

# Exhibit 1



[HOME](#) > [MEDIA](#) > [PRESS RELEASES](#) > [PRESS RELEASE VIEW](#)

# U.S. Central Command statement on Yemen raid

Release No: 17-049 Feb. 1, 2017

February 1, 2017

Release Number 20170201-01

FOR IMMEDIATE RELEASE

A team designated by the operational task force commander has concluded regrettably that civilian non-combatants were likely killed in the midst of a firefight during a raid in Yemen Jan. 29. Casualties may include children.

The ongoing credibility assessment seeks to determine if there were any still-undetected civilian casualties in the ferocious firefight that also claimed the life of Navy Seal Team Chief Special Warfare Operator William “Ryan” Owens and wounded three other U.S. service members.

The known possible civilian casualties appear to have been potentially caught up in aerial gunfire that was called in to assist U.S. forces in contact against a determined enemy that included armed women firing from prepared fighting positions, and U.S. special operations members receiving fire from all sides to include houses and other buildings.

This complex situation included small arms fire, hand grenades and close air support fire. Analysts are carefully assessing whether additional non-combatant civilians that were not visible to the assault force at the time were mixed in with combatants.

The raid resulted in the seizure of materials and information that is yielding **valuable intelligence to help partner nations deter and prevent future terror**

[Skip to main content \(Press Enter\)](#)

attacks in Yemen and across the world.

“Al-Qa’ida in the Arabian Peninsula has a horrifying history of hiding women and children within militant operating areas and terrorist camps, and continuously shows a callous disregard for innocent lives,” said Col. John J. Thomas, U.S. Central Command spokesman.

“That’s what makes cases like these so especially tragic.”

---

**USCENTCOM**

# Exhibit 2



(b)(1),(b)(5),Sec. 1.4(a),Sec. 1.4(d)

Sir, I will stand by for feedback and guidance as this moves forward.

Very Respectfully,

Craig

From: Votel, Joseph L GEN MIL USA USCENTCOM CCCO (b)(6)  
 Sent: Thursday, January 26, 2017 10:53 AM  
 To: Faller, Craig RADM SD <(b)(6)> mil>; Dunford, Joseph F Jr Gen USMC JS (US)  
 (b)(6) mil>  
 Cc: Whelan, Theresa M SES OSD OUSD POLICY (US) (b)(6) mil>; Handelman,  
 Kenneth B SES OSD OUSD POLICY (US) (b)(6) mil>; Selva, Paul J Gen USAF  
 JS OCJCS (US) (b)(6) mil>; Mayville, William C Jr LTG USARMY JS ODJS (US)  
 (b)(6) (b)(6) mil>; Dolan, John L Lt Gen USAF JS J3 (US)  
 (b)(6) (b)(6) mil>; Marrs, James R Maj Gen USAF JS J2 (US)  
 (b)(6) (b)(6) mil>; McKenzie, Kenneth F Jr LtGen USMC JS J5 (US)  
 (b)(6) (b)(6) mil>; Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC  
 (b)(6) mil>; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS  
 (b)(6) mil>; Stearney, Scott A RADM MIL USN USCENTCOM CCJ3  
 (b)(6) mil>; Miller, Austin Scott LTG USARMY SOCOM JSOC (US)  
 (b)(6) mil>; Thomas, (b)(6) MIL USAF USCENTCOM CCCO  
 (b)(6) mil>

Subject: (S) SHABWAH Bi-Lateral Raid

Classification: ~~SECRET~~

Mr Secretary and Chairman,

Thanks for the quick work on securing authorities for our Shabwah CONOP.

(b)(1),Sec. 1.4(a)

(b)(1), Sec. 1.4(a)

I will ensure that my PAO is reaching out to yours to ensure proper coverage.

We will keep you informed on execution of this first raid and then give you a heads-up as we prepare to execute other portions of this CONOP in support of the UAE-led coalition that is orchestrating these operations in Shabwah.

Vr,

Votel

Joseph L. Votel

General, US Army

Commander, US Central Command

HQ, USCENTCOM

7115 South Boundary Blvd

MacDill AFB, FL 33621-5101

(b)(6)

(b)(6)

17-L-0705/JS/039

# Exhibit 3

(b) (6) **Maj USMC JS OCJCS (US)**

**From:** [REDACTED] Col USAF JS OCJCS (US)  
**Sent:** Friday, January 27, 2017 6:49 AM  
**To:** Crandall, Darse E Jr RDML USN JS OCJCS (US)  
**Cc:** JS Pentagon DoM List LC Bridge; [REDACTED] LtCol USMC JS DOM (US)  
**Subject:** FW: (S) (F) SHABWAH AND BAM INTELL SHARING  
**Attachments:** TAB A - Support to UAE Shabwah Offensive FINALDOCX; TAB B - DoD Operational Proposal to Support UAE Shabwah Offensive FINAL....docx; CENTCOM BAM FCO - UAE Intel Sharing 15 Nov 16 (v3).pptx; UAE Assurances.docx

CLASSIFICATION: ~~SECRET~~

Sir

FYSA - good rundown on Shabwah from Mike d'A.

V/r

[REDACTED]

(b) (6) [REDACTED], Col, USAF  
Principal Deputy Legal Counsel  
Office of the Chairman of the Joint Chiefs of Staff

NIPR: [REDACTED]  
SIPR: [REDACTED]  
JWICS: [REDACTED]

COMM: [REDACTED]  
SVOIP: [REDACTED]  
TSVOIP/NSTS: [REDACTED]

MOBILE (UNCLAS): [REDACTED]  
\*MOBILE (SECRET): [REDACTED]  
(\*must be enabled - send NIPR email, or text to UNCLAS mobile first)

CLASSIFICATION: ~~SECRET~~

-----Original Message-----

**From:** d'Annunzio, Michael A SES OSD OGC (US)  
**Sent:** Thursday, January 26, 2017 7:13 PM  
**To:** Koffsky, Paul S SES OSD OGC (US) <(b) (6)>  
**Cc:** Allen, Charles A SES OSD OGC (US); [REDACTED] Davidson, Ellana V SES OSD OGC (US); [REDACTED] CIV OSD OGC (US); [REDACTED] CIV OSD OGC (US); [REDACTED] CIV OSD OGC (US); [REDACTED] CIV OSD OGC (US); [REDACTED] Col USAF OSD OGC (US)

[REDACTED] LTC USARMY OSD OGC (US)  
(b) (6) [REDACTED] R CIV OSD OGC (US)  
[REDACTED] CIV ([REDACTED])  
CIV OSD OGC ([REDACTED]); JS Pentagon DoM List LC Bridge [REDACTED]

Subject: FW: [S] (S) SHABWAH AND BAM INTELL SHARING

~~SECRET~~

Paul, others,

An end-of-day informational update on some recent Yemen-related decisions and discussions follows.

Last night the President approved a DoD proposal, along the lines of the attached Word documents, to conduct and support the UAE in conducting certain counterterrorism operations in Shabwah, Yemen. The record of the President's approval is currently only found in the CJCS email below; I'm told a further email from a White House official might follow.

Following that decision, and in preparation for today's 1400 Deputies Committee meeting on Yemen and South Sudan, (b) (6) at NSC Legal convened an interagency lawyers' call to discuss implementation of the President's decisions. The key points of lawyers' discussion were:

(b) (1) (A), (b) (5)

[REDACTED]

I understand that the first U.S.-UAE raid in Shabwah could occur tomorrow night Yemen time.

Mike

Mike d'Annunzio  
Attorney-Advisor

Pentagon (b)(6)  
(b)(6)

STE (b)(6)

VOSIP (b)(6)

DRSN (b)(6)

NSTS

sipr: (b)(6)

jwics: (b)(6)

-----Original Message-----

From: Dunford, Joseph F Jr Gen USMC JS (US)

Sent: Wednesday, January 25, 2017 9:29 PM

To: Votel, Joseph L GEN MIL USA USCENCOM CCCC (b)(6)

Cc: Selva, Paul J Gen USAF JS OCJCS (US) (b)(6) Mayville, William C Jr LTG USARMY JS ODJS

(US) (b)(6); Dolan, John L Lt Gen USAF JS J3 (US) (b)(6)

Marrs, James R Maj Gen USAF JS J2 (US) (b)(6) McKenzie, Kenneth F Jr LtGen USMC JS JS

(US) (b)(6)

Subject: (S) SHABWAH AND BAM INTELL SHARING

CLASSIFICATION: ~~SECRET~~

Joe--

Just back from the WH ... POTUS approved both requests. SD will make Hill calls in the morning and we'll get you an EXORD. Good hunting ...

VR  
Joe

CLASSIFICATION: ~~SECRET~~

DERIVED FROM : Multiple Sources  
DECLASSIFY ON:

~~SECRET~~

DERIVED FROM : Multiple Sources  
DECLASSIFY ON:

~~SECRET~~

# Exhibit 4





PRESS BRIEFINGS

## Press Briefing by Press Secretary Sean Spicer

Issued on: February 2, 2017



James S. Brady Press Briefing Room

12:32 P.M. EST

MR. SPICER: Good afternoon. Happy Groundhog Day. We've got six more weeks of winter, apparently. Luckily, for those of you who are going to be joining the President down to Florida this weekend, you'll get some time to get a glimpse of summer at the "Winter White House" in Mar-a-Lago.

The President is going to start his meeting at 1:00 sharp. You probably just saw the b-roll of folks from Harley rolling on in, literally. So I'm going to try to keep this a little quick.

The President signed a proclamation yesterday ushering in Black History Month. He looks forward to an engaging and informative month of events honoring the enormous contributions that African Americans have made throughout our history.

Last night, the President was honored to host the swearing-in of the next Secretary of State, Rex Tillerson, in the Oval Office. As the President said last night, Secretary Tillerson is a man who's already respected all over the world for the tremendous life that he's led, and now will bring his years of experience to the critical task of making our nation safer, more prosperous, and more secure.



It's time to bring a clear-eyed focus to our foreign affairs, and now with Secretary Tillerson at the helm of the State Department, we'll do just that. We'll strengthen our alliances, form new ones, and enhance America's interests throughout the world.

Speaking of the President's excellent nominees, praise is pouring in from around the country for his pick for Supreme Court. The Detroit News said Judge Gorsuch is a "legal superstar"; "an outstanding choice," says the New Hampshire Union Leader. The Richmond Times-Dispatch says the "initial reaction" was "to cheer." The South Florida Sun Sentinel touted his "excellent qualifications."

Yesterday, Judge Gorsuch had his first round of meetings on the Hill. Unfortunately, Senate offices aren't in the habit of releasing editorials, but from everything we heard, the Judge knocked it out of the park on the Senate as well. The President looks forward to a fair and speedy confirmation process for this exceedingly qualified nominee and jurist.

In my last briefing, I read out a list of the senators Judge Gorsuch met with. In addition to the meeting with Majority Leader McConnell, Majority Whip Cornyn, Judiciary Chairman Grassley, and Senators Hatch and Gardner, the Judge also met with Democratic Senator Joe Manchin of West Virginia. Recently, Senator Manchin expressed his belief that Judge Gorsuch could win enough Democrats to hit 60 votes. I'll agree with the Senator there on that one. I mean, we have to have a few Trump-state Democrats who want to win re-election.

But, as I pointed out yesterday, this so-called 60 vote "standard" is simply not accurate. Democrats are grasping at straws to block the confirmation of an unquestionably qualified nominee. I'll repeat, neither of the two Supreme Court justices that President Obama put forward were subject to the 60-vote threshold. So although I agree with Senator Manchin that Judge Gorsuch will probably get enough Democrats to get to 60, it's just simply not ever been a requirement.

Now, on to the events of today. The President started his day by attending the National Prayer Breakfast. It's a tradition that continued over six decades, going back to President Eisenhower. The President thanked the American people for their faith and prayers that have sustained and inspired him, noting that the five words that he has heard more than any others as he's traveled throughout the country are, "I'm praying for you."

He spoke at length about the ISIS genocide against Christians and the oppression of peace-loving Muslims, as well as the threats of extermination against the Jewish people, and made it clear that he believes the United States has a moral obligation to speak out against such violence.

He encouraged Americans to remain a tolerant society where all faiths are respected and where all of our citizens can feel safe and secure. With that goal in mind, the President remarked that he's taken action to ensure that the United States will not allow a beachhead of intolerance to spread throughout our nation. In the coming days, we will develop a system to help ensure that those admitted into our country fully embrace our values of religious and personal liberty and reject any form of oppression or discrimination.

The President also committed to get rid of the Johnson Amendment and allowing our representatives of faith to speak freely and without retribution.

In a particularly poignant moment during his remarks, the President recalled yesterday his visit to Dover Air Force Base to join the family of Chief Ryan Owens as America's fallen hero was returned home. After honoring Chief Owens for giving his life in defense of the American people, the President quoted John 15:13: "Greater love hath no man than this: that a man lay down his life for his friends."

After returning to the White House this morning, the President held a legislative affairs staff meeting in the Oval Office with his team. The team continues to work closely with Congress to enact the President's agenda. With the nomination of Judge Gorsuch to the Supreme Court, extensive outreach is underway on Capitol Hill and we look forward to the Judge receiving a swift and fair hearing.

Between his meetings, the President was pleased to see that EPA Administrator-designee Pruitt was voted out of the Senate Environment and Public Works Committee. As has unfortunately become the practice, Democrats again boycotted the hearing, requiring a suspension of the rules in order to advance his nomination.

Following the strategy session, the President met with Senators Hatch, Wyden and Congressmen Brady and Neal. This meeting was an opportunity for the President to meet with the chairmen and ranking members of the Senate Finance Committee and House Ways and Means Committee to help chart the future of U.S. trade policy. The President has put together an all-star trade team that will

work closely with the U.S. Trade Representative and the committees led by these members to craft new trade deals.

The President has expressed his concern time and again with NAFTA, which he believes is an out-of-date agreement. The ultimate goal is to ensure the best and fairest treatment of U.S. workers and businesses, and the President believes that those interests are best secured by bilateral, rather than multilateral trade deals. He looks forward to working closely with the USTR and Congress when it comes to issues of trade.

For those of you who weren't outside and just saw the Harleys roll up, it's no surprise that this afternoon the President will host a meeting and listening session with Harley-Davidson executives and union representatives. For a list of those individuals, please contact our office.

Harley-Davidson has been an American success story since 1901, when William S. Harley, at age 21, completed the blueprint drawing of an engine designed to fit into a bicycle. In 1903, Harley-Davidson began building motorcycles in the United States. And today, the company has approximately 6,000 employees and \$6 billion in annual revenue. The company's global headquarters is located in Milwaukee, Wisconsin — which may have had something to do with them getting in so quickly. And there's a certain staffer.

Today, the President will welcome to the White House the latest generation of Harley-Davidson executives to discuss how to make it easier for businesses to create more jobs and factories in the United States. Beyond the company executives, representatives from the machinists and steel workers unions were also be in attendance.

Their motorcycles have carried our American servicemembers in war. They carry our police officers that keep us safe. They carry the Secret Service as they protect our presidents. And they bring joy to millions of Americans and throughout the world — and others throughout the world, rather. The President is looking forward to hosting these leaders from one of America's truly great entrepreneurial success stories. The American worker built this country, and the President is focused on restoring a government that puts their interests first.

A few administrative notes. The National Security Advisor, Mike Flynn, today announced additions to the NSC senior staff. David Cattler will be a Deputy Assistant to the President for Regional Affairs.

John Eisenberg, Deputy Assistant to the President, NSC Legal Advisor, and Department [Deputy]

Counsel to the President for National Security Affairs. Kevin Harrington, Deputy Assistant to the President for Strategic Planning. And Kenneth Juster, Deputy Assistant to the President for International Economic Affairs.

Lastly, we had a great reaction to our Skype introduction seats yesterday. I know we've had a tremendous amount of requests pouring in from around the country. Please contact the press office if you know of any that has an interest in joining us in the future.

In terms of the schedule for tomorrow, the President will host a Strategic and Policy Forum. Then, in the afternoon, the President will have lunch with General Flynn before departing down to Mar-a-Lago later in the day.

With that, I'll take some questions.

Katie Pavlich.

Q Hi, Sean. Thanks for the question. Today, President Trump talked about Christian genocide at the National Prayer Breakfast, and last year the Obama State Department officially declared a genocide by ISIS against Christians and other minority and religious groups in the Middle East and North Africa. Now that Rex Tillerson has been sworn in as the Secretary, what specifically is the administration planning to do to comply with the legal obligations of protecting these groups under the U.N. 1948 Treaty?

MR. SPICER: That's a great question. I think Secretary Tillerson is learning his way around the building so far this morning. He gave a great speech talking about his vision and goal for the State Department. I think there will be further guidance coming out on that, Katie. Right now, his job is to get in, get settled, talk to the employees, make sure they understood.

But back to the issue, obviously it's important to President. It was during — throughout the campaign. It's something that he addressed this morning, and is something that he is committed to. He talked about it in terms of the executive orders, and allowing Christian minorities in key countries seek asylum in the United States. He recognizes that, in so many nations, these are the oppressed groups in accordance with how the U.N. defines refugees. So I think you'll see further guidance with that.



Jennifer.

Q Thanks, Sean. I have two questions, actually. Today, the President renewed his promise to protect religious liberty, which he says is under threat. Some Americans see religious liberty as code for discrimination. Can you kind of give us a sense of how the President views this tension?

MR. SPICER: It's an interesting question, because I do — you know, this is something that comes up quite a bit. I think there is a line. We have freedom of religion in this country, and I think people should be able to practice their religion, express their religion, express areas of their faith without reprisal. And I think that pendulum sometimes swings the other way in the name of political correctness.

And I think the President and the Vice President both understand that one of the things that makes our country and this democracy so great is our ability to express our religion, to believe in faith, to express it, and to live by it. And that's where I think the important part is — whether it's a small business owner or employee, he wants to have some degree of expression of faith at the company. And too often those voices get pushed out in the name of political correctness.

So he's going to continue to make sure that we not only speak up for it, but find ways in which we can keep that line a little less blurred and make sure that the pendulum doesn't swing against people. We shouldn't impose a religion on anybody. We're free to express our religion or be — you know, not have one. That's obviously, in our country, an equally valid way of living your life. But at the same time, I think people who want to express their faith shouldn't be ostracized because they want to live that.

Major.

Q If you could give us an example, if you could, of the pendulum swinging in the direction of political correctness. And how is that going to inform the President with this executive order? And as you may know, a draft is circulating around town and many have wondered if that is going to be a way to either silence those on the left or be a threat to the LGBTQ community. Talk us through both of those.

MR. SPICER: Well, I think if you look back to the Little Sisters case, if you look back to other businesses that were, under Obamacare —

Q Would you put Hobby Lobby in that category?

MR. SPICER: I would, yeah. Absolutely. I think there's several businesses and several institutions — Catholic institutions and others — that have been mandated or attempted to mandate certain things that they may or may not do or how they have to treat their employees. Those are instances where clearly the pendulum is swinging a different way, where you are not carving out institutions or the ability for privately held businesses to conduct themselves to live according to their faith or their moral compass.

And so there's clearly a lot of evidence in the last couple years of the government coming in with regulations and policies that have, frankly, denied people the ability to live according to their faith.

Q From the President's point of view, that's discriminatory in itself.

MR. SPICER: Well, I think there's — like I said, I think it's a pendulum. And where the President is, is that he wants to make sure that you don't penalize someone for wanting to express their faith, and that to the extent that we can keep that line a little less blurred and allow people who don't believe in a faith or have an opposing faith, make sure that they are equally comfortable in the workplace. But we shouldn't penalize people or mandate them to abide by certain policies or regulations which are in direct contradiction to their faith.

Q And what about the executive order, Sean?

MR. SPICER: There's right now no executive orders that are official or able to read out. We maintain that there's nothing new on that front.

Q (Inaudible) drafted along —

MR. SPICER: It's not a question of — there are a lot of ideas that are being floated out — I mentioned this the last couple days. But that doesn't mean — part of it is, as the President does all the time, he asks for input, he asks for ideas, and on a variety of subjects there are staffing procedures that go on where people have a thought or an idea and it goes through the process. But until the President makes up his mind and gives feedback and decides that that's final, there's nothing to announce.

Q Thank you. In light of the tragedy that happened in Quebec City last week, which Prime Minister Trudeau is actually calling an act of terrorism, what is the President doing, what initiatives is he taking to make sure that that kind of homegrown — because he was a Canadian citizen — homegrown terrorism, homegrown violence doesn't happen within our country?

MR. SPICER: Well, there's a lot of things. Number one, he's talked cyber — I mean, he's looking at it from every angle. I think the first thing is to make sure that we look at our borders. You've got to protect your own people first, then you've got to look at the cyber threats. I mean, so there is a holistic approach to both immigration and there's a direct nexus between immigration and national security and personal security that he has to look at.

But then it's a multi-tiered step. You look at the borders, you look at who we're letting in, and you also look at what we're doing internally with our intelligence agencies and the FBI that make sure that we're looking at — whether it's the cyber threats that we face or other terrorist activities — but making sure that we're working with the NSA and the FBI to be ahead of the curve, if you will.

Q If I may, these are homegrown — Oklahoma City was an American kid.

MR. SPICER: Sure.

Q Okay. That's all. That's what I'm asking.

MR. SPICER: That's what I'm saying. But I think that, part of it is, looking at using the assets that we have here — the NSA, the FBI — looking at using the different agencies to see if we can get ahead of the curve and see things. And a lot of times, that's been a very big issue, is getting ahead of the curve for when there are telltale signs, having the reporting systems up, working with the various agencies. But it's a multi-effort process, if you will.

Kristen.

Q Sean, thank you. Why is the administration easing sanctions against Russia?

MR. SPICER: We're not easing sanctions. The Treasury Department — it is, from what I understand, it's a fairly common practice for the Treasury Department, after sanctions are put in place, to go back and to look at whether or not there needs to be specific carve-outs for either industries or

products and services that need to be going back and forth. But I would refer you back to the Treasury Department on that one.

Q Hold on, Sean. The language on the Treasury Department website suggests that you are, in fact, easing sanctions that authorizes certain transactions with the Federal Security Service. Does that not suggest a shift from what was put in place —

MR. SPICER: No, it doesn't.

Q So explain —

MR. SPICER: It is, from what I understand, a regular course of action. The Treasury does, quite often, when there are sanction imposed, but I would refer you back to the Treasury Department.

Q Thank you. Could I ask you to describe the tone of the call on the weekend between the Australian Prime Minister and the President, and also outline the President's concerns about the refugee deal in question? And I asked you this earlier this week, but could you clarify whether the deal is on or not? Because the President tweeted last night "I will study this dumb deal," implying that he's still considering it.

MR. SPICER: Right. The President had a very cordial conversation with Prime Minister Turnbull, where they went through an extensive discussion of this deal. The President is unbelievably disappointed in the previous administration's deal that was made and how poorly it was crafted, and the threat to national security it put the United States on.

He has tremendous respect for the Prime Minister and for the Australian people, and has agreed to continue to review that deal and to ensure that as part of the deal, which was always part of it, that we would go through a very, very extreme vetting process to ensure that every single person that is being offered up is coming here with peaceful intentions and poses no threat to the United States.

So he has ensured that while he has respect for the Australian people and respect for Prime Minister Turnbull, that we do not pose a threat to the United States of America, that the deal that was cut by the last administration is something that he is extremely, extremely upset with. He does not like it, but out of respect for him, he's going to allow that process — continue to study it and



allow it to move forward under the conditions that have been set — that there will be extreme vetting on every single one of those individuals.

Q Just for clarity, the deal itself is still under review, so it's not certain to proceed? Or it will proceed as —

MR. SPICER: Part of the deal was that — the deal allows for the United States to vet the individuals that are being offered up to be processed. The President's goal is to make sure that every single one of those people, in accordance with the deal and as discussed in the telephone conversation with the Prime Minister, is subject to extreme vetting to ensure that no one puts it. But I cannot underscore how disappointed he was in the deal that was made and how he thought it was just a horrible deal that was offered up by the United States by the previous administration.

Sarah.

Q The President and his national security advisor have been clear the administration wants to put Iran "on notice," but they haven't specified what that is. What options are on the table? And are there any options, like military action, that might be off the table at this point?

MR. SPICER: So I think General Flynn was really clear yesterday that Iran has violated the Joint Resolution, that Iran's additional hostile actions that it took against our Navy vessel are ones that we are very clear are not going to sit by and take.

I think that we will have further updates for you on those additional actions, but clearly we wanted to make sure that Iran understood that they are on notice, this is not going un-responded to.

John.

Q Thank you very much, Sean.

Q It was a Saudi vessel.

MR. SPICER: Thank you. Yes.

Q They thought it was an American, but it's a Saudi vessel.

MR. SPICER: Right, that's right. John.

Q Thank you, Sean. On January 27th, at the Republican retreat in Philadelphia, Vice President Pence had a closed-door meeting with House Republicans where several of them brought up the case of IRS Commissioner John Koskinen. There was an attempt to impeach him last year, which some of the leadership in the House felt was unfair to the commissioner, and they urged him to tell the President that given his entire record, he should fire him or ask for his resignation soon. My sources said the Vice President said "I can hear you." Is there any pending action on the fate of Commissioner Koskinen?

MR. SPICER: I have nothing to update you on.

Hallie.

Q On Yemen, it was initially described, the raid over the weekend, as a successful raid by the administration. There are now some questions and comments raised about the possibility of additional civilian casualties. So I've got a couple of questions for you on this one. Would you still stand by your characterization of the raid as "successful"? Was the President given multiple options about this raid, or just one? And were there consultations with the prior administration's national security officials, military officials about the raid moving forward?

MR. SPICER: Thank you. Actually, I'd like to just walk through that. I appreciate you bringing this up.

There is — let's go through the tick-tock on that raid. On November 7th, CENTCOM submitted the plan to DOD. Clearly, that was under the last administration. Legal teams were involved immediately when it was submitted to DOD. On December 19th, the plan was approved by the Department of Defense and recommended that it be moved ahead. It was sent then to the National Security Council staff here in the White House. Again, this all happened under the previous administration.

On January 6th, there was an interagency deputies meeting. The deputies recommended at that time that they go ahead. It was so easily approved it was sent straight up. The conclusion to hold

was, at that time, to hold for what they called a “moonless night,” which, by calendar, wouldn’t occur until then-President-elect Trump was President Trump.

On January 24th, shortly after taking office, Secretary of Defense-then Mattis read the memo, resent it back up to the White House conveying his support. On the 25th of January, the President was briefed by General Flynn on Secretary Mattis’s recommendation and the status of the operation, or potential operation.

The President asked to see Secretary Mattis and Joint Chiefs of Staff Dunford. He then, on that evening, had a dinner meeting, which included the President, the Vice President, Secretary Mattis, Chairman Dunford, Chief of Staff Priebus, Jared Kushner, Chief Strategist Bannon, General Kellogg, General Flynn, and CIA Director Pompeo where the operation was laid out in great extent. The indication at that time was to go ahead on Friday the 26th.

In the morning, the deputies committee met again. It was not a necessary step because they had previously recommended and also reaffirmed their support for that. On January 26th, the President signed the memo authorizing the action.

So it was a very — not only was it a very, very thought-out process by this administration, it had started back on November 7th in terms of — clearly well before that, but it was a move forward by CENTCOM on November 7th. This was a very, very well thought-out and executed effort.

Q Where was the President the night of the raid? How did he learn about Chief Owens’s death? And do you still stand by your characterization that it was successful?

MR. SPICER: The President was here in the residence. He was kept in touch with his national security staff. Secretary Mattis and others had kept him updated on both the raid and the death of Chief Owens, as well as the four other individuals that were injured. So he was kept apprised of the situation throughout the evening.

And again, I think — I would go back to what I said yesterday: It’s hard to ever call something a complete success when you have the loss of life, or people injured. But I think when you look at the totality of what was gained to prevent the future loss of life here in America and against our people and our institutions, and probably throughout the world in terms of what some of these individuals could have done, I think it is a successful operation by all standards.

And again, I want to reiterate, it is tough to ever use the word “success” when you know that somebody has lost their life. But when you go back and look at an individual that dedicated their life to serving this country, and went over and over and over again knowing that this not only the risk that he took but wanted to do it because he knew the threat that these kind of individuals pose to our country and to our people, that’s — while not a success that you lost to him, you know that he died in sacrifice for someone else here in this nation.

Hunter Walker.

Q Thank you, Sean. I’ve seen some criticism of the President’s remarks at the prayer breakfast this morning. Can you shed any light on why he thought that was a good venue to mock “The Apprentice” for its ratings?

MR. SPICER: Look, Mark Burnett, the creator of “The Apprentice,” who is a long-time supporter of the prayer breakfast but also has a personal relationship, was there. He meant it as a light-hearted moment. And I think if you look at the totality of his remarks, they were absolutely beautiful. And I think to hone in on that, it was a light-hearted moment he was trying to have with a big supporter of the National Prayer Breakfast and a personal friend.

Guys, I’ll be out tomorrow. I want to make sure we all get to see the President now. Thank you, guys.

END

12:57 P.M. EST

# Exhibit 5



HOME > MEDIA > NEWS ARTICLES > NEWS ARTICLE VIEW

## U.S. Raid in Yemen Garner Intelligence

By Terri Moon Cronk

WASHINGTON, Jan. 30, 2017 — The U.S. military raid on the militant Islamist group al-Qaida in the Arabian Peninsula compound in Yemen Jan. 28 that killed a U.S. service member and injured three others yielded valuable intelligence, Pentagon spokesman Navy Capt. Jeff Davis told reporters today.



Service members from the Air Force, Army and Marine Corps participate in sustainment training at Grand Bara, Djibouti, Jan. 5, 2017. During the exercise, Air Force joint terminal attack controllers, along with soldiers from the 101st Infantry Battalion and Marines from the 11th Marine Expeditionary Unit conducted training utilizing MV-22 Osprey and F-16 Fighting Falcon aircraft. During a raid against the terrorist group al-Qaida in the Arabian Peninsula, Jan. 28, 2017, in Yemen, an Osprey hard-landed, injuring three service members and killing one. Air Force photo Tech. Sgt. Joshua J. Garcia

Material captured from the site will help the United States “gain a deeper insight into the group’s planning to help prevent terrorist attacks against innocent civilians in the United States and our coalition-partner nations,” he said.

Similar site exploitation operations in Afghanistan, Syria and Iraq have produced information about terrorist planner logistics, recruiting and financing efforts, Davis noted.

“Until now, we’ve had limited access to terror sites on the ground to gain intelligence from [al-Qaida in the Arabian Peninsula],” he said.

### Raid Conducted for Intel Gathering

[Skip to main content \(Press Enter\)](#)

This operation was specifically to enable us to gather the information we



needed to be able to map out this group better, and to prevent future foreign terrorist attacks,” the captain said, noting that al-Qaida in the Arabian Peninsula has a number of links to very specific, United States and Western-focused attacks.

The three service members’ injuries occurred when an Osprey MV-22 tilt-rotor aircraft made a hard landing during the operation, Davis said, adding that the inoperable Osprey was subsequently destroyed in place by a U.S. airstrike.

### **Casualties Being Assessed**

The raid on the compound, in a remote area of al-Bayda, Yemen, reportedly also killed 14 of the organization’s operatives, he said.

The casualties in Yemen are being assessed, including al-Qaida in the Arabian Peninsula’s use of numerous female fighters, some of whom were among those killed in the raid, Davis said.

“The [female fighters] ran to pre-established positions as if they’d trained to be ready and trained to be combatants and engage with us. So, some of the enemy killed in combat are in fact female,” he said.

### **Aggressive Actions Against Terrorists**

The operation had been planned for months, and was one in a series of aggressive actions against al-Qaida in the Arabian Peninsula in Yemen, he said.

Coalition forces drove the organization out of Yemen’s al-Mukalla province last year, which the terrorist group controlled at the time, Davis noted, adding they then moved down the Yemen coast to parts of Aden and inland.

“The AQAP presence right now is largely coastal with some inland presence,” he noted.

“AQAP is a foreign terrorist organization designated as such,” Davis said. “It continues to target U.S. and allied interests in Yemen as well as around the world.”

Search main content (Press Enter).

The United States is interested in al-Qaida in the Arabian Peninsula following their proven history of engaging in external operations, he said.

Davis said the terrorist events that the group has claimed responsibility for or been linked to include the attempt to mail explosives to U.S. addresses in 2010; orchestrating complex attacks against Yemen's ministry of defense in 2013; and most recently, the targeted and financed attack and massacre on the French newspaper Charlie Hebdo in January 2015.

The group also is connected to attacks on the United States that include the 2013 Boston Marathon bombing, and the attempted underwear bombing aboard Northwest Flight 253 on Christmas in 2009.

"The United States and our partner nations remain committed to eradicating the threats posed by violent extremism and destroying militant safe havens," Davis emphasized. "We will take measures to combat terrorism, ensuring the safety and security of the U.S. citizens and those targeted by terrorists."

(Follow Terri Moon Cronk on Twitter: @MoonCronkDoD)

---

 al-Qaida  Centcom  Yemen



# Exhibit 6

~~SECRET SENSITIVE~~

01 FEB 2017

From: (b) (6) [REDACTED] Commander

Subj: MEMORANDUM FOR THE RECORD

[REDACTED] Credibility Assessment on Potential Civilian Casualties

**BLUF:** We assess there were between 4 and 12 civilian casualties (CIVCAS) associated with OPERATION (b) (1) (A) [REDACTED] raid on RAC 6 IVO al-Bayda, Yemen POD 28-29 January 2017. The exact number of CIVCAS is indeterminate.

**BACKGROUND:** On 28 January 17, TF 94-7 in conjunction with (b) (1) (A) [REDACTED] Special Operations Command TF 66 conducted a bilateral intelligence raid in Yemen's Al Bayda Province. The mission targeted al-Qaeda in the Arabian Peninsula (AQAP) with the intent to capture AQAP leaders, exploit captured enemy material, and increase understanding of AQAP's external operations network and planning.

**WHO:** 4-12 CIVCAS; exact number indeterminate

**WHAT:** We assess there were between 4 and 12 CIVCAS associated with OPERATION (b) (1) (A) [REDACTED]. The exact number is indeterminate.

**WHEN:** 28 - 29 January 2017

**WHERE:** Rawdat al Athabah Compound (b) (1) (A) [REDACTED] Yemen

**ASSESSMENT:**

The credibility assessment consisted of the following:

1. Narrative of Actions on the Objective from the after action review (AAR);
2. Full Motion Video (FMV) Reviews of Pre-and Post-OP Feeds;
3. Post-Strike Sensitive Intelligence

**1. Narrative of Actions on the Objective from the AAR.**

The assault force (AF) maneuvered up a knoll north of the objective (b) (1) (A) [REDACTED] on the force's final approach to the target. The AF was immediately engaged by enemy combatants located in (b) (1) (A) [REDACTED] 80 meters north of the AF. The AF established a blocking position (BP) to provide suppressive fire on the (b) (1) (A) [REDACTED] while the AF moved down the eastern side of (b) (1) (A) [REDACTED]. Once the AF received effective fire from the south, the (b) (1) (A) [REDACTED] buildings. The hostile fire came from enemy taking cover in buildings where we assess women and children were located.

1

~~SECRET SENSITIVE~~

~~SECRET // NOFORN~~

(b) (1) 1.4(a) (b) (c) (d)



**CONCLUSION:** We assess there were between 4 and 12 non-combatant casualties, however the exact number is indeterminable. The Assault Force was enveloped by effective enemy fire and sustained four casualties, one fatal, in the exchange of gunfire. The AF was engaged from 360 degrees, from more than a dozen compounds, by both male and female combatants. The enemy on the objective was able to engage the assault force with effective fire until partially suppressed by close air support. Despite the ferocity of the fight, the assault force worked through close quarters to discriminate noncombatants from the enemy. However, enemy fire from every direction, a propane tank fire that engulfed the 10-series, the proportional use of close air support, and combatants intermingled with noncombatants, resulted in civilian casualties.

(b) (6)



~~SECRET // NOFORN~~

# Exhibit 7

Team,

LIMDIS FYSA. The attached e-mail from the TF 94-7 CDR to the CENTCOM CDR includes the timeline for today's operation.

v/r,

(b)(6)

COL (b)(6)  
Staff Judge Advocate  
U.S. Central Command

Secret: (b)(6)  
Unclassified: (b)(6)  
Office: (b)(6)  
Mobile:  
VOSIP:

-----Original Message-----

From: (b)(6) COL MIL USA USCENTCOM CCJA  
Sent: Thursday, January 26, 2017 5:56 PM  
To: (b)(6) Col USAF JS OCICS (US)  
Cc: CCJA On Law; JS Pentagon DoM List LC Bridge; d'Annunzio, Michael A SES OSD OGC (US); (b)(6) IV OSD OGC (US); (b)(6)  
Subject: RE: [S//NF] (S) Shabwah Detention

Classification: SECRET//NOFORN

(b)(6)

Thanks. Great discussion. I really appreciated the call, even though we got cut off a bit early. A few follow-ups FYSA:

(1) Please see attached traffic from SECDEF's office conveying mission execution approval and additional PA guidance from POTUS.

(2) GEN Votel has issued an EXORD (via e-mail, to be followed up with a formal order tonight). GEN Votel specifically directs that the detainees shall remain in UAE custody (unless they are HVTs). Mission execution appears to be set for tomorrow night.

(b)(1), Sec. 1.4(a)

(b)(6)

v/r,

(b)(6)

COL (b)(6)  
Staff Judge Advocate  
U.S. Central Command

Secret: (b)(6)  
Unclassified: (b)(6)  
Office: (b)(6)  
Mobile:  
VOSIP:

-----Original Message-----

From: (b)(6) Col USAF JS OCJCS (US) [mailto:(b)(6).mil@mail.smil.mil]

Sent: Thursday, January 26, 2017 12:33 PM

To: (b)(6) MIL USA USCENCOM CCJA

Cc: CCJA Op Law; JS Pentagon DoM List LC Bridge; d'Annunzio, Michael A SES OSD OGC (US); (b)(6) CIV OSD OGC (US)

Subject: (5) Shabwah Detention

CLASSIFICATION: SECRET-

(b)(6)

Apologies - my SIPR systems departed on a frolic and detour.

We had to break off for an NSC legal phone call on this subject (not the detention piece but the assurances stuff).

(b)(1), Sec. 1.4(a)

I've copied Mike and Mike to correct my deficient legal views....

v/r,

(b)(6)

(b)(6) Col, USAF  
Principal Deputy Legal Counsel  
Office of the Chairman of the Joint Chiefs of Staff

(b)(6)  
[Redacted Box] .mil

(\*must be enabled - send NIPR email, or text to UNCLAS mobile first)

CLASSIFICATION: ~~SECRET~~

Classified By: (b)(6) COL MIL USA USCENTCOM CCJA Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb  
2016 Declassify On:1/26/2017  
Classification: ~~SECRET//NOFORN~~

Classified By: (b)(6) COL MIL USA USCENTCOM CCJA Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb  
2016 Declassify On:1/26/2017  
Classification: ~~SECRET//NOFORN~~

# Exhibit 8



Stenographic Transcript  
Before the

COMMITTEE ON  
ARMED SERVICES

**UNITED STATES SENATE**

HEARING TO  
RECEIVE TESTIMONY ON  
UNITED STATES CENTRAL COMMAND AND UNITED  
STATES AFRICA COMMAND

Thursday, March 9, 2017

Washington, D.C.

ALDERSON COURT REPORTING  
1155 CONNECTICUT AVENUE, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036  
(202) 289-2260  
[www.aldersonreporting.com](http://www.aldersonreporting.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HEARING TO RECEIVE TESTIMONY ON  
UNITED STATES CENTRAL COMMAND AND  
UNITED STATES AFRICA COMMAND

Thursday, March 9, 2017

U.S. Senate  
Committee on Armed Services  
Washington, D.C.

The committee met, pursuant to notice, at 9:29 a.m. in Room SH-216, Hart Senate Office Building, Hon. John McCain, chairman of the committee, presiding.

Committee Members Present: Senators McCain [presiding], Inhofe, Wicker, Fischer, Cotton, Rounds, Ernst, Tillis, Sullivan, Perdue, Graham, Sasse, Strange, Reed, Nelson, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Heinrich, Warren, and Peters.

1           OPENING STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR  
2 FROM ARIZONA

3           Chairman McCain: Good morning.

4           The Senate Armed Services Committee meets this morning  
5 to receive testimony on the posture of U.S. Central Command  
6 and Africa Command.

7           We are pleased to welcome our witnesses: General Votel  
8 and General Waldhauser. We thank each of you for your  
9 decades of distinguished service and for your leadership of  
10 our men and women in uniform.

11           More than a decade and a half since the September 11th  
12 terrorist attacks, our Nation is still at war with  
13 terrorists that seek to attack our homeland, our interests,  
14 our allies, and our partners. In this fight, our military  
15 service members are doing everything we ask of them from  
16 North Africa to the Middle East to South Asia. Thanks to  
17 their tremendous talent and dedication, we have made  
18 important tactical and operational progress.

19           Our military has gradually eroded ISIS's territorial  
20 control and removed key personnel from the battlefield.  
21 ISIS has been expelled from its Libyan stronghold in Sirte,  
22 and I am confident that soon the same will be true in Mosul  
23 and Raqqa. Our military has kept up the pressure on  
24 terrorists operating in countries like Yemen and Somalia.  
25 And in Afghanistan, we have kept Al Qaeda on the run and

1 helped our Afghan hold the line against renewed Taliban  
2 assaults.

3 But much to the frustration of the American people,  
4 this hard-won tactical progress has not led to enduring  
5 strategic gains. In fact, the sad reality is America's  
6 strategic position in the Middle East is weaker today than  
7 it was 8 years ago. And the positions of Vladimir Putin's  
8 Russia and the Iranian regime and its terrorist proxies have  
9 improved. This is not a military failure. Instead, it is a  
10 failure of strategy, a failure of policy, and most of all, a  
11 failure of leadership.

12 The fact is for at last the last 8 years, we have tried  
13 to isolate the fight against terrorism from its geopolitical  
14 context. Or as General Mattis put it 2 years ago, we have  
15 been living in a "strategy-free environment" for quite some  
16 time. The result is that we have failed to address and, at  
17 times, exacerbated the underlying conflict, the struggles  
18 for power and sectarian identity now raging across the  
19 Middle East. We have been unable or unwilling to either ask  
20 or answer basic questions about American policy in the  
21 region. We have been reluctant to act, and when compelled  
22 to do so, we have pursued only the most limited and  
23 incremental actions.

24 We are fighting ISIS in Syria but ignoring the Syrian  
25 civil war that was its genesis and fuels it to this day. We

1 are fighting ISIS in Iraq but failing to address the growing  
2 influence of Iran. We are fighting Al Qaeda in Afghanistan  
3 but pretending the Taliban is no longer our problem. We are  
4 fighting Al Qaeda in the Arabian Peninsula in Yemen but  
5 refraining from confronting the threat posed by Iran's  
6 Houthi proxies. In short, we are treating the symptoms and  
7 ignoring the disease, and we should not be surprised at the  
8 results: a Middle East aflame, America's influence  
9 squandered, America's adversaries emboldened, America's  
10 friends disheartened, and America's policy options narrowed  
11 and worsened.

12 This is the unfortunate inheritance of the new  
13 administration. Yet as difficult and complex as our  
14 challenges are in the Middle East, we have an opportunity to  
15 chart a new and different course. Seizing this opportunity  
16 will require more than just a plan for the accelerated  
17 defeat of ISIS. We have to raise our sights, look beyond  
18 the tactical and operational fight, and start answering some  
19 basic but difficult strategic questions. What enduring  
20 objectives do we hope to achieve across the Middle East?  
21 How will we achieve those goals, and on what timeline, and  
22 at what cost?

23 In Iraq, Mosul will be retaken eventually, but that  
24 will only likely reignite the battle for the future of Iraq,  
25 a battle in which we have an important stake. What is

1 America's policy and strategy to deal with the problems that  
2 lie ahead: combating the malign influence of Iran and its  
3 militias, addressing the future of the Kurds and their place  
4 in Iraq, and attenuating the disenfranchisement of Sunni  
5 Iraqis that gave rise to ISIS in the first place?

6 Likewise in Syria, I believe Raqqa will eventually be  
7 liberated. But the closer we come to that day, the more it  
8 becomes clear that we cannot avoid difficult questions about  
9 Syria any longer. What is America's policy and strategy  
10 concerning a political transition in Syria, the future of  
11 Assad and his regime, the fate of the Kurds in Syria, and  
12 the influence of extremist forces from Sunni terrorists to  
13 Iranian-backed militias? In short, what is America's vision  
14 of an end-state in Syria?

15 In Libya, the ISIS stronghold in Sirte has been  
16 degraded. But what remains is a divided nation littered  
17 with independent militias, flooded with arms, and searching  
18 in vain for legitimate governance and political unity. What  
19 is America's policy and strategy for addressing these  
20 conditions, which unless confronted will make Libya fertile  
21 ground for extremism and anti-Western terrorism?

22 In Afghanistan, we have settled for a strategy of  
23 "don't lose." And the result is that last month, General  
24 Nicholson testified before this committee that this war is  
25 now in a stalemate after 15 years of fighting. After 15



1 years of fighting, we are in a stalemate. What is America's  
2 policy and strategy for rolling back a resurgent Taliban,  
3 for addressing the terrorist sanctuaries within Pakistan's  
4 borders, and pushing back against Iranian and Russian  
5 meddling? In short, what does victory look like in  
6 Afghanistan, and what is our strategy for achieving it?

7 Across the region, Russian and Iranian influence is  
8 growing at America's expense. Russia and Iran even hosted  
9 Syrian peace talks in Moscow last year without America  
10 present at the table.

11 Russia's cruise missiles crisscross the region while  
12 its aircraft indiscriminately target Syrian civilians.  
13 Iran's proxies wield lethal rockets and ballistic missiles  
14 with impunity, sensing that the nuclear deal shields them  
15 from American pressure. What is America's policy and  
16 strategy to counter Russian and Iranian malign influence  
17 that often manifests itself below the threshold of open  
18 conflict? How do we restore the trust of our regional  
19 allies and partners and convince them to forego hedging  
20 strategies that only add to uncertainty and instability?

21 These are the major policy and strategy questions  
22 hanging in the balance. The stakes are high, not just for  
23 the stability of the Middle East and Africa, but for  
24 America's national security. It is not the job of our  
25 witnesses to provide answers to these questions. That is

1 the job of the President, his administration, and the  
2 Congress. We owe our witnesses and the men and women they  
3 lead unambiguous national security priorities, clarity in  
4 our strategic thinking, and an unwavering commitment to  
5 provide them the resources required to support the necessary  
6 courses of action.

7       Once again, I want to thank our witnesses for appearing  
8 before the committee today and look forward to hearing how  
9 the military efforts will help us achieve favorable  
10 strategic outcomes.

11       Senator Reed?

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATEMENT OF HON. JACK REED, U.S. SENATOR FROM RHODE  
2 ISLAND

3 Senator Reed: Well, thank you, Mr. Chairman, and thank  
4 you to our witnesses not only for your appearing here today  
5 but for your extraordinary service to the Nation over many,  
6 many years. And also please relay our thanks to the men and  
7 women that you lead, and we appreciate their efforts  
8 extraordinarily so.

9 You are in a situation of very challenging times in all  
10 of the areas of operation. This hearing is especially  
11 timely, given unfolding events on the ground in Iraq and  
12 Syria and the reported completion of a proposed strategy to  
13 accelerate efforts against ISIS. Our assistance to partners  
14 on the ground is helping them to make steady progress in  
15 reclaiming areas of Iraq and Syria once held by ISIS, most  
16 notably in Mosul.

17 However, the situation in Syria seems to get more  
18 complicated by the day as different actors on the ground  
19 pursue divergent goals. Russia's continued support for the  
20 Assad regime fuels the country's civil war, enables the  
21 abuse and killing of the Syrian population, and allows ISIS  
22 to exploit the resulting instability for its own gains.  
23 Chairman of the Joint Chiefs of Staff General Dunford met  
24 with his Russian and Turkish counterparts just this week to  
25 discuss deconflicting operations in Syria, a battlespace

1 that has become increasingly complicated as U.S., Turkish,  
2 Russian, Iranian, Assad regime, and local partner forces  
3 converge in northern Syria. And, General Votel, we look  
4 forward to your update on these particular issues.

5 According to public reports, the Defense Department has  
6 presented the White House with a draft strategy to  
7 accelerate progress against ISIS. While details of the  
8 strategy have not been publicly released, reports indicate  
9 that it retains many of the core elements of the strategy  
10 put in place under the Obama administration. General  
11 Dunford has described the strategy as a "political-military  
12 plan" and a "whole of government approach" requiring  
13 important contributions from other non-DOD departments and  
14 agencies, most notably the State Department.

15 This is why it is so concerning to me that the Trump  
16 administration's budget would apparently cut the State  
17 Department by a reported 37 percent at the very time that we  
18 need a surge of diplomatic and other assistance efforts to  
19 achieve the political conditions necessary to ultimately  
20 prevail in our fight against ISIS. As then General and now  
21 Secretary of Defense Mattis warned this committee, "if you  
22 don't fund the State Department fully, then I need to buy  
23 more ammunition." We just cannot keep buying bullets as the  
24 Trump administration is proposing.

25 General Waldhauser, the importance of a robust

1 interagency is perhaps of even greater importance in your  
2 area of responsibility, where you are primarily working by,  
3 with, and through partner military forces in conjunction  
4 with U.S. interagency efforts. General, as you share your  
5 assessment of current and future AFRICOM efforts in places  
6 like Libya and Somalia, I look forward to hearing the ways  
7 you are incorporating a whole of government approach into  
8 your planning. Such incorporation is particularly important  
9 in places like these where conflict resolution will  
10 ultimately rely less on the military toolkit and more on  
11 generating the proper political conditions to sustain and  
12 build upon security gains.

13 Turning back the CENTCOM AOR, over the last few years,  
14 there has been a persistent focus on Iran's nuclear program  
15 and appropriately so. We passed the 1-year anniversary of  
16 the implementation of the Joint Comprehensive Plan of  
17 Action, or JCPOA, in January, and Iran appears to be living  
18 up to its commitments under this agreement. However, the  
19 JCPOA only addresses one facet of the challenge posed by  
20 Iran. Its destabilizing activities in the region, ballistic  
21 missile development efforts, and unprofessional and  
22 dangerous behavior in the maritime environment continue.

23 Sanctions related to Iran's nuclear program were  
24 successful because of the extraordinary unity within the  
25 international community. We must approach the remaining

1 challenges in a similar way if we are to be successful in  
2 changing Iran's behavior. Any new sanctions must be  
3 carefully applied in concert with our international partners  
4 so that we do not give Iran a pretext to withdraw from the  
5 JCPOA and risk reversing the progress that has been made on  
6 limiting their nuclear ambitions.

7 Last month, as the chairman indicated, General Mick  
8 Nicholson, Commander of Resolute Support and U.S. Forces-  
9 Afghanistan, testified that despite significant security  
10 gains and political efforts, Afghanistan is currently facing  
11 a stalemate. Further complicating the security landscape  
12 are the range of external actors, including Iran, Russia,  
13 and Pakistan, who seem intent upon interfering with the  
14 stability in Afghanistan. It was General Nicholson's  
15 assessments that increased troop levels for the NATO train,  
16 advise, and assist mission, as well as the continued growth  
17 in the size and capability of the Afghan Air Force, would be  
18 necessary to break the stalemate.

19 General Votel, the committee would benefit from hearing  
20 your assessment of the current situation in Afghanistan and  
21 what can be done to protect the hard-won progress that has  
22 been achieved and ensure that further progress is made.

23 Again, thank you both for your continued service to the  
24 Nation, and I look forward to your testimony.

25 Chairman McCain: I welcome the witnesses. And your



1 written statements will be made part of the record. We will  
2 begin with you, General Votel. And welcome and thanks for  
3 the service that you both render to our Nation.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1           STATEMENT OF GENERAL JOSEPH L. VOTEL, USA, COMMANDER,  
2 U.S. CENTRAL COMMAND

3           General Votel: Chairman McCain, Ranking Member Reed,  
4 distinguished members of the committee, good morning, and  
5 thank you for the opportunity to be here today to discuss  
6 the current posture and state of readiness of the United  
7 States Central Command.

8           I am very pleased to appear today with my good friend  
9 and highly respected brother in arms, General Tom  
10 Waldhauser.

11           I come before you today on behalf of the outstanding  
12 men and women of the command, military, civilians, and  
13 contractors, along with our coalition partners representing  
14 nearly 60 nations. Our people are the very best in the  
15 world at what they do, and I could not be more proud of them  
16 and their families. Without question, they are the strength  
17 of our Central Command team.

18           I have been in command of CENTCOM for about a year now.  
19 It has been an incredibly busy and productive period. Over  
20 the past 12 months, we have dealt with a number of  
21 significant challenges in Iraq and Syria, Afghanistan,  
22 Pakistan, Yemen, Egypt in the Sinai, the Bab al Mandeb  
23 Strait, and elsewhere throughout our area of responsibility.  
24 We are making progress in many areas, but as you know, there  
25 is much work that remains.

1           We are also dealing with a range of malign activities  
2 perpetrated by Iran and its proxies operating in the region.  
3 It is my view that Iran poses the greatest long-term threat  
4 to stability for this part of the world.

5           Generally speaking, the central region remains a highly  
6 complex area, widely characterized by pervasive instability  
7 and conflict. The fragile security environments, which  
8 reflect a variety of contributing factors, including  
9 heightened ethno-sectarian tensions, economic uncertainty,  
10 weak or corrupt governance, civil wars, and humanitarian  
11 crises are exploited by violent extremist organizations and  
12 terrorist groups such as Al Qaeda and ISIS. These groups  
13 have clearly indicated their desire and intent to attack the  
14 U.S. homeland, our interests abroad, and the interests of  
15 our partners and allies.

16           At the same time, the central region is increasingly  
17 crowded with external nation states such as Russia and  
18 China, and they are pursuing their own interests and  
19 attempting to shift alliances.

20           The point that I would emphasize to you is this, that  
21 while there may be other more strategic or consequential  
22 threats in regions in the world today, the central region  
23 has come to represent the nexus for many of the security  
24 challenges our Nation faces. And most importantly, the  
25 threats in region continue to pose the most direct threat to

1 the U.S. homeland and the global economy. Thus, it must  
2 remain a priority and be resourced and supported  
3 accordingly.

4 The team at U.S. Central Command remains appropriately  
5 focused on doing what is necessary to protect our national  
6 interests and those of our partners. Our strategic approach  
7 is straightforward: prepare, pursue, and prevail. And I  
8 will explain what I mean by that.

9 We prepare the environment to ensure an effective  
10 posture. We actively pursue opportunities to strengthen  
11 relationships and support our interests, and when we do put  
12 our forces into action, we prevail in our assigned missions.

13 I would also point out to you that today to the credit  
14 and professionalism of our armed forces and coalition  
15 partners, we are executing campaigns in the central region  
16 with significantly fewer U.S. forces on the ground than in  
17 previous years. As you have seen clearly demonstrated in  
18 Iraq and Syria, Afghanistan, Yemen, and elsewhere throughout  
19 our area of responsibility, we have adopted a by, with, and  
20 through approach that places a heavy reliance on indigenous  
21 forces. While this approach does present some challenges  
22 and can be more time-consuming, it is proving effective and  
23 is likely to pay significant dividends going forward.  
24 Indigenous force partners continue to build needed  
25 capability and capacity and they are personally invested in

1 the conduct of operations and thus inclined to do what is  
2 necessary to preserve the gains they have achieved going  
3 forward.

4 We also have a vested interest in ensuring increased  
5 stability and security in this strategically important  
6 central region. To this end, I will close by highlighting  
7 three areas where I do believe, if we apply the appropriate  
8 amount of energy and effort, we can and will have a lasting  
9 impact in this part of the world.

10 First, we must restore trust with our partners in the  
11 region while at the same time maintaining the strong trust  
12 of our leadership here in Washington. The fact is we cannot  
13 surge trust in times of crisis, and we must do what is  
14 necessary now to assure our partners of our commitment and  
15 our staying power.

16 Second, we must link our military objectives and  
17 campaigns as closely as possible to our policy objectives  
18 and our other instruments of national power. In other  
19 words, we must rely on our military objectives and our soft  
20 power capability with desired national and regional  
21 strategic end states, recognizing that if we do not do this,  
22 we risk creating space for our adversaries to achieve their  
23 strategic aims.

24 Finally, we must make sure that we are postured for  
25 purpose in the region. We must have credible, ready, and

1 present force, coupled with foreign military sales and  
2 foreign military financing programs that serve to build and  
3 shape partner nations' capability in a timely and effective  
4 fashion.

5 Ours is a challenging and important mission. Much is  
6 at stake today in the central region. We recognize this  
7 fact, and I assure you that the CENTCOM team stands ready  
8 and willing to do what is necessary to protect our national  
9 interests and the interests of our allies and partners.

10 Let me close by thanking the committee for the strong  
11 support that you continue to provide to the world-class team  
12 at United States Central Command and particularly to our  
13 forces located forward in the region. As I said at the  
14 outset, the 80,000-plus soldiers, sailors, airmen, marines,  
15 coast guardsmen, and civilians that make up the command are  
16 truly the very best in the world at what they do, and I  
17 could not be more proud of them and their families. I know  
18 that you are proud of them as well.

19 Thank you again, and I look forward to answering your  
20 questions.

21 [The prepared statement of General Votel follows:]

22

23

24

25



1 Chairman McCain: Thank you.  
2 General Waldhauser?  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           STATEMENT OF GENERAL THOMAS D. WALDHAUSER, USMC,  
2           COMMANDER, U.S. AFRICA COMMAND

3           General Waldhauser: Thank you, Mr. Chairman. Chairman  
4           McCain, Ranking Member Reed, and distinguished members of  
5           the committee, thank you for the opportunity to update you  
6           on the activities and efforts of United States Africa  
7           Command.

8           I would like to also say it is an honor for me to sit  
9           next to my battle buddy here, General Votel.

10          For the past 9 months, I have been honored to lead the  
11          men and women of this geographic combatant command. Africa  
12          is an enduring interest for the United States. Small, but  
13          wise investments in the capability, legitimacy and  
14          accountability of African defense institutions offer  
15          disproportionate benefits to America, our allies, the United  
16          States, and most importantly, enable African solutions to  
17          African problems.

18          Parts of Africa remain a battleground between  
19          ideologies, interests, and values. Equality, prosperity,  
20          and peace are often pitted against extremism, oppression,  
21          and conflict.

22          Today trans-regional violent extremist organizations on  
23          the continent constitute the most direct security threat to  
24          the United States. To address this threat, our military  
25          strategy articulates a long-term, regionally focused

1 approach for a safe and stable Africa.

2 Specifically, the strategy outlines an Africa in which  
3 regional organizations and states are willing and capable  
4 partners addressing African security challenges all while  
5 promoting United States' interests. The Africa Command  
6 strategy builds our partners' abilities to direct, manage,  
7 and operate capable and sustainable defense institutions.  
8 While we have achieved progress in implementing our  
9 strategy, threats and challenges still remain.

10 In East Africa, we support African Union and European  
11 Union efforts to neutralize al Shabaab and other violent  
12 extremist organizations operating in Somalia. And we also  
13 support the eventual transfer of security responsibilities  
14 from the African Union mission in Somalia to the Somali  
15 National Security Forces.

16 In 2016, al Shabaab regained some previously held  
17 Somalia territory, and today the group continues to conduct  
18 attacks on AMISOM forces, the national security forces of  
19 Somalia, as well as the federal government of Somalia.

20 Additionally, we have also seen elements of ISIS begin  
21 to make inroads into Somalia, which will further test AMISOM  
22 forces and the federal government of Somalia as well.

23 The instability in Libya in North Africa caused by  
24 years of political infighting may be the most significant  
25 near-term threat to the U.S.'s and allies' interests on the

1 continent. Stability in Libya is a long-term proposition.  
2 We must maintain pressure on the ISIS-Libya network and  
3 concurrently support Libya's efforts to reestablish a  
4 legitimate and unified government. This is a significant  
5 challenge, and we must carefully choose where and with whom  
6 we work and support in order to counter ISIS-Libya and not  
7 to shift the balance between various factions and risks of  
8 sparking greater conflict in Libya.

9 In West Africa, our primary focus is countering and  
10 degrading Boko Haram and ISIS-West Africa. Since 2011, Boko  
11 Haram has consistently carried out attacks against civilians  
12 and targeted partner regional governments and military  
13 forces in the Lake Chad Basin region. With forces from  
14 Benin, Cameroon, Chad, Niger, and Nigeria, we are working  
15 with the multinational joint task force located in Niger to  
16 enable regional cooperation and expand partner capacity to  
17 ensure Boko Haram and ISIS-West Africa do not further  
18 destabilize the region.

19 The multinational joint task force has been successful  
20 in enabling multinational cooperation and coordinating  
21 multinational operations and placed a significant pressure  
22 on Boko Haram and ISIS-West Africa.

23 In Central Africa, through the combined efforts of  
24 military forces, civilian agencies, and nongovernmental  
25 organizations, we work to build the capacity of our partners

1 to address regional threats, such as maritime security,  
2 illicit trafficking of goods and persons, the Lord's  
3 Resistance Army, and other criminal networks and  
4 enterprises.

5 Africa-wide we support the efforts to enable African  
6 partners to respond to humanitarian crises, mass atrocities,  
7 disaster contingencies, and to support peace operations.  
8 Through the United States National Guard's State Partnership  
9 Program, along with their African partners, we have improved  
10 disaster management competency and readiness to assist  
11 civilian-led efforts. We continue to see great value in the  
12 National Guard's persistent engagement and fully support the  
13 State Partnership Program's efforts.

14 Africa's security environment is dynamic and complex  
15 requiring innovative solutions. Even with limited resources  
16 or capabilities, Africa Command aggressively works with  
17 partners and allies to execute our missions and mitigate  
18 risk. Moving forward, we continue to focus our decisive  
19 effort on building African partner capacity and will  
20 continue to work closely with the international and  
21 interagency partners to make small, wise investments which  
22 pay huge dividends in building stable and effective  
23 governments, the foundation for long-term security in  
24 Africa.

25 I am confident with your support Africa Command will

1 protect and promote United States' interests and keep the  
2 United States safe from threats emanating from the African  
3 continent

4 And finally, on behalf of the United States Africa  
5 Command, I want to thank you for the opportunity to be with  
6 you this morning, and I also look forward to your questions.  
7 Thank you.

8 [The prepared statement of General Waldhauser follows:]

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 Chairman McCain: Thank you, General.

2 General Votel, do you agree that we are in a stalemate  
3 in Afghanistan after 15 years?

4 General Votel: Mr. Chairman, I do.

5 Chairman McCain: And in some measurements, maybe you  
6 could argue that when we go from control of 72 percent of  
7 the country to 52 percent, that is worse than a stalemate.

8 Would you agree that one of the most disturbing things  
9 about the attack on the hospital yesterday -- that attack  
10 was carried out by ISIS, not by the Taliban, which shows at  
11 least to this person that we are seeing an increase in  
12 influence of ISIS, as well as Russia providing weapons and  
13 the Iranians playing a greater role than in the past.

14 I guess my question is, are we developing a strategy to  
15 break the stalemate, and is it going to require additional  
16 U.S. troops?

17 General Votel: Mr. Chairman, the answer to your  
18 question is yes, we are developing a strategy, and we are in  
19 discussions with the Secretary and the Department right now.  
20 Both General Nicholson and I are forming our best advice and  
21 recommendations to the Secretary, and we look forward to  
22 moving forward with that.

23 I do believe it will involve additional forces to  
24 ensure that we can make the advise and assist mission more  
25 effective.



1 Chairman McCain: Already you have received a  
2 capability on rules of engagement which enhance your  
3 abilities to combat the enemy. Is that correct?

4 General Votel: That is correct.

5 Chairman McCain: We have got a very interesting and  
6 challenging situation in Syria, and that is the whole issue  
7 of the Kurds, our relationship with them, Erdogan's  
8 relationship with them, the importance of the use of  
9 Insurlik, the importance of our relationship with Turkey.  
10 And I met with President Erdogan in Ankara recently. He is  
11 passionately opposed to Kurdish involvement and our support  
12 of the Kurds that I understand are going to be a very vital  
13 element in expediting the retaking of Raqqa.

14 This is a complex situation, and it would take all my  
15 time, as you know, to go through all this. But I think  
16 there is a possibility of an impending conflict between  
17 Turkey and the Kurds as opposed to us all working together  
18 to try to defeat ISIS and remove them from Raqqa. Do you  
19 see that as a scenario that we should be concerned about?

20 General Votel: I do, Mr. Chairman, and to that end, we  
21 are trying to take actions to prevent that from occurring.

22 Chairman McCain: Well, we find ourselves in kind of a  
23 strange situation that we and the Russians are allied  
24 against the Turks, as far as the Kurds are concerned. Is  
25 that a correct assessment?

1           General Votel: I would not necessarily say that we are  
2 aligned against the Turks. We certainly understand what  
3 their interests are and we understand their concerns about  
4 the partners that we are working with. Turkey is a vital  
5 partner in this effort here. We could not do what we are  
6 doing without them. So our efforts are to try to work  
7 through this tension through dialogue, through information,  
8 and through identifying alternatives that give us a way to  
9 move forward against ISIS without damaging the long-term  
10 relationship with a NATO partner.

11           Chairman McCain: Well, as you know, we are working  
12 with the Kurds and arming and training them, and they are a  
13 very effective fighting force, the same Kurds that Erdogan  
14 has labeled as a terrorist organization and, in the view of  
15 some, a greater threat to Turkey than ISIS is.

16           Who is going to sort all this out?

17           General Votel: Well, I think there certainly has to be  
18 an effort, Mr. Chairman, at the military level, and there  
19 has to be an effort at the political level to address this.

20           Chairman McCain: I am not sure there is an  
21 understanding of how seriously Erdogan views this issue, and  
22 I am not sure we appreciate the importance of the role that  
23 Turkey plays in our effort to retake Raqqa particularly in  
24 the use of Insurlik and other activities that require  
25 Turkish cooperation. Unless something changes, I foresee a

1 train wreck here, and I am not sure that the administration  
2 recognizes how seriously particularly President Erdogan  
3 views the threat that he views that the Kurds oppose.

4 Finally, General Waldhauser, let us talk about Libya a  
5 second. Who is the most powerful influence in Libya today?  
6 And briefly, what is the answer to this chaos?

7 General Waldhauser: Thank you, Senator.

8 It is difficult to say who is the most powerful partner  
9 right now inside Libya. If you took polls, you would see  
10 that the Libyan National Army has got great support in the  
11 east and the GNA has support in the west. So there needs to  
12 be accommodation of those two organizations in order to get  
13 to a political solution there.

14 Chairman McCain: Does it bother you that Haftar has  
15 been visiting with the Russians and went out to a Russian  
16 carrier? Obviously, now the Russians may be assuming a role  
17 in Libya that they never had before.

18 General Waldhauser: It is very concerning, Senator.  
19 Haftar has visited, as you said, on the carrier with the  
20 Russians. He has also visited in the country of Russia.  
21 Also this week, as reported in the open press, Siraj from  
22 the Government of National Accord has also visited Russia.

23 Chairman McCain: As is the case with Afghanistan that  
24 I mentioned, I hope we will be developing a strategy as  
25 regards to Libya as the volatility of that situation can

1 clearly lead to the rise of ISIS and other extremist  
2 organizations, as I know you are well aware, General.

3 Senator Reed?

4 Senator Reed: Thank you very much, Mr. Chairman.

5 General Votel, you are now in the process of evaluating  
6 the mission and the strategy. For many years, the mission  
7 seemed to be very clear with respect to Syria and to Iraq of  
8 degrade and defeat ISIS. Now there are activities  
9 particularly around Manbij where you are in the process of  
10 trying to separate forces. The issue here really is not  
11 only define the mission, but preventing mission creep in  
12 terms of starting to find ourselves committed not just to  
13 destroying ISIS but to somehow refereeing a very complicated  
14 situation with Russians, Assad forces, anti-Assad forces,  
15 Turkish forces, Kurdish forces, and an array of other forces  
16 that you can allude to.

17 How are you going to prevent that mission creep, or is  
18 there that possibility?

19 General Votel: Well, thank you, Senator. Yes, I do  
20 agree. If we are not careful, we could find ourselves in a  
21 different situation. The presence of our forces in Manbij  
22 is not new to just the current situation. They have  
23 actually been on the ground since Manbij was secured here 6  
24 or 7 months ago. And they are principally there to ensure  
25 that ISIS is not able to reestablish itself in the area.

1 And we have undertaken a number of operations in that  
2 particular regard.

3 As the situation is currently played out, that is the  
4 principal focus of our elements there. They do have the  
5 benefit by virtue of being there to also provide overwatch  
6 and, I would add, a measure of assurance not just for our  
7 local partners on the ground there, but I would also suggest  
8 for our Turkish partners. We understand what their concerns  
9 are about undue Kurdish influence in this particular area.  
10 So the best way that we can keep an eye on that I think is  
11 through our well trained SOF forces on the ground.

12 Senator Reed: One of the areas I touched upon in my  
13 comments was the interagency. And, General Waldhauser, can  
14 you accomplish your mission in AFRICOM if you do not have  
15 rather robust support by the State Department and other  
16 agencies, including our European allies?

17 General Waldhauser: The short answer, Senator, is no,  
18 we cannot. We work very closely with various agencies,  
19 USAID, the State Department, and the like. I could give  
20 numerous examples if you would like of how we partner with  
21 them and how they contribute to development, which is so  
22 important in our mission.

23 Senator Reed: Thank you.

24 And, General Votel, likewise?

25 General Votel: I absolutely agree.

1           Senator Reed: As we go forward in terms of the new  
2 strategy that the President is asking for, one point he made  
3 was requesting a recommendation to change any U.S. rules of  
4 engagement and other U.S. policy restrictions that exceed  
5 the requirements of an international war. My sense is that  
6 the requirements and the authorities that the military has  
7 asked for is, one, they can do the job, but two, they also  
8 do things like minimize civilian casualties, provide for an  
9 appropriate relationship with the local populations, which  
10 helps you rather than hurts you. Is that still the  
11 sensitivity that you have? I mean, adherence to the minimum  
12 international law might not be the smartest military  
13 approach.

14           General Votel: Well, we conduct all of our operations,  
15 of course, in accordance with the Law of Armed Conflict, and  
16 we bring our values to the fight wherever we are.

17           I do not think those are particular limitations on us  
18 at this particular point. My advice here moving forward has  
19 been to ensure that our forces have the operational agility  
20 to maintain pressure and sustain our approach of presenting  
21 ISIS with multiple dilemmas and really pursuing a military  
22 strategy of simultaneous operations to really overwhelm them  
23 quickly. And so the preponderance of our discussions and  
24 our recommendations really fell within that area.

25           Senator Reed: But again, the rules that we have

1 adopted have been based on best military policy, not just  
2 adherence to arbitrary rules. We minimize casualties  
3 because it has an effect on the population that will hurt  
4 our operations. Is that correct?

5 General Votel: Senator, that is absolutely correct.  
6 750,000 people in the west portion of Mosul. And so we  
7 certainly have to conduct our operations with the full  
8 knowledge that that is the situation.

9 Senator Reed: Again, gentlemen, thank you for your  
10 service, and I look forward to continuing these discussions.  
11 Thank you.

12 Chairman McCain: Senator Inhofe?

13 Senator Inhofe: Thank you, Mr. Chairman.

14 General Waldhauser, as you and I discussed in my  
15 office, Senator Rounds and I just returned from several  
16 areas in your command. You know, when you stop and look at  
17 it, it seems like it has been shorter than that, but it has  
18 been 10 years since we started AFRICOM. And the continent  
19 used to be divided in three different commands. Now, since  
20 that time, we have had a lot of successes.

21 General Rodriguez, one of your predecessors said,  
22 Africa is an enduring interest to the United States and its  
23 importance will continue to increase as African economies,  
24 population, and influence grow. Do you agree with that  
25 statement?

1           General Waldhauser: Senator, I do.

2           Senator Inhofe: It was not long ago when Chuck Wald  
3 had the job that you have right now. He talked about the  
4 significance of Phase Zero. He actually wrote an article  
5 about the Phase Zero campaign, why is Phase Zero important,  
6 and how does it apply to AFRICOM. Could you make any  
7 comments about that?

8           General Waldhauser: Senator, thank you. What I would  
9 say to that question is that the ability to engage with the  
10 population and have such exercises and engagements with  
11 agencies, as was previously described, things like  
12 education, health care, jobs for the significant youth bulge  
13 that is in Africa is very, very important. We have got to  
14 get at these drivers that make these individuals, young men  
15 especially, want to join groups like al Shabaab. In order  
16 to get at that part of the problem, we need to be engaged  
17 with education, health care, jobs, and the like.

18          Senator Inhofe: To preclude something from happening,  
19 head it off at the pass. And I would agree with that.

20          We were also in Afghanistan, General Votel, and we met  
21 with our service members and, of course, the new President.  
22 And General Nicholson and I -- I think maybe we might be in  
23 my opinion -- and I might be influenced by the fact that I  
24 knew the new president's predecessor, and there is no  
25 comparison. Summing up kind of what General Nicholson said



1 -- I will read this -- a need for a long-term coalition  
2 commitment to Afghanistan, a need for increased coalition  
3 forces for training and assisting the Afghan military, the  
4 strength and the commitment of the Afghan people who want to  
5 take their country back from the insurgents, shifting the  
6 focus to winning versus not losing, the high casualty rate  
7 among the Afghan forces, the increase in territory  
8 controlled by the Taliban, the importance of cutting the  
9 Taliban's access to financing their operations.

10 Do you pretty much agree with his assessment with what  
11 the situation is there?

12 General Votel: I do, Senator.

13 Senator Inhofe: And do you think that maybe, when we  
14 get some of these less than optimistic reports in these  
15 committee hearings that we have, that you get a little bit  
16 different idea when you are actually there? And one of the  
17 things that I think we are not factoring in enough would be  
18 President Ghani. I would like to have your idea as to what  
19 a difference that can make because I can remember sitting  
20 there with his predecessor and then evaluating the  
21 situation, what his commitment is right now and what he  
22 really believes his people are going to be able to do.

23 General Votel: Senator, I absolutely agree with you.  
24 I do think we cannot overestimate the strategic advantage of  
25 having a leader like President Ghani in place. His

1 willingness to partner, his visionary ideas about this, and  
2 his general approach to bringing the coalition on board I  
3 think have been very good, and I think they provide us a  
4 very good opportunity to build upon.

5 Senator Inhofe: With him and with your experience from  
6 the last fighting season that we had, since we are coming up  
7 now to the next fighting season, do you have any projection  
8 as to differences we might see with that leadership and  
9 where we are right now?

10 General Votel: I think that we will continue to see  
11 very steady leadership from President Ghani and his  
12 government through the next fighting season. I think the  
13 challenge that we will have will be sustaining the Afghan  
14 forces as they move forward. As you have noted, as others  
15 have noted, they have absorbed a lot of casualties, and yet  
16 they have been resilient through that. But there is a need  
17 to ensure that they get into a normal operational cycle that  
18 allows them to recover, to rebuild themselves, to reset  
19 themselves, and then get back into the fight. And I think  
20 that as we move forward, that will be the challenge that  
21 General Nicholson and I will have to manage.

22 Senator Inhofe: And I would agree with that. And I  
23 think that there is an effect that the new president has on  
24 the fighting troops over there, on theirs, that will yield a  
25 better performance.

1 Thank you, Mr. Chairman.

2 Chairman McCain: And the fighting season has begun  
3 earlier than ever in Afghanistan. True, General?

4 General Votel: I think the fighting season does not  
5 end. I agree with you, Senator.

6 Chairman McCain: Senator Peters?

7 Senator Peters: Thank you, Mr. Chairman.

8 And thank you to both of you today for testifying. I  
9 appreciate all that you do. You have a very difficult job  
10 and both of you do it with honor. So thank you so much for  
11 your service to our country.

12 I represent in Michigan probably the largest Arab  
13 American, Muslim American community here in the United  
14 States and had an opportunity just recently to meet with a  
15 number of community members at the Islamic Center and heard  
16 some great concern from the Yemeni American community as to  
17 what they are seeing in Yemen in terms of Saudi Arabia and  
18 the operations, what seems to be indiscriminate bombing, the  
19 killing of large numbers of civilians. I think, according  
20 to some estimates, close to 4,000 civilians have been killed  
21 in Yemen by a Saudi Arabian-led air campaign, which appears  
22 to them as indiscriminate and, according to them, does great  
23 damage to the United States. People see those Saudi attacks  
24 as related to the United States. There has been increasing  
25 recruitment for folks who want to do harm to the United

1 States because of the actions that are being undertaken by  
2 the Saudi Arabians.

3 So if you could comment, General Votel, a little bit  
4 about what is happening there to us, and what do you assess  
5 the cause of the large number of civilian casualties that we  
6 are seeing in Yemen and what can we do to reduce that?

7 General Votel: Thank you for the question, Senator.

8 I attribute those types of situations more to the  
9 competence of the forces that are operating there and their  
10 ability to properly target. As you are aware, we do not  
11 provide intelligence for those things. We do not make  
12 decisions for them.

13 But yet, we have a relationship with Saudi Arabia. And  
14 at my level and at levels below me, my air commander, a  
15 variety of subordinate commanders, we have engaged with our  
16 partner leaders in Saudi Arabia to talk to them about the  
17 effects of this and to provide opportunities for them to  
18 learn from our experience in terms of this and improve their  
19 capabilities in this particular regard. And I think they  
20 have done that.

21 In addition, I personally have reached out and talked  
22 to my counterpart about the importance of reaching out to  
23 international organizations like the ICRC, Doctors Without  
24 Borders, who also operate in these areas, and ask that they  
25 establish relationships and begin a discussion between the

1 Saudi Arabian Government and Ministry of Defense and these  
2 particular organizations so we can better understand what is  
3 happening on the ground and we can begin to work through  
4 this. And I am very happy to tell you that that is taking  
5 place now.

6 Senator Peters: So you would characterize this as a  
7 training issue as opposed to some other factor that is  
8 causing --

9 General Votel: I do not attribute it to deliberate  
10 decisions to target civilians. I attribute it to a growing  
11 need to develop a better and more precise targeting process  
12 for their operations.

13 Senator Peters: And are we able to assist them in  
14 that?

15 General Votel: We do not assist them directly with  
16 targeting on the ground, but we are able to, through our  
17 experience and through our people, engage them and help with  
18 their professionalism and give them the benefit of our  
19 experience and tactics, techniques, procedures, processes  
20 that we use to try to absolutely minimize those types of  
21 events. And we are doing that.

22 Senator Peters: Well, it is good to hear. Thank you.

23 General Votel, to move to Syria now, you were recently  
24 quoted in the "New York Times" about saying that we want to  
25 bring the right capabilities forward, not all of those

1 necessarily resident in the special operations community.  
2 If we need additional artillery or things like that, I want  
3 to bring those forward to augment our operations. And I  
4 note today in the news there was an artillery unit that I  
5 believe is being positioned in Syria now.

6 In your estimate, what is the right mix of conventional  
7 and special operations forces that are going to be required  
8 to succeed in Syria?

9 General Votel: Senator, I am not sure I can give you  
10 an exact percentage-wise mix of this. But what I can tell  
11 you is that the way that we operate today with our special  
12 operations forces and unique capabilities they bring,  
13 through our experience of the last 15 or 16 years, we have  
14 become very comfortable and capable of operating together.

15 And so what I have pledged to our commanders and what I  
16 expect from them is for them to ask for the capabilities  
17 that we need and then for us to ensure that we have the  
18 right command and control, the right force protection, the  
19 right resources in place to ensure that it can function  
20 properly together. And that to me is much more important  
21 than a particular mix of whatever the capabilities are. I  
22 think as we move more towards the latter part of these  
23 operations into more of the stability and other aspects of  
24 the operations, we will see more conventional forces  
25 requirements perhaps.

1 Senator Peters: Thank you, General.

2 Chairman McCain: Senator Wicker?

3 Senator Wicker: Let us get back to Afghanistan,  
4 General Votel. Do the Afghan people support the presence of  
5 the United States there?

6 General Votel: I believe that they do, Senator.

7 Senator Wicker: And how do you measure that?

8 General Votel: I think we measure that by favorability  
9 ratings that we see of them for the Government of  
10 Afghanistan and the activities that they are pursuing. And  
11 I think we measure that through our direct contact with them  
12 with teams that we have out there on the ground and others  
13 that interact with the Afghan people on a regular basis.

14 Senator Wicker: And as a matter of fact, several years  
15 ago, there was a loya jirga convened of most Afghan leaders,  
16 and they overwhelmingly were in support of the United States  
17 presence there to protect them against what had happened  
18 before.

19 Has there been another loya jirga, or do we simply  
20 assume that the elected leadership of the government  
21 represents them?

22 General Votel: There has not been another loya jirga I  
23 think of the same scope that you referenced, Senator. But  
24 we do pay attention to the polling. I would note in some  
25 recent polls that I have seen, the favorability ratings for

1 the Taliban are very low in the 6 to 7 percent range as  
2 opposed to much, much higher for the Government of  
3 Afghanistan.

4 Senator Wicker: You had strong praise for President  
5 Ghani. How is the relationship there between the president  
6 and Mr. Abdullah who is his nearest competitor?

7 General Votel: It has improved significantly. And I  
8 contribute that directly to the engagement of our  
9 ambassadors on the ground who have personally invested in  
10 that and worked that relationship, and it has had a positive  
11 impact on our operations.

12 Senator Wicker: Well, that is good to hear.

13 Now, the information we have -- and the chairman  
14 alluded to this -- the Afghan Government controls 57 percent  
15 of the country's districts. A year and a half ago, that  
16 figure was 72 percent. What happened?

17 General Votel: Senator, I would tell you that there  
18 are other numbers out there. We have some slightly  
19 different ones, but they are in the general ball park of  
20 what you are saying.

21 Senator Wicker: Generally, those numbers are correct.

22 General Votel: In general.

23 Senator Wicker: So there has been a significant drop,  
24 as the chairman said, in a year and a half.

25 General Votel: There have been areas that we would put



1 into the contested space area here that have increased over  
2 the last year.

3 Senator Wicker: Your testimony would be that this has  
4 not happened because the support among the Afghan people of  
5 our efforts has diminished.

6 General Votel: I do not think so.

7 Senator Wicker: Something we did?

8 General Votel: I think this is the effect of the  
9 fighting that is taking place and of the efforts by the  
10 Taliban to be more resurgent in specific areas in  
11 Afghanistan.

12 Senator Wicker: Well, okay. General Nicholson said in  
13 talking about the stalemate that what will break the  
14 stalemate are offensive capabilities such as special forces  
15 and allowing the air force to overmatch the Taliban. Also  
16 he said we have a shortfall of a few thousand troops in  
17 Afghanistan for the train, advise, and assist mission.  
18 Would you talk about those two aspects, and would you  
19 support a few thousand more American troops to get the job  
20 done in this mission?

21 General Votel: Senator, With respect to the last part  
22 of your question, that is certainly a discussion we are  
23 having with the Secretary right now. I will not pre-stage a  
24 decision here. That is certainly his regard. But certainly  
25 I agree with what General Nicholson's approach is. And I do

1 agree that one of our efforts to improve the capabilities  
2 and equipment of the Afghan Air Force is a big part of this,  
3 as is improving and expanding their special operations  
4 capability.

5 Senator Wicker: Thank you.

6 General Waldhauser, the Wasp amphibious expedition did  
7 over 100 consecutive days of strikes. It is considered to  
8 be an impressive success. What lessons have we learned from  
9 that deployment, and are we sending you what you need to get  
10 the job done in that respect?

11 General Waldhauser: The Wasp and Marine aviation that  
12 was on board that ship was a significant contributor to the  
13 GNA forces and ridding Sirte of ISIS.

14 Lessons learned at the tactical level have to do with  
15 coordination on the ground and special forces who were there  
16 on the ground, but I think it is important to point out that  
17 from 1 August until middle of December there were nearly 500  
18 strikes. Most of them came from ISR platforms, but a lot of  
19 them, as you said, came from the ship. And I think the  
20 ability to have zero civilian casualties in a very, very  
21 dense urban environment underscores the training and the  
22 professionalism of those who were conducting that operation.

23 So in sum, that was a huge asset for us. We actually  
24 borrowed it from CENTCOM in order to make it happen, but  
25 that is how we have to do business these days. AFRICOM and

1 CENTCOM coordinate on various trans-regional asset changes,  
2 and that was an example where it worked very well.

3 Senator Wicker: Thank you, sir.

4 Chairman McCain: Senator Shaheen?

5 Senator Shaheen: Thank you, Mr. Chairman.

6 And General Votel and General Waldhauser, thank you  
7 both for your testimony and for your service.

8 General Votel, there has already been reference to the  
9 marines who have arrived in Syria. The "Washington Post"  
10 story this morning reports that the battalion landing team,  
11 1st Battalion, 4th Marines, will man the guns and deliver  
12 fire support for U.S.-backed local forces who are preparing  
13 an assault on the city.

14 First of all, is that accurate, and should we take that  
15 to mean an assault is imminent in Raqqa?

16 General Votel: Well, certainly we will not talk about  
17 any timings of any of our particular operations. But our  
18 intention here with this -- and this fell within the  
19 authorities that are provided to me right now was to ensure  
20 that we had redundant capable fire support on the ground to  
21 support our partners and ensure that we could take advantage  
22 of opportunities and ensure the continued progress that we  
23 have been seeing.

24 Senator Shaheen: And are you comfortable that that  
25 gives us that progress and support that we need?

1           General Votel: In conjunction with our excellent  
2 coalition air forces, yes, I am very confident that that  
3 will help us.

4           Senator Shaheen: Thank you.

5           Yesterday in our meeting -- and we heard similar  
6 comments from General Nicholson when he was here talking  
7 about Russian influence in Afghanistan. They are trying to  
8 legitimize the Taliban and undermine our mission and NATO's  
9 mission there. Can you talk about what alternatives we have  
10 to respond to Russian activities there?

11          General Votel: I think the best alternative that we  
12 have is to ensure that we demonstrate our commitment to the  
13 mission that we have in place here with the Government of  
14 Afghanistan. Certainly with our twofold mission, we focused  
15 on counterterrorism and then, of course, the train, advise,  
16 and assist mission. So the most important thing we can do  
17 is send a very clear message that we are going to see this  
18 mission through and support the Government of Afghanistan in  
19 the way that they require with military capabilities and  
20 other things to ensure that they can be successful.

21          Senator Shaheen: And to what extent does our effort in  
22 Eastern Europe with NATO affect Russia's ability to  
23 undermine what we are doing in Afghanistan? How much do  
24 they need to be focused on what is happening in Eastern  
25 Europe?

1           General Votel: From my perspective, I would like them  
2 totally focused on Eastern Europe and not on Afghanistan. I  
3 am being a little facetious here. I am not sure that I can  
4 comment that there is necessarily a direct relationship  
5 between that, Senator. Certainly I think if their attention  
6 can be drawn to other challenges, other problems that they  
7 are focused on, that helps us.

8           Senator Shaheen: General Waldhauser, in your  
9 statement, you point out that long-term success in slowing  
10 the progress of Boko Haram and ISIS in West Africa requires  
11 Nigeria to address development, governance, and economic  
12 deficiencies, which are drivers of terrorism in that region.  
13 As we look at the future where one in four Africans are  
14 Nigerian, what happens in Nigeria has a huge impact on what  
15 happens throughout the rest of Africa. Do you agree with  
16 that?

17           General Waldhauser: I most definitely do. With 182  
18 million people in that country -- it is the seventh largest  
19 country in the world -- what happens there has a significant  
20 impact not only on the continent, but it could be in Europe  
21 and the United States as well.

22           Senator Shaheen: And to what extent do we feel like  
23 they are addressing the threat from Boko Haram and also  
24 addressing those deficiencies that have existed there?

25           General Waldhauser: Senator, 2 weeks ago, I was in

1 Abuja and talked with the acting vice president, and he is  
2 very, very aware of the fact that there is still much work  
3 that needs to be done in northeastern Nigeria both with Boko  
4 Haram and ISIS-West Africa. And I came away from that visit  
5 in a positive way because there have been some human rights  
6 issues with the Nigerians, but they are taking that on. I  
7 mean, they are making some progress there. But I think the  
8 acting vice president or acting president understands there  
9 is still a threat. Boko Haram has weakened a bit, but they  
10 are still a threat. ISIS-West Africa is still there and  
11 they are still a threat. But this Lake Chad Basin region  
12 task force has been doing fairly well with at least trying  
13 to keep the problem inside the Nigerian borders.

14 Senator Shaheen: And are they working to address the  
15 historic divisions between the Christian southern part of  
16 the country and the Muslim north? Are there any initiatives  
17 underway that help to resolve some of those historic  
18 conflicts?

19 General Waldhauser: Senator, I am not aware of any per  
20 se. I would just say that in my discussions with senior  
21 leadership there 2 weeks ago, they have a fairly wide-  
22 ranging and overarching strategy of where they want to go  
23 which ultimately will turn over northeastern Nigeria to the  
24 police forces.

25 Senator Shaheen: Thank you.

1 Thank you, Mr. Chairman.

2 Chairman McCain: Senator Fischer?

3 Senator Fischer: Thank you, Mr. Chairman.

4 General Votel, since the nuclear deal with Iran was  
5 announced, Iran's behavior in the region, its support for  
6 terrorism, and its domestic repression -- it appears to have  
7 gotten worse. Iran wields significant power in Syria,  
8 Lebanon, Iraq, and Yemen, and it seeks to destabilize our  
9 key allies. What do you see as Iran's goal in the region?

10 General Votel: Senator, I believe Iran seeks to be the  
11 regional hegemon, to be the most influential country in the  
12 region.

13 Senator Fischer: And how would you characterize Iran's  
14 regional behavior since the nuclear agreement? Has it  
15 improved or has it worsened?

16 General Votel: I would describe it as destabilizing to  
17 the region. It has not been helpful to anything that I can  
18 see going on across the region.

19 Senator Fischer: How would you characterize Iran's  
20 relationship with Russia in the region?

21 General Votel: Again, not having firsthand knowledge  
22 on that, I guess I would characterize it as they find areas  
23 of cooperation. I am particularly concerned how both Iran  
24 and Russia have cooperated to prop up the Assad regime and  
25 make them stronger. That is certainly of some concern. So

1 I do see that level of cooperation being very unhelpful to  
2 the things that we are doing across the region. I do not  
3 know what the long-term views of each of these countries  
4 might be and how that might play out, but it certainly looks  
5 like they are taking the opportunity of convenience to join  
6 efforts in some regard.

7 Senator Fischer: And I wanted to ask you your long-  
8 term view with regards to the United States and our position  
9 in the region, first of all, just with Iran's destabilizing  
10 activities but also with their relationship with Russia.  
11 Can you give us in your best opinion how that affects the  
12 United States and our involvement?

13 General Votel: I can, Senator, and I will offer you my  
14 observation. It is based on my travels throughout the  
15 region over the last year and meeting with our partners  
16 across many of the countries. My consistent takeaway here  
17 is that the partners in the region would strongly prefer to  
18 have a relationship with the United States over any other  
19 nation that might be external to the Middle East. And I  
20 think that is an opportunity for us to move forward on. We  
21 have long-term historical relationships with many of these  
22 countries, and we should capitalize on that as we move  
23 forward. And I think that offers us the best opportunity.

24 Senator Fischer: As we look over the last year, we  
25 have seen Iran has escalated its harassment of our vessels,



1 our personnel in the Persian Gulf. And just last week,  
2 multiple fast attack vessels from the IRGC came close to a  
3 U.S. Navy ship in the Strait of Hormuz, and they forced it  
4 to change direction.

5 What is CENTCOM doing to address that harassment that  
6 we are seeing by Iran?

7 General Votel: First off, we are ensuring that our  
8 maritime forces have all the right rules of engagement and  
9 capabilities and training and techniques to deal with that,  
10 and I do believe they are effectively doing that. One of  
11 the first things I did after coming into command was get on  
12 a ship and go through the Straits of Hormuz so I could see  
13 it with my own eyes, and I was extraordinarily impressed  
14 with the maturity of our sailors and the judgment of our  
15 leaders as we went through that.

16 More broadly, I think we have to hold Iran accountable  
17 for their actions. No other nation operates the way they do  
18 in the Arabian Gulf. Nobody does that in the Arabian Gulf.  
19 And they need to be held accountable for that and they need  
20 to be exposed for those types of unprofessional, unsafe, and  
21 abnormal activities.

22 Senator Fischer: It sounds like you are very concerned  
23 with Iran's growing asymmetrical capabilities, and that  
24 includes its acquisition of advanced cruise missiles, I  
25 would assume.

1 General Votel: It does, Senator.

2 Senator Fischer: What about naval mines, ballistic  
3 missiles, and UAVs? I guess when we are looking at our  
4 interests in the Persian Gulf and our allies' interests in  
5 the Persian Gulf, how do those growing threats affect that?

6 General Votel: The way they affect us is they provide  
7 Iran with a layered capability where they can use their fast  
8 boats, they can use cruise missiles, they can use radars,  
9 they can use UAVs to potentially dominate specific areas.  
10 So this is a concern, and it is something that certainly we  
11 look at in our capabilities and it is something that we have  
12 engaged our partners in the region on on how we work  
13 together to mitigate the effects of that layered approach  
14 that Iran pursues in these critical chokepoints.

15 Senator Fischer: Thank you, sir.

16 Thank you, Mr. Chairman.

17 Chairman McCain: Senator Warren?

18 Senator Warren: Thank you, Mr. Chairman.

19 And thank you for being here.

20 I would like to return to an issue raised by Senator  
21 Reed. There is a big debate going on right now, as you  
22 know, about military spending, and of course, we need a  
23 strong military. But the military is not the only element  
24 of our national security strategy. Spending on security  
25 outside the military budget is very small. Diplomacy and

1 development combined is about 1 percent of our annual  
2 budget, but it includes programs that promote democracy,  
3 human rights, the rule of law that boost economic growth,  
4 that improve access to education, that fight hunger, that  
5 treat infectious diseases, and it provides disaster relief  
6 around the world.

7 General Votel and General Waldhauser, you command our  
8 armed forces in some of the most active and dangerous parts  
9 of the world. Do you think the activities of the State  
10 Department and other civilian partners are a waste of time  
11 and taxpayer money?

12 General Votel: I do not, Senator.

13 Senator Warren: Thank you.

14 General Waldhauser: Senator, nor do I. They are a big  
15 part of what we do.

16 Senator Warren: Thank you. And I agree. But the  
17 Trump administration's blueprint budget would increase  
18 defense spending in some areas by massively slashing through  
19 other programs that are critical for our national security.  
20 Not every international problem is the same and the right  
21 tool is not always a military response. Recapping our State  
22 Department by cutting an already small foreign aid budget  
23 makes America less safe, and that is just not smart.

24 I would like to turn to another issue, and that is the  
25 ongoing fight against ISIS in Iraq and in Syria. General

1     Votel, you contributed to the Pentagon's plan to accelerate  
2     the fight against ISIS which Secretary Mattis delivered to  
3     the White House last week. I have every confidence that the  
4     U.S. military can defeat ISIS on the battlefield and help  
5     retake strategically important cities.

6             But what I want to ask you is about what comes next.  
7     You are going to be mediating between armed opposition  
8     forces that dislike each other intensely in cities where  
9     existing infrastructure has been completely destroyed with a  
10    population that has been traumatized and displaced. What  
11    will it take to create conditions for normal life to resume  
12    in Mosul and Raqqa?

13            General Votel: I think it starts certainly following  
14    up our military operations with good local governance and  
15    addressing humanitarian aid, addressing issues like  
16    demining, of restoring basic services to the people, of  
17    trying to bring additional aid in there so small businesses  
18    and other things can get going, and then the bigger aspects  
19    of governance can begin to take place. And so as we look at  
20    our military operations, particularly as we look at places  
21    like Raqqa or Mosul, what we have tried to do is ensure that  
22    our military planning is very closely linked to the  
23    political planning, what comes next so that we do not just  
24    finish a military operation and then just leave. It is  
25    important that we have local hold forces. It is important

1 that we predetermine local governance that is going to come  
2 in and begin to take this over. So I think that is an  
3 extraordinarily important point. The transition from  
4 military operations to the stability operations and things  
5 that come next I think is a significant lesson learned for  
6 us -- relearned for us many times, and it is something that  
7 we have specifically focused on in this campaign.

8 Senator Warren: Thank you. I am very glad to hear  
9 that, General. Planning for peace is hard. We did not do  
10 it after we toppled Saddam Hussein, and we are still paying  
11 a price for that blindness today. I do not want to see us  
12 turn around and make that same mistake again. I think we  
13 need to be very careful that we do not create an environment  
14 that breeds the next generation of extremists, and I am  
15 grateful for your work in this area. I am grateful to both  
16 of you for all that you are doing. Thank you.

17 Thank you, Mr. Chairman.

18 Senator Reed [presiding]: On behalf of Chairman  
19 McCain, let me recognize Senator Cotton.

20 Senator Cotton: Thank you.

21 Gentlemen, welcome back to the committee.

22 General Waldhauser, you were speaking with Senator  
23 Shaheen about Nigeria and the role that it plays not just in  
24 the African continent but around the world. Could you speak  
25 a little bit about what President Buhari's absence from the

1 country means and what the status is right now of Nigerian  
2 politics for the committee?

3 General Waldhauser: Senator, I would just have to say  
4 that open source reporting indicates that he is still in  
5 London receiving medical help. That was a topic that was  
6 not discussed with officials when I was there.

7 But what I did observe was acting President Osinbajo  
8 has done extremely well. He is very competent. He has a, I  
9 would say, very wide view of the problems and issues, and he  
10 seems to want to get after them. And he was definitely  
11 genuinely interested in making things happen, and I thought  
12 we had some very frank discussions with him on the way ahead  
13 with regard to our support for the defeat of ISIL-West  
14 Africa and Boko Haram.

15 Senator Cotton: What is the level of political  
16 consensus and stability between the north and the south in  
17 that country right now?

18 General Waldhauser: I really could not give you a fair  
19 assessment of that. It was not part of the discussion. We  
20 did not have that topic.

21 Senator Cotton: I understand.

22 Looking to the east, would you please discuss the  
23 strategic implications of China's new base in Djibouti and  
24 what it means for our presence there and throughout the Horn  
25 of Africa?

1           General Waldhauser: So the Chinese base is right  
2 outside Camp Lemonnier, about 4 miles or so from our base.  
3 The intention for that location was to provide a port for  
4 their ships to have in the area. They have about 2,200  
5 peacekeepers on the continent. This is the first time for  
6 them that they have kind of journeyed in that direction. So  
7 right now, it is due to be completed later this summer.

8           I would just say the concern that I have from an  
9 operational perspective is the operational security when we  
10 operate so close to a Chinese base. And the Camp Lemonnier-  
11 Djibouti area is not only AFRICOM, but CENTCOM uses it,  
12 SOCOM uses it, TRANSCOM, EUCOM, and the like. So it is a  
13 very strategic location, and visiting Djiboutian officials  
14 twice, I have talked with their president and expressed our  
15 concerns about some of the things that are important to us  
16 about what the Chinese can or cannot do at that location.

17           Senator Cotton: Thank you.

18           General Votel, you have already spoken with several  
19 Senators this morning about the stalemate in Afghanistan.  
20 For many years now, we on this committee and many leaders in  
21 the executive branch have been lamenting the existence of  
22 sanctuaries for the Taliban and other terrorist groups in  
23 Pakistan. As you think about the strategy to break this  
24 stalemate, what is the role of eliminating those sanctuaries  
25 inside of Pakistan? How do you plan to get after this

1 longstanding problem?

2 General Votel: Thank you, Senator.

3 Pakistan, of course, remains a key partner in this  
4 fight here. I have been encouraged by my meetings with the  
5 new Chief of Army Staff, General Bajwan, and his commitment  
6 to help address this. They have done some things that have  
7 been helpful to us. Most recently they have supported  
8 General Nicholson in some operations along the border,  
9 making sure that they were well coordinated and doing the  
10 activities on their side of the border. That is a very  
11 positive sign and a move in the right direction. And they  
12 have done things against the principal concerns that we  
13 have, the Haqqani Network and Taliban. But what we do need  
14 is we need that to be more persistent and continue to focus  
15 in that particular area. And so we will continue to engage  
16 with Pakistan throughout this.

17 I think it is key to ensure that Pakistan and  
18 Afghanistan have a very good relationship. There certainly  
19 are tensions along the common border between those  
20 countries. And I think a key role that we can play is in  
21 helping move that relationship forward.

22 Senator Cotton: Let me ask you about a seam on the map  
23 between you and Harry Harris, but it is an important seam  
24 because it involves Pakistan and Afghanistan and India and  
25 PACOM. To what extent do you think Pakistan's Afghan policy



1 is driven in part by its India policy and, in particular,  
2 whether an independent Afghanistan conducting its own  
3 foreign policy might be adverse to Pakistani interests?

4 General Votel: Senator, I think Pakistan's view of the  
5 region I think as they look at their interests, it plays  
6 very largely in how they look at both sides of their  
7 country.

8 Senator Cotton: One final question. Since the 1970s,  
9 Russia's influence throughout the Middle East has been  
10 minimal, thanks in large part to the diplomacy of Henry  
11 Kissinger and Presidents Nixon and Ford. How would you  
12 assess the level of Russia's influence in the region today?

13 General Votel: Russia is attempting to increase their  
14 influence throughout the Middle East, as we have seen in  
15 Syria. We have seen them do things certainly with our  
16 longstanding partner Egypt and others across the region. So  
17 it is my view that they are trying to increase their  
18 influence in this critical part of the globe.

19 Senator Cotton: Do you think they have been successful  
20 in any of those attempts thus far?

21 General Votel: Well, they certainly have been  
22 successful in supporting the Assad regime, and so that is  
23 certainly an example of that. I am hopeful that we will be  
24 able to reassert our own relationships as well.

25 Senator Cotton: Thank you, gentlemen.

1 Senator Reed: On behalf of Chairman McCain, let me  
2 recognize Senator King.

3 Senator King: Thank you, Senator Reed.

4 General Votel, let us talk about four areas where we  
5 are engaged in conflict: Iraq, Syria, Yemen, and  
6 Afghanistan.

7 By the way, I want to compliment you on your written  
8 statement. It is a primer on the region that I think should  
9 be required reading for everyone in this body. It is very  
10 well done, very thoughtful, and comprehensive.

11 Who are our allies in Iraq? Who are we fighting next  
12 to? The ISF. Right?

13 General Votel: That is correct, Senator.

14 Senator King: And the Kurds.

15 General Votel: The Peshmerga in the northern part of  
16 Iraq.

17 Senator King: And what religion are the members of the  
18 ISF and the Kurds?

19 General Votel: They are Muslims.

20 Senator King: And in Syria we have got the Syrian  
21 Democratic Forces and also the Kurds?

22 General Votel: We have Syrian Kurds and we are working  
23 with local Syrian Arabs, Turkmen and in some cases local  
24 Christian forces.

25 Senator King: But the vast majority of those forces

1 are Muslim. Is that correct?

2 General Votel: That is correct.

3 Senator King: And in Yemen, UAE, Saudi Arabia, those  
4 forces are Muslim?

5 General Votel: Absolutely.

6 Senator King: And in Afghanistan, the ANSF, the Afghan  
7 National Security Forces, also Muslim?

8 General Votel: They are Muslim.

9 Senator King: One of the statements you made in your  
10 opening comments was that our strategy rests upon, quote, a  
11 heavy reliance on indigenous forces. Is that correct?

12 General Votel: That is correct, Senator.

13 Senator King: And it is fair to say that the vast  
14 majority of those indigenous forces are Muslim.

15 General Votel: That is the case today.

16 Senator King: So it would be a mistake as a matter of  
17 national policy, rhetoric, or discussion if we attempted to  
18 alienate or marginalize Muslim citizens of anywhere in the  
19 world because these are our allies in all of the fights that  
20 we are engaged in in your area. Is that not correct?

21 General Votel: I believe it is correct, Senator.

22 Senator King: And you talked about restoring trust  
23 with our partners in the region. Our partners in the region  
24 are all based upon Muslim societies. Is that not correct?

25 General Votel: They largely are. It is largely a

1 Muslim area.

2 Senator King: The second area -- and this has been  
3 discussed to some extent but again it is in your report on  
4 page 3 and 5 of your statement. The goals that you define  
5 cannot be accomplished solely through military means, you  
6 say. The military can help create the necessary conditions.  
7 There must be concomitant progress in other complementary  
8 areas, reconstruction, humanitarian aid, stabilization,  
9 political reconciliation. On page 5, you say, however,  
10 solely a military response is not sufficient. This must be  
11 accomplished through a combination of capabilities if we are  
12 going to achieve and sustain our strongest deterrence  
13 posture.

14 Again, just to put a fine point on what has been  
15 discussed previously, to solely rely on military strength in  
16 solving these very complex and difficult problems would be a  
17 serious mistake. Would you agree?

18 General Votel: I would agree, Senator. I think we  
19 have to have a combination of all of our elements of power,  
20 hard power and soft power.

21 Senator King: Thank you.

22 Next question. This is a slightly different subject.  
23 You work with a lot of these allies. You work with these  
24 countries, with Iraq and other countries in the region. How  
25 would it be received in the Arab world if the United States

1 relocates its embassy from Tel Aviv to Jerusalem without a  
2 settlement of the Palestinian-Israeli conflict?

3 General Votel: I think from my personal discussions  
4 with some in the region, I think that it would create some  
5 challenges for some of those countries.

6 Senator King: Some challenges? Can you expand?  
7 Serious challenges?

8 General Votel: It could potentially be very serious.

9 Senator King: And does that include our staunch ally  
10 Jordan?

11 General Votel: I believe, yes, sir, it does, Senator.

12 Senator King: Thank you.

13 Final question to both of you. Foreign military sales  
14 and foreign military financing programs -- are they  
15 appropriately calibrated to meet your needs in the region?  
16 My sense is that that is an area where we could use some  
17 work.

18 General Votel: From my perspective, Senator, the  
19 importance of the foreign military sales and foreign  
20 military funding programs is to help build capability for  
21 our partners that is interoperable with us. They generally  
22 want to buy U.S. equipment because it comes along with  
23 training. It comes along with sustainment, and it makes  
24 them more interoperable with us. I think we have to take a  
25 long-term view in terms of this, and I think it is in our

1 interests for our partners in the region to use capabilities  
2 that are interoperable with ours.

3 Senator King: General Waldhauser, in just a few  
4 seconds I have left, a quick update on the status of ISIS in  
5 Libya.

6 General Waldhauser: The status of ISIS in Libya is  
7 they right now are regrouping. They are in small numbers,  
8 small groups. We tried to develop the intelligence, but  
9 after they left Sirte, we developed intelligence. We bombed  
10 them on January 18th and they were in the southern part of  
11 Libya. They have scattered again now. They are in small  
12 groups trying to regroup.

13 Senator King: No longer control Sirte.

14 General Waldhauser: Correct. No longer control Sirte.  
15 They were out of Sirte in the middle of December.

16 Senator King: Thank you.

17 Thank you, Mr. Chairman.

18 Chairman McCain [presiding]: By the way, General  
19 Votel, just to complicate things further, Barzani, the  
20 leader of the Iraqi Kurds, does not support the KRG, the  
21 Syrian Kurds. Right?

22 General Votel: That is correct, Chairman.

23 Senator King: Senator Ernst?

24 Senator Ernst: Thank you, Mr. Chair.

25 And thank you, gentlemen, for being here today and your

1 time and attention to all of our questions.

2 General Votel, we had an interesting conversation the  
3 other day, and as the chair of the Emerging Threats and  
4 Capabilities Subcommittee, you mentioned something to me  
5 that I thought was very interesting and something that I am  
6 concerned about. And that is the increasing threat that is  
7 posed by ISIS's ability to use drones. We had a great  
8 conversation about that. And what they are using you say  
9 was kind of a modified commercial, off-the-shelf drone. And  
10 can you tell us about that emerging threat and maybe  
11 describe for those on the committee exactly what they are  
12 using and what those capabilities are?

13 General Votel: Thank you, Senator.

14 What we are seeing I think are commercially acquired  
15 drones. They are generally quadcopters that are available I  
16 think very easily by anybody online or at other places,  
17 hobbyist locations. And what they are able to do is,  
18 obviously, operate them for purposes of their own  
19 surveillance, and as we have seen in the news, in some cases  
20 they have been able to rig grenades and other things to  
21 them. So they have been able to achieve some effects with  
22 that.

23 So it is concerning to our partners. It is certainly  
24 concerning to us. And I think it is a reminder of just how  
25 savvy and challenging of an enemy that we are dealing with

1 here, and I think it requires us to make sure that we are  
2 equally savvy in our approach to this, making sure we have  
3 the right tools to defend against these types of threats.

4 Senator Ernst: Absolutely. Thank you. It reminds me  
5 of the early part of the Iraq war when the forces were using  
6 remote controlled cars with explosives as a first form of  
7 IEDs. And of course, through the years, they grew  
8 technologically advanced. And so I see something so simple  
9 as this that could become much more complicated over time.

10 Do the Iraqi forces have the capabilities to defeat  
11 those drones?

12 General Votel: We are working on providing them the  
13 capabilities. Right now, they enjoy protection against  
14 these threats in a number of areas largely because we have  
15 capabilities with our forces that are accompanying them and  
16 are located in their locations.

17 Senator Ernst: Very good. Thank you.

18 And we also spoke about troop numbers yesterday and how  
19 random some of those numbers tend to be when you have that  
20 artificial boundary of a country line between Iraq and  
21 Syria. And if you could, please share with the committee  
22 what is our role in that. Should that role of troop numbers  
23 and where those troops are located be left up to our on-the-  
24 ground combatant commanders? If you could just share a  
25 little bit of that conversation.



1           General Votel:  Senator, I think the more we can  
2 provide agility for our commanders on the ground to make  
3 decisions about where they need forces and when they need  
4 it, I think that is the most appropriate thing that can be  
5 done.  I think we are most successful when we enable our  
6 very good and well qualified leaders and people on the  
7 ground to make decisions in the situations in which they see  
8 it.  So I am for making sure that we try to provide them the  
9 agility and the process around that.  We certainly  
10 understand why it is important to look at things like  
11 numbers and stuff like that.  It certainly drives our  
12 resources and budgeting and other aspects of that.  So that  
13 certainly has to be taken into consideration.  But I look at  
14 this more from a flexibility and agility standpoint for our  
15 commanders on the ground.

16           Senator Ernst:  Thank you very much.

17           And, General Waldhauser, thank you as well.

18           As you know, Tunisia has sent more foreign fighters  
19 than any other country to join the ranks of ISIS abroad.  In  
20 addition to supplying the foreign fighters, Tunisia  
21 struggles with containing the terrorist activity on their  
22 own soil, so much that they have had a physical wall built  
23 along the border with Libya in an attempt to deter  
24 terrorists from entering their country.

25           Is AFRICOM currently equipped to address the potential

1 influx of ISIS fighters returning home to Tunisia as we  
2 strike them elsewhere, whether it is in the Middle East or  
3 other places?

4 General Waldhauser: Senator, I would have to  
5 characterize Tunisia as one of the bright spots on the  
6 continent. They are in the process of transforming their  
7 military to be more capable of dealing with terrorist  
8 threats. They have purchased equipment from the United  
9 States, which we are helping them with right now,  
10 helicopters and the like. We have people on the ground who  
11 are training, advising, and assisting their special  
12 operations forces. And I believe the wall that you refer to  
13 is technical equipment provided by DTRA, as well as Germany,  
14 to help them contain the foreign fighter flow back and forth  
15 between especially Libya and Tunisia.

16 But the bottom line is they are a bright spot. I  
17 visited them twice, and they are headed in the right  
18 direction. They are struggling with what to do with foreign  
19 fighters who return, but again, I think that is not a  
20 negative against them.

21 Senator Ernst: Very good. Well, I appreciate it.  
22 Gentlemen, thank you very much for your input.

23 Senator Reed [presiding]: Thank you.

24 On behalf of Chairman McCain, let me recognize Senator  
25 Blumenthal.

1 Senator Blumenthal: Thank you, Mr. Chairman.

2 I want to thank both of you for your service and, as  
3 you did in your testimony, General Votel, the outstanding  
4 men and women under both your commands who make us proud and  
5 who are doing such great work under your command. I want to  
6 join Senator King in thanking you for your testimony, which  
7 is a very, very enlightening for me, elucidating outline of  
8 the challenges and I would note for my colleagues  
9 particularly in your description of the next generation of  
10 cyber warriors or the use of cyber warfare by our  
11 adversaries going from the rather rudimentary weapons of the  
12 roadside bombs to the much more sophisticated use of cyber  
13 and, as my colleague has pointed out, drones and other  
14 challenges that face us there.

15 I want to focus on Iran. In response to Senator  
16 Fischer's question about whether Iranian aggression has  
17 increased since the nuclear treaty, you pointed out that  
18 their conduct there has been destabilizing -- the word you  
19 used was "destabilizing" -- and abnormal. And, of course,  
20 we know Iran has tested an anti-ship ballistic missile  
21 there, a new Russian made S-300 missile air defense system,  
22 as well as harassing a Navy ship, the USS Invincible, in the  
23 Strait of Hormuz by sending an Iranian frigate within, I  
24 think, 150 yards, smaller boats within 600 yards. Last  
25 month, the Iranians fired a medium-range ballistic missile

1 in violation of the U.S. Security Council resolution  
2 resulting in United States sanctions enforcement against 25  
3 individuals and entities. That action was in violation of  
4 the U.N. resolution. But none of these other activities are  
5 in violation of the nuclear agreement. Are they?

6 General Votel: My understanding, Senator, is the  
7 nuclear agreement did not address any of those other aspects  
8 of the Iranian threat.

9 Senator Blumenthal: But would you agree with me that  
10 they do demand a response from the United States?

11 General Votel: I would absolutely agree, Senator.

12 Senator Blumenthal: And much more aggressive not only  
13 sanctions but warnings and actions against their partners in  
14 this effort, most prominently the Russians.

15 General Votel: I would agree. I think we should use a  
16 combination of both diplomatic and other security-related  
17 tools here, economic tools to address this concern.

18 Senator Blumenthal: Would you agree with me that the  
19 Russians through the Iranians, in effect, are testing us in  
20 that area because they are, in effect, aiding and abetting  
21 the Iranians in this increasing destabilizing activity?

22 General Votel: Well, I would, Senator, and I would  
23 certainly point to a place like Syria where these two  
24 countries have essentially propped up a regime here and made  
25 them more capable, more powerful, and kept them from

1 collapsing.

2 Senator Blumenthal: But when we complain about the  
3 Iranians -- and all of us probably in this room would agree  
4 with you that they are the major destabilizing influence in  
5 that area -- we are talking as much about the Russians as we  
6 are about the Iranians.

7 General Votel: Senator, in my comments here I was  
8 specifically talking about the Iranian threat. That is the  
9 one that we confront with. Certainly, as I mentioned also  
10 in my opening statement here, we are concerned about  
11 external actors and what their interests are in the region  
12 as well, and those can contribute to more destabilizing  
13 aspects as well. So I think they have to be addressed --  
14 they both have to be addressed.

15 Senator Blumenthal: And how would you suggest that we  
16 should address the Iranian destabilizing influence of this  
17 regime?

18 General Votel: I think there are a variety of things.  
19 I think the most important thing is to work with our  
20 regional partners here to ensure that we have a common  
21 approach to this. I think in some cases we should look at  
22 ways that we can disrupt their activities through a variety  
23 of means, not just military means. We have to expose them  
24 for the things they are doing. They should be held  
25 accountable for those things. And I think we have to

1 contest their revolutionary ideology, and it is not just the  
2 United States, but it has to be those in the region. Iran  
3 has a role in the region. They have been around for a long  
4 period of time. Nobody is trying to make Iran go away, but  
5 we are concerned about the destabilizing behavior that they  
6 pursue on a regular basis.

7 Senator Blumenthal: My time has expired, but this  
8 topic is one that I think is profoundly important. I will  
9 have some more questions that I hope you and your staff  
10 perhaps can answer and maybe in a different setting as well.

11 Thank you, Mr. Chairman.

12 Senator Reed: Thank you.

13 On behalf of Chairman McCain, let me recognize Senator  
14 Perdue.

15 Senator Perdue: Thank you, Mr. Chairman.

16 It is an honor to be here before you two gentlemen.  
17 Thank you for your great careers and what you are doing for  
18 our country today. And I hope you will take this message  
19 back to your troops, that everything they do over there is  
20 not missed on us.

21 I have a question about ISIS. General Votel, first of  
22 all, I think one of the first things that the President has  
23 done is ask for a 30-day review of the current strategy and  
24 so forth. Where are we in that process? And what types of  
25 things can we expect to see in terms of our strategy there?

1 And I would like you also to address what is our end game,  
2 and can you talk about that today or should we wait until we  
3 see the 30-day review?

4 General Votel: Senator, I think it is most appropriate  
5 for the Secretary who I believe has presented his findings  
6 to the new administration, and I think he is probably the  
7 person who is most appropriate to talk about the decisions  
8 and end states that will come out of that.

9 Senator Perdue: Fair enough.

10 With regard to ISIS in the Sinai, right now Egypt --  
11 there are daily efforts there I think. Can you give us an  
12 update on what is being done and what other countries are  
13 involved in the fight with ISIS? And give us an order of  
14 magnitude of the size of that action in the Sinai.

15 General Votel: The Egyptians several months ago have  
16 deployed forces into the Sinai and specifically around the  
17 area where the multinational force is. That has been  
18 helpful. That has helped address a threat that was emerging  
19 there, and they are engaged on a regular basis in fighting  
20 ISIS in that particular area.

21 Egypt is addressing this. We are helping them in some  
22 areas, particularly with some of our expertise in improvised  
23 explosive devices. They have asked for that, and so we have  
24 been key to help them with that in this particular area.

25 Senator Perdue: Do we have any troops on the ground in

1 the Sinai?

2 General Votel: We do not have any troops on the ground  
3 that are fighting ISIS. We do have troops on the ground in  
4 the Sinai that are associated with the multinational force  
5 mission.

6 Senator Perdue: Thank you.

7 General Waldhauser, I want to go back to a question  
8 that was earlier asked of you about China's presence in  
9 Africa and particularly the base at Djibouti. Given what  
10 Russia has done with Crimea and now at Latakia and at  
11 Tartus, are you concerned that we will see other activity of  
12 base building in Africa? Have you had any other indications  
13 of either Russia or China developing permanent positions or  
14 presence in that theater?

15 General Waldhauser: Senator, in 2013, the Chinese laid  
16 out a strategic plan of One Belt, One Road where they will  
17 have commerce that starts in China, goes down to Indonesia,  
18 the Malacca Straits, across over to Djibouti, up into Europe  
19 and back. And that is roughly 60 countries and 40 percent  
20 of the global GDP that goes on in that area. It is all  
21 about trade. This is their first endeavor in an overseas  
22 base, and it will not be their last.

23 Senator Perdue: Thank you, sir.

24 I want to ask one more question real quick. I am about  
25 out of time. But in Somalia and Sudan, there is a growing



1 threat that there is a real serious famine that is about to  
2 happen if it has not already started there. What will that  
3 do to the military situation in that area?

4 General Waldhauser: Well, first of all, in Somalia,  
5 Senator, this right now is the most pressing issue to the  
6 brand new president who was just elected this last month.  
7 Right now, there are over 6.2 million individuals who have  
8 been affected by it, and it has not been, to my knowledge,  
9 actually declared a famine yet. But in terms of combating  
10 al Shabaab and the like, movement of people in those large  
11 masses has an impact on military operations.

12 But the bottom line in Somalia is right now -- and we  
13 have counterterrorism operations. We are trying to build up  
14 the national security forces. But that famine for the brand  
15 new president and this fledgling national government is the  
16 biggest thing on their plate. They have to do well in this  
17 because if they cannot provide for this famine, then  
18 Somalia, who has been without a national government for over  
19 20 years, is going to question what the purpose and what  
20 contributions they will make.

21 Senator Perdue: Thank you, sir.

22 One last real quick question. In Moron, Spain, I was  
23 fortunate enough to meet and visit with some of your great  
24 marines there. They have got a very strong mission.  
25 Unfortunately, late last year, they had to move about half

1 of their air assets back to the U.S. for training. Can you  
2 talk about readiness with regard to their mission in Africa?

3 General Waldhauser: Senator, the impact right now is  
4 really capacity for us. So we have had to kind of center  
5 their activity mostly on western Africa. And so some of the  
6 missions we have in eastern Africa that they would have been  
7 able to deploy to in the past, we would have to coordinate  
8 with CENTCOM, and we have actually used marines from the  
9 Oregon MEU in CENTCOM on the ground in Djibouti to take care  
10 of crisis response activities, specifically South Sudan,  
11 that we had at that time. So the readiness of the airplanes  
12 has gotten better, but when you go from 12 to 6, the  
13 capacity is cut in half. And the impact is we have got to  
14 do a better job coordinating and sharing assets because the  
15 Africa continent is extremely large.

16 Senator Perdue: Yes, sir. Thank you. Thank you both.

17 Chairman McCain [presiding]: Senator Donnelly?

18 Senator Donnelly: Thank you, Mr. Chairman.

19 Thank you both for your service. We are so grateful  
20 for your hard work.

21 General Votel, as we move forward in Mosul and some of  
22 the ISIS fighters head out, what efforts do we have in place  
23 to try to capture them before they head to Raqqa or to other  
24 areas, or where are they heading out to?

25 General Votel: Well, Senator, thank you for the

1 question.

2 Our intention, of course, is to prevent them from  
3 getting out. And so the first part of all of our operations  
4 is to isolate the areas where we are, where our attacks are  
5 taking place by our partners, and where we are bringing our  
6 enabling capabilities so that we do not let anybody get out  
7 or get in. Being a desert, this is obviously a very porous  
8 area, so there probably are some that get out. I think they  
9 are generally moving into the middle Euphrates River valley,  
10 which is a location that is equidistant between Mosul and  
11 Raqqa.

12 Senator Donnelly: A while ago, we were just outside  
13 Hadditha in Anbar Province meeting with the Iraqi leaders  
14 there. And I just wanted to follow up. At that time, they  
15 were close to starvation, for a lot of their citizens. It  
16 was extremely difficult for all of their families. Where  
17 are we now in terms of solidifying Hadditha, Fallujah,  
18 Ramadi, those areas, and are they working with us and with  
19 the central government?

20 General Votel: Senator, they are and we are making  
21 progress with the humanitarian aid and the needs of the  
22 people out in all of those areas. This I think is an area  
23 that we have to pay particular attention to as we move  
24 forward, particularly in the large urban areas. Our  
25 military operations -- planning for those has to be done in

1 conjunction with the humanitarian aid planning and providing  
2 for the needs of the people that will be left behind. So I  
3 think this is a key aspect for us.

4 Senator Donnelly: As we head toward Raqqa, we have  
5 seen that marines have come in. Are you getting everything  
6 that you need in terms of equipment, manpower, all of those  
7 things to take Raqqa back?

8 General Votel: We are, Senator, and I am certainly in  
9 discussions with the Secretary about what we might need  
10 going forward.

11 Senator Donnelly: Because I think our feeling is we do  
12 not want to not get this done as soon as possible because we  
13 did not provide you with the necessary equipment, necessary  
14 personnel.

15 As we look at Raqqa and moving forward, obviously there  
16 is a lot of complication with the Turks and with others.  
17 How are all those pieces coming together for you?

18 General Votel: Well, as you know, Senator, this is an  
19 extraordinarily complex area here. And so we are trying to  
20 work with an indigenous force that has tensions with a NATO  
21 ally. And so that is not an easy situation to move through.  
22 But I think the way we are addressing it is in the right  
23 way. We are being as transparent as we can. We are  
24 providing information. We are looking for options on a day-  
25 to-basis to ensure we can mitigate and minimize the tension

1 that exists in this area. So I will not try to tell you  
2 that there is an easy way through all this complexity.  
3 There is not. It is going to take a lot of hard work. It  
4 is going to take military work. It is going to take  
5 diplomatic work as we move forward. And I do believe that  
6 is the approach that we are taking and I think that  
7 ultimately it will work for us.

8 Senator Donnelly: I was going to follow up -- you were  
9 kind enough to come by my office -- to follow up and say I  
10 think your idea of complete transparency, here is what we  
11 are doing, here is what we are working on, here is how we  
12 plan to do it and to try to cooperate as much as we can with  
13 other countries, but to tell them this is the plan and this  
14 is where we are going seems to make a lot of sense to me.

15 As you look at what has gone on in the Arabian Gulf, we  
16 just saw another incident with our ships recently. And as  
17 we move forward, the distances seem to be less. They get  
18 closer. They get closer. Do we have a plan ready to go  
19 where at some point we say, you know, you have crossed the  
20 red line, and if they continue, that we take appropriate  
21 action?

22 General Votel: Senator, I am very confident in our  
23 ship captains and in our crews for them to deal with the  
24 situation. I do believe they have the right rules of  
25 engagement. They have the right tools to prevent things,

1 and in the case that prevention does not work or deterrence  
2 does not work, then they have the capabilities to defend  
3 themselves and take action. So I am very confident in our  
4 people.

5 Senator Donnelly: My guess is that there will become  
6 an X crosses Y point, and I just want to make sure that our  
7 captains and all of them are ready. And I have the same  
8 confidence.

9 General Waldhauser, as you look at your area of  
10 command, what do you see as our biggest challenge right now  
11 that you are dealing with?

12 General Waldhauser: Senator, I think the biggest  
13 challenge perhaps is the development piece for the  
14 demographics of a very youthful population. 41 percent of  
15 the continent is under the age of 15. We have got to find a  
16 way to get at education, health care, hopelessness,  
17 livelihood, and the like in order to give those individuals  
18 a future because we could knock off all the ISIL and Boko  
19 Haram this afternoon, but by the end of the week, so to  
20 speak, those ranks would be filled. We know from those who  
21 have kind of come out of the forest and given themselves up,  
22 so to speak, that the reason they joined was they needed a  
23 job, they needed a livelihood. It is not, for the most  
24 part, in those regions about ideology. That is not the  
25 driver. It is those factors I just talked about that drive

1 them into that line of work because there is nothing else  
2 for them to do. So I think the youth bulge and the  
3 demographics and providing development and a way ahead for  
4 those youth are very, very important.

5 Senator Donnelly: So we cannot fight our way out of  
6 it. What we have to do is to try to give them hope and  
7 dignity and purpose I guess.

8 General Waldhauser: Exactly. I am not the first.  
9 Many people, especially those in uniform, have said we  
10 cannot kill our way to victory here. And this is about the  
11 long-term investment in capacity building because at the end  
12 of the day, that is what is going to try to help solve the  
13 problem especially on the African continent.

14 Senator Donnelly: Thank you. Thank you both for your  
15 service.

16 Thank you, Mr. Chairman.

17 Chairman McCain: Senator Tillis?

18 Senator Tillis: Thank you, Mr. Chairman.

19 General Votel, thank you for spending the time with me  
20 in my office this week. And, General Waldhauser, welcome to  
21 the committee. Thank you both for your service.

22 I will ask this of both of you. One area that I would  
23 like to get your feedback on is foreign military financing,  
24 foreign military sales and to what extent do we need to  
25 focus on that with some of our partner nations that you

1 believe is helpful to you completing your missions in each  
2 of your commands. General Votel, we will start with you.

3 General Votel: Thank you, Senator.

4 I think foreign military funding, foreign military  
5 sales are extraordinarily important.

6 Senator Tillis: Can you get more into specifics about  
7 certain areas where we need to really look at on a more  
8 immediate basis?

9 General Votel: Yes, I do. I think certainly looking  
10 at ballistic missile capabilities for some of our Gulf  
11 partners is an important area. Certainly some of the  
12 aircraft programs out there -- there is a great desire to  
13 have U.S. programs in many of these countries, and those are  
14 certainly areas where we have to pay strong attention.

15 Senator Tillis: What sort of capabilities in Egypt?  
16 Senator Perdue asked you questions about the Sinai and  
17 increasing threat in that region because of the  
18 consolidation of ISIS and other entities. What kinds of  
19 things would be helpful in particular to Egypt in that area?

20 General Votel: Well, certainly the suite of counter-  
21 improvised explosive device equipment we have out there,  
22 running from jammers to protected vehicles and a variety of  
23 things in between, I think would be extraordinarily helpful  
24 to them.

25 Senator Tillis: Do you have any specifics? And,



1 General Waldhauser, I want to go to you with the same line  
2 of questioning. But any specific things that you can  
3 provide us, any specific areas where we need to take a look  
4 at and maybe get back to where we are helping build that  
5 partnership with Egypt?

6 General Votel: Senator, we do, and with your  
7 permission, we will look for an opportunity to come and talk  
8 with you specifically about that so we can get into some  
9 detail about what we think would be most useful for Egypt  
10 and in fact for other partners across the region.

11 Senator Tillis: Thank you.

12 And, General Waldhauser, same line of questions.

13 General Waldhauser: Thank you, Senator.

14 Interestingly, in Africa, the foreign military sales is  
15 a very interesting choice. Many of the countries that we  
16 deal with are not financially in good shape, and  
17 consequently the ability to pay and the ability to fund for  
18 long-term parts blocks behind that is a difficult task. So  
19 I am not suggesting that we should alter the rules or change  
20 the rules, but I think we need to be very flexible when we  
21 deal with some of these poor countries and make sure we  
22 understand their absorptive capability so that what we are  
23 selling them they not only can use them in the first few  
24 years, but there will be a parts block behind that, if you  
25 will. There will be an institution, a logistical

1 infrastructure behind that, that will allow them to keep  
2 these pieces of equipment, whether they be vehicles or maybe  
3 C-130 airplanes, keep them in good shape for years ahead and  
4 years to come.

5 Senator Tillis: Thank you.

6 On another subject -- and it relates to foreign  
7 military aid. General Votel, when you were in my office, we  
8 were talking about Afghanistan. When I was there the year  
9 before last, at the time there was a concern that there was  
10 going to be a drop-off in foreign investment and the tools  
11 that Afghanistan needed for its economic development, which  
12 is a key part of stabilizing the country -- what is the  
13 current situation there?

14 General Votel: I think the situation looks good, both  
15 from a NATO standpoint and from a much broader international  
16 standpoint. The donation conferences and other things that  
17 have been convened here over the last year --

18 Senator Tillis: Are we building a reliable stream, or  
19 is there another cliff that we have to be concerned with?

20 General Votel: I think we are building a reliable  
21 stream out to the 2020 time frame and in some cases beyond  
22 that. So I think the international community has stepped up  
23 to the plate in this particular area.

24 Senator Tillis: Thank you.

25 General Waldhauser, when General Votel and the people

1 that we have assisting countries in CENTCOM are successful  
2 in Mosul and Raqqa, it seems to me the good news is maybe we  
3 are getting some level of success there. But I have got to  
4 believe that that is going to potentially cause some  
5 additional challenges for you. Can you talk about the ones  
6 that you are specifically concerned with?

7 General Waldhauser: Senator, anytime you put pressure  
8 on the network and disrupt or dislodge ISIL from a certain  
9 area, movement will occur. So that means the border  
10 countries toward that took place are very concerned about  
11 foreign fighters moving back and forth. And so that is one  
12 of the big concerns that we have. And one of the issues  
13 that we have to deal with when we conduct operations, it is  
14 important that the neighbors of those countries know what we  
15 are trying to do and understand why we are trying to do that  
16 so we can help them with the foreign fighter flow if  
17 movement should occur.

18 Senator Tillis: Thank you, Mr. Chair.

19 Chairman McCain: Senator Kaine?

20 Senator Kaine: Thank you, Mr. Chair.

21 And thanks to the witnesses.

22 The Marine Corps doctrinal publication entitled  
23 "Strategy" has this phrase in it. What matters ultimately  
24 in war is strategic success, attainment of our political  
25 aims, and the protection of our national interests. History

1 shows that national leaders, both political and military,  
2 have failed to understand this relationship, sow the seeds  
3 for ultimate failure, even when their armed forces achieve  
4 initial battlefield success. Battlefield brilliance seldom  
5 rescues a bad strategy.

6 I have been heartened by the American military's  
7 performance on the battlefield. Very heartened with our  
8 partners against ISIL in Iraq and now Syria. And although  
9 we would not want to predict anything about timing, I think  
10 that we are going to continue to have battlefield success.

11 What is our political strategy, say, following the fall  
12 of Raqqa that would lead us to have a belief that there is  
13 going to be a better next chapter to follow in Syria  
14 especially?

15 General Votel: Senator, I am not sure I can comment on  
16 what the political strategy is. I do believe this is a key  
17 aspect of what Secretary Mattis and the administration are  
18 discussing right now with respect to what this looks like  
19 long-term.

20 Senator Kaine: And, General Votel, I think that is a  
21 good answer. You are not commenting because the political  
22 strategy is really for the political leadership not the  
23 military leadership. The administration and Congress. You  
24 understand that Congress has a role in this as well, not  
25 just the administration.

1 General Votel: I do, Senator.

2 Senator Kaine: We are pursuing a war now based on an  
3 authorization that was passed in September of 2001. It is  
4 now nearly 16 years old. Do you think it would be helpful  
5 in terms of articulating a political strategy that would put  
6 the military mission into a context and to find an end  
7 result and a potential desired future state if Congress were  
8 to grapple with the question of the authorities and this  
9 desired end political strategy?

10 General Votel: Senator, I think the current AUMF has  
11 provided what we needed, but I do believe an updated  
12 authorization certainly would send a stronger commitment to  
13 uniformed military of our commitment and desire to support  
14 them.

15 Senator Kaine: In the CENTCOM space, if the military  
16 mission succeeds and Raqqa were to fall, do you still  
17 believe that the American mission against ISIL and al Qaeda  
18 will take a long time?

19 General Votel: I do. This is a very savvy enemy, and  
20 they are adapting. Like we are adapting on the battlefield,  
21 they are adapting on the battlefield.

22 Senator Kaine: Just like the ISIL attack --

23 General Votel: Right.

24 Senator Kaine: -- in Afghanistan dressed as doctors  
25 attacking the hospital. This is a threat that is not going

1 to go away just because Raqqa were to fall. Correct?

2 General Votel: That is right. They will begin to  
3 adopt other forms, and we will need to be persistent against  
4 that and we will need to work with our partners to address  
5 that in both Iraq and Syria.

6 Senator Kaine: Well, my colleagues know because I have  
7 said it a lot and others view it the same way, that this  
8 question of authorities -- I do think it is past time for  
9 Congress to address it. Whether you think the 9-14-01 AUMF  
10 legally covers the battle against ISIL or not, I think there  
11 are prudent reasons at a minimum and I think legal reasons  
12 as well that we should tackle it.

13 On the question of legal authorities, traditionally you  
14 need two kinds of legal authorities to be engaged in a  
15 military mission. You need a domestic legal authority and  
16 you need an international legal justification as well. The  
17 most common international legal justification for military  
18 action in somebody else's territory is that they invited  
19 you. We are conducting military actions in Iraq with the  
20 request and support of the Iraqi Government. We are  
21 conducting military operations in Afghanistan with the  
22 support and request of the Afghan Government. We just  
23 conducted a DOD ground operation for the first time in Yemen  
24 with the request and support of the Yemeni Government.

25 Are we deploying marines in Syria at the request or

1 with the permission of the Syrian Government?

2 General Votel: We are not, Senator.

3 Senator Kaine: What is the international legal  
4 justification for the U.S. taking military action in another  
5 country without the request of that country? We have  
6 criticized nations such as Russia, for example, for  
7 undertaking military actions in the Ukraine or Crimea  
8 without the request of the government.

9 General Votel: Thank you, Senator. I think we  
10 certainly make a judgment about the ability of the  
11 government to make a decision. In that case I think what we  
12 are doing in Syria, we are looking at that as an extension  
13 of the authority to operate from Iraq.

14 Senator Kaine: Iraq has had us in and we are  
15 cooperating with Iraq. We are there in Iraq at their  
16 request. But I guess the bottom line is there is no such  
17 request from Syria. We do not judge that government capable  
18 of making such a request, and we do not really recognize the  
19 legitimacy of Bashar al Assad's government. But you are  
20 saying that the international legal justification for  
21 American military action in a country that has not asked us  
22 is the fact that we are engaged in a military action in a  
23 country next door that has asked us?

24 General Votel: I believe we are being extended that  
25 authority by our leadership to conduct those operations

1 principally because we are operating against an enemy that  
2 operates on both sides of that border.

3         Senator Kaine: If I might, one last question with  
4 respect to Yemen. We have had hearings in this committee  
5 about the ground operation in Yemen, which to my knowledge  
6 was the first ground operation by DOD forces in Yemen.  
7 There were a number of questions raised by that. I do not  
8 want to go into the classified briefing we had, but  
9 questions about was the mission compromised in some way in  
10 the advance. What intel was gained? There was some after-  
11 the-fact justification of the mission using video that  
12 actually had been taken in another mission. Is the DOD  
13 conducting an ongoing investigation of that mission to  
14 determine all lessons learned, what worked, what did not,  
15 and what we can do better?

16         General Votel: Senator, thank you, and let me answer  
17 this a little more comprehensively.

18         First and foremost, I am responsible for this mission.  
19 I am the CENTCOM Commander and I am responsible for what is  
20 done in my region and what is not done in my region. So I  
21 accept the responsibility for this. We lost a lot on this  
22 operation. We lost a valued operator. We had people  
23 wounded. We caused civilian casualties. We lost an  
24 expensive aircraft.

25         We did gain some valuable information that will be



1 helpful for us. Our intention here was to improve our  
2 knowledge against this threat, a threat that poses a direct  
3 threat to us here in the homeland. And that was what we  
4 were focused on.

5 There have been a number of investigations that have  
6 been initiated. Most of these are regulatory or statutory  
7 in terms of things that we normally do.

8 When we lose an aircraft, there is both a safety  
9 investigation to ensure that we disseminate lessons learned  
10 for the broader fleet, and there is also a collateral  
11 investigation that tries to determine the specific reason  
12 why that happened and establishes accountability over that.

13 We have done an investigation into the civilian  
14 casualties. That has been completed. The helicopter  
15 investigations are ongoing. The civilian casualty aspect  
16 has been completed, and we have made a determination based  
17 on our best information available that we did cause  
18 casualties, somewhere between 4 and 12 casualties that we  
19 accept -- I accept responsibility for.

20 We have done a line of duty investigation, again a  
21 statutory investigation, on the death of Senior Chief Owens  
22 that determined that he was in the line of investigation.

23 The key mechanism that I have, Senator, is the after-  
24 action review, and this is something we do with every  
25 operation we do. And the intention here is to review the

1 operation in great detail to understand exactly what  
2 happened. And it is done with the chain of command in  
3 place. And we have done that and I have presided over that.  
4 Based on my experience, nearly 37 years of service, I have  
5 certainly appointed a lot of investigations and I have been  
6 through a lot of these after-action reviews. When I go  
7 through these things, there are some specific things that I  
8 am looking for. I am looking for information gaps where we  
9 cannot explain what happened in a particular situation or we  
10 have conflicting information between members of the  
11 organization. I am looking for indicators of incompetence  
12 or poor decision-making or bad judgment throughout all of  
13 this.

14 So what I can tell you is that we did an exhaustive  
15 after-action review on this. I presided over that. It went  
16 down to a level that included people who were on the  
17 specific objective. As a result of that, I was satisfied  
18 that none of those indicators that I identified to you were  
19 present. I think we had a good understanding of exactly  
20 what happened on this objective, and we have been able to  
21 pull lessons learned out of that that we will apply in  
22 future operations. And as a result, I made the  
23 determination that there was no need for an additional  
24 investigation into this particular operation.

25 Senator Kaine: So the only investigation that

1 continues is the investigation -- or the loss of the  
2 helicopters is still not complete.

3 General Votel: That is correct, Senator.

4 Senator Kaine: Thank you.

5 Thank you, Mr. Chair.

6 Chairman McCain: Just to follow up, General, there has  
7 been a lot of conversation about this particular mission and  
8 the point that some of us are trying to make that the  
9 heroism and sacrifice of those who served has nothing to do  
10 with the mission itself. In other words, we honor their  
11 sacrifice no matter what happened in the mission.

12 And when you have women and children killed, as you  
13 pointed out, the loss of a \$70 million aircraft, you did not  
14 capture anyone as was part of the mission, that mission is  
15 not a success. But that happens in war. There is a thing  
16 called the fog of war. They did the best they could under  
17 very difficult circumstances. And I hope in the process of  
18 your investigation, when heavy fire was encountered why the  
19 decision was made to continue the mission -- I still do not  
20 think this committee has an answer to that question. But it  
21 does not question the loyalty and sacrifice and bravery when  
22 we question the mission.

23 And unless we tell the American people the truth, the  
24 absolute truth, then we are going to revisit another war a  
25 long time ago where we did tell the American people the

1 truth and we paid a very heavy price for it. There are  
2 55,000 names engraved in black granite not far from here,  
3 and the American people were not told the truth about  
4 whether we were succeeding or failing in that war. And then  
5 because of that, it all collapsed. So I hope that we will  
6 not forget that lesson, and in no way does it detract from  
7 the heroism and professionalism and sacrifice of the brave  
8 men and women who serve under your command.

9 Senator McCaskill?

10 Senator McCaskill: Thank you, Mr. Chairman. I just  
11 want to underline the comments you just made, and I do think  
12 it is important that we get answers to the questions about  
13 what happened at that moment in very difficult  
14 circumstances, admittedly, that heavy fire occurred and the  
15 decision was made to continue. And I am also anxious to  
16 have the questions answered about the real value of the  
17 intelligence that was gathered. I think there have been  
18 some mixed signals about the value of the intelligence that  
19 was gathered.

20 I want to talk to you today. I have spent an awful lot  
21 of time working on contracting in contingencies. And I  
22 remember my very first trip to Iraq included a stop in  
23 Kuwait to look at contracting. And I had an encounter with  
24 a general there that I will never forget. I will always  
25 admire him for being so honest with me because I was

1 pointing out all of these massive problems with contracting,  
2 especially Log Cap 1, Log Cap 2 and all of those associated  
3 contracts. And he looked at me and he said, Senator, I  
4 wanted three kinds of ice cream in the mess yesterday, and I  
5 do not care how much it costs.

6 Now, while I admired him for his honesty, it kind of  
7 underscored for me that contracting oversight was not a core  
8 capability many times within commands within contingencies.  
9 If it were, we would not have this long trail of mistakes  
10 made going all the way back to Kosovo on contracting.

11 So I was upset yesterday when I saw the DOD IG report  
12 coming out of Kuwait where they said that ineffective  
13 monitoring of contractor performance for the Kuwait base  
14 operations -- a particular concern that the contracting  
15 officer representatives, which we have worked very hard -- I  
16 mean, at the point in time I was over there, it was the  
17 worst guy in the unit got handed the clipboard, had no idea  
18 what he was supposed to do in terms of contracting oversight  
19 and did not do much. We have done a lot of work on this,  
20 training, and making sure people understand and with the  
21 standing up the Contracting Command.

22 So the fact that there is no consistent surveillance of  
23 these contracts in Kuwait, no assurance that the contract  
24 requirements have been met, and the entire \$13 million  
25 performance bonus was paid even though it is not clear that

1 it was earned, and maybe most worrisome, this environmental  
2 and health hazard that has been allowed to languish. It is  
3 fairly clear from reading this report that a stagnant  
4 wastewater lagoon went unresolved, that it was probably  
5 never constructed correctly, and it is really impacting the  
6 health and safety of some of our men and women that are  
7 stationed there.

8 So I need you to reassure me that we have not taken our  
9 eye off the importance of contracting oversight. And this  
10 is not just you. This is also the ACC and the 408th  
11 Contracting Support Brigade.

12 General Votel: Thank you, Senator.

13 I absolutely agree with you, and I recognize my  
14 responsibility as the CENTCOM Commander and as a senior  
15 leader in the Department of Defense to ensure that the  
16 expenditure of our national treasure and our resources is  
17 done in an effective and efficient manner. And I look  
18 forward to an opportunity to talk with you specifically  
19 about this situation in Kuwait.

20 Senator McCaskill: I would like that very much, and we  
21 will look forward to hearing from you directly. The thing  
22 that was the most frustrating about the contracting through  
23 much of the Iraq conflict before we did the contracting  
24 reforms that the Wartime Contracting Commission set out --  
25 and we codified all of those, most of them in this committee

1 -- the amount of money that was wasted was astounding. And  
2 we just cannot afford it. We just cannot afford it.

3 Let me briefly, in the time I have remaining -- I know  
4 that they have covered Russia as it relates to what has been  
5 going on in Afghanistan. I am not sure that it has been  
6 touched on, what is going on in Nigeria, and would love you  
7 to speak to that, General Waldhauser, about the fact that we  
8 refused to sell them the Cobra attack helicopters because of  
9 the history of human rights problems. And undeterred by  
10 that history, of course, Russia stepped up and now sold them  
11 attack helicopters. They are now training the Nigerian  
12 military, including the special forces, instead of the  
13 United States.

14 Could you give us any assessment of the impact of that,  
15 that Russia has stepped in where our better judgment said it  
16 was not a good idea and is now taking on that primary role  
17 with the Nigerian special forces?

18 General Waldhauser: Senator, not only Nigeria but  
19 other countries on the continent. If there are easier ways  
20 to get to military sales, if countries come in, China,  
21 Russia, North Korea, for example -- if they come in and do  
22 not have a lot of strings attached, then sometimes it is  
23 easier for those countries to purchase weapon systems from  
24 others than the U.S.

25 So we try to accommodate certain financial situations.

1 I know the DSCA people that work for OSD try hard to  
2 accommodate that. And when you look closely at the  
3 absorption capabilities of these countries -- but again in  
4 many occasions, human rights is not an issue when it comes  
5 to weapon sales from countries other than the United States.

6 Senator McCaskill: Well, I think it is something we  
7 need to worry about because it is, obviously, a powerful way  
8 to spread the influence and power of Russia. And I think we  
9 all, no matter what our party is, have figured out in the  
10 last 6 months that this is a real threat to our country and  
11 to our national security.

12 Thank you, Mr. Chairman.

13 Chairman McCain: Senator Graham?

14 Senator Graham: Thank you, Mr. Chairman.

15 I think you have been asked about soft power and the  
16 need for it. Both of you said it is an important tool in  
17 the toolbox to win the war. Is that correct?

18 General Votel: That is correct, Senator.

19 General Waldhauser: Yes, Senator. Yes.

20 Senator Graham: And you are warfighters  
21 extraordinaire. So I appreciate you putting a plug in for  
22 soft power.

23 Let me dig in with it. Can you win the war without it?

24 General Waldhauser: I do not believe you can, Senator.  
25 Everything comes from security. Once you have a secure



1 environment, development needs to take place, and that is  
2 where soft power kicks in.

3 General Votel: I agree with, General Waldhauser.

4 Senator Graham: So really, this war is about a  
5 glorious death being offered by the terrorists and a hopeful  
6 life by the rest of the world. Is that a pretty good  
7 description of what we are trying to do is offer a hopeful  
8 life to compete with a glorious death?

9 General Votel: I think in very general terms, I think  
10 it is about that. It is about offering alternatives to  
11 people to the situations that they find themselves in.

12 Senator Graham: And the good news is that most people  
13 over there do not want what ISIL is selling. There is not a  
14 big demand for that product. Is that a fair statement?

15 General Waldhauser: Certainly on the African continent  
16 that is true, very true.

17 General Votel: I would agree with that, Senator.

18 Senator Graham: Very few fathers and mothers want to  
19 turn their daughters over to ISIL if they do not have to.  
20 Is that a fair statement?

21 General Votel: It is, Senator.

22 General Waldhauser: Yes, Senator, it is fair.

23 Senator Graham: Is it a fair statement we are not  
24 going to win this war without partners in the faith? The  
25 only way you can win this war is to have fellow Muslims

1 fighting with us against ISIL.

2 General Votel: It is my view that we have to have  
3 local forces engaged in this.

4 General Waldhauser: That is what by, with, and through  
5 is all about, Senator.

6 Senator Graham: And is it fair to say that most people  
7 in the faith reject this hateful ideology?

8 General Votel: That is true, Senator.

9 General Waldhauser: I agree.

10 Senator Graham: So I want the committee to understand  
11 that any budget we pass that guts the State Department's  
12 budget, you will never win this war. As a matter of fact,  
13 ISIL will be celebrating.

14 What is Russia trying to do in Libya, General  
15 Waldhauser?

16 General Waldhauser: Senator, Russia is trying to exert  
17 influence on the ultimate decision of who becomes and what  
18 entity becomes in charge of the government inside Libya.  
19 They are working to influence that decision.

20 Senator Graham: They are trying to do in Libya what  
21 they have been doing in Syria?

22 General Waldhauser: Yes. That is a good way to  
23 characterize it.

24 Senator Graham: It is not in our national interest to  
25 let that happen. Is it?

1 General Waldhauser: It is not.

2 Senator Graham: The political situation in Libya is  
3 pretty fractured?

4 General Waldhauser: It is very fractured, Senator.

5 Senator Graham: So the commander of their military is  
6 at odds with the political leader supported by the U.N. Is  
7 that fair?

8 General Waldhauser: That is fair, yes.

9 Senator Graham: And if we do not fix that, it is going  
10 to be tough moving forward?

11 General Waldhauser: We have got to get the entities,  
12 specifically Haftar and the government of national accord,  
13 together to make an accommodation in order to get any  
14 government moving forward.

15 Senator Graham: Would you say that Secretary Tillerson  
16 is very important in this regard?

17 General Waldhauser: Very important, Senator.

18 Senator Graham: So we need to put that on his radar  
19 screen.

20 General Waldhauser: Yes, we do.

21 Senator Graham: Syria. The Kurds that we are  
22 training, General Votel, are they mostly in line with the  
23 YPG? Are they YPG Kurds?

24 General Votel: They are, Senator.

25 Senator Graham: Is it fair to say that in the eyes of

1 the Turks, the YPG Kurds are not much better, if any better,  
2 than the PKK?

3 General Votel: Senator, that is the view of the Turks.

4 Senator Graham: Is it fair to say that the YPG Kurds  
5 have sort of a communist/Marxist view of governing? That is  
6 what their manifesto says anyway.

7 General Votel: Senator, I think it is fair to say that  
8 there is some affinity back towards that.

9 Senator Graham: So is it fair to say that we have got  
10 to be careful about over-utilizing the YPG Kurds? Not only  
11 will it create problems for Turkey, other Kurds in the  
12 region do not buy into their agenda also.

13 General Votel: I think it is important. And that is  
14 why as we look to a place like Raqqa, we are attempting to  
15 do that with majority Arab forces.

16 Senator Graham: Is it fair to say that how we take  
17 Raqqa can determine the outcome of Geneva in terms of a  
18 political settlement?

19 General Votel: It is certainly a key operation. We  
20 will support that.

21 Senator Graham: Is it fair to say that the balance of  
22 power on the ground in terms of Assad's regime that he is in  
23 a good spot?

24 General Votel: He is in a better position than he was  
25 a year ago.

1 Senator Graham: That the opposition has basically  
2 melted away because Russia, Iran, and Assad have gone after  
3 them full throated.

4 General Votel: The support that has been provided by  
5 Russia and Iran has certainly enabled the regime.

6 Senator Graham: Is it fair to say that most Syrians  
7 want two things: to get rid of ISIL but also to get rid of  
8 Assad because he slaughtered their families?

9 General Votel: The Syrians that I have talked to I  
10 think would agree with that.

11 Senator Graham: Is it fair to say it is in our  
12 national security interests for Damascus not to be handed  
13 over to Assad, a proxy for Iran, in any final settlement,  
14 that you cannot have Iran dominating Damascus?

15 General Votel: Senator, I think that is certainly a  
16 decision for our political leadership to make, but I think  
17 there is a strong consensus.

18 Senator Graham: Final thought. How we take Raqqa will  
19 determine if we can get a political settlement in Geneva if  
20 we do not change the balance of military power on the  
21 ground, go outside of this Kurdish construct, reassure the  
22 Arabs that we are a better partner than we have been in the  
23 past, we are going to give Damascus to the Iranians, if we  
24 help those Syrian Arabs who want to fight and take their  
25 country back from Assad and his brutal dictatorship, I think

1 we can change the balance of power on the ground and get a  
2 better deal in Geneva. So if the Trump administration is  
3 listening, how you take Raqqa will determine how successful  
4 we are in neutralizing Iranian influence and Russian  
5 influence.

6 Mr. Chairman, you have been terrific on this issue. I  
7 want to thank you for your leadership.

8 Chairman McCain: I thank you.

9 I thank you, Generals, for your appearance here this  
10 morning. It has been very helpful to the committee and to  
11 the United States Senate. I know it is not your favorite  
12 pastime, but I think it is very important that we hear  
13 directly from you. Thank you for your leadership, and we do  
14 want you to be assured that we will do everything we can to  
15 support you as we go through what is a very complicated and  
16 difficult challenge.

17 Senator Reed?

18 Senator Reed: I simply want to thank you, gentlemen,  
19 for your service and for your testimony today. And please  
20 relay our thanks to the men and women who serve so well with  
21 you. Thank you very much.

22 Chairman McCain: This hearing is adjourned.

23 [Whereupon, at 11:40 a.m., the hearing was adjourned.]

24

25

# Exhibit 9

**The  
Intercept**

# PENTAGON SAYS 35 KILLED IN TRUMP'S FIRST YEMEN RAID — MORE THAN TWICE AS MANY AS PREVIOUSLY REPORTED

Alex Emmons

December 20 2018, 11:56 a.m.



On Feb. 3, 2017, residents inspect a house that was damaged during a Jan. 29, 2017, U.S. raid on the tiny village of Yakla, in central Yemen. Photo: AP

On January 30, 2017, then-White House press secretary Sean Spicer announced that the Pentagon had conducted a “very successful” special

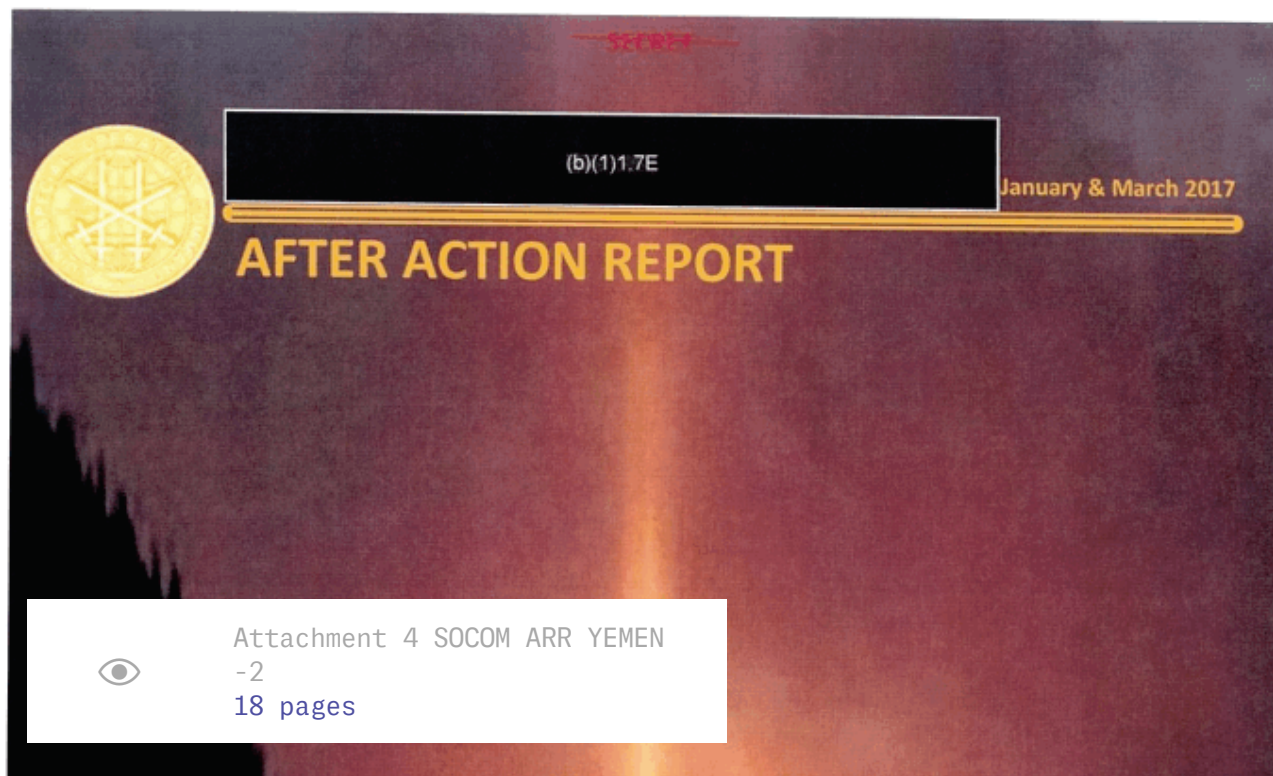


operations raid against Al Qaeda in the Arabian Peninsula in Yemen. The raid resulted in the deaths of “an estimated 14 AQAP members” and one U.S. service member, later identified as Navy Seal William “Ryan” Owens, Spicer said.

A Pentagon spokesperson [briefed reporters](#) on the operation the same day, also saying that the raid had killed 14 Al Qaeda operatives. In the weeks that followed, the raid would become the subject of tremendous controversy, as conflicting media reports debated whether it had [yielded significant intelligence](#), as the administration claimed, and whether it had killed an [intended high-level target](#). But when it came to the death toll, the [initial press coverage](#) largely parroted the administration’s estimate.

But according to a classified report by the Joint Special Operations Command Center for Counterterrorism Studies, the Pentagon privately assessed that the raid had killed more than twice as many people as it had initially said.

“The battle damage assessment (BDA) included approximately 35 enemy killed in action (EKIA) and one ZU-23 anti-aircraft weapon destroyed,” according to a heavily redacted copy of the report obtained by The Intercept under the Freedom of Information Act. The operation also “resulted in one friendly KIA,” meaning someone “killed in action,” presumably Owens, “with minimal civilian casualties,” the report notes.



Those numbers contradict [on-the-ground reporting](#), which found that most of the dead were villagers who mistook the SEALs for members of a Yemeni rebel group known as the Houthis, their local adversaries. Those killed included at least six women and 10 children under the age of 13, residents said. In the days after the raid, the Pentagon [admitted](#) “regrettably that civilian non-combatants were likely killed,” but did not update its casualty estimate. Pentagon spokesperson Lt. Cmdr. Rebecca Rebarich told The Intercept by email that the figure of 35 enemy dead was the result of a lengthier formal assessment.

“There is not a discrepancy between the two numbers,” Rebarich wrote. “The initial reports were 14 enemy killed in action (EKIA). This was discussed publicly by Pentagon spokesman Navy Capt. Jeff Davis, on January 30, a little more than a day after the operation. A more [thorough] assessment was conducted, as part of the formal after action report, where it was determined 35 enemy combatants were killed during the operation.”

It is unclear how the Pentagon came up with either number. The estimate of 35 enemy fighters killed in action differs significantly from independent estimates of the death toll, even when women and children are included. Villagers in al-Ghayil gave the [Bureau of Investigative Journalism](#) a list of 25 names of residents killed in the raid, nine of whom were said to be children under the age of 13. Human Rights Watch [collected a list of 23 names and ages of villagers who had died](#); a witness told the group that two other people had also died, but he could not remember their names.

The list of the dead provided by AQAP included eight additional men and a handful of children who were not on the lists supplied by villagers or known to be residents of the village, with the men identified only by noms de guerre. Taken together, those numbers suggest that a death toll as high as 35 could be possible, but only if the Pentagon counted women and children as “enemies.”

Among the dead was 8-year-old Nawar al-Awlaki, the daughter of Anwar al-Awlaki, a U.S. citizen and radical cleric who the Obama administration claimed had an operational role in Al Qaeda. Al-Awlaki’s son Abdulrahman – who was not accused of being affiliated with Al Qaeda – was killed in a drone strike at the age of 16 shortly after his father’s death, but the Obama administration later said that he was not the target.

“Nearly two years have passed since the raid in Bayda raised concerns regarding U.S. compliance with international rules to take all necessary measures to minimize civilian loss, but the importance of thorough investigations and transparent findings has not waned,” said Kristine Beckerle, a Yemen researcher for Human Rights Watch. “Transparency as to what went so very wrong that nine children were killed is important for those children’s relatives, as well as those who find themselves in the crosshairs of U.S. action in the future – a real

reckoning with past errors could help push the adoption of measures to avoid civilian losses like those suffered in Yemen.”

The Intercept also obtained a redacted copy of a classified memo on civilian casualties from the raid, which says, “We assess there were between 4 and 12 non-combatant casualties, however the exact number is indeterminable.”

The memo also echoes earlier Pentagon assertions that U.S. forces were “engaged” by “both male and female combatants,” but the claim that women took up arms is disputed. All the witnesses of the attack interviewed by The Intercept last year denied that women joined the fight, with one describing it as “eib” – shameful. They said it was impractical for women to fire guns while they held small children.

**Join Our Newsletter**  
**Original reporting. Fearless journalism. Delivered to you.**  
I'm in →

The Intercept filed its freedom of information request on March 13, 2017, seeking documents about the operation. Two days later, the American Civil Liberties Union filed a similar [request](#) to the Defense, State, and Justice departments seeking, among other things, “after-action assessments of civilian or bystander casualties of the raid.” Despite a legal battle that has lasted more than a year and resulted in the release of [dozens of documents](#), however, the ACLU has not yet received a copy of the after-action report obtained by The Intercept.

“The government has obscured basic facts about this tragic raid, including its legal and factual basis, who was killed, and why. Its disclosures so far have been inadequate and now appear selective,” Anna Diakun, a fellow at the ACLU’s National Security Project, told The Intercept by email. “This administration has consistently chosen secrecy

over transparency, all while dramatically expanding its use of lethal force, with devastating consequences for civilians.”

The Intercept also obtained internal emails announcing Owens’s death, as well as what appears to be an undated draft statement from the DOD public affairs office announcing the raid.

“U.S. forces conducted a successful and effective raid of an al-Qa’ida in the Arabian Peninsula Headquarters in the Shabwah Governate, Yemen, Jan. 28. The operation resulted in the death/detainment of xx AQAP members,” the statement read, with the “xx” presumably to be filled in after the fact. “The raid also resulted in the capture of valuable exploitable intelligence materials that we are confident will provide insight into the planning of future terror plots.”

The report also shows that the Joint Special Operations Command was keenly aware of the optics of the raid, which, in addition to Owens’s death, wounded three U.S. servicemembers and killed and wounded many Yemenis, including a woman who was nine months pregnant and was shot in the stomach; local doctors performed an emergency caesarean section, but the baby died.

“Unfortunately, the media did not characterize the mission in a successful light,” the report notes. “The media described the raid as killing dozens of civilians and resulting in one death and the destruction of a \$70 million dollar [sic] aircraft. The new U.S. administration was seen as brash and unconcerned with U.S. military or Yemeni lives.”



We depend on the support of readers like you to help keep our nonprofit newsroom strong and independent. [Join Us](#) →

## RELATED



**Women and Children in Yemeni Village Recall Horror of Trump's "Highly Successful" SEAL Raid**



**Iona Craig Won a Polk Award for Her Investigation of a SEAL Team Raid That Killed Women and Children in Yemen. Here's How She Did It.**

# Exhibit 10



[thedrive.com](https://www.thedrive.com)

# A USAF C-17 Flew A Secretive Mission Into Yemen To Rescue Wounded Emirati Troops In 2017

*Joseph Trevithick*

13-16 minutes



**Congress may be debating pulling the plug on U.S. support for the Saudi-led coalition in the country, but America's own shadowy war will continue.**

In 2017, a C-17A Globemaster III airlifter landed in Yemen in order to collect six wounded members of the United Arab Emirates' military and deliver them to safety. As Congress continues to debate whether or not to keep supporting the Saudi Arabian-led coalition fighting [Iranian-backed Houthi rebels](#) in Yemen, this mission is a good reminder that U.S. military will almost certainly remain engaged in its own murky operations against Al Qaeda- and ISIS-affiliated groups in the country regardless.

The Air Force Association revealed the existence of the aeromedical evacuation mission, which a crew from the [62nd Airlift Wing](#) at Joint Base Lewis-McChord in Washington State had carried out, during its main annual conference and exhibition in



Washington, D.C. on Sept. 17, 2018. U.S. Air Force Captain James Jenson accepted the 2018 Lieutenant General William H. Tunner Crew Award for most outstanding strategic airlift crew in the Air Force on behalf of himself and the rest of his crew, referred to by their callsign during the mission, Reach 865.

“The crew of Reach 865 executed an aeromedical evacuation of six Emirati soldiers from Yemen,” the announcer explained during the presentation. “They overcame a denial of air traffic services and degraded communications, deconflicted themselves from other American assets, and mitigated rapidly changing patient status to safely deliver the patients.”

We don’t know the exact date of the operation took place or where the C-17 landed in Yemen, how dangerous that location might have been, and where it subsequently delivered the wounded Emirati troops. U.S. Central Command confirmed the mission had occurred, but was unable to say whether or not any other aeromedical evacuations or Emirati or other U.S. partner forces in Yemen had occurred before that.





## USAF

A C-17A Globemaster III from the 62nd Airlift Wing touches down at the Selah Airstrip within the Yakima Training Center in Washington State during an exercise.

There was also no indication that the CENTCOM public affairs office was aware of this particular mission at all before we inquired about it. At the time of writing, we have not received any response from Joint Base Lewis-McChord or the 62nd Airlift Wing regarding our queries about this mission.

Aeromedical evacuations are not unusual for C-17s and their crews, though. The U.S. Air Force has even developed [a full surgical suite](#), called the Tactical Critical Care Evacuation Team-Enhanced (TC CET-E), which is designed to fit inside the aircraft so medical personnel can perform life-saving operations in flight.



## USAF



The inside of a C-17 configured for aeromedical evacuations.

“During operations U.S. forces provided the Emiratis with intelligence support; airborne ISR; advice and assistance with operational planning; maritime interdiction and security operations; medical support; and aerial refueling,” a CENTCOM public affairs officer told *The War Zone* in an Email in September 2018.

“However, due to security and force protection considerations, we will not discuss specifics regarding this operation.”

The Email did note that, at that time, the U.S. military did not have any standing aeromedical or casualty evacuation assets in place that were dedicated to supporting any operations in Yemen.

However, in May 2018, U.S. Transportation Command had announced that it was [looking to hire contractors](#) to operate fixed-wing aircraft and helicopters and provide casualty evacuation and personnel recovery services at any of 10 different sites inside the country.





## Google Maps/The War Zone

A map showing 10 separate locations in Yemen, as well as other sites in neighboring countries. The ones within Yemen encompass what the U.S. military calls the Yemen Joint Special Operations Area. In May 2018, U.S. Transportation Command expressed an interest in hiring contractors to provide casualty evacuation and personnel recovery services within range of these locations.

“Please note, this was in support of counterterrorism operations, not the Saudi-led Coalition in their fight against the Houthis,” the CENTCOM public affairs officer stressed in their Email. “DoD [the Department of Defense] provides non-combat advisory support, refueling support to Coalition aircraft and intelligence support to assist Saudi Arabia in preventing cross-border attacks.”

This is a critical distinction. The U.S. government has been under increasing pressure from within to end the latter support to the Saudi-led coalition in the face of a still growing humanitarian disaster in Yemen, brought on in no small part by [often indiscriminate Saudi airstrikes](#), as well as [Houthi intransigence](#). On top of that, U.S.-Saudi relations are at an all-time low after the brutal murder of [Jamal Khashoggi](#), a Saudi-born journalist and sometimes critic of the ruling monarchy in Riyadh, who had been living in self-imposed exile in Turkey, in October 2018.

The U.S. government has been providing various types of support to the Saudis and their allies in Yemen since 2015, but Congress has never officially approved any of it. A recent report from [The Atlantic](#), found that U.S. taxpayers had actually been footing the bill for mid-air refueling for Saudi and Emirati jets flying missions

against the Houthis specifically. Today, the Pentagon has still not formalized an agreement requiring those countries to pay for the tanker services, despite a clear legal requirement to do so.

In September 2017, [The Intercept](#) had already revealed that the U.S. military was not accurately tracking when and how much it was fueling Saudi and Emirati aircraft at all. Earlier in November 2018, the Pentagon [announced](#) it would no longer refuel Saudi-led coalition aircraft at all, officially at the request of officials in Riyadh.



USAF

A US Air Force KC-135R tanker refuels a United Arab Emirates F-16E Desert Falcon fighter jet during operations against ISIS in Iraq in 2016.

On Dec. 13, 2018, the U.S. Senate [voted to pass](#) a resolution invoking the [War Powers Resolution](#) of 1973 and calling for an end to *all* U.S. support for the Saudis and their allies in Yemen engaged in fighting the Houthis. That same day, they passed [another non-binding resolution](#) rebuking the Saudi government over Khashoggi's murder and directly accusing Crown Prince Mohammad bin Salman of ordering the hit. Better known as MbS, the [Crown Prince is widely seen](#) as the real leader of Saudi Arabia as his father, King Salman bin Abulaziz, becomes [increasingly old and frail](#).

The War Powers measure is unlikely to have any practical impact immediately since the U.S. House of Representatives has already rejected it. When the Democratic Party takes control in the House in January 2019, they will almost certainly revisit it, though. It is still a strong statement from legislators, including some Republicans, to President Donald Trump's Administration, which [has very publicly advocated](#) for continuing to support the Saudis in Yemen. The U.S. government has also been highly supportive of the ongoing political process to end Yemen's civil war, which that has seen more momentum recently [with direct talks](#) starting between the rebels and the country's Saudi-backed, internationally recognized government in Sweden on Dec. 12, 2018.

It is worth noting, when it comes to supporting the Saudi-led coalition's operations, the Trump Administration has simply been continuing a policy that President Barack Obama put into place. It's also important to understand that the resolutions that the Senate passed and the House voted down both included carve-outs for U.S. operations in and around Yemen that are otherwise approved under other legislation.

In its September 2018 Email, CENTCOM would not say what



specific operation the 62nd's aeromedical flight had been in support of, but we do know that U.S. forces were actively working with UAE personnel in 2017 to loosen Al Qaeda in the Arabian Peninsula's (AQAP) grasp on Yemen's central Shabwah Governorate. "We have been working there with airstrikes as necessary and the authority to do ground operations where necessary," U.S. Navy Captain Jeff Davis, a Pentagon spokesman, told [The Washington Examiner](#) in August 2017.

At the same time, U.S. special operations forces were taking part in an operation known as Yukon Sceptre. While we don't know the exact details about that operation, the so-called "first word" "Yukon" in operational nicknames is almost exclusively linked to activities in Yemen. Sometime prior to 2017, there had been another counter-terrorism operation in Yemen known as [Yukon Viking](#).



## Deployment Overview

|                       |                   |
|-----------------------|-------------------|
| COE                   | SOF13             |
| Generating Resilience | Capex & Resources |
| Training & Readiness  |                   |

- Deployed 25 Feb-26 Sep 2017 to EUCOM, AFRICOM, and CENTCOM
- Deployment totaled 214 days
  - Split: 39 days (3-24 Mar, 6-13 Jun, 18-25 Aug, 3 Sep)
  - Distributed: 162 days (25 Mar-2 Sep)
  - Disaggregated: 192 days (29 Mar-6 Oct)
- CENTCOM:
  - 420-man task force provided all-weather fires to SOJTF-OIR's Operation ECLIPSE
  - BAT and CTH primarily operated in the GOA in support of SOF counter-AQAP operations
- AFRICOM/EUCOM: MVD operated in the Gulf of Sidra in support of SOF
- Conducted numerous operations, exercises, and exchanges

| CENTCOM  | EUCOM  | AFRICOM  | SOCOM   |
|--|--|--|---|
| <ul style="list-style-type: none"> <li>• Ex ALLIGATOR DAGGER</li> <li>• Ex EAGER LION</li> <li>• OOAD Prosecution</li> <li>• KSA Medical SMEE</li> <li>• KSA MISO SMEE</li> <li>• KSA Amphib Ops SMEE</li> <li>• Oman Marksmanship SMEE</li> <li>• UAE Fires SMEE</li> <li>• UAE Amphib Raid SMEE</li> <li>• Bahrain FET SMEE</li> <li>• Kuwait EOD SMEE</li> <li>• Egyptian Shipriders</li> <li>• MARCENT RMS</li> <li>• CHD support to TFSW</li> <li>• MIO/VBSS</li> </ul> | <ul style="list-style-type: none"> <li>• Spanish Harrier Interop</li> <li>• Ex JOINT HORIZON</li> <li>• Spanish PHIBLEX</li> <li>• Ex JUNIPER FALCON</li> <li>• Ex SPRING STORM</li> <li>• Israel Enablers SMEE</li> <li>• Bastille Day Parade</li> <li>• Greek Air Force Interop</li> <li>• Spanish Typhoon Interop</li> <li>• Harrier Coronet</li> <li>• OOAD Prosecution</li> </ul> | <ul style="list-style-type: none"> <li>• Djibouti Civil Affairs</li> <li>• CHD Support to CJTF-HOA J2X</li> <li>• Djibouti Sustainment Training</li> </ul> | <ul style="list-style-type: none"> <li>• Op ECLIPSE</li> <li>• Op ODYSSEY RESOLVE</li> <li>• Op YUKON SCEPTRE</li> <li>• Shabwah Offensive</li> <li>• Op ARSENIC SWORD</li> <li>• J&amp;Q</li> <li>• Integrated Survey Program</li> </ul> |

UNCLASSIFIED

5

USN/USMC

A slide from a 2017 briefing by the heads of the US Navy's Bataan Amphibious Ready Group and the US Marine Corps' 24th Marine Expeditionary Unit covering their activities that year. This included support for US special operations forces engaged in "Op Yukon Spectre" and "Shabwah Offensive."

In February 2018, the U.S. military began Yukon Journey, which the Pentagon only publicly acknowledged in November 2018. [Yahoo News](#) later confirmed this was indeed a new American operation in the country. However, this specifically referred to American support for the Saudi-led coalition's fight against the Houthis.

It is possible that Yukon Sceptre referred to the separate fight against AQAP- and [ISIS-affiliated groups](#) in the country, which the U.S. government understands to be authorized under the 2001 Authorization For Use of Military Force, [or AUMF](#), which Congress passed into law after the 9/11 terrorist attacks. If all these different operations, with unclear timelines and objectives, seem confusing and murky, that's because they are.

|         |   |
|---------|---|
| CENTCOM | AL-QAEDA IN THE ARABIAN PENINSULA (AQAP) / AQAP   |
| CENTCOM | CENTCOM Forward Jordan/ Forward Jordan  |
| CENTCOM | Global Campaign Plan Iran/Iran Threat Network / GCI ITN EXORD                                   |
| CENTCOM | MISO (Military Information Support Operations) SUPPORT TO U.S. GOVERNMENT EFFORTS IN IRAQ EXORD |
| CENTCOM | Multinational Force and Observers EXORD   |
| CENTCOM | Multinational Force and Observers Participation Resolution: MFO Sinai                           |
| CENTCOM | Office of Security Cooperation – Iraq (OSC-I) Site Closure / OSC-I                              |
| CENTCOM | Operation FREEDOM'S SENTINEL  |
| CENTCOM | Operation INHERENT RESOLVE EXORD  |
| CENTCOM | PE EXORD  |
| CENTCOM | PROTECTING CRITICAL SITES IN IRAQ EXORD   |
| CENTCOM | Resupply of Arms, Munitions, and Materiel to Gov of Iraq  |
| CENTCOM | Support to Kingdom of Saudi Arabia and Partner Nations in Yemen / YOUKON JOURNEY EXORD          |

## DOD

A list of operations and other activities within US Central Command, which Yahoo News was first to report. Yukon Journey, misspelled "Youkon Journey" is at the bottom. the US mission to



counter AQAP in Yemen is listed without a nickname at the top.

It's also difficult to say for sure where the U.S. counter-terrorism operation ends and the Saudi-led coalition fight against the Houthis begins. For example, there's no indication the U.S. knew or knows now whether Emirati aircraft it was refueling as part of aid to the Saudi-led coalition went on to strike Houthi or AQAP targets.

Further underscoring the complexities of the situation in Yemen, in their fight against the Houthis, the Saudis have decided to embrace other Islamist groups they had previously opposed and accused of having links to AQAP and [the Muslim Brotherhood](#). This most notably includes the Yemeni political party [Al Islah](#).

At the same time, the Saudi's ostensible ally the UAE continued to target Al Islah members until December 2017, going so far as to reportedly hire an [American-based hit squad](#) to murder them. It remains unclear still whether the Emiratis conducted those activities under the guise of the fight against the Houthis, their U.S.-backed mission against AQAP and ISIS, or as part of a third front they pursued entirely independently.



## Saudi Press Agency

The Crown Prince of Abu Dhabi, one of the United Arab Emirates, Sheik Mohammed bin Zayed Al Nahyan, second from the left, meets with members of Yemen's Al Islah during a meeting organized by Saudi Arabia's Crown Prince Mohammad Bin Salman, to his right, in December 2017.

As such, no matter what support the U.S. military does or does not render to the Saudi-led coalition, there remains a significant risk that American personnel in Yemen will find it difficult to segregate their operations from those of other countries fighting the Houthis. A good example of this was when Houthi forces shot down a U.S. Air Force MQ-9 Reaper [in 2017](#).

We don't know what operation this drone was supporting and, for all practical purposes, it doesn't matter. Had the Houthis seen the 62nd's C-17 on its aeromedical mission, there's no reason to imagine they might not have decided to engage it, too, thinking that it might have been delivering personnel or equipment to the Saudi-led coalition. The U.S. military's designated "Yemen Joint Special Operations Area" [spans the entire country](#). In addition, the UAE itself operates its own C-17s, further increasing the likelihood that the rebels would seek to shoot it down.

All told, even if Congress succeeds in ending U.S. military support for the Saudi-led coalition fighting the Houthis, which looks increasingly likely, there is absolutely no indication that this will bring an end to American operations in Yemen. It would not automatically end support for members of that coalition, primarily the UAE, ostensibly fighting AQAP and ISIS, either.

There have been far fewer calls for more public oversight of these

other American military activities in Yemen, as evidenced by the aeromedical mission in 2017 that apparently went unnoticed even by certain elements of the U.S. military itself. Congress has shown little stomach for repealing or amending the 2001 AUMF, despite [some recent attempts](#) to do so.

Unless more dramatic changes in U.S. foreign policy occur, the U.S. military looks set to be involved in Yemen for years to come. Without clarity as to the full scope of its activities there, the United States' activities in the country will similarly remain as controversial as ever.

*Contact the author: [jtrevithickpr@gmail.com](mailto:jtrevithickpr@gmail.com)*

Don't forget to sign up

Your Email Address

# Exhibit 11

Flashpoints ([//www.militarytimes.com/flashpoints/](http://www.militarytimes.com/flashpoints/))

## US puts boots on the ground in Yemen to attack AQAP

By: Tara Copp ([/author/tara-copp](http://author/tara-copp)) 📅 August 4, 2017

3.6K

WASHINGTON – U.S. warplanes and a small number of ground troops are assisting in a “major operation” in central Yemen against the al-Qaida faction there, the Pentagon confirmed Friday.

The joint United Arab Emirates-U.S. operation is led by the government of Yemen, according to a statement released by UAE’s embassy in Washington.

The forces are targeting al-Qaida in the Arabian Peninsula militants in the Shabwah Governorate in central Yemen, and “is being closely supported by a combined UAE and U.S. enabling force,” the embassy said.

Pentagon spokesman Capt. Jeff Davis said the U.S. role in the operation includes surveillance, aerial refueling, close air support and a “small number of forces on the ground,” he said, without providing specifics.

The mission aims to “go in there and really rid the Shabwah Governate of remaining holdout areas” of al-Qaida, Davis said.

Since February the U.S. has conducted more than 80 airstrikes in Yemen against al-Qaida forces and conducted at least two ground raids, including a January 29 raid that resulted in the death of a Navy SEAL, Chief Special Warfare Operator William “Ryan” Owens.

The Navy’s Bataan Amphibious Ready Group is also nearby to support the operation but Davis did not say what kind of role those ships or the roughly 2,200 Marines ([http://www.navy.mil/submit/display.asp?story\\_id=99148](http://www.navy.mil/submit/display.asp?story_id=99148)) aboard might have in the operation.

Defense Secretary Jim Mattis was visiting Norfolk, Va., Friday to meet with Navy special operations forces based there. FOX News reported Thursday that Mattis would be getting updates on the operation while in Norfolk.

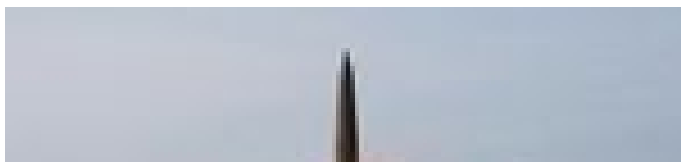
### Sign up for the Early Bird Brief

The defense industry’s most comprehensive news

Subscribe

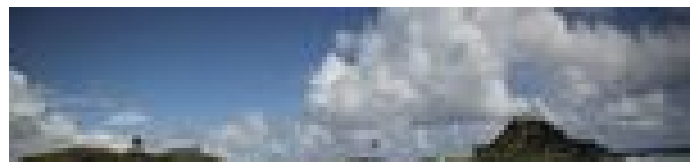
3.6K

### Recommended for you



#### North Korea tests new missile — and Trump’s resolve

([http://www.militarytimes.com/news/pentagon-congress/2019/05/06/north-korea-tests-new-missile-and-trumps-resolve/?utm\\_source=clavis](http://www.militarytimes.com/news/pentagon-congress/2019/05/06/north-korea-tests-new-missile-and-trumps-resolve/?utm_source=clavis))



#### The US military’s logistical train is slowly snaking toward China

([http://www.militarytimes.com/news/your-military/2019/05/08/the-us-militarys-logistical-train-is-slowly-snaking-toward-china/?utm\\_source=clavis](http://www.militarytimes.com/news/your-military/2019/05/08/the-us-militarys-logistical-train-is-slowly-snaking-toward-china/?utm_source=clavis))

# Exhibit 12

# BATAAN Amphibious Ready Group 24th Marine Expeditionary Unit Post-Deployment Brief



**CAPT Larry LeGree**



**Col Chick Rideout**

**Overall Classification**  
**UNCLASSIFIED**

**Current As Of**  
**18 Oct 2017**

**PHIBRON 8 POC**  
LCDR Mac Marrone, USN  
Operations Officer  
mac.marrone1@navy.smil.mil

**24th MEU POC**  
LtCol Chris Niedziocha, USMC  
Operations Officer  
chris.niedziocha@usmc.smil.mil

**UNCLASSIFIED**



# Agenda

- Task Organization
- ARG/MEU Mission
- Deployment Overview
- Operations & Exercises
- Theater Security Cooperation
- Employment Methods
- PTP Overview
- Embarkation Plan
- OPSEC
- Table of Equipment





# Task Organization

- COE
- SOF I3
- General Resilience
- Capes & Resources
- Training & Readiness



**Amphibious Squadron EIGHT**  
**CAPT Larry LeGree**

**24th Marine Expeditionary Unit**  
**(Command Element)**  
**Col Ryan "Chick" Rideout**



**USS BATAAN LHD 5**  
**CAPT Eric Pfister**



**USS MESA VERDE LPD 19**  
**CAPT Max Clark**



**USS CARTER HALL LSD 50**  
**CDR Tim Carter**

**ARG Personnel:**  
**2,290 Marines & Sailors**

**MEU Personnel:**  
**2,492 Marines & Sailors**

**Battalion Landing Team 3/6**  
**(Ground Combat Element)**  
**LtCol Todd Mahar**



**VMM-365 (REIN)**  
**(Aviation Combat Element)**  
**LtCol "FES" Krockel**



**Combat Logistics Battalion 24**  
**(Logistics Combat Element)**  
**LtCol Chris Hafer**



**Det TACRON**  
**21.1**



**Det HSC-26.2**



**Fleet Surgical**  
**Team 6**



**Assault**  
**Craft Unit Two**



**Beach Master**  
**Unit Two**



**Det Naval**  
**Beach Group 2**



**Assault Craft**  
**Unit Four**



**Maritime**  
**Raid Force**



**SOF Liaison**  
**Element**



# ARG/MEU Mission

Provide a forward-deployed, flexible, sea-based MAGTF capable of conducting amphibious operations, crisis response, and limited contingency operations, to include enabling the introduction of follow-on forces and designated special operations in order to support the theater requirements of Geographic Combatant Commanders.

- Expeditionary by nature
- Sea-based, strategic reach with inherent force protection
- Scalable levels of presence and visibility
- Offers wide range of options for national leadership
- Rapid response: within 6 hours of notification
- Self-sustaining: 15 days of organic, sea-based logistics
- Enables follow-on, joint, interagency, and coalition forces
- Combined arms integration of credible combat power
- Operates from over-the-horizon and beyond line-of-sight
- Operates independent of facilities ashore
- Capable of integrating with SOF
- Task-organized to operate across the range of military operations (ROMO)





# Deployment Overview

- Deployed 25 Feb-26 Sep 2017 to EUCOM, AFRICOM, and CENTCOM
- Deployment totaled 214 days
  - Split: 39 days (3-24 Mar, 6-13 Jun, 18-25 Aug, 3 Sep)
  - Distributed: 162 days (25 Mar-2 Sep)
  - Disaggregated: 192 days (29 Mar-6 Oct)
- CENTCOM:
  - 420-man task force provided all-weather fires to SOJTF-OIR's Operation ECLIPSE
  - BAT and CTH primarily operated in the GOA in support of SOF counter-AQAP operations
- AFRICOM/EUCOM: MVD operated in the Gulf of Sidra in support of SOF
- Conducted numerous operations, exercises, and exchanges

| <u>CENTCOM</u>           | <u>EUCOM</u>              | <u>AFRICOM</u>           | <u>SOCOM</u>                |
|--------------------------|---------------------------|--------------------------|-----------------------------|
| • Ex ALLIGATOR           | • Spanish Harrier Interop | • Djibouti Civil Affairs | • Op ECLIPSE                |
| • DAGGER                 | • Ex JOINT HORIZON        | • CHD Support to CJTF-   | • Op ODYSSEY RESOLVE        |
| • Ex EAGER LION          | • Spanish PHIBLEX         | • HOA J2X                | • Op YUKON SCEPTRE          |
| • OOAD Prosecution       | • Ex JUNIPER FALCON       | • Djibouti Sustainment   | • Shabwah Offensive         |
| • KSA Medical SMEE       | • Ex SPRING STORM         | • Training               | • Op ARSENIC SWORD          |
| • KSA MISO SMEE          | • Israel Enablers SMEE    |                          | • J&Q                       |
| • KSA Amphib Ops SMEE    | • Bastille Day Parade     |                          | • Integrated Survey Program |
| • Oman Marksmanship SMEE | • Greek Air Force Interop |                          |                             |
| • UAE Fires SMEE         | • Spanish Typhoon Interop |                          |                             |
| • UAE Amphib Raid SMEE   | • Harrier Coronet         |                          |                             |
| • Bahrain FET SMEE       | • OOAD Prosecution        |                          |                             |
| • Kuwait EOD SMEE        |                           |                          |                             |
| • Egyptian Shipriders    |                           |                          |                             |
| • MARCENT RMS            |                           |                          |                             |
| • CHD support to TFSW    |                           |                          |                             |
| • MIO/VBSS               |                           |                          |                             |





# Theater Security Cooperation

Case 1:17-cv-03391-PAE Document 149-12 Filed 05/18/19 Page 6 of 14

- COE
- SOF I3
- Capes & Resources
- Training & Readiness



| March                      |                       |                         | April |                  |              | May                    |                 |                      | June                 |                       |
|----------------------------|-----------------------|-------------------------|-------|------------------|--------------|------------------------|-----------------|----------------------|----------------------|-----------------------|
| 1. ISRAEL SMEE             | 3. EGYPT SMEE         | 6. SOUDA BAY, GRE PVST  |       |                  |              | 7. SOUDA BAY, GRE PVST | 9. KUWAIT SMEE  | 10. KSA SMEE         | 12. UAE SMEE         | 13. PIRAEUS, GRE PVST |
| 2. ROTA, ESP PVST          | 4. VALENCIA, ESP PVST |                         |       |                  |              | 8. KSA SMEE            |                 | 11. GREEK BI-LAT     |                      |                       |
|                            | 5. HAIFA, ISR PVST    |                         |       |                  |              |                        |                 |                      |                      |                       |
| June                       |                       | July                    |       |                  | August       |                        |                 | September            |                      |                       |
|                            | 15. BASTILLE DAY      | 17. KSA SMEE            |       | 19. BAHRAIN SMEE | 20. UAE SMEE | 21. OMAN SMEE          |                 | 24. GREEK BI-LAT     | 27. TOULON, FRA PVST |                       |
| 14. DJIBOUTI CIVIL AFFAIRS |                       |                         |       |                  |              |                        | 22. MARCENT RMS | 25. EGYPT SMEE       | 28. PALMA, ESP PVST  |                       |
|                            | 16. MUSCAT, OMAN PVST | 18. SOUDA BAY, GRE PVST |       |                  |              |                        | 23. KSA SMEE    | 26. RHODES, GRE PVST |                      |                       |

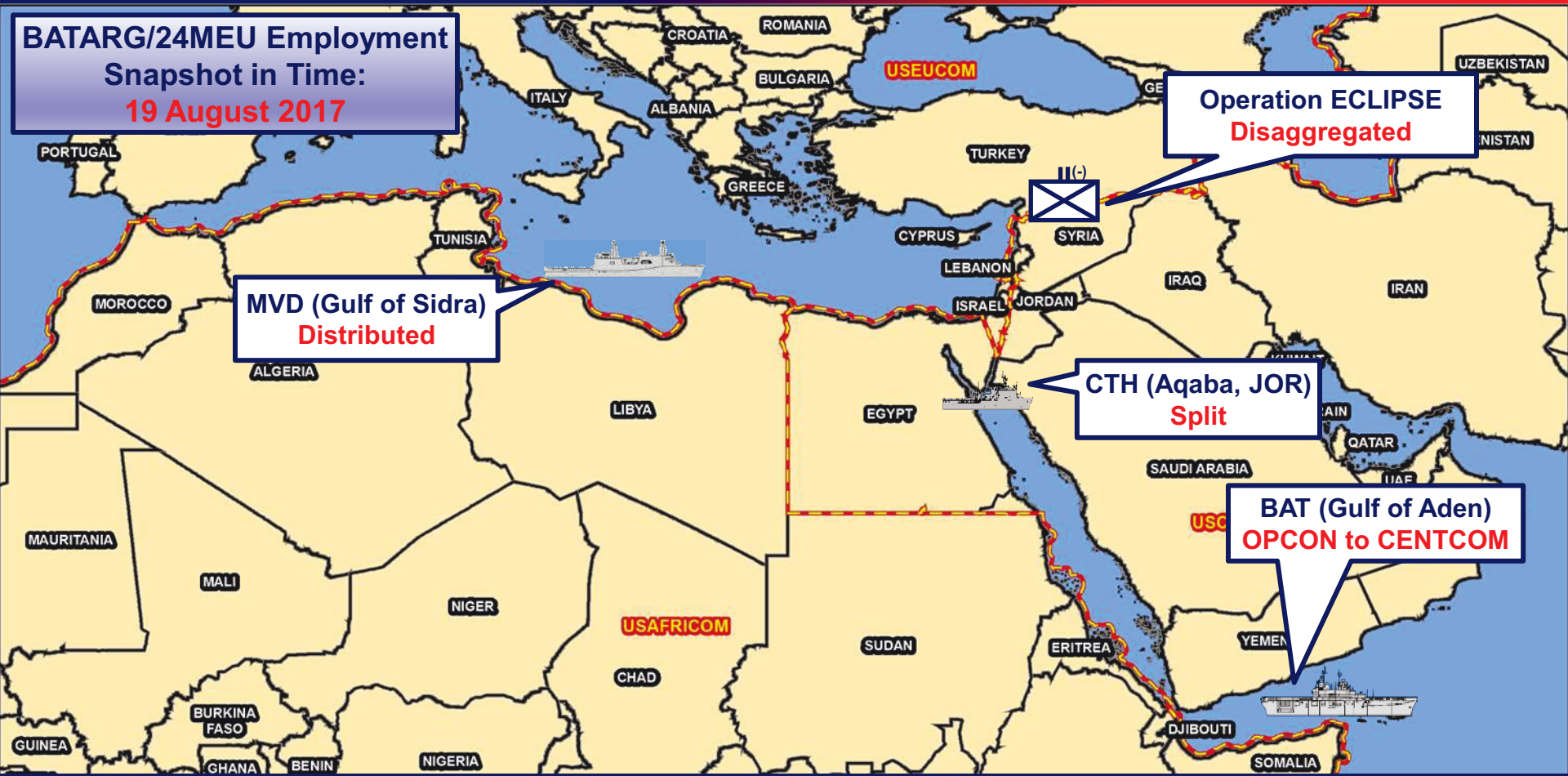
UNCLASSIFIED



# Employment Methods

|                        |                     |
|------------------------|---------------------|
| ● COE                  | ● SOF I3            |
| ● Capes & Resilience   | ● Capes & Resources |
| ● Training & Readiness |                     |

**BATARG/24MEU Employment Snapshot in Time:**  
**19 August 2017**



- Aggregated:** all the elements of the ARG/MEU are operating within mutually supporting distances of one another and all the capabilities of the ARG/MEU can be brought to bear on mission accomplishment.
- Split:** elements of the ARG/MEU function separately for various durations and distances with the ARG/MEU commanders retaining control of forces under the same GCC.
- Distributed:** elements of the ARG/MEU function separately for various durations and/or distances, beyond the range of mutual support, with the ARG/MEU commanders retaining control of all forces under the same GCC.
- Disaggregated:** elements of the ARG/MEU function separately and independently, regardless of time and distance, with elements under a command relationship that changes/limits the ARG/MEU commanders' control of their forces.

(Source: Marine Corps Order 3120.13, Policy for Marine Expeditionary Units)



# Backup Slides





# PTP/FRTP Overview

- COE
- SOF I3
- Capes & Resources
- Training & Readiness
- Generating Resilience

| August            |               |                    |  | September  |       |                    |            | October  |  |             |  | November                   |               |
|-------------------|---------------|--------------------|--|------------|-------|--------------------|------------|----------|--|-------------|--|----------------------------|---------------|
| STAFF PLANNING    |               |                    |  | WCC (TTGL) | PMINT | HURRICANE MATTHEW  |            |          |  | RUT         |  |                            | FST-GC (TTGL) |
| BOLD ALLIGATOR 16 |               |                    |  |            |       | VBSS               | ITT2/ FATT |          |  | ITT3/ ADITT |  |                            |               |
| EOTG COURSES      |               |                    |  |            |       |                    |            |          |  |             |  |                            |               |
|                   |               |                    |  |            |       |                    |            |          |  |             |  |                            |               |
| November          |               | December           |  |            |       | January            |            |          |  | February    |  |                            |               |
|                   | THANKS GIVING | ARG/MEU EX + DGSIT |  |            |       | HOLIDAYS/ NEW YEAR |            | COMPTUEX |  |             |  | PRE-DEPLOYMENT LEAVE BLOCK |               |
|                   |               |                    |  |            |       |                    |            |          |  |             |  |                            |               |






|        |
|--------|
| NAVY   |
| MARINE |
| JOINT  |
| HA/DR  |
| OTHER  |



# Embarkation Plan

|                         |                     |
|-------------------------|---------------------|
| ● COE                   | ● SOF I3            |
| ● Generating Resilience | ● Capes & Resources |
| ● Training & Readiness  |                     |

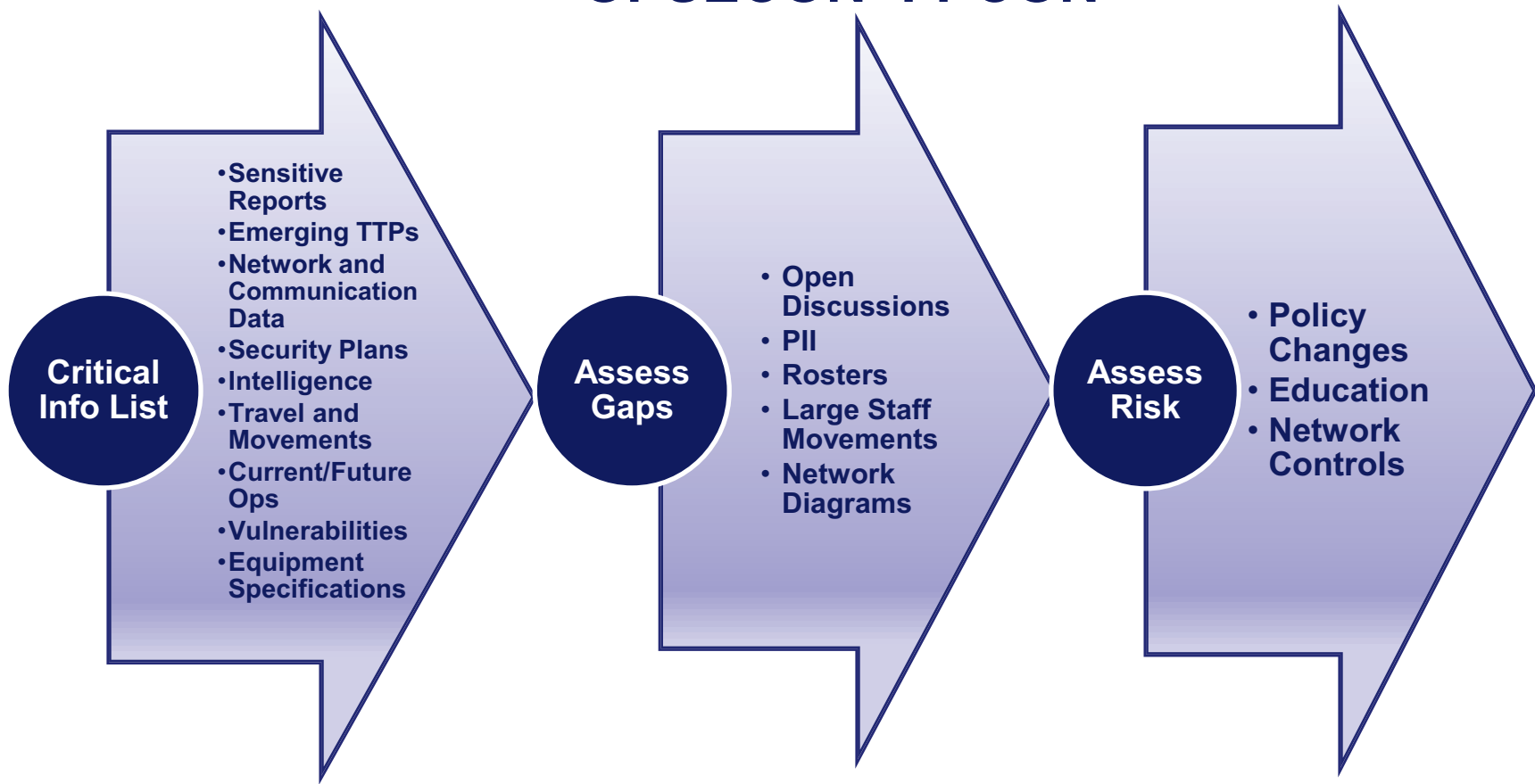
| ARG/MEU                  | LHD-5 USS BATAAN<br>(1693 capacity)   | LPD-19 USS MESA VERDE<br>(699 capacity)    | LSD-50 USS CARTER HALL<br>(405 capacity)    |
|--------------------------|--|---|--|
| <b>PRIMARY UNITS</b>     | <ul style="list-style-type: none"> <li>• MEU HQ: CapSet III+</li> <li>• ACE HQ: CO, XO, OpsO</li> <li>• BLT HQ: CO, OpsO, FSC</li> <li>• CLB Det: OpsO</li> <li>• MRF HQ and MRF A</li> <li>• FCE</li> <li>• JTFFE</li> <li>• ANGLICO FCT</li> </ul>   | <ul style="list-style-type: none"> <li>• MEU XO</li> <li>• BLT XO</li> <li>• CLB CO, XO, CopsO (CapSetIV)</li> <li>• FSO, Bty Cdr</li> <li>• ACE HMLA Det</li> <li>• MRF B</li> <li>• FCE</li> <li>• MEU Staff Enablers (S-2, S-3, S-6)</li> </ul>  | <ul style="list-style-type: none"> <li>• Co K CO</li> <li>• CLB Det</li> <li>• BLT Det: AFSSO CapSet IV</li> </ul>   |
| <b>MANEUVER ELEMENTS</b> | <ul style="list-style-type: none"> <li>• Co L 3/6 (Vertical Assault)</li> <li>• 1 CAAT Plt</li> <li>• 1 x LAR CO (-) (5 x pre-boated)</li> <li>• BLT Sniper Team</li> <li>• 81mm Mortar Platoon (TRAP Force)</li> <li>• CEB Plt (-)</li> <li>• Det, CLB: Trans Spt, Engr, Maint, EOD, Supply, Dental, DLC Food Services</li> <li>• FARP Det</li> <li>• 2 x EOD TM</li> <li>• FET</li> <li>• 4 x LAAD</li> <li>• JTACs</li> <li>• LFSP/HST x 2</li> </ul> | <ul style="list-style-type: none"> <li>• Co I 3/6 (Motorized/Alt Vertical Asslt)</li> <li>• 1 CAAT Plt (4 x pre-boated)</li> <li>• LAR Det (5 x pre-boated)</li> <li>• CEB Det</li> <li>• Arty Btry (Rein) (4 x M777, 8 x MTVR)</li> <li>• CLB (-): Trans Spt, Eng, Maint, EOD, Supply, Health Services, Food Services</li> <li>• 5 x CRRCS (MRF)</li> <li>• 3 x EOD TM</li> <li>• BLT Sniper Tm</li> <li>• 1 x Medium Crawler Tractor</li> <li>• Total MTVR from CLB = 10 (2<sup>nd</sup> Motorized Co) will required download at beach prior to use of trucks.</li> <li>• 1 x M1152 w/M1102 CE</li> <li>• LFSP/HST x 2</li> </ul> | <ul style="list-style-type: none"> <li>• Co K 3/6 (Mech)</li> <li>• BLT Sniper Tm</li> <li>• AAV Plt (11 x AAV)</li> <li>• 4 x Tanks BLT</li> <li>• 4 x EFSS</li> <li>• 4 x Ammo Trlr</li> <li>• 13 x ITV/LSV BLT</li> <li>• 1 x EOD TM,</li> <li>• 2 x LVSR Refuel, CLB</li> <li>• 1 x LVSR Wrecker CLB</li> <li>• 1 x Backhoe CLB</li> <li>• 1 x R7 CLB</li> <li>• 1 x M88</li> <li>• 1 x D6 Dozer CLB</li> <li>• 1 x MC Line Charge Trlr (BLT)</li> <li>• 1 x MRC-145 (LFSP)</li> <li>• LFSP / HST x 1</li> </ul> |
| <b>ACE</b>               | <ul style="list-style-type: none"> <li>• 12 x MV-22</li> <li>• 7 x AV-8B</li> <li>• 4 x CH-53E</li> </ul>  | <ul style="list-style-type: none"> <li>• 4 x AH-1W</li> <li>• 3 x UH-1Y</li> <li>• 5 x RQ-21</li> </ul>   |  |
| <b>NAVAL SUPPORT</b>     | <ul style="list-style-type: none"> <li>• 3 x MH-60S (VBSS Top Down / SAR)</li> <li>• 2 x LCU (pre-boat) BMU</li> <li>• Fleet Surgical Team.</li> <li>• 1 x 7m RHIB (organic to ship)</li> </ul>  | <ul style="list-style-type: none"> <li>• 2 x LCAC (pre-boat: 1 x CLZ, 3 LAR, 1 x CAAT/LAR)</li> <li>• 2 x NSW/MRF RHIB</li> <li>• Medical</li> <li>• CLZ (Pre-boat)</li> </ul>  | <ul style="list-style-type: none"> <li>• 2 x LCAC 7 x MTVR, 1 x Tram, 1 x M105</li> <li>• 1 x 7m RHIB</li> <li>• 2 x 11m RHIB</li> </ul>   |
| <b>MISSIONS</b>          | <ul style="list-style-type: none"> <li>• Air and Surface-based Raid, AF/Port Seizure, site reinforcement, Co/Plt sized QRF and TRAP</li> <li>• NLW Security Force</li> <li>• FDR</li> <li>• MASCAL (BLT)</li> <li>• MEB / JTF Amphibious Advance Force Operations / Enabler</li> <li>• TSC</li> <li>• Strike</li> <li>• FARP/ISB</li> <li>• VBSS</li> <li>• Water Production: (1) TWPS, (1) LWPS</li> <li>• I-Level Comm &amp; Optics</li> </ul>         | <ul style="list-style-type: none"> <li>• Limited Air-based Raid, AF/Port seizure, site reinforcement, Plt Sized QRF and TRAP</li> <li>• FDR</li> <li>• MASCAL</li> <li>• TSC</li> <li>• VBSS</li> <li>• Water Production: (1) TWPS, (1) LWPS</li> <li>• A/DACG</li> <li>• Intermediate Supply</li> <li>• Welding</li> </ul>   | <ul style="list-style-type: none"> <li>• Surface-based Raid, Reinforcement / QRF</li> <li>• HA/DR (light)</li> <li>• Hasty NEO</li> <li>• TSC</li> <li>• VBSS (X-Deck)</li> <li>• Water Production: (2) LWPS</li> <li>• Welding</li> <li>• Intermediate Supply</li> </ul>  |





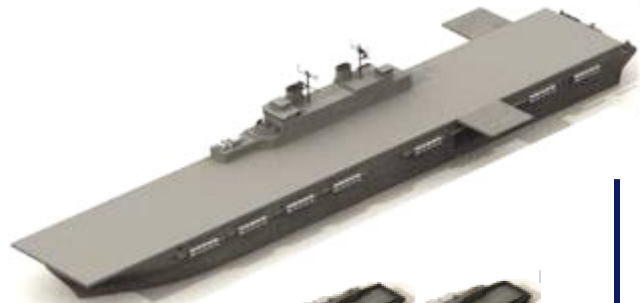
## Integrated Deliberate Planning Methodology

### OPSECON~FPCON





# Table of Equipment



2 x LCU



2 x LCAC



2 x LCAC



3 x MH-60



3 x UH-1Y



4 x CH-53E



4 x AH-1W



7 x AV-8B



5 x RQ-21A



12 x MV-22B Osprey



20 x MTVR



10 x AAV (P7)



14 x LAV



4 x M777



1 x AAV (C7)



1 x LAV-EW



29 x HMMWV



1 x AAV (R7)



36 x HMMWV



5 x LAV



4 x M1A1



1 x MTVR Wrecker



2 x TRAM



1 x MCT Dozer



7 x MTVR



1 x TRAM



7 x MTVR



1 x LAAD



1 x MTVR Wrecker



9 x HMMWV



3 x LAAD



13 x ITV



4 x EFSS



2 x LVSR



1 x LVSR Wrecker



1 x TRAM



1 x D6 Dozer





# Topic Directory

Backup Slides  
Storyboard

COE  
Generating Resilience  
Training & Readiness

SOF I3  
Capes & Resources

## Training & Readiness

- [PTP/FRTP Overview](#)
- [Visual Information](#)
- [Non-Traditional SIGINT](#)
- [Aviation Training in the COE](#)
- [MV-22B Restricted Visibility Landing](#)
- [PTP/FRPT Alignment](#)
- [Armed HSC Integration](#)
- [Aircraft Readiness](#)
- [Sustaining the Three MH-60S Surface Warfare Detachment Concept of Operations For Amphibious Assault Ship Deployments](#)
- [Cruiser/Destroyer Integration](#)
- [Intelligence and Cryptologic Training Program](#)
- [ARG/MEU Mine Warfare Training, Experience, and Integration with MIW Assets](#)
- [ASRTD Utilization and Opportunities](#)
- [OPSEC Methodology](#)
- [ARG/MEU Embarkation of Mine Warfare Assets](#)
- [FSET Utilization](#)
- [24th MEU AH-1W Repair Time](#)

## Generating Resilience

- [Medical Consolidation](#)
- [Distance Support / OnBoard Tech Assistance](#)
- [Effects of Outsourcing on Warfighting](#)
- [Distributed Network Management](#)
- [Top Ten BATARG Troubled Systems](#)
- [TS VTC/Access to NSANET on LPD](#)
- [Corsair-lite Cryptologic Carry On Program \(CCOP\)](#)
- [ARG/MEU CERT Targeting](#)
- [CIWS Tech Utilization](#)
- [Link on LSD](#)
- [T-SCIF/Gear on LSDs](#)
- [Cryptologic Analysis Support Element Support to Targeting](#)
- [Management of SCI Cyber Security Afloat](#)
- [Naval Logistic Integration](#)
- [UAS System Embarkation on ARG Warships](#)
- [Amphibious Ready Group Access to Physical Therapy Services](#)
- [Distance Support and Onboard Technical Assist](#)
- [Propulsion Reliability](#)
- [NMT Reliability](#)
- [Radar Reliability](#)
- [CLDJ - An Under-resourced Driver of Readiness](#)

## SOF I3

- [Distributed Bandwidth Management](#)
- [SOFLE Program](#)
- [CF-SOF Interdependence](#)
- [Bandwidth Management](#)
- [MEU/SOF Integration](#)

## COE

- [Strategic Fleet Sustainment](#)
- [Djibouti as an Expeditionary Lodgment](#)
- [Duqm: Strategic Logistics Hub](#)
- [Integrating CRUDES to Gain Sea Control](#)
- [OPSEC in the Current Environment](#)
- [MV-22B in the COE](#)
- [Embarked Aviation I3](#)
- [Command and Control](#)
- [Force Laydown](#)
- [Disaggregated Capabilities](#)
- [Distributed and Disaggregated Operations](#)
- [Spotting Requirements ISO Task Force Operations](#)
- [Best Practices For Aviation Assets During BAM Xsits](#)

## Capabilities & Resources

- [Embarkation Plan](#)
- [Future Expeditionary Force](#)
- [Medical Obsolescence Management](#)
- [Cost-Effective Solutions](#)
- [Increasing Flight Deck Availability](#)
- [Embarkation Space Management](#)
- [Aviation Wind Envelope Expansion](#)
- [Table of Equipment](#)
- [Obsolescence management w/ COTs Medical Equip](#)
- [ACDS Upgrade To SSDS](#)
- [Role 2 Surgical Team Support for LPD Disaggregated Operations](#)
- [MK 38 Recording](#)
- [GCCS-M 4.1.1.1 and Canes Interoperability Issues](#)
- [CANES 4.1.1 Integration Impact To SCI](#)
- [Theater Battle Management Core System \(TBMCS\) Employment of Deployed Defense Cyber Operators](#)
- [Obsolescence Management of Medical Equipment](#)
- [NCIS Agent Allocation](#)
- [Increased Bandwidth Requirements to Maximize Distributed Command and Control](#)
- [Flight Window Expansion](#)

## Core Slides

- [Title Slide](#)
- [Agenda](#)
- [Task Organization](#)
- [Themes](#)
- [ARG/MEU Mission](#)
- [Deployment Overview](#)
- [Ops & Ex: 25 Feb-15 Jun 17](#)
- [Ops & Ex: 16 Jun-26 Sep 17](#)
- [Theater Security Cooperation](#)
- [Employment Methods](#)
- [ARG/MEU in the Tri-COM Littorals](#)
- [Maritime Focus Shifts to the GOA](#)
- [SOF I3](#)
- [Op ECLIPSE](#)

## Storyboards

- [CTH Compliant Boarding of DHOW MSV Ali Madat](#)
- [EAGER LION](#)
- [KSA Medial and Marksmanship SMEE](#)
- [KSA MISO SMEE](#)
- [Oman Marksmanship SMEE](#)
- [UAE JTAC SMEE](#)
- [UAE Amphibious Raid SMEE](#)
- [Bahrain FET SMEE](#)
- [Kuwait EOD SMEE](#)
- [Egyptian Shiprider SMEE](#)
- [RMS 17](#)
- [JOINT HORIZON 17](#)
- [Spanish Amphibious Exercise](#)
- [JUNIPER FALCON 17](#)
- [SPRING STORM 17](#)
- [Djibouti Civil Affairs](#)
- [Djibouti Sustainment Training Infantry Skills](#)
- [Bahrain MRF Wind Tunnel Training](#)
- [CENTCOM DV](#)
- [KSA KLE King Faisal Naval Base](#)
- [Greek Paratrooper Bilat](#)
- [Bahrain FAST VBSS sustainment](#)
- [SPMAGTF DLQs on MVD](#)
- [UH1/AH1 Karavia Range Shoot](#)
- [Doha EAP Conference](#)
- [Team Misrata KLE](#)

Info Paper and Storyboard POCs  
 LTJG Matthew Aiken  
[matthew.aiken@navy.smil.mil](mailto:matthew.aiken@navy.smil.mil)  
 Capt Aaron Anderson  
[aaron.anderson@usmcf.smil.mil](mailto:aaron.anderson@usmcf.smil.mil)

UNCLASSIFIED

# Exhibit 13

(b)(3):10 U.S.C. § 424,(b)(6)

**From:** (b)(3):10 U.S.C. § 424,(b)(6)  
**Sent:** Thursday, January 19, 2017 12:02 PM  
**To:** (b)(6) CDR/O5 JSC USA MIL  
**Cc:** (b)(6) LtCol/USAF JSC USA MIL  
**Subject:** RE: Cyber in support of Shabwah Offensive

Classification: ~~TOP SECRET//NOFORN~~

Classified By: d990741  
Derived From: Multiple Sources  
Declassify On: 25X1, EO 12951

=====  
(b)(1),(b)(5),(b)(6),1.4(a)

-----Original Message-----

**From:** (b)(6) CAPT [mailto:(b)(6)@nccs.ic.gov]  
**Sent:** Thursday, January 19, 2017 9:39 AM  
**To:** (b)(6) OSD USA GOV <(b)(6)@O-04 OSD USA MIL>  
(b)(6)@OSD USA GOV (b)(6)  
**Cc:** (b)(6)@OSD USA GOV (b)(6) LtCol/USAF JSC USA MIL  
<(b)(6)@nccs.ic.gov>; (b)(6)@O-04 OSD USA MIL (b)(6)  
OSD USA GOV (b)(6) OGC <(b)(6)>  
LTCOL JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) MAJ/O4 JSC USA MIL (b)(6)@nccs.ic.gov;  
(b)(6)@O-05 OSD USA MIL (b)(6)@osdj.ic.gov; (b)(3):10 U.S.C. § 424,(b)(6)  
(b)(3):10 U.S.C. § 424,(b)(6) (b)(6) LtCol/USAF JSC USA MIL (b)(6)@nccs.ic.gov>  
**Subject:** RE: Cyber In support of Shabwah Offensive

Classification: ~~TOP SECRET//NOFORN~~

Classified By: JS J39  
Derived From: Multiple Sources  
Declassify On: 25X1, EO 12951

18  
2017  
R-3 DIA  
17c 0705  
1

(b)(6)

(b)(5)

(b)(1),(b)(5),1.4(a),1.4(c)

V/r,

CAPT (b)(6) USN  
Division Chief, Joint Staff, J-39,  
Cyber and Electronic Warfare Ops Division

(b)(6)

-----Original Message-----

From: (b)(6) OSD OSD(P) [mailto:(b)(6)]  
Sent: Wednesday, January 18, 2017 3:32 PM  
To: (b)(6) LCDR, USN, OGC <(b)(6)> CAPT  
(b)(6) OSD(P) <(b)(6)>  
Cc: (b)(6) OSD(P) <(b)(6)> LtCol JS (US)  
(b)(6) OSD(P) <(b)(6)>  
(b) OGC <(b)(6)> LtCol  
(b)(6) MAJ - JS DDSO (US) <(b)(6)>  
USN, OSD(P) <(b)(6)>  
Subject: Cyber in support of Shabwah Offensive

Classification: ~~TOP SECRET//NOFORN~~

Classified By (b)(6) OUSD(P)/SOLIC/SOCT

Derived From: Multiple Sources  
Declassify On: 25X1, EO 12951

---

CAPT (b)(6)

Returning to issues surrounding potential DoD offensive cyber operations in support of UAE's *Shabwah* Offensive, I have three questions to run by you. My JS J-37 POC, LtCol (b)(6) is cc'ed, for his SA.

(b)(1),(b)(5),1.4(a),1.4(c)

Thank you for your assistance.

V/R,

(b)(6)

NP & CT Policy  
ASD(SO/LIC)/SOCT  
Com (b)(6)  
SVOIP

# Exhibit 14





LEGACY HOMEPAGE > NEWS > ARTICLE

# Pentagon Provides Updates on Support for Operations in Yemen, Somalia

Aug. 4, 2017

News

By Cheryl Pellerin

DoD News, Defense Media Activity

WASHINGTON -- Pentagon spokesman Navy Capt. Jeff Davis updated the press here today on U.S. operations with local partners in Yemen against al-Qaida in the Arabian Peninsula and in Somalia against al-Shabab.



Air Force Senior Airman Garrett Cornett, a loadmaster from the 75th Expeditionary Airlift Squadron, waits for a cargo load during a mission in Somalia in support of the Combined Joint Task Force-Horn of Africa, May 26, 2017.

Skip to main content | Press Center

In Yemen's Shabwah Governorate yesterday, according to the United Arab Emirates' Ambassador to the United States, Yemeni government armed forces launched a major operation against al-Qaida in the Arabian Peninsula with support from UAE and U.S. forces.

## **Al-Qaida in the Arabian Peninsula**

Today, Davis said, a small number of U.S. forces "are supporting our regional counterterrorism partners in ongoing operations in Yemen against [al-Qaida in the Arabian Peninsula] to degrade the group's ability to coordinate external terrorist operations and to use Yemen territory as a safe place for terror plotting."

Shabwah Governorate has a heavy al-Qaida in the Arabian Peninsula presence, he added.

U.S. support in this part of Yemen is a continuation of what U.S. forces have been doing there since Jan. 29, when a raid by U.S. forces killed an estimated 14 al-Qaida in the Arabian Peninsula terrorists.

According to a U.S. Central Command news release at the time, "the raid is one in a series of aggressive moves against terrorist planners in Yemen and worldwide," and that similar operations have produced intelligence on al-Qaida logistics, recruiting and financing efforts.

U.S. support to the Yemeni people enhances stabilization efforts in the region, he added, noting that eliminating the influence of al-Qaida in the Arabian Peninsula and the Islamic State of Iraq and Syria in the region "will significantly degrade extremist activity in the area and set conditions for stabilization efforts in Yemen."

Davis said U.S. forces continue to conduct air strikes in Yemen against terrorist targets.

"Since Feb. 28 we've conducted more than 80 strikes against [al-Qaida in the Arabian Peninsula] militants, infrastructure, fighting positions and equipment, and this is based upon the authorities granted in the operation that began" with the January raid, he said.

[Skip to main content \(Press Enter\).](#)

## Al-Shabab in Somalia

On July 30, U.S. forces took part in a raid near Tortorow in southern Somalia that targeted a senior member of al-Shabab.

“We can now confirm,” Davis said, “that the strike killed one of al-Shabab's senior leaders, Ali Mohammed Hussein, also known as Ali Jabal.”

The senior al-Shabab terrorist was one of the organization’s leaders, he added, responsible for leading al-Shabab forces operating in the Mogadishu and Banadir regions, and planning and executing attacks against the Somali capital, Mogadishu.

Hussein used the Lower Shabelle region, a known al-Shabab safe haven, as a hub for these activities, Davis said, adding that his removal disrupts al-Shabab's ability to plan and conduct attacks in Mogadishu and to coordinate efforts among al-Shabab regional commanders.

“We continue to work there in Somalia in coordination with our partners with the Somali Defense Forces and other allies,” he said, “to systematically dismantle al-Shabab and to help achieve and bring stability and security throughout the region.”

(Follow Cheryl Pellerin on Twitter @PellerinDoDNews)

 Centcom  Central Command  Somalia  Yemen

# Exhibit 15

UNCLASSIFIED

**Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations**

This report is provided consistent with Section 1264 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.<sup>1</sup> It provides an update to the legal, factual, and policy bases for the “Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations,” originally published on December 5, 2016 (“original report”). Consistent with Section 1264, this report contains a classified annex. If a particular item or topic area from the original report is not covered in this update or its classified annex, it remains unchanged from the original report.

***Countries in Which the United States Has Used or Is Using Military Force***

Consistent with the War Powers Resolution, the President provides a periodic report to Congress every six months on the status of the situations in which U.S. Armed Forces have been, among other things, introduced into “hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.”<sup>2</sup> Including as described in the most recent periodic War Powers report, submitted on December 11, 2017, the United States has used military force in the following countries:<sup>3</sup>

- *Afghanistan*: Pursuant to the strategy that the President announced publicly on August 21, 2017, U.S. forces remain in Afghanistan for the purposes of stopping the reemergence of safe havens that enable terrorists to threaten the United States or its interests, supporting the Afghan government and the Afghan military as they confront the Taliban in the field, and creating conditions to support a political process to achieve a lasting peace. United States forces in Afghanistan are training, advising, and assisting Afghan forces; conducting and supporting counterterrorism operations against al-Qa’ida and against the Islamic State of Iraq and Syria (ISIS); and taking appropriate measures against those who provide direct support to al-Qa’ida, threaten U.S. and coalition forces, or threaten the viability of the Afghan government or the ability of the Afghan National Defense and Security Forces to achieve campaign success. The United States remains in an armed conflict, including in Afghanistan and against al-Qa’ida, ISIS, the Taliban, and the Taliban Haqqani Network, and active hostilities are ongoing.

---

<sup>1</sup> National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 (2017) (“NDAA for FY 2018”).

<sup>2</sup> Joint Resolution Concerning the War Powers of Congress and the President, Pub. L. No. 93-148, 87 Stat. 555 (1973) (“War Powers Resolution”).

<sup>3</sup> Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate providing a Supplemental Consolidated Report Consistent with the War Powers Resolution, December 11, 2017 (“2017 War Powers Report”).

UNCLASSIFIED

## UNCLASSIFIED

- *Iraq and Syria:* As part of a comprehensive strategy to defeat ISIS, U.S. Armed Forces are conducting a systematic campaign of airstrikes and other vital operations against ISIS forces in Iraq and Syria. U.S. Armed Forces have also carried out airstrikes and other necessary operations against al-Qa'ida in Syria. U.S. Armed Forces are also deployed to Syria to conduct operations against ISIS with indigenous ground forces. In Iraq, U.S. Armed Forces are advising and coordinating with Iraqi forces and providing training, equipment, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. Actions in Iraq are being undertaken in coordination with the Government of Iraq, and in conjunction with coalition partners. U.S. Armed Forces participating in the Defeat-ISIS campaign in Syria have taken a limited number of strikes against Syrian government and pro-Syrian government forces. These strikes were lawful measures to counter immediate threats to U.S. and partner forces while engaged in that campaign.

Additionally, on April 6, 2017, U.S. forces in the Mediterranean Sea operating beyond the territorial sea of any state struck the Shayrat military airfield in Syria in response to the chemical weapons attack on Syrian civilians in southern Idlib Province, Syria, on April 4, 2017.

- *Yemen:* A small number of U.S. military personnel are deployed to Yemen to conduct operations against al-Qa'ida in the Arabian Peninsula (AQAP) and ISIS. U.S. Armed Forces continue to work closely with the Government of Yemen and regional partner forces to dismantle and ultimately eliminate the terrorist threat posed by those groups. United States forces have conducted a number of airstrikes against AQAP operatives and facilities in Yemen, and supported United Arab Emirates- and Yemen-led operations to clear AQAP from Shabwah Governorate. In October 2017, U.S. forces also conducted airstrikes against ISIS targets in Yemen for the first time.
- Separately, United States forces, in a non-combat role, have also continued to provide logistics and other support to the Saudi-led coalition combatting the Houthi insurgency in Yemen. The limited military and intelligence support that the U.S. military is providing to the Saudi-led coalition does not involve the introduction of U.S. Armed Forces into hostilities and thus does not trigger reporting under the War Powers Resolution.
- *Somalia:* In Somalia, U.S. forces are countering the terrorist threat posed by ISIS and al-Shabaab, an associated force of al-Qa'ida. United States forces have conducted a number of airstrikes against al-Shabaab as well as ISIS. United States forces also advise, assist, and accompany regional forces, including Somali and African Union Mission in Somalia (AMISOM) forces, during counterterrorism operations.
- *Libya:* United States forces have conducted a number of airstrikes against ISIS in Libya. These airstrikes were conducted in coordination with Libya's Government of National Accord.



UNCLASSIFIED

- *Niger*: United States forces that were deployed to Niger to train, advise, and assist Nigerian partner forces were attacked on October 4, 2017 and on December 6, 2017, by elements assessed to be part of ISIS. United States and Nigerian partner forces responded with armed force in self-defense.

*The Domestic Law Bases for the Ongoing Use of U.S. Military Force*

- *Statutory Authorization: The 2001 AUMF*
  - The Scope of the 2001 AUMF: The classified annex contains more information on the application of the Authorization for Use of Military Force (2001 AUMF)<sup>4</sup> to particular groups and individuals.
- *Statutory Authorization: The 2002 AUMF*: Although the Authorization for Use of Military Force Against Iraq (2002 AUMF)<sup>5</sup> was mentioned in the original report with respect to its authorization to use force against ISIS in Iraq and in certain circumstances in Syria, the original report did not provide a full explanation of the scope of the 2002 AUMF.

Under the relevant portions of the 2002 AUMF, “[t]he President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to . . . defend the national security of the United States against the continuing threat posed by Iraq.”<sup>6</sup> Although the threat posed by Saddam Hussein’s regime in Iraq was the primary focus of the 2002 AUMF, the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable, democratic Iraq and for the purpose of addressing terrorist threats emanating from Iraq. After Saddam Hussein’s regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against al-Qaida in Iraq (now known as ISIS). Then, as now, that organization posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq. Congress ratified this understanding of the 2002 AUMF by appropriating funds over several years. Furthermore, although the Iraq AUMF limits the use of force to address threats to, or stemming from, Iraq, it (like the 2001 AUMF) contains no geographic limitation on where authorized force may be employed. Accordingly, the 2002 AUMF reinforces the authority for military operations against ISIS in Iraq and, to the extent necessary to achieve the purposes described above, in Syria or elsewhere.

- *The President’s Constitutional Authority to Take Military Action in Certain Circumstances Without Specific Prior Authorization of Congress*: In addition to these statutes, Article II of

---

<sup>4</sup> Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224, (2001) (“2001 AUMF”).

<sup>5</sup> Authorization for Use of Military Force Against Iraq, Pub. L. No. 107-243, 116 Stat. 1498 (2002) (“2002 AUMF”).

<sup>6</sup> *Id.* § 3(a)(1).

UNCLASSIFIED

## UNCLASSIFIED

the Constitution provides authority for the use of military force in certain circumstances even without specific prior authorization of Congress. For example, on April 6, 2017, the President directed a military strike against the Shayrat military airfield in Syria pursuant to his authority under Article II of the Constitution to conduct foreign relations and as Commander in Chief and Chief Executive. United States intelligence indicated that Syrian military forces operating from that airfield were responsible for the chemical weapons attack on Syrian civilians in southern Idlib Province, Syria. The President directed this strike in order to degrade the Syrian military's ability to conduct further chemical weapons attacks and to dissuade the Syrian government from using or proliferating chemical weapons, thereby promoting regional stability and averting a worsening of the region's current humanitarian catastrophe. In directing this strike, the President acted in the vital national security and foreign policy interests of the United States. Congress was notified of this particular strike on April 8, 2017, in a Presidential report, consistent with the War Powers Resolution.

*Working With Others in an Armed Conflict*

The 2017 National Security Strategy and the 2018 National Defense Strategy continue to prioritize working by, with, and through allies and partners to achieve our national security objectives. This calls for partnerships with states, multinational forces, and in some cases, non-state actors that share U.S. interests. For example, 70 state partners (and 4 international organizations) are part of the Defeat-ISIS Coalition. United States-supported non-state actors in Syria were also critical in dismantling ISIS's self-proclaimed physical "caliphate."

- *Domestic Authorities and Limitations:*

Section 1232 of the NDAA for FY 2017,<sup>7</sup> as amended by Section 1231 of the NDAA for FY 2018, purports to limit "bilateral military-to-military cooperation" between the United States and Russia. The United States does not support Russia's military strategy in Syria, and U.S. military forces do not cooperate with Russian military forces. However, Section 1232 does not purport to limit military-to-military discussions with Russia to de-conflict military operations in Syria to reduce the risk of interference, miscalculation, or unintended escalation of military operations.

As described in the original report, the United States often supports its partners and allies by providing intelligence in furtherance of shared objectives. As appropriate, the United States takes a variety of measures, including diplomatic assurances, vetting, training, and monitoring, to promote respect for human rights and compliance with the law of armed conflict by the recipient of U.S. intelligence and to mitigate the risk that the intelligence will be used in violation of the law. Sharing must always be consistent with U.S. domestic law.

*Application of Key Domestic and International Legal Principles to Key Theaters*

---

<sup>7</sup> National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).



## UNCLASSIFIED

- *Afghanistan*: Since October 7, 2001, the United States has conducted counterterrorism combat operations in Afghanistan. Pursuant to the strategy that the President announced publicly on August 21, 2017, U.S. forces remain in Afghanistan for the purposes of stopping the reemergence of safe havens that enable terrorists to threaten the United States, supporting the Afghan government and the Afghan military as they confront the Taliban in the field, and for the purpose of creating conditions to support a political process to achieve a lasting peace. United States forces in Afghanistan are training, advising, and assisting Afghan forces; conducting and supporting counterterrorism operations against al-Qa'ida and against ISIS; and taking appropriate measures against those who provide direct support to al-Qa'ida, threaten U.S. or coalition forces, or threaten the viability of the Afghan government or the ability of the Afghan National Defense and Security Forces to achieve campaign success. The United States remains in an armed conflict, including in Afghanistan and against al-Qa'ida, ISIS, the Taliban, and the Taliban Haqqani Network, and active hostilities are ongoing. The domestic and international legal bases for U.S. military operations and activities in Afghanistan remain unchanged from the original report.
- *Iraq*: Due to accelerated progress in the fight to defeat ISIS, the United States and the Defeat-ISIS Coalition are shifting focus in Iraq from combat operations to sustaining military gains. United States forces, however, continue to conduct airstrikes, and Iraqi security forces are still engaged in combat operations against remaining cells of ISIS. ISIS retains the ability to carry out lethal attacks, and it still poses a significant threat to civilians and the stability of the region. At the continued request and with the consent of the Government of Iraq, and with the continued authority provided by statute and the Constitution,<sup>8</sup> U.S. forces are advising and coordinating with Iraqi forces and are training, equipping, and building the capacity of select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces, to prevent the re-emergence of ISIS. The domestic and international legal bases for U.S. military operations and activities in Iraq remain unchanged from the original report.
- *Syria*: The United States and the Defeat-ISIS Coalition liberated 4.5 million people from ISIS oppression in 2017, and ISIS has lost 98 percent of the territory it once claimed in Iraq and Syria. The United States and U.S.-supported Syrian Democratic Forces (SDF) are engaged in liberating the middle Euphrates River valley in Syria. U.S. operations include continued airstrikes; advice and coordination to indigenous ground forces; and training, equipment, and other assistance in support of those indigenous forces. Despite this, ISIS continues to be able to carry out lethal attacks. Therefore, the United States continues to use force against ISIS and al-Qa'ida in other parts of Syria as well. After the middle Euphrates River valley is liberated, the United States will continue to conduct airstrikes against these terrorist groups in Syria and will continue to train, equip, and build the capacity of appropriately vetted Syrian groups pursuant to the authority provided by statute and the Constitution.<sup>9</sup>

---

<sup>8</sup> NDAA for FY 2018, *supra* note 1, § 1222.

<sup>9</sup> *Id.* at § 1223.

## UNCLASSIFIED

The fight against ISIS continues, and it remains a regional and global threat through its ability to organize and inspire acts of violence throughout the world. Similarly, al-Qa'ida continues to pose a threat to the United States and to the security of our partners and allies. The domestic and international legal bases for U.S. military operations and activities against ISIS and al-Qa'ida in Syria remain unchanged from the original report.

In May and June 2017, as well as February 2018, the United States took strikes against the Syrian Government and pro-Syrian Government forces. These strikes were limited and lawful measures taken to counter immediate threats to U.S. or partner forces while engaged in the campaign against ISIS. As a matter of domestic law, the 2001 AUMF provides authority to use force to defend U.S., Coalition, and partner forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of counter-ISIS operations. As a matter of international law, necessary and proportionate use of force in national and collective self-defense against ISIS in Syria includes measures to defend U.S., Coalition, and U.S.-supported partner forces while engaged in the campaign to defeat ISIS.

- *Yemen:* In addition to conducting direct action against AQAP in Yemen as described in the original report, the United States has also conducted a limited number of airstrikes against ISIS in Yemen. The 2001 AUMF confers authority to use force against ISIS. As a matter of international law, we note that the airstrikes against ISIS have been conducted with the consent of the Government of Yemen in the context of its armed conflict against ISIS and also in furtherance of U.S. national self-defense.

As described in the original report, since 2015, the United States has provided limited support to the Kingdom of Saudi Arabia (KSA)-led coalition military operations against Houthi and Saleh-aligned forces in Yemen. Authorized types of support continue to include intelligence sharing, best practices, and other advisory support when requested and appropriate. Additionally, the Arms Export Control Act (AECA) and associated delegations of authority provide the Secretary of State, primarily through the Foreign Military Sales program and through the Department of State's licensing of Direct Commercial Sales, the authority to provide or license defense articles and defense services to KSA, the United Arab Emirates (UAE), and other members of the KSA-led coalition. Many of these defense articles and defense services have been used in the conflict in Yemen. The domestic and international legal bases for limited U.S. military support to KSA-led coalition operations in Yemen remain unchanged from the original report.

- *Somalia:* In addition to conducting direct action against al-Qa'ida and al-Shabaab in Somalia as described in the original report, the United States has also conducted airstrikes against a limited number of ISIS terrorist targets in Somalia. The 2001 AUMF confers authority to use force against ISIS. As a matter of international law, we note that the airstrikes against ISIS have been conducted with the consent of the Government of Somalia in the context of its armed conflict against ISIS and also in furtherance of U.S. national self-defense.

## UNCLASSIFIED

- *Libya*: The United States has continued to conduct airstrikes against ISIS terrorist targets in Libya, including its desert camps and networks, to promote regional stability and contribute to the defeat of ISIS in Libya. The domestic and international legal bases for military direct action in Libya remain unchanged from the original report.
- *Niger*: At the request of the Government of Niger, the previous Administration approved, and the current Administration continued, the deployment of U.S. forces to Niger under the President's constitutional authority as Commander-in-Chief and Chief Executive and under certain statutory authorities of the Secretary of Defense to train, advise, and assist Nigerien partner forces. On October 4, 2017 and December 6, 2017, those U.S. forces and their Nigerien partner forces were attacked by forces assessed to be elements of ISIS, a group within the scope of the 2001 AUMF, and responded with force in self-defense. The Administration has concluded that this use of force was also conducted pursuant to the 2001 AUMF.

### *Targeting*

*United States Policies Regarding Targeting and Incidental Civilian Casualties*: The United States remains committed to complying with its obligations under the law of armed conflict, including those that address the protection of civilians, such as the fundamental principles of necessity, humanity, distinction, and proportionality. In addition to American values and legal imperatives that guide U.S. forces in the protection of civilians, protecting civilians is fundamentally consistent with mission accomplishment and the legitimacy of operations. The United States continues, as a matter of policy, to apply heightened targeting standards that are more protective of civilians than are required under the law of armed conflict. These heightened policy standards are reflected in Presidential and other Executive Branch policies, military orders and rules of engagement, and the training of U.S. personnel. The classified annex contains additional information on this topic.

### *Capture and Detention of Individuals in Armed Conflict*

The capture of terrorist suspects remains an essential part of U.S. counterterrorism strategy. The United States uses all available tools at its disposal, including law of armed conflict detention, the criminal justice system, and transfers to third countries. Maximizing intelligence collection and seeking the most appropriate long-term disposition are key factors in choosing the right tool or combination of tools, while always adhering to U.S. legal obligations, policies, and values. The classified annex contains additional information on this topic.

The President issued Executive Order (E.O.) 13823 on January 30, 2018, directing the Secretary of Defense, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of any other appropriate executive departments and agencies, to recommend policies to the President regarding the disposition of individuals captured in connection with an armed conflict. The Executive Branch will inform Congress of any new policies approved by the President.

## UNCLASSIFIED

- *Scope of Military Detention Under Article II of the U.S. Constitution:* As discussed in the original report, the President as Chief Executive and Commander-in-Chief has constitutional authority to direct the use of military force in certain circumstances, without prior statutory authorization. Over two centuries of Executive Branch practice support this authority, supplying a “historical gloss on the ‘executive Power’ vested in Article II of the Constitution.”<sup>10</sup> This authority has been the basis for using force in a number of instances discussed throughout the original report and in this update. If the President were to order operations in reliance on his constitutional authority to use military force abroad, that authority would include the power to detain individuals with whom the United States is engaged in hostilities so that they could not return to the battlefield for the duration of those hostilities.<sup>11</sup>
- *Review of Continued Detention of Detainees at Guantanamo Bay:* The President issued E.O. 13823 on January 30, 2018, revoking Section 3 of E.O. 13492 of January 22, 2009, which was never acted upon fully but which ordered the closure of detention facilities at U.S. Naval Station Guantanamo Bay. Detention operations at Guantanamo Bay are necessary because a number of the remaining detainees are being prosecuted by military commission, and the detention of others is necessary to protect against continuing, significant threats to the security of the United States, as determined by periodic reviews. Further, detention operations at Guantanamo Bay are legal, safe, humane, and conducted consistent with U.S. and international law. The E.O. provides that all detention operations at U.S. Naval Station Guantanamo Bay will continue to be conducted consistent with all applicable United States and international law. The E.O. also permits the transport and detention of new detainees to Guantanamo Bay when lawful and necessary to protect the United States and directs the Secretary of Defense, in consultation with the Secretary of State and the Attorney General, to recommend policies to the President governing the transfer of individuals to Guantanamo Bay.

For those detainees at Guantanamo Bay not charged in or subject to a judgment of conviction by a military commission, E.O. 13823 retains the procedures for periodic review established in E.O. 13567 of March 7, 2011, which are described in the original report. The purpose of the periodic review is to determine whether continued law of war detention is necessary to protect against a significant threat to the security of the United States.

### ***Prosecution of Individuals Through the Criminal Justice System and Military Commissions***

Since the publication of the original report, the Department of Justice has successfully prosecuted a number of individuals for terrorism and terrorism-related offenses. Among others, Ibrahim Adam Huran, also known as Spin Ghul, was sentenced to life imprisonment for his role in attempting to murder American military personnel in Afghanistan and conspiring to bomb the

<sup>10</sup> *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003).

<sup>11</sup> See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 519-21 (2004) (plurality) (“[D]etention to prevent a combatant’s return to the battlefield is a fundamental incident to waging war . . .”); *id.* at 587 (Thomas, J., dissenting).

UNCLASSIFIED

U.S. Embassy in Nigeria, and Ahmed Abu Khattala was convicted of federal terrorism charges stemming from his role in the 2012 attacks on U.S. facilities in Benghazi.

UNCLASSIFIED

# Exhibit 16



**REPORT ON THE LEGAL AND POLICY  
FRAMEWORKS GUIDING THE  
UNITED STATES' USE OF MILITARY  
FORCE AND RELATED NATIONAL  
SECURITY OPERATIONS**

December 2016





## FOREWORD

From President Lincoln's issuance of the Lieber Code during the Civil War to our nation's leadership at the Nuremberg Trials following World War II, the United States has a long history of emphasizing the development and enforcement of a framework under which war can be waged lawfully and effectively, with due regard for humanitarian considerations, and consistent with our national interests and values.

Consistent with this long tradition, since my first days in office I have underscored the importance of adhering to standards—including international legal standards—that govern the use of force. Far from eroding our nation's influence, I have argued, adherence to these standards strengthens us, just as it isolates those nations who do not follow such standards. Indeed, as I have consistently emphasized, what makes America truly remarkable is not the strength of our arms or our economy, but rather our founding values, which include respect for the rule of law and universal rights.

Decisions regarding war and peace are among the most important any President faces. It is critical, therefore, that such decisions are made pursuant to a policy and legal framework that affords clear guidance internally, reduces the risk of an ill-considered decision, and enables the disclosure of as much information as possible to the public, consistent with national security and the proper functioning of the Government, so that an informed public can scrutinize our actions and hold us to account. When I took office, our nation was already years into a new and different kind of conflict against enemies who do not wear uniforms or respect geographic boundaries and who disregard the legal principles of warfare. Recognizing the novelty of this threat and the difficult legal and policy questions it raised and continues to raise, the United States complies with all applicable domestic and international law in conducting operations against these enemies. And, over the course of my Administration, I directed my team to work continually to refine, clarify, and strengthen the standards and processes pursuant to which the United States conducts its national security operations.

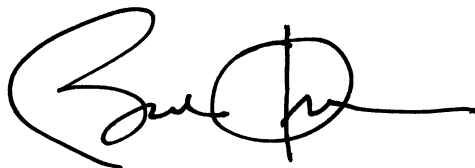
This report details the results of these efforts. It describes, among other things, how my Administration has ensured that our uses of force overseas are supported by a solid domestic law framework and consistent with an international legal framework predicated on the concepts of sovereignty and self-defense embedded in the United Nations Charter. And it describes how the United States has applied rules, practices, and policies long used in traditional warfare to this new type of conflict. In addition, the report recounts actions my Administration has taken to institutionalize a policy framework to ensure that, in carrying out certain critical operations, the United States not only meets but also in important respects exceeds the safeguards that apply as a matter of law in the course of an armed conflict—particularly in the areas of the preservation of civilian life, transparency, and accountability. For, as I have previously emphasized, to say that a military tactic is legal, or effective, is not to say that it is wise or moral in every instance.



To be sure, even with the release of this report today, there remains information about U.S. national security operations that we cannot disclose consistent with national security. Nor does this report address all conceivable legal aspects or justifications for the use of military force in every context or provide an exhaustive discussion of how the United States wages war. Rather, this report is intended to explain the domestic and international bases for the United States' ongoing use of military force overseas and to describe some of the key legal and policy frameworks my Administration has developed to govern such uses of force and related national security operations, such as detention, transfer, and interrogation operations. The report builds on a long line of public speeches and statements by members of my Administration that reflect my commitment to being as transparent as possible about how and in what circumstances the United States conducts national security operations. Even as working toward that degree of transparency can be challenging at times, it is ultimately critical to reinforcing the process of democratic decision-making, to demonstrating the legitimacy of our actions, and to reinforcing our relationships with our allies and partners.

Given the dynamic nature of today's security environment, the United States will no doubt continue to confront new issues as our nation's national security professionals work tirelessly to protect U.S. persons and interests. That is why, in conjunction with the release of this report, I am issuing a Presidential Memorandum that encourages future Administrations to build on this report and carry forward the principles of transparency it represents. In particular, the memorandum states that the National Security Council staff shall be asked, as appropriate, to update the report at least on an annual basis and to arrange for the report to be released to the public.

Through this report, I hope to enhance the public's understanding of the legal and policy principles that have guided U.S. national security operations, and to reinforce the fact that we defend our interests at home and around the world in a manner consistent with the laws, values, and traditions that are the source of our greatest strength.

A handwritten signature in black ink, appearing to read "Donald Trump", with a stylized circular flourish at the end.

# TABLE OF CONTENTS

|  |    |
|--|----|
| FOREWORD .....   | i  |
| INTRODUCTION .....   | 1  |
| PART ONE: KEY FRAMEWORKS RELATED TO THE USE OF U.S. MILITARY FORCE OVERSEAS .....  | 2  |
| I. The Domestic Law Bases for the Ongoing Use of U.S. Military Force.....  | 3  |
| A. <i>Statutory Authorization: The 2001 AUMF</i> .....   | 3  |
| B. <i>The President’s Constitutional Authority to Take Military Action in Certain Circumstances Without Specific Prior Authorization of Congress</i> ..... | 7  |
| II. International Law and the U.S. Use of Military Force .....   | 8  |
| A. <i>U.N. Security Council Authorization</i> .....  | 8  |
| B. <i>The Inherent Right of Individual and Collective Self-Defense</i> .....   | 9  |
| C. <i>Consent to Use Force in an Otherwise Lawful Manner</i> .....   | 11 |
| III. The End of Armed Conflict with Non-State Armed Groups .....   | 11 |
| IV. Working with Others in an Armed Conflict.....  | 12 |
| A. <i>Domestic Authorities and Limitations</i> .....   | 12 |
| B. <i>International Law Considerations</i> .....   | 14 |
| V. Application to Key Theaters.....  | 15 |
| A. <i>Afghanistan</i> .....  | 15 |
| B. <i>Iraq</i> .....   | 15 |
| C. <i>Syria</i> .....  | 16 |
| D. <i>Somalia</i> .....  | 17 |
| E. <i>Libya</i> .....  | 17 |
| F. <i>Yemen</i> .....  | 18 |
| PART TWO: KEY LEGAL AND POLICY FRAMEWORKS RELATED TO THE CONDUCT OF HOSTILITIES.....   | 19 |
| I. Targeting .....   | 19 |
| A. <i>The Law of Armed Conflict and Targeting</i> .....  | 19 |
| B. <i>Selected Topics Regarding Targeting</i> .....  | 21 |
| C. <i>U.S. Policies Regarding Targeting and Incidental Civilian Casualties</i> .....   | 24 |
| II. Capture of Individuals in Armed Conflict .....   | 27 |
| III. Detention of Individuals in Armed Conflict.....   | 28 |

|  |   |    |
|--|---|----|
| A.   | <i>Scope of Military Detention Authority Under the 2001 AUMF</i>                        | 28 |
| B.   | <i>Review of the Continued Detention of Detainees at Guantanamo Bay</i>                 | 30 |
| C.   | <i>Treatment of Armed Conflict Detainees</i>  | 31 |
| IV.  | Prosecution of Individuals Through the Criminal Justice System and Military Commissions | 36 |
| A.   | <i>Article III Courts</i>   | 37 |
| B.   | <i>Military Commissions</i>   | 38 |
| C.   | <i>Transfers to Third Countries for Purposes of Prosecution</i>                         | 39 |
| V.   | Transfer of Armed Conflict Detainees from U.S. Custody                                  | 40 |
| A.   | <i>Transfers and Domestic Law</i>   | 40 |
| B.   | <i>Transfers and International Law</i>  | 41 |
| C.   | <i>U.S. Policy on Transfers in the Context of Armed Conflict</i>                        | 42 |
| D.   | <i>U.S. Policy on Humane Treatment Assurances and Post-Transfer Monitoring</i>          | 42 |
| APPENDIX: ADDITIONAL SPEECHES AND STATEMENTS FROM THE PRESIDENT AND ADMINISTRATION OFFICIALS ON THESE TOPICS |   | 44 |
| ENDNOTES   |   | 49 |

## INTRODUCTION

This report has been drafted pursuant to the Presidential Memorandum of December 5, 2016, which directed national security departments and agencies to prepare for the President a formal report that describes key legal and policy frameworks that currently guide the United States' use of military force and related national security operations.

The Presidential Memorandum of December 5, 2016, further states that the National Security Council staff shall be asked to, as appropriate, coordinate a review and update of this report, provide any updated report to the President, and arrange for the report to be released to the public.<sup>1</sup>

# PART ONE: KEY FRAMEWORKS RELATED TO THE USE OF U.S. MILITARY FORCE OVERSEAS

The primary focus of Part One is to describe the domestic and international legal frameworks for the United States' current uses of military force overseas.

The War Powers Resolution states that the President shall submit a report to Congress within 48 hours after, among other things, U.S. Armed Forces are introduced into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."<sup>2</sup> It further requires the President to report to Congress no less than every six months on the status of such hostilities. President Obama has submitted these periodic War Powers reports every June and December of his Presidency, and they provide a summary of the circumstances in which the United States is using military force overseas.

Part One describes the domestic and international legal framework for the uses of military force described in the recent periodic War Powers report, submitted in December 2016.<sup>3</sup> In particular, as described in that report, the United States is currently using military force in the following countries:<sup>4</sup>

- *Afghanistan:* In Afghanistan, U.S. Armed Forces have transitioned the lead for security to Afghan security forces while preventing Afghanistan from being used to launch attacks against the United States. A limited number of U.S. forces remain in Afghanistan for the purposes of, among other things, training, advising, and assisting Afghan forces; conducting and supporting counterterrorism operations against the remnants of core al-Qa'ida, as well as the Islamic State of Iraq and the Levant (ISIL); and taking appropriate measures against those who directly threaten U.S. and coalition forces in Afghanistan. Active hostilities are ongoing.<sup>5</sup>
- *Iraq and Syria:* U.S. Armed Forces are conducting a systematic campaign of airstrikes and other necessary operations against ISIL forces in Iraq and Syria. U.S. Armed Forces are also conducting airstrikes and other necessary operations against al-Qa'ida in Syria. In Iraq, U.S. Armed Forces are advising and coordinating with Iraqi forces and providing training, equipment, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. Additionally, small teams of U.S. special operations forces have deployed to Syria to help coordinate U.S. operations with indigenous ground forces conducting operations against ISIL.<sup>6</sup>
- *Yemen:* The U.S. military continues to work closely with the Government of Yemen to dismantle operationally and ultimately eliminate the threat posed by al-Qa'ida in the Arabian Peninsula (AQAP). U.S. joint efforts have resulted in direct action, including airstrikes, against a limited number of AQAP operatives and senior leaders who posed a terrorist threat

to the United States.<sup>7</sup> The United States has also deployed small numbers of U.S. military personnel to Yemen to support operations against AQAP, including support for operations to capture AQAP leaders and key personnel. Additionally, on October 12, 2016, the United States conducted military strikes on radar facilities in Houthi-controlled territory in Yemen in response to anti-ship cruise missile launches that threatened U.S. Navy warships in the international waters of the Red Sea on October 9 and October 12, 2016. The targeted radar facilities were involved in the October 9, 2016 launches and other recent attacks.<sup>8</sup>

- *Libya:* U.S. military forces have conducted airstrikes against ISIL targets in Libya, including in support of ongoing efforts by forces aligned with the Government of National Accord (GNA) to recapture the city of Sirte from ISIL.
- *Somalia:* U.S. forces in Somalia continue to counter the terrorist threat posed by al-Qa’ida and al-Shabaab and to provide advice and assistance to regional counterterrorism forces, including Somali and African Union Mission in Somalia (AMISOM) forces. U.S. forces have conducted airstrikes against al-Qa’ida and al-Shabaab and in the defense of U.S. and partnered forces.<sup>9</sup>

When using military force overseas, the United States complies with domestic law—including relevant constitutional and statutory authorities—and international law. In doing so, the Administration regularly informs Congress and the public of the status and circumstances of its use of military force overseas.

## I. The Domestic Law Bases for the Ongoing Use of U.S. Military Force

### A. *Statutory Authorization: The 2001 AUMF*

Shortly after the September 11th attacks, Congress passed the Authorization for Use of Military Force (2001 AUMF). In that joint resolution, Congress authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”<sup>10</sup> Through the 2001 AUMF, Congress intended to give the President the statutory authority he needed “in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”<sup>11</sup> The 2001 AUMF plainly covers al-Qa’ida, the “organization” that “planned, authorized, committed, [and] aided the terrorist attacks that occurred on September 11, 2001,” as well as the Taliban, which “harbored” al-Qa’ida.<sup>12</sup> Thus, in accordance with this statutory authorization, the United States commenced military operations against al-Qa’ida and the Taliban on October 7, 2001. The 2001 AUMF continues to provide the domestic legal authority for the United States to use military force against the terrorist threats identified above.

## 1. The Scope of the 2001 AUMF

All three branches of the U.S. Government have affirmed the ongoing authority conferred by the 2001 AUMF and its application to al-Qa'ida, to the Taliban, and to forces associated with those two organizations within and outside Afghanistan.<sup>13</sup>

In March 2009, the Department of Justice filed a brief addressing the question of the scope of the government's detention authority under the 2001 AUMF in litigation over detention at Guantanamo Bay.<sup>14</sup> The brief explained that the 2001 AUMF authorizes detention of enemy forces as an aspect of the authority to use force.<sup>15</sup> With respect to the scope of detention authority under the 2001 AUMF, the brief explained that the 2001 AUMF authorized the detention of "persons who were part of, or substantially supported, Taliban or al-Qa'ida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces."<sup>16</sup> The brief stated that, in applying that standard, "[p]rinciples derived from law-of-armed-conflict rules governing international armed conflicts . . . must inform the interpretation of the detention authority Congress has authorized" in the 2001 AUMF.<sup>17</sup>

In the National Defense Authorization Act for Fiscal Year 2012 (2012 NDAA), Congress expressly affirmed "that the authority of the President to use all necessary and appropriate force pursuant to the [2001] Authorization for Use of Military Force includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war."<sup>18</sup> In turn, subsection (b) of that Act defined a "covered person" as "any person" who either "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks" or "who was a part of or substantially supported al-Qa'ida, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces."<sup>19</sup>

Similarly, the Federal courts have issued rulings in the detention context that affirmed the President's authority to detain individuals who are part of al-Qa'ida, the Taliban, or associated forces, or who substantially supported those forces in the armed conflict against them.<sup>20</sup>

## 2. Definition of "Associated Forces"

As noted in the previous sub-section, all three branches of government have recognized that the 2001 AUMF authorizes the use of force against "al-Qa'ida, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners."

To be considered an "associated force" of al-Qa'ida or the Taliban for purposes of the authority conferred by the 2001 AUMF, an entity must satisfy two conditions. First, the entity must be an organized, armed group that has entered the fight alongside al-Qa'ida or the Taliban. Second, the group must be a co-belligerent with al-Qa'ida or the Taliban in hostilities against the United States or its coalition partners. Thus, a group is not an associated force simply because it

aligns with al-Qa'ida or the Taliban or embraces their ideology. Merely engaging in acts of terror or merely sympathizing with al-Qa'ida or the Taliban is not enough to bring a group within the scope of the 2001 AUMF. Rather, a group must also have entered al-Qa'ida or the Taliban's fight against the United States or its coalition partners.

### 3. Application of the 2001 AUMF to Particular Groups and Individuals

Consistent with the above, the 2001 AUMF does not authorize the President to use force against every group that commits terrorist acts. Rather, the U.S. military is currently taking direct action against solely the following individuals and groups under the authority of the 2001 AUMF: al-Qa'ida;<sup>21</sup> the Taliban; certain other terrorist or insurgent groups affiliated with al-Qa'ida or the Taliban in Afghanistan; AQAP; al-Shabaab; individuals who are part of al-Qa'ida in Libya;<sup>22</sup> al-Qa'ida in Syria;<sup>23</sup> and ISIL.

A determination was made at the most senior levels of the U.S. Government that each of the groups named above is covered by the 2001 AUMF only after a careful and lengthy evaluation of the intelligence concerning each group's organization, links with al-Qa'ida or the Taliban, and participation in al-Qa'ida or the Taliban's ongoing hostilities against the United States or its coalition partners. Moreover, the Administration also regularly briefs Congress about U.S. operations against these groups and the legal basis for these operations.

Although much of the intelligence underlying a determination that a group is covered by the 2001 AUMF is necessarily sensitive, many of these groups have made plain their continued allegiance and operational ties to al-Qa'ida. For example, this determination was made recently with respect to al-Shabaab because, among other things, al-Shabaab has pledged loyalty to al-Qa'ida in its public statements; made clear that it considers the United States one of its enemies; and been responsible for numerous attacks, threats, and plots against U.S. persons and interests in East Africa. In short, al-Shabaab has entered the fight alongside al-Qa'ida and is a co-belligerent with al-Qa'ida in hostilities against the United States, making it an "associated force" and therefore within the scope of the 2001 AUMF.

A particularly prominent group that the Administration has determined to fall within the ambit of the 2001 AUMF is the enemy force now called ISIL. As discussed below, Congress has expressed support for this action.<sup>24</sup>

As the Administration has explained publicly, the 2001 AUMF has authorized the use of force against the group now called ISIL since at least 2004. The facts underlying this determination are as follows: a terrorist group founded by Abu Mu'sab al-Zarqawi—whose ties to Osama bin Laden dated from al-Zarqawi's time in Afghanistan and Pakistan before the September 11th attacks—conducted a series of terrorist attacks in Iraq beginning in 2003. These attacks prompted bin Laden to ask al-Zarqawi to merge his group with al-Qa'ida. In 2004, al-Zarqawi publicly pledged his group's allegiance to bin Laden, and bin Laden publicly endorsed al-Zarqawi as al-Qa'ida's leader in Iraq. For years afterwards, al-Zarqawi's group, which adopted the name al-Qa'ida in Iraq (AQI) when it merged with al-Qa'ida, conducted deadly terrorist attacks against U.S. and coalition forces. In response to these attacks, U.S. forces engaged in combat operations against the group from 2004 until U.S. and coalition forces left



Iraq in 2011. The group has continued to plot attacks against U.S. persons and interests in Iraq and the region—including the brutal murder of kidnapped American citizens in Syria and threats to U.S. military personnel that are now present in Iraq at the invitation of the Iraqi Government.

The subsequent 2014 split between ISIL and current al-Qa'ida leadership does not remove ISIL from coverage under the 2001 AUMF. Although ISIL broke its affiliation with al-Qa'ida, the same organization continues to wage hostilities against the United States as it has since 2004, when it joined bin Laden's al-Qa'ida organization in its conflict against the United States. As AQI, ISIL had a direct relationship with bin Laden himself and waged that conflict in allegiance to him while he was alive. ISIL now claims that it—not al-Qa'ida's current leadership—is the true executor of bin Laden's legacy. There are rifts between ISIL and parts of the network bin Laden assembled, but some members and factions of al-Qa'ida-aligned groups have publicly declared allegiance to ISIL. At the same time, ISIL continues to denounce the United States as its enemy and to target U.S. citizens and interests. In these circumstances, the President is not divested of the previously available authority under the 2001 AUMF to continue using force against ISIL—a group that has been subject to that AUMF for more than a decade—simply because of conflicts between the group and al-Qa'ida's current leadership. A contrary interpretation of the statute would allow an enemy force—rather than the President and Congress—to control the scope of the 2001 AUMF by splintering into rival factions while continuing to prosecute the same conflict against the United States.<sup>25</sup>

As is also true with respect to the broader conflict against al-Qa'ida, the Taliban, and associated forces, Congress has repeatedly and specifically funded the President's military actions against ISIL through an unbroken stream of appropriations over multiple years. Shortly after announcing the military operation against ISIL in 2014, the President asked for and obtained from Congress \$5.6 billion for the express purpose of carrying out specific military activities against ISIL in Iraq and Syria.<sup>26</sup> Congress has since appropriated an additional \$5 billion in support of the U.S. counter-ISIL effort, virtually all of it in line with the specific amounts and categories requested by the President. These funds were made available over the course of two annual budget cycles, in connection with close congressional oversight of the status and scope of U.S. counter-ISIL activities, and with knowledge of the specific measures the President was taking to counter ISIL and the statutory provisions under which he was acting.<sup>27</sup>

Congressional support for the military campaign against ISIL extends beyond the appropriation of funds for specific military activities. Congress has also authorized the President to provide lethal and nonlethal assistance to select groups and forces fighting ISIL in Iraq and Syria. In doing so, Congress has defined the parameters of the assistance programs and provided specific direction for the use of its appropriations. Throughout this period, Congress has also reinforced its oversight role through reporting requirements relating to the costs and status of U.S. counter-ISIL operations, including monthly reports documenting incremental costs of the operation<sup>28</sup>; quarterly reports on the status of U.S. forces deployed in support of the operation<sup>29</sup>; regular reporting from the inspector general for the military operation against ISIL<sup>30</sup>; and reporting consistent with the requirements in the War Powers Resolution.<sup>31</sup> This reporting is in addition to information Congress receives from the Executive Branch during regular oversight hearings.<sup>32</sup>

These funding, oversight, and authorizing measures convey Congress's support for the President's use of force against ISIL, including his determination that he had and continues to have authority to act under prior congressional authorizations for the use of military force.<sup>33</sup>

In summary, the Executive Branch's decision that a group is covered by the 2001 AUMF is not taken lightly. That determination is made at the most senior levels of the U.S. Government, and it follows careful consideration and fact-intensive reviews by senior government lawyers and is informed by departments and agencies with relevant expertise and institutional roles, including all-source intelligence from the U.S. Intelligence Community. Finally, the fact that an al-Qa'ida or Taliban-affiliated group has not been identified as covered by the 2001 AUMF does not mean that the United States has made a final determination that it lacks the statutory authority to use force against the group. The United States remains prepared to review this question whenever a situation arises in which it may be necessary to take direct action against a terrorist group.

*B. The President's Constitutional Authority to Take Military Action in Certain Circumstances Without Specific Prior Authorization of Congress*

In addition to directing the exercise of force pursuant to the 2001 AUMF, the President has also recently directed the use of military force overseas pursuant to his authority under Article II of the U.S. Constitution.

The President's power to employ military force abroad in the absence of specific prior congressional approval derives from his constitutional responsibility as Commander in Chief and Chief Executive for foreign and military affairs, and it has been confirmed by longstanding Executive Branch practice.<sup>34</sup> In considering the President's authority to use military force in Libya in 2011, the Department of Justice's Office of Legal Counsel (OLC) asked whether the operations would "serve sufficiently important interests to permit the President's action as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations."<sup>35</sup> In that opinion, OLC noted that defense of the United States to repel a direct and immediate military attack is one basis—but not the exclusive one—on which the President may use military force without congressional approval.<sup>36</sup> OLC also recognized that a "possible constitutionally-based limit" on such Presidential authority may exist where a planned military engagement constitutes a "war" within the meaning of the U.S. Constitution's Declaration of War Clause.<sup>37</sup> OLC explained that "whether a particular planned engagement constitutes a 'war' for constitutional purposes . . . requires a fact-specific assessment of the 'anticipated nature, scope, and duration' of the planned military operations."<sup>38</sup>

As an example, the President recently relied on his constitutional authority to direct U.S. military strikes against radar facilities in Houthi-controlled territory in Yemen in October 2016. The strikes advanced the important national interest in, among other things, protecting U.S. forces, and their limited nature, scope, and duration meant that the operation did not rise to the level of "war" within the meaning of the Declaration of War Clause.

When the President is acting under his constitutional authority, the War Powers Resolution calls for the President to submit a report to Congress within 48 hours after U.S.

Armed Forces are introduced into “hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.”<sup>39</sup> The War Powers Resolution further states that, after the submission of such a report, the President is generally required to “terminate” any use of the U.S. Armed Forces with respect to which the report was submitted within 60 days thereafter, unless Congress either is physically unable to meet or declares war, specifically authorizes the action, or extends the deadline.<sup>40</sup>

## II. International Law and the U.S. Use of Military Force

In addition to being carried out in accordance with domestic law, the United States’ uses of military force overseas described above are also consistent with international law.

The U.N. Charter identifies the key international law principles that must guide State behavior when considering whether to resort to the use of force, a question that is governed by the body of international law known as the *jus ad bellum*. In particular, Article 2(4) of the U.N. Charter provides in relevant part that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”<sup>41</sup> Article 51 of the U.N. Charter, however, specifies that “[n]othing in this Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs.”<sup>42</sup>

Although a comprehensive discussion of when a State may resort to force on the territory of another State under international law is beyond the scope of this report, the United States generally recognizes three circumstances under which international law does not prohibit such a use of force: (1) use of force authorized by the U.N. Security Council acting under the authority of Chapter VII of the U.N. Charter; (2) use of force in self-defense; and (3) use of force in an otherwise lawful manner with the consent of the territorial State. Each of these three bases is described below and their application to the United States’ current uses of military force is described in Part One, Section V.

The three international law bases for using force on the territory of another State are not mutually exclusive, and States may have more than one international legal basis for using force. The United States has relied on all three bases at various points during this Administration. Moreover, although this portion of the report is focused on the *jus ad bellum*, all U.S. military operations involving the use of military force under any of the justifications noted above are conducted consistent with the law of armed conflict, also known as the *jus in bello*.

### A. U.N. Security Council Authorization

The U.N. Security Council may, under Chapter VII of the U.N. Charter, authorize the use of force as may be necessary to maintain or restore international peace and security.<sup>43</sup> For example, during this Administration, the United States and other States have used force pursuant to a U.N. Security Council resolution under Chapter VII to protect civilian populated areas under threat of attack in Libya,<sup>44</sup> to combat piracy in and off the coast of Somalia,<sup>45</sup> and to support the International Security Assistance Force (ISAF) in Afghanistan.<sup>46</sup>

## B. *The Inherent Right of Individual and Collective Self-Defense*

### 1. Basic Principles

The U.N. Charter recognizes the inherent right of States to resort to force in individual or collective self-defense against an armed attack, subject to the customary international law requirement that any use of force in self-defense must be limited to what is necessary and proportionate to address the threat.

### 2. Self-Defense Against Non-State Actors

The inherent right of self-defense is not restricted to threats posed by States. Even before the September 11th attacks, it was clear that the right of self-defense applies to the use of force against non-State actors on the territory of another State. For centuries, States have invoked the right of self-defense to justify taking action on the territory of another State against non-State actors. As one example, the oft-cited *Caroline* incident involved the use of force by the United Kingdom in self-defense against a non-State actor located in the United States. Nearly two hundred years later, this right remains widely accepted.<sup>47</sup> Moreover, States may use force in self-defense against non-State actors either individually or collectively; for example, the United States is currently using force against ISIL in Syria in the collective self-defense of Iraq (and other States).

### 3. Self-Defense in Response to Imminent Armed Attacks

Under the *jus ad bellum*, a State may use force in the exercise of its inherent right of self-defense not only in response to armed attacks that have already occurred, but also in response to *imminent* attacks before they occur. When considering whether an armed attack is imminent under the *jus ad bellum* for purposes of the initial use of force against another State or on its territory, the United States analyzes a variety of factors.<sup>48</sup> These factors include “the nature and immediacy of the threat; the probability of an attack; whether the anticipated attack is part of a concerted pattern of continuing armed activity; the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of mitigating action; and the likelihood that there will be other opportunities to undertake effective action in self-defense that may be expected to cause less serious collateral injury, loss, or damage.”<sup>49</sup> Moreover, “the absence of specific evidence of where an attack will take place or of the precise nature of an attack does not preclude a conclusion that an armed attack is imminent for purposes of the exercise of the right of self-defense, provided that there is a reasonable and objective basis for concluding that an armed attack is imminent.”<sup>50</sup> Finally, as is now increasingly recognized by the international community, the traditional conception of what constitutes an “imminent” attack must be understood in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations.<sup>51</sup>

#### 4. Self-Defense and “Unable or Unwilling”

Under international law, a State may use force on the territory of another State in self-defense only if it is necessary to do so in order to address the threat giving rise to the right to use force in the first instance. States therefore must consider whether actions in self-defense that would impinge on another State’s sovereignty are necessary, which entails assessing whether the territorial State is able and willing to mitigate the threat emanating from its territory and, if not, whether it would be possible to secure the territorial State’s consent before using force on its territory against a non-State actor.

In some cases, international law does not require a State to obtain the consent of the State on whose territory force will be used against a non-State armed group. Under international law, States may defend themselves, in accordance with the inherent right of individual and collective self-defense, when they face actual or imminent armed attacks by a non-State armed group and the use of force is necessary because the government of the State where the threat is located is unable or unwilling to prevent the use of its territory by the non-State actor for such attacks. In particular, there will be cases in which there is a reasonable and objective basis for concluding that the territorial State is unable or unwilling to confront effectively a non-State actor in its territory so that it is necessary to act in self-defense against the non-State actor in that State’s territory without its consent.<sup>52</sup>

As the Executive Branch has said previously, this “unable or unwilling” standard, in the circumstances here, is “an important application of the requirement that a State, when relying on self-defense for its use of force in another State’s territory, may resort to force only if it is necessary to do so—that is, if measures short of force have been exhausted or are inadequate to address the threat posed by the non-State actor emanating from the territory of another State.”<sup>53</sup> Through this legal basis for action, customary international law recognizes that a State may defend itself against a non-State actor that is able to launch attacks from within another State’s territory.

The unable or unwilling standard is not a license to wage war globally or to disregard the borders and territorial integrity of other States. Indeed, this legal standard does not dispense with the importance of respecting the sovereignty of other States. To the contrary, applying the standard ensures that the sovereignty of other States is respected. Specifically, applying the standard ensures that force is used on foreign territory without consent only in those exceptional circumstances in which a State cannot or will not take effective measures to confront a non-State actor that is using the State’s territory as a base for attacks and related operations against other States. With respect to the “unable” prong of the standard, inability perhaps can be demonstrated most plainly where, for example, a State has lost or abandoned effective control over the portion of its territory where the armed group is operating. With respect to the “unwilling” prong of the standard, unwillingness might be demonstrated where, for example, a State is colluding with or harboring a terrorist organization operating from within its territory and refuses to address the threat posed by the group.

## 5. Application of the *Jus ad Bellum* in an Ongoing Armed Conflict

Once a State has lawfully resorted to force in self-defense against a particular actor in response to an actual or imminent armed attack by that group, it is not necessary as a matter of international law to reassess whether an armed attack is occurring or imminent prior to every subsequent action taken against that group, provided that hostilities have not ended. In addition, in armed conflicts with non-State actors that are prone to shifting operations from country to country, the United States does not view its ability to use military force against a non-State actor with which it is engaged in an ongoing armed conflict as limited to “hot” battlefields. This does not mean the United States can strike wherever it chooses: the use of force in self-defense in an ongoing armed conflict is limited by respect for States’ sovereignty and the considerations discussed above, including the customary international law requirements of necessity and proportionality when force could implicate the rights of other States.<sup>54</sup>

### C. Consent to Use Force in an Otherwise Lawful Manner

Another circumstance in which the use of force on the territory of another sovereign does not violate international law is when undertaking an otherwise lawful use of force with the consent of a territorial State. The provision of such consent need not be made public. The United States has relied on State consent in various military operations. In many cases, consent operates in conjunction with the right of self-defense in an ongoing armed conflict. In operations against ISIL, for example, the United States has relied on both its right of self-defense and the consent of certain territorial States.

The concept of consent can pose challenges in certain countries where governments are rapidly changing, have lost control of significant parts of their territory, or have shown no desire to address the threat. Thus, it sometimes can be a complex matter to identify the appropriate person or entity from whom consent should be sought and the form such consent should take. The U.S. Government carefully considers these issues when examining the question of consent.

## III. The End of Armed Conflict with Non-State Armed Groups

Hostilities against an enemy like al-Qa’ida are unconventional and presumably will not come to a conventional end. Groups like al-Qa’ida are highly unlikely to disarm and sign instruments of surrender. And given their radical objectives, groups like al-Qa’ida are also highly unlikely ever to denounce terrorism and violence and to seek to address their perceived grievances through some form of reconciliation or participation in a political process. As President Obama has stated, “[n]egotiations cannot convince al-Qa’ida’s leaders to lay down their arms.”<sup>55</sup> There is therefore little chance that there will be an agreement to end these hostilities.

As the President has also said, however, “this war, like all wars, must end.”<sup>56</sup> At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa’ida to such an extent that they will have been



effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed conflict between the United States and those forces.<sup>57</sup>

Unfortunately, that day has not yet come. Progress has been made in disrupting and degrading al-Qa'ida's core and senior leadership, and in disrupting and degrading ISIL. But these groups still pose a real and profound threat to U.S. national security. As a result, the United States remains in a state of armed conflict against these groups as a matter of international law, and the 2001 AUMF continues to provide the President with domestic legal authority to defend against these ongoing threats.

#### **IV. Working with Others in an Armed Conflict**

The President's counterterrorism strategy has prioritized the development of partnerships with those who share U.S. interests. In the countries described at the outset of this report and in other theaters, the United States partners with States, multinational forces, and in some cases, non-State actors. For example, sixty-eight State partners are today engaged as part of the counter-ISIL coalition led by the United States.

The United States and foreign partners provide one another a range of support, including training, provision of materiel, intelligence sharing, and operational support. When supporting foreign partners, the United States ensures that it understands their legal basis for acting, and, as laid out in more detail below, takes a number of steps to ensure U.S. assistance is used lawfully and appropriately under domestic and international law. Although a complete discussion of the legal and policy frameworks pursuant to which the United States works with partners is beyond the scope of this report, some of the key legal and policy considerations relevant to such support for partners are detailed below, with a focus on those theaters where, in addition to working with partners, the United States is also using force itself.

##### *A. Domestic Authorities and Limitations*

In the campaign against ISIL and beyond, coalitions and partnerships with other States and non-State actors are increasingly prominent features of current U.S. military operations. The U.S. Government has a number of authorities to provide assistance to foreign partner forces and takes a variety of measures to help partners comply with the law of armed conflict and to avoid the misuse of U.S. assistance. Examples of such measures include vetting and training recipients of U.S. assistance, monitoring how U.S. assistance is used, and suspending or terminating such assistance as appropriate.

For example, Section 1209 of the National Defense Authorization Act for Fiscal Year 2015 (2015 NDAA) authorizes assistance to appropriately vetted Syrian groups and individuals for certain purposes.<sup>58</sup> Under that provision, the Secretary of Defense, in coordination with the Secretary of State, is authorized to "provide assistance, including training, equipment, supplies, stipends, construction of training and associated facilities, and sustainment, to appropriately

vettted elements of the Syrian opposition and other appropriately vetted Syrian groups and individuals.”<sup>59</sup> Section 1209 defines “appropriately vetted” to include, at a minimum, assessments of the Syrian opposition groups or individuals receiving assistance for associations with terrorist groups and a commitment from those groups or individuals “to promoting the respect for human rights and the rule of law.”<sup>60</sup> To help ensure compliance with these standards, the United States uses longstanding U.S. military and intelligence processes and practices for vetting and training foreign forces.<sup>61</sup> The United States has also made monitoring the use of U.S. military equipment, ammunition, and other assistance provided to these groups part of the mission of U.S. forces in Syria to help ensure that any assistance is used appropriately by recipients.

The United States also supports its partners and allies by providing intelligence in furtherance of shared objectives. Sometimes this sharing occurs as part of combined military operations, where the United States is directly involved in an armed conflict. Intelligence sharing in such situations allows coalition members to have a common picture of the battlefield, to fully integrate and synchronize operations, and to promote force protection. On other occasions, the United States provides intelligence support to foreign partners engaged in conflicts in which the United States is not participating directly. As appropriate, the United States can take a variety of measures, including diplomatic assurances, vetting, training, and monitoring, to ensure that the recipient of U.S. intelligence respects human rights and complies with the law of armed conflict. Sharing must always be consistent with U.S. domestic law, including the requirement that intelligence agencies cannot ask another party to undertake activities which they are themselves prohibited from undertaking.

Several statutes impose requirements on the security-related assistance that the United States may provide to partner countries, including in the context of an armed conflict. Most prominently, the so-called Department of Defense and Department of State “Leahy Laws” prohibit, respectively, the Department of Defense from using funds “for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights,”<sup>62</sup> and the State Department from furnishing assistance “to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”<sup>63</sup> Reports of gross violations of human rights are examined on a fact-specific basis. Section 502B of the Foreign Assistance Act provides that the term “gross violations of internationally-recognized human rights” includes, among other violations, torture or cruel, inhuman, or degrading treatment or punishment and other flagrant denials of the right to life, liberty, or the security of person.<sup>64</sup>

Under the Leahy Laws, assistance may in some instances be reinstated to units previously found to be ineligible. In early 2015, the Administration established a joint Department of Defense and Department of State Leahy Law implementation policy for “remediating” units of foreign security forces that were previously found ineligible to receive assistance through the vetting process by which the Executive Branch implements the Leahy Laws. Under the Department of State Leahy Law, the State Department may reinstate assistance to a unit if the State Department determines and reports to Congress that the foreign government has taken or is taking effective measures to bring to justice the responsible members of the security forces.<sup>65</sup>



Under the Department of Defense Leahy Law, the Department of Defense may resume assistance if, after consultation with the Department of State, it determines that the government of the foreign country has taken all necessary corrective steps and provides a report to the appropriate congressional committees within fifteen days.<sup>66</sup> Such steps may include impartial and thorough investigations, prosecutions or administrative actions, and appropriate and proportional sentencing.

Additionally, the United States is limited in the aid it can provide to others by longstanding policies, including those reflected in Executive Order 12333.<sup>67</sup> Under Section 2.11 of that order, “[n]o person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.”<sup>68</sup>

### *B. International Law Considerations*

The U.S. military’s ability to engage and work with partners can and often does turn on international legal considerations. The United States military seeks to work with partners that will comply with international law, and U.S. partners expect the same from the United States. The United States’ commitment to upholding the law of armed conflict also extends to promoting compliance by U.S. partners with the law of armed conflict. Receiving credible and reliable assurances that U.S. partners will comply with applicable international law, including the law of armed conflict, is an important measure that the United States military routinely employs in its partnered operations. As a matter of policy, the United States always seeks to promote adherence to the law of armed conflict and encourages other States and partners to do the same.

As a matter of international law, the United States looks to the law of State responsibility and U.S. partners’ compliance with the law of armed conflict in assessing the lawfulness of U.S. military assistance to, and joint operations with, military partners. The United States has taken the position that a State incurs responsibility under international law for aiding or assisting another State in the commission of an internationally wrongful act when: (1) the act would be internationally wrongful if committed by the supporting State; (2) the supporting State is both aware that its assistance will be used for an unlawful purpose and intends its assistance to be so used; and (3) the assistance is clearly and unequivocally connected to the subsequent wrongful act.<sup>69</sup>

Some U.S. allies and partners have different international legal obligations because of the different treaties to which they are parties, and others may hold different legal interpretations of common obligations. The United States seeks to build on common understandings of international law, while also seeking to bridge or manage the specific differences in any particular State’s international obligations or interpretations of those obligations. In the context of the campaign against ISIL, for example, the United States meets with coalition partners on a regular basis to discuss legal obligations and good practices in implementing those obligations.

## V. Application to Key Theaters

This section of the report outlines the application of these key domestic and international legal principles to the six theaters identified at the outset—Afghanistan, Iraq, Syria, Somalia, Libya, and Yemen.

### A. Afghanistan

*Background.* Since October 7, 2001, the United States has conducted counterterrorism combat operations in Afghanistan. Active hostilities in Afghanistan remain ongoing, and U.S. persons and interests continue to be actively targeted by terrorist and insurgent groups operating there. Although the United States has transitioned the lead for security to Afghan security forces, a limited number of U.S. forces remain in Afghanistan for the purposes of, among other things: training, advising, and assisting Afghan forces; conducting and supporting U.S. counterterrorism operations against the remnants of core al-Qa’ida and against ISIL; and taking appropriate measures against those who directly threaten U.S. and coalition forces in Afghanistan.

*Domestic Law.* As a matter of domestic law, the 2001 AUMF authorizes U.S. counterterrorism combat operations in Afghanistan.<sup>70</sup> Congress has also repeatedly authorized U.S. support for Afghan military forces. In the National Defense Authorization Act for Fiscal Year 2016 (2016 NDAA), for example, Congress extended authorization of the Afghanistan Security Forces Fund.<sup>71</sup>

*International Law.* As a matter of international law, the United States initiated counterterrorism combat operations in Afghanistan in U.S. national self-defense. On October 7, 2001, the United States notified the U.N. Security Council consistent with Article 51 of the U.N. Charter that the United States was taking action in the exercise of its right of self-defense in response to the September 11th attacks.<sup>72</sup> U.S. military operations and support for Afghan military forces in the ongoing armed conflict in Afghanistan are now undertaken consistent with the Bilateral Security Agreement between the United States and Afghanistan and with the consent of the Government of Afghanistan.<sup>73</sup>

### B. Iraq

*Background.* In Iraq, the United States is conducting a systematic campaign of airstrikes against ISIL and has also captured some of its members. More broadly, the United States is also advising and coordinating with Iraqi forces and providing training, equipment, communications support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. U.S. forces are also providing support and security for U.S. citizens and property.

*Domestic Law.* As a matter of domestic law, the 2001 AUMF and the 2002 AUMF authorize the U.S. use of force against ISIL in Iraq. As previously noted, Congress has supported the

President's military actions against ISIL through an unbroken stream of appropriations.<sup>74</sup> Among other actions it has taken, Congress has authorized the United States to provide "the military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces and other local security forces, with a national security mission, with defense articles, defense services, and related training to more effectively partner with the United States and other international coalition members to defeat ISIL."<sup>75</sup>

*International Law.* As a matter of international law, the United States is using force against ISIL in Iraq at the request and with the consent of the Government of Iraq, which has sought U.S. and coalition support in its defense of the country against ISIL.<sup>76</sup> U.S. operations against ISIL in Iraq are thus conducted in the context of an armed conflict and in furtherance of Iraq and others' armed operations against the group and in furtherance of U.S. national self-defense.

### C. Syria

*Background.* As part of the campaign against ISIL outlined above, the United States is using force against ISIL in Syria. The United States is conducting a systematic campaign of airstrikes against ISIL and has provided U.S. military equipment, ammunition, and other assistance to indigenous ground forces conducting operations against ISIL in Syria. Small teams of U.S. special operations forces have also deployed to Syria to help coordinate U.S. operations with some of these indigenous ground forces. Furthermore, the United States is conducting airstrikes against al-Qa'ida in Syria, including against those leaders of al-Qa'ida in Syria who are involved in plotting against the United States and its partners.

*Domestic Law.* The 2001 AUMF and, in certain circumstances, the 2002 AUMF authorize the use of force in Syria against al-Qa'ida in Syria and ISIL; as previously noted, Congress has also supported this military campaign through an unbroken stream of appropriations.<sup>77</sup> As previously mentioned, Congress has also authorized assistance to appropriately vetted Syrian groups and individuals for certain purposes. In the 2015 NDAA, for example, Congress authorized the Secretary of Defense, in coordination with the Secretary of State, to "provide assistance, including training, equipment, supplies, stipends, construction of training and associated facilities, and sustainment, to appropriately vetted elements of the Syrian opposition and other appropriately vetted Syrian groups and individuals."<sup>78</sup>

*International Law.* As a matter of international law, the United States is using force in Syria against ISIL and providing support to opposition groups fighting ISIL in the collective self-defense of Iraq (and other States) and in U.S. national self-defense. Upon commencing airstrikes against ISIL in Syria in September 2014, the United States submitted a letter to the U.N. Security Council consistent with Article 51 of the U.N. Charter explaining the international legal basis for its use of force.<sup>79</sup> As the letter explained, Iraq has made clear that it is facing a serious threat of continuing armed attacks from ISIL coming out of safe havens in Syria. The Government of Iraq has asked the United States to lead international efforts to strike ISIL sites and strongholds in Syria in order to end the continuing armed attacks on Iraq, to protect Iraqi citizens, and ultimately to enable Iraqi forces to regain control of Iraqi borders.<sup>80</sup> Moreover, ISIL is a threat not only to Iraq and U.S. partners in the region, but also to the United States. Consistent with the

inherent right of individual and collective self-defense, the United States therefore initiated necessary and proportionate actions in Syria against ISIL in 2014, and those actions continue to the present day.

Similarly, the United States is using force in Syria against al-Qa'ida in Syria in self-defense of the United States and in furtherance of the security of U.S. partners and allies.

In its 2014 letter to the U.N. Security Council, the United States explained that Syria is unable or unwilling to confront effectively the threat that ISIL poses to Iraq, the United States, and U.S. partners and allies. The Syrian Government has shown that it cannot and will not confront ISIL effectively.<sup>81</sup> Syria is similarly unable or unwilling to confront effectively the threat posed by al-Qa'ida in Syria.

#### *D. Somalia*

*Background.* In Somalia, the United States continues to counter the terrorist threat posed by al-Qa'ida and its Somalia-based associated force, al-Shabaab. The United States has conducted airstrikes and other operations against al-Qa'ida and al-Shabaab.<sup>82</sup> As part of its campaign against al-Qa'ida and its associated force al-Shabaab, the United States is also providing advice and assistance to regional counterterrorism forces, including Somali and African Union Mission in Somalia (AMISOM) forces.

*Domestic Law.* As noted above, the 2001 AUMF authorizes counterterrorism combat operations in Somalia against al-Qa'ida and al-Shabaab.<sup>83</sup>

*International Law.* As a matter of international law, U.S. counterterrorism operations in Somalia, including airstrikes, have been conducted with the consent of the Government of Somalia in support of Somalia's operations in the context of the armed conflict against al-Shabaab and in furtherance of U.S. national self-defense.

#### *E. Libya*

*Background.* In Libya, the United States is conducting airstrikes against ISIL targets, including in support of efforts by forces aligned with the GNA to recapture the city of Sirte from ISIL.

*Domestic Law.* As previously described, the 2001 AUMF provides authority as a matter of domestic law for U.S. airstrikes in Libya against ISIL.<sup>84</sup>

*International Law.* As a matter of international law, airstrikes in Libya against ISIL are being conducted at the request and with the consent of the GNA in the context of the ongoing armed conflict against ISIL and in furtherance of U.S. national self-defense.

#### F. Yemen

*Background.* The United States has been working closely with the Government of Yemen to dismantle operationally and ultimately eliminate the terrorist threat posed by AQAP. As part of this effort, the United States has taken direct action, including airstrikes, against a limited number of AQAP operatives and senior leaders in Yemen who posed a threat to the United States. The United States has also deployed small numbers of U.S. military personnel to Yemen to support operations against AQAP, including support for operations to capture AQAP leaders and key personnel.

In addition, on October 12, 2016, in response to the launch of anti-ship cruise missiles by Houthi insurgents that threatened U.S. Navy warships in the international waters of the Red Sea, the President ordered missile strikes on radar facilities in Houthi-controlled territory in Yemen that were involved in the missile launch that had threatened U.S. warships.

Since 2015, the United States has also provided limited support to Saudi-led coalition military operations against Houthi and Saleh-aligned forces in Yemen. U.S. forces are not taking direct military action in Yemen in this Saudi-led effort; instead, the United States provides certain logistical support (including air-to-air refueling), intelligence sharing, best practices, and other advisory support when requested and appropriate. Additionally, the United States has provided advice to the Saudi-led coalition regarding compliance with the law of armed conflict and regarding best practices for reducing the risk of civilian casualties.

*Domestic Law.* As discussed above, the 2001 AUMF confers authority to use force against AQAP.<sup>85</sup> And, also as noted above, the October 12, 2016, strikes were taken to protect U.S. vessels and personnel and were directed by the President pursuant to his constitutional authority as Commander in Chief and Chief Executive. Certain statutory authorities and the President's constitutional authorities as Commander in Chief and Chief Executive and to conduct the foreign affairs of the United States authorize the provision of limited support for counter-Houthi operations by the Saudi-led coalition.

*International Law.* As a matter of international law, the United States has conducted counterterrorism operations against AQAP in Yemen with the consent of the Government of Yemen in the context of the armed conflict against AQAP and in furtherance of U.S. national self-defense. The October 12, 2016, strikes taken to protect U.S. vessels and personnel were also conducted with the consent of the Yemeni Government.<sup>86</sup> The U.S. support for the Saudi-led coalition military operations is being provided in the context of the Coalition's military operations being undertaken in response to the Government of Yemen's request for assistance, including military support, to protect the sovereignty, peace, and security of Yemen.

## PART TWO: KEY LEGAL AND POLICY FRAMEWORKS RELATED TO THE CONDUCT OF HOSTILITIES

This part of the report highlights key legal and policy frameworks relevant to the conduct of hostilities: targeting; capture, detention, and interrogation of detainees in armed conflicts; and prosecutions and transfers of such detainees.

Because the United States is currently engaged in hostilities against only non-State actors, the applicable international legal regime governing these U.S. military operations is the law of armed conflict covering non-international armed conflicts, including Common Article 3 of the 1949 Geneva Conventions and other treaty and customary international law rules governing the conduct of hostilities in non-international armed conflicts.<sup>87</sup> As discussed below, the United States often applies policies that are more restrictive than what would be required as a matter of law. In doing so, the United States maintains the right to change its policies and practices consistent with applicable law.

### I. Targeting

The U.S. Government makes extensive efforts to ensure that its targeting efforts comply with all applicable international obligations, domestic laws, and policies. This section of the report does not discuss all of the legal and policy considerations relevant to these efforts, but instead focuses on (1) the law of armed conflict framework underlying U.S. targeting efforts; (2) two key topics relevant to the legal framework—constitutional constraints on the targeting of U.S. persons and law of armed conflict rules applicable to the targeting of money and revenue-generating objects; and (3) key policies concerning targeting military objectives and reducing incidental civilian casualties.

#### A. *The Law of Armed Conflict and Targeting*

It is well- and long-established that under the law of armed conflict, States may target specific, identified individual members of an enemy force as well as individuals directly participating in hostilities. For example, during World War II, U.S. Navy forces lawfully shot down the aircraft of Admiral Yamamoto, the commander of the Japanese navy, specifically because he was on board. His loss was a significant setback for the Japanese war effort. Today, just as in 1943, the use of lethal force against an identified member of the enemy force in an ongoing armed conflict is consistent with law of armed conflict principles governing who may be made the object of attack.



Removing the senior leadership of terrorist groups against which the United States is engaged in hostilities—including those in charge of plotting attacks against the United States and its partners—is an important piece of the overall U.S. strategy for defeating these groups. It is also consistent with the U.S. commitment to minimizing civilian casualties. Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects.

Under the law of armed conflict, States may also use technologically advanced weapons systems—including unmanned aerial vehicles, commonly referred to as “drones”—so long as they are employed in conformity with applicable law of armed conflict principles and rules. Technologically advanced weapons systems can often enhance the United States’ ability to implement its obligations under the law of armed conflict. Precision-guided munitions, enhanced sensors, and the ability to monitor targets for extended periods of time can allow the United States to distinguish more effectively between a member of the enemy forces and a civilian. It is U.S. policy to develop, acquire, and field weapons systems and other technological capabilities that further enable the discriminate use of force in different operational contexts.<sup>88</sup>

Additionally, using targeted lethal force against an enemy consistent with the law of armed conflict does not constitute an “assassination.” Assassinations are unlawful killings and are prohibited by Executive Order.<sup>89</sup> There is no requirement under international law to provide legal process before a State may use lethal force in accordance with the law of armed conflict.

None of the above diminishes longstanding and important obligations under both domestic and international law that constrain how and in what circumstances force may be used in the course of an armed conflict. In its targeting practices in the context of both international and non-international armed conflicts, the United States complies with—and in many important respects has policies that provide greater safeguards than—the requirements of all applicable law, including the law of armed conflict.

First, U.S. targeting practices comply with the principle of distinction, which in the targeting context requires that attacks be limited to military objectives and that civilians or civilian objects not be made the object of attack.<sup>90</sup> Even when the United States is dealing with enemy forces that do not wear uniforms or carry their arms openly, the United States goes to great lengths to apply this principle. In particular, the United States considers all available information about a potential target’s current and historical activities to inform an assessment of whether the individual is a lawful target. For example, an individual who is formally or functionally a member of an armed group against which the United States is engaged in an armed conflict is generally targetable. Determining that someone is a “functional” member of an armed group may include looking to, among other things, the extent to which that person performs functions for the benefit of the group that are analogous to those traditionally performed by members of a country’s armed forces; whether that person is carrying out or giving orders to others within the group; and whether that person has undertaken certain acts that reliably connote meaningful integration into the group.<sup>91</sup>

Second, U.S. targeting practices comply with the principle of proportionality, which, among other things, prohibits attacks in which the expected loss of life or injury to civilians and damage to civilian objects incidental to the attack would be excessive in relation to the concrete and direct military advantage expected to be gained.<sup>92</sup> Additionally, feasible precautions must be taken in conducting an attack to reduce the risk of harm to civilians and other protected persons and objects, such as, in certain circumstances when it is appropriate to do so, warning civilians before bombardments.<sup>93</sup> In U.S. operations against enemy forces, great care is taken to adhere to the principle of proportionality in both planning and execution to ensure that collateral damage is kept to a minimum. Indeed, as discussed below, the United States routinely applies certain heightened policy standards that are more protective of civilians than is required under the law of armed conflict.<sup>94</sup>

Third, U.S. targeting practices conform to the principle of necessity, which requires that the use of military force (including all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of armed conflict) be directed at accomplishing a legitimate military purpose.<sup>95</sup> Individuals who are part of enemy forces are generally legitimate military targets, and the United States may use lethal force against enemy forces in the armed conflict in which it is engaged, subject to other applicable law of armed conflict rules. The law of armed conflict does not require that enemy combatants be warned before being made the object of attack,<sup>96</sup> and it does not require that enemy combatants be given an opportunity to surrender before being made the object of attack.<sup>97</sup>

Fourth, U.S. targeting practices conform to the principle of humanity, which prohibits the infliction of suffering, injury, or destruction unnecessary to accomplish a legitimate military purpose. For example, it is forbidden to use weapons that are calculated to cause superfluous injury.<sup>98</sup>

Finally, and as discussed further below, there is a robust review process before the United States uses military force against members of enemy forces, and that review process includes rigorous safeguards to protect civilians. Throughout the military chain of command, commanders, advised by trained and experienced staffs—including intelligence officers, operations officers, and judge advocates—review operations for compliance with applicable U.S. domestic and international law, including the law of armed conflict, and for consistency with the policies and orders of superiors in the military chain of command.

## *B. Selected Topics Regarding Targeting*

### *1. U.S. Constitutional Constraints Regarding Targeting U.S. Citizens Who Are Abroad and Part of an Enemy Force*

As discussed in Part One, the 2001 AUMF provides the primary domestic legal framework for targeting enemy forces in the context of the current hostilities. Additional constitutional considerations are implicated by the targeting of U.S. citizens abroad who are part of an enemy force.



In a small number of instances, U.S. citizens have joined enemy forces and planned attacks against the United States from abroad. This situation has historical precedent. In previous conflicts, U.S. citizens have fought in foreign armies against the United States, including with the Axis countries during World War II. Longstanding legal principles and court decisions confirm that being a U.S. citizen does not immunize a member of the enemy from attack.<sup>99</sup> As a plurality of the U.S. Supreme Court made clear in 2004 with respect to detention authority, “[a] citizen, no less than an alien, can be ‘part of or supporting forces hostile to the United States or coalition partners’ and ‘engaged in an armed conflict against the United States.’”<sup>100</sup>

However, the United States must take into account all relevant constitutional considerations with respect to U.S. citizens. When the United States knows in advance that the specific object of its attack is an individual U.S. citizen, it proceeds on the basis that constitutional rights—in particular, the Fifth Amendment’s Due Process Clause<sup>101</sup> and the Fourth Amendment’s prohibition on unreasonable searches and seizures<sup>102</sup>—attach to the U.S. citizen even while the individual is abroad.<sup>103</sup> Those rights are considered in assessing whether it is lawful to target the individual.

The United States has publicly provided this constitutional analysis in detail on numerous occasions.<sup>104</sup> In particular, these publicly released materials discuss how the United States has applied a due process balancing analysis to determine the circumstances under which it may use lethal force against a U.S. citizen who is a senior operational leader of an enemy force planning violent attacks against Americans,<sup>105</sup> and how, under this analysis, the United States would be able to use force against the senior operational leader in at least the following circumstances: (1) where an informed, high-level official of the U.S. Government has determined that the targeted individual poses an imminent threat of violent attack against the United States;<sup>106</sup> (2) where a capture operation would be infeasible and where those conducting the operation continue to monitor whether capture becomes feasible; and (3) where such an operation would be conducted consistent with applicable law of armed conflict principles.<sup>107</sup>

The United States applied these three criteria for the use of force against a U.S. citizen in the only specific, targeted strike against an identified U.S. citizen that it has conducted—the strike that targeted Anwar al-Aulaqi. First, Anwar al-Aulaqi posed an imminent threat of violent attack on U.S. persons. He was the chief of external operations of AQAP, one of the most dangerous regional affiliates of al-Qa’ida and a group that has committed numerous terrorist attacks overseas and attempted multiple times to conduct terrorist attacks against the U.S. homeland. In this role, al-Aulaqi repeatedly made clear his intent to attack U.S. persons; he was also directly and personally involved in the continued planning and execution of terrorist attacks against the U.S. homeland. Based on this information, high-level U.S. Government officials appropriately concluded that al-Aulaqi posed an imminent threat of violent attack against the United States. Second, before carrying out the operation that killed al-Aulaqi, senior officials conducted a careful evaluation of the circumstances at the time and determined that it was not feasible to capture al-Aulaqi. Third, senior officials determined that the operation would be conducted consistent with applicable law of armed conflict principles. In addition, the operation was undertaken with the consent of the Government of Yemen.<sup>108</sup>

Beyond the Fifth Amendment’s Due Process Clause, the United States has also proceeded on the basis that a lethal operation targeting a U.S. citizen abroad who is planning attacks against the United States would result in a “seizure” under the Fourth Amendment.<sup>109</sup> The U.S. Supreme Court has made clear that the constitutionality of a seizure is determined by “balanc[ing] the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.”<sup>110</sup> Even in domestic law enforcement operations, the Court has noted that “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”<sup>111</sup> Thus, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”<sup>112</sup>

At least in circumstances where the targeted person is an operational leader of an enemy force and an informed, high-level U.S. Government official has determined that the individual poses an imminent threat of violent attack against the United States, and those conducting the operation would carry out the operation only if capture were infeasible, the use of lethal force would not violate the Fourth Amendment.<sup>113</sup> Under such circumstances, the intrusion on any Fourth Amendment interests would be outweighed by the “importance of the governmental interests [that] justify the intrusion”—the interests in protecting the lives of U.S. nationals.<sup>114</sup>

Notably, although the three circumstances outlined above are sufficient to render a lethal operation against a U.S. citizen lawful under the circumstances described, they are not necessarily required. In particular, the three circumstances may not apply to operations that take place on traditional battlefields. Rather, the United States has concluded only that the stated circumstances would be sufficient to make lawful a lethal operation in a foreign country directed against a specific individual U.S. citizen.<sup>115</sup>

## 2. Targeting Money and Revenue-Generating Objects

Under certain conditions, attacks on money and revenue-generating objects are consistent with the law of armed conflict. As described above, under the principle of distinction, parties to a conflict must discriminate between military objectives, on the one hand, and civilians and civilian objects, on the other hand. Parties to a conflict may make enemy combatants and other military objectives the object of attack.<sup>116</sup> They may not make civilians, persons who are *hors de combat*, and other protected persons and objects the object of attack.<sup>117</sup> Accordingly, subject to other applicable law of armed conflict rules, States may make only military objectives the object of attack in an armed conflict.<sup>118</sup>

Insofar as objects are concerned, military objectives are those objects that by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.<sup>119</sup> That definition may encompass objects that make an effective contribution to the enemy’s war-fighting or war-sustaining capabilities.<sup>120</sup> Money and certain

revenue-generating objects can, under the circumstances ruling at the time, make an effective contribution to armed action by enabling a non-State armed group to conduct and sustain its operations. Destroying such objects may offer a definite military advantage by denying revenue to a non-State armed group. Although definite military advantage is assessed in its operational and strategic context, the U.S. interpretation of “definite military advantage” excludes advantages that are merely hypothetical or speculative. Moreover, as in all targeting decisions, the United States would apply all other relevant law of armed conflict principles and rules, including the principle of proportionality. Subject to these rules, the United States may target money and revenue-generating objects that constitute military objectives consistent with the principle of distinction.

As part of military operations against ISIL, the United States and other States have taken military action against money and certain revenue-generating objects controlled by ISIL as part of a broader strategy to deny funding for the terrorist organization’s armed operations. These attacks have targeted ISIL-controlled oil infrastructure, tanker trucks, wells, and refineries, significantly reducing ISIL’s oil production and the revenues that are used to support its armed operations.<sup>121</sup> The United States has also targeted certain storage sites that ISIL has used to store the money it controls. As a result of these strikes, ISIL has been forced to reduce the salaries of its fighters, diminishing their morale and leading to defections that undermine ISIL’s overall war-fighting capability.

### *C. U.S. Policies Regarding Targeting and Incidental Civilian Casualties*

The United States is committed to complying with its obligations under the law of armed conflict, including those obligations that address the protection of civilians. In addition to the moral and legal imperatives to protect civilians, the protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in pursuit of U.S. national interests. Minimizing civilian casualties can further mission objectives; help maintain the support of partner governments and vulnerable populations, especially in the conduct of counterterrorism and counterinsurgency operations; and demonstrate the legitimacy and enhance the sustainability of U.S. operations critical to U.S. national security.<sup>122</sup>

As a matter of policy, the United States therefore frequently applies certain heightened policy standards and procedures that underscore its commitment to reducing civilian casualties and to enhancing transparency and strengthening accountability for its actions. These standards and procedures cover all phases of military operations from planning to completion to after-action assessment. These standards frequently result in practices that are more protective of civilians than required under the law of armed conflict.

#### *1. The Presidential Policy Guidance*

One such policy document, approved in 2013, is the Presidential Policy Guidance on Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities (PPG).<sup>123</sup> The PPG establishes standard operating procedures for when the United States takes direct action against terrorist targets outside of the United States and areas of active hostilities. For purposes of the PPG, the term “direct action”

refers to lethal and non-lethal uses of force, including capture operations.<sup>124</sup> The determination as to whether a region constitutes an “area of active hostilities” does not turn exclusively on whether there is an armed conflict under international law taking place in the country at issue, but also takes into account, among other things, the size and scope of the terrorist threat, the scope and intensity of U.S. counterterrorism operations, and the necessity of protecting any U.S. forces in the relevant location. Afghanistan, Iraq, Syria, and certain portions of Libya are currently designated as “areas of active hostilities,” such that the PPG does not apply to direct actions taken in those locations. The policy standards and processes contained in the PPG also do not apply to direct action taken when the United States is acting quickly to defend U.S. or partner forces from attack or outside the counterterrorism context, such as the October 12, 2016, U.S. military strikes on radar facilities in Houthi-controlled territory in Yemen.

Under the PPG, as with all U.S. uses of force, any direct action must be conducted lawfully and taken against lawful targets. As a matter of policy, the PPG sets forth additional standards for direct action, including:

- *Preference for Capture:* The PPG prioritizes capture operations over lethal action. Under the PPG, lethal action should be taken in an effort to prevent terrorist attacks against U.S. persons only when capture of an individual is not feasible and no other reasonable alternatives exist to address the threat effectively.<sup>125</sup>
- *Standards for Use of Lethal Force:* The PPG underscores that any decision to use force abroad outside areas of active hostilities—even against adversaries dedicated to killing Americans—is a significant one. It makes clear that lethal force should not be proposed or pursued as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission, and it sets forth a series of policy conditions that are more restrictive than the law of armed conflict requires that must be met before such force will be used, including that:
  - The United States will use lethal force against only a terrorist target that poses “a continuing, imminent threat to U.S. persons,” underscoring that it is simply not the case that all terrorists overseas pose such a threat;
  - Before lethal action may be taken, the United States must have “near certainty” that the terrorist target is present and that non-combatants will not be injured or killed;<sup>126</sup>
  - There must be an assessment that the capture of the target is not feasible at the time of the operation<sup>127</sup> and that no other reasonable alternatives exist to address the threat to U.S. persons effectively; and
  - Lethal action requires an assessment that relevant governmental authorities in the country where the action is contemplated either cannot or will not effectively address the threat to U.S. persons.<sup>128</sup>

- *U.S. Government Coordination and Review:* The PPG ensures that decisions to capture or use lethal force against terrorist targets outside areas of active hostilities are made at the most senior levels of the U.S. Government, informed by departments and agencies with relevant expertise. It sets forth a decision making process for operations whereby senior national security officials—including the leadership of key departments and agencies—review and inform proposals to ensure that the legal and policy standards are met.<sup>129</sup>
- *After-Action Reviews and Congressional Notification:* The PPG includes procedures for after-action reports as well as requirements for congressional notification.<sup>130</sup>
- *Reservation of Authority:* Of course, the PPG reflects that the President always retains authority to take lethal action consistent with the law of armed conflict. Nothing in the PPG prevents the President from exercising his constitutional authority as Commander in Chief and Chief Executive, as well as his statutory authority, to consider a lawful proposal from operating agencies that he authorize direct action that would fall outside of the policy guidance contained within the PPG, including a proposal that he authorize lethal force against an individual who poses a continuing, imminent threat to another country's persons.<sup>131</sup> In every case in which the United States takes military action, however, whether in or outside an area of active hostilities, international legal principles, including respect for a State's sovereignty and the laws of armed conflict, impose important constraints on the ability of the United States to act unilaterally—and on the way in which the United States can use force—in foreign territories.

## 2. Executive Order Regarding Civilian Casualties

Another important example of how the United States has established policies related to reducing the risk of civilian casualties is Executive Order 13732 on U.S. Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force.<sup>132</sup> The Executive Order applies to all operations, regardless of where they are conducted, and underscores that a commitment to the protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in furtherance of U.S. national interests.

- *Best Practices:* The Executive Order catalogues existing best practices developed by the U.S. Government over many years to protect civilians in the context of operations involving the use of force inside and outside areas of active hostilities and directed relevant departments and agencies to continue such measures in present and future operations. In particular, the Executive Order requires relevant agencies, consistent with mission objectives and applicable law, to conduct training, develop intelligence systems, take feasible precautions, and conduct risk assessments in the interest of protecting civilians. The Executive Order also requires, as appropriate, reviewing or investigating incidents involving civilian casualties and taking measures to mitigate future incidents; acknowledging U.S. Government responsibility for civilian casualties when they have occurred and offering condolences, including *ex gratia* payments, to civilians who are injured or to the families of civilians who are killed; engaging with foreign partners to share and learn best practices; and maintaining channels for engagement with the International Committee of the Red Cross (ICRC) and non-

governmental organizations that can assist in efforts to distinguish between military objectives and civilians.<sup>133</sup>

- *Enhancing Intake of Information to Assess Reports of Civilian Casualties:* To help address certain challenges associated with addressing the credibility of reports of civilian casualties in non-permissive environments, the Executive Order emphasizes the U.S. Government's consideration of relevant and credible information from all available sources, including non-governmental organizations.<sup>134</sup>
- *Release of Information Related to Civilian Casualties:* The Executive Order also directs the Director of National Intelligence (DNI), or such other official as the President may designate, to release publicly an annual summary of information obtained from relevant departments and agencies about the number of strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities and about the assessed range of combatant and non-combatant deaths resulting from those strikes. The annual report will also include information about the sources and methodology used to conduct this assessment and address discrepancies between post-strike assessments of the U.S. Government and credible reporting from non-governmental organizations.<sup>135</sup>
- *Consultation with Experts:* Finally, the Executive Order directs the National Security Council staff to convene experts from relevant U.S. Government departments and agencies to consult on civilian casualty trends and to consider potential improvements to the U.S. Government's civilian casualty mitigation efforts.<sup>136</sup>

The Executive Order reflects the fact that wherever the United States uses lethal force (whether or not taking action covered by the PPG), it is committed as a matter of policy and practice to minimizing the risk of civilian casualties and to promoting accountability. Moreover, the Executive Order and the practices it describes exemplify the continuing commitment of the U.S. Government to refining, clarifying, and strengthening the standards and procedures that govern U.S. use of force abroad to ensure that they continue to be informed by best practices and the most current information.

## II. Capture of Individuals in Armed Conflict

The capture of terrorist suspects is an essential part of U.S. counterterrorism strategy. It has been critical to ensure that intelligence is collected from these suspects in a manner that is consistent with the law and U.S. values; that captured terrorist suspects are detained through an appropriate legal framework; and that, wherever possible, the United States avails itself of a long-term disposition option such as prosecution in an Article III court or military commission. When considering U.S. capture operations overseas, departments and agencies carefully assess all relevant facts and legal authorities to determine whether an individual may be apprehended and detained and whether there is a potential for prosecution.



As discussed more fully below, as terrorist suspects have been captured or apprehended, the U.S. Government has used all available tools at its disposal—including military, law enforcement, and intelligence authorities—to maximize intelligence collection and to incapacitate terrorists while adhering to U.S. legal obligations, policies, and values. These tools include the use of law-of-armed-conflict detention authority, as authorized under the 2001 AUMF, as well as the use of the criminal justice system. In some cases, military and law enforcement authorities have worked together to seek longer-term disposition options through prosecution or, in some circumstances, through transfers to third countries. These collaborative efforts often provide the U.S. Government with a stable authority for long-term incapacitation of terrorists and a means of eliciting their cooperation while respecting the law.

The U.S. Government has also set forth additional policies and procedures governing certain capture operations through the PPG. In Section 2, the PPG sets forth the approval process for operations to capture terrorism suspects outside of the United States and areas of active hostilities.<sup>137</sup> Among other things, these procedures require that agencies proposing capture operations consider long-term disposition options wherever practicable, including prosecution in a civilian court or military commission.<sup>138</sup>

Where individuals have been held in long-term military detention, the U.S. Government has ensured that such detainees are held under a framework that protects national security and that is consistent with the interests of justice, and with international and domestic law. For example, with respect to the Guantanamo Bay detention facility, a Task Force established by the President in 2009 examined the status of each individual and recommended whether each should be transferred to a third country, prosecuted, or held in continued law-of-armed-conflict detention.<sup>139</sup> The President also ordered a periodic review of Guantanamo detainees designated for law-of-armed-conflict detention or referred for prosecution (but without charges pending or conviction) to determine whether continued detention of each detainee is necessary to protect against a continuing significant threat to the security of the United States. Pursuant to that order,<sup>140</sup> Periodic Review Boards (PRBs) continue to assess the threat posed by Guantanamo detainees who are not charged by a military commission or otherwise designated for transfer. As explained further below, based on these procedures and the Administration's efforts to repatriate and resettle detainees, the population at Guantanamo has been significantly reduced.

### **III. Detention of Individuals in Armed Conflict**

#### *A. Scope of Military Detention Authority Under the 2001 AUMF*

During this Administration, the United States has detained individuals captured in the hostilities authorized by the 2001 AUMF in Afghanistan, in Iraq, temporarily at sea, and at the Guantanamo Bay detention facility. As a plurality of the U.S. Supreme Court has observed, the capture and detention of enemy belligerents in order to prevent their return to the battlefield has long been recognized as an “important incident[] of war.”<sup>141</sup> The United States bases its authority to detain these individuals on the 2001 AUMF as informed by the law of armed conflict.<sup>142</sup>

Under the 2001 AUMF, the United States may detain those persons who were part of, or substantially supported, Taliban or al-Qa'ida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.<sup>143</sup> To determine whether an individual is “part of” an enemy force, the United States may rely on either a formal or functional analysis of the individual’s role in that enemy force.<sup>144</sup> As noted above, such a functional analysis may include looking to, among other things, the extent to which that person performs functions for the benefit of the group that are analogous to those traditionally performed by members of a country’s armed forces; whether that person is carrying out or giving orders to others within the group; and whether that person has undertaken certain acts that reliably connote meaningful integration into the group.

Examination of whether an individual is “part of” an enemy force is informed by the fact that the armed groups against which the President is authorized to use force under the 2001 AUMF neither abide by the law of armed conflict nor typically issue membership cards or uniforms. Therefore, information relevant to a determination that an individual joined with or became part of an enemy force might range from formal membership, such as through an oath of loyalty, to more functional indications, such as training with al-Qa'ida (as reflected in some cases by staying at al-Qa'ida or Taliban safehouses that are regularly used to house militant recruits), taking positions with enemy forces, or in planning or carrying out attacks against the United States and its allies’ persons or interests, particularly U.S. persons or interests. Often these factors operate in combination. In each case, given the nature of the irregular forces and the practice of their participants or members to try to conceal their affiliations, judgments about whether a particular individual falls within the scope of the authority conferred by the 2001 AUMF will necessarily turn on the totality of the circumstances.<sup>145</sup>

In the detention context, the U.S. Court of Appeals for the D.C. Circuit has employed a functional approach to determining whether an individual is “part of” an enemy force under the 2001 AUMF.<sup>146</sup> As that Court of Appeals has explained:

[D]etermining whether an individual is part of al Qaeda, the Taliban, or an associated force almost always requires drawing inferences from circumstantial evidence, such as that individual’s personal associations. Unlike enemy soldiers in traditional wars, terrorists do not wear uniforms. Nor do terrorist organizations issue membership cards, publish their rosters on the Internet, or otherwise publicly identify the individuals within their ranks. So we must look to other indicia to determine membership in an enemy force.<sup>147</sup>

The Court of Appeals has also observed that, in the context of detention, it “is impossible to provide an exhaustive list of criteria for determining whether an individual is ‘part of’ al-Qaida. That determination must be made on a case-by-case basis” and must “focus[] upon the actions of the individual in relation to the organization.”<sup>148</sup> As developed in the D.C. Circuit’s habeas cases, relevant indicia and circumstances may include whether (1) the individual intended to fight against the United States or its coalition partners<sup>149</sup>; (2) the individual closely associated with members of enemy forces<sup>150</sup>; (3) other members of the enemy forces or documents created by the enemy forces identified the individual as a member<sup>151</sup>; (4) the individual trained in a camp



associated with an enemy force<sup>152</sup>; (5) the individual stayed at a guesthouse associated with an enemy force<sup>153</sup>; (6) the individual followed practices associated with enemy forces, such as the practice of turning over passports and money<sup>154</sup>; (7) the individual swore an oath of allegiance to an enemy force<sup>155</sup>; (8) the individual hosted leaders of the enemy force<sup>156</sup>; (9) the individual recruited or referred aspiring members to the enemy force<sup>157</sup>; (10) the individual traveled along routes conventionally used by the enemy force<sup>158</sup>; (11) the individual lied to interrogators or provided implausible explanations for his or her behavior<sup>159</sup>; and (12) the individual possessed a weapon.<sup>160</sup> Moreover, the U.S. Court of Appeals for the D.C. Circuit has clarified that “[e]vidence that an individual operated within al-Qaida’s command structure is ‘sufficient but is not necessary to show he is ‘part of’ the organization’” for purposes of detention.<sup>161</sup>

As noted above, the United States has also interpreted the 2001 AUMF to authorize the detention of individuals who “substantially support” enemy forces in the course of their hostilities against the United States or its coalition partners. This interpretation is informed by the law of armed conflict governing international armed conflicts, which allows for the detention of a narrow category of individuals who are not part of the enemy but bear sufficiently close ties to those forces as to be detainable. By providing “substantial support,” an individual is “more or less part of” the enemy force.<sup>162</sup> Thus, the concept of “substantial support” could encompass individuals whose support for enemy forces makes them analogous to those who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews or members of services responsible for the welfare of the armed forces. Significantly, the provision of only unwitting or insignificant support to enemy forces does not qualify as “substantial support.” Nor does independent advocacy or journalism. In practice, the United States has not relied in court proceedings exclusively on the “substantial support” concept to justify the continued detention of any individual held at Guantanamo Bay.

Under the 2001 AUMF, as informed by the law of armed conflict, detention is generally authorized until the end of hostilities.<sup>163</sup> The relevant inquiry in determining whether detention remains authorized is whether active hostilities have ceased, not whether a particular combat mission is over. During ongoing hostilities, the U.S. Government’s legal authority to detain “is not dependent on whether an individual would pose a threat to the United States or its allies if released but rather upon the continuation of hostilities.”<sup>164</sup> However, as a matter of policy, a detainee 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. This discretionary designation of a detainee for possible transfer from a detention facility, including the facility at Guantanamo Bay, does not affect the legality of his continued detention under the 2001 AUMF pending transfer.<sup>165</sup>

#### *B. Review of the Continued Detention of Detainees at Guantanamo Bay*

In his first week in office, President Obama issued Executive Order 13492 regarding the review and disposition of individuals detained at Guantanamo Bay and the closure of the detention facility. As the Administration has made clear, the facility’s continued operation weakens U.S. national security by furthering the recruiting propaganda of violent extremists, hindering relations with key allies and partners, and draining resources. Executive Order 13492

further required a comprehensive review of the status of Guantanamo detainees to determine their appropriate disposition by way of release, transfer, prosecution, or continued detention pursuant to the law of armed conflict.<sup>166</sup> That review was completed on January 22, 2010.<sup>167</sup>

In 2011, the President established a process to ensure that individuals detained at Guantanamo Bay under the law of armed conflict remain in detention only when necessary to protect against a continuing significant threat to the security of the United States.<sup>168</sup> Executive Order 13567 established Periodic Review Boards (PRBs) whose purpose is to determine, through a review of relevant and available information, including hearings in which the detainee may participate, whether detention of each eligible Guantanamo detainee remains necessary to protect against such a threat. The Order directed the PRBs to consider cases of detainees who were either designated for continued law-of-armed-conflict detention or referred for prosecution (except for those detainees who have been convicted or are facing pending charges) as a result of the review conducted pursuant to Executive Order 13492. Certain elements of the PRB process were codified into statute by the 2012 NDAA.<sup>169</sup>

Initial PRB hearings for each detainee at Guantanamo eligible for review under the Executive Order were completed as of September 8, 2016. Detainees for whom the PRB made a final determination that continued law-of-armed-conflict detention is warranted are subject to subsequent full reviews and hearings by the PRB on a triennial basis.<sup>170</sup> The continued detention of each detainee eligible for a PRB pursuant to the Executive Order is also subject to a file review every six months to determine whether any new information raises a significant question as to whether a detainee's continued detention is warranted.<sup>171</sup> If such a significant question is raised during the file review, the detainee will promptly receive a full review. Detainees are assisted in proceedings before the PRB by a government-provided personal representative who possesses the security clearance necessary for access to information compiled for the Board's review.<sup>172</sup> In addition, the detainee may be assisted in proceedings before the PRB by private counsel retained by the detainee at no expense to the United States.<sup>173</sup> The PRB does not address the legality of any individual's detention. But if at any time during the PRB process material information calls into question the legality of detention, the matter will be referred immediately to the Secretary of Defense and the Attorney General for appropriate action.<sup>174</sup>

President Obama has repeatedly reaffirmed that closing the Guantanamo Bay detention facility is a national security imperative.<sup>175</sup> The Administration is taking all possible steps to reduce the detainee population at Guantanamo and to close the detention facility in a responsible manner that protects U.S. national security. However, restrictions that Congress has placed on transfers of Guantanamo detainees since 2011 have served as significant impediments to closing the facility. As of the release of this report, there are 59 detainees at Guantanamo, compared to 242 detainees on January 20, 2009, when the President took office.

### *C. Treatment of Armed Conflict Detainees*

#### *1. Fundamental Treatment Guarantees for Armed Conflict Detainees*

The standards in Common Article 3 of the 1949 Geneva Conventions apply to detainees in any military operation.<sup>176</sup> Common Article 3 reflects a minimum standard of humane

treatment protections in non-international armed conflict for all persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. Additional rules regarding treatment of detainees will apply depending on the particular context. In particular, Article 75 of Additional Protocol I to the Geneva Conventions sets forth fundamental guarantees for persons in the hands of an opposing force in an international armed conflict, including prohibitions on torture and humiliating and degrading treatment, as well as fair trial guarantees.<sup>177</sup> The United States is not party to Additional Protocol I, but the United States has chosen out of a sense of legal obligation to treat the principles set forth in Article 75 as applicable to any individual it detains in an international armed conflict, and it expects all other nations to adhere to these principles as well.

Additional Protocol II to the Geneva Conventions contains detailed humane treatment standards and fair trial guarantees that would apply in the context of non-international armed conflicts, such as the hostilities authorized by the 2001 AUMF.<sup>178</sup> The United States signed Additional Protocol II in 1987 and President Reagan submitted it to the Senate for advice and consent to ratification. In March 2011, this Administration urged the Senate to act on the Protocol as soon as practicable. Prior to urging the Senate to act, the U.S. Government conducted an extensive interagency review, which concluded that U.S. military practice is already consistent with the Protocol's provisions.<sup>179</sup> The Executive Branch noted that joining the treaty would not only assist the United States in continuing to exercise leadership in the international community in developing the law of armed conflict, but would also reaffirm the United States' commitment to humane treatment in, and compliance with legal standards for, the conduct of armed conflict.

## 2. The Prohibition on Torture and Ill-Treatment

Torture and cruel, inhuman, or degrading treatment or punishment (CIDTP) are categorically prohibited under domestic and international law, including international human rights law and the law of armed conflict. These prohibitions exist everywhere and at all times.

### a. The Prohibition on Torture and Ill-Treatment Under U.S. Domestic Law

Torture and ill-treatment are prohibited as a matter of U.S. domestic law. The Detainee Treatment Act of 2005 requires that “no individual in the custody or under the physical control of the U.S. Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.”<sup>180</sup> This language means that under U.S. domestic law, every U.S. official, wherever he or she may be, is prohibited from engaging in torture or CIDTP.

Additionally, immediately upon taking office in January 2009, President Obama issued Executive Order 13491, which requires that any individual detained in any armed conflict who is in the custody or under the effective control of the United States or detained within a facility owned, operated, or controlled by the United States “shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds,

mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment).<sup>181</sup>

Moreover, Executive Order 13491 requires that no individual in U.S. custody or under U.S. control in any armed conflict “shall . . . be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in [the] Army Field Manual.”<sup>182</sup> This requirement is applicable to all departments and agencies that conduct interrogations of terrorism suspects or detainees in armed conflict.

The President has stated repeatedly that waterboarding is torture, and the Army Field Manual explicitly prohibits it.<sup>183</sup> Executive Order 13491 also revoked all executive directives, orders, and regulations inconsistent with that order.<sup>184</sup>

The 2016 NDAA codified many of the key interrogation-related reforms required by that Executive Order.<sup>185</sup> Specifically, it codified the requirement that an individual in the custody or under the effective control of an officer, employee, or other agent of the U.S. Government, or detained within a facility owned, operated, or controlled by a U.S. department or agency, in any armed conflict, may not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2-22.3.<sup>186</sup> The 2016 NDAA also imposed new legal requirements, including that the Army Field Manual remain publicly available, and that any revisions be made publicly available 30 days in advance of their taking effect.<sup>187</sup>

#### **b. The Prohibition on Torture and Ill-Treatment in International Law**

The prohibition on torture is also binding as a matter of customary international law at all times on all States and all parties to an armed conflict, including the United States, regardless of a State’s status as party or non-party to any particular treaty.<sup>188</sup>

In the law of armed conflict, Common Article 3 of the 1949 Geneva Conventions explicitly prohibits torture and humiliating, degrading, or cruel treatment.<sup>189</sup> Article 75 of Additional Protocol I explicitly prohibits torture of all kinds, whether physical or mental. Article 4(2)(a) of Additional Protocol II, which applies in non-international armed conflicts, prohibits violence to the life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation, or any form of corporal punishment. Although the United States is not a party to Additional Protocol II, U.S. military practices, including its detention and interrogation practices, are consistent with its requirements, as noted above.

In international human rights law, the International Covenant on Civil and Political Rights prohibits torture and CIDTP.<sup>190</sup> The United States has had international law obligations under this treaty as a State party since 1992.<sup>191</sup> The UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) creates a variety of legal obligations related to torture and CIDTP that are binding on the United States as a matter of international law,<sup>192</sup> including that each State Party must take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its

jurisdiction,<sup>193</sup> to ensure that all acts of torture are offences under its criminal law,<sup>194</sup> and to promptly and impartially investigate credible allegations of torture in territory under its jurisdiction.<sup>195</sup> The United States ratified the UNCAT in 1994, and enacted the Torture Convention Implementation Act to implement certain aspects of the Convention's requirements that were not already codified as part of U.S. domestic law.<sup>196</sup>

The United States recognizes that a time of war does not suspend the operation of the UNCAT, which continues to apply even when a State is engaged in armed conflict.<sup>197</sup> The law of armed conflict and the UNCAT contain many provisions that complement one another and are in many respects mutually reinforcing: for example, the obligations to prevent torture and CIDTP in the UNCAT remain applicable in times of armed conflict and are reinforced by complementary prohibitions in the law of armed conflict. In accordance with the doctrine of *lex specialis*, where these bodies of law conflict, the law of armed conflict would take precedence as the controlling body of law with regard to the conduct of hostilities and the protection of war victims.<sup>198</sup> However, a situation of armed conflict does not automatically suspend nor does the law of armed conflict automatically displace the application of all international human rights obligations. International human rights treaties, according to their terms, may also be applicable in armed conflict.

Additionally, the United States has stated that where the text of the UNCAT provides that obligations apply to a State Party in "any territory under its jurisdiction," such obligations extend to certain places beyond the sovereign territory of the State Party, and more specifically, "territory under its jurisdiction" extends to "all places that the State Party controls as a governmental authority." The United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft.<sup>199</sup>

### c. The Prohibition on Torture and Ill-Treatment in U.S. Policy

As discussed above, the 2016 NDAA and Executive Order 13491 require that individuals in the custody or under the effective control of an officer, employee, or other agent of the U.S. Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subject to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2-22.3.<sup>200</sup> The requirements of Army Field Manual 2-22.3 are binding on the U.S. military, as well as on all federal government departments and agencies, including the intelligence agencies, with respect to individuals in U.S. custody or under U.S. effective control in any armed conflict, without prejudice to authorized non-coercive techniques of Federal law enforcement agencies.<sup>201</sup> The Army Field Manual explicitly prohibits threats, coercion, and physical abuse.<sup>202</sup> Army Field Manual 2-22.3 must also remain available to the public, and any revisions must be made available to the public 30 days before taking effect.<sup>203</sup>

Consistent with Executive Order 13491 and the 2016 NDAA, Army Field Manual 2-22.3 lists the 18 approved interrogation approaches. Those approaches include those that make use of incentives, emotions, and silence, as well as the limitations on their use.<sup>204</sup> Additionally,

Appendix M of Army Field Manual 2-22.3 lists the one approved restricted interrogation technique (separation) that may be authorized during the intelligence interrogation of detained “unlawful enemy combatants.” Appendix M also includes the limitations on the use of this technique. Separation involves separating a detainee from other detainees and their environment. The use of this restricted technique requires Combatant Commander approval, and approval of each interrogation plan by the first General Officer or Flag Officer in the interrogator’s chain of command.<sup>205</sup>

In addition to the Army Field Manual, the Department of Defense<sup>206</sup> has Department-wide policy directives in place to ensure humane treatment during intelligence interrogations and detention operations. For example, Department of Defense Directive 3115.09<sup>207</sup> requires that Department of Defense personnel and contractors promptly report any credible information regarding suspected or alleged violations of Department policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings, or tactical questioning. Reports must be promptly and thoroughly investigated by proper authorities, and remedied by disciplinary or administrative action, when appropriate.

Additionally, Department of Defense Directive 2311.01E requires that “[a]ll military and U.S. civilian employees, contractor personnel, and subcontractors assigned to or accompanying a Department of Defense Component shall report reportable incidents through their chain of command,” including “[a] possible, suspected, or alleged violation of the law of war, for which there is credible information.”<sup>208</sup> All reportable incidents must be investigated and, where appropriate, remedied by corrective action. Moreover, under U.S. law and policy, the Department of Defense does not use contract interrogators except in limited circumstances.<sup>209</sup>

Department of Defense policy also includes specific requirements with regard to humane treatment in medical care during the period of detention. Consistent with Additional Protocol II to the Geneva Conventions, Department of Defense policy requires that health care personnel charged with the medical care of detainees in armed conflict protect detainees’ physical and mental health and provide appropriate treatment for disease. Upon arrival in any Department of Defense detention facility, all detainees receive medical screening and any necessary medical treatment. The medical care that detainees receive throughout their time in U.S. custody is generally comparable to that which is available to U.S. personnel serving in the same location.<sup>210</sup>

### 3. International Committee of the Red Cross (ICRC) Notification and Access

The 2016 NDAA requires that any U.S. Government department or agency provide the ICRC with notification of, and prompt access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the U.S. Government or detained within a facility owned, operated, or controlled by a department or agency of the U.S. Government, consistent with existing Department of Defense regulations and policies.<sup>211</sup> This statute codified the identical legal requirement contained in Executive Order 13491.<sup>212</sup>

Department of Defense policy implements detailed procedures and requirements to ensure that detainees are treated humanely and in accordance with all applicable legal



obligations. Department of Defense Directive 2310.01E<sup>213</sup> requires that the Department of Defense assign internment serial numbers (ISNs) to all detainees interned by the United States in connection with armed conflict as soon as practicable and normally within 14 days of capture by, or transfer to, the custody or control of Department personnel, barring exceptional circumstances. Pursuant to this Directive, the ICRC is promptly made aware of all ISN assignments and has access to Department of Defense detention facilities and the detainees housed therein, subject to reasons of imperative military necessity. Further, the Directive requires that the Department of Defense keep detailed information regarding every individual it detains.

As a matter of policy, the United States also supports the Principles and Guidelines of the Copenhagen Process on the Handling of Detainees in International Military Operations,<sup>214</sup> including Paragraph 11, which states that in non-international armed conflict and where warranted in other situations, the detaining authority is to notify the ICRC or other impartial humanitarian organization of the deprivation of liberty, release, or transfer of a detainee. It also states that where practicable, the detainee's family is to be notified of the deprivation of liberty, release, or transfer of a detainee, and that detaining authorities are to provide the ICRC or other relevant impartial international or national organizations with access to detainees.

In partnership with the ICRC, the Department of Defense has greatly expanded the contact detainees held in the Guantanamo Bay detention facility have with their families. Detainees are given the opportunity to send and receive letters, facilitated by the ICRC, and are able to talk to their families periodically via phone or video teleconference.

#### **IV. Prosecution of Individuals Through the Criminal Justice System and Military Commissions**

When terrorism suspects are captured or brought into U.S. custody, the U.S. Government's first priorities are to ensure that they are unable to engage in terrorist activities and to collect as much intelligence as possible, consistent with the humane treatment laws, principles, and policies described above. While law-of-armed-conflict detention is permissible in the course of an armed conflict as described above, criminal trials can hold individuals accountable for their unlawful actions, offer victims a forum for redress, encourage cooperation, and provide a stable, long-term basis for incarceration for those found to be guilty.<sup>215</sup> Thus, the best way to ensure that a terrorism suspect can be brought to justice in the long term is often through prosecution in the criminal justice system. Therefore, the U.S. Government's policy has been to consider prosecution options for terrorism suspects even where the individuals are initially held under law-of-armed-conflict authorities, and, where possible, to take steps to preserve such options.<sup>216</sup> Article III courts have served as the venue for a significant number of successful terrorism prosecutions. Military commissions may also be an appropriate venue, depending on the facts and circumstances of a particular case; in some circumstances, transfer to a third country may provide for the best long-term disposition option. In practice, all of the terrorism suspects apprehended and held by the U.S. Government since January 2009 outside of

areas of active hostilities have ultimately been handled by the criminal justice system, as many others were in prior Administrations, or have been transferred to other countries.

#### A. Article III Courts

The Article III court system in the United States is a well-established forum for trying terrorism suspects. Both before and after the September 11th attacks, the Department of Justice successfully prosecuted hundreds of defendants for terrorism and terrorism-related offenses. The U.S. Government has prosecuted not only terrorism suspects apprehended in the United States, but also those captured in various places abroad including Afghanistan,<sup>217</sup> Pakistan,<sup>218</sup> and off the Somali coast.<sup>219</sup>

A number of Federal statutes provide a basis for prosecuting individuals for offenses that involve not only planning and committing terrorist attacks,<sup>220</sup> but also providing material support to terrorist organizations or terrorist plots (such as arms, money, or personnel),<sup>221</sup> soliciting the commission of terrorism-related offenses,<sup>222</sup> or conspiring to commit such offenses.<sup>223</sup> Congress in recent years has also expanded extraterritorial jurisdiction over certain offenses and enhanced terrorism-related penalties.<sup>224</sup> Additionally, even where an individual is not tried directly for planning an attack or providing support to a terrorist organization, other statutes—such as weapons-related offenses or the prohibition against lying to investigators—may provide important tools to disrupt a plot and ensure that offenders face justice.<sup>225</sup> Federal statutes also allow for the protection of classified information during the course of a trial.<sup>226</sup>

When terrorism suspects are apprehended by law enforcement authorities, the U.S. Government has prioritized obtaining intelligence within existing legal parameters in order to prevent imminent attacks. The U.S. Supreme Court has recognized a limited exception to the rule that statements made by suspects placed under arrest will not be admissible unless the suspect is first advised of his or her *Miranda* rights. Pursuant to this exception, statements by a suspect placed under arrest may be admissible if the officers' questions were reasonably prompted by a concern for public safety.<sup>227</sup> In order to ensure consistent application of the public safety exception, the Attorney General has approved guidance for the FBI with respect to terrorism cases that allows agents to ask all questions that are reasonably prompted by an immediate concern for public safety before advising arrestees of their *Miranda* rights.<sup>228</sup> Agents have used the public safety exception in several instances where there is a reasonable belief that a terrorism suspect has information about an imminent attack or there is immediate concern for the safety of the public or the arresting agents.<sup>229</sup> In many cases, terrorism suspects have agreed to continue speaking with law enforcement agents after having been read their *Miranda* rights.

The federal criminal justice system also affords prosecutors a means to secure plea agreements that entail cooperation with law enforcement and intelligence officials. Cooperation can be facilitated through measures such as agreements to delay sentencing while the accused continues to assist authorities and provide intelligence. The stringent penalties provided under relevant anti-terrorism statutes create incentives for defendants to cooperate.

A number of high-profile terrorists have been convicted in Article III courts. Defendants who have pleaded guilty before trial have included Faisal Shahzad (who attempted to detonate a



car bomb in Times Square in 2010 and was sentenced to life imprisonment) and Umar Farouk Abdulmutallab (who attempted to detonate a bomb on an airplane on Christmas Day of 2009 and was sentenced to life imprisonment). Defendants who have proceeded to trial and were convicted include Sulaiman Abu Ghaith (Osama bin Laden's son-in-law, who was sentenced to life in prison in 2014 for conspiring to kill Americans); Dzhokar Tsarnaev (who was sentenced to death for his role in the 2013 Boston Marathon bombing); and Ahmed Khalfan Ghailani (who was sentenced to life imprisonment for his role in al-Qa'ida's 1998 bombings of the U.S. embassies in Kenya and Tanzania). Earlier high-profile terrorism cases prosecuted in Article III courts include trials of the plotters who carried out the first World Trade Center bombing in 1993, and of Richard Reid, who attempted to blow up an American jetliner with a shoe-bomb in late 2001. After being convicted, terrorists have been held securely in Federal prisons.

As noted above, in some cases, Article III courts have been used where defendants were first apprehended overseas by the U.S. military.<sup>230</sup> In these cases, military and intelligence authorities have been able to coordinate effectively with law enforcement to ensure that terrorists could be apprehended and intelligence could be gathered while preserving the potential for criminal prosecution. For example, in 2011, the U.S. military captured Ahmed Abdulkadir Warsame in the Gulf of Aden. Warsame had worked as a senior operative for the terrorist group al-Shabaab and as a link between al-Shabaab and al-Qa'ida in the Arabian Peninsula. He was initially held under authority of the 2001 AUMF and questioned for intelligence purposes for several months. He was then read his *Miranda* rights, spoke voluntarily to law enforcement agents, and was brought to the Southern District of New York to face prosecution. Warsame pleaded guilty to terrorism-related charges and has cooperated with authorities by providing valuable intelligence about the two terrorist organizations. Other cases where individuals have been captured by the U.S. military overseas and then brought to the United States to face Federal criminal charges include Irek Ilgiz Hamidullin, who was captured in Afghanistan and convicted for conspiring to shoot down American helicopters and to kill U.S. and Afghan soldiers, and Ahmed Abu Khatalla, who was captured in Libya and is awaiting trial on charges relating to his alleged role in the 2012 attacks on U.S. facilities in Benghazi.

### *B. Military Commissions*

In appropriate circumstances, the United States may prosecute individuals detained in armed conflict in military commissions. This Administration worked in a bipartisan manner to reform military commissions through the Military Commissions Act of 2009 (MCA).<sup>231</sup> These reforms helped ensure core protections for the accused, such as the exclusion of evidence obtained by torture or by cruel, inhuman, or degrading treatment.<sup>232</sup> Other basic protections include the presumption of innocence and the U.S. Government's burden to prove guilt beyond a reasonable doubt<sup>233</sup>; the right to counsel<sup>234</sup>; the right to cross-examine witnesses<sup>235</sup>; the right to present one's own witnesses and to compel favorable testimony<sup>236</sup>; and the right to exculpatory evidence, including mitigating evidence.<sup>237</sup> In addition, the 2009 MCA provides for the right to appeal final judgments rendered by a military commission to the U.S. Court of Military Commission Review and to the U.S. Court of Appeals for the D.C. Circuit, and ultimately to the U.S. Supreme Court.<sup>238</sup>

These procedures accord with applicable international law safeguards. Common Article 3 of the 1949 Geneva Conventions prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”<sup>239</sup> Additionally, Article 15 of the UNCAT, which is applicable to military commissions proceedings at Guantanamo, prohibits the use of a statement which is established to have been made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

For an accused to be tried by a military commission, he or she must be charged with an enumerated offense, typically constituting a violation of the law of armed conflict. Offenses described in the MCA include violations of certain provisions in the Uniform Code of Military Justice as well as certain additional offenses such as attacking civilians or engaging in acts of terrorism.<sup>240</sup> To be eligible for trial by military commission, the defendant cannot be a U.S. citizen and must be an “unprivileged enemy belligerent,” which is defined under the statute to mean that he or she (1) has engaged in hostilities against the U.S. or its coalition partners; (2) has purposefully and materially supported such hostilities; or (3) was a part of al-Qa’ida at the time of the alleged offense.<sup>241</sup> As a result, there may be members of certain terrorist groups who fall outside the jurisdiction of military commissions because, for example, they lack ties to al-Qa’ida and their conduct does not otherwise make them subject to prosecution in the military commission forum.

Currently, military commission proceedings are pending against Khalid Sheikh Mohammed and four other alleged co-conspirators accused of planning the September 11th attacks, as well as against Abd Al-Rahim Hussein Muhammed Abdu Al-Nashiri for his alleged role in the 2000 attack on the USS Cole, and Abd Al Hadi Al-Iraqi for planning and leading attacks on Coalition forces in Afghanistan from 2001 to 2004.<sup>242</sup> Several individuals have been convicted through military commission proceedings (either through trial or guilty pleas) and are serving sentences or have completed their sentences. One conviction was vacated on appeal to the D.C. Circuit after the defendant had been released,<sup>243</sup> another conviction has recently been upheld by the D.C. Circuit,<sup>244</sup> and an appeal in one case is pending before the U.S. Court of Military Commission Review.<sup>245</sup>

As a matter of policy, the United States has sought to make military commissions proceedings as transparent as possible. Proceedings are transmitted via live video feed to locations at Guantanamo and in the United States so that the press and the public can view them, with a 40-second delay to protect against the disclosure of classified information. Additionally, court transcripts, filings, and other materials are also available to the public online via the Office of Military Commissions website.<sup>246</sup>

### *C. Transfers to Third Countries for Purposes of Prosecution*

In some circumstances the U.S. Government may determine that prosecution by a third country would serve as an appropriate forum to bring a captured terrorist suspect to justice. Transfers to third countries for prosecution have been made only after careful consideration of

the facts of each particular case, including an assessment of the relevant legal authorities under U.S. law and the third country's laws (including any jurisdictional issues), the citizenship of the accused and any victims, the location of the offense, and any diplomatic considerations. Importantly, as discussed in Part Two, Section V below, the U.S. Government will not transfer any captured suspect if it is more likely than not that the individual would be tortured by the receiving country.

## V. Transfer of Armed Conflict Detainees from U.S. Custody

The United States does not transfer any individual to a foreign country if it is more likely than not that the person would be tortured in that country. This includes transfers conducted in the context of an armed conflict. The U.S. Government's policy is reflected in a statutory statement of U.S. policy and memorialized in court submissions.<sup>247</sup>

For individuals who are detained at Guantanamo Bay, a decision to transfer a detainee from Guantanamo prior to the end of hostilities also reflects the best judgment of U.S. Government experts, including counterterrorism, intelligence, and law enforcement professionals, that, to the extent a detainee poses a continuing threat to the United States, the threat has been or will be sufficiently mitigated—and the national interest will be served—if the detainee is transferred to another country under appropriate security measures. When contemplating such a transfer of a detainee to another country, the United States considers the totality of relevant factors relating to the individual to be transferred and the government in question, including any security and humane treatment assurances received and the reliability of those assurances.<sup>248</sup>

### A. *Transfers and Domestic Law*

Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) provides that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”<sup>249</sup> FARRA states a policy of applying the standard in UNCAT Article 3, discussed below, to all transfers by the United States.<sup>250</sup>

To further the goal of ensuring humane transfers in all contexts, including in the context of armed conflict, Executive Order 13491 required the formation of a special U.S. Government task force to study and evaluate the practices of transferring individuals to other nations in order to ensure consistency with all applicable laws and U.S. policies pertaining to treatment.<sup>251</sup> The Special Task Force issued a set of recommendations to ensure that U.S. transfer practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to face torture. A document providing an overview of the Special Task Force Report was published by the Department of Justice when the Report was completed,<sup>252</sup> and the full text of the unclassified portion of the Report has now been publicly released.

Additionally, Section 1034 of the 2016 NDAA requires that prior to transferring any Guantanamo detainee to a foreign country, the Secretary of Defense must certify that the transfer “is in the national security interests of the United States” and that the receiving government “has taken or agreed to take appropriate steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests.”<sup>253</sup> In making each certification, the Secretary of Defense consults with the Attorney General, the Secretary of State, the Secretary of Homeland Security, the Chairman of the Joint Chiefs of Staff, and the Director of National Intelligence.<sup>254</sup>

When seeking security assurances from governments receiving Guantanamo detainees, the U.S. Government particularly seeks assurances that receiving governments will take certain security measures that, in the U.S. Government’s experience, have proven to be effective in mitigating threats posed by former detainees. The specific measures that are ultimately negotiated vary depending on a range of factors, including the specific threat a detainee may pose, the geographic location of the receiving country, the receiving country’s domestic laws, the receiving country’s capabilities and resources, and, where applicable, the receiving country’s international legal obligations.

#### *B. Transfers and International Law*

Article 3 of the UNCAT states that

(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The United States issued an understanding of Article 3 upon its ratification of the UNCAT, stating that the United States understands the phrase “where there are substantial grounds for believing that he would be in danger of being subjected to torture” to mean “if it is more likely than not that he would be tortured.”<sup>255</sup> The purpose of the U.S. understanding on Article 3 is twofold: it clarifies the meaning of “substantial grounds” and it ensures harmonization in domestic implementation of Article 3 of the UNCAT and Article 33 of the 1951 Refugee Convention and its 1967 Protocol.<sup>256</sup> Prior to U.S. ratification of the UNCAT, the U.S. Supreme Court had interpreted Article 33 of the Refugee Convention to mean that a person falling within the scope of its protections could not be removed to a country where it was more likely than not that he or she would be persecuted on account of a protected ground (e.g., religion, political opinion).<sup>257</sup> Given that Article 3 of the UNCAT required extending the prohibition on removal under U.S. law to situations involving the risk of torture, the “more likely

than not” understanding ensured that the Article 3 protections would be applied in a manner consistent with existing protections under U.S. law.

Article 3 of the UNCAT has been implemented in U.S. law, among other ways, through immigration removal and extradition regulations issued pursuant to the FARRA.<sup>258</sup>

In 2008, the United States stated that Article 3 of UNCAT does not impose any legal obligations on the United States with respect to individuals located outside U.S. sovereign territory,<sup>259</sup> such that the Article is not applicable as a legal matter to transfers occurring from outside U.S. sovereign territory, including in the context of armed conflict. As discussed above, as a matter of policy, the United States applies the UNCAT Article 3 standard to all transfers regardless of location.

### *C. U.S. Policy on Transfers in the Context of Armed Conflict*

The U.S. Government carefully considers any transfer of a detainee from U.S. custody in the context of an armed conflict to determine whether it is more likely than not that the individual would face torture in the receiving country.

In making any such determination, U.S. officials consider the totality of relevant factors relating to the individual to be transferred and the proposed recipient government. When considering a transfer, the United States may consider, among other factors:

- the individual’s allegations of prior or potential future mistreatment in the receiving State;
- the receiving State’s overall human rights record;
- the specific factors suggesting that the individual in question is at risk of being tortured in the receiving State;
- whether similarly situated individuals have been tortured in the receiving State; and
- where applicable, any assurances of humane treatment from the receiving State (including an assessment of their credibility).

### *D. U.S. Policy on Humane Treatment Assurances and Post-Transfer Monitoring*

Humane treatment assurances may be sought in advance of a detainee transfer as a prudential matter or, in certain cases, where, if credible and reliable, the assurances could mitigate treatment concerns, such that the transfer would ultimately be consistent with applicable law and policy. The essential question in evaluating foreign government assurances relating to humane treatment in any post-transfer detention is whether, taking into account these assurances and the totality of other relevant factors relating to the individual and the government in question, it is more likely than not that the individual will be tortured in the country to which he or she is being transferred. There have been cases where the United States has considered the use

of assurances but nevertheless declined to transfer individuals because the United States was not satisfied that even with assurances the transfer would be consistent with its obligations, policies, or practices.

Although the content of any specific set of assurances must be determined on a case-by-case basis, assurances should fundamentally reflect a credible and reliable commitment by the receiving State to treat the transferred individual humanely and that such treatment would be consistent with applicable international and domestic law.

The U.S. Government considers a number of factors in evaluating the adequacy of assurances offered by the receiving State, including, but not limited to, information regarding the judicial and penal conditions and practices of the receiving State; U.S. relations with the receiving State; the receiving State's capacity and incentives to fulfill its assurances; political or legal developments in that State; the State's record in complying with similar assurances; the particular person or entity providing the assurances; and the relationship between that person or entity and the entity that will detain and/or monitor the individual transferee's activity.

Where appropriate, the U.S. Government also seeks assurances or a commitment that the receiving State will permit credible, independent organizations or, in some circumstances, U.S. Government officials to have consistent, private access to transferred detainees for post-transfer humanitarian monitoring. The U.S. Government has raised concerns, as appropriate, regarding both treatment and the process under which prosecutions have been pursued post-transfer when concerns come to its attention, whether from U.S. Government-obtained information, the results of monitoring by non-governmental organizations, or other sources. The United States has also taken other measures, such as training guard forces in anticipation of transfers, and has suspended transfers, where appropriate.

In a case in which the United States became aware of credible allegations that humane treatment assurances were not being honored, the United States would take diplomatic or other steps to ensure that the detainee in question would be appropriately treated, and to make clear the bilateral implications of continued non-observance of commitments made to the U.S. Government. A failure to honor humane treatment commitments would be a significant factor in determining whether to make any future detainee transfers from U.S. custody to the custody of a foreign government against which such a finding had been made. In specific cases where the United States had concerns about whether these commitments would be honored by the receiving country, the United States would not proceed with transfers to that country predicated on such assurances until those concerns had been appropriately addressed.



## APPENDIX: ADDITIONAL SPEECHES AND STATEMENTS FROM THE PRESIDENT AND ADMINISTRATION OFFICIALS ON THESE TOPICS

As noted in the Foreword, this report builds on a long line of public speeches and documents that reflect the President's commitment to being as transparent as possible about how and in what circumstances the United States uses military force and conducts related national security operations. Although this report cites these previous public statements when they are directly referenced in the text, it does not cite them in every instance where they support or are otherwise relevant to a discussion. A list of many such speeches and other materials follows for informational and reference purposes:

Executive Order No. 13491, *Ensuring Lawful Interrogations*, 74 Fed. Reg. 4893 (January 22, 2009)

Executive Order No. 13492, *Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities*, 74 Fed. Reg. 4897 (January 22, 2009)

Executive Order No. 13493, *Review of Detention Policy Options*, 74 Fed. Reg. 4901 (January 22, 2009)

Respondents' Memorandum Regarding the Government's Detention Authority Relative to the Detainees Held at Guantanamo Bay, *In re Guantanamo Bay Detainee Litigation*, No. 08-442 (D.D.C. March 13, 2009), available at <https://www.justice.gov/sites/default/files/opa/legacy/2009/03/13/memo-re-det-auth.pdf>

President Barack Obama, "Remarks by the President on National Security," the National Archives, Washington, D.C., May 21, 2009, available at <https://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>

President Barack Obama, "A Just and Lasting Peace," 2009 Nobel Peace Prize Lecture, Oslo, Norway, December 10, 2009, available at <https://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>

Harold H. Koh, Legal Adviser to the Department of State, “The Obama Administration and International Law,” Address to the American Society of International Law, March 25, 2010, available at [www.state.gov/s/l/releases/remarks/139119.htm](http://www.state.gov/s/l/releases/remarks/139119.htm)

David S. Kris, Assistant Attorney General for National Security, “Law Enforcement as a Counterterrorism Tool,” Address at the Brookings Institution, June 11, 2010, available at <https://www.justice.gov/opa/speech/assistant-attorney-general-david-kris-speaks-brookings-institution>

Memorandum from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, to the Attorney General, *Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi* (July 16, 2010), available at [https://www.justice.gov/sites/default/files/olc/pages/attachments/2015/04/02/2010-07-16\\_-\\_olc\\_aaga\\_barron\\_-\\_al-aulaqi.pdf](https://www.justice.gov/sites/default/files/olc/pages/attachments/2015/04/02/2010-07-16_-_olc_aaga_barron_-_al-aulaqi.pdf)

Executive Order No. 13567, *Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force*, 76 Fed. Reg. 13275 (March 7, 2011)

Memorandum from Caroline D. Krass, Principal Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, to the Attorney General, *Authority to Use Military Force in Libya* (April 1, 2011), available at [https://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya_0.pdf)

John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, “Strengthening Our Security by Adhering to Our Values and Laws,” Address at Harvard Law School, September 16, 2011, available at <https://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>

Jeh C. Johnson, General Counsel, Department of Defense, Speech to the Heritage Foundation, October 18, 2011, available at [https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2011/10/20111018\\_Jeh-Johnson-Heritage-Speech.pdf](https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2011/10/20111018_Jeh-Johnson-Heritage-Speech.pdf)

Jeh C. Johnson, General Counsel, Department of Defense, “National Security Law, Lawyers, and Lawyering in the Obama Administration,” Address at Yale Law School, February 22, 2012, available at <https://www.lawfareblog.com/jeh-johnson-speech-yale-law-school>

Presidential Policy Directive/PPD-14, Requirements of the National Defense Authorization Act (February 28, 2012), available at <https://www.whitehouse.gov/the->



[press-office/2012/02/28/presidential-policy-directive-requirements-national-defense-authorizatio](#)

Eric Holder, Attorney General, Address at Northwestern University School of Law, March 5, 2012, available at <https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law>

Stephen W. Preston, General Counsel, Central Intelligence Agency, “CIA and the Rule of Law,” Address at Harvard Law School, April 10, 2012, available at <https://www.cia.gov/news-information/speeches-testimony/2012-speeches-testimony/cia-general-counsel-harvard.html>

John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, “The Ethics and Efficacy of the President’s Counterterrorism Strategy,” Remarks at the Woodrow Wilson International Center for Scholars,” Washington, D.C., April 30, 2012, available at <https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>

John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, “U.S. Policy toward Yemen,” Remarks to the Council on Foreign Relations, New York, N.Y., August 8, 2012, available at <http://www.cfr.org/asia-and-pacific/conversation-john-o-brennan/p35305>

Harold H. Koh, Legal Adviser to the Department of State, “International Law in Cyberspace,” Address to the USCYBERCOM Inter-Agency Legal Conference, September 18, 2012, available at [www.state.gov/s/l/releases/remarks/197924.htm](http://www.state.gov/s/l/releases/remarks/197924.htm)

Jeh C. Johnson, General Counsel, Department of Defense, “The Conflict against Al Qaeda and Its Affiliates: How Will It End?” Address at the Oxford Union, Oxford University, November 30, 2012, available at <http://www.state.gov/documents/organization/211954.pdf>

United States Cong. Senate Committee on Armed Services. *The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force*. May 16, 2013. 113<sup>th</sup> Cong. 1st. sess (testimony of Michael A. Sheehan, Assistant Secretary, Department of Defense, BG Richard C. Gross, Legal Counsel, Chairman of the Joint Chiefs of Staff, and Robert S. Taylor, Acting General Counsel, Department of Defense), available at [www.armed-services.senate.gov/imo/media/doc/13-43%20-%205-16-13.pdf](http://www.armed-services.senate.gov/imo/media/doc/13-43%20-%205-16-13.pdf)

Presidential Policy Guidance, U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities (May 22, 2013) (redacted), available at [https://www.justice.gov/oip/foia-library/procedures\\_for\\_approving\\_direct\\_action\\_against\\_terrorist\\_targets/download](https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download)

Letter from Attorney General Eric Holder to the Hon. Patrick J. Leahy, May 22, 2013, *available at* <https://www.justice.gov/sites/default/files/ag/legacy/2013/05/28/AG-letter-5-22-13.pdf>

President Barack Obama, “Remarks by the President at the National Defense University,” Washington, D.C., May 23, 2013, *available at* <https://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-barack-obama>

FACT SHEET: The President’s May 23 Speech on Counterterrorism (May 23, 2013), *available at* <https://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-president-s-may-23-speech-counterterrorism>

FACT SHEET: U.S. Policies and Procedures for the Use of Force in Counterterrorism Operations (May 23, 2013), *available at* <https://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>

Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, Remarks at NYU Law School, New York, N.Y., November 19, 2013, *available at* <https://www.whitehouse.gov/the-press-office/2013/11/19/remarks-prepared-delivery-assistant-president-homeland-security-and-coun>

Opening statements of Mary E. McLeod, Principal Deputy Legal Adviser, Department of State, and Stephen W. Preston, General Counsel, Department of Defense, United States Cong. Senate Committee on Foreign Relations, Hearing on Authorization for Use of Military Force After Iraq and Afghanistan, (May 21, 2014) 113th. Cong. 2nd sess., *available at* [www.foreign.senate.gov/hearings/authorization-for-use-of-military-force-after-iraq-and-afghanistan-05-21-14](http://www.foreign.senate.gov/hearings/authorization-for-use-of-military-force-after-iraq-and-afghanistan-05-21-14)

President Barack Obama, “Remarks by the President at the United States Military Academy Commencement Ceremony,” West Point, N.Y., May 28, 2014, *available at* <https://www.whitehouse.gov/the-press-office/2014/05/28/remarks-president-united-states-military-academy-commencement-ceremony>

Mary E. McLeod, Principal Deputy Legal Adviser, Department of State, Opening Statement to the United Nations Committee Against Torture, November 12-3, 2014, *available at* <https://geneva.usmission.gov/2014/11/12/acting-legal-adviser-mcleod-u-s-affirms-torture-is-prohibited-at-all-times-in-all-places/>

Letter from the President to the Congress, “Authorization for the Use of United States Armed Forces in connection with the Islamic State of Iraq and the Levant,” February 11, 2015, *available at* [www.whitehouse.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection](http://www.whitehouse.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection)

Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, “Evolving to Meet the New Terrorist Threat,” Remarks at the Council on Foreign

Relations, March 7, 2016, *available at* <https://www.whitehouse.gov/the-press-office/2016/03/07/remarks-lisa-o-monaco-council-foreign-relations-kenneth-moskow-memorial>

Stephen W. Preston, General Counsel, Department of Defense, Keynote Speech at the Annual Meeting of the American Society of International Law, April 10, 2015, *available at* <http://www.defense.gov/News/Speeches/Speech-View/Article/606662>

Brian Egan, Legal Adviser to the Department of State, Keynote Speech at the Annual Meeting of the American Society of International Law, April 4, 2016, *available at* <https://www.state.gov/s/l/releases/remarks/255493.htm>

Department of Defense, PLAN FOR CLOSING THE GUANTANAMO BAY DETENTION FACILITY (May 23, 2016), *available at* [www.defense.gov/Portals/1/Documents/pubs/GTMO\\_Closure\\_Plan\\_0216.pdf](http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf)

Executive Order No. 13732, *United States Policy on Pre-and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force*, 81 Fed. Reg. 44483 (July 1, 2016)

FACT SHEET: Executive Order on the US Policy on Pre & Post-Strike Measures to Address Civilian Casualties in the US Operations Involving the Use of Force & the DNI Release of Aggregate Data on Strike Outside Areas Active Hostilities (July 1, 2016), *available at* <https://www.whitehouse.gov/the-press-office/2016/07/01/fact-sheet-executive-order-us-policy-pre-post-strike-measures-address>

Office of Director of National Intelligence, *Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities* (July 1, 2016), *available at* <https://www.dni.gov/files/documents/Newsroom/Press%20Releases/DNI+Release+on+CT+Strikes+Outside+Areas+of+Active+Hostilities.PDF>

Brian Egan, Legal Adviser to the Department of State, Remarks on International Law and Stability in Cyberspace at Berkeley Law, November 10, 2016, *available at* <https://www.state.gov/s/l/releases/remarks/264303.htm>

Jennifer M. O'Connor, General Counsel, Department of Defense, "Applying the Law of Targeting to the Modern Battlefield," Remarks at the New York University School of Law, November 28, 2016, *available at* <http://www.defense.gov/News/Speeches/Speech-View/Article/1014188/applying-the-law-of-targeting-to-the-modern-battlefield>

## ENDNOTES

---

<sup>1</sup> This Report is intended to provide an overview of the U.S. Government’s existing legal and policy views on issues relating to the use of military force and related national security operations. The sources cited in the endnotes are included for informational purposes and do not necessarily constitute endorsement by the U.S. Government of every proposition in the underlying source.

<sup>2</sup> Joint Resolution Concerning the War Powers of Congress and the President, Pub. L. No. 93-148, 87 Stat. 555 (1973) (“War Powers Resolution”).

<sup>3</sup> This portion of the report focuses on theaters where the United States is taking direct action and thus does not discuss theaters such as Cuba, where U.S. forces continue to conduct humane and secure detention operations.

<sup>4</sup> Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate Providing a Supplemental Consolidated Report Consistent with the War Powers Resolution, December 5, 2016 (“2016 War Powers Report”).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *See* Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, October 14, 2016, *available at* <https://www.whitehouse.gov/the-press-office/2016/10/14/letter-president-war-powers-resolution>.

<sup>9</sup> 2016 War Powers Report, *supra* note 4.

<sup>10</sup> Authorization for Use of Military Force, Pub. L. No. 107-40, §2(a), 115 Stat. 224, (2001) (“2001 AUMF”).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Although Afghanistan was the focus when the 2001 AUMF was enacted in September 2001, the President’s authority to use force pursuant to that statute is not limited to Afghanistan. The 2001 AUMF itself contains no such geographic limitation, and neither Congress nor U.S. Federal courts have limited the President’s ability to use force in that way. As the United States has pointed out in the context of detainee litigation, imposing such a geographic limit on the authority conferred by the 2001 AUMF would “unduly hinder both the President’s ability to protect our country from future acts of terrorism and his ability to gather vital intelligence regarding the capability, operations, and intentions of this elusive and cunning adversary.” Respondents’ Memorandum Regarding the Government’s Detention Authority Relative to the Detainees Held at Guantanamo Bay, *In re Guantanamo Bay Detainee Litigation*, No. 08-442 (D.D.C. Mar. 13, 2009) (“March 13 Brief”) (quoting *Khalid v. Bush*, 355 F. Supp. 2d 311, 320 (D.D.C. 2005), *rev’d on other grounds sub nom.*, *Boumediene v. Bush*, 553 U.S. 723 (2008)).

<sup>14</sup> *Id.*

<sup>15</sup> Detention authority is addressed in greater depth in this report at Part Two, Section III-A.

<sup>16</sup> March 13 Brief, *supra* note 13, at 2.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, §1021(a), 125 Stat. 1562 (2011) (“2012 NDAA”). In another section, Congress made clear that the “disposition of a person under the law of war as described in subsection (a) may include the following: (1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force. (2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84)). (3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction. (4) Transfer to the custody or control of the person’s country of origin, any other foreign country, or any other foreign entity.” *Id.* §1021(c).

<sup>19</sup> *Id.* §1021(b).

<sup>20</sup> See, e.g., *Ali v. Obama*, 736 F.3d 542, 544 (D.C. Cir. 2013) (“This Court has stated that the AUMF authorizes the President to detain enemy combatants, which includes (among others) individuals who are part of al Qaeda, the Taliban, or associated forces. As this Court has explained in prior cases, the President may also detain individuals who substantially support al Qaeda, the Taliban, or associated forces in the war.” (citation omitted)); *Al-Adahi v. Obama*, 613 F.3d 1102, 1102 (D.C. Cir. 2010) (“The government may therefore hold at Guantanamo and elsewhere those individuals who are ‘part of’ al-Qaida, the Taliban, or associated forces.”); *Khan v. Obama*, 655 F.3d 20, 23 (D.C. Cir. 2011) (“We have held that the AUMF grants the President authority (inter alia) to detain individuals who are ‘part of forces associated with Al Qaeda or the Taliban.’”); *Hussain v. Obama*, 718 F.3d 964, 967 (D.C. Cir. 2013) (“[The AUMF] justifies holding a detainee at Guantanamo if the government shows, by a preponderance of the evidence, that the detainee was part of al Qaeda, the Taliban, or associated forces at the time of his capture.” (internal citations omitted)).

<sup>21</sup> Al-Qa’ida is used here to refer to what has at times been called “core al-Qa’ida,” including the senior leaders and cadre of the organization based in Afghanistan and Pakistan who were primarily responsible for planning and carrying out the September 11th attacks in the United States. Since the degradation of those elements and the relocation of some senior leaders outside the region, the term “al-Qa’ida senior leaders” is now used to refer to the overall emir and other senior figures of the group.

<sup>22</sup> For example, the United States conducted an airstrike against Mokhtar Belmokhtar, a long-time terrorist who maintained his personal allegiance to al-Qa’ida, pursuant to the authority conferred on the President by the 2001 AUMF. Under that same authority, the United States captured al-Qa’ida member Abu Anas al-Libi, accused of participating in the 1998 U.S. embassy bombings in Kenya and Tanzania.

<sup>23</sup> References to al-Qa’ida in Syria encompass references to the Nusra Front, which is al-Qa’ida’s official affiliate in Syria and which changed its name to Fatah al-Sham Front in July 2016. Additionally, there are some members of al-Qai’da who have relocated to Syria from other conflict zones who are not members of the Nusra Front.

<sup>24</sup> See Letter from President Barack Obama to Congressional Leaders Reporting on the Deployment of United States Armed Forces Personnel to Iraq and the Authorization of Military Operations in Syria (Sept. 23, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/09/23/letter-president-war-powers-resolution-regarding-syria>.

<sup>25</sup> The President’s authority to use force against ISIL is further reinforced by the Authorization for Use of Military Force Against Iraq, Pub. L. No. 107-243, 116 Stat. 1498 (2002) (“2002 AUMF”). Under the relevant portions of the 2002 AUMF, “[t]he President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to . . . defend the national security of the United States against the continuing threat posed by Iraq.” *Id.* § 3(a)(1). Although the threat posed by Saddam Hussein’s regime in Iraq was the primary focus of the 2002 AUMF, the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable, democratic Iraq and of addressing terrorist threats emanating from Iraq. After Saddam Hussein’s regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against AQI (now known as ISIL). Then, as now, that organization posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq. Congress ratified this understanding of the 2002 AUMF by appropriating billions of dollars to support continued military operations in Iraq between 2003 and 2011. Accordingly, the 2002 AUMF reinforces the authority for military operations against ISIL in Iraq and, to the extent necessary to achieve these purposes, elsewhere.

<sup>26</sup> Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2285-95 (2014) (“2015 Consolidated Appropriations Act”).

<sup>27</sup> See, e.g., Consolidated Appropriations Act, 2016 Committee Print of the H. Comm. on Appropriations, Explanatory Statement at 289, Pub. L. No. 113-114 (2015) (highlighting threat posed by the “rise of [ISIL]” and noting that the Act “moves funding from the base appropriation to the [overseas contingency operations] appropriation” for the military “to conduct counter-ISIL operations”); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, §§ 1223-1224, 129 Stat. 726, 1049 (2015) (“2016 NDAA”) (expressing Congress’s sense that ISIL “poses an acute threat to the people and territorial integrity of Iraq” and that “defeating ISIL is critical to maintaining a unified Iraq”).

<sup>28</sup> See 2015 Consolidated Appropriations Act, *supra* note 26, § 8097; Consolidation Appropriations Act, 2016, Pub. L. No. 114-113, § 8093, 129 Stat. 2242, 2373 (2015) (“2016 Consolidated Appropriations Act”).

<sup>29</sup> See 2016 NDAA, *supra* note 27, § 1224.

<sup>30</sup> See LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS, OPERATION INHERENT RESOLVE, REPORT TO THE U.S. CONGRESS ii, 116-22 (Mar. 31, 2016), available at [https://oig.state.gov/system/files/oir\\_quarterly\\_march2016.pdf](https://oig.state.gov/system/files/oir_quarterly_march2016.pdf); see also 5 U.S.C. app. § 8L (2012).



<sup>31</sup> See, e.g., 2015 Consolidated Appropriations Act, *supra* note 26, §§ 8140, 9014; 2016 Consolidated Appropriations Act, *supra* note 28, §§ 8122, 9019 (providing that funds could not be used “in contravention of the War Powers Resolution,” including the congressional consultation and reporting requirements).

<sup>32</sup> See, e.g., *U.S. Policy Towards Iraq and Syria and the Threat Posed by the Islamic State of Iraq and the Levant (ISIL): Hearing Before the S. Comm. on Armed Services*, 113th Cong. 5-72 (Sept. 2014) (statements of Chuck Hagel, Secretary of Defense, and General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff); *The Administration’s Strategy and Military Campaign Against Islamic State in Iraq and the Levant: Hearing Before the H. Comm. on Armed Services*, 113th Cong. 4-46 (Nov. 2014) (statements of Chuck Hagel, Secretary of Defense, and General Martin E. Dempsey, Chairman, Joint Chiefs of Staff).

<sup>33</sup> See, e.g., *DaCosta v. Laird*, 448 F.2d 1368, 1369 (2d Cir. 1973) (“[T]here was sufficient legislative action in extending the Selective Service Act and in appropriating billions of dollars to carry on military and naval operations in Vietnam to ratify and approve the measures taken by the Executive.”).

<sup>34</sup> As the Office of Legal Counsel recounted in an opinion in 2011 regarding the use of military force in Libya, there are over two centuries of Executive Branch practice in support of this authority. Examples from recent decades in which Presidents directed the use of military force without specific prior authorization legislation include “bombing in Libya (1986), an intervention in Panama (1989), troop deployments to Somalia (1992), Bosnia (1995), and Haiti (twice, 1994 and 2004), air patrols and airstrikes in Bosnia (1993-1995), and a bombing campaign in Yugoslavia (1999).” Memorandum from Caroline D. Krass, Principal Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, to the Attorney General, Authority to Use Military Force in Libya (April 1, 2011), *available at* [https://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya_0.pdf).

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 10 n.2.

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.*

<sup>39</sup> War Powers Resolution, *supra* note 2.

<sup>40</sup> *Id.*

<sup>41</sup> U.N. Charter, art. 2, para. 4.

<sup>42</sup> *Id.* art. 51.

<sup>43</sup> See U.N. Charter, arts. 39, 42. Article 39 states: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” Article 42 states: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”

<sup>44</sup> See U.N. Security Council Resolution 1973 (2011).

<sup>45</sup> See U.N. Security Council Resolution 1851 (2008); U.N. Security Council Resolution 1846 (2008).

<sup>46</sup> See U.N. Security Council Resolution 1386 (2001); U.N. Security Council Resolution 1510 (2003).

<sup>47</sup> See Letter from the Representative of the United States of America to the President of the U.N. Security Council, September 23, 2014 (notifying the U.N. Security Council of military action against ISIL and al-Qa’ida in Syria and explaining that “States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defense, as reflected in Article 51 of the UN Charter, when as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks.”); *see also* Letter from the Permanent Representative of Germany to the United Nations to the President of the Security Council, December 10, 2015 (“[Germany] will now support the military measures of those states that have been subject to attacks by ISIL” on the grounds that “ISIL has occupied a certain part of Syrian territory over which the Government of the Arab Republic of Syria does not at this time exercise effective control. States which have been subject to armed attack by ISIL originating in this part of Syrian territory are therefore justified under Article 51 of the UN Charter to take necessary measures in self-defence, even without the consent of the Syrian Government.”); Letter from the Permanent Representative of Belgium to the President of the U.N. Security Council, June 9, 2016 (“ISIL occupied a certain part of Syrian territory over which the Government of the Syrian Arab Republic does not, at this time, exercise effective control. In light of this exceptional situation, States that have been subject to armed attack by ISIL originating in that part of the Syrian territory are therefore justified under Article 51 of the UN Charter to take necessary measures of self-defence.”).

<sup>48</sup> These factors include those identified in Daniel Bethlehem, *Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors*, 106 AM. J. INT'L L. 769 (2012).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, "Strengthening Our Security by Adhering to Our Values and Laws," Address at Harvard Law School, September 16, 2011, *available at* <https://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>.

<sup>52</sup> See Letter from the Permanent Representative of Australia to the President of the U.N. Security Council, September 9, 2015 (explaining that "[s]tates must be able to act in self-defence when the Government of the State where the threat is located is unwilling or unable to prevent attacks originating from its territory"); Letter from the Permanent Representative of France to the President of the U.N. Security Council, March 31, 2015 (stating that "[i]n accordance with the inherent rights of individual and collective self-defence reflected in Article 51 of the United Nations Charter, States must be able to act in self-defence when the government of the State where a threat is located is unwilling or unable to prevent attacks emanating from its territory"); Letter from the Permanent Representative of Turkey to the President of the U.N. Security Council, July 24, 2015 (arguing that "[i]t is apparent that the regime in Syria is neither capable nor willing to prevent these threats emanating from its territory which clearly imperil the security of Turkey and the safety of its nationals").

<sup>53</sup> Brian Egan, Legal Adviser to the Department of State, Keynote Speech at the Annual Meeting of the American Society of International Law, April 4, 2016, *available at* <https://www.state.gov/s/l/releases/remarks/255493.htm>.

<sup>54</sup> In particular, *see supra* Part One, Section II-B(4), for a discussion of the "unable or unwilling" standard, which is an important application of the *jus ad bellum* necessity requirement.

<sup>55</sup> President Barack Obama, "A Just and Lasting Peace," 2009 Nobel Peace Prize Lecture, Oslo, Norway, December 10, 2009, *available at* <https://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>.

<sup>56</sup> President Barack Obama, "Remarks by the President at the National Defense University," Washington, D.C., May 23, 2013, *available at* <https://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-barack-obama>.

<sup>57</sup> See Jeh C. Johnson, General Counsel, Department of Defense, "The Conflict against Al Qa'ida and Its Affiliates: How Will It End?," Oxford University, November 30, 2012, *available at* <http://www.state.gov/documents/organization/211954.pdf>.

<sup>58</sup> National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 1209, 128 Stat. 3292 (2014) ("2015 NDAA").

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> "Section 1209 Report: Department of Defense Assistance to Appropriately Vetted Elements of the Syrian Opposition," Unclassified Report to Congress, January 30, 2015.

<sup>62</sup> 10 U.S.C. § 2249e(a)(1) (2012 & 2016 Supp.).

<sup>63</sup> 22 U.S.C. § 2378d(a) (2012 & 2016 Supp.).

<sup>64</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 116, 75 Stat. 424-2.

<sup>65</sup> See 10 U.S.C. § 2249e(b); 22 U.S.C. § 2378d(b).

<sup>66</sup> 10 U.S.C. § 2249e(b).

<sup>67</sup> Executive Order No. 12333, *United States Intelligence Activities*, 46 Fed. Reg. 59941 (1981) ("E.O. 12333").

<sup>68</sup> *Id.* § 2.11.

<sup>69</sup> Draft Articles on State Responsibility – Comments of the Government of the United States of America (Mar. 1, 2001), *available at* <http://www.state.gov/documents/organization/28993.pdf>. See also International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries 66 (2001).

<sup>70</sup> See *supra* Part One, Section I-A(2).

<sup>71</sup> 2016 NDAA, *supra* note 27, § 1531.

<sup>72</sup> Letter from the Permanent Representative of the United States to the President of the U.N. Security Council, U.N. SCOR, 56th Sess. at I, U.N. Doc. S/2001/946 (Oct. 7, 2001), *available at* [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2001/946](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2001/946).

<sup>73</sup> Security and Defense Cooperation Agreement Between the Islamic Republic of Afghanistan and the United States, Sept. 30, 2014, *available at* [mfa.gov.af/Content/files/BSA%20ENGLISH%20AFG.pdf](http://mfa.gov.af/Content/files/BSA%20ENGLISH%20AFG.pdf).

<sup>74</sup> See *supra* Part One, Sections I-A, I-C.

<sup>75</sup> 2016 NDAA, *supra* note 27, § 1223(a)(3).

<sup>76</sup> See Letter from Hoshiyar Zebari, Minister for Foreign Affairs of the Republic of Iraq, to the Secretary General of the United Nations, S/2014/440, June 25, 2014, *available at* [www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_440.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_440.pdf); Letter from Ibrahim al-Ushayqir al-Ja'fari, Minister for Foreign Affairs of Iraq, to the Secretary General of the United Nations, S/2014/691, Sept. 22, 2014, *available at* [www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_691.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_691.pdf).

<sup>77</sup> See Part One, Section I-A.

<sup>78</sup> 2015 NDAA, *supra* note 58, § 1209.

<sup>79</sup> See Letter from the Representative of the United States of America to the President of the U.N. Security Council, September 23, 2014.

<sup>80</sup> *Id.*

<sup>81</sup> By September 2014, the Syrian Government had lost effective control of much of eastern and northeastern Syria, with much of that territory under ISIL's control.

<sup>82</sup> 2016 War Powers Report, *supra* note 4.

<sup>83</sup> See Part One, Section I-A(2)(a).

<sup>84</sup> See Part One, Section I-A(2)(b).

<sup>85</sup> See Part One, Section I-A(2)(a).

<sup>86</sup> Letter from the Representative of the United States to the President of the U.N. Security Council, October 15, 2016, *available at* [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2016\\_869.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_869.pdf).

<sup>87</sup> See, e.g., Geneva Convention (III) Relative to the Treatment of Prisoners of War ("Third Geneva Convention"), Aug. 12, 1949, 6 U.S.T. 3316, 2406.

<sup>88</sup> Executive Order No. 13732, *United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force*, 81 Fed. Reg. 44483 (July 1, 2016) ("E.O. 13732") ("In particular, relevant agencies shall, consistent with mission objectives and applicable law, including the law of armed conflict . . . develop, acquire, and field weapon systems and other technological capabilities that further enable the discriminate use of force in different operational contexts . . .").

<sup>89</sup> See E.O. 12333, *supra* note 67, § 2.11 (Prohibition on Assassination) ("No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."); see also W. Hays Parks, Memorandum of Law: Executive Order 12333 and Assassination, Department of the Army Pamphlet 27-50-204, December 1989, *available at* [https://www.loc.gov/rr/frd/Military\\_Law/pdf/12-1989.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/12-1989.pdf). Executive Orders are binding on government departments and agencies.

<sup>90</sup> See U.S. DEPARTMENT OF DEFENSE, LAW OF WAR MANUAL § 2.5 (2015) (revised May 2016), *available at* [www.defense.gov/Portals/1/Documents/DoD\\_Law\\_of\\_War\\_Manual-June\\_2015\\_Updated\\_May\\_2016.pdf](http://www.defense.gov/Portals/1/Documents/DoD_Law_of_War_Manual-June_2015_Updated_May_2016.pdf) ("DoD Law of War Manual") (Distinction); *id.* § 5.6 (Discrimination in Conducting Attacks).

<sup>91</sup> Considerations relevant to making this membership determination are discussed in more detail in Part Two, Section III-A. As described in that Section, in ongoing habeas litigation, the Federal courts have similarly taken a functional approach to determining which individuals are detainable under the 2001 AUMF.

<sup>92</sup> See DoD Law of War Manual, *supra* note 90, § 2.4.1.2 (Unreasonable or Excessive); *id.* § 5.12 (Proportionality—Prohibition on Attacks Expected to Cause Excessive Incidental Harm).

<sup>93</sup> See *id.* § 5.11 (Feasible Precautions in Conducting Attacks to Reduce the Risk of Harm to Protected Persons and Objects); see also Department of Defense Briefing by Operation Inherent Resolve Spokesman Col. Warren (Nov. 18, 2015), *available at* [www.defense.gov/News/Transcripts/Transcript-View/Article/630393/departement-of-defense-press-briefing-by-col-warren-via-dvids-from-baghdad-iraq](http://www.defense.gov/News/Transcripts/Transcript-View/Article/630393/departement-of-defense-press-briefing-by-col-warren-via-dvids-from-baghdad-iraq) ("In Al-Bukamal, we destroyed 116 tanker trucks, which we believe will reduce ISIL's ability to transport its stolen oil products. This is our first strike against tanker trucks, and to minimize risks to civilians, we conducted a leaflet drop prior to the strike. . . . As you can see, it's a fairly simple leaflet; it says, 'Get out of your trucks now, and run away from them.' A very simple message. And then, also, 'Warning: airstrikes are coming. Oil trucks will be destroyed. Get away from your oil trucks immediately. Do not risk your life.' And so, these are the leaflets that we dropped—about 45 minutes before the airstrikes actually began. Again, we combine these leaflet drops with very low altitude passes of some of our attack aviation, which sends a very powerful message.").

<sup>94</sup> See *infra* Part Two, Section I-C.

<sup>95</sup> See DoD Law of War Manual, *supra* note 90, § 2.2 (Military Necessity).

<sup>96</sup> *Id.* § 2.2.3.1 (Consideration of the Broader Imperatives of Winning the War); 1958 UK MANUAL ¶115 n.2 ("It is not forbidden to send a detachment or individual members of the armed forces to kill, by sudden attack, members or a member of the enemy armed forces.").



<sup>97</sup> See DoD Law of War Manual, *supra* note 90, § 2.2.3.1 (Consideration of the Broader Imperatives of Winning the War); FINAL REPORT ON THE PERSIAN GULF WAR PURSUANT TO TITLE V OF THE PERSIAN GULF CONFLICT SUPPLEMENTAL AUTHORIZATION AND PERSONNEL BENEFITS ACT OF 1991 (P.L. 102-25), 629 (April 1992), *available at* [www.ssi.army.mil](http://www.ssi.army.mil) (“A combatant force involved in an armed conflict is not obligated to offer its opponent an opportunity to surrender before carrying out an attack.”).

<sup>98</sup> DoD Law of War Manual, *supra* note 90, § 6.6 (Weapons Calculated to Cause Superfluous Injury).

<sup>99</sup> *Ex Parte Quirin*, 317 U.S. 1, 37 (1942).

<sup>100</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 519 (2004) (plurality opinion).

<sup>101</sup> See U.S. CONST. amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law . . .”).

<sup>102</sup> See U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

<sup>103</sup> See David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, to the Attorney General, *Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi* (July 16, 2010) (“Aulaqi Memo”), *available at* [https://www.justice.gov/sites/default/files/olc/pages/attachments/2015/04/02/2010-07-16\\_-\\_olc\\_aaga\\_barron\\_-\\_al\\_aulaqi.pdf](https://www.justice.gov/sites/default/files/olc/pages/attachments/2015/04/02/2010-07-16_-_olc_aaga_barron_-_al_aulaqi.pdf).

<sup>104</sup> See, e.g., *id.*; Letter from Attorney General Eric Holder to the Hon. Patrick J. Leahy, May 22, 2013 (“Holder Letter”), *available at* <https://www.justice.gov/sites/default/files/ag/legacy/2013/05/28/AG-letter-5-22-13.pdf>.

<sup>105</sup> Aulaqi Memo, *supra* note 103.

<sup>106</sup> In considering whether a senior operational leader poses an imminent threat of violent attack, the United States would consider the factors identified in Part One, Section II-B(3).

<sup>107</sup> See, e.g., Holder Letter, *supra* note 104.

<sup>108</sup> Aulaqi Memo, *supra* note 103.

<sup>109</sup> *Id.*

<sup>110</sup> *Tennessee v. Garner*, 471 U.S. 1, 8 (1985) (internal quotation marks omitted); *accord Scott v. Harris*, 550 U.S. 372, 383 (2007).

<sup>111</sup> *Garner*, 471 U.S. at 11.

<sup>112</sup> *Id.* at 11-12.

<sup>113</sup> Aulaqi Memo, *supra* note 103.

<sup>114</sup> *Id.*

<sup>115</sup> In these circumstances, the targeting of a U.S. citizen would also not violate the statutory prohibition against murder of U.S. nationals abroad, 18 U.S.C. § 1119. A lethal operation against an enemy leader that is undertaken in national self-defense or during an armed conflict, authorized by an informed, high-level official, and carried out in a manner that accords with applicable law of armed conflict principles would fall within a well established variant of the public authority justification and therefore would not be murder.

<sup>116</sup> DoD Law of War Manual, *supra* note 90, § 5.6 (Discrimination in Conducting Attacks).

<sup>117</sup> See *id.*

<sup>118</sup> See *id.* § 5.6.2 (Persons, Objects, and Locations That Are Protected From Being Made the Object of Attack).

<sup>119</sup> See *id.* § 5.7 (Objects That Are Military Objectives).

<sup>120</sup> See *id.* § 5.7.8.5 (Examples of Military Objectives—Economic Objects Associated With Military Operations).

<sup>121</sup> See, e.g., *id.* § 5.7.8.5 (Examples of Military Objectives—Economic Objects Associated With Military Operations) (“Oil refining and distribution facilities and objects associated with petroleum, oil, and lubricant products (including production, transportation, storage, and distribution facilities) have also been regarded as military objectives.”).

<sup>122</sup> E.O. 13732, *supra* note 88, § 1.

<sup>123</sup> Presidential Policy Guidance, U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities (May 22, 2013) (redacted) (“PPG”), *available at* [https://www.justice.gov/oip/foia-library/procedures\\_for\\_approving\\_direct\\_action\\_against\\_terrorist\\_targets/download](https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* § 1.C.

---

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* §§ 1-4.

<sup>130</sup> *See id.* § 7 (Congressional Notification).

<sup>131</sup> *Id.* §5.B.

<sup>132</sup> E.O. 13732, *supra* note 88.

<sup>133</sup> *Id.* § 2.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* § 3. Additionally, under the Executive Order, “[t]he Assistant to the President for National Security Affairs may, as appropriate, request that the head of any relevant agency conduct additional reviews related to the intelligence assessments of deaths from strikes against terrorist targets outside areas of active hostilities.” *Id.* § 3(d).

<sup>136</sup> *Id.* § 4.

<sup>137</sup> PPG, *supra* note 123, § 2 (Approval Process for Certain Captures and the Long-Term Disposition of Certain Suspects).

<sup>138</sup> *Id.* § 2.A.1. Additionally, the PPG requires that all nominations for capturing or otherwise taking a suspect into custody must undergo a legal review by the General Counsel of the nominating agency to determine that the suspect may lawfully be captured or taken into custody by the United States and that the operation can be conducted in accordance with applicable law. *Id.* § 2.B.4.

<sup>139</sup> *See* FINAL REPORT: GUANTANAMO REVIEW TASK FORCE (Jan. 22, 2010) (“Guantanamo Final Report”), available at <https://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>; Executive Order No. 13492, *Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities*, 74 Fed. Reg. 4897 (January 22, 2009) (“E.O. 13492”).

<sup>140</sup> Executive Order No. 13567, *Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force*, 76 Fed. Reg. 13275 (March 10, 2011) (“E.O. 13567”); *see also* 2012 NDAA, *supra* note 18, § 1033.

<sup>141</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality opinion) (internal quotations omitted).

<sup>142</sup> *See infra* Part One, Section I-A; *see also* March 13 Brief, *supra* note 13, at 1; *Hamdi*, 542 U.S. at 519 (2004) (plurality opinion).

<sup>143</sup> March 13 Brief, *supra* note 13, at 2; *see also* DoD Law of War Manual, *supra* note 90, § 4.18.4.1 (Being Part of a Hostile, Non-State Armed Group); *id.* § 5.8.3 (Persons Belonging to Non-State Armed Groups).

<sup>144</sup> March 13 Brief, *supra* note 13, at 6 (“[A]ny determination of whether an individual is part of [the armed groups that the President is authorized to detain under the AUMF] may depend on a formal or functional analysis of the individual’s role.”); *see also* *Awad v. Obama*, 608 F.3d 1, 11-12 (D.C. Cir. 2010).

<sup>145</sup> March 13 Brief, *supra* note 13, at 7 (“In each case, given the nature of the irregular forces, and the practice of their participants or members to try to conceal their affiliations, judgments about the detainability of a particular individual will necessarily turn on the totality of the circumstances.”); *see also* DoD Law of War Manual, *supra* note 90, § 4.18.4.1 (Being Part of a Hostile, Non-State Armed Group); *id.* § 5.8.3 (Persons Belonging to Non-State Armed Groups).

<sup>146</sup> *Odah v. United States*, 611 F.3d 8, 10 (D.C. Cir. 2010) (“[The 2001 AUMF] gives the United States government the authority to detain a person who is found to have been ‘part of’ al Qaeda or Taliban forces.”).

<sup>147</sup> *Ali v. Obama*, 736 F.3d 542, 546 (D.C. Cir. 2013).

<sup>148</sup> *Salahi v. Obama*, 625 F.3d 745, 751-52 (D.C. Cir. 2010) (quoting *Bensayah v. Obama*, 610 F.3d 718, 725 (D.C. Cir. 2010), judgment vacated as moot by *Bensayah v. Obama*, No. 08-5537, Order (D.C. Cir. Jan. 9, 2014)).

<sup>149</sup> *See* *Awad v. Obama*, 608 F.3d at 8 (“The government acknowledges that intention to fight is inadequate by itself to make someone ‘part of’ al Qaeda, but it is nonetheless compelling evidence when, as here, it accompanies additional evidence of conduct consistent with an effectuation of that intent.”); *see also, e.g., Al-Adahi v. Obama*, 613 F.3d 1102, 1108 (D.C. Cir. 2010); *Ali*, 736 F.3d at 546-49.

<sup>150</sup> *See, e.g., Awad*, 608 F.3d at 11; *Uthman v. Obama*, 637 F.3d 400, 404-05 (D.C. Cir. 2011); *Al Alwi v. Obama*, 653 F.3d 11, 17 (D.C. Cir. 2011); *Hussain v. Obama*, 718 F.3d 964, 968-69 (D.C. Cir. 2013); *Ali*, 736 F.3d at 546; *Odah v. United States*, 611 F.3d 8, 15-17 (D.C. Cir. 2010); *al-Bihani v. Obama*, 590 F.3d 866, 873 (D.C. Cir. 2010).

<sup>151</sup> *See, e.g., Awad*, 608 F.3d at 7-8; *Barhoumi v. Obama*, 609 F.3d 416, 425-26, 428-29 (D.C. Cir. 2010).

<sup>152</sup> *See, e.g., Barhoumi*, 609 F.3d at 425; *al-Adahi*, 613 F.3d at 1109; *Al Alwi*, 653 F.3d at 17-18; *cf. al-Bihani*, 590 F.3d at 873 n.2 (“[W]e need not rely on the evidence suggesting that Al-Bihani attended Al Qaeda training camps in Afghanistan and visited Al Qaeda guesthouses. We do note, however, that evidence supporting the military’s reasonable belief of either of those two facts with respect to a non-citizen seized abroad during the ongoing war on terror would seem to overwhelmingly, if not definitively, justify the government’s detention of such a non-citizen.”).

<sup>153</sup> See *Ali*, 736 F.3d at 546 (“As this Court has stated before, a person’s decision to stay with the members of a terrorist force at a terrorist guesthouse can be highly probative evidence that he is part of that force and thus a detainable enemy combatant. One does not generally end up at al Qaeda or other terrorist guesthouses in Afghanistan or Pakistan by mistake—either by the guest or by the host.”); see also, e.g., *Barhoumi*, 609 F.3d at 427; *al-Adahi*, 613 F.3d at 1109; *Uthman*, 637 F.3d at 406; *Al Alwi*, 653 F.3d at 17-18; *Odah*, 611 F.3d at 16; cf. *al-Bihani*, 590 F.3d at 873 n.2.

<sup>154</sup> See, e.g., *Al Alwi*, 653 F.3d at 20; *Uthman*, 637 F.3d at 405-06.

<sup>155</sup> See, e.g., *Salahi v. Obama*, 625 F.3d 745, 751 (D.C. Cir. 2010).

<sup>156</sup> *Id.* at 751-52.

<sup>157</sup> *Id.*

<sup>158</sup> See, e.g., *Uthman*, 637 F.3d at 406; *Odah*, 611 F.3d at 15-16.

<sup>159</sup> See, e.g., *Uthman*, 637 F.3d at 406; *Aliv. Obama*, 736 F.3d 542, 546 (D.C. Cir. 2013).

<sup>160</sup> See, e.g., *Hussain v. Obama*, 718 F.3d 964, 969 (D.C. Cir. 2013); *Odah*, 611 F.3d at 15-16.

<sup>161</sup> *Salahi*, 625 F.3d at 752; *Al-Adahi v. Obama*, 613 F.3d 1102, 1109 (D.C. Cir. 2010) (“When the government shows that an individual received and executed orders from al-Qaida members in a training camp, that evidence is sufficient (but not necessary) to prove that the individual has affiliated himself with al-Qaida.”); *Awad v. Obama*, 608 F.3d 1, 10-11 (D.C. Cir. 2010).

<sup>162</sup> Red Cross Commentary on Third Geneva Convention 64 (Pictet, ed. 1960), available at <http://www.icrc.org/ihl.nsf/COM/375-590007>.

<sup>163</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004) (plurality opinion) (“[W]e understand Congress’ grant of authority for the use of ‘necessary and appropriate force’ to include the authority to detain for the duration of the relevant conflict, and our understanding is based on longstanding law-of-war principles.”); *Ali*, 736 F.3d at 544 (“Detention under the AUMF may last for the duration of hostilities.”); 2012 NDAA, *supra* note 18, §1021(c)(1) (affirming authorization of detention authority “until the end of hostilities authorized by the [AUMF]”); cf. Third Geneva Convention, *supra* note 87, art. 118 (prisoners of war should be released “after cessation of hostilities.”).

<sup>164</sup> *Awad*, 608 F.3d at 11.

<sup>165</sup> *Id.*; see also *Almerfedi v. Obama*, 654 F.3d 1, 4 n.3 (D.C. Cir. 2011).

<sup>166</sup> E.O. 13492, *supra* note 139, § 4.

<sup>167</sup> Guantanamo Final Report, *supra* note 139.

<sup>168</sup> E.O. 13567, *supra* note 140; see also Fact Sheet: New Actions on Guantanamo and Detainee Policy (Mar. 7, 2011) (“New Actions”), available at <https://www.whitehouse.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guant-namo-and-detainee-policy>.

<sup>169</sup> 2012 NDAA, *supra* note 18, § 1033.

<sup>170</sup> E.O. 13567, *supra* note 168, § 3(b).

<sup>171</sup> *Id.* §3(c).

<sup>172</sup> Executive Order 13567 states that “[i]n exceptional circumstances where it is necessary to protect national security, including intelligence sources and methods, the PRB may determine that the representative must receive a sufficient substitute or summary, rather than the underlying information.” *Id.* § 3(a)(5).

<sup>173</sup> Executive Order 13491, *Ensuring Lawful Interrogations*, 74 Fed. Reg. 4893, § 3(a)(2) (Jan. 22, 2009) (“E.O. 13491”).

<sup>174</sup> *Id.* § 8.

<sup>175</sup> Department of Defense, PLAN FOR CLOSING THE GUANTANAMO BAY DETENTION FACILITY (May 23, 2016) (“Plan for Closing Guantanamo”), available at [www.defense.gov/Portals/1/Documents/pubs/GTMO\\_Closure\\_Plan\\_0216.pdf](http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf).

<sup>176</sup> Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Art. 3, Aug. 12, 1949, 6 U.S.T. 3114 (“Common Article 3”); DoD Law of War Manual, *supra* note 90, § 3.1.1.2

<sup>177</sup> Protocol Additional to the Geneva Conventions of August 12, 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 (“Additional Protocol I”).

<sup>178</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609, arts. 4-6 (“Additional Protocol II”); New Actions, *supra* note 168.

<sup>179</sup> New Actions, *supra* note 168. In particular, this comprehensive review assessed that subject to certain reservations, understandings, and declarations that were submitted to the Senate in 1987, along with refinements and additions to be submitted, Additional Protocol II was consistent with current U.S. military practice and beneficial to

U.S. national security and foreign policy interests. *See* Letter from Secretary Clinton and Secretary Gates to Senator Kerry and Senator Lugar, March 7, 2011.

<sup>180</sup> Pub. L. No. 109-148, § 1003(a) (2005), codified at 42 U.S.C. § 2000dd(a).

<sup>181</sup> E.O. 13491, *supra* note 173, § 3(a).

<sup>182</sup> *Id.* § 3(b).

<sup>183</sup> *See, e.g.*, U.S. Department of the Army, ARMY FIELD MANUAL 2-22.3, § 5-75 (September 2006) (“Army Field Manual 2-22.3”), *available at*

[www.apd.army.mil/Search/ePubsSearch/ePubsSearchDownloadPage.aspx?docID=0902c85180012142](http://www.apd.army.mil/Search/ePubsSearch/ePubsSearchDownloadPage.aspx?docID=0902c85180012142); *see also* President Barack Obama, “Remarks on the End of the War in Iraq,” Fort Bragg, North Carolina, November 14, 2011, *available at* <https://www.whitehouse.gov/the-press-office/2011/12/14/remarks-president-and-first-lady-end-war-iraq>.

<sup>184</sup> The Executive Order further provides that no officer, employee, or agent of the U.S. Government may rely on any interpretation of the law governing interrogation issued by the Department of Justice between September 11, 2001, and January 20, 2009. *See* E.O. 13491, *supra* note 173, § 1, 3(c). The Office of Legal Counsel subsequently withdrew five opinions that were encompassed by this direction in the Order. The five withdrawn memos were: Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Interrogation of al Qaeda Operative* (Aug. 1, 2002); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee* (May 10, 2005); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* (May 10, 2005); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May be Used in the Interrogation of High Value al Qaeda Detainees* (May 30, 2005); Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High-Value al Qaeda Detainees* (July 20, 2007).

<sup>185</sup> 2016 NDAA, *supra* note 27, § 1045(a) and (b).

<sup>186</sup> Although this restriction is not directly applicable to FBI, DHS, or other Federal law enforcement entities, interrogation techniques used by these authorities are fully consistent with the other humane treatment standards described above. *Id.* §1045(a)(1-2).

<sup>187</sup> *Id.* §1045(a)(6)(A)(ii). The 2016 NDAA further requires that the Secretary of Defense complete a review of Army Field Manual 2-22.3 not sooner than three years after enactment of the statute to ensure that it complies with applicable legal obligations and that authorized practices do not involve the use or threat of force. *Id.* § 1045(a)(6)(A)(i). It also requires the High-Value Detainee Interrogation Group to develop a public report on best practices for interrogations. *Id.* § 1045(a)(6)(B).

<sup>188</sup> *See, e.g., Filartiga v. Pena-Irala*, 630 F.2d 876 (2d. Cir. 1980).

<sup>189</sup> Common Article 3, *supra* note 176, ¶ 1(a), (c) (“The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; [...] (c) outrages upon personal dignity, in particular humiliating and degrading treatment.”).

<sup>190</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (“ICCPR”). Article 7 of the ICCPR states: “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

<sup>191</sup> The United States issued reservations, understandings, and declarations upon its ratification of the ICCPR, which are available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en). The United States’ long-held position is that the ICCPR applies only to individuals who are *both* within the territory of a state *and* within that State Party’s jurisdiction. This position is based on the best reading of the text of the Covenant, an application of longstanding international principles of treaty interpretation, and the treaty’s negotiating history.

<sup>192</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (“UNCAT”). The United States issued reservations, understandings, and declarations upon its



ratification of the UNCAT, which are available at

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en#23](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en#23).

<sup>193</sup> Article 2.1 of the UNCAT states: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

<sup>194</sup> Article 4 of the UNCAT states: “1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

<sup>195</sup> Article 12 of the UNCAT states: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

<sup>196</sup> 18 U.S.C § 2340 *et seq.*

<sup>197</sup> Article 2.2 of the UNCAT specifically provides that neither “a state of war [n]or a threat of war . . . may be invoked as a justification for torture.”

<sup>198</sup> For example, although Article 14 of the Convention contemplates an enforceable right to fair and adequate compensation for victims of torture, it would be anomalous under the law of armed conflict to provide individuals detained as enemy belligerents with a judicially enforceable individual right to a claim for monetary compensation against the Detaining Power for alleged unlawful conduct. The Geneva Conventions contemplate that claims related to the treatment of POWs and Protected Persons are to be resolved on a state-to-state level, and war reparations claims have traditionally been, and as a matter of customary international law are, the subject of government-to-government negotiations as opposed to private lawsuits.

<sup>199</sup> Besides these areas, whether the Convention applies with respect to particular territory is context-specific and would vary depending on the facts and circumstances. For example, occupied territory would likely be considered “territory under (a state’s) jurisdiction” for the purposes of the Convention if the occupying power exercises the requisite control as a governmental authority in the occupied territory.

<sup>200</sup> 2016 NDAA, *supra* note 27, § 1045(a)(1-2). E.O. 13491, *supra* note 173, § 3(b).

<sup>201</sup> 2016 NDAA, *supra* note 27, § 1045(a)(5). E.O. 13491, *supra* note 173, § 3(b). After extensive consultation with representatives of the U.S. Armed Forces, the Intelligence Community, and some of the United States’ most experienced and skilled interrogators, a Special Task Force appointed by the President concluded that the Army Field Manual provides appropriate guidance for military interrogators and that no additional or different guidance was necessary for other agencies. These conclusions rested on the Special Task Force’s unanimous assessment that the practices and techniques identified by the Army Field Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations. The Special Task Force identified a need for further research on interrogation methods, and the High-Value Detainee Interrogation Group was subsequently charged with sponsoring and coordinating that research.

<sup>202</sup> With respect to intelligence interrogations, the specifically prohibited actions include, among other things: forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee or using duct tape over the eyes; applying beatings, electronic shock, burns, or other forms of physical pain; “waterboarding”; using military working dogs; inducing hypothermia or heat injury; conducting mock executions; and depriving the detainee of necessary food, water, or medical care. *See* Army Field Manual 2-22.3, *supra* note 183, § 5-75.

<sup>203</sup> 2016 NDAA, *supra* note 27, §1045(a)(6)(ii).

<sup>204</sup> The 18 techniques are (1) Direct Approach; (2) Incentive Approach; (3) Emotional Love Approach; (4) Emotional Hate Approach; (5) Emotional Fear-Up Approach; (6) Emotional Fear-Down Approach; (7) Emotional Pride and Ego-Up Approach; (8) Emotional Pride and Ego-Down Approach; (9) Emotional Futility; (10) We Know All; (11) File and Dossier; (12) Establish Your Identity; (13) Repetition; (14) Rapid Fire; (15) Silent; (16) Change of Scenery; (17) Mutt and Jeff; and (18) False Flag. *See* Army Field Manual 2-22.3, *supra* note 183.

<sup>205</sup> Army Field Manual 2-22.3, *supra* note 183, Appendix M, ¶ M-7. Section M-30 of the Manual requires that “use of separation must not preclude the detainee getting four hours of continuous sleep every 24 hours.” This four-hour standard is a minimum standard, and it would not allow, for example, 40 continuous hours of interrogation with only four hours of sleep on either end. Nothing in the Army Field Manual, including Appendix M, authorizes or condones the use of sleep manipulation or sensory deprivation, and all techniques, including separation, must be applied in a manner consistent with the prohibition on torture and CIDTP.

<sup>206</sup> E.O. 13491 prohibits the CIA from operating any detention facilities, and it required the CIA to close as expeditiously as possible any detention facilities that it may have operated at the time. E.O. 13491, *supra* note 173, § 4(a).

<sup>207</sup> Department of Defense Directive 3115.09, *DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning*, Nov. 15, 2013, available at [www.dtic.mil/whs/directives/corres/pdf/311509p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf).

<sup>208</sup> DoD Directive 2310.01E, *DoD Detainee Program*, Aug. 19, 2014 (“DoD Directive 2310.01E”), available at [www.jag.navy.mil/distrib/instructions/DoDD2310.01E\\_Detainee\\_Program.pdf](http://www.jag.navy.mil/distrib/instructions/DoDD2310.01E_Detainee_Program.pdf).

<sup>209</sup> For example, the National Defense Authorization Act for Fiscal Year 2010 prohibited contractor personnel from interrogating any individual “under the effective control of DOD or otherwise under detention in a DOD facility in connection with hostilities” unless the Secretary of Defense determines that a waiver to this provision is vital to U.S. national security interests. Pub. L. 111-84, 123 Stat. 2190 (2009). DoD Directive 3115.09 implements that provision and further provides that, in cases in which the Secretary of Defense does waive the prohibition, any contract interrogators must be trained and certified, must be monitored in real time by DoD military or civilian personnel, must submit interrogation plans for approval, and may not be placed in charge of interrogation operations or facilities.

<sup>210</sup> PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE U.N. COMMITTEE AGAINST TORTURE, Third-Fifth Reports, ¶ 32, Aug. 12, 2013, available at [www.state.gov/documents/organization/213267.pdf](http://www.state.gov/documents/organization/213267.pdf); U.S. Department of Defense, *Medical Program Support for Detainee Operations*, Instruction 2310.08E, June 6, 2006, available at <http://www.dtic.mil/whs/directives/corres/pdf/231008p.pdf>. DoD Instruction 2310.08E also “[r]eaffirms the responsibility of health care personnel to protect and treat, in the context of a professional treatment relationship and established principles of medical practice, all detainees in the control of the Armed Forces during military operations. This includes enemy prisoners of war, retained personnel, civilian internees, and other detainees.” And it establishes reportable incident requirements related to observed or suspected violation of applicable standards for treatment of detainees. In addition, Department of Defense policy supports the preservation of life by appropriate clinical means, in a humane manner, and in accordance with all applicable laws. To that end, the Department of Defense has established clinically appropriate procedures to address the medical care and treatment of individual detainees experiencing the adverse health effects of clinically significant weight loss, including those individuals who are engaged in hunger strikes. Involuntary feeding is used only as a last resort if necessary to address significant health issues caused by malnutrition and/or dehydration, and it is never used as a form of punishment. These procedures are administered in accordance with all applicable domestic and international laws pertaining to humane treatment.

<sup>211</sup> 2016 NDAA, *supra* note 27, § 1045(b)(1). Because this provision is applicable where individuals are detained in any “armed conflict,” it does not apply in routine criminal cases.

<sup>212</sup> The Executive Order requires that all agencies of the U.S. Government provide the ICRC with such notification of and access to any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the U.S. Government or detained within a facility owned, operated, or controlled by a department or agency of the U.S. Government, consistent with Department of Defense regulations and policies.

<sup>213</sup> DoD Directive 2310.01E, *supra* note 208.

<sup>214</sup> The Principles were concluded in 2012. The Copenhagen Principles are non-legally binding principles developed over a five-year process by 24 governments and are intended to lay out good practices for States and international organizations that detain persons in the course of international military operations and in situations of non-international armed conflict. The Principles are available at [www.um.dk/en](http://www.um.dk/en).

<sup>215</sup> Additionally, law-of-armed-conflict detention authority pursuant to the 2001 AUMF may not be an available legal option if a suspected terrorist is not part of an organization determined to be covered by the 2001 AUMF.

<sup>216</sup> See, e.g., PPG, *supra* note 123, § 2.D.

<sup>217</sup> *United States v. Hamidullin*, No. 3:14-cr-140 (E.D. Va.) (sentenced to life imprisonment, Dec. 3, 2015), *appeal pending*, No. 15-4788 (4th Cir.).

<sup>218</sup> *United States v. Ghailani*, No. 98-cr-1023 (S.D.N.Y.) (sentenced to life imprisonment, Jan. 25, 2011), *conviction and sentence aff’d*, 733 F.3d 29 (2d Cir. 2013).

<sup>219</sup> *United States v. Warsame*, No. 11-cr-559 (S.D.N.Y.) (notice of plea agreement filed with the court on Mar. 26, 2013).

<sup>220</sup> See, e.g., 18 U.S.C. § 2332a, b, f (prohibiting uses of weapons of mass destruction, terrorism offenses, and bombings of certain facilities).

<sup>221</sup> *Id.* § 2339a-b.

<sup>222</sup> *Id.* § 373 (prohibiting solicitation of certain violent offenses).

<sup>223</sup> *Id.* § 371 (prohibiting conspiracies to commit Federal offenses); *id.* § 956 (prohibiting conspiracies to commit certain violent offenses overseas).

<sup>224</sup> See, e.g., Intelligence Reform and Terrorism Prevention Act of 2004, § 6603(c)-(d), Pub. L. No. 108-458 (amending the material support statute to include jurisdiction for offenses committed extraterritorially); USA

FREEDOM Act § 704, Pub. L. No. 114-23 (2015) (enhancing the maximum penalty under 18 U.S.C. § 2339b from 15 years to 20 years).

<sup>225</sup> See, e.g., 18 U.S.C. § 924(b) (prohibiting the transport or receipt of firearms in interstate commerce where the firearm would be used to commit a felony); *id.* § 1001(a) (prohibiting material misrepresentations to Federal investigators and providing an enhanced penalty if the offense under investigation involves international or domestic terrorism).

<sup>226</sup> See Classified Information Procedures Act, Pub. L. No. 96-456 (1980), codified at 18 U.S.C. App. 3.

<sup>227</sup> See *New York v. Quarles*, 467 U.S. 649 (1984).

<sup>228</sup> The Attorney General has also issued related guidance for prosecutors, which has been released in response to a FOIA request and is available at [www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-miranda-rights.pdf](http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-miranda-rights.pdf).

<sup>229</sup> See, e.g., *United States v. Abdulmutallab*, 2011 WL 4345243 (E.D. Mich. Sept. 16, 2011) (holding that the *Quarles* public safety exception applied to statements made by Umar Farouk Abdulmutallab when he was questioned by officers at a hospital on the day he was taken into custody for attempting to detonate a bomb on an airliner). Abdulmutallab subsequently pleaded guilty to all charges against him.

<sup>230</sup> A provision of the 2012 NDAA, *supra* note 18, § 1022, sets forth a requirement that certain individuals captured in the course of hostilities be held in military custody pending disposition under the laws of armed conflict. The provision applies to individuals who would be eligible for detention under the 2001 AUMF and who are determined to be (1) part of al-Qa'ida or an associated force and (2) to have participated in planning or carrying out an attack or attempted attack against the United States or its coalition partners. U.S. citizens are exempt from this provision, *see id.* § 1022(b)(1), and the President has been given authority to issue waivers on the basis of national security and to design implementing procedures, *id.* § 1022(a)(4), (c). Presidential Policy Directive 14, issued publicly by the President on February 28, 2012, sets forth the procedures for determining whether military custody is required for non-citizens detained by U.S. authorities. It contains several categorical national security waivers, including where the placement of another country's nationals in U.S. military custody would impede counterterrorism cooperation with that country or would interfere with efforts to secure that individual's cooperation. The military custody requirement is also waived for lawful permanent residents of the United States who are arrested in the United States or by U.S. authorities overseas based on conduct taking place in the United States. Where an individual is arrested by law enforcement authorities, the Attorney General, with the concurrence of other cabinet-level officials, is responsible for making a final determination as to whether he or she is covered by the provision. The Attorney General may also issue individualized waivers on a case-by-case basis. (Where an individual is captured or detained by the U.S. military, the requirements of § 1022 are deemed satisfied.)

<sup>231</sup> Pub. L. No. 111-84 §§1801-07 (2009), codified at 10 U.S.C. §§ 948a-950t ("2009 MCA").

<sup>232</sup> 10 U.S.C. § 948(r).

<sup>233</sup> *Id.* § 949l(c).

<sup>234</sup> *Id.* § 948k.

<sup>235</sup> *Id.* § 949c(b)(6).

<sup>236</sup> *Id.* § 949j(a).

<sup>237</sup> *Id.* § 949j(b).

<sup>238</sup> *Id.* § 950(g).

<sup>239</sup> Common Article 3, *supra* note 176.

<sup>240</sup> 2009 MCA, *supra* note 231, §§ 948d, 950t.

<sup>241</sup> 10 U.S.C. § 948a, c.

<sup>242</sup> Unlike the alleged plotters of the September 11th attacks and Al-Nashiri, the charges against Al-Iraqi were referred to a military commission not authorized to issue a capital sentence.

<sup>243</sup> *Hamdan v. United States*, 696 F.3d 1238 (D.C. Cir. 2012), *overruled in part*, *Al Bahlul v. United States*, 767 F.3d 1, 11-17 (D.C. Cir. 2014) (en banc).

<sup>244</sup> *Bahlul v. United States*, 2016 WL 6122778 (D.C. Cir. Oct. 20, 2016) (en banc) (per curiam). As of this writing, it is unknown whether Bahlul will seek further review before the Supreme Court.

<sup>245</sup> See *In re Khadr*, 823 F.3d 92 (D.C. Cir. 2016) (denying petition for writ of mandamus to the U.S. Court of Military Commission Review).

<sup>246</sup> See Office of Military Commissions (2016), [www.mc.mil](http://www.mc.mil).

<sup>247</sup> Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), §2242(a) (8 U.S.C. § 1231 note); *see also Omar v. McHugh*, 646 F.3d 13, 18 (D.C. Cir. 2011); *Kiyemba v. Obama*, 561 F.3d 509, 513-15 (D.C. Cir. 2009); Reply Brief for the Federal Parties on Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit, *Geren v. Omar*, 2008 WL 727815, at 24-25 (U.S. 2008) (Nos. 07-394, 06-1666).

---

<sup>248</sup> Plan for Closing Guantanamo, *supra* note 175 .

<sup>249</sup> 8 U.S.C. § 1231 note.

<sup>250</sup> As discussed in Part Two, Section V-D, Article 3.1 of the UNCAT states that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

<sup>251</sup> E.O. 13491, *supra* note 173, §5.

<sup>252</sup> Office of Public Affairs, U.S. Department of Justice, *Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President*, Aug. 24, 2009, available at <https://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>.

<sup>253</sup> 2016 NDAA, *supra* note 27, § 1034(b)(1), (b)(2)(C).

<sup>254</sup> Plan for Closing Guantanamo, *supra* note 175 .

<sup>255</sup> See sources cited in *supra* note 192. The United States issued reservations, understandings, and declarations upon its ratification of the UNCAT, which are available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en#23](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en#23).

<sup>256</sup> The United States is not a party to the 1951 Convention Relating to the Status of Refugees. But in 1968, it became a party to the 1967 Protocol Relating to the Status of Refugees, which incorporates Articles 2-34 of the Convention. See Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; Protocol to the Convention relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

<sup>257</sup> See, e.g., *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).

<sup>258</sup> See 8 C.F.R. §§ 208.16-208.18, 1208.16-18 (related to immigration removal proceedings); 22 C.F.R. § 95.1-95.4 (related to extradition proceedings).

<sup>259</sup> John Bellinger, Legal Adviser to the Department of State, Testimony Before the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight, June 10, 2008; Reply Brief for the Federal Parties on Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit, *Geran v. Omar*, 2008 WL 727815, at 24-25 (U.S. 2008) (Nos. 07-394, 06-1666).



# Exhibit 17

~~TOP SECRET//NOFORN~~

May 22, 2013

PROCEDURES FOR APPROVING DIRECT ACTION AGAINST TERRORIST TARGETS  
LOCATED OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES

This Presidential Policy Guidance (PPG) establishes the standard operating procedures for when the United States takes direct action, which refers to lethal and non-lethal uses of force, including capture operations, against terrorist targets outside the United States and areas of active hostilities.

Any direct action must be conducted lawfully and taken against lawful targets; wherever possible such action will be done pursuant to a [REDACTED] plan. In particular, whether any proposed target would be a lawful target for direct action is a determination that will be made in the first instance by the nominating department's or agency's counsel (with appropriate legal review as provided below) based on the legal authorities of the nominating department or agency and other applicable law. Even if the proposed target is lawful, there remains a separate question whether the proposed target should be targeted for direct action as a matter of policy. That determination will be made pursuant to the interagency review process and policy standards set forth in this PPG. The most important policy objective, particularly informing consideration of lethal action, is to protect American lives.

Capture operations offer the best opportunity for meaningful intelligence gain from counterterrorism (CT) operations and the mitigation and disruption of terrorist threats. Consequently, the United States prioritizes, as a matter of policy, the capture of terrorist suspects as a preferred option over lethal action and will therefore require a feasibility assessment of capture options as a component of any proposal for lethal action. Lethal action should be taken in an effort to prevent terrorist attacks against U.S. persons only when capture of an individual is not feasible and no other reasonable alternatives exist to effectively address the threat. Lethal action should not be proposed or pursued as a punitive step or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Capture is preferred even in circumstances where neither prosecution nor third-country custody are available disposition options at the time.

CT actions, including lethal action against designated terrorist targets, shall be as discriminating and precise as reasonably possible. Absent extraordinary circumstances, direct action against an identified high-value terrorist (HVT) will be taken only when there is near certainty that the individual being targeted is in fact the lawful target and located at the place where the action will occur. Also absent extraordinary circumstances, direct action will be taken only if there is near certainty that the action can be taken without injuring or killing non-combatants. For purposes of this PPG, non-combatants are understood to be individuals who may not be made the object of attack under the law of armed conflict. The term "non-combatant" does not include an individual who is targetable as part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense. Moreover, international legal principles, including respect for a state's sovereignty and the laws of war, impose important constraints on the ability of the United States to act

~~TOP SECRET//NOFORN~~

[REDACTED]

~~TOP SECRET//NOFORN~~

unilaterally – and on the way in which the United States can use force – in foreign territories. Direct action should only be undertaken [REDACTED]

As reflected in the procedures contained in this PPG, whenever possible and appropriate, decisions regarding direct action will be informed by departments and agencies with relevant expertise, knowledge, and equities, [REDACTED], as well as by coordinated interagency intelligence analysis. Such interagency coordination and consultation will ensure that decisions on operational matters of such importance are well-informed and will facilitate de-confliction among departments and agencies addressing overlapping threat streams. Such coordination is not intended to interfere with the traditional command and control authority of departments and agencies conducting CT operations.

Lastly, when considering potential direct action against a U.S. person under this PPG, there are additional questions that must be answered. The Department of Justice (DOJ), for example, must conduct a legal analysis to ensure that such action may be conducted against the individual consistent with the laws and Constitution of the United States.

Based on the principles and priorities described above, Section 1 sets forth the procedure for establishing [REDACTED] plan for taking direct action against terrorist targets. Section 2 sets forth the approval process for the capture and long-term disposition of suspected terrorists. Section 3 sets forth the policy standard and procedure for designating identified HVTs for lethal action. Section 4 sets forth the policy standard and procedure for approving lethal force against terrorist targets other than identified HVTs.<sup>1</sup> Section 5 sets forth the procedures for approving proposals that vary from the policy guidance otherwise set forth in this PPG. Section 6 sets forth the procedure for after-action reports. Section 7 addresses congressional notification. Section 8 sets forth general provisions.

## **SECTION 1. Procedure for Establishing a [REDACTED] Plan for taking Direct Action Against Terrorist Targets**

### **1.A Operational Plans for Taking Direct Action Against Terrorist Targets**

Each of the operating agencies may propose a detailed operational plan to govern their respective direct action operations [REDACTED] against: (1) suspected terrorists who may be lawfully detained; (2) identified HVTs who may be lawfully targeted for lethal action; or (3) lawful terrorist targets other than identified HVTs.

### **1.B Interagency Review of Operational Plans**

All operational plans to undertake direct action operations against terrorist targets [REDACTED] must undergo a legal review by the general counsel(s) of the operating

<sup>1</sup> This PPG does not address lawful and properly authorized activities that may have lethal effects, which are incidental to the primary purpose of the operation.

~~TOP SECRET//NOFORN~~

~~TOP SECRET/NOFORN~~

agency executing the plan, and be submitted to the National Security Staff (NSS) for interagency review. All proposed operational plans must conform to the policy standards set forth in this Section. All proposed operational plans to undertake direct action against terrorist targets [REDACTED] along with the conclusions of the General Counsel, shall be referred to the NSS Legal Adviser. The NSS Legal Adviser and the General Counsel of the proposing operating agency shall consult with other department and agency counsels, as necessary and appropriate. The NSS Legal Adviser shall submit the relevant legal conclusions to the Deputies Committee to inform its consideration of the proposed operational plan. All proposed operational plans to undertake direct action against terrorist targets [REDACTED] will be reviewed by appropriate members of the Deputies and Principals Committees of the National Security Council (NSC) (defined in Presidential Policy Directive-1 or any successor directive) before presentation to the President for decision.

### 1.C Guidelines for Operational Plans

Any operational plan for taking direct action against terrorist targets [REDACTED] shall, among other things, indicate with precision:

- 1) The U.S. CT objectives to be achieved;
- 2) The duration of time for which the authority is to remain in force;
- 3) The international legal basis for taking action [REDACTED];
- 4) The strike and surveillance assets that may be employed when taking action against an authorized objective;
- 5) [REDACTED]
- 6) Any proposed stipulation related to the operational plan, including the duration of authority for such stipulation;
- 7) Any proposed variations from the policies and procedures set forth in this PPG; and
- 8) The conditions precedent for any operation, which shall include at a minimum the following: (a) near certainty that an identified HVT or other lawful terrorist target other than an identified HVT is present; (b) near certainty that non-combatants will not be injured or killed; (c) [REDACTED]<sup>2</sup> and (d) if lethal force is being employed: (i) an assessment that capture is not feasible at the time of the operation; (ii) an assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and (iii) an assessment that no other reasonable alternatives to lethal action exist to effectively address the threat to U.S. persons.

<sup>2</sup> Operational disagreements [REDACTED] shall be elevated to Principals. The President will adjudicate any disagreement among or between Principals.



~~TOP SECRET//NOFORN~~

**1.D Additional Requirements When Requesting Authority for Directing Lethal Force Against Targets Other Than Identified HVTs**

When requesting authority to direct lethal force against terrorist targets other than identified HVTs, the [REDACTED] plan shall also include the following:

- 1) The types of targets that would qualify as appropriate targets pursuant to Section 4 (Terrorist Targets Other Than Identified HVTs) for purposes of the proposed operational plan; and
- 2) A description of the operating agency's internal process for nominating and approving the use of lethal force against terrorist targets other than identified HVTs.

**1.E Policies and Procedures**

The operating agencies shall establish harmonized policies and procedures for assessing:

- 1) Near certainty that a lawful target is present;
- 2) Near certainty that non-combatants will not be injured or killed; and
- 3) With respect to a proposal to take direct action against terrorist targets other than identified HVTs, whether the target qualifies pursuant to the policy standard set forth in Section 4.A of this PPG and in the specific operational plan.

**1.F When Using Lethal Action, Employ All Reasonably Available Resources to Ascertain the Identity of the Target**

When the use of lethal action is deemed necessary, departments and agencies of the United States Government must employ all reasonably available resources to ascertain the identity of the target so that action can be taken, for example, against identified HVTs in accordance with Section 3 of this PPG. Verifying a target's identity before taking lethal action ensures greater certainty of outcome that lethal action has been taken against identified HVTs who satisfy the policy standard for lethal action in Section 3.A.

**1.G Principals and Deputies Review of Operational Plans for Taking Direct Action Against Terrorists Targets [REDACTED]**

When considering a proposed operational plan, Principals and Deputies shall evaluate the following issues, along with any others they deem appropriate:

- 1) The implications for the broader regional and international political interests of the United States; and
- 2) For an operational plan that includes the option of lethal force against targets other than identified HVTs, an explanation of why authorizing direct action against targets other than identified HVTs is necessary to achieve U.S. policy objectives.

~~TOP SECRET//NOFORN~~**1.H Presentation to the President**

1.H.1 If the Principal of the nominating operating agency, after review by Principals and Deputies, continues to support the operational plan, the plan shall be presented to the President for decision, along with the views expressed by departments and agencies during the NSC process.

1.H.2 An appropriate NSS official will communicate, in writing, the President's decision, including any terms or conditions placed on any approval, to appropriate departments and agencies.

**1.I Amendments or Modifications to Operational Plans**

Except as described in Section 5, any amendments or modifications to an approved operational plan for direct action [REDACTED] shall undergo the same review and approval process outlined in this Section.

**SECTION 2. Approval Process for Certain Captures and the Long-Term Disposition of Certain Suspects**

This Section sets forth the approval process for nominating for capture suspected terrorists or individuals providing operational support to suspected terrorists (in this section, together referred to as "suspects"); proposals to take custody of suspects, including pre- and post-capture screening; [REDACTED] and determining a long-term disposition for suspects.

Unless otherwise approved in an operational plan under Section 1, the NSS shall coordinate for interagency review under this PPG, as described below, the following: (1) operations intended to result [REDACTED] (2) operations that result in United States Government personnel taking custody (through a capture or transfer)<sup>3</sup> of a suspect located overseas and outside areas of active hostilities; and (3) long-term disposition decisions with respect to such suspects. The involvement of United States Government personnel in extraditions or transfers initiated for the purpose of prosecution in civilian court or those scenarios to which PPD-14 applies (i.e., circumstances in which an individual is arrested or otherwise taken into custody by the Federal Bureau of Investigation (FBI) or another Federal law enforcement agency)<sup>4</sup> are not covered by this PPG.

**Captures and Transfers by Foreign Governments:** These procedures do not apply to U.S. law enforcement requests for foreign governments to arrest or otherwise take into custody a suspect

<sup>3</sup> "Custody," as referred to here, [REDACTED] it is anticipated that the United States Government will have temporary or transitory custody of the individual(s) without the presence of officials of the foreign government maintaining custody of the detainee(s).

<sup>4</sup> Consistent with existing policy and practice, DOJ will, as appropriate, continue to notify the NSS, through the Counterterrorism Security Group (CSG), of plans to arrest, or seek the extradition or transfer of, a suspected terrorist, and where appropriate (e.g., to consider other potential disposition options) the NSS, in consultation with DOJ, may arrange for interagency consideration of a request for extradition or transfer.

~~TOP SECRET//NOFORN~~

~~TOP SECRET//NOFORN~~

or to United States Government provision of training, funds, or equipment to enable a foreign government to capture a suspect. These procedures also do not apply to non-law enforcement United States Government requests to capture a suspect who will remain in the custody of the foreign government or to the provision of actionable intelligence to enable such captures. Every 6 months, departments and agencies shall notify the NSS of any requests made of a foreign government to capture a suspect in the preceding 6 months. Unless covered by the exceptions above or otherwise included in an operational plan under Section 1, if United States Government personnel [REDACTED] capture a suspect, or an operation is intended to result in United States Government personnel taking custody of a suspect, the department or agency must submit a proposal through the NSS for interagency review. Operational plans [REDACTED] may include additional conditions requiring interagency review of capture operations involving United States Government personnel, depending on the policy consideration of the particular country or region in which the operations would occur. If United States Government personnel are expected [REDACTED] to capture or transfer suspects in a particular country or region on an ongoing basis, the department or agency involved should seek to include a proposed plan for such activities in the operational plan approved under Section 1.

## 2.A Nomination Process

2.A.1 Any department or agency participating in the Deputies Committee review in Section 2.D may identify an individual for consideration, but only an operating agency or DOJ ("nominating agencies" for purposes of Section 2 of this PPG) may formally request that a suspect be considered for capture or custody by U.S. personnel. Additionally, a department or agency that has captured a suspect, or that plans to capture or otherwise take custody of a suspect, shall, whenever practicable, propose a long-term disposition for such individual. Prior to requesting that an individual be considered for capture or custody by the United States, the nominating agency must confirm with its General Counsel that the operation can be conducted lawfully, but it is not necessary to have resolved the long-term disposition plan prior to proposing a capture operation.

2.A.2 Whenever possible, the nominating agency shall notify the Interagency Disposition Planning Group prior to such a request.

2.A.3 A nomination for custody, including capture, or a proposed long-term disposition under Section 2.A.1 shall be referred to the NSS, which shall initiate the screening process described in Section 2.B.

2.A.4 In the event initial screening under Section 2.B has not taken place prior to U.S. personnel taking custody of a suspect, the process for screening after capture described in Section 2.C shall be initiated.

[REDACTED]

~~TOP SECRET//NOFORN~~



~~TOP SECRET/NOFORN~~

**2.B Screening Prior to a Capture Operation**

2.B.1 The nominating agency shall prepare a profile for each suspect referred to the NSS for review of a proposal to capture or otherwise take custody of the individual. The profile shall be developed based upon all relevant disseminated information available to the Intelligence Community (IC), as well as any other information needed to present as comprehensive and thorough a profile of the individual as possible. The profile should explain any difference of views among the IC and note, where appropriate, gaps in existing intelligence, as well as inconclusive and contradictory intelligence reports. At a minimum, each individual profile shall include the following information to the extent that such information exists:

[REDACTED]

2.B.2 Once the profile has been completed, the nominating agency shall provide the profile to the NSS Senior Director for Counterterrorism.

2.B.3 Whenever time permits, the Interagency Disposition Planning Group shall assess the availability, including the strengths and weaknesses, of potential disposition options.

2.B.4 All nominations under this Section for capturing or otherwise taking a suspect into custody must undergo a legal review by the General Counsel of the nominating agency to determine that the suspect may lawfully be captured or taken into custody by the United States and that the operation can be conducted in accordance with applicable law. The General Counsel's conclusions shall be referred to the NSS Legal Adviser. The NSS Legal Adviser and the General Counsel of the nominating agency shall consult with other department and agency counsels, as necessary and appropriate. In addition, in the event that the suspect who has been

~~TOP SECRET/NOFORN~~

~~TOP SECRET//NOFORN~~

nominated is a U.S. person, DOJ shall conduct a legal analysis to ensure that the operation may be conducted consistent with the laws and Constitution of the United States. The NSS Legal Adviser shall submit the relevant legal conclusions to the Deputies Committee to inform its consideration of the nomination.

2.B.5 The NSS shall convene a Restricted Counterterrorism Security Group (RCSG)<sup>6</sup> for the purpose of reviewing and organizing material and addressing any issues related to the nomination of an individual for capture, custody, or long-term disposition. Before forwarding to the Deputies the nomination of a suspect for capture or to otherwise be taken into custody, the RCSG shall identify whether any other material is needed for Deputies' consideration of the nomination and issue taskings to departments and agencies, as appropriate. For each nomination, the NSS will request, and the National Counterterrorism Center (NCTC) shall conduct, an assessment of the suspect and provide that assessment to the NSS prior to consideration of the nomination or proposed long-term disposition by the Deputies Committee, and where feasible, prior to RCSG review. The NSS will be responsible for ensuring that all necessary materials, including the profile developed by the nominating agency and the NCTC assessment, are included in the nomination package submitted to Deputies.

## 2.C Screening After Capture

2.C.1 Whenever feasible, initial screening by the United States of suspects taken into U.S. custody should be conducted before the United States captures or otherwise takes custody of the suspect, as set out in Section 2.B.

2.C.2 In the event initial screening cannot be conducted before the United States takes custody of the individual, immediately after capturing or otherwise taking custody of the suspect, appropriate U.S. personnel shall screen the individual to ensure that the correct individual has been taken into custody and that the individual may be lawfully detained. Such screening shall be conducted consistent with the laws and policies applicable to the authorities pursuant to which the individual is being detained, and [REDACTED]

2.C.3 [REDACTED]

2.C.4 In the event that the suspect is detained pursuant to law of war authorities by the U.S. military and additional time is needed for purposes of intelligence collection or the development of a long-term disposition option, the Secretary of Defense or his designee, following appropriate interagency consultations coordinated through the NSC process, may approve an extension of the screening period [REDACTED] subject to the following:

---

<sup>6</sup> The RCSG shall be chaired by the NSS Senior Director for Counterterrorism and shall include the following departments and agencies: the Department of State, the Department of the Treasury, DOD, DOJ, the Department of Homeland Security (DHS) [REDACTED], CIA, Joint Chiefs of Staff (JCS), [REDACTED] and NCTC. Additional departments and agencies may participate in the RCSG meetings, as appropriate.

~~TOP SECRET/NOFORN~~

- 1) The suspect's detention must be consistent with U.S. law and policy, as well as all applicable international law;
- 2) [REDACTED]
- 3) The International Committee of the Red Cross must be notified of, and provided timely access to, any suspect held by the U.S. military pursuant to law of war authorities; and
- 4) When possible and consistent with the primary objective of collecting intelligence, intelligence will be collected in a manner that preserves the availability of long-term disposition options, including prosecution.

## 2.D Deputies Review

2.D.1 A nomination or disposition package for capture, custody, or long-term disposition forwarded to the Deputies shall include the following:

- 1) The profile, produced by the nominating agency pursuant to Section 2.B.1, for the suspect or suspects proposed for capture or long-term disposition;
- 2) Any assessment produced by NCTC pursuant to Section 2.B.5;
- 3) If appropriate, a description of the planned capture and screening operation and [REDACTED] operational plan under which the capture would be conducted;
- 4) The department(s) or agency or agencies that would be responsible for carrying out the proposed operation, if not already conducted;
- 5) A summary of the legal assessment prepared under Section 2.B.4; and
- 6) An assessment, including the strengths and weaknesses, of potential long-term disposition options.

2.D.2 The Deputies of the Department of State, the Treasury, DOD, DOJ, DHS, the Office of the Director of National Intelligence (DNI), [REDACTED], CIA, JCS, [REDACTED], NCTC, and any other Deputies or officials a Deputy National Security Advisor (DNSA) may invite to participate, shall promptly consider whether to recommend to the Principal of the nominating agency that a capture operation be conducted in the context of the proposed plan at issue, that the United States Government otherwise take custody of the individual, or that a particular long-term disposition option be pursued.

2.D.3 When considering a proposed nomination, the Deputies shall evaluate the following issues, and any others deemed appropriate by the Deputies:

~~TOP SECRET/NOFORN~~





---

2.E.2 An appropriate NSS official will communicate in writing the decision taken, including any terms or conditions placed on such decisions, to the Deputies who participated in the Deputies Committee review of the nomination.

**SECTION 3. Policy Standard and Procedure for Designating Identified HVTs for Lethal Action**

**3.A Policy Standard for the Use of Lethal Action Against HVTs**

Where the use of lethal action against HVTs has been authorized [REDACTED], an individual whose identity is known will only be eligible to be targeted, as a policy matter, consistent with the requirements of the approved operational plan [REDACTED], if the individual's activities pose a continuing, imminent threat to U.S. persons.

**3.B Necessary Preconditions for Taking Lethal Action**

Lethal action requires that the individual may lawfully be targeted under existing authorities and that any conditions established in the appropriate operational plan, including those set forth in Section 1.C.8, are met. The preconditions set forth in Section 1.C.8 for the use of lethal force are as follows: (a) near certainty that an identified HVT is present; (b) near certainty that non-combatants will not be injured or killed; (c) [REDACTED];<sup>7</sup> (d) an assessment that capture is not feasible at the time of the operation;<sup>8</sup> (e) an assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and (f) an assessment that no other reasonable alternatives to lethal action exist to effectively address the threat to U.S. persons.

**3.C Interagency Review Process**

3.C.1 Any department or agency participating in the Deputies Committee review in Section 3.D may identify an individual for consideration, but only the operating agencies (also known as the "nominating agencies" for purposes of Section 3 of this PPG) may formally propose that an individual be nominated for lethal action following confirmation from the General Counsel of the nominating agency that the individual would be a lawful target.

3.C.2 The nominating agency shall prepare a profile for each individual nominated for lethal action. The profile shall be developed based upon all relevant disseminated information available to the IC, as well as any other information needed to present as comprehensive and thorough a profile of the individual as possible. The profile shall note, where appropriate, gaps

---

<sup>7</sup> Operational disagreements [REDACTED] are to be elevated to Principals. The President will adjudicate any disagreement among or between Principals.

<sup>8</sup> This process is designed to review nominations of individuals only where the capture of any individual at issue is not feasible. If, at any point during or after the approval process capture appears feasible, a capture option in accordance with Section 2 of this PPG (or the relevant operational plan [REDACTED]) should be pursued. If the individual has already been approved for lethal action when a capture option becomes feasible, the individual should be referred to the NSS Senior Director for Counterterrorism and undergo an expedited Deputies review focused on identifying disposition options.

~~TOP SECRET//NOFORN~~

in existing intelligence, as well as inconclusive and contradictory intelligence reports. At a minimum, each individual profile shall include a summary of all relevant disseminated intelligence required to determine whether the policy standard set forth in Section 3.A for lethal action against HVTs has been met, and include the following information to the extent that such information is available:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.C.3 The NSS shall convene a meeting of the RCSG for the purpose of reviewing and organizing material, and addressing any issues, related to the nomination of an individual for lethal action.

3.C.4 Before forwarding the nomination of an identified HVT for lethal action to Deputies, the RCSG shall identify other materials needed for Deputies' consideration of the nomination and shall issue such taskings to departments and agencies, as appropriate. For each nomination, the NSS will request, and NCTC shall conduct, an assessment of the nomination and provide that assessment to the NSS prior to consideration of the nomination by the Deputies Committee, and where feasible prior to RCSG review. The NSS will be responsible for ensuring that all necessary materials, including the profile developed by the nominating agency and the NCTC assessment, are included in the nomination package submitted to Deputies.

~~TOP SECRET//NOFORN~~



~~TOP SECRET//NOFORN~~

3.C.5 All nominations for lethal action must undergo a legal review by the General Counsel of the nominating agency to ensure that the action contemplated is lawful and may be conducted in accordance with applicable law. The General Counsel's conclusions shall be referred to the NSS Legal Adviser. In all events, the NSS Legal Adviser and the General Counsel of the nominating agency shall consult with DOJ. The NSS Legal Adviser and the General Counsel of the nominating agency shall also consult with other interagency lawyers depending on the particular nomination. In addition, in the event that the individual proposed for nomination is a U.S. person, DOJ shall conduct a legal analysis to ensure that lethal action may be conducted against that individual consistent with the laws and Constitution of the United States. The NSS Legal Adviser shall submit the relevant legal conclusions to the NSS Senior Director for Counterterrorism for inclusion in the nomination package to be submitted to Deputies.

3.C.6 If the proposal may be conducted lawfully, the nomination shall be referred to a DNSA, or another appropriate NSS official, to facilitate consideration by the Deputies Committee.

### **3.D Deputies Review**

3.D.1 Upon completion of a nomination package, the NSS shall forward the nomination package to the Deputies Committee for consideration. A standard nomination package to be forwarded to the Deputies shall include, at a minimum, the following:

- 1) The profile, produced by the nominating agency pursuant to Section 3.C.2, for the individual proposed for lethal action;
- 2) The assessment produced by NCTC pursuant to Section 3.C.4;
- 3) A description [REDACTED] operational plan to which the nomination would be added, including the timeframe, if any, in which the operation may be executed;
- 4) The operating agency or agencies that would be responsible for conducting the proposed lethal action;
- 5) A summary of the legal assessment; and
- 6) The determinations made by the nominating agency that capture is not currently feasible and that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons, as well as the underlying analysis for those determinations.

3.D.2 The Deputies of the Department of State, DOD, JCS, DOJ, DHS, DNI, CIA, and NCTC shall promptly consider whether to recommend to the Principal of the nominating agency that lethal action be taken against the proposed individual in the context [REDACTED] operational plan at issue. [REDACTED] shall participate in the review process as observers. A DNSA may invite Deputies or other officials to participate as appropriate. Following consideration and discussion by the Deputies, departments and agencies shall submit to the NSS the final positions of their Principals within a timeframe consistent with operational needs.

~~TOP SECRET//NOFORN~~





~~TOP SECRET NOFORN~~

annual review to the Deputies for consideration. Following Deputies review, the information, along with any recommendations from Deputies, shall be forwarded to the Principal of the nominating agency for review. A separate legal review will be conducted, as appropriate. An appropriate official from each nominating agency shall inform a DNSA of what action, if any, the Principal of the nominating agency takes in response to the review.

3.F.2 The Deputy of any department or agency participating in the Deputies Committee review in Section 3.D may propose at any time that an individual be [REDACTED] for lethal action. In the event that such a proposal is made, NCTC shall update the IC-coordinated profile for the individual at issue and, as appropriate, the Deputies shall consider whether to propose that the individual be removed by the Principal of the nominating agency.

3.F.3 Following consideration and discussion by the Deputies in accordance with 3.F.1 or 3.F.2, departments and agencies shall submit the final positions of their Principals within an appropriate timeframe determined by the NSS.

**SECTION 4. Policy Standard and Procedure for Approving Lethal Force Against Terrorist Targets Other Than Identified HVTs**

**4.A Policy Standard for Directing Lethal Force Against Terrorist Targets Other Than Identified HVTs**

This Section applies to the direction of lethal force [REDACTED] against lawful terrorist targets [REDACTED], such as manned or unmanned Vehicle Borne Improvised Explosive Devices or infrastructure, including explosives storage facilities. Where an operating agency has been authorized to take direct action against terrorist targets other than identified HVTs [REDACTED], such a terrorist target may be acted against as a policy matter, consistent with the requirements of the approved operational plan [REDACTED], if the target poses a continuing, imminent threat to U.S. persons.

**4.B Necessary Preconditions for Directing Lethal Force Under This Section**

Directing lethal force under this Section requires that: (1) the target may lawfully be targeted and that any conditions established in the appropriate operational plan, including those set forth in Section 1.C.8, are met. The preconditions set forth in Section 1.C.8 for the use of lethal force are as follows: (a) near certainty that a lawful terrorist target other than an identified HVT is present; (b) near certainty that non-combatants will not be injured or killed; (c) [REDACTED] [REDACTED] retain an assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the

<sup>o</sup> Operational disagreements [REDACTED] are to be elevated to Principals. The President will adjudicate any disagreement among or between Principals.

[REDACTED]  
[REDACTED]  
[REDACTED]

~~TOP SECRET NOFORN~~

~~TOP SECRET//NOFORN~~

threat to U.S. persons; and (f) an assessment that no other reasonable alternatives to lethal action exist to effectively address the threat to U.S. persons.

#### **4.C Nomination and Review of Terrorist Targets Other Than Identified High-Value Individuals**

Where an operating agency has been authorized to direct force against terrorist targets (including [REDACTED] property) other than identified HVTs [REDACTED], the operating agency may nominate specific terrorist targets to target with lethal force consistent with the requirements of the approved operational plan [REDACTED], including the process required by the plan for nominating and approving such targets.

### **SECTION 5. Procedures for Approving Proposals that Vary from the Policy Guidance Otherwise Set Forth in this PPG**

#### **5.A Already Authorized Targets: Variations from Operational Plan Requirements When Fleeting Opportunities Arise**

5.A.1 When direct action has been authorized under this PPG against identified HVTs or against terrorist targets other than identified HVTs [REDACTED], the operating agency responsible for conducting approved operations, as a result of unforeseen circumstances and in the event of a fleeting opportunity, may submit an individualized operational plan to the NSS that varies from the requirements of the operational plan [REDACTED]. In that event, an appropriate NSS official shall consult with other departments and agencies, as appropriate and as time permits, before submitting the proposal to the President for his decision.

5.A.2 All such variations from an operational plan must be reviewed by the General Counsel of the operating agency conducting the operation and the conclusions referred to the NSS Legal Adviser. In all cases, any operational plan must contemplate an operation that is in full compliance with applicable law. Absent extraordinary circumstances, these proposals shall:

- 1) Identify an international and domestic legal basis for taking action in the relevant country [REDACTED]
- 2) Mandate that lethal action may only be taken if: (a) there is near certainty that the target is present; (b) there is near certainty that non-combatants will not be injured or killed; (c) it has been determined that capture is not feasible; (d) the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and (e) no other reasonable alternatives exist to effectively address the threat to U.S. persons.

5.A.3 Any variation from an operational plan shall be presented to the President for decision, and an appropriate NSS official shall communicate the President's decision, including any terms or conditions placed on any approval, to appropriate agencies.

~~TOP SECRET//NOFORN~~

~~TOP SECRET//NOFORN~~

**5.B Extraordinary Cases: Variations from the Policy Guidance Otherwise Set Forth in this PPG**

Nothing in this PPG shall be construed to prevent the President from exercising his constitutional authority as Commander in Chief and Chief Executive, as well as his statutory authority, to consider a lawful proposal from operating agencies that he authorize direct action that would fall outside of the policy guidance contained herein, including a proposal that he authorize lethal force against an individual who poses a continuing, imminent threat to another country's persons. In extraordinary cases, such a proposal may be brought forward to the President for consideration as follows:

- 1) A proposal that varies from the policy guidance contained in this PPG may be brought forward by the Principal of one of the operating agencies through the interagency process described in Section 1 of this PPG, after a separate legal review has been undertaken to determine whether action may be taken in accordance with applicable law.
- 2) Where there is a fleeting opportunity, the Principal of one of the operating agencies may propose to the President that action be taken that would otherwise vary from the guidance contained in this PPG, after a separate legal review has been undertaken to determine whether action may be taken in accordance with applicable law.
- 3) In all cases, any proposal brought forward pursuant to this subsection must contemplate an operation that is in full compliance with applicable law.

**SECTION 6. Procedures for After Action Reports**

**6.A** The department or agency that conducted the operation shall provide the following preliminary information in writing to the NSS within 48 hours of taking direct action against any authorized target:

- 1) A description of the operation;
- 2) A summary of the basis for determining that the operation satisfied the applicable criteria contained in the approved operational plan;
- 3) An assessment of whether the operation achieved its objective;
- 4) An assessment of the number of combatants killed or wounded;
- 5) A description of any collateral damage that resulted from the operation;
- 6) A description of all munitions and assets used as part of the operation; and
- 7) [REDACTED]

~~TOP SECRET//NOFORN~~



~~TOP SECRET//NOFORN~~

6.B The department or agency that conducted the operation shall provide subsequent updates to the NSS on the outcome of the operation, as appropriate, including any intelligence collected as a result of the operation. The information provided to the NSS under this Section shall be made available to appropriate officials at the departments and agencies taking part in the review under Sections 1 and 3 of this PPG.

**SECTION 7. Congressional Notification**

A congressional notification shall be prepared and promptly provided to the appropriate Members of the Congress by the department or agency approved to carry out such actions when:

- 1) A new operational plan for taking direct action [REDACTED] is approved;
- 2) Authority is expanded under an operational plan for directing lethal force against lawfully targeted individuals [REDACTED] and against lawful terrorist targets other than individuals; or
- 3) An operation has been conducted pursuant to such approval(s).

In addition, appropriate Members of the Congress will be provided, no less than every 3 months, updates on identified HVTs who have been approved for lethal action under Section 3. Each department or agency required to submit congressional notifications under this Section shall inform the NSS of how it intends to comply with this Section prior to providing any such notifications to Congress.

**SECTION 8. General Provisions**

8.A This PPG 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.

8.B [REDACTED]

8.C Twelve months after entry into force of this PPG, Principals shall review the implementation and operation of the PPG, including any lessons learned from evaluating the information provided under Section 6, and consider whether any adjustments are warranted.

~~TOP SECRET//NOFORN~~

# Exhibit 18

Stenographic Transcript  
Before the

COMMITTEE ON  
ARMED SERVICES

**UNITED STATES SENATE**

UNITED STATES SPECIAL OPERATIONS COMMAND

Thursday, May 4, 2017

Washington, D.C.

ALDERSON COURT REPORTING  
1155 CONNECTICUT AVENUE, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036  
(202) 289-2260  
[www.aldersonreporting.com](http://www.aldersonreporting.com)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES SPECIAL OPERATIONS COMMAND

Thursday, May 4, 2017

U.S. Senate  
Committee on Armed Services  
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in Room SD-G50, Dirksen Senate Office Building, Hon. John McCain, chairman of the committee, presiding.

Present: Senators McCain [presiding], Inhofe, Wicker, Fischer, Cotton, Rounds, Ernst, Tillis, Sullivan, Perdue, Cruz, Reed, Nelson, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Heinrich, Warren, and Peters.

1           OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR  
2 FROM ARIZONA

3           Chairman McCain: Good morning. The Senate Armed  
4 Services Committee meets this morning to receive testimony  
5 on the posture of the U.S. Special Operations Command, known  
6 as SOCOM.

7           I would like to welcome Ms. Theresa Whelan, who is  
8 representing the Office of the Assistant Secretary of  
9 Defense for Special Operations and Low-Intensity Conflict,  
10 and General Tony Thomas, the Commander of SOCOM. I thank  
11 our witnesses for appearing before the committee and for  
12 their many years of dedicated service to the Nation.

13           The purpose of today's hearing is to hear directly from  
14 the senior civilian and military leaders responsible for  
15 ensuring our special operations forces are trained,  
16 equipped, and ready to confront what is the most complex and  
17 daunting set of national security challenges our Nation has  
18 faced since the Second World War.

19           In response to the increasing threats, our combatant  
20 commanders around the world have developed a seemingly  
21 insatiable demand for the unique capabilities of our special  
22 operators. That is especially true in the fight against  
23 terrorism.

24           For the last 15 years, special operations forces have  
25 been heavily engaged in the fight against global terrorist

1 groups. As a result, SOCOM's budget has emphasized  
2 optimizing and sustaining counterterrorism capabilities.  
3 This is unlikely to change anytime soon. The United States  
4 will remain engaged in global counterterrorism operations of  
5 varying scope and intensity for the foreseeable future, and  
6 special operations forces will continue to play a vital  
7 role.

8 But we must be careful never to equate special  
9 operations with counterterrorism. Special operations forces  
10 must be prepared to perform a variety of other critical  
11 missions beyond counterterrorism, missions that will  
12 continue to grow in scale and importance, and demand more  
13 from our special operations forces.

14 China, Russia, Iran, and North Korea are becoming more  
15 aggressive in challenging U.S. interests and partners  
16 through the use of asymmetric means that often fall below  
17 the threshold of conventional conflict. The ability of our  
18 special operators to conduct low-visibility special warfare  
19 operations in politically sensitive environments make them  
20 uniquely suited to counter the malign activities of our  
21 adversaries in this domain.

22 Put simply, special operations forces have an  
23 indispensable role to play in great power competitions and  
24 global counterproliferation.

25 The challenges posed by militarily advanced great

1 powers will require the development and employment of new  
2 technologies and capabilities. It also warrants a serious  
3 review of the need for additional special operations force  
4 structure.

5       However, posturing a force to effectively operate in  
6 this domain will not be possible until we in Congress step  
7 up and repeal the misguided and disastrous defense spending  
8 caps and forthcoming defense budget cuts required by law in  
9 the Budget Control Act. Persistent budgetary uncertainty  
10 undermines the ability of our military leaders to plan and  
11 forces them to choose between near-term readiness to support  
12 ongoing operations and optimizing the force and its  
13 capabilities to address emerging and future requirements.

14       This is not sustainable, and this is not right.

15       I look to our witnesses to explain how SOCOM is  
16 attempting to balance the need to support ongoing  
17 operational warfighting requirements while also ensuring  
18 that the force is prepared to deal with emerging threats, as  
19 well as describe in detail where budget shortfalls are  
20 forcing you to accept risk.

21       Lastly and most importantly, I expect our witnesses to  
22 provide the committee with an update on the overall health  
23 of the force and what is being done to mitigate the impact  
24 to our operators and their families. Fifteen years of  
25 continuous combat operations in back-to-back deployments

1 have placed enormous strain on the force, challenging  
2 readiness, resilience, and retention.

3 We owe our operators and their families who have given  
4 so much in defense of our Nation the support that they  
5 deserve.

6 Again, I thank our witnesses for being with us today  
7 and look forward to their testimony.

8 Senator Reed?

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           STATEMENT OF HON. JACK REED, U.S. SENATOR FROM RHODE  
2 ISLAND

3           Senator Reed: Thank you very much, Mr. Chairman. Let  
4 me also join you in thanking our witnesses for appearing  
5 today to discuss the United States Special Operations  
6 Command and the readiness of our special operations forces.  
7 You are both ably leading your respective organizations  
8 through a period of both high operational tempo and also  
9 significant transition.

10           The United States Special Operations Command, or SOCOM,  
11 recently celebrated the 30th anniversary of its  
12 establishment by Congress. Those 30 years, and particularly  
13 the last 15, have been characterized by great successes,  
14 including the operation that killed Osama bin Laden.  
15 SOCOM's history also includes tragedies that resulted in the  
16 loss of brave special operators.

17           Fortunately, our special operations forces have learned  
18 from each of these events and have emerged as a stronger and  
19 more capable force.

20           General Thomas, the high quality of men and women you  
21 lead today are a testament to that lineage.

22           SOCOM is unique within the Department of Defense as the  
23 only functional combatant command with service-like  
24 responsibilities for the training, equipping, organization,  
25 and readiness of special operations forces.

1           When Congress created SOCOM, it also established the  
2           position of the Assistant Secretary of Defense for Special  
3           Operations and Low-Intensity Conflict, or ASD/SOLIC, to be  
4           the service secretary-like civilian tasked with day-to-day  
5           advocacy and oversight of special operations forces. For  
6           many reasons, including competing responsibility for other  
7           policy matters, the ASD/SOLIC has not adequately fulfilled  
8           the mandate to date.

9           The National Defense Authorization Act of Fiscal Year  
10          2017 sought to address this issue with a number of reforms  
11          designed to optimize the partnership between the Commander  
12          of SOCOM and the ASD/SOLIC for the benefit of special  
13          operations forces. For that reason, we are pleased to have  
14          Ms. Whelan, the Acting Assistant Secretary of Defense SOLIC,  
15          testifying today in the service secretary-like role  
16          envisioned by last year's reforms.

17          We look forward to receiving an update from both of you  
18          as to the progress you have made toward achieving the goals  
19          of last year's bill and what we expect over the next several  
20          years.

21          Our special operations forces remain heavily engaged in  
22          the fight against ISIS, Al Qaeda, and other violent  
23          extremist organizations, sometimes directly, but more often  
24          in support of local partner forces on the ground, as we have  
25          seen most prominently in Iraq and Syria. I hope both of you



1 will give us your assessment of what, if anything, we can do  
2 to accelerate progress in defeating these groups.

3 While the last 15 years of special operations  
4 deployments have been primarily focused on countering  
5 violent extremist groups, there is growing realization that  
6 special operations forces, and the unique skillsets that  
7 they possess, may be called upon for other missions as well.

8 General Thomas, you and many in your community have  
9 sought to characterize this so-called gray zone of  
10 competition short of direct military conflict. We saw such  
11 tactics most notably as part of Russia's eventual illegal  
12 annexation of Crimea, and should expect more such challenges  
13 as adversaries pursue efforts against the United States and  
14 other countries.

15 I hope that you will provide the committee with your  
16 views on the suitability of special operations to direct  
17 gray zone challenges today and what changes in special  
18 operations capabilities and authorities, many of which were  
19 designed to confront the terrorist threat, may be necessary.

20 Given the demand for special operation forces across  
21 these various mission sets, we must always remain mindful of  
22 the already high operational tempo faced by our special  
23 operators and their families. SOCOM has sought to mitigate  
24 the stress of these repeated demanding deployments through  
25 the Preservation of the Force and Family Initiative. I look

1 forward to an update on the lessons learned from this  
2 initiative and SOCOM's plans going forward.

3 General Thomas and Ms. Whelan, I hope you will pass  
4 along the committee's admiration and thanks to our special  
5 operators and their families for the tremendous sacrifices  
6 they make in support of our national security.

7 Thank you, Mr. Chairman.

8 Chairman McCain: Ms. Whelan?

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATEMENT OF THERESA M. WHELAN, ACTING ASSISTANT  
2 SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS/LOW-INTENSITY  
3 CONFLICT

4 Ms. Whelan: Thank you, Senator. Chairman McCain,  
5 Senator Reed, and distinguished members of the committee, I  
6 am honored to appear before you today in my capacity as the  
7 Acting Assistant Secretary of Defense for Special Operations  
8 and Low-Intensity Conflict. I am pleased to share the table  
9 with General Tony Thomas, who has served at the forefront of  
10 the special operations forces at all levels of command. Our  
11 entire SOLIC team is proud to partner with him and his  
12 command in forging the future of DOD special operations.

13 I would like to thank you and your predecessors for the  
14 foresight to create SOLIC and USSOCOM 30 years ago, and for  
15 your commitment to maintaining that vision over the last 3  
16 decades. We are grateful for this committee's strong  
17 support for special operations, as evidenced by the  
18 resources, authorities, and depth of understanding you  
19 provide in your oversight. Our military is stronger and  
20 more capable due to your efforts.

21 Today, I will focus on three topics: winning the  
22 current fight and defeating emerging threats, building on  
23 the foundations of Section 922 ASD/SOLIC authorities, and  
24 continuing to hone the edge of SOF personnel and  
25 capabilities.

1           SOF is a vanguard force in countering emerging threats  
2           at the leading edge of the modern security landscape. In  
3           the last 15 years, we encountered a networked enemy, we  
4           flattened our organizations and accelerated our targeting  
5           cycles, and we built a network to defeat them. We now face  
6           advanced transregional threats that demand greater levels of  
7           coordination and collaboration, and we are redoubling our  
8           focus on building relationships and international and  
9           interagency partners.

10           Today, SOLIC provides advocacy for the special  
11           operations budget, which is approximately 1.8 percent of our  
12           defense budget in 2017. And we directly manage over \$2  
13           billion in various budgets that support counterterrorism and  
14           counternarcotics efforts.

15           The 3 decades-long partnership between SOCOM and SOLIC  
16           has generated a force capable of dealing with emerging  
17           threats and a force that is able to translate those gains  
18           across the department. We will win the fight against VEOs  
19           and protect our citizens, vital interests, allies, and  
20           partners.

21           This requires a long-term strategic approach that  
22           combats terrorists, disrupts terrorist networks, discredits  
23           extremist ideologies, and diminishes factors that contribute  
24           to recruitment and radicalization.

25           Sustained funding and flexible legislative authorities

1 have been instrumental to those efforts. I want to thank  
2 the committee for establishing Section 127(e), formerly  
3 known as Section 1208, as a permanent authority. The  
4 maturation of this program has provided our warfighters a  
5 powerful tool to employ to support our allies, attack our  
6 enemies, and protect our force, and it is a great example of  
7 interagency synergy enabled by strong congressional support  
8 and oversight.

9 Congressional support for countering threat finance and  
10 transnational organized crime is also crucial to our  
11 efforts. Terrorists, insurgents, and other threat networks  
12 depend upon illicit revenue streams and criminal  
13 facilitators for logistics support, money laundering, or  
14 obtaining weapons and fraudulent documents.

15 Thank you also for codifying the responsibilities of  
16 ASD/SOLIC's important oversight role, comprised of the  
17 complementary tasks of monitoring and advocacy in the fiscal  
18 year 2017 NDAA.

19 USSOCOM has made dramatic advances during wartime in  
20 response to urgent battlefield demands, gains that require  
21 an institutional foundation to endure. The service  
22 secretary-like authorities in Section 922 serve as a  
23 strategic linchpin ensuring that we lock in these hard-won  
24 gains.

25 These authorities have empowered the Special Operations

1 Policy Oversight Council, which we have used over the past  
2 year to resolve base infrastructure and casualty evacuation  
3 issues among SOCOM and the services. Ultimately, these  
4 gains can be leveraged across the entire force with SOF best  
5 practices in technology and talent management serving as  
6 templates for the department in addressing emerging  
7 challenges.

8 A key part of SOLIC's role is to advance the state-of-  
9 the-art in concepts, technologies, and strategies for both  
10 humans and hardware. Our Combating Terrorism Technical  
11 Support Office leads this effort with SOLIC developing  
12 cutting-edge technologies for SOF, the interagency, and law  
13 enforcement.

14 The SOF Truths state that humans are more important  
15 than hardware. As we continue to provide agile and  
16 innovative capabilities, we must also continue to build and  
17 sustain an elite work force suited to the unique and diverse  
18 demands of 21st century warfare.

19 We will also continue to work closely with Congress to  
20 ensure that we have the right policies, agile authorities,  
21 and necessary resources to employ SOF effectively. I thank  
22 Congress for its continuing support of our men and women in  
23 uniform, and their families, and I look forward to your  
24 questions.

25 [The prepared statement of Ms. Whelan follows:]

1 Chairman McCain: General Thomas?  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1           STATEMENT OF GENERAL RAYMOND A. THOMAS III, USA,  
2           COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND

3           General Thomas: Chairman McCain, Ranking Member Reed,  
4           and distinguished members of the committee, thank you for  
5           the opportunity to appear before you today. I am especially  
6           grateful to be here today with Principal Deputy Assistant  
7           Secretary Whelan in a session dedicated exclusively to  
8           special operations as it provides us the opportunity to  
9           discuss in detail the unique requirements, capabilities, and  
10          challenges associated with your United States Special  
11          Operations Command.

12          This body legislated us into existence a little over 30  
13          years ago to act as a unique Department of Defense  
14          organization, a dual-hatted, service-like entity responsible  
15          for the manning, training, and equipping of special  
16          operations forces, as well as a globally focused, functional  
17          combatant command.

18          In fulfilling the first role, which continues to be our  
19          primary function, I believe we have consistently provided  
20          the world's best special operations forces to the geographic  
21          combatant commanders. However, it is in the second role, as  
22          a globally focused combatant command, where SOCOM has  
23          evolved the most.

24          As we carry out both of these roles today, special  
25          operations forces are more relevant than ever to the current

1 and enduring threats facing our Nation. We have been at the  
2 forefront of national security operations for the past 3  
3 decades, to include continuous combat over the past 15.5  
4 years. This is historic period has been the backdrop for  
5 some of our greatest successes, as well as the source of our  
6 greatest challenge, which is the sustained readiness of this  
7 magnificent force.

8 We are thankful for the resources you have provided not  
9 only to operate this force but also to perform the critical  
10 sustainment efforts that underpin our most precious resource  
11 -- our people.

12 Last month was particularly difficult for the United  
13 States Special Operations Command, losing its 407th hero,  
14 Staff Sergeant De Alencar, a father of five, in a firefight  
15 in the Nangarhar Province of Afghanistan while operating  
16 alongside his Afghan partners. Then last week, we lost  
17 Ranger Sergeants Thomas and Rogers, our 408th and 409th  
18 casualties, respectively.

19 This comes on the heels of 16 other combat fatalities  
20 since I assumed command a year ago. It is a stark reminder  
21 that we are a command at war and will remain so for the  
22 foreseeable future.

23 My current priorities for the command fall into three  
24 broad categories. First, we must win the current fight,  
25 which consists of carrying out assigned missions running the

1 gamut from defeating Islamic extremism, both Sunni and Shia,  
2 to countering Russian aggression, to preparing for  
3 contingencies in Korea, as well as various security  
4 operations to defend the homeland. Second, we must continue  
5 to transform our enterprise to remain relevant in the  
6 rapidly changing security environment. Finally, we must  
7 take care of our people and their families as they form the  
8 foundation upon which our force is built.

9 My first year in command has seen us focused on these  
10 priorities as we transform the way the Department of Defense  
11 looks at many of the national military strategy challenges  
12 in our role as the coordinating authority for countering  
13 transregional threats. More recently, we have also poured  
14 significant resources into defining our role as the  
15 department's synchronizer for countering weapons of mass  
16 destruction.

17 Both of these substantive roles are additive to the  
18 current missions, where approximately 8,000 special  
19 operations forces are deployed in over 80 countries, working  
20 with international, interagency, and DOD partners in support  
21 of the geographic combatant commanders' priorities.

22 This focus is also occurring during a period of  
23 unprecedented recapitalization of substantive parts of our  
24 warfighting capability, to include the conversion of our  
25 entire C-130 fleet to J model C-130s, as well as other major

1 platforms. We are extremely thankful to the services for  
2 enabling this transformation of the force, as it sets us on  
3 the path for success for decades to come.

4 We are equally grateful for the support of Congress for  
5 the required resourcing that, in turn, has produced a SOCOM  
6 which is relevant to all the current and enduring threats  
7 facing the Nation. We appreciate your continued oversight  
8 and advocacy for your United States Special Operations  
9 Command, and I look forward to your questions today.

10 Thank you.

11 [The prepared statement of General Thomas follows:]

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Chairman McCain: Thank you, General.

2 General, how are the spending caps under the Budget  
3 Control Act impacting the readiness and capabilities of  
4 special operations forces?

5 General Thomas: Chairman, that has been a consistent  
6 challenge over the last couple years as two of the things  
7 that we would endeavor to control in terms of  
8 predictability, and that is the deployment tempo and the  
9 resourcing of our force. Resourcing has not been very  
10 predictable over the last several years, and the potential  
11 for continued cuts undermines both our readiness and our  
12 modernization going forward.

13 Chairman McCain: So what does that do to morale?

14 General Thomas: Chairman, indirectly, I think,  
15 obviously, it affects the morale of our servicemembers who  
16 are concerned about the support of the Nation and this body.

17 Chairman McCain: When it is not predictable as to  
18 where and when they will be required because of budget  
19 constraints. True?

20 General Thomas: Chairman, it is true. Yes, there is a  
21 ripple.

22 Chairman McCain: So how can you plan, in this  
23 budgetary environment, when we lurch from crisis to crisis?

24 I guess I am a little redundant here, but when I look  
25 at this map of where all of your people are, spread all over

1 the world, it seems to me at least we owe them some kind of  
2 predictability.

3 Let me ask, what is your assessment? Do you know when  
4 we will see an updated counter-ISIS strategy from the  
5 administration?

6 General Thomas: Chairman, we are currently working on  
7 updating that strategy.

8 Chairman McCain: What is your assessment of Russia's  
9 malign activities aimed at destabilizing Eastern Europe and  
10 our NATO allies?

11 General Thomas: Chairman, as I think you know, we are  
12 supporting General Scaparrotti's efforts to both discern and  
13 determine the nature of Russian aggression, as well as to  
14 compete short of conflict in the various countries where it  
15 occurs.

16 Chairman McCain: And have you seen the Russia malign  
17 activities increase, decrease, or stay the same?

18 General Thomas: Chairman, I would assess they are a  
19 steady state of aggressive activities.

20 Chairman McCain: And how do you think we deter that?

21 General Thomas: Chairman, I think by, with, and  
22 through our allies is the primary approach. I think we have  
23 great support and great opportunity there, and we are  
24 continuing to enhance that approach.

25 Chairman McCain: Has the European Reassurance

1 Initiative had a positive impact?

2 General Thomas: It has, Chairman.

3 Chairman McCain: Do you think we are in a "stalemate"  
4 in Afghanistan, as General Nicholson testified before this  
5 committee, in light particularly of recent successful, at  
6 least in their view, Taliban attacks, including the killing  
7 of over 100 Afghans at a base?

8 General Thomas: Chairman, I am aware of General  
9 Nicholson's description of the current status of the fight  
10 as a stalemate. I recently returned from visiting  
11 Afghanistan where you know our special operations forces  
12 play a key role with our associated forces.

13 It is, admittedly, a very tough fight, and we are  
14 beginning yet another fighting season. I would offer,  
15 though that, in terms of stalemate, the one objective we had  
16 for why we went there in the first place that we have  
17 accomplished over the last 15.5 years is the avoidance of  
18 another attack from that area. That certainly is an  
19 accomplishment and something that we need to reinforce going  
20 forward.

21 Chairman McCain: But if you have a "stalemate," that  
22 means that it does not end, doesn't it?

23 General Thomas: Chairman, I understood the commander's  
24 assessment of stalemate as an opportunity to change the  
25 strategy.



1 Chairman McCain: But that opportunity, if the present  
2 status quo prevails, then there is no end to it. In other  
3 words, what do you think needs to be done to end a  
4 stalemate?

5 General Thomas: Chairman, I think that General  
6 Nicholson and the Secretary are pursuing new initiatives to  
7 --

8 Chairman McCain: What do you think is needed, General  
9 Thomas?

10 General Thomas: Chairman, we are integral to the  
11 discussion on what is needed going forward. Again, I am  
12 supporting the commander there, and supporting our Secretary  
13 of Defense in terms of the strategy --

14 Chairman McCain: You know, you testified before this  
15 committee that you would give your opinion, if it is  
16 requested by this committee. I will ask you again. What do  
17 you think needs to be done in Afghanistan to end a  
18 stalemate?

19 General Thomas: Chairman, I think the critical factor  
20 is the commitment, the commitment to some enduring state  
21 that has not been described effectively in the past. I  
22 think the new strategy is going to establish that definition  
23 of what --

24 Chairman McCain: Does that mean, in your view,  
25 additional troops commitment?

1 General Thomas: Chairman, additional troops are being  
2 considered, changes to the ROE --

3 Chairman McCain: In your opinion, do you think it  
4 requires additional troops?

5 General Thomas: Chairman, right now, I think we have  
6 an adequate number of my troops, special operations forces,  
7 on the ground.

8 Chairman McCain: Of your troops, you think you have  
9 enough?

10 General Thomas: I do.

11 Chairman McCain: And how often do your average  
12 individuals under your command serve overseas?

13 General Thomas: Chairman, I believe what you are  
14 getting at is the deployment tempo for folks.

15 Chairman McCain: Right.

16 General Thomas: It varies across our force. In some  
17 cases, various parts of our force, various components are in  
18 a 1-to-1.2 worst-case deployment.

19 Chairman McCain: Meaning how many months deployed  
20 versus how many months back in the United States?

21 General Thomas: With that ratio I just described, they  
22 are about a 1-to-1, so 6 months or so deployed, if that is  
23 the rotation, 6 months back. That is the worst case. In  
24 the best case, we have been able to establish a balance of  
25 1-to-3, so for every 6 months deployed --

1 Chairman McCain: Isn't it a significant strain to have  
2 half your time deployed? Doesn't that put a lot of strain  
3 on the individuals and their families?

4 General Thomas: Chairman, that worst case is actually  
5 less than the DOD's desired rate, and we are endeavoring to  
6 get that back in balance.

7 Again, that is not our entire formation. That is only  
8 parts of our formation. But it is unsustainable, to your  
9 point.

10 Chairman McCain: I thank you, General.

11 Senator Reed: Thank you very much, Mr. Chairman.

12 To both Ms. Whelan and General Thomas, do you believe  
13 that both SOCOM and SOLIC have an adequate seat at the table  
14 when discussions are made about budget acquisition and other  
15 issues impacting your force, vis-a-vis the other services?

16 Ms. Whelan?

17 Ms. Whelan: Thanks for the question, Senator.

18 Actually, I think that the recent language in the NDAA  
19 in Section 922 has significantly improved the ability of  
20 ASD/SOLIC to gain a seat at the table. And to that point,  
21 specifically, we recently used that language to justify  
22 getting a separate seat for ASD/SOLIC on the Deputy  
23 Secretary's management action group, which previously SOLIC  
24 did not have.

25 We have also gained a separate seat for SOLIC on the

1 Deputy Secretary's SAP Oversight Council. SOCOM has a  
2 number of special access programs that we previously had not  
3 been able to manage independently.

4 Further, within the department, we have established a  
5 tiger team to cross departmentwide in order to determine  
6 other areas in which ASD/SOLIC needs to gain additional  
7 authorities and abilities within the department to represent  
8 SOCOM and have a seat at the table.

9 One other recent accomplishment is I think we will have  
10 a seat for SOCOM in the upcoming defense strategy  
11 development process.

12 Senator Reed: General Thomas, any comments?

13 General Thomas: Senator, I would reinforce Theresa's  
14 points. We very much embrace the recent language that  
15 reinforces ASD/SOLIC's role as a service-like entity. We  
16 are well-represented at all of the appropriate venues.

17 It sometimes takes reminding that we are unique in that  
18 case, because we are seen as either one or the other, and we  
19 sometimes have to remind folks that we are both, a service-  
20 like entity and a combatant command.

21 But you have empowered us to be at the table for all  
22 those venues, and we are adequately represented. Thank you.

23 Senator Reed: Secretary Whelan, are there any  
24 responsibilities you have that you feel might be more  
25 effectively and efficiently carried out by another entity?

1 You have a broad range of responsibilities. Is there  
2 anything that should be repositioned?

3 Ms. Whelan: Within ASD/SOLIC, I think that there is  
4 consistency, actually, across the portfolio in terms of the  
5 types of activities that the Assistant Secretary is  
6 responsible for. In terms of the Assistant Secretary's role  
7 in providing policy oversight, all of the activities that  
8 ASD/SOLIC has purview over are in some way related to either  
9 the employment of SOF forces or the environments in which  
10 SOF forces operate. Whether they be SOF MISO capabilities,  
11 civil affair capabilities, foreign internal defense  
12 capabilities, training capabilities, and, of course,  
13 counterterrorism capabilities, the portfolio is consistent  
14 in that context.

15 Senator Reed: My understanding, and correct me if I am  
16 inaccurate, is that you also have responsibility for  
17 information warfare?

18 Ms. Whelan: Yes, Senator, information warfare does  
19 fall under the purview of ASD/SOLIC.

20 Senator Reed: But you do not have responsibility for  
21 cyber operations. And as we know, cyber operations and  
22 information warfare, on the other side, our adversaries seem  
23 to be one, merged together, with each day.

24 Ms. Whelan: Correct, Senator. It is a seam. There  
25 are a lot of seams, as you all know, within our

1 organizational structure, and it is difficult. If you  
2 eliminate one seam, you will create another. So it is kind  
3 of a difficult balance to strike.

4 One of the things that we have done, though, is SOLIC  
5 recently put out a strategy for operating in the information  
6 environment. This strategy impacts the entire department,  
7 to include the cyber warriors in the department. So we have  
8 an integrated interdepartmental approach to implementing  
9 that strategy.

10 Right now, we are going through a capabilities-based  
11 assessment of that strategy to determine where we have  
12 additional needs and where we have seams that we need to fix  
13 in order to operate effectively.

14 Senator Reed: Thank you.

15 Just a final and very quick question. As the chairman  
16 has noted, we have threats that are not strictly  
17 counterterrorism today with this gray area of operations.  
18 Section 1208, which I think has been very useful, as you  
19 have described it, is focused more on counterterrorism. Is  
20 there anything we have to do to give you that same degree of  
21 authority with respect to these gray areas in unconventional  
22 warfare rather than counterterrorism?

23 General Thomas, your comments?

24 And I have no time.

25 General Thomas: Senator, we are actively pursuing both

1 the authorities and the resources that would enable more  
2 enhanced unconventional warfare operations. Again, we are  
3 very appreciative of what 1208 does for us, and that is  
4 actually -- I mean, it is very -- kind of enthusiastic. Its  
5 similar authority, similar resourcing might be advantageous  
6 for the force and for the Nation for unconventional warfare  
7 purposes, and I look forward to having that continuing  
8 discussion with you and others.

9 Senator Reed: Thank you.

10 Thank you, Mr. Chairman.

11 Chairman McCain: Senator Inhofe?

12 Senator Inhofe: Thank you, Mr. Chairman.

13 I do want to pursue this a little bit, in terms of your  
14 response to the chairman's question in terms of the adequacy  
15 of the force.

16 But I want to first mention your activity in Africa,  
17 which really surprised me. I can remember when we first  
18 brought AFRICOM along, and we started paying attention to  
19 what is going on over there, the potential threats there,  
20 the terrorism that is infiltrating the countries. So I know  
21 you have been active over there. I have talked to a lot of  
22 the African leaders. Very complimentary on some of the  
23 results that we are getting.

24 And this surprises me, because AFRICOM did not even  
25 come online until the first of 2008, and yet, if you go back



1 to 2006, the deployments to Africa have increased by more  
2 than 1,600 percent. It went from 1 percent to 17 percent in  
3 terms of deployments outside the United States. That is  
4 huge. That is a lot of increase in activity.

5 In addition to combating terrorism and the expanding  
6 network of violent extremism organizations, General Thomas,  
7 what impact, what can you elaborate on, on your activities  
8 in Africa? It is an inordinate increase, in terms of  
9 percentage, when you realize that some 17 percent of all  
10 deployments are actually affecting Africa.

11 General Thomas: Senator, I would actually attribute  
12 that to our adversaries' activities. The migration of ISIS  
13 and Al Qaeda to Africa, to ungoverned spaces over the  
14 preceding decade has been palpable. You know the specific  
15 locations. I probably, in an open session, should not get  
16 into the details of where and what. But we have endeavored  
17 to move where they have tried to establish new provinces,  
18 new areas of influence, in support of General Waldhauser and  
19 AFRICOM.

20 So that transition over time has really been driven by  
21 adversarial action. But I think the good news is that we  
22 have had the ability to move those locations and attempt to  
23 defeat and disrupt them where they try to reside.

24 Senator Inhofe: I do not think anyone anticipated back  
25 in 2008 or even in the years since then that the activity

1 would increase as it has there, so I am interested in  
2 following through with that.

3 On the idea of what you guys are in a position to  
4 handle right now, most of the deployed SOCOM forces, 55  
5 percent, went to the Middle East. Next was Africa, that was  
6 17 percent. Then Europe, 13 percent, and 9 percent.

7 Now, when you look at the optempo that was involved  
8 over there, in your written testimony, you acknowledge that  
9 adversary powers are increasingly turning toward  
10 unconventional warfare to pursue their objectives.

11 But maybe I misunderstood you when you responded to the  
12 question of the chairman, that you are adequately staffed to  
13 carry on these functions. Is that not an accurate  
14 recollection I am having?

15 General Thomas: Senator, we are adequately staffed to  
16 maintain the current tempo, the current distribution of  
17 special operations forces. It is a strain. It is certainly  
18 not an easy burden, but we are adequately resourced.

19 Senator Inhofe: I am looking for the quote that we  
20 had. Yes, this would have been from the House committee  
21 yesterday. I cannot find it right now, but there were  
22 quotes that -- here it is right here. You said most special  
23 operations forces units are employed to their sustainable  
24 limit.

25 Now, to me, that seems a little inconsistent with being

1 adequately staffed. You went on to talk about as or more  
2 challenged as a conventional force by the problem of  
3 suicide, other problems in the ranks that come with what I  
4 consider to be over-deployed.

5 What are some of the problems that you are facing that  
6 give you the indication that maybe you are not adequately  
7 staffed?

8 General Thomas: Senator, again, we can sustain the  
9 current rate of deployment. It is something we scrutinize  
10 every day.

11 You mentioned, the chairman mentioned early on, that  
12 there is a large demand signal from our geographic combatant  
13 commanders to do the things they have to do. As a service,  
14 one of our roles, we aim to meet their requirements. As a  
15 global combatant command, we also attempt to synchronize  
16 special operations activity to the greatest efficacy  
17 possible. I think we are doing that, to the degree we can.

18 There are challenges on the force. You mentioned  
19 certainly some of the more dire symptoms. We address them  
20 directly every day. That is large focal point for us.

21 I would have to thank all of you as well for providing  
22 us the tools that we did not have a decade ago to build in  
23 resiliency for our force in terms of our Preservation of the  
24 Force and Family, and also for our ability to care for our  
25 warriors in the event of mishaps, injuries, et cetera. We

1 did not have that capability. You helped us gain it over  
2 time, and that is a critical part of how we sustain  
3 ourselves.

4 Senator Inhofe: Well, as one member of this committee,  
5 I look at some of the results, some of the problems that you  
6 have, and I have to question as to whether or not it is  
7 adequately staffed.

8 One short question, I know my time has expired, but you  
9 can do this for the record, if you like, Ms. Whelan, there  
10 is some confusion, as I mentioned to you earlier, in the  
11 words that you use when you are talking about adversary  
12 powers increasing, turning toward unconventional warfare.  
13 You said, "exquisite integration across multiple components  
14 of not only the Defense Department, also the United States  
15 Government, as a key challenge to confronting growing  
16 threat."

17 You might, for the record, since my time has expired,  
18 elaborate a little bit on that. Would you do that?

19 Ms. Whelan: Yes, Senator. We would be happy to.

20 Senator Inhofe: Thank you very much.

21 Chairman McCain: Senator Hirono?

22 Senator Hirono: Thank you, Mr. Chairman.

23 I want to thank both of our witnesses for your service.  
24 And, in particular, I would like to thank the men and women  
25 that you lead in our armed services, both in the military

1 and in the civilian side, and, of course, particularly the  
2 Special Ops Command in the Pacific arena who provide great  
3 support to the Asia-Pacific region.

4 Secretary Whelan, guidelines for the use of force were  
5 established by President Obama in the 2013 Presidential  
6 Policy Guidance. The rules include the requirement for a  
7 "near certainty" that the terrorist target was present and  
8 that no civilians would be injured or killed.

9 There is no legal requirement that President Obama's  
10 successors adhere to the same rules. President Trump has  
11 recently directed you to advise him on any recommended  
12 changes to the rules of engagement, and there were reports  
13 that there were a large number of civilian casualties after  
14 the raid in Yemen recently.

15 Have the rules of engagement requirement of near  
16 certainty that no civilian casualties will result been  
17 modified for special ops missions?

18 Ms. Whelan: Thanks for the question, Senator.  
19 Absolutely not.

20 Senator Hirono: Are there differences in the steps a  
21 conventional force would take versus special operations to  
22 prevent collateral civilian loss of life during missions?

23 Ms. Whelan: Senator, I will let General Thomas answer  
24 that question.

25 Senator Hirono: General Thomas?

1           General Thomas: Senator, no is the answer. We both  
2 adhere to the Law of Armed Conflict. There are different  
3 techniques in terms of how we develop targets, but the same  
4 absolute standard applies.

5           Senator Hirono: So these rules of engagement that  
6 require near certainty that your target is there and that  
7 you will minimize collateral damage, that was applied in the  
8 Yemen case?

9           Ms. Whelan: Yes, the rules of engagement were not  
10 changed for the Yemen case.

11          Senator Hirono: And although there was a high number,  
12 we were told maybe 200 or so civilian casualties, that did  
13 not result in a review of what happened there?

14          Ms. Whelan: There have been extensive reviews of what  
15 happened, after-action reports, and lessons learned, but the  
16 casualties were not a result of a change in the rules of  
17 engagement.

18          Senator Hirono: What were they the result of?

19          Ms. Whelan: They were a result of operational  
20 circumstances that the forces on the ground found themselves  
21 in.

22          Senator Hirono: I see.

23          General Thomas, in your testimony, you identify SOFWERX  
24 as a SOCOM initiative to support agile acquisition with  
25 appropriate venues. This is an open collaboration facility

1 in Florida that has been in operation for over a year and  
2 has successfully brought hundreds of nontraditional partners  
3 together to work on your most challenging problems. I think  
4 that is a really good idea, although we have a lot of  
5 innovators and idea folks all over the country, also in  
6 Hawaii.

7 How do you search for ideas, collaborators, and  
8 solutions outside of your SOFWERX construct?

9 General Thomas: Senator, you actually teased out the  
10 bigger part of the problem. I have the luxury of commanding  
11 70,000 of the best, most creative problem solvers in the  
12 world. How I marry them up with the absolute innovation  
13 that is everywhere in terms of industrial approaches is the  
14 real challenge.

15 But SOFWERX is one way we are doing that, where we are  
16 compressing the space between academia, innovators,  
17 businessmen, and our operators in the pursuit of very  
18 specific problems. So you might imagine the whole gamut of  
19 issues that we are endeavoring to accomplish there that are  
20 enabling our force. But we are able to do that and go into  
21 rapid fielding and accelerated fielding of capabilities that  
22 enable our force.

23 So a relatively new initiative, SOFWERX, about 1.5  
24 years old, but also already paying some huge dividends for  
25 us.



1           Senator Hirono: So based on your experience so far  
2 with SOFWERX, would you recommend that something like this,  
3 maybe a physical location for PACOM or other commands?

4           General Thomas: Senator, the Defense Department is  
5 actually endeavoring to do this at a number of different  
6 locations. Secretary Carter certainly invested in the  
7 valley. There are other initiatives around the United  
8 States, tapping into the various laboratories and academic  
9 facilities.

10           I cannot speak to where the department is going in  
11 terms of the Pacific and where we might invest out there,  
12 but I am sure we are interested in wherever we can tap into  
13 that kind of innovative capability.

14           Senator Hirono: I hope you all will take a look at  
15 spreading the opportunity around, because there are a lot of  
16 small businesses all over the country who could provide the  
17 kind of innovation that you are seeking.

18           The Pentagon has acknowledged more than 100 U.S.  
19 special operation forces operating with Iraqi units in and  
20 around the Mosul with upwards of 600 more playing a support  
21 role in staging bases farther from the frontlines.

22           This is for General Thomas. Can you comment on the  
23 seemingly ever-increasing use of special operation forces?  
24 Do you think we are relying too heavily on special ops?

25           General Thomas: First and foremost, we are not a

1 panacea. We are not the ultimate solution for every  
2 problem. You will not hear that coming from us. That has  
3 been misconstrued in some media circles. Everything we are  
4 doing is in concert with conventional forces, with our  
5 allies, completely integrated.

6 I just visited Mosul. I was there about 3 weeks ago.  
7 Mosul was my hometown for 15 months, from 2007 to 2008, so I  
8 am very familiar with how daunting that challenge is.

9 In that area, you have a mix of conventional forces. I  
10 met with a brigade commander from the Army who was there.  
11 We had our special operations forces and our forces all  
12 integrated with the Iraqis, who are doing the majority of  
13 the fighting and incurring most of the casualties there. So  
14 it is an absolute blend of all of our forces, and I think  
15 the right mix.

16 Senator Hirono: Thank you, Mr. Chairman.

17 Chairman McCain: Senator Wicker?

18 Senator Wicker: Thank you both.

19 Let's talk about collaboration with your international  
20 counterparts. Which one of you would like to discuss the  
21 extent to which we collaborate with our international  
22 allies? General?

23 General Thomas: Senator, in a word, extensively. At  
24 almost every part of our formation, you will see where we  
25 are endeavoring to bring everyone in who has a part of the

1 problem.

2 I am very appreciative that the Director of National  
3 Intelligence has enabled us to crush through pre-existing  
4 prohibitions for information-sharing, probably one of the  
5 most powerful things that we have in this day and age, to be  
6 able to share exquisite information that the United States  
7 has that we may or may not be intent on acting on, but be  
8 able to share that with our allies and enable them to act.

9 But that is at almost every point of our formation,  
10 where that level of collaboration is ongoing right now. So  
11 "exquisite" is the best way I can describe the extent of the  
12 collaboration, and getting better every day.

13 Senator Wicker: Is there anything else you need in the  
14 next NDAA to help you there? Do you have what you need?

15 General Thomas: Senator, I believe we certainly have  
16 no restrictions that I can mention to you nor that I can  
17 specify to right now. So we feel very enabled there.

18 As I mentioned, the intelligence community is finding  
19 ways to enable us more every day, certainly with the  
20 concerns of safeguarding methods and sources and things like  
21 that, but with a lean toward sharing and collaborating more  
22 than we have ever done before.

23 Senator Wicker: I understand you have a particularly  
24 strong relationship with our neighbors to the north in  
25 Canada.

1           General Thomas: A phenomenal relationship, yes,  
2   Senator.

3           Senator Wicker: What can you tell us in this non-  
4   classified setting about Exercise Vital Archer?

5           General Thomas: Senator, hard to go into detail about  
6   that exercise, which we recently completed, as I think you  
7   know. But it is part of a cycle, if you will, to ensure our  
8   interoperability with our neighbors, with one of our  
9   greatest partners, for a very specific mission set that is  
10   of critical interest to both Canada and us.

11          Senator Wicker: Let me shift then to special boats and  
12   say, first of all, that we in Mississippi are thankful and  
13   honored to have Special Boat Team 22 headquartered in our  
14   state.

15          Would you describe the ways in which these special boat  
16   teams contribute to different missions?

17          General Thomas: Senator, I recently had the privilege  
18   of running all over Stennis here about a month ago, and  
19   getting out on the water in some of those capabilities.  
20   They are integral to many of our activities around the  
21   globe. NAVSCIATTS, the institution that you have there as  
22   well, is also a critical enabler for many of our foreign  
23   allies.

24          So, again, two phenomenal aspects of our portfolio that  
25   are important to everything that we are doing.

1 Senator Wicker: So we are continuing to do a lot of  
2 significant work in riverine environments.

3 General Thomas: Where it applies, Senator, we  
4 certainly have that capability, and we continue to improve  
5 it.

6 Senator Wicker: Where does that apply?

7 General Thomas: Senator, on several locations around  
8 the globe that probably would be best to address in a closed  
9 hearing.

10 Senator Wicker: Okay. And let me just say, to follow  
11 up on the chairman's line of questioning about Afghanistan,  
12 I just think it is very important for you to know, and for  
13 everyone listening to know, that we need to move beyond  
14 anything that puts us at a stalemate in Afghanistan.

15 This is an important fight that we need to win, and  
16 there is every reason that we should be able to do that. We  
17 have a populace in Afghanistan who supports our presence  
18 there. The overwhelming majority of the ethnic groups, of  
19 the tribes, appreciate what we stand for and look to the  
20 United States for leadership.

21 So to the extent that either of you, both of you, can  
22 give us correct and helpful information about how to move  
23 past what some people have described as a stalemate, to me,  
24 is very, very helpful.

25 Ms. Whelan?

1 Ms. Whelan: Senator, I think we are actually actively  
2 looking at adjustments to the approach in Afghanistan right  
3 now. I expect that these proposals will go to the President  
4 within the next week, and the intent is to do just that, to  
5 move beyond the stalemate and also to recognize that  
6 Afghanistan is a very important partner for the United  
7 States in a very tricky region. We want to maintain that  
8 partnership with Afghanistan, and we want to ensure that  
9 Afghanistan reaches its potential. So that is the objective  
10 of the strategy, sir.

11 Senator Wicker: That is very good to know. Thank you.

12 Chairman McCain: Senator Heinrich?

13 Senator Heinrich: Thank you, Chairman.

14 Thank you both for being here. And please pass along  
15 our gratitude to everyone who serves in your command. I  
16 think the work they do every day has an enormous amount of  
17 respect from all of our constituents, and we should be very  
18 grateful for that.

19 General Thomas, yesterday, I want to thank you for just  
20 sitting down with me in my office. You and I discussed a  
21 number of things.

22 The high operational tempo was one of the things we  
23 touched on. One of the things you mentioned to me that  
24 really stuck in my head are the numbers. You also indicated  
25 that now somewhere between 28 percent and 30 percent of your

1 funding is now from war supplemental, or OCO funding, versus  
2 7 percent across the other military services.

3 I was hoping you could talk a little bit about what  
4 that means in terms of that budgetary overreliance on OCO  
5 and how that impacts your ability to plan and execute your  
6 mission.

7 General Thomas: Senator, thanks for the question and  
8 thanks for the opportunity to discuss a number of issues  
9 with you in more detail yesterday.

10 I mentioned the two things that I look to that  
11 pressurize us most are unpredictable de tempo, and certainly  
12 there are aspects of that are affecting our force, and  
13 resourcing, the predictability or not of resourcing, which  
14 has been challenging over time.

15 We are monitoring very closely the budget discussions.  
16 We are integral to all those budget discussions.  
17 Truthfully, I am somewhat sanguine that we will get the  
18 resources required to continue to pursue the tempo and the  
19 effects that we are producing right now.

20 You pointed out my one concern is that we have trended  
21 to be much, much more dependent on operational contingency  
22 funds than anybody else in DOD. So the current budget would  
23 push us --

24 Senator Heinrich: If your overall budget were held  
25 flat, would you rather have that in base budget or would you



1     rather see it over in the OCO?

2             General Thomas:   Senator, I hope that we will be able  
3     to get consideration to move that into the base over time.  
4     Again, I have talked with Secretary Mattis, so I do not want  
5     to appear inconsistent.   The department is not pushing that  
6     as aggressively for the remainder of the other services  
7     because they are only leveraged to OCO to about a 7 percent  
8     degree.   We are 30 percent or near 30 percent right now.   So  
9     that is some risk that we certainly would like to mitigate  
10    over time.

11            Senator Heinrich:   One of the other things we mentioned  
12    and talked a little bit about is the contributions out at  
13    Cannon Air Force Base.   Would you take a moment and talk a  
14    little bit about the importance of the RPA contribution that  
15    happens there?   And do you have concerns with regard to  
16    operational tempo?   We have made huge investments in the  
17    facility over the years because of the growing mission, but,  
18    obviously, the tempo has been incredible.

19            General Thomas:   Senator, I think this committee is  
20    very aware that ISR is a significant portion of our  
21    portfolio, to the tune of about one-fifth of our investment  
22    strategy on any given annual basis.   It runs the gamut from  
23    tactical ISR all the way to high-end ISR that our Air Force  
24    component produces, which is the best in the world.   It is  
25    better than anything on the planet.

1 Cannon plays a critical role in terms of the basing and  
2 training of that ISR capability, both manned and unmanned.  
3 And then the range complex there allows us to work it every  
4 night. So, again, state-of-the-art ISR capability produced  
5 by our Air Force and others that we leverage on a consistent  
6 basis.

7 Senator Heinrich: I also want to commend SOCOM's  
8 interest in pursuing what General Goldfein described as  
9 silent sabotage with regard to directed energy. An airborne  
10 high-energy laser on a C-130 gunship could certainly deliver  
11 a number of capabilities before and during clandestine  
12 ground operations.

13 Do you want to share any thoughts you have on how  
14 directed energy might contribute to your future mission and  
15 how SOCOM's plans for developing that system are coming  
16 along?

17 General Thomas: Senator, as we discussed yesterday, we  
18 see a number of applications for high-energy weapons  
19 capabilities, so we are interested from a number of  
20 approaches. You mentioned that we have offered to base it  
21 on one of our platforms as a test basis. That was  
22 relatively easy for us to offer up and obviously gives us  
23 kind of an immediate developmental capability. So, again,  
24 very interested, not exclusively a SOCOM pursuit --

25 Senator Heinrich: Do you feel good about Air Force's

1 willingness to get in that game as well?

2 General Thomas: I do. We have a phenomenal  
3 relationship with General Goldfein and the Air Force.

4 We have actual annual service talks with all the  
5 services to talk through how we can crush through our  
6 combined equities, and the relationship with our sister  
7 services is phenomenal. I have no concerns.

8 Senator Heinrich: My time has expired here, but I also  
9 want to express a willingness to work with you on the 1208-  
10 like issues with regard to unconventional warfare.

11 So thank you all for being here today.

12 Chairman McCain: Senator Ernst?

13 Senator Ernst: Thank you, Mr. Chair.

14 To Ms. Whelan and General Thomas, thank you so much for  
15 being with us today. As a soldier and a citizen, I want to  
16 thank you very much for your relentless work on the  
17 battlefield. And as the spouse of a former SOF operator, I  
18 want to thank you for SOCOM's dedication to the health and  
19 wellness of those operators and especially the commitment  
20 that you have to those servicemembers' families. So thank  
21 you very much for being here.

22 General Thomas, during your confirmation hearing, we  
23 spoke about SOCOM's Preservation of the Force and Family,  
24 POTFF, initiatives. As you know, I am glad to see that  
25 SOCOM has done a lot in those areas to help our special

1 operations warriors and their family members. The wounded  
2 warriors especially is an interest of mine. I would  
3 encourage everybody on this committee to take a look at  
4 those programs and learn more about them.

5 Can you give us just a brief update on POTFF and  
6 specifically on THOR 3? I had the opportunity to do PT at a  
7 THOR 3 facility with some of your operators. It was an  
8 experience.

9 Can you tell us if SOCOM has the support it needs from  
10 Congress for these types of programs?

11 General Thomas: Senator, thanks for the question.  
12 Thanks more specifically for your personal support for this  
13 critical capability.

14 It is, admittedly, an awkward acronym, POTFF,  
15 Preservation of the Force and Family, but it captures the  
16 essence of what we are trying to enable, focused on both our  
17 force and, arguably, something that we talked about but did  
18 not have the resourcing before, the readiness and the  
19 preservation of our families.

20 It literally builds in or enables us to build in  
21 resilience prior to and in preparation for potential  
22 deployment for both our servicemembers and their family  
23 members across a broad array of approaches -- psychological,  
24 physical, spiritual -- that again has paid huge dividends  
25 for us.

1           You mentioned a specific aspect of that that pertains  
2 mostly to the physical maintenance and the physical recovery  
3 of our force. But over time, this committee and the  
4 Congress has enabled us to put the right infrastructure in  
5 place with the right technicians, therapists, and  
6 psychologists, et cetera, to provide state-of-the-art, as  
7 good as anything on the planet, sustainment capability for  
8 our individual operators, our individual servicemembers, and  
9 their families.

10           Command Sergeant Major Patrick McCauley and I go around  
11 the formation. We get nothing but rave reviews from the  
12 force. In some cases, in fact, the challenge forces in some  
13 of our most distant locations where smaller forces, they are  
14 looking for the same capability, and we are finding ways to  
15 parlay that to them as well, as opposed to just at the  
16 larger special operation installations.

17           Senator Ernst: Outstanding. It is a great program.  
18 Thank you, sir, for being so supportive of that.

19           And it is not surprising that so many of our SOF  
20 warriors, even after injury, are able to get back into that  
21 fight. While I was at THOR 3 with a dear friend of mine  
22 from Iowa, we met another one of his teammates who had also  
23 been injured. He had a near, at the hip amputation and had  
24 a prosthetic. He has been able to return to the fight  
25 because of those facilities. But he has been back to

1 Afghanistan a number of times.

2 But we also have those warriors who are not able to  
3 deploy again. So what is SOCOM doing to utilize their  
4 talents and abilities even after injury if they cannot  
5 deploy? And are there things that we should look at as  
6 Congress to enable those warriors to stay on duty?

7 General Thomas: Senator, you touched on one of the  
8 unique challenges that we have, that most of our  
9 servicemembers, even despite extraordinary wounds,  
10 debilitating wounds for any other human being, desire  
11 greatly to continue serving. So you highlighted one  
12 example. I can highlight dozens where we have been able to  
13 accommodate individuals to stay in the force and to continue  
14 to contribute.

15 You mentioned an amputee. We have amputees that are  
16 operating as operators, frontline operators, special forces,  
17 SEALs, the tip of the spear although way through all of our  
18 supporting functions.

19 And so again, our goal is, if they want to continue  
20 serving, we find a way to enable that. And you have given  
21 us the wherewithal, the committee has given us the  
22 wherewithal to be able to do that through our Warrior Care  
23 program.

24 Senator Ernst: Very good. I appreciate that very  
25 much.

1 I do have a few other questions. We will get to those.  
2 Just a quick yes or no, though.

3 President Trump today is saying that he does support  
4 leaving troops in Iraq in the fight against ISIS. Is that  
5 something that you would support?

6 General Thomas: Senator, I support the strategy, so  
7 whatever the nature of the special operations support is  
8 required to obtain our objectives, I am supportive.

9 Senator Ernst: Ms. Whelan?

10 Ms. Whelan: Yes, actually, we are totally linked, and  
11 the strategy is based on our requirements of the generals on  
12 the ground.

13 Senator Ernst: Thank you very much.

14 Thank you, Mr. Chair.

15 Chairman McCain: Senator Kaine?

16 Senator Kaine: Thank you, Mr. Chair.

17 Thanks to the witnesses. I have a concern and a  
18 question.

19 On the concern side, on the SOCOM Web site, you have a  
20 SOF Truths, five of them. One of them is, most special  
21 operations require non-SOF assistance. That seems pretty  
22 obvious. I have a concern about what I worry is a sort of  
23 growing SOF myth, and that is you can do special forces and  
24 have special forces and nothing else to accomplish your  
25 goals. Even conversations in this body sometimes are, well,



1 we do not want to use ground troops, no boots on the ground,  
2 but it is okay to use special forces.

3 I sometimes think that is a little bit of not really a  
4 military calculation but kind of more of a political one,  
5 that ground troops are a little bit more notable, special  
6 forces tend to be more covert, so we can do things with  
7 special forces and not really have to be accountable for it  
8 to the public.

9 Am I right to worry about that?

10 General Thomas: Senator, I think you are right to  
11 worry about the perception. It is something that we battle  
12 all the time. There have been too many books and movies and  
13 publications that might imply that we go it alone, do it  
14 alone, and that is completely incorrect.

15 So, certainly, I share your concern that that is out  
16 there, but it is something that we push back on all the  
17 time. It is just not the case.

18 Senator Kaine: A question Senator Wicker asked you  
19 about, collaboration with international partners, I want to  
20 focus on a piece of that, the training that you do. I think  
21 one of the best parts of our DOD budget, and it is a very  
22 small part of the budget, is the training work that we do  
23 with other nations, either bringing military leaders of  
24 other nations here or doing training with countries all over  
25 the world.

1           Senator King and I have done some traveling and have  
2    seen U.S. special forces doing training in some tough parts  
3    in the world that are pretty impressive. Without saying  
4    anything in an open setting that you should not, talk a  
5    little bit about the scope of the training activities that  
6    our special forces are involved in with partners all over  
7    the world.

8           General Thomas: Senator, we are consistently trying to  
9    align ourselves with the appropriate partner forces where  
10   our national interests pertain in the interest of building  
11   their capability to the range of missions that they might be  
12   required to do.

13           I think we are pursuing a much more enlightened  
14   training approach, all the way through security force  
15   assistance. Where I think my fellow combatant commanders  
16   would tell you that we are probably not keeping pace is in  
17   terms of the bureaucracy that pertains to foreign military  
18   sales and things of that ilk. I know we are trying to get  
19   those to be as coherent as possible going forward. That  
20   would help us.

21           But I think we are doing a much better job of  
22   identifying partner forces ahead of time that need various  
23   capabilities, and we are pressing to make sure they have  
24   that capability.

25           Senator Kaine: And this training, when you do it, it

1 is not only about just sheer military capacity-building. It  
2 is also about rules of war and human rights and elevating  
3 professional standards in these militaries around the world,  
4 and that is all for the good.

5 General Thomas: Senator, you are nailing what I think  
6 is one of the critical aspects of it. It is literally  
7 imparting our American values to them in the means of a  
8 military-to-military relationship.

9 Too often, in my mind, the first billpayer is that  
10 military-to-military relationship when we have missteps, and  
11 we are the first to address it. If we even get a scent of  
12 extrajudicial killings or inappropriate behavior, we address  
13 that immediately with the respective element. But we are  
14 attempting to bring their understanding of what we believe  
15 is the right way to conduct combat operations along as part  
16 of our training.

17 Senator Kaine: One of the most important things I  
18 think we can do is kind of be the partner of choice as other  
19 nations are looking to build capacity, and I think there is  
20 probably no area more than special forces where we are  
21 really seen as a partner of choice by nations all around the  
22 world. That is a great way to build relationships and  
23 improve capacity, compliance with rule of law.

24 So I commend you on that and look forward to talking  
25 about that more as we get into working on the NDAA together.

1 Thank you, Mr. Chairman.

2 Chairman McCain: Senator Sullivan?

3 Senator Sullivan: Thank you, Mr. Chairman.

4 Ms. Whelan, General, thanks for your testimony.

5 General, I appreciated the opportunity to meet with you  
6 and your team yesterday. I wanted to follow up on some of  
7 our discussions.

8 Obviously, we focus a lot here on ISIS and Al Qaeda and  
9 some of the other terrorist groups. But certainly, one of  
10 your most important missions is the counter-WMD mission. As  
11 the threat is growing from North Korea, Iran, it is not just  
12 a direct threat. As you know, it is a proliferation threat.  
13 And I think that is going to be an enduring mission for you  
14 and your team and the SOF Command for decades.

15 So in 2016, in the unified campaign plan, it was  
16 amended to transfer responsibility from STRATCOM to SOCOM  
17 for the synchronization of DOD's global counter-WMD  
18 strategy. To the extent you can discuss it in an open  
19 hearing like this, what are the things that we can do to  
20 support that critically important mission in terms of  
21 resources? How is the transfer going? And are there any  
22 other things that this committee should be aware of to help  
23 you most effectively focus and undertake that critical  
24 mission?

25 General Thomas: Senator, thanks for the question, and

1 thanks for the time yesterday as well.

2 As you mentioned, this is an enormous and incredibly  
3 important mission set that we accepted responsibility for in  
4 January. So January of this year was when it was officially  
5 assigned to us from the Department of Defense. We have had  
6 about 4 months to work our enhanced appreciation for all  
7 that entails. Obviously, we had studied ahead of time, but  
8 there is nothing like embracing a mission to really  
9 understand it.

10 We have had a chance to do our first of what is a  
11 semiannual synchronization session with all the interagency  
12 partners that are part of this problem set, all the  
13 geographic combatant commanders, our international partners,  
14 a really, really valuable session that we conduct  
15 semiannually.

16 We are currently now trying to confederate all the  
17 ongoing activities so that we can provide the Secretary an  
18 assessment here. I am aiming for the August timeframe to  
19 give him a comprehensive assessment of where we are in terms  
20 of the United States Government policies and objectives for  
21 countering weapons of mass destruction, where we are from a  
22 DOD approach, and relative to both our interagency and our  
23 international partners.

24 So, again, we are leaning into this mission as  
25 aggressively as we do most everything at SOCOM. But it is

1 obviously much, much bigger than us, and we are honored to  
2 have that coordinating role for the Department of Defense,  
3 and we are endeavoring to provide the best product possible  
4 for the Secretary and the department.

5 Senator Sullivan: As you undertake that analysis and  
6 that transfer of authority over to you, which has already  
7 happened, please make sure that this committee -- I can  
8 almost guarantee you that you would get bipartisan support  
9 for additional responsibilities or resources that you will  
10 need with regard to that critical mission, so please keep us  
11 posted.

12 Let me ask this, it is kind of related to Senator  
13 McCain's and Senator Kaine's question.

14 We seem to have, in some ways, adopted a strategy of  
15 fighting our wars now with a combination of SOCOM forces and  
16 airpower. But in your professional military opinion, what  
17 other capabilities would be beneficial to help our forces  
18 and our country bring success in places like Iraq or Syria  
19 or Afghanistan?

20 I know you are looking at that issue, but there is kind  
21 of this, and I think it is a theme here, you are hearing a  
22 bit of a myth that, hey, once the SOCOM men and women are on  
23 it, everything is good to go. But we know that there are a  
24 lot of other capabilities and other forces that need to  
25 bring to bear.

1           Specifically, what do you see as most important in  
2 terms of other capabilities, supporting or even in the lead?

3           General Thomas: Senator, it is kind of ironic, I am  
4 running through my brain right now 80 different countries,  
5 8,000 special operations forces forward deployed, and I  
6 cannot think of a single circumstance where we are not  
7 dependent on another service, another supporting function  
8 out there -- not one.

9           So if and when it has been described as special  
10 operations forces by themselves, it is a misconception.

11           Now, unfortunately, in some cases, we are too  
12 prominent, too prominent because it is interesting, it is,  
13 again, the stuff of too many books and movies. But we are  
14 not doing anything by ourselves.

15           The good news is, as we go into a problem, as special  
16 operations goes into a problem, I consider the entirety of  
17 the DOD inventory at our disposal, and vice versa. That is,  
18 I think, the benefit of the joint force approach, that we do  
19 not feel constrained that there is nothing available in the  
20 DOD arsenal that we cannot leverage, and they look at us in  
21 the same fashion.

22           So, again, that is happening about anywhere I can  
23 imagine, anywhere I have been lately, without any  
24 shortcomings.

25           Senator Sullivan: So you are integrated, for example,



1 with marines who are doing artillery fire missions with you  
2 in Iraq right now?

3 General Thomas: I think I mentioned to you I will not  
4 get into specifics, but I just visited some marines that  
5 were shooting more 155 ammo than I can supply them right  
6 now, and they are integral to everything we are doing.

7 Senator Sullivan: Great. Thank you.

8 Thank you, Mr. Chairman.

9 Chairman McCain: Senator King?

10 Senator King: Thank you, Mr. Chairman.

11 Ms. Whelan, I could not help notice your former title  
12 of Principal Deputy Assistant Secretary of Defense for  
13 Special Operations Low-Intensity Conflict.

14 When I was a junior staff member in this body 40 years  
15 ago, I once called OMB for an administration witness. They  
16 gave me a title. He said I am sending you so and so, the  
17 principal deputy. I said I do not know these titles. What  
18 does that mean? The fellow gave me an answer, which if I  
19 ever write a book about Washington, it will be the title of  
20 my book. The answer was, "He is at the highest level where  
21 they still know anything."

22 [Laughter.]

23 Senator King: I just want you to know that you are at  
24 that level, and I am now above it. So I have never  
25 forgotten that.

1           General Thomas, there has been a lot of talk about  
2 tempo. Let me go back to the left about tempo and talk  
3 about retention, recruitment, and throughput. Do you have  
4 adequate people in the pipeline to maintain the tempo that  
5 you are at today?

6           General Thomas: Senator, again, something that we look  
7 at incredibly closely every day. The answer is we are  
8 having some challenges for portions of the force for  
9 recruitment. I contribute some in terms of Army special  
10 operations forces to the downsizing of the Army, partly for  
11 some internal challenges that I think we have rectified.

12           But in some cases, we have had some challenges. I  
13 think we are trending in the right direction now though  
14 going forward, but we had some temporary challenges over the  
15 last couple years.

16           Senator King: I certainly hope that you will let the  
17 committee know about those issues. And if there are  
18 recruitment and retention issues that our actions here can  
19 help to alleviate, we certainly want to do that.

20           General Thomas: Will do, Senator.

21           Senator King: Ms. Whalen, the command-and-control is  
22 an issue that is of some concern. Do you believe that we  
23 have effective command-and-control of the special operations  
24 forces?

25           I am concerned about interested parties, your command,

1 geographic combatant commanders, service components, all  
2 receive and share information in a quick and efficient  
3 manner. Talk to me about command-and-control.

4 Ms. Whelan: Certainly. I will actually also let  
5 General Thomas comment on this as well.

6 But I think from our perspective, in the SOLIC  
7 oversight role, we actually have excellent command-and-  
8 control. In fact, I think the integration of our forces  
9 between SOCOM and the combatant commands that they support,  
10 the regional combatant commands --

11 Senator King: So if there is an action of special  
12 operation forces in a particular geographic area, the  
13 combatant commands are integrated, they know what is going  
14 on.

15 Ms. Whelan: Actually, Senator, the way it works is  
16 that SOCOM forces, the SOF forces actually fall under the  
17 command of the combatant commander, the geographic combatant  
18 commander. So the GCC is fully in charge of the operations  
19 that take place in their AOR. For example, if you are  
20 looking at the CENTCOM AOR right now, General Votel and his  
21 subordinate commanders, that is the chain of command that  
22 operates all of the forces that are in that AOR right now,  
23 to include special operations forces.

24 Not necessarily for this forum, but there are some  
25 specific elements that operate under a slightly different

1 chain of command, although still under General Votel's  
2 purview but with more direct access to General Votel that  
3 belong to General Thomas.

4 But there is total integration, and nothing happens in  
5 a geographic commander's AOR that he does not know about.

6 Senator King: General Thomas, you are comfortable with  
7 the structure?

8 General Thomas: Senator, absolutely comfortable. I  
9 reemphasize Theresa's point. There are no special  
10 operations in the world right now that are not under the  
11 command-and-control of geographic combatant commander.

12 There are provisions for exceptions in some scenarios.  
13 And truthfully, the exceptions are single digits over the  
14 course of our history where SOCOM could be the supported  
15 commander. But day in, day out, all of our operators right  
16 now are under the control of a geographic combatant  
17 commander.

18 I have combatant command of all special operations  
19 forces, and I apportion them to their respective geographic  
20 combatant --

21 Senator King: There is always coordination with the  
22 combatant command?

23 General Thomas: Always, constant, incessant. Senator,  
24 our role for synchronizing is where these geographic  
25 combatant commanders get to their prescribed limits. So you

1 might imagine, for CENTCOM, for instance, as their borders  
2 literally butt up to other geographic combatant commanders,  
3 Syria to Turkey, Yemen to Somalia, Egypt to Libya, that is  
4 where we play a critical function of synchronizing special  
5 operations activities across those respective geographic  
6 combatant commanders.

7 Again, they fight the forces. We provide a  
8 transregional perspective and role.

9 Senator King: Ms. Whelan, my time is up, but very  
10 quickly, you mentioned information warfare. What does that  
11 consist of?

12 Ms. Whelan: Information warfare is a complex set of  
13 functions that include some of our military information  
14 support teams, as well as some of our communications  
15 specialties. There is a whole list. I know you are short  
16 on time, Senator, if you like --

17 Senator King: Perhaps you could, for the record --

18 Ms. Whelan: Absolutely.

19 Senator King: -- give us a definition of what that is.

20 Ms. Whelan: We will take that for the record and get  
21 you the answer.

22 Senator King: Thank you very much.

23 Thank you, Mr. Chairman.

24 Chairman McCain: Senator Cotton?

25 Senator Cotton: Thank you both for coming today.

1 General Thomas, thank you, in particular, for your  
2 service, and all the men and women underneath your command.

3 Over the last 8 years, there has been some tension  
4 between civilian and uniformed services over the number of  
5 flag officers that we have seen grow in all the services.  
6 The committee made an effort to reduce the number of flag  
7 officers last year.

8 I have heard some generals and admirals, though, say  
9 that when the civilian command authority reserve decision-  
10 making power to the highest levels, decision-making power  
11 that was once delegated to colonels and captains and, heaven  
12 forbid, even lieutenants on the battlefield in Iraq and  
13 Afghanistan in the last decade, then we should expect to see  
14 an increase in the number of flag officers.

15 Have we begun to see in the last 4 months more  
16 delegation of operational decision-making authority back to  
17 where I suggest it belongs, in the hands of commanders who  
18 are on the frontlines?

19 General Thomas: Senator, the short answer is yes.

20 I am a little bit humored by how you described the  
21 situation in that my youngest son, who just gave up company  
22 command of the 82nd recently wrote to me and said since when  
23 did we stop letting company commanders command companies?  
24 My response to him was, Michael, that question has been  
25 asked since time immemorial. Where and how are you

1 restricted right now?

2 But I think, to your overall point, that while certain  
3 authorities had been elevated to very senior levels, I  
4 typically ask our force, are you empowered at the right  
5 level with the right ROE to do your job? And I think it is  
6 turning in that direction.

7 Senator Cotton: As that delegation occurs, do you  
8 think we might see a concomitant decline in the number of  
9 flag officers in the Pentagon who need to make those  
10 decisions for our company and field grade officers in the  
11 field?

12 General Thomas: Senator, I would tell you, truthfully,  
13 flag officers in the Pentagon are not empowered to make  
14 those decisions because they are not in the chain of  
15 command. So I think the right folks in the chain of command  
16 are being empowered to make the decisions that you certainly  
17 experienced from your time in combat. We are going back in  
18 that direction positively.

19 Senator Cotton: On a related note, last month, we  
20 deployed the Massive Ordnance Air Blast in Afghanistan for  
21 the first time. There was some media controversy about  
22 that, about why that bomb was deployed.

23 At what decision would something like that be made?

24 General Thomas: Senator, I think it was described that  
25 that decision was in General Nicholson's authority, so he

1 had the capability, he had the discretion and decision-  
2 making to deploy it.

3 I think you know we used it as an area denial weapon in  
4 an area that we have been having a protracted fight with  
5 ISIS and the Khorasan in Nangarhar Province in Afghanistan.  
6 So I think it was the right deployment of a weapon system  
7 that avoided a more extensive of loss of life.

8 I mentioned Sergeant De Alencar and our two rangers who  
9 died out in the area recently.

10 So, again, that decision-making authority was General  
11 Nicholson --

12 Senator Cotton: The commander in Afghanistan.

13 General Thomas: The commander on --

14 Senator Cotton: Not the chairman, nor the Secretary of  
15 Defense, the National Security Adviser, the President.

16 General Thomas: No.

17 Senator Cotton: And deciding what kind of ordnance to  
18 employ, would you say that is a decision for commanders in  
19 the field to make?

20 General Thomas: I believe it is.

21 Senator Cotton: And they do not need to get approval  
22 from anyone 8,000 miles away in Washington?

23 General Thomas: I think that could actually cause  
24 great risk to the force, if it had to go back that way.

25 Senator Cotton: I hope all the rest of our bombs are



1 overcoming the laws of their mother. Are they?

2 General Thomas: I think they are over their grieving.

3 Senator Cotton: Good.

4 Another question I want to raise is the relationship  
5 between special operations forces and conventional forces.  
6 By definition, special operations forces are special. They  
7 do amazing things, but they are limited in numbers and  
8 focused in mission.

9 Would you agree that you cannot simply flood special  
10 operations forces and expect them to be a substitute for  
11 what our conventional forces or what a broader strategy  
12 would do?

13 General Thomas: Senator, I agree, and, more  
14 pragmatically, we do not have the forces, the special  
15 operations forces, to do that. So it is not a viable  
16 solution.

17 Senator Cotton: So special operations forces are an  
18 important complement to conventional forces in a broader  
19 strategy, but they cannot be a substitute for either?

20 General Thomas: Agreed, Senator.

21 Senator Cotton: A related question, does that mean  
22 that if we expect to increase the number of special  
23 operations forces, or the mission sets that we provide them,  
24 or the operational tempo at which we deploy them, we also  
25 need to see a concomitant increase in the number of

1 conventional forces as well to support those missions?

2 General Thomas: I think that is a good assumption,  
3 Senator.

4 Senator Cotton: All right. Thank you.

5 Chairman McCain: Senator Peters?

6 Senator Peters: Thank you, Mr. Chairman.

7 Thank you to our witnesses here today for your  
8 insightful testimony.

9 General Thomas, I would like to go back to something  
10 you brought up in your testimony as well as to a question  
11 earlier from a panelist, and that is the SOFWERX effort that  
12 is undergoing right now to bring together academia and  
13 industry and some high-tech work.

14 As you know as well as anyone, the nature of warfare is  
15 going to change dramatically in the years ahead. Technology  
16 focus will be greater than ever. In the past, the military  
17 has always been a leader in that area and will continue to  
18 do that. But one difference is that what we are seeing now  
19 in the civilian industry is accelerating in terms of new  
20 innovations.

21 We have, in Michigan, TARDEC, which is the Army's tank  
22 and vehicle research lab, which is also working on the model  
23 that you have mentioned. But I was just curious, I know  
24 your effort is only about 1.5 years old now, but what would  
25 you consider the major takeaway of that effort in the last

1 1.5 years? Or perhaps a lesson that you have learned in  
2 that 1.5 years that is going to be instructive for entities  
3 like TARDEC and others to emulate?

4 General Thomas: Senator, I could probably on the  
5 record provide you a list of initiatives that have actually  
6 resulted in fielding capabilities to our forces, so some  
7 very specific dividends that have come out of that  
8 environment.

9 Truthfully, our director of Acquisition Technology and  
10 Logistics is leveraging that platform every day. For  
11 instance, the Counter-Unmanned Aerial System challenge that  
12 cropped up recently in Iraq and Syria, which was relatively  
13 nuanced, we were able to pour some very directed resources  
14 at that, have what he calls a collision of academia,  
15 technicians, operators, come together on that problem, among  
16 others, to really crash on it in a hurry and, more  
17 importantly, leverage off-the-shelf technologies, things  
18 that would otherwise take an inordinate amount of time to  
19 get to the field.

20 So if I can, I would like to provide you a list of  
21 specifics of what we have accomplished and, more  
22 importantly, what we are endeavoring to do going into the  
23 future.

24 Senator Peters: I appreciate that. I would also like  
25 to do a deeper dive, perhaps with some folks there to talk

1 specifically about some of the work that they are doing and  
2 how we can replicate that in other places, because I think  
3 this is critically important in future warfare.

4 As you know, and you have alluded to it in your answer  
5 there, autonomy and robotics will probably have some of the  
6 greatest potential to change how we conduct warfare.

7 In fact, I was struck that, last week, the Marine Corps  
8 conducted an exercise at Camp Pendleton on the future of  
9 amphibious warfare, which included using robots as the first  
10 boots on the ground, resupplying troops with drones, and  
11 even robots providing covering fire for those marines.

12 In general, how do you see autonomy and robotics  
13 changing battlefield tactics in some of your operations? It  
14 appears this is coming a lot quicker than folks may have  
15 anticipated.

16 General Thomas: Senator, I would like to think we are  
17 at the forefront or writing all the initiatives that pertain  
18 to that. As you might imagine, our mission set, especially  
19 our direct-action mission set, entails an element of risk  
20 that we are trying to mitigate for literally the number one  
21 man in a formation that could absolutely be mitigated  
22 through robotics and other kind of sensory improvements over  
23 time.

24 So we are pursuing that actively. I was going to ask,  
25 if your time allows, that maybe we can get you to come visit

1 in Tampa. We have had several visitors come in and actually  
2 provide us other opportunities to connect with academia and  
3 industry to some of the other activities that you mentioned.

4 Senator Peters: I would appreciate that opportunity.

5 What do you consider some of the main benefits and  
6 tradeoffs that we need to consider as this technology moves  
7 forward?

8 General Thomas: Right now, it is a practical challenge  
9 for us, because, as you might imagine, we have tried to push  
10 the application of robotics where just the agility, in terms  
11 of sensory capability, decision-making, and physical  
12 capabilities of robotics just are not there yet. But  
13 nonetheless, we are pushing in that regard. But we see some  
14 great opportunities.

15 Senator Peters: Great. Thank you, General. I  
16 appreciate it.

17 Chairman McCain: Senator Cruz?

18 Senator Cruz: Thank you, Mr. Chairman.

19 Good morning. Welcome. Thank you both for your  
20 service to our Nation, particularly at this perilous time.

21 General Thomas, in recent months, special operations  
22 forces from across the services have made the ultimate  
23 sacrifices in conflicts around the world. Most recently, a  
24 number of brave special operators lost their lives fighting  
25 ISIS in northeastern Afghanistan. The reduction in

1 conventional forces in Afghanistan and the closure of a  
2 majority of combat outposts and forward operating bases in  
3 the country has left a considerable gap in U.S. presence in  
4 critical enemy engagement areas.

5         Would special operations forces in Afghanistan be  
6 better supported if there were a greater presence of  
7 conventional soldiers in combat outposts and forward  
8 operating bases throughout the country?

9         General Thomas: Senator, I think General Nicholson and  
10 others are looking at enhancing the capability in terms of  
11 train, advise, assist, so more conventional forces that  
12 would thicken the ability to advise and assist Afghan  
13 forces. That would absolutely be to our benefit.

14         Right now, you mentioned the casualties that we  
15 recently incurred. Those are accompanied operations. That  
16 is where our special operations forces are accompanying  
17 Afghan special operations capabilities.

18         Ultimately, we want to make them capable of doing it on  
19 their own, and we are certainly making some progress there.  
20 But I think parallel efforts to advise and assist the larger  
21 conventional capabilities of the Afghan forces would  
22 absolutely enhance the effort.

23         Senator Cruz: Do the special operations forces have  
24 the dedicated assets and resources that they need to fight  
25 and win, given so many competing areas of conflict around

1 the world? And are you ever put into a position where you  
2 are forced to choose which mission to fully support and what  
3 can be accomplished with less dedicated assets?

4 General Thomas: Senator, to answer your first  
5 question, I do think we have adequate resources to task.

6 The bigger challenge, which was prefaced by the  
7 chairman at the beginning, is that, from a DOD standpoint,  
8 we are a microcosm of the DOD from a global approach, in  
9 that we are trying to provide the necessary special  
10 operations requirements to all the geographic combatant  
11 commanders at the same time with a relative prioritization.

12 The Secretary and the chairman are endeavoring to make  
13 sure that prioritization is as precise as it needs to be for  
14 us as service components so that we can support the effort  
15 and priority, but it is a challenge. We, like the  
16 department, are trying to do a lot of things at the same  
17 time in a challenging world, so that has some inherent  
18 friction to it.

19 Senator Cruz: On a different topic, I understand that  
20 the decision regarding which combatant command would be  
21 responsible for weapons of mass destruction has been  
22 decided, and that, starting in January, it now falls under  
23 your command at the Special Operations Command.

24 This is obviously a critical component of our Nation's  
25 nuclear deterrent and counter-WMD programs that have a major

1 responsibility, including nuclear, chemical, and biological  
2 agents.

3       Could you please comment on how the addition of WMD  
4 responsibility has affected current and future operations?

5       General Thomas: Senator, I mentioned previously that  
6 we absolutely embrace the enormity of this mission. It is  
7 much, much bigger than special operations and SOCOM, so we  
8 are looking to leverage as much of the rest of the  
9 interagency community and our international partners to  
10 accomplish our government's objectives in this regard as we  
11 can.

12       Right now, we have the resourcing required to embrace  
13 this set, and we are in discussion for what we need going  
14 forward. I mentioned earlier that I hope to provide an  
15 assessment to our Secretary of Defense in August in terms of  
16 a comprehensive review of what we are trying to accomplish  
17 from a U.S. Government policy and strategy objective, and  
18 how well we are doing.

19       So, again, we look forward to providing that to the  
20 committee as well, once we brief the Secretary.

21       Senator Cruz: Ms. Whelan, do you have additional  
22 thoughts on the impact of WMD responsibility under SOCOM?

23       Ms. Whelan: Senator, thanks for the question.

24       I think we fully supported the decision to shift the  
25 responsibility to SOCOM. SOCOM has the capabilities on



1 that, we were intended to utilize to address this issue, so  
2 I think, organizationally, it made a tremendous amount of  
3 sense to us to move it from STRATCOM to SOCOM, so we fully  
4 support.

5 Senator Cruz: Thank you very much.

6 Chairman McCain: Senator Warren?

7 Senator Warren: Thank you, Mr. Chairman.

8 And thank you for being here. I just want to quickly  
9 ask about the importance of our nonmilitary agencies and  
10 programs to your mission.

11 For much of the past decade, special operations forces  
12 have deployed around the globe 24/7, and we often think of  
13 them as conducting raids and taking out terrorists. But I  
14 understand that a big part of your mission is actually to  
15 advise and assist local forces to build their own capacity.

16 General, how important is our State Department to that  
17 mission?

18 General Thomas: Senator, the relationship to the State  
19 Department is indescribably critical, both at the State  
20 Department level, but I would offer, as I mentioned earlier,  
21 we are in 80 different countries, and we look to have the  
22 most enhanced relationships possible with every one of those  
23 countries through our country team. If that is not the  
24 baseline for our United States Government approach, then we  
25 are flawed from the start.

1 Senator Warren: So at the national level and at the  
2 country level.

3 Would a reduction in funding to the State and USAID  
4 that conduct foreign assistance in diplomacy make your job  
5 easier or make your job harder?

6 General Thomas: Senator, as you are implying, it makes  
7 their job harder, which I think, by extension, would make  
8 our job harder. So I cannot calculate the specific cost,  
9 but I know an already strained State Department would be  
10 more pressed to do their job.

11 Senator Warren: Good. Thank you. That is very  
12 helpful.

13 The administration is seeking a significant reduction  
14 in the State Department and USAID budgets. Diplomacy and  
15 development are critical for alleviating the very conditions  
16 that contribute to the security challenges that SOCOM  
17 confronts every single day.

18 Now, if I can, I would like to return to a question  
19 that Senator Sullivan raised about SOCOM's responsibility as  
20 the lead organization for countering WMDs. I know that this  
21 responsibility was shifted over to you to ensure that we are  
22 paying enough attention to the nuclear proliferation threat  
23 and to ensure that we are synchronizing the WMD work with  
24 the counterterrorism mission so that we can prevent a  
25 terrorist group from ever getting a hold of a nuclear

1 weapon.

2 This mission, as I understand it, includes three lines  
3 of effort: preventing the acquisition of WMDs by foreign  
4 powers, containing and reducing WMD threats, and responding  
5 to a WMD crisis.

6 As I understand it, you seem pretty prepared to tackle  
7 the first of those, given your hard-won experience using  
8 intelligence to track bad actors over the past 15 years.  
9 WMD threats and responding to WMD crises are going to  
10 require some new skills here.

11 General, to the extent that you can in an open session,  
12 can you just say a word about what you see as the biggest  
13 challenges in taking on this new responsibility?

14 General Thomas: Senator, absolutely. You mentioned  
15 that we were already pre-established in various aspects of  
16 this mission set. I think to Secretary Whelan's earlier  
17 comment, I think that is what made it an almost natural fit  
18 for the mission to transition to us, that we have a pre-  
19 existing approach and process, kind of an ethos to dealing  
20 with transregional terrorism. I think there was a natural  
21 application or kind of a fungible application to the WMD  
22 set.

23 Going forward though, even from a first blush  
24 assessment, the biggest challenge for all of us is seeing  
25 and sensing the nature of the threat in an environment that

1 runs the gamut from dual-use technology, proliferation of  
2 nefarious items in the same stream as things that are for  
3 the good of industry and not of a nefarious use.

4 So I really see the major onus as we go forward is  
5 determining how we, both DOD and the interagency, see and  
6 assess the threat and obviously can enable operations to do  
7 what we need to do, whether it is disruption of activities  
8 or something else. So the most daunting challenge I think  
9 will be of an intelligence variety in terms of assessing the  
10 threat.

11 Senator Warren: Thank you. I appreciate that.

12 I understand that the committee has asked you to  
13 prepare a report on the resources, personnel, and  
14 authorities you are going to need to carry out this mission.  
15 I understand you are working on that. I know it will be  
16 very helpful.

17 General Thomas: Yes, ma'am, we are.

18 Senator Warren: Good. Can I ask you one last quick  
19 question? And that is, Senator Sullivan asked about what  
20 you needed from us to carry out the mission. I just wanted  
21 to see if you could say a word about what you expect to  
22 receive from Strategic Command, who is giving up this  
23 mission, in terms of personnel and funding.

24 General Thomas: Ma'am, we are actually still co-joined  
25 with Strategic Command for this mission set. So as they

1 shifted the set specifically to us, there are still a number  
2 of co-related activities that have kept us co-joined. They  
3 did transfer an entity with the Defense Threat Reduction  
4 Agency that was part and parcel of their approach that came  
5 directly to was and is integral to what we are doing now.  
6 But we are also addressing what we think are the future  
7 requirements to enhance this mission.

8 Senator Warren: Do you expect more transfers to occur?

9 I am going to quit, Mr. Chairman, because I am over my  
10 time.

11 General Thomas: I am hopeful that within the  
12 department, not necessarily from STRATCOM, which is a busy  
13 command with a profound portfolio, but I am hopeful that  
14 within the department, that the resources that we describe  
15 will be resourced.

16 Senator Warren: All right. Thank you. Your job to  
17 stop the proliferation of nuclear weapons is powerfully  
18 important, and we want to make sure you have the resources  
19 you need. Thank you.

20 Thank you, Mr. Chairman.

21 Chairman McCain: Senator Rounds?

22 Senator Rounds: Thank you, Mr. Chairman.

23 Ms. Whelan and General Thomas, first of all, thank you  
24 for your service to our country.

25 In the 2014 QDR, manpower requirement for Special

1 Operations Command was approximately 72,000. However, this  
2 number was capped at 69,000 due to budget constraints. It  
3 is clear the world is not any safer now than it was in 2014.  
4 I would expect the current demand on your operations has not  
5 been diminished, and, if anything, it has been increased.

6 What is the current manpower requirement for SOCOM to  
7 meet its global requirements? Is additional force structure  
8 required?

9 General Thomas: Senator, I believe our stated  
10 requirement is the requirement. We are working to refine,  
11 if there is any needed growth in the future.

12 I am thankful, as you mentioned, that, in spite of the  
13 fact that we did not receive the growth that was prescribed  
14 and validated, that we have had tremendous support from  
15 across the department in terms of augmentees and additional  
16 units that have enabled us to continue to pursue our jobs.

17 So again, I am thankful that the department has  
18 reapportioned to allow us to do what they have asked us to  
19 do.

20 Senator Rounds: When you were not allowed or not  
21 authorized the amount requested, clearly, then, you have to  
22 take on additional risk in certain areas. Where is that  
23 risk at, at this time? Where did you have to take on  
24 additional risk?

25 General Thomas: Senator, again, I think, without

1 getting into details of specific locations and activities,  
2 there was curtailment in terms of some of our activities.

3 Senator Rounds: Diminished operations.

4 General Thomas: Diminished operations. And then, as I  
5 mentioned, in many cases, we merely went back to the  
6 department and said, while we cannot grow it or maintain it  
7 internally, might we receive additional augmentation? In  
8 almost every case, they have afforded that to us.

9 Senator Rounds: Recent testimony from both the U.S.  
10 Navy and the U.S. Air Force has identified a significant  
11 difficulty in retaining qualified pilots. How is pilot  
12 retention going for special operations aviation?

13 General Thomas: Senator, a great question. Senator  
14 King asked the earlier question about recruitment and  
15 retention. I should have mentioned that we are experiencing  
16 similar retention challenges to the Air Force and others  
17 relative to the enticement of pilots to join industry. So  
18 it is something that is certainly affecting us right now,  
19 and we are trying to come up with creative alternatives or  
20 solutions to rectify that.

21 Senator Rounds: So you are indicating that you do have  
22 the same challenges as everyone else has on it and --

23 General Thomas: To a lesser degree, but, yes, we have  
24 that.

25 Senator Rounds: To a lesser degree.

1 General Thomas: Yes, we do.

2 Senator Rounds: Okay. Does USSOCOM need service-like  
3 acquisition authorities for the purposes of developing,  
4 acquiring, and sustaining special operations technology,  
5 equipment, and services?

6 General Thomas: Senator, we enjoy those authorities  
7 right now. Interestingly, we do not have all the  
8 authorities that the services have. They have some unique  
9 authorities. Usually folks think it is a flip on that, that  
10 special operations have unique authorities that enable us.  
11 There are actually some authorities inherent in the services  
12 that we are looking to gain over time.

13 Senator Rounds: Could you specify?

14 General Thomas: Specifically, I cannot get into the  
15 technical aspects of it.

16 Senator Rounds: For the record, would you provide us  
17 with that?

18 General Thomas: I would be glad to do that. But  
19 again, I would also emphasize that our structure with our  
20 director of AT&L working directly for me with a streamlined  
21 relationship with our program executive officer has enabled  
22 us to do some pretty extraordinary things too. So we are  
23 very well-enabled. We are looking to try to enhance and  
24 have all the tools that the services have.

25 Senator Rounds: Cyber capabilities are critical when



1 it comes to your operations as well. I suspect you would  
2 agree with that. Can you share with us right now your  
3 ability to maintain a cyber superiority with regard to the  
4 operations that your -- let me put it this way. Clearly,  
5 you have to be able to maintain cybersecurity when it comes  
6 to your operations. Can you describe for us the challenges  
7 you have, shortcomings you may have, or needs that you may  
8 have with regard to cybersecurity capabilities?

9 General Thomas: Senator, I would start by expressing  
10 my appreciation to CYBERCOM for the great capabilities that  
11 they have provided us, much like they have to other  
12 combatant commands, to first and foremost protect our  
13 infrastructure. Again, we have some very, very valuable  
14 resources to do that.

15 Similarly, we are working with them closely to enhance  
16 our offensive capabilities, the cyber capabilities that must  
17 be integral to our approach to the full spectrum of combat  
18 operations going forward. Again, I think we have endeavored  
19 to have some pretty nuanced approaches, again thanks to  
20 CYBERCOM and others who have helped enable us.

21 Senator Rounds: My time has expired.

22 Mr. Chairman, thank you.

23 Chairman McCain: Senator McCaskill?

24 Senator McCaskill: Thank you, Mr. Chairman.

25 Thank you both for being here and preparing for this

1 hearing today.

2 I wanted to emphasize at the start that, according to  
3 the materials I reviewed, countering Russian aggression is  
4 the number two priority.

5 Is that correct, General Thomas?

6 General Thomas: Senator, right now, that is the number  
7 two priority, although I would tell you it is being  
8 challenged by our preparations for Korea.

9 Senator McCaskill: As I look at the map that we have,  
10 the only place you have more deployed other than EUCOM is,  
11 in fact, CENTCOM, correct? It is the number two deployment?

12 General Thomas: Yes, ma'am. That is accurate.

13 Senator McCaskill: You have 1,400 forces deployed to  
14 protect against Russian aggression right now?

15 General Thomas: Ma'am, working with our partners in  
16 the respective countries, we do.

17 Senator McCaskill: And in addition to that, could you  
18 ballpark how many other American military personnel are we  
19 putting on the frontlines to counter Russian aggression?

20 General Thomas: Senator, I cannot speak specifically  
21 to the other complementary forces that are out there, other  
22 than to say that we are closely linked with them in terms of  
23 --

24 Senator McCaskill: Would it be thousands of American  
25 military in the countries on the western border of Russia?

1           General Thomas: Senator, I think you would have to  
2 discern between those assigned to Europe and additive  
3 forces. But I do not have the specific numbers.

4           Senator McCaskill: Okay. The point I am trying to  
5 make is, we are putting real resources out there in the  
6 military going after Russian behavior. We have determined  
7 and you have determined, and the military leadership has  
8 determined, that Russia is a problem.

9           I just want to emphasize that because it is frustrating  
10 to me that they try to break the backbone of democracies all  
11 over the world, and we consider it such a threat that we are  
12 putting the biggest treasure we have, which are the lives of  
13 men and women of our military, on the frontlines of this  
14 aggression, but there does not seem to be a sense of urgency  
15 about Russia. And I wanted to underline that as I began.

16           The other thing I want to talk to you about today is I  
17 had a chance to review the GAO report that was recently  
18 released. It is a classified report. Have you had a chance  
19 to look at that, General Thomas?

20           General Thomas: Senator, I am not aware of that  
21 specific GAO report. Regarding what subject, ma'am?

22           Senator McCaskill: Countering ISIS and its effects?

23           General Thomas: I have not seen that report, no,  
24 ma'am.

25           Senator McCaskill: I highly recommend it to you. I

1 think it would be very helpful to you.

2 Since you are the key DOD element responsible for  
3 global antiterrorism operations, several of the recommended  
4 oversight questions seem really particularly relevant to  
5 your command. For example, the problems that we are having,  
6 we have spent billions trying to train and equip the  
7 military in both Iraq and Afghanistan. Would you agree with  
8 that, General?

9 General Thomas: We have, Senator.

10 Senator McCaskill: And we continue to spend billions  
11 trying to do both of those things, correct?

12 General Thomas: Correct, Senator.

13 Senator McCaskill: And I am not sure that we are  
14 getting adequate information about how much success we have  
15 had. And I think that it would be helpful to know what  
16 steps have been taken to address the challenges to train and  
17 equip regarding the underlying factors that have caused the  
18 personnel shortages in Iraq. We continue to have  
19 insufficient numbers of soldiers even to round out units in  
20 Iraq.

21 I think with the amount of money we are spending, it  
22 would be great, you may not be prepared today, but since you  
23 all are so involved in the train and equip, it would be  
24 helpful for us to get more information about, what is the  
25 problem? And are we adjusting what we are doing? Or are we

1 just pouring in money and still having folks walk away and  
2 still have people who we have trained and equipped show up  
3 on the other side?

4 General Thomas: Senator, I can guarantee that for  
5 every problem that you have identified, we are endeavoring  
6 to try to rectify it. I will work with General Votel, the  
7 CENTCOM Commander, to make sure we get you a response on the  
8 record for the concerns that you have, ma'am.

9 Senator McCaskill: I know that DOD recently revised  
10 the train and equip program in Syria. As you are well-  
11 aware, we had a number of problems, especially the first  
12 attempt at train and equip that was disastrous.

13 Could you tell us what have been the results of the  
14 revisions that occurred in the train and equip mission in  
15 Syria in 2016?

16 General Thomas: Ma'am, there are really two different  
17 programs that I think you are referring to there. One was  
18 the one that was certainly challenged. I think we have made  
19 great strides. I am hesitant to get into details in an open  
20 forum in terms of the very, very capable surrogate forces  
21 that we are now leveraging in Syria and certainly with the  
22 organic forces in Iraq. But we have gone --

23 Senator McCaskill: I learned about some of that when I  
24 was in Jordan.

25 General Thomas: Very good.

1 Senator McCaskill: But what kind of assurances do you  
2 feel like we have now that the individuals associated with  
3 the terrorist organizations of either Syria or Iran are not  
4 benefiting from our train and equip missions?

5 General Thomas: In my particular lane, where our  
6 special operations are supporting CENTCOM activities, I am  
7 very comfortable that we are vetting them to the degree that  
8 we are very certain that we are not contributing to those  
9 particular threat organizations.

10 But, again, I will get you more for the record.

11 Senator McCaskill: That would be terrific.

12 Thank you, Mr. Chairman.

13 Chairman McCain: Senator Tillis?

14 Senator Tillis: Thank you, Mr. Chairman.

15 General Thomas, it is good to see you.

16 Ms. Whelan, you as well.

17 I was just back down at Fort Bragg a couple weeks ago.  
18 I get down there frequently, probably they are sick of  
19 seeing me. But it is such an important part of what we do  
20 globally that I want to send the message there.

21 I know that many of my members have asked questions  
22 about the stress on the force and optempo and a number of  
23 those things. What I would like to maybe spend my time on  
24 has more to do with the employment side and my capacity as  
25 Personnel Subcommittee chair.

1 I know that, in your opening testimony, you said we  
2 must continue to place the greatest emphasis on selecting,  
3 retaining, and empowering our people and sustaining them and  
4 their families.

5 With two-thirds of the SOCOM force married, what more  
6 do you think we need to do? And the nature of their mission  
7 is such that even the relative stress level has to be higher  
8 because there is so much that the person back stateside does  
9 not know what is going on.

10 What do you think we need to do to more of to provide  
11 better support for the families of our SOCOM forces?

12 General Thomas: Senator, I mentioned earlier to a  
13 similar question that I am very thankful to the committee  
14 that you have actually given us some tools that have allowed  
15 us to put our money where our intent is.

16 I think, for years, our approach to family readiness  
17 was sort of, be ready, your spouse may or may not deploy.  
18 We did not actually build in specific resilience to that  
19 eventuality, the fact that it is on the training schedule,  
20 that you folks will deploy.

21 We have also been able to leverage, as you might  
22 imagine, you described our operator experience, a lot of  
23 experience, a lot of repetitions downrange. Our spouses  
24 have had the same experience. We have been able to leverage  
25 their experience for how we can be more thorough in our

1 preparation to build in the resilience and to deal with  
2 their problems as they occur over time.

3 So, again, I am thankful that you have given us the  
4 means to get after this, and I think we are doing it much  
5 more comprehensively every day.

6 Senator Tillis: Have you given any thought, as you are  
7 looking at recruiting and retention side of things, are  
8 there any things that have arisen, other things that we  
9 should consider to help you retain our best and brightest?

10 And if you cannot answer that in specifics now, we  
11 would like it for the purposes of the subcommittee so they  
12 can instruct our recommendations for the NDAA.

13 But if you have any off the top of your head, Ms.  
14 Whelan, or you, General Thomas?

15 General Thomas: Senator, I do not have any specific  
16 requirements right now. We are always looking to see, if  
17 and when retention challenges come up, how we can mitigate  
18 those. But at the moment, I do not have any specific  
19 requests.

20 Ms. Whelan: Sir, we do not either. However, one of  
21 the issues that we will be looking at within SOLIC, and as  
22 part of the clarified responsibilities for SOLIC oversight,  
23 is this issue of retention and how we might be able to work  
24 with SOCOM to ensure that we have the resources we need.

25 Senator Tillis: We just want to make sure that we get



1 you the tools that you need, because it costs a lot of money  
2 to get these people to the level that they can be deployed,  
3 and we want to make sure that we focus on retention and  
4 valuing our men and women and their families.

5 In my remaining time, I would like to talk a little bit  
6 about -- I know the demand is outstripping supply in terms  
7 of your ability to fulfill all the demands. One question  
8 that I have is whether you believe, in some instances,  
9 because of the nature of funding and the nature of the  
10 conflicts we are in, if there is some amount of what your  
11 command focuses on that the need would be better satisfied  
12 by the service lines or others.

13 In other words, if we have a legitimate demand for  
14 additional special operations, is there a component of the  
15 demand that you are fulfilling now that could arguably be  
16 fulfilled through some other vehicle outside of SOF?

17 General Thomas: Senator, I field a similar line of  
18 questions from our Secretary of Defense consistently. We  
19 are looking at that very aggressively.

20 Most recently, we completed our annual process to align  
21 forces 2 years out, so where we think special operations  
22 forces are required in priority relative to that of  
23 geographic combatant commanders. So it literally produced a  
24 one through end list of what we are doing in priority and a  
25 plan to discuss that in detail with the Secretary in terms

1 of here is where we could offramp, and here is the risk or  
2 the price to be paid in terms of either cessation of  
3 missions or things of that like.

4 But we are looking at that very closely, on how we can  
5 mitigate the pressure on the force in terms of number of  
6 missions we are doing.

7 Senator Tillis: Thank you.

8 Chairman McCain: Senator Blumenthal has arrived.

9 Senator Blumenthal: Thank you, Mr. Chairman.

10 General Thomas, your command now has responsibility for  
11 countering weapons of mass destruction across all of the  
12 combatant commands, correct?

13 General Thomas: Senator, we are the coordinator for  
14 the Department of Defense. That is correct.

15 Senator Blumenthal: Including use of chemical agents.

16 General Thomas: That is correct, all elements of  
17 weapons of mass destruction.

18 Senator Blumenthal: You may be familiar with a new  
19 Human Rights Watch report this week that cites a number of  
20 recent incidents, including the one April 4th that triggered  
21 our missile attack, but others in December 2016 when there  
22 were two and another in March 2017. All involved with the  
23 use of nerve agent weaponry in Syria. Apparently, they  
24 killed at least 159 people, they reported in the New York  
25 Times.

1           And the New York Times reported, in addition, use of  
2 other chemical agents, principally chlorine, since the April  
3 4th attack that led to our missile strike.

4           Are you aware of that report? And do you have  
5 information to corroborate those reports?

6           General Thomas: Senator, I have not seen that specific  
7 report. I am aware of all or most of those incidents. I am  
8 surprised you did not mention use of VX at the Malaysia  
9 International Airport as another egregious use of an  
10 incredibly nefarious weapons system in an open area.

11           Senator Blumenthal: I am sure you have information  
12 about the support or complicity of the Russians in these  
13 attacks, do you not?

14           General Thomas: Senator, I am aware of the nature of  
15 all those attacks and the actors involved. Again, probably  
16 in an open session, I would probably be circumspect to  
17 discuss the specifics of some of the intelligence that  
18 pertains.

19           Senator Blumenthal: Would you be prepared to talk  
20 about Russian involvement in these attacks in a different  
21 setting?

22           General Thomas: Senator, I would be glad to talk about  
23 any actors' involvement in any of these episodes.

24           Senator Blumenthal: I am not sure exactly how to ask  
25 this question, General, and I hope you will bear with me.

1 But is there a reason why the American people should  
2 not know about Russian complicity and involvement in these  
3 war crimes? They are war crimes. If the Russians are  
4 aiding and abetting them, why should the American people be  
5 denied that information?

6 General Thomas: Senator, I think the American public  
7 should know the extent to whoever is employing weapons of  
8 mass destruction and chemical weapons. As much as we  
9 understand who and how, that could and should be divulged to  
10 the American public.

11 Senator Blumenthal: So the rules about your providing  
12 us information in this setting are made by others, not by  
13 yourself, obviously, so I am not meaning any disrespect to  
14 you.

15 But I am absolutely perplexed as to why we should not  
16 make more widely known the involvement of Russians in war  
17 crimes, only one of them so far widely reported, that led us  
18 to launch a missile strike at the base where Russians  
19 currently are stationed. They had to know about the use of  
20 sarin in that attack on Assad's own people.

21 So I hope that we are able to disseminate that  
22 information more widely to the American people. And I  
23 respect your position and the rules that apply to you. But  
24 you do have information about, let's call them other actors  
25 who are aiding and abetting Bashar Assad in these criminal

1 attacks, murderous acts on his own people, is that correct?

2 General Thomas: Senator, we are focused on everyone  
3 who is inclined to use these kinds of weapons.

4 Senator Blumenthal: Is there any sort of defense that  
5 can be provided to the people of Syria by the United States  
6 against these types of weapons?

7 General Thomas: Senator, as you might imagine, the  
8 equipment required for the array of weapons that may or may  
9 not still be in the Syrian arsenal would be extensive, so I  
10 am sure it is a daunting logistics challenge to try to  
11 provide that kind of equipment.

12 Again, I think your first point, disrupting the use or  
13 the employment of the weapons systems is probably the most  
14 effective thing you could do.

15 Senator Blumenthal: General, my time has expired. I  
16 really appreciate both you and Ms. Whelan being here today  
17 and your service to our Nation and the service of every  
18 single man and woman under your command. Thank you very  
19 much.

20 Chairman McCain: I thank the witnesses. This hearing  
21 is adjourned.

22 [Whereupon, at 11:25 a.m., the hearing was adjourned.]

23

24

25

# Exhibit 19



# CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

\*CORRECTED COPY\*

---

J-2  
DISTRIBUTION: A, B, C, JS-LAN, S

CJCSI 3160.01  
13 February 2009

## NO-STRIKE AND THE COLLATERAL DAMAGE ESTIMATION METHODOLOGY

References: See Enclosure E.

1. Purpose. The purpose of this instruction is to document the Department of Defense (DOD) policy governing the No-strike process, management of No-strike entities, treatment of collateral objects, and the collateral damage estimation (CDE) methodology (CDM).
2. Cancellation. CJCSM 3160.01B, 31 August 2007, "Joint Methodology for Estimating Collateral Damage and Casualties for Conventional Weapons: Precision, Unguided, and Cluster" and CJCSI 3227.01, 8 June 2007, "No-Strike Policy and Guidance" are canceled.
3. Applicability. This instruction applies to the Joint Staff, Services, combatant commands, DOD combat support agencies (CSAs), and joint activities.
4. Policy. See Enclosures B through D.
5. Definitions. See Glossary.
6. Responsibilities. See Enclosure A.
7. Summary of Changes. This update consolidates directives for CDE and the No-Strike process previously contained in CJCSM 3160.01B and CJCSI 3227.01 respectively. The material has been significantly reorganized. In addition, it adds objectives and standards for CDE training and certification as recommended by the JTCG/ME Collateral Damage Working Group (CDWG) and adopted by U.S. Joint Forces Command's (USJFCOM's) Joint Targeting School (JTS) as the CDE program of instruction (POI).

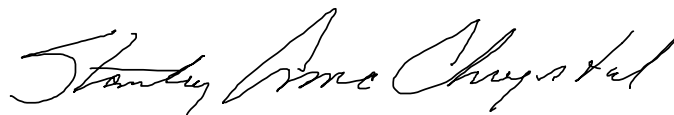
~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

DRONES / JS / 000066

CJCSI 3160.01  
13 February 2009

8. Releasability. This instruction is approved for limited release and contains information exempt from mandatory disclosure under the Freedom of Information Act (exemption 2 applies). DOD components (to include the combatant commands) and other federal agencies may obtain copies of this instruction through controlled Internet access only (limited to .mil and .gov users) from the CJCS Directives Home Page--  
[http://www.dtic.mil/cjcs\\_directives](http://www.dtic.mil/cjcs_directives). Joint Staff activities may access or obtain copies of this instruction from the Joint Staff Decision Support Environment (JS DSE). Combatant command Foreign Disclosure Officers are authorized to release this instruction to foreign governments to support the planning of or execution of combined/allied operations. These foreign representatives will not be authorized to provide further dissemination of the instruction.
9. Effective Date. This instruction is effective upon receipt.

For the Chairman of the Joint Chiefs of Staff



STANLEY A. MCCHRYSTAL  
Lieutenant General, USA  
Director, Joint Staff

Enclosures:

- A -- Responsibilities
- B -- Collateral Objects, Dual-Use, and Human Shields
- C -- No-Strike Policy and Guidance
- D -- Joint Methodology for Collateral Damage Estimation
- E -- References
- GL -- Glossary



DISTRIBUTION

Distribution A, B, C, and J plus the following:

|  | <u>Copies</u> |
|--|---------------|
| Secretary of State .....   | 2             |
| Secretary of Defense .....   | 2             |
| Director of Central Intelligence .....                               | 2             |
| Office of the Chairman, JCS, Legal Counsel .....                     | 2             |
| Joint Technical Coordinating Group for Munitions Effectiveness ..... | 2             |

CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

CJCSI 3160.01  
13 February 2009

## LIST OF EFFECTIVE PAGES

The following is a list of effective pages for. Use this list to verify the currency and completeness of the document. An "O" indicates a page in the original document.

| PAGE             | CHANGE | PAGE             | CHANGE |
|------------------|--------|------------------|--------|
| 1 thru 2         | O      | D-E-1 thru D-E-4 | O      |
| i thru vii       | O      | E-1 thru E-2     | O      |
| A-1 thru A-6     | O      | GL-1 thru GL-10  | O      |
| B-1 thru B-7     | O      |                  |        |
| C-1 thru C-4     | O      |                  |        |
| C-A-1 thru C-A-4 | O      |                  |        |
| C-B-1 thru C-B-5 | O      |                  |        |
| D-1 to D-5       | O      |                  |        |
| D-A-1 to D-A-36  | O      |                  |        |
| D-B-1 thru D-B-2 | O      |                  |        |
| D-C-1 thru D-C-2 | O      |                  |        |
| D-D-1 thru D-D-2 | O      |                  |        |

CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

TABLE OF CONTENTS

|  | Page   |
|--|--------|
| ENCLOSURE A -- RESPONSIBILITIES .....  | A-1    |
| ENCLOSURE B -- COLLATERAL OBJECTS, DUAL-USE, AND HUMAN SHIELDS                         |        |
| Introduction .....   | B-1    |
| Protected or Collateral Object Categories .....  | B-1    |
| Dual-Use Targets .....   | B-7    |
| Human Shields .....  | B-7    |
| ENCLOSURE C -- NO-STRIKE POLICY AND GUIDANCE   |        |
| Introduction .....   | C-1    |
| General Guidance .....   | C-1    |
| The No-Strike Process.. .....  | C-3    |
| Appendix A -- Database Development .....   | C-A-1  |
| Appendix B -- The No-Strike List .....   | C-B-1  |
| ENCLOSURE D -- JOINT METHODOLOGY FOR CDE   |        |
| Introduction .....   | D-1    |
| General Guidance .....   | D-2    |
| Limitations and Exclusions .....   | D-4    |
| Appendix A -- The CDM Process .....  | D-A-1  |
| Introduction .....   | D-A-1  |
| Risk and the CDM .....   | D-A-2  |
| Collateral Damage Thresholds .....   | D-A-2  |
| CER and CHA Relationships .....  | D-A-4  |
| CER Reference Tables .....   | D-A-6  |
| Five Basic Questions of the CDM .....  | D-A-6  |
| CDE Level 1 Target Validation and Initial CDE Assessment ...                           | D-A-7  |
| CDE Level 2 General and Target Size Assessment .....                                   | D-A-12 |
| CDE Level 3 Weaponeeing Assessment Overview .....                                      | D-A-17 |
| CDE Level 4 Refined Assessment Overview .....  | D-A-22 |
| CDE Level 5 Casualty Assessment Overview .....   | D-A-29 |
| Appendix B -- CDM Process Quick Guide .....  | D-B-1  |
| Appendix C -- CER Reference Table Summary .....  | D-C-1  |
| Appendix D -- CDE Level 5 Population Density Reference Table<br>and CE Worksheet ..... | D-D-1  |
| Appendix E -- CDE Training and Certification Criteria .....                            | D-E-1  |

ENCLOSURE E -- REFERENCES.....E-1

GLOSSARY

Part I -- Abbreviations and Acronyms .....GL-1  
Part II -- Terms and Definitions .....GL-4

FIGURES

Figure D-A-1 Risk and the Collateral Damage Estimation  
Methodology..... D-A-3  
Figure D-A-2 CER/CHA Relationship ..... D-A-4  
Figure D-A-3 Minimum Target Size Methods ..... D-A-15

TABLES

Table B-1 Category I Collateral Objects .....B-3  
Table B-2 Category II Collateral Objects .....B-6  
Table C-A-1 Core No-Strike List Category Codes..... C-A-1  
Table C-A-2 Urban Area Priority List ..... C-A-2  
Table C-A-3 Sources for Deriving Positional Data ..... C-A-3  
Table D-A-1 CDM Mitigation Techniques ..... D-A-27

CJCSI 3160.01  
13 February 2009

ENCLOSURE A

RESPONSIBILITIES

1. This enclosure delineates responsibilities for the many organizations that execute and support the No-Strike guidance and CDE methodology. The Joint Staff Director for Intelligence (J-2) Deputy Directorate for Targets (Joint Staff/J-2T) is the lead agent for updates or changes to this instruction.

a. Joint Staff/J-2T. The Joint Staff/J-2T is responsible for the development of No-Strike and CDE policy and guidance for the Chairman of the Joint Chiefs of Staff (JCS). Joint Staff/J-2T fulfills this role via the Military Target Intelligence Management Structure in collaboration with combatant commands, the Joint Staff, and the national Intelligence Community (IC) (see glossary for IC delineation). The following are Joint Staff/J-2T roles and responsibilities specific to No-Strike and the CDM:

(1) Develop joint CDE policy and guidance.

(2) Coordinate with the combatant commands, Services, CSAs, and the Joint Technical Coordinating Group for Munitions Effectiveness (JTTCG/ME) to identify operational requirements that provide the framework for the CDM.

(3) Provide oversight of all CDM training. Maintain database of CDE trained and certified analysts via the Joint Staff/J-2T Secret Internet Protocol Routing Network (SIPRNET) Sharepoint site (includes name, rank, date trained, score, trained by, and last currency update). Validate requests for Services, combatant commands, or organizations desiring to establish a CDM training course. Coordinate the accreditation of those courses with USJFCOM/JTS.

(4) Validate new collateral damage information prior to its inclusion in the methodology.

(5) Provide oversight of population density tables to facilitate IC support and ensure their standardized production and use.

(6) Review and coordinate CDE automation requirements. Provide oversight of automated tool development to ensure policy, training, and tool automation is synchronized.

(7) Notify DOD components when new collateral effects radii (CER) tables are produced.



b. JTCG/ME. The JTCG/ME is a joint organization chartered under the auspices of the Services' logistics commands. It directs working groups that focus on specific aspects of weaponeering, weapon effects, and collateral damage. The following are JTCG/ME roles and responsibilities specific to CDM:

(1) Develop and publish weapons effectiveness information for conventional weapons. JTCG/ME, in coordination with the Joint Staff/J-2T, develops, maintains, and distributes the CDE reference tables that are the foundation for the CDM.

(2) Produce CDE reference tables separate from this instruction as new weapon's data become available. Tables will be produced no less than twice annually and distributed through the JTCG/ME SIPRNET Web site.

(3) Contribute technical updates to this instruction concurrent with the development and release of new weapons effects data and products.

(4) Approve tools, sources, and methods used to display or calculate the CER values<sup>1</sup> for the CDE reference tables and weapon effectiveness data.

c. USJFCOM JTS. The JTS is the only DOD formal schoolhouse that provides joint targeting training for operations and intelligence personnel designated to Unified Commands, the Joint Staff, Defense agencies, and Service targeting coded positions. As part of its curriculum, JTS teaches CDM and is currently the only school accredited to do so. The following are JTS' roles and responsibilities specific to CDM:

(1) Maintain the POI standard for DOD CDE training and instructor certification.

(2) Provide CDE training for personnel detailed to a position or billet performing CDE.

(3) Maintain at least one standardization instructor as the course manager capable of certifying instructors to teach the POI.

(4) Validate the POI to be taught by other organizations, and certify their instructors after approval for the course is validated by Joint Staff/J-2T. Requesting organizations are responsible for funding their courses to include the training of their instructors and the validation of their course.

---

<sup>1</sup> Formerly known as Effective Miss Distance or EMD values.

(5) Keep record of CDE trained analysts and instructors who graduate from JTS (name, rank, date, and score). Input data into the Joint Staff/J-2T Sharepoint site.

(6) Comply with Appendix E to Enclosure D.

d. Combatant Commands. Combatant command commanders (CCDRs) must apply the CDM to mission specific Rules of Engagement (ROE) and higher commander's guidance during the planning and conduct of full spectrum operations. Due to the nature of operations and the strategic risk they may pose to the U.S. government, due diligence is critical in ensuring personnel are trained in the CDM in accordance with (IAW) Appendix E to Enclosure D. The following are combatant command roles and responsibilities specific to No-Strike and the CDM:

(1) Identify positions requiring CDE training and certification on the joint manning document.

(2) Ensure area of responsibility (AOR) specific certification standards are established and maintained prior to a trained CDE analyst performing assessments.

(3) Ensure training and certification requirements are met and proficiencies maintained for the duration of an individual's assignment. Update analyst's initial certification and annual currency via the Joint Staff/J-2T SIPRNET Sharepoint site. Personnel trained after 30 December 2005 on CJCSM 3160.01B are grandfathered by this CJCSI including those trained by USCENTCOM's mobile training team (MTT). The MTT was the basis for the course now being taught at JTS. Any work those trained CDE analysts performed or will perform is backed by this CJCSI. Combatant commands should review data via normal timelines.

(4) If desiring to establish training separate from the JTS, send a letter of intent to Joint Staff/J-2T IAW Appendix E to Enclosure D. JTS will train the instructors and certify the POI's implementation via an audit of the course. Requesting organizations are responsible for funding their courses to include the training of their instructors and the validation of the course. After certification, course must use the JTS CDM course POI, instructor certification process, and course materials as produced and approved by USJFCOM/JTS to ensure joint standardization. Combatant commands establishing separate training will update Joint Staff/J-2T's Sharepoint database with graduates of their course.

(5) Present the appropriate information as directed by this instruction and CJCSI 3122.06, Sensitive Target and Review (STAR) Process (reference d).

CJCSI 3160.01  
13 February 2009

(6) Ensure population density tables are developed and kept current IAW this instruction for all plans as directed in reference i.

(7) Ensure imagery used to support CDE assessments is not older than 90 days. This is waived to 180 days if there are no indications of change in the area of interest.

(8) Geographic CCDRs. Supported by the IC, geographic CCDRs are responsible to identify, develop, maintain, and distribute to subordinate and supporting commands and supported functional commands a list of No-Strike entities (known as the No-Strike list (NSL)) for operation-specific assigned AORs, and for those countries within their Unified Command Plan assigned AOR for which there is Guidance for the Employment of the Force (GEF) documentation (formerly known as Contingency Planning Guidance) or Joint Strategic Capabilities Plan directed plans and/or operational orders (OPORDs).<sup>2</sup> The geographic CCDR, as the approving authority for the NSL, should designate a single No-Strike Coordinator to manage the process (see Enclosure C).<sup>3</sup>

(9) Functional CCDRs. Functional combatant commands with worldwide responsibilities are responsible for coordinating with geographic combatant commands to leverage relevant country-based NSLs maintained for their respective countries of interest. It is critical for the functional combatant command to aggressively coordinate with supporting geographic combatant commands to ensure NSLs for countries of interest are current and valid (see Enclosure C).

e. Services. Due to the nature of operations and the strategic risk they may pose to the U.S. government, due diligence is critical to ensure personnel are trained in the CDM IAW Appendix E to Enclosure D. The following are Service roles and responsibilities specific to CDM:

(1) Ensure that personnel detailed to a position or billet that may require them to perform CDE are trained and certified in the CDM.

(2) Ensure personnel detailed to CDE position attend JTS CDM course or its mobile training team (MTT). Personnel trained after 30 December 2005 on CJCSM 3160.01B are grandfathered by this CJCSI including those trained by USCENTCOM's MTT. The MTT was the basis for the course now being taught at

---

<sup>2</sup> Enclosure F of the JSCP provides Intercommand Targeting Guidance.

<sup>3</sup> For all other countries within an AOR, geographic CCDRs should compile NSLs to support crisis action planning as necessary. However, Modernized Integrated Database (MIDB) maintenance as done by Responsible Analytic Centers (RACs) is guided by the Defense Intelligence Analysis Program (DIAP) priorities. Those commands that elect to maintain an NSL for countries outside direction provided in subparagraph 3.b(1) cannot be assured of MIDB record detail to the level afforded DIAP priority countries. Each geographic combatant command and RAC must have procedures to task and respond effectively IAW crisis action planning criteria for non-priority countries.

CJCSI 3160.01  
13 February 2009

JTS. Any work those trained CDE analysts performed or will perform is backed by this CJCSI. Combatant commands should review data via normal timelines.

(3) Services should establish (or leverage existing) appropriate special skill/experience identifiers to facilitate the tracking of certified CDE analysts.

(4) If desiring to establish training separate from the JTS, send a letter of intent to Joint Staff/J-2T IAW Appendix E to Enclosure D. JTS will train the instructors and certify the POI's implementation via an audit of the course. Requesting organizations are responsible for funding their courses to include the training of their instructors and the validation of the course. After certification, courses must use the JTS CDM course POI, instructor certification process, and course materials as produced and approved by USJFCOM/JTS to ensure joint standardization. Services establishing separate training will update Joint Staff/J-2T's Sharepoint database with graduates of their course.

(5) Provide a standardized tool approved by JTCG/ME for use in CDE to support DOD requirements. Current authorized tools are Joint Automated Deep Operations Coordination System and Fast Assessment Strike Tool-Collateral Damage.

f. DOD CSAs/Service Intelligence Production Centers. CSAs and Service Intelligence Production Centers are responsible for identifying and reporting No-Strike entities to the appropriate Responsible Analytic Center (RAC) through GEMINI (see Enclosure C Appendix A, subparagraphs 2.b. and 2.c). CSAs and Service Intelligence Production Centers are responsible for assigning their own No-Strike Coordinator to serve as the POC who has the access and skills necessary to support the No Strike Process for their command. Efforts include recommendation of No-Strike entities, their functionality, location, and geospatial definition in the Modernized Integrated Database (MIDB). Ideally, this would include the capture of a geospatially accurate polygon (shape file) of the No-Strike facility outline and its storage in a community accessible database such as Target Management System (TMS). Other responsibilities include supporting the target vetting process by characterizing and/or verifying the functionality of entities under consideration for attack. The MIDB is the vehicle used to archive and maintain entity identification and characterization information, to include No-Strike entities (see Enclosures B and C). Finally, the CDE process requires casualty estimates for Level 5 assessments. Combatant commands are required to develop and maintain the demographic data for countries and/or regions in their AOR to support operational planning and execution; however, the IC is required to support this effort as needed and requested by the combatant commands. (See Enclosure D).

g. The Defense Threat Reduction Agency (DTRA). DTRA is responsible for developing and maintaining data and technical tools to conduct chemical,

A-5

Enclosure A

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000079**

CJCSI 3160.01  
13 February 2009

biological, or radiological (CBR) plume hazard estimation in support of CDE assessments. DTRA maintains the expertise and capability to conduct timely plume hazard analysis in support of a commander's CDE requirements. DTRA's population data requirements are documented with the IC for production and maintenance to support CDE assessments.

h. The Defense Intelligence Agency's (DIA) National Center for Medical Intelligence (NCMI). NCMI is responsible for assessing significant human health risks associated with exposure to chemical contamination of air, food, water, or soil; and with exposures that may result from accidental or intentional releases of toxic industrial chemicals. In addition, the NCMI maintains the expertise and capability to identify and assess medical facilities in order to preserve and avoid collateral damage to medical infrastructure. The NCMI does not assess health risks from the use of CBR weapons or from CBR releases from collateral damage. NCMI's population data requirements are documented with the IC for production and maintenance in order to support CDE assessments.

i. Other organizations. Although not bound by this instruction, non-DOD United States Government agencies, e.g., Department of State, and Coalition partners should report operating locations in an AOR to the appropriate command element or joint task force (JTF) to facilitate command and interagency coordination, and deconfliction of No-Strike entities that occur via the joint interagency coordination group (JIACG) (see reference g).

j. It is an inherent responsibility of all commanders, observers, air battle managers, weapons directors, attack controllers, weapons systems operators, intelligence analysts, and targeting personnel to:

(1) Establish positive identification (PID) and to accurately locate targets consistent with current military objectives and mission specific ROE. **PID is defined as "the reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the Law of War and applicable ROE."**

(2) Identify potential collateral concerns prior to munitions release and target engagement (provide function and geospatial delimitations if able).

(3) Apply the CDM with due diligence to mission objectives, force protection, and collateral damage.

## ENCLOSURE B

### COLLATERAL OBJECTS, DUAL-USE, AND HUMAN SHIELDS

1. Introduction. Objects defined by the Law of War (LOW) as functionally civilian or noncombatant in nature are considered protected or collateral objects<sup>4</sup> (reference a). Knowledge of collateral objects is essential to target development, the No-Strike process, and the CDM. Protected or collateral objects will be treated in accordance with policy and guidance prescribed in this instruction and operational ROE.

2. Protected or Collateral Object Categories. Collateral objects are divided into two categories based on their sensitivity. Objects are represented by MIDB classification category codes (CATCODES) for the purposes of intelligence production, target development, and as a standardized description of each category. Table B-1 and B-2 below show the collateral objects by category type and tie specific CATCODEs to their description (number in parenthesis).

a. Category I Protected or Collateral Objects. This category includes the most sensitive subset of objects defined by the LOW. These objects typically comprise the core of the NSL (see Enclosure C, Appendix A). An operation's ROE may dictate other categories for the supporting NSL.

(1) Diplomatic offices, foreign missions, and sovereign nonmilitary property of other nations within the AORs.

(2) Religious, cultural, historical institutions, and structures.

(3) Intergovernmental organizations (e.g., United Nations, North Atlantic Treaty Organization) and Nongovernmental organizations (e.g., International Committee of the Red Cross, Amnesty International) property, equipment, and personnel.

(4) Medical facilities (both civilian and military).

(5) Public education facilities including nonmilitary schools, colleges, universities, and institutes.

(6) Civilian refugee camps and concentrations.



(7) Prisoner of war camps and concentrations and government detention facilities/prisons.

(8) Facilities whose engagement may result in pollution that cannot be contained to include contamination of standing water, streams, and rivers.

(9) Dams or dikes whose engagement may result in the flooding of civilian areas.

| <u>MIDB CATCODE</u> | <u>FUNCTION</u>   |
|---------------------|---|
| 42140               | Thermal Power Plants, Nuclear (8)   |
| 43110               | Water Supply Facilities, Treatment Plants (8)   |
| 43121               | Water Supply Facilities, Storage Facilities, Reservoirs (9)                                   |
| 43210               | Sewage Waste Facilities (8)   |
| 43400               | Medical Facilities (4)  |
| 43410               | Hospitals (4)   |
| 43420               | Medical Clinics (4)   |
| 43430               | Medical Dispensaries (4)  |
| 43440               | Medical Laboratories (4)  |
| 43450               | Blood Banks (4)   |
| 43460               | Convalescent or Medical Rehabilitation Centers (4)  |
| 43470               | Veterinary Hospitals or Clinics (4)   |
| 43480               | Veterinary Laboratories (4)   |
| 43800               | Dikes and Other Water Control Features, General (9)   |
| 43810               | Dikes and Other Water Control Features, Critical Dike Sections (9)                            |
| 43820               | Dikes and Other Water Control Features, Water Control Features, Other Than Dikes and Dams (9) |
| 43900               | Dams, General (9)   |
| 43910               | Dams, Concrete Dams (9)   |
| 43920               | Dams, Earthen or Rock-Filled Dams (9)   |
| 43930               | Dams, Masonry Dams (9)  |
| 43940               | Dams, Composite Dams, General Dam Entry (9)   |
| 43941               | Dams, Composite Dams, Concrete Component of Composite Dam (9)                                 |
| 43942               | Dams, Composite Dams, Earthen or Rock-Filled Components of Composite Dams (9)                 |
| 43943               | Dams, Composite Dams, Masonry Component of Composite Dam (9)                                  |
| 49600               | Nonmilitary Schools, General (5)  |
| 49610               | Nonmilitary Schools, Grammar Schools, Secondary Schools and High Schools (5)                  |
| 49620               | Nonmilitary Schools, Colleges and Universities (5)  |
| 49630               | Nonmilitary Schools, Technical and Trade Schools (5)  |
| 49640               | Nursery School, Preschool, Day Care (5)   |

<sup>4</sup> Also known as the Law of Armed Conflict (LOAC).

| <u>MIDB CATCODE</u> | <u>FUNCTION</u>  |
|---------------------|--|
| 49650               | Nonmilitary Schools, Madrassas (5)                           |
| <u>72000</u>        | Medical Training Facilities, Type Not Specified (5)          |
| 72100               | Schools, Medical Unidentified (5)                            |
| 72110               | Schools of Medicine (5)                                      |
| 72120               | Schools of Dentistry (5)                                     |
| 72130               | Veterinary Schools (5)                                       |
| 72140               | Schools of Nursing (5)                                       |
| 72150               | Schools of Pharmacy (5)                                      |
| 72160               | Paramedical Training Schools (5)                             |
| 72170               | Veterinary Technician Training Schools (5)                   |
| 72300               | Medical Interest Site (4)                                    |
| 75300               | Civilian Refugee Camps (6)                                   |
| 75900               | Prisoner of War (POW) Concentrations (7)                     |
| 77500               | Government Detention Facilities, General (7)                 |
| 77510               | Government Detention Facilities, Prisons, Non-Military (7)   |
| 77520               | Government Detention Facilities, Prisons, Military (7)       |
| 77600               | Religious, Cultural and Historical Institutions, General (2) |
| 77610               | Religious Institutions (2)                                   |
| 77620               | Cultural and Historical Institutions (2)                     |
| 77630               | Cemeteries (2)   |
| 77700               | Libraries (2)  |
| 77800               | Diplomatic Offices and Foreign Missions, General (1)         |
| 77810               | Diplomatic Offices and Foreign Missions, Embassies (1)       |
| 77820               | Diplomatic Offices and Foreign Missions, Legations (1)       |
| 77830               | Diplomatic Offices and Foreign Missions, Consulates (1)      |
| 77840               | Diplomatic Residences (1)                                    |
| 77850               | Foreign Missions and Government Offices (1)                  |
| 77860               | Designated Assembly Areas (1)                                |
| 77870               | Nongovernmental Organizations (3)                            |

Table B-1. Category I Collateral Objects (U)

b. Category II Protected or Collateral Objects. This category includes the remainder of objects defined by the LOW and may be on the NSL.

(1) Nonmilitary billeting and accommodations including private civilian housing and family housing on military or government property.

(2) Civilian meeting places including athletic fields, stadiums, racetracks, parks, civic and convention centers, theaters, amusement parks, markets, and recreational facilities.

(3) Public utilities and facilities including those that generate,



distribute, or transport electricity, petroleum or water intended for civilian consumption; commercial fuel service stations, civilian mass transit facilities, water supply facilities, waste facilities, urban gas supply, fire stations, postal facilities, police stations, civil defense facilities, and financial institutions.

(4) Agricultural processing and storage facilities that market or distribute foodstuffs for civilian consumption.

(5) Facilities and/or structures for which the functionality/purpose is unknown are classified as Category II Protected or Collateral Objects.

| <b><u>MIDB CATCODE</u></b> | <b><u>FUNCTION</u></b>  |
|----------------------------|---|
| 18200                      | Agricultural Raw Materials, Vegetables, General (4)                                 |
| 18210                      | Agricultural Raw Materials, Grain Storage, General (4)                              |
| 18211                      | Agricultural Raw Materials, Grain Storage, Underground or Earth-Covered Bunkers (4) |
| 18212                      | Agricultural Raw Materials, Grain Storage, Elevators (4)                            |
| 18213                      | Agricultural Raw Materials, Grain Storage, Horizontal Bulk (4)                      |
| 18214                      | Agricultural Raw Materials, Grain Storage, On-Farm (4)                              |
| <u>42000</u>               | Electrical Power Generating, Transmission, and Control (3)                          |
| 42100                      | Thermal Power Plants, General (3)   |
| 42110                      | Thermal Power Plants, Steam Turbine (3)   |
| 42120                      | Thermal Power Plants, Gas Turbine (3)   |
| 42130                      | Thermal Power Plants, Diesel (3)  |
| 42150                      | Thermal Power Plants, Geothermal (3)  |
| 42190                      | Thermal Power Plants, Combination (3)   |
| 42200                      | Hydroelectric Power Plants, General (3)   |
| 42210                      | Hydroelectric Power Plants, Storage, General (3)                                    |
| 42211                      | Hydroelectric Power Plants, Storage, Base-of-Dam (3)                                |
| 42212                      | Hydroelectric Power Plants, Storage, Diversion (3)                                  |
| 42220                      | Hydroelectric Power Plants, Run-of-River, General (3)                               |
| 42222                      | Hydroelectric Power Plants, Run-of-River, Diversion (3)                             |
| 42230                      | Hydroelectric Power Plants, Pumped Storage (3)                                      |
| 42240                      | Hydroelectric Power Plants, Tidal (3)   |
| 42290                      | Hydroelectric Power Plants, Combination (3)   |
| 42300                      | Alternate Energy Power Plants (3)   |
| 42600                      | Electrical Power Substations, General (3)   |
| 42610                      | Electrical Power Substations, Transformer (3)                                       |
| 42620                      | Electrical Power Substations, Switching (3)   |
| 42630                      | Electrical Power Substations, Traction (3)  |
| 42640                      | Electrical Power Substations, Converter (3)   |
| 42650                      | Electrical Power Capacitor Substations (3)  |
| 42660                      | Electrical Power Taps (3)   |
| 42700                      | Electrical Power Control Centers (3)  |
| <u>43000</u>               | Public Utilities (3)  |

CJCSI 3160.01  
13 February 2009

| <u>MIDB CATCODE</u> | <u>FUNCTION</u>   |
|---------------------|---|
| 43010               | Urban Utility, Steam Heating Plant (3)  |
| 43100               | Water Supply Facilities, General (3)  |
| 43120               | Water Supply Facilities, Storage Facilities, General (3)                              |
| 43122               | Water Supply Facilities, Storage Facilities, Tanks (3)                                |
| 43123               | Water Supply Facilities, Storage Facilities, Towers and Standpipes (3)                |
| 43130               | Water Supply Facilities, Pumping Stations (3)   |
| 43140               | Water Supply Facilities, Sources, General (3)   |
| 43141               | Water Supply Facilities, Sources, Wells (3)   |
| 43142               | Water Supply Facilities, Sources, Springs (3)   |
| 43143               | Water Supply Facilities, Sources, Rivers or Streams, Intake Points (3)                |
| 43144               | Water Supply Facilities, Sources, Lakes, Intake Points (3)                            |
| 43145               | Water Supply Facilities, Sources, Salt Water Bodies, Intake Points (3)                |
| 43150               | Water Supply Facilities, Irrigation Pump Stations (3)                                 |
| 43160               | Water Supply Facilities, Water Pipeline Segments (3)                                  |
| 43190               | Water Supply Facilities, Water Drilling Towers (3)                                    |
| 43200               | Waste Facilities, General (3)   |
| 43220               | Waste Facilities, Solid Waste Processing, General (3)                                 |
| 43221               | Waste Facilities, Solid Waste Processing, Transfer Stations (3)                       |
| 43222               | Waste Facilities, Solid Waste Processing, Landfills (3)                               |
| 43300               | Mass Transit Facilities, General (3)  |
| 43310               | Mass Transit Facilities, Barns And Parks (3)  |
| 43320               | Mass Transit Facilities, Repair Plants (3)  |
| 43330               | Mass Transit Facilities, Combined Parking and Repair Facilities (3)                   |
| 43340               | Mass Transit Facilities, Subway Facilities or Heavy Rail (3)                          |
| 43500               | Urban Gas Supply, General (3)   |
| 43510               | Urban Gas Supply, Gas Manufacturing (3)   |
| 43520               | Urban Gas Supply, Gas Storage, General (3)  |
| 43521               | Urban Gas Supply, Gas Storage, Gasholders (3)   |
| 43522               | Urban Gas Supply, Gas Storage, Storage Tanks (3)                                      |
| 43523               | Urban Gas Supply, Gas Storage, Reservoirs, Underground (3)                            |
| 43530               | Urban Gas Supply, Gas Storage, Bottling Plants (3)                                    |
| 43600               | Fire Stations (3)   |
| 43700               | Postal Facilities (3)   |
| 44400               | Ferry Facilities, Highway, General (3)  |
| <u>46000</u>        | Urban Services, General (3)   |
| 46100               | Non-Military Motor Services (3)   |
| 46110               | Commercial Fuel Service Stations (Gas) (3)  |
| 46120               | Non-Military Motor Pools (3)  |
| 46200               | Recreational Facilities, Athletic Fields, Parks, Civic Centers, Theaters, General (2) |

B-5

Enclosure B

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000085**

CJCSI 3160.01  
13 February 2009

| <b><u>MIDB CATCODE</u></b> | <b><u>FUNCTION</u></b>   |
|----------------------------|--|
| 46210                      | Recreational Facilities (2)  |
| 46220                      | Athletic Fields (2)  |
| 46230                      | Stadiums (2)   |
| 46240                      | Race Tracks (2)  |
| 46250                      | Parks (2)  |
| 46260                      | Civic and Convention Centers (2)   |
| 46270                      | Theaters (2)   |
| 49700                      | Nonmilitary Billeting and Accommodations (1)   |
| 49710                      | Hotels, Motels, Inns to Include Hotels Motels, Inns, Bed and Breakfasts, and Hostels (1)                                       |
| 49720                      | Apartment Complexes (1)  |
| 49730                      | Residences, Non-Diplomatic (1)   |
| 58900                      | Food, Feed, Beverage, and Tobacco Storage (4)  |
| <u>77000</u>               | Trade, Commerce, and Government (3)  |
| 77100                      | Merchandising and Marketing (3)  |
| 77110                      | Retail Market and Department Store (3)   |
| 77120                      | Market, General (3)  |
| 77130                      | Department Store, General (3)  |
| 77140                      | Restaurants (3)  |
| 77200                      | Financial Institutions, General (3)  |
| 77210                      | Central Government Banking, Financial, Economic, Commercial, Treasury or Trade Organizations (3)                               |
| 77220                      | Domestic Banking, Insurance, Finance, Exchanges, Brokerage Houses or Gambling Establishments (3)                               |
| 77230                      | Foreign Banking, Insurance, Finance, Exchanges, Brokerage Houses or Gambling Establishments (3)                                |
| 77240                      | Currency Dealers and Exchangers, Check Cashers, Money Transmitters or Hawala--Money Services Businesses (MSBS) (3)             |
| 77250                      | Global or Regional Lending Organizations Formed by Treaty or International Agreement -- Intl Financial Institutions (IFIS) (3) |
| 77900                      | Trade, Commerce, and Government (3)  |
| 77910                      | Stock Market (3)   |
| 77920                      | Chamber/Department of Commerce (3)   |
| 78100                      | Civil Defense Facilities, General (3)  |
| 78110                      | Civil Defense Facilities, Population Protection (3)  |
| 78120                      | Civil Defense Facilities, Civil Defense Training Facilities (3)  |
| 78130                      | Civil Defense Facilities, Civil Defense Forces Facility (3)  |
| 78140                      | Civil Defense Facilities, Civil Defense Reserve Storage Facilities (3)   |

Table B-2. Category II Collateral Objects (U)

c. **Protected or collateral object categories may be modified by the Secretary of Defense (SecDef) or President as the military or political situation dictates. Changes to these categories will be reflected in operation specific ROE.**

### 3. Dual-Use Targets

a. Targets characterized as having both a military and civilian purpose/function are characterized as dual-use. In most cases, dual-use targets consist of facilities/structures associated with senior governmental level command and control, national communications infrastructure, media centers, national power and petroleum, oil, and lubricants infrastructure, industrial facilities, and public utilities providing support to the civilian population and the military effort.

b. Dual-use targets may also consist of LOW protected facilities/structures occupied by combatants. LOW protected structures occupied by enemy combatants for the purpose of advancing military objectives lose their LOW protection and are not classified as dual-use (provided the adversary has been put on notice). Similarly, if the function of a collateral object is determined to be supporting military operations and/or objectives exclusively, it is not classified as dual-use. Such entities are not considered collateral damage or No-Strike concerns and may be deemed lawful targets IAW reference a (also see Enclosure C, subparagraph 2.c. and supporting footnote).

c. Commanders are responsible to determine the predominant function of LOW protected structures, based on current intelligence, and decide if the target is dual-use or not. The ROE for a specific operation provides the authorizations and/or prohibitions for targeting dual-use objects. Regardless of the ROE in effect, civilian personnel working within the boundary of dual-use targets must be considered as noncombatant casualties for the purpose of casualty estimation under guidance provided in Enclosure D.

4. Human Shields. Human shields are civilian or noncombatant personnel placed around a valid military target by a combatant to hinder attack of that target. In some instances, human shields are willing accomplices who support the belligerent nation and in this case they lose their protected status and are valid military targets. In other instances, the belligerent nation may forcibly place civilians or noncombatants at valid military targets and these personnel are considered protected persons and should not be targeted. Only involuntary human shields must be accounted for in casualty estimation. If the status of the human shields is not known, then the more restrictive rule applies, and they are to be protected as protected persons/collateral objects.

CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

B-8

Enclosure B

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000088**

## ENCLOSURE C

## NO-STRIKE POLICY AND GUIDANCE

1. Introduction

a. No-Strike entities<sup>5</sup> are those designated by the appropriate authority upon which kinetic or non-kinetic operations are prohibited to avoid violating international law, conventions, or agreements, or damaging relations with coalition partners and indigenous populations. The infliction of unnecessary suffering or damage to civilian persons or property that is excessive in relation to the concrete and direct military advantage anticipated is inconsistent with international law and is contrary to DOD policy outlined in this document and in references a and b.

b. The source and method for defining a person, place, or thing as a No-Strike entity is derived primarily from the body of international law collectively known as LOW. The LOW incorporates international treaties and agreements adhered to by the U.S. government, as well as customary international law, into a comprehensive set of guidance and requirements governing the conduct of modern warfare.

2. General Guidance

a. The LOW requires all military personnel to take reasonable precautions to ensure that only military objectives are targeted and to ensure that civilian or noncombatant objects are not made the object of attack. NSLs identify and functionally characterize LOW protected No-Strike entities, forming the strategic and operational basis for target de-confliction during operational planning, CDE within the target development process, and the de-confliction of Joint Fires during operational and tactical execution. See Enclosure D for additional guidance on CDE.

b. No-Strike Entities. No-Strike entities can be both traditional and non-traditional in nature,<sup>6</sup> and consist of objects which are functionally characterized as civilian and/or noncombatant and therefore are prohibited from attack. No-Strike entities may include, but are not limited to medical, educational, diplomatic, cultural, religious, and historical sites, or other objects that do not, by their nature, location, purpose, or use, effectively contribute to

---

<sup>5</sup> Also sometimes referred to as collateral objects for the purposes of CDE. See Enclosures B and D.

<sup>6</sup> For the purposes of this instruction, the term "traditional" refers to physical entities such as facilities, units, and other entities geospatially located within the geographic area of operation. The term "non-traditional" refers to entities that are more abstract in nature and are usually associated with trans-national information technology and global economic structures. These "non-traditional" entities may include objects such as computer networks, Web sites, IP addresses, bank accounts, etc.



CJCSI 3160.01  
13 February 2009

the enemy's war-fighting or war-sustaining capability. These entities are generally not lawful targets under normal circumstances; however, if used for the furtherance of military or hostile force objectives, No-Strike entities lose their protected status and may be subject to attack, provided the adversary has been put on notice. For example, if a hospital structure is used to store weapons or is used for some other military purpose, a warning must be given and if unheeded, the facility forfeits its protected status under the LOW and becomes a lawful military target. When such a change in status occurs, the CCDR or authorized designee may approve the entity for attack (see Appendix B to this Enclosure, paragraph 6, for change of status guidance).

c. No-Strike Entities Located on Military Installations. When located on installations determined to be lawful military targets, No-Strike entities should be evaluated for collateral damage concerns and mitigated IAW Enclosure D. It must be assumed these entities host protected functions unless confirmed otherwise.<sup>7</sup> No-Strike entities must be geospatially defined, developed as separate facilities, and assigned a functional category code and O-suffix, as appropriate. Proximity of lawful military targets to No-Strike entities does not preclude engagement of the lawful military target. However, in these circumstances the commander must weigh the anticipated loss of life, damage to property, or other negative effects incidental to the attack versus the military advantage expected to be gained by the attack. In making the decision, commanders must consider the military necessity for attacking the target, proportionality of the means planned for target engagement, and reasonableness within the framework of operational objectives.

d. No-Strike Entities Versus Restricted Targets. Restricted targets are different from No-Strike entities. Restricted targets are those valid military targets which support the attainment of operational objectives, but which have been restricted from specified means of effects or engagement for operational, political, intelligence gain/loss, environmental, collateral damage, and/or ROE considerations.<sup>8</sup> CCDRs are required to identify, develop, maintain, and distribute a list of restricted targets (known as the restricted target list (RTL)) for tasked plans and/or operational orders (OPORDs) within their assigned AOR. The RTL provides the target identification, effects restrictions, nominating command/agency, rationale, and approval authority for target engagement and effects. The RTL must be separate and distinct from the NSL.

---

<sup>7</sup> If the function of these entities is confirmed as supporting a military objective, it is not necessary to treat them as collateral damage concerns. These entities are deemed lawful targets IAW reference a, and any incidental damage sustained as a result of combat operations should be considered additional damage as defined in reference h.

<sup>8</sup> Valid targets are those that have been vetted as, "A part of target development that ensures all vetted targets meet the objectives and criteria outlined in the commander's guidance and ensures compliance with the law of armed conflict and rules of engagement." JP 3-60, Joint Targeting, reference e.

### 3. The No-Strike Process

a. General. Participation and cooperation among stakeholders is critical to the success of the No-Strike process. Non-DOD stakeholders in particular play a key role in protecting life and property by identifying the location and functionality of non-military entities. Specific instructions on database and NSL development are provided in the appendices to this enclosure.

#### b. Identification, Characterization, and Nomination

(1) Identification, characterization, and nomination of No-Strike entities are the first steps in the No-Strike process. All stakeholders have the responsibility to identify and characterize the functionality of No-Strike entities as accurately as possible, and report this information to the responsible combatant command, JTF, or responsible U.S. government department or agency in a timely manner. Every effort shall be made to validate No-Strike entity nominations; however, timeliness of the reporting is critical during the conduct of military operations.

(2) To increase the accuracy and currency of reporting on facilities, combatant commands should encourage organizations to periodically provide a Global Positioning System (GPS) quality center-point and corner points defining the facility boundary for each potential No-Strike entity of interest along with an expected duration of occupancy. Street addresses and/or general descriptions of facility locations are of little use for geospatially defining No-Strike facilities. This information is essential to the collateral damage process and also allows more efficiency via automated tools.

c. Development. No-Strike entities require the same accuracy in location and geospatial definition as that of lawful military targets. Accurate positioning and geospatial development of No-Strike entities and identification of collateral damage/effects concerns is part of both the deliberate and dynamic targeting processes and is a continuous process that does not end when military operations commence (see reference e for detailed discussion on the deliberate and dynamic targeting processes). The continuous identification and development of No-Strike entities, well in advance of and throughout military operations, is critical to campaign success.

d. List Generation and Maintenance. NSL generation and maintenance must be an assigned task with frequent and routine reviews by the combatant command No-Strike Coordinator. Participation by stakeholders and validation by the appropriate agencies will yield additions, changes, and/or deletions to the NSL on a regular basis. Active maintenance will ensure the most up to date information is available to planners and battle management systems supporting target planning and CDE. NSL approval is a CCDR responsibility and the procedures governing NSL approval are a command function.



e. Dissemination. After approval, the geographic CCDR will ensure routine and timely dissemination of NSLs to all subordinate and supporting commands and supported functional commands with a periodicity appropriate for the tempo of operations. Subordinate and supporting commanders must then ensure the NSL is disseminated down to every level of their commands. See Appendix B to this Enclosure for additional guidance on NSL dissemination.

f. Execution. Deliberate and dynamic targets must be validated against the latest NSL prior to attack. CDE and mitigation will be accomplished IAW Enclosure D and the governing ROE for the particular operation. Targets that cannot be mitigated for collateral damage will be forwarded for review and approval IAW reference d.

g. Follow-on Operations. Traditional No-Strike entities typically consist of facilities and locations that are important to planners in follow-on, stability operations, such as hospitals, food distribution points, and refugee camps. These and similar locations could be inappropriately exploited by insurgent or terrorist groups, in which case they may lose their protected status. Consequently, the No-Strike process remains a U.S. government priority even after the cessation of major combat operations. By limiting unnecessary suffering and disproportionate damage, the No-Strike process will accelerate recovery in post-conflict operations and minimize operational limitations routinely imposed as a result of international sensitivities over the humanitarian impacts of military operations.

## APPENDIX A TO ENCLOSURE C

## DATABASE DEVELOPMENT

1. No-Strike Entity Identification, Nomination, and Development

a. The following set of MIDB CATCODEs will be used as the core foundation for NSLs (for any country or operation); they are listed *in priority order* of importance for IC production and validation of record accuracy.<sup>9</sup> This list represents the CATCODEs that must be used to develop an NSL due to LOW; however, it is not all inclusive. Combatant commands may have other categories reflected on the NSL based on theater ROE. See Enclosure B for additional detail regarding these categories.

|       |  |
|-------|--|
| 778XX | Diplomatic Facilities, Foreign Missions, and Nongovernmental Organizations |
| 776XX | Religious, Cultural, Historical Institutions                               |
| 434XX | Medical Facilities   |
| 721XX | Medical Schools  |
| 72300 | Medical Interest Site  |
| 496XX | Civilian Schools   |
| 75300 | Civilian Refugee Camps   |
| 75900 | Prisoner of War Camps  |
| 775XX | Government Detention Facilities  |
| 43210 | Sewage Waste Facilities  |
| 439XX | Dams   |
| 438XX | Dikes and Other Water Control Features                                     |
| 77700 | Libraries  |

Table C-A-1. Core No-Strike List Category Codes

b. Production Prioritization. If there is an existing joint target list (JTL) and/or RTL, they shall be used to focus the IC and prioritize their MIDB production and review efforts for possible No-Strike entities. If a JTL/RTL does not exist, established special engagement zones, named areas of interest (NAI), or designated search areas may serve the same purpose. If none of these exist, combatant command personnel shall attempt to refine the scope of effort for the IC by geographic/regional priority. For urban areas, the priority is as follows:

<sup>9</sup> Categories 41500, 41510, and 41520, Computer Networks, Computer Networks Service Providers, and Computer Networks, Information Production and Storage respectively, are also potential No-Strike categories depending on the protected function they support (i.e., Hospitals, Water Control, etc.).

| Priority | City Size                           |
|----------|-------------------------------------|
| 1        | National Capital                    |
| 2        | Regional/State Capital              |
| 3        | Cities with population over 250,000 |
| 4        | Cities with population over 100,000 |
| 5        | Cities with population over 20,000  |
| 6        | All other                           |

Table C-A-2. Urban Area Priority List

c. Development. No-Strike entities must be named distinctly with an assigned identification (e.g., basic encyclopedia (BE)) number/O-suffix) and classified by their functionality with an appropriate CATCODE IAW reference c. Facilities must be geospatially defined as discrete entities with a precise GPS quality geographic center and corner point boundaries. They must be entered in MIDB to support validation by the appropriate authority and realistic target deconfliction during the conduct of combat operations. If required, combatant commands may request IC support for No-Strike entity development. Development of new nominations should be requested via the nomination-database change request (NOM-DCR) process IAW subparagraph 2.c. below, with amplifying information provided via e-mail to the appropriate RAC. Requirements to support development of existing entities in MIDB should be submitted via Community On-Line Intelligence System for End Users and Managers (COLISEUM).

d. Coordinate Generation. Coordinates relating to physical No-Strike entities are produced and maintained in MIDB. Accurate positioning of physical No-Strike entities is essential for minimizing collateral damage and critical to the CDE process.<sup>10</sup> Since automated CDE tools depend on accurate plots of the NSL to ensure valid CDE results, care must be exercised in the methods used to derive No-Strike entity locations. Coordinate sources listed below 1 meter controlled image base (CIB) on Table C-A-3 are not accurate enough to provide reliable depictions using automated CDE tools. Properly acquired GPS coordinates should be used to cue and further refine No-Strike locations on imagery (reference k). Orthorectified mono imagery should be

<sup>10</sup> Although related here in the context of traditional No-Strike entities (i.e., entities such as facilities, units, geographic areas, etc.), accurate identification and location of non-traditional No-Strike entities (i.e., cyberspace elements) are just as important to deconflict against kinetic fires and minimize collateral damage/effects on noncombatant and civilian functions.

used whenever stereo imagery is not available. Sources for deriving positional data are listed below, in order, based on accuracy:

| <b>Priority</b> | <b>Coordinate Source</b>  |
|-----------------|---|
| 1               | Digital Point Positioning Database  |
| 2               | Precise Orthorectified Image Datasets   |
| 3               | CIB 1 Meter   |
| 4               | CIB 5 and 10 Meter  |
| 5               | Uncontrolled National Technical Means Imagery with Rapid Positioning Capability |

Table C-A-3. Sources for Deriving Positional Data

## 2. New Nominations

a. No-Strike entity information is likely to come from a variety of sources (particularly after an operation begins): CSAs, Services, Components, JIACG, Coalition partners, Interagency partners, etc.... Regardless of source, each stakeholder must nominate No-Strike entities for MIDB entry through the GEMINI portal.<sup>11</sup> If stakeholders do not or cannot have access to GEMINI then they must pass the required information to the appropriate combatant command No-Strike Coordinator for data entry into GEMINI.

b. Stakeholders may not regularly communicate with combatant commands and the information they provide may be either incomplete or difficult to validate. To facilitate the positive identification, location, and validation of No-Strike entities, combatant commands may utilize the JIACG, as well as command CSA and coalition partner liaisons. Despite the GEMINI process outlined above, combatant commands can expect to receive information from interested parties by fax, phone, e-mail, or visits from stakeholders. Commands must reach-out to subordinate commands, allies, coalition partners, host nation, and the JIACG to refine No-Strike entity information and encourage stakeholder participation and feedback.

c. DIA's GEMINI Web-based portal for production and dissemination of MIDB facility and unit-related intelligence is the approved method for nominating new possible No-Strike entities. When doing so, agencies shall follow the NOM-DCR guidelines and procedures established within GEMINI. As nominations are developed, agencies shall provide as much information as possible. Location and source of information is critical. Identify the entity by

<sup>11</sup> Currently applies to traditional No-Strike entities only. See Appendix B, paragraph 2.b.

CJCSI 3160.01  
13 February 2009

CATCODE to ensure it is forwarded to the correct RAC. Agencies should ensure contact information in GEMINI profile is current.

d. Important attributes in reporting potential new No-Strike entities include, but are not limited to: date of nomination, country, entity name, coordinates (suggested format DD.MM.SS.SSSX/DDD.MM.SS.SSSX) or location with GPS or priority 1, 2, or 3 coordinate sources preferred using World Geodetic System 1984 (WGS-84) Datum (see Table C-A-3), coordinate accuracy, perimeter boundary, number of personnel at the facility and work schedules (if known). Important attributes for reporting and/or nominating virtual No-Strike entities include internet protocol (IP) or uniform resource locator (URL) addresses (or other uniquely identifying features in cyberspace) and the geospatial location of any physical systems or nodes that utilize the virtual network. Requestor provides point of contact, organization, e-mail address, phone, and fax telephone numbers for validation purposes.

C-A-4

Appendix A  
Enclosure C

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000096**

## APPENDIX B TO ENCLOSURE C

## THE NO-STRIKE LIST

1. Overview

a. Purpose. To provide combatant commands practical guidance in developing and compiling the NSL for their operations.

b. Responsibilities. See base instruction, paragraph 4. Internal authority for NSL approval within combatant commands will vary between commands and operations. As a practical matter, the Joint Staff recommends that the NSL, RTL, and JTL have the same approval authority for a given operation; however, given the mission critical importance of NSL accuracy, dissemination of NSL updates should be dynamic, providing timely situational awareness of newly identified No-Strike entities.

2. NSL Generation

a. No-Strike Categories. Querying a core set of MIDB CATCODEs via GEMINI can begin generation of the NSL (see Table C-A-1). The results from this query should become the foundation of the NSL (for any AOR country or operation). This set may be modified and/or expanded by the combatant commands in coordination with the Joint Staff based on approved operational ROE and as the military and political situation dictates.

b. Non-Traditional No-Strike Entities. Guidelines for automated NSL generation contained in this instruction currently apply only for traditional No-Strike entities produced and maintained in MIDB. If required, entry of non-traditional No-Strike entities (i.e., individuals, accounts, computer networks, etc.) on NSLs may be manually accomplished until production policy, capability, and standardized procedures to database these entities mature. The JS/J-2T will update this instruction as policy, capability, and procedures develop for the handling and databasing of non-traditional No-Strike entities.

c. Automated Production. In addition to querying CATCODEs in MIDB, there are also a number of ways to automate NSL generation. Two of the most prominent methods include the Joint Targeting Toolbox and the MORPHEUS portal. Query procedures are described in each tool's respective help

CJCSI 3160.01  
13 February 2009

functions. NSLs should include the following information, at a minimum: country code, entity identification (e.g., BE) number, O-suffix (where applicable), record status, CATCODE, entity name, associated geocoordinate, and coordinate derived (sorted in that order, from left to right). Lists should be saved with the naming scheme "DRAFT-(two letter country code)-NO-STRIKE-DDMMMMTTTTZ."

d. Automated Display. Once generated and saved, the NSL can be displayed as an overlay in battle management systems such as the Global Command and Control System (GCCS) and JADOCs. Combining NSL entities in an overlay with geospatial intelligence, tasking and/or fires orders, and other operational data provides target planners enhanced situational awareness in collateral damage avoidance, particularly for dynamic targeting.

### 3. NSL Validation and No-Strike Entity Verification

a. Once the NSL is created, combatant commands must verify entities on the NSL are not on the JTL/RL and vice versa. Whenever there is a change in either the NSL or the JTL/RTL, combatant commands must compare the two lists to look for new discrepancies. For dynamic targeting, each lawful target must be run against the NSL to ensure the target is not a protected entity, and to perform CDE and mitigation as necessary. When applicable, a check of the JTL against the RTL will ensure that individual RTL target restrictions are not violated.

b. DIA is the RESPROD for all No-strike facility CATCODEs. All No-Strike facility nominations go to DIA for approval, which includes verification that the CATCODE is accurately attributed. Therefore, DIA is responsible for verifying that a No-Strike facility is indeed a No-Strike facility. Further verification should be done by the combatant commands for database errors, problems, and/or inconsistencies. These should include:

- (1) Inaccurate, incorrect, or city center coordinates.
- (2) Multiple identification numbers and/or names for the same entity.
- (3) Mismatched identification numbers and entity names.
- (4) Improperly assigned CATCODE and/or O-suffix.
- (5) Single entity identification numbers listed with multiple CATCODEs (the NSL should only reflect items with appropriate No-Strike CATCODEs).

Appendix B  
Enclosure C

C-B-2

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000098



CJCSI 3160.01  
13 February 2009

c. Un-verified Entities. At the discretion of the combatant command, un-verified entities may be added to the NSL to ensure their protection. Efforts must be made to positively identify and locate the entity as soon as possible. However, if the nominated entity is at risk, then early addition to the NSL is a prudent action.

d. In circumstances where No-Strike entities are found within the physical boundaries of a lawful military target, the lawful target is placed on the JTL and the No-Strike entity is placed on the NSL. The two may share the same identification (e.g., BE, unit ID) number but would be differentiated by CATCODE, O-suffix, and, in many cases, entity name. Proximity does not preclude engagement of the lawful target as long as any conflict between the No-Strike entity and lawful target is resolved IAW Enclosure B and requisite approvals sought, if necessary, IAW reference d.

e. Whenever there is a change in either the NSL or the JTL, combatant commands must validate the two lists to look for new discrepancies. For dynamic targeting, each lawful target must be run against the NSL to ensure the target is not a protected entity, and to conduct collateral damage estimation and mitigation as necessary. When applicable, a check of the JTL against the RTL will ensure that individual RTL target restrictions are not violated.

#### 4. NSL Coordination and Approval

a. IC members as part of the IC target vetting process should provide feedback on potential No-Strike entities to the combatant commands. Combatant commands should provide continuous NSL access for IC review.

b. The Joint Staff recommends further coordination of the NSL with appropriate functional elements of the combatant command staff, such as the Staff Judge Advocate, the JIACG, coalition liaisons, civil affairs, or other appropriate elements specific to the operation. Thorough coordination between each responsible agency is necessary and failure to do so could result in injury to noncombatants, civilians, or friendly forces, the unintended destruction of property, or mission failure.

c. Once the initial NSL is approved, the list is re-saved to reflect its final status (remove "DRAFT" from the naming convention). In addition, combatant commands must establish procedures for updating the NSL based on the needs of the mission and no less than once annually. Updates to procedures and timelines may vary between the planning and execution phases of an operation. Internal and external reviews may be limited to just the additions or deletions from the list, since entities on the original NSL were already verified.

Appendix B  
Enclosure C

C-B-3

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000099**



CJCSI 3160.01  
13 February 2009

d. Combatant commands are encouraged to automate the process of associating No-Strike entities to the NSL based on country and DIA-approved CATCODEs. This automated process ensures that the NSLs are continuously updated and reflect the latest intelligence available. In this situation, the concept of the NSL approval can now be accomplished through having the automated NSL generation approved. In other words, if appropriate authority within the combatant command approves of the CATCODES used for the NSL and the automated process by which an NSL is generated, then the NSL itself is approved.

#### 5. NSL Dissemination

a. The primary means of disseminating NSLs is over the MIDB and GCCS replication architecture to Joint Worldwide Intelligence Communications Systems, SIPRNET, coalition systems, and other command directed battle management systems for use by target planners and Joint/Service fires and effects coordinators.

b. Secondary mechanisms will likely be necessary for coalition and/or other units and organizations not connected to the MIDB architecture. Secondary dissemination shall occur via Web posting, e-mail, record message traffic, or other means to ensure widest distribution to components, JTFs, and federated targeting and combat assessment partners. Combatant commands are responsible for timely updates to the NSL as changes are identified. Delaying the dissemination of changes to the NSL increases the risk of unnecessary and unintended collateral damage.

#### 6. Change of Status

a. No-Strike entities that lose their protected status should be removed from the NSL. No-Strike entities lose their protected status if they are used for a military purpose. In such cases, they become lawful military targets. For example, if a hospital or a place of worship is used for a purpose that is inconsistent with its protected status, such as storing weapons, housing combatants or unlawful belligerents, or functioning as an observation post, the facility loses immunity from attack under the LOW and is subject to attack, provided the adversary has been put on notice and the notice has gone unheeded. It is a combatant command responsibility to determine the predominate functionality of a facility.

b. Upon losing protected status, the entity's MIDB record must be updated to reflect the new characterization. When this occurs, a second CATCODE and O-suffix will be assigned reflecting the new functionality. Assigning a secondary CATCODE (i.e., related to objects used for military purposes by terrorists or insurgents) would not remove the initial No-Strike CATCODE from

Appendix B  
Enclosure C

C-B-4

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000100

CJCSI 3160.01  
13 February 2009

the associated facility record in MIDB, but would reside in conjunction with the No-Strike CATCODE. As long as this alternate “hostile” CATCODE assignment was in effect, the combatant command would have the option of attacking the entity.

c. Before strikes can be approved and executed, the combatant command must remove the No-Strike CATCODE and entity identification number from the NSL and place the entity identification number with the appropriate secondary “hostile” CATCODE on the JTL (or RTL, as appropriate). Unless designated by higher authority, the CCDR or his/her designated representative is the only level of command authorized to change the status of an entity on the NSL. Close and timely coordination between the combatant command, JS/J-2T, and the appropriate RACs will help minimize confusion. Combatant commands must document changes to the NSL by DTG and reason for the change.

d. Exceptions to guidance in paragraph c are those instances where (1) intelligence confirms the use of the No-Strike entity for hostile purposes and the need to strike is time sensitive (whereupon it is nominated as a time sensitive target (TST)), and/or (2) troops are in contact and taking hostile fire from traditional No-Strike entities. These entities do not have to be reflected on the JTL before they can be engaged; operational imperatives, established ROE, including the inherent right and obligation of self-defense, provide the combatant command the appropriate authority to engage in these instances unless this authority is expressly limited in SecDef provided supplemental ROE.

e. From the time a No-Strike entity is characterized as hostile, periodic reviews of available intelligence are recommended at both the theater and national levels to ensure the most current and accurate characterization and categorization. If a No-Strike entity shows no indication of reverting back to its primary function after 12 months, commands should work with the RACs to deactivate the primary CATCODE. Deactivated, No-Strike related CATCODEs should be removed from the NSL but kept under review by the RAC IAW DIAP guidelines and established MIDB business rules.

f. For those combatant commands that do not have responsible producer (RESPROD) authority to assign insurgent CATCODEs and for all other categories of activities other than insurgency or terrorism, the combatant command must coordinate with the national RAC to effect a change in status per established NOM-DCR procedures. To facilitate change of status and re-characterization of No-Strike entities, the combatant command must develop procedures to coordinate with national RACs to codify and institutionalize the process. If the need to prosecute becomes time-sensitive, coordination timeliness compress. Procedures will include the ability to coordinate and

Appendix B  
Enclosure C

C-B-5

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000101

CJCSI 3160.01  
13 February 2009

expedite re-characterization of TST nominations. It is recommended the process include initial verbal coordination with the RAC, followed by written confirmation, and a formal NOM-DCR. The RAC must attempt to implement change requests within combatant command-specified timeframes.

C-B-6

Appendix B  
Enclosure C

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000102**

ENCLOSURE D

JOINT METHODOLOGY FOR CDE

1. Introduction

a. The LOW requires reasonable precautions to ensure only legitimate military objects are targeted. The LOW requires combatants to refrain from intentionally targeting civilian or noncombatant populations or facilities. The LOW also stipulates that anticipated civilian or noncombatant injury or loss of life and damage to civilian or noncombatant property incidental to attacks must not be excessive in relation to the expected military advantage to be gained.

b. Failure to observe these obligations could result in disproportionate negative effects on civilians and noncombatants and be considered a LOW violation. Furthermore, U.S. leadership and military could be subject to global criticism, which could adversely impact military objectives, alliances, partnerships, or national goals. The U.S. government places a high value on preserving civilian and noncombatant lives. The U.S. military must emulate and represent these values through the conscientious use of force in the accomplishment of assigned military missions.

c. The CDM encompasses the joint standards, methods, techniques, and processes for a commander to conduct CDE and mitigate unintended or incidental damage or injury to civilian or noncombatant persons or property or the environment. It assists commanders in weighing risk against military necessity and in assessing proportionality within the framework of the military decision-making process. In short, the CDM is a means for a commander to adhere to the LOW.

d. The CDM is a balance of science and art that produces the best judgment of potential damage to collateral concerns. As a science, the CDM uses a mix of empirical data, probability, historical observations, and complex modeling for CDE assessments. However, the science is inherently limited by the quantity and reliability of collected and analyzed weapons effects data and target information. Furthermore, the science of the CDM cannot always account for the dynamics of the operational environment. Therefore, the art of the CDM is not only complementary but critical. Targeting professionals, intelligence analysts, and operations personnel should employ their combined expertise, experience, and current intelligence to tailor the science to the

specifics of the operational environment. Taken together, the CDM's science and art provide essential information that the commander uses in context with other factors and sound judgment to weigh risks versus gains in determining if the effects to be achieved against a given target warrant the use of kinetic (lethal) weapons.

## 2. General Guidance

a. The CDM supports employment of conventional munitions across the spectrum of conflict. It provides commanders with an understanding of weapon effects, incidental consequences, and mitigation techniques, enabling more balanced, comprehensive judgments.

b. The CDM is not an exact science. The supporting technical data and processes of the methodology are derived from physics-based computer models, weapons test data, and operational combat observations. All of these sources contain some degree of inherent error and uncertainty. **The CDM does not predict the actual outcome of weapon employment. The operational environment, weapon's reliability, and fidelity of intelligence data are primary factors that account for a CDE output differing from actual combat employment.** Though the CDM follows a rigid process and generates estimated values, neither analysts or commanders should be under the impression that these values in any way constitute ground truth, an exact science, or flawless data. CDM is merely an estimate to assist a commander in the decision making process relying on informed data and sound judgment.

c. Moreover, the CDM and the products derived from the CDM are not the only input to a commander's decision making. Operational objectives, end state considerations, LOW, ROE, target characteristics, risk to friendly forces, and strategic risk are examples of other factors that contribute to a commander's decision making. These factors, either alone or in combination, may outweigh the value of the CDM input. This is not to say that collateral damage cannot be an overriding issue depending on the operational environment at the time. Therefore, it is important that commanders, at all levels, who may be responsible for performing CDE, focus appropriate command attention and emphasis on the CDM.

d. Operation-specific ROE and other policy guidance issued by the Secretary of Defense and/or the President will dictate decision authorities and collateral damage thresholds. Thresholds are established consistent with the LOW, governing reporting requirements, and the delegated CDE responsibilities of strategic, operational, and tactical commanders.

e. The CDM must be applied as exhaustively and thoroughly as possible relative to commander's guidance and operation specific constraints. The CDM

CJCSI 3160.01  
13 February 2009

must also be sufficiently flexible to accommodate the pace and tempo of operations. Collateral damage estimates are perishable. Therefore, the CDM must remain responsive to changes in the operational environment, scalable for tactical through strategic application, and common enough for most geographic areas or regions of conflict.

f. The CDM must be implemented consistently across all commands. Consistency minimizes confusion, maintains a joint standard, and provides commanders at all levels with a common construct and decision-making aid. Though commanders may explore and use innovative mitigation techniques, the following rules and limitations apply:

(1) Collateral damage mitigation techniques not expressly authorized in this directive cannot be presented exclusively as part of a CDE assessment. At a minimum, every CDE assessment must use those mitigation techniques authorized in the CJCSI using the CER values and resulting collateral hazard areas (CHAs) derived from the supporting CDE reference tables.

(2) A commander (or the strike approval authority) must be informed, either on a CDE graphical aid or verbally, of the assumptions, errors, and uncertainties accompanying the mitigation techniques employed, including the sources and fidelity of the supporting information. Information must comply with the minimum standards as prescribed in reference j.

g. Commanders apply the methodology, concepts, and outputs for planning fires below the operational level. The CDM has the flexibility to apply to time critical events and is designed to allow a trained CDE analyst to quickly produce an estimate.

(1) However, the CDM is not intended to deny a commander the ability to respond to time-sensitive targeting events and should not be used as the sole justification to impede or delay fires for time-sensitive targeting.

(2) Additionally, the CDM does not limit a commander's inherent right of self-defense under the LOW. When the use of force in self-defense is necessary, including in situations with troops in contact, the nature, duration, and scope of force should not exceed that which is required to respond decisively to hostile acts or demonstrated hostile intent. The concept of proportionality in self-defense is not to be confused with attempts to minimize collateral damage and the other tenets of LOW during military operations.

h. The CDM establishes a means of accommodating policy or other limitations, such as foreign partner sensitivities, the U.S. government may impose upon its forces, beyond LOW legal requirements. The CDM improves the efficiency of operations and should not be construed as state practice with



respect to customary international law. Similarly, no part of this methodology is meant to abrogate U.S. obligations under the LOW. Nothing in the CDM limits or increases the rights and obligations of any U.S. military commander or Service member under the LOW.

i. Lastly, this instruction directly supports the STAR process which outlines the procedures for CCDRs to identify and classify targets as “sensitive.” CCDRs classify targets as “sensitive” when the potential for damaging effects and/or injury to civilian or noncombatant property and persons and potential ensuing political consequences, or other significant adverse effects are estimated to exceed predetermined, situation-specific thresholds normally defined in the operation specific ROE (see glossary for sensitive target and reference d).

### 3. Limitations and Exclusions

a. **The CDM accounts for all conventional munitions currently in the U.S. inventory except as noted below and in the accompanying tables.** It is not applicable to nuclear, non-kinetic, or non-lethal capabilities. In future updates, the CDM will account for (or provide references for) them. Until then, follow combatant command/SecDef guidance for targeting with these capabilities.

b. **CDE as specified in this instruction is not required for surface-to-surface direct fire weapon systems** (e.g., 120mm cannon on M1 Main Battle Tank, 25mm Bushmaster, M-2 .50 Caliber Machinegun), **rotary wing or fixed-wing air-to-surface direct fire weapon systems less than 105mm** (e.g., 2.75in rockets, M2A1 40mm Bofors, GAU-8 30mm Gatling gun, and GAU-4 20mm Gatling gun) **due to operational practicality.** The risk of collateral damage from these weapon systems is presented by the distribution of munitions in the target area and not from the explosive effects of the warhead. The LOW concepts of proportionality, necessity, and reasonableness are considered for employment of direct fire weapon systems.

c. **The CDM does not account for weapon malfunctions, operational delivery errors, or altered delivery tactics based on operator judgment.** The CDM assumes weapons will function as designed and will be delivered to achieve the desired effects.

d. **The CDM does not account for unknown transient civilian or noncombatant personnel and/or equipment in the vicinity of a target area.** This includes cars passing on roads, people walking down the street, or other noncombatant entities whose presence in the target area cannot be predicted to reasonable certainty within the capabilities and limitations of intelligence collection means. It is an inherent responsibility for commanders,

CJCSI 3160.01  
13 February 2009

at all levels, to employ due diligence to identify assemblies of civilian or noncombatant personnel and/or property in the target area and de-conflict target engagements when possible.

e. **The CDM does not account for individual marking or adjusting rounds when employing surface-to-surface ballistic munitions (SSBM) in the Observer Adjusted (OA) method of engagement.** Commanders should remain cognizant of this fact and only employ the minimum number of marking or adjusting rounds required to achieve the desired effects on the target.

f. **The CDM does not account for the use of cluster or improved conventional munitions (ICM) beyond CDE Level 3** because of the greater risk of unexploded ordnance and the limited weaponeering options available to mitigate the risk of collateral damage with these munitions.

g. **Rocket Assisted Projectiles (RAPs) or enhanced/extended range artillery, mortar, and naval gun munitions are not addressed beyond CDE Level 3** due to the considerable increase in ballistic errors associated with these munitions and the significant increase in risk associated with their use in urban areas.

h. While the CDM can be applied to any geographic region, weapons effects may vary in different environments. In general, the CDM and supporting weapon effectiveness data use a combination of flat terrain, rolling hills, and soft soil as the base environment and terrain. Desert and jungle environments, as well as those with hard soil, for instance, may present conditions that change weapon effects. Commanders should consider unique environmental conditions and terrain features along with any assessment from the CDM.



CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

## APPENDIX A TO ENCLOSURE D

## THE CDM PROCESS

1. CDM Overview

a. Introduction. The technical methods detailed in the CDM enable a reasonable determination of collateral damage inherent in weapons employment. The CDM thereby addresses the LOW requirement for reasonable precautions to minimize effects of combat on the civilian or noncombatant population. The supporting technical data, mitigation techniques, and logic of the CDM recognize the intelligence limitations of what can reasonably be known about a given target, its surroundings, and collateral structure composition; the fidelity of available weapon's empirical data; and the operational realities and uncertainties of ordnance delivery in a combat environment.

b. The CDM is Simple and Repeatable. The steps outlined in Appendix B are designed so that the CDM can be used in a deliberate manner where time is not a factor or in situations where time is critical. In addition, the methodology and supporting data tables can be used with or without the aide of an automated CDE tool.

c. Elements of the Technical Framework. The framework of the CDM is built around five mutually dependent CDE Levels (CDE Level 1 through 5). Each level is based on a progressively refined analysis of available intelligence, weapon type and effect, the physical environment, target characteristics, and delivery scenarios with specific risk thresholds established for each of the five CDE levels.

(1) Beyond the first level, the CDM assigns sub-groupings: A for precision-guided munitions (PGM); B for Air-to-Surface Unguided Munitions (ASUGM); C for SSBM.

(2) At each CDE level an assessment of either low or high is produced. If collateral concerns are not within the computed collateral hazard area (CHA) or if the specified level of risk to collateral concerns is not met, the assessment is low and a higher CDE level is not needed. If a low assessment is rendered the methodology supports engagement of the desired target with the conditions and restrictions specified by the CDE level where the low assessment was estimated. If collateral concerns are within the CHA or the specified level of risk to collateral concerns is exceeded, the assessment is high and the next CDE level is performed.

Appendix A  
Enclosure D

D-A-1

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000109

d. Risk and the CDM. **The CDM measures the dynamic relationship between three principle categories of risk: risk to mission, risk to forces, and risk of collateral damage.** The intersection of the three is determined by the weaponeering restrictions required to reduce collateral damage to an acceptable level while achieving mission success and minimizing risk to forces. As the CDM progresses up through each CDE level, the number of weaponeering restrictions also increases, elevating the potential risk to friendly forces and mission accomplishment based on weapon, platform availability, and threats in the target area. Figure D-A-1 depicts the risk continuum and the interaction between collateral damage and weaponeering restrictions for each CDE level.

e. Collateral Damage Thresholds. The outputs of the CDM provide commanders with easily recognizable measures of operational risk based on the CDE level required to achieve a final CDE assessment. The collateral damage threshold in CDE Levels 1, 2, and 3 mitigates risk to less than 10-percent probability of serious/lethal wounds to standing personnel, dressed in summer weight clothing, in open rolling terrain from primary warhead fragmentation or debris. The collateral damage threshold in CDE Level 4 reduces this risk mitigation to less than 1-percent fractional structural damage to collateral structures from primary warhead blast effects. This is because CDE Level 4 imposes the specific requirement to fuze the warhead to detonate either in the target structure or below ground, which mitigates fragmentation effects by using the building or ground to absorb fragments. Of note, injury to personnel remains the primary concern in CDE Level 4. The link between personnel and structures from a collateral damage perspective is the assumption that noncombatants in structures are predominantly injured or killed by blunt trauma from structural collapse and secondary debris. The effects of blast induced debris have not been characterized; of note, blast induced debris has been operationally observed to be a significant hazard to noncombatant personnel.

COLLATERAL RISK

- CDE 1: TARGET VALIDATION/INITIAL ASSESSMENT
- CDE 2: GENERAL/TARGET SIZE ASSESSMENT
- CDE 3: WEAPONEERING ASSESSMENT
- CDE 4: REFINED ASSESSMENT
- CDE 5: CASUALTY ASSESSMENT

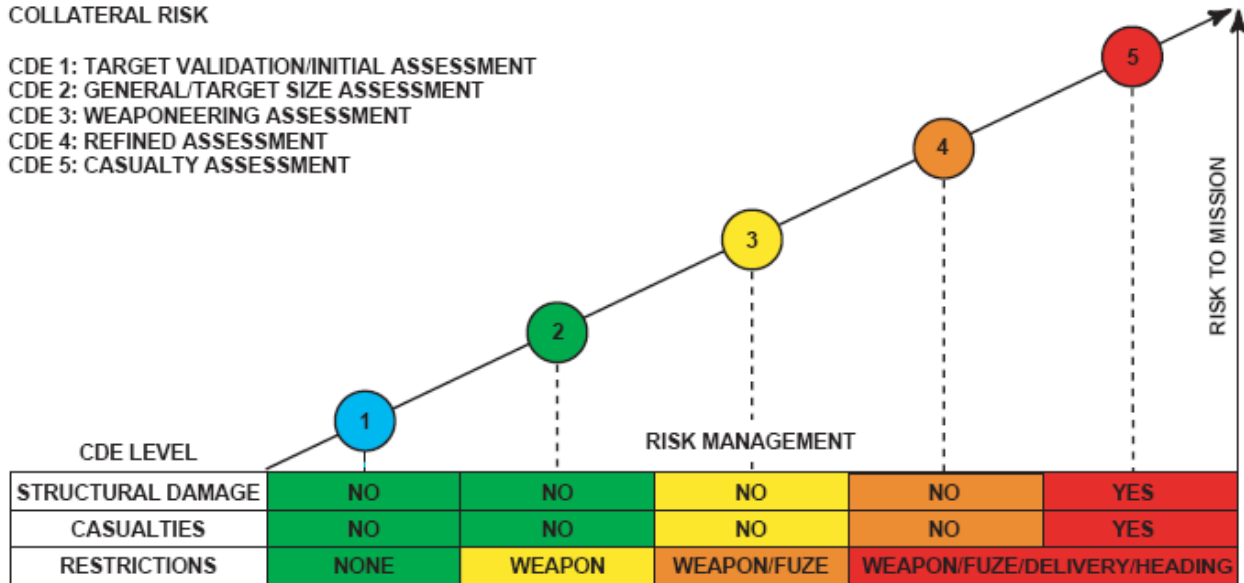


Figure D-A-1. Risk and the Collateral Damage Estimation Methodology

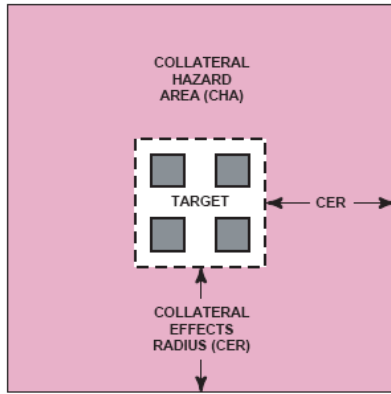
f. Components of the CDE Levels. CER and CHA are two fundamental elements of the CDM that determine the progression from each CDE level.

(1) CER. A CER is a radius representing the largest collateral hazard distance for a given warhead, weapon, or weapon class considering predetermined, acceptable collateral damage thresholds that are established for each CDE level. A CER value contains the total error associated with a specific munition and method of employment as well as the radius of dominant warhead effects. For cluster or ICM, the CER value includes the pattern radius of the sub-munitions.

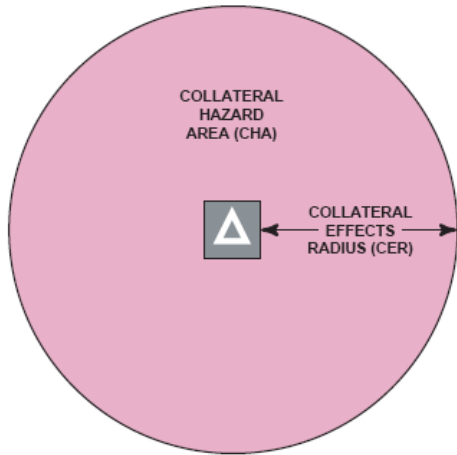
(2) CHA. A CHA is formed by measuring a CER from either the edge of a target facility boundary, the aimpoint for a point target, or the edge of an engagement zone or artillery sheaf for an area target.

(3) Essentially, the CER is used to form the CHA. The assessment conducted at each CDE level is based on the existence of collateral concerns within the corresponding CHA. Within a CHA there is an unacceptable probability for damage or injury to collateral concerns, which include persons and objects. Each succeeding CDE level employs mitigation techniques and weaponeering restrictions designed to reduce the area of collateral effects to an acceptable level. Figure D-A-2 illustrates the CER/CHA relationship.

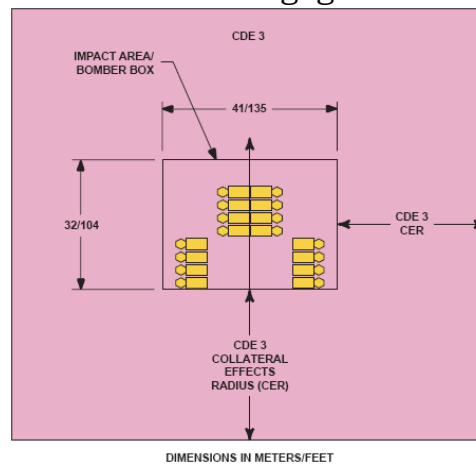
CHA measured from a installation/facility/target boundary:



CHA measured from an aimpoint:



CHA for ASUGM Engagement Zone:



CHA measured from SSBM sheaves:

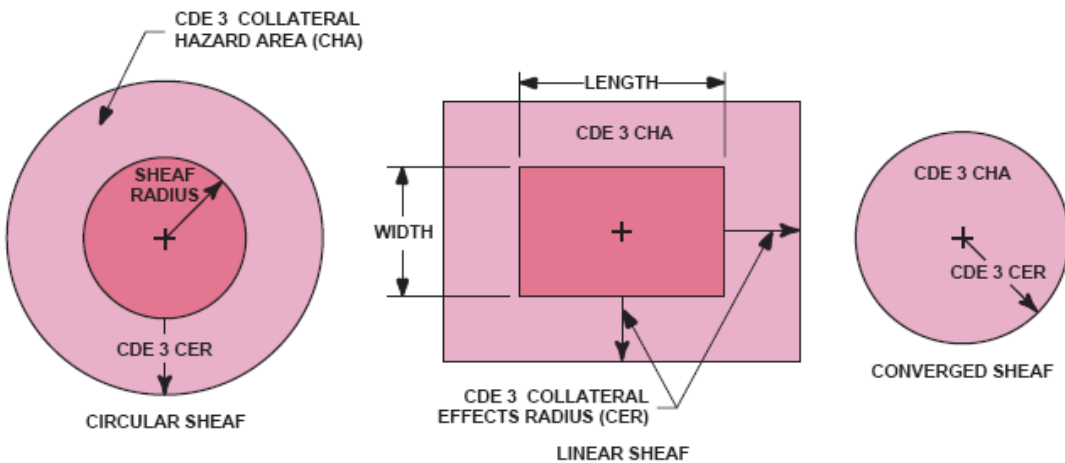


Figure D-A-2. CER and CHA Relationships

g. Warhead Effects in the CDM. The maximum distance to achieve probability of damage and injury was developed for each warhead contained in the CDE reference tables. These include considerations for primary blast, fragmentation, secondary debris from crater ejecta, and blunt trauma from building collapse using damage criteria appropriate for each CDE level.

h. Types of Error Used in the CDM. The CDM and supporting CDE reference tables involve three primary categories of error: delivery error, target location error, and total error.

(1) Delivery error is expressed in terms of circular error. CE90 is the radius of a circle in the ground plane in which 90 percent of munitions are expected to impact around an aimpoint.

(2) Target location error (TLE), also expressed in terms of circular error, is the error associated with locating the true position of the target. Specifically, TLE90 describes the radius of a circle in the ground plane centered on the target coordinates such that 90 percent of the time the true target location is within.

(3) Total error 90 (TE90), expressed in terms of CE90, is the root sum square (RSS) of the delivery error and the TLE90. The CDM and supporting CDE reference tables apply two distinct TE90 values, Precision TE90 and OA TE90. The two TE90 values are calculated using separate TLE90 measurements and are based on the specific weapon classes and methods of engagement.

(a) Precision TE90. Precision TE90 is used to calculate precision PGM, ASUGM, and SSBM CER values for the Precise Method of Engagement delineated in the CDM. The Precision TE90 is determined using the accepted errors for precise target coordinates.

(b) OA TE90. OA TE90 is used to calculate SSBM CER values for the OA method of engagement specified in the CDM. OA TE90 is based on observed operational accuracies and tactics, techniques, and procedures.

i. Cluster and ICM Pattern Radius. Worst-case pattern radii have been developed for each weapon, capable of dispensing sub-munitions, contained in the CER reference tables. The worst-case radii are combined with individual sub-munition collateral effects radii and TE90 to produce CER values appropriate for each CDE level.

j. CDE Reference Tables. To support CDE, JTCG/ME accredits and produces CER and Minimum Target Size (MTS) reference tables twice annually (at a minimum). JTCG/ME maintains the tables on their SIPRNET Web page

Appendix A  
Enclosure D

D-A-5

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000113

CJCSI 3160.01  
13 February 2009

(<https://jtcg.amsaa.army.smil.mil/jpias/index.html>). Request access via the site as the tables are password protected. When new tables are developed JS/J-2T notifies DOD components via official message. Problems obtaining new tables on the Web site should be directed to your command or next higher echelon targeting office/directorate/division. Representatives from foreign governments supporting combined operations or planning with the United States should contact their local U.S. DOD representative.

(1) CER reference tables are tailored for each CDE level, considering collateral concern, the weaponeering capabilities, and limitations of each munition addressed in the tables. The tables represent the range of collateral weapon effects, measured from a warhead detonation, for each conventional munition in the US inventory. CER reference table values are rounded up to allow for simplicity of operational use and a conservative assessment.

(2) Below is a list of the tables and the CDE level they support as posted on the JTCG/ME Web site:

CDE Level 1: Target Validation/Initial Assessment  
- CDE Level 1 CER Reference Table

CDE Level 2: PGM General Assessment  
- CDE Level 2A PGM CER Reference Table

CDE Level 2: ASUGM/SSBM Minimum Target Size Assessment  
- CDE Level 2B ASUGM Minimum Target Size Reference Table  
- CDE Level 2C SSBM Minimum Target Size Reference Table

CDE Level 3: Weaponeering Assessment  
- CDE Level 3A PGM CER Reference Table  
- CDE Level 3B ASUGM CER Reference Table  
- CDE Level 3C SSBM CER Reference Table

CDE Level 4: Refined Assessment  
- CDE Level 4A PGM CER Reference Table  
- CDE Level 4B ASUGM CER Reference Table  
- CDE Level 4C SSBM CER Reference Table

(3) Appendix C to this Enclosure summarizes the intended use for each reference table, the dominant hazard used in calculating the CER, the threshold criteria, and any assumed exclusions or limitations.

## 2. The Five Basic Questions of the CDM

a. Introduction. In its most basic form, the CDM centers on five

Appendix A  
Enclosure D

D-A-6

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000114**



simple questions that must be answered before engaging any target.

(1) **Can I PID the object I want to affect?** (PID: defined as “the reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the LOW and applicable ROE.”) Note: Recent operational feedback indicate that most collateral damage incidents result from target misidentification.

(2) **Are there protected or collateral objects, civilian or noncombatant personnel, involuntary human shields, or significant environmental concerns within the effects range of the weapon I would like to use to attack the target?**

(3) **Can I mitigate damage to those collateral concerns by attacking the target with a different weapon or with a different method of engagement, yet still accomplish the mission?**

(4) **If not, how many civilians and noncombatants do I think will be injured or killed by the attack?**

(5) **Are the collateral effects of my attack excessive in relation to the expected military advantage gained and do I need to elevate this decision to the next level of command to attack the target based on the ROE in effect?**

b. **CDE Level 1 Target Validation/Initial Assessment Overview.** CDE Level 1 is the most important and complex step in the CDM. The information gained during CDE Level 1 is required to accomplish the remaining steps of the methodology. CDE Level 1 assessment answers the first two questions: “Can I PID the object I want to affect” and “Are there protected or collateral objects, civilian or noncombatant personnel, involuntary human shields, or significant environmental concerns within the effects range of the weapon I would like to use to attack the target”. CDE Level 1 evaluates the target’s functionality for dual-use concerns, identifies potential CBR plume hazards, environmental hazards, and identifies all collateral concerns within the CDE Level 1 CER (resultant CHA). This step reveals those targets or collateral concerns that may represent areas of strategic risk and therefore may also have to be evaluated via the STAR process (see reference d).

(1) CDE Level 1 is supported technically by the CDE Level 1 CER Reference Table. The CDE Level 1 CER Reference Table provides a single CER that includes the effects from any conventional weapon in the US inventory (with exceptions noted in the table). The CDE Level 1 CER is used to form the coarsest CHA by using the CER as a radius measured from the edge of the boundary drawn around the entity being targeted. This entity

Appendix A  
Enclosure D

D-A-7

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000115



CJCSI 3160.01  
13 February 2009

could be an installation, a facility, or an area target. The resultant CHA becomes the primary search area for the identification of collateral concerns near a target. Targets assessed as CDE Level 1 low present the lowest probability of collateral damage and have no tactical restrictions on execution, thus presenting the least risk for the commander. Targets assessed as CDE Level 1 High present a greater probability of collateral damage and require a CDE Level 2 assessment.

(2) Target Development. The CDE Level 1 assessment begins with characterizing the target's functionality/purpose, physical orientation and description, and the identity of the intended target by geospatially distinguishing the target from its surrounding environment. This is normally accomplished through imagery analysis; however, if imagery is not available commanders should use the best resources available to geospatially separate the combatant function of the target from its civilian and noncombatant surroundings. The next step is to identify and characterize the target's critical elements. This step identifies those elements whose engagement supports attainment of the commander's objectives and avoids targeting those LOW protected or collateral objects sometimes located on combatant installations and facilities. The final step in target development is to confirm that current ROE authorizes the target for engagement.

(3) Dual-Use Target Assessment. Following target validation, determine if the target serves a combatant and a civilian/noncombatant purpose. Enclosure B provides definitions and treatment of dual-use targets. If the target is characterized as dual-use then initiate intelligence analysis to estimate the population density of the facility. Information is required as all dual-use targets require a CDE Level 5 assessment.

(4) Protected or Collateral Object and Human Shield Assessment. Once positive identification is established, define the CDE Level 1 CHA around the target based on the values contained in the CDE Level 1 CER Reference Table. This step is normally performed through annotations on imagery; however, in cases where imagery is not available, use the best resources available, such as maps and charts. Once the CDE Level 1 CHA is established, identify and characterize the collateral objects located within the CHA. If available, review imagery to identify and characterize any collateral objects not contained in a no-strike list, paying special attention to identify all of the Category I Protected or Collateral Objects (see Enclosure C). Imagery used to support CDE assessments will not be older than 90 days. This is waived to 180 days if there are no indications of change in the area of interest.

(a) Human Shields. **The U.S. LOW delineates between voluntary and involuntary human shields.** Human shields are civilian or noncombatants placed around a valid military target by a combatant to hinder

Appendix A  
Enclosure D

D-A-8

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000116

CJCSI 3160.01  
13 February 2009

attack of that target. Voluntary human shields (i.e., civilians who voluntarily and intentionally place themselves in the line of fire so as to disrupt that line of fire) are considered to have shed their protected status and are instead direct participants in hostilities. In other instances, the belligerent nation may forcibly place civilians or noncombatants at valid military targets and these personnel are considered protected persons and should not be targeted (involuntary human shields). Therefore, **only involuntary human shields are considered collateral objects in the CDM.**

1. In cases where intelligence indicates the enemy is using involuntary human shields, the CDE analyst will identify the presence, location, and number within the CDE Level 1 CHA. The CDE analyst will use the number of known involuntary human shields during CDE Level 5 casualty assessment.

2. In cases where the status of human shields is not known, the more restrictive rule applies, and the human shields are to be protected as protected persons/collateral objects. The CDE analyst then follows the step above.

(5) CBR Plume Hazard Assessment. Once both the target and the collateral objects within the CDE Level 1 CHA are identified and characterized, evaluate the potential of producing a CBR plume hazard. The existence of this hazard is based on the characterized functionality of the target facility or one of the surrounding collateral objects. Examples of CBR plume hazards include nuclear, biological, or chemical production/storage facilities; nuclear power plants; fertilizer, pharmaceutical, pesticide/herbicide production/storage facilities; medical durable equipment manufacturing/storage facilities; petroleum refineries; and paper manufacturing facilities. **The presence of a CBR plume hazard (target or collateral object) may elevate the target to the STAR process even if the CDE is assessed as low due to environmental risks or the risk of expanding the effects of the conflict (see reference d).**

(a) If the target facility is assessed as a plume hazard, weaponize the target to achieve the desired effects and submit the target along with the weaponizing solution through the combatant command to DTRA for a Hazard Prediction Assessment Capability (HPAC) analysis. Add the HPAC casualty estimate to the overall CDE Level 5 casualty estimate. **In almost all cases, plume-producing targets are assessed as CDE Level 5 High due to the likelihood of significant casualties.**

(b) If the plume hazard is not the target, but a plume producing collateral object located within the CDE Level 1 CHA, continue with the CDE assessment to mitigate the potential weapon effects on the plume hazard. If unable to mitigate the weapon effects, submit the plume hazard along with the

Appendix A  
Enclosure D

D-A-9

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000117**

CJCSI 3160.01  
13 February 2009

weaponeering solution through the combatant command to DTRA for HPAC analysis. Add the HPAC casualty estimate to the overall CDE Level 5 casualty estimate.

(c) If the two cases above do not apply, commanders must still be informed of the risk of errantly engaging a CBR plume hazard. Therefore, the CDE analyst must still submit the collateral concern plume hazard for HPAC analysis. In this instance, submit the weaponeering solution as in the above two cases but clarify that the selected weapon misses the intended target and impacts the collateral concern plume hazard. Include the HPAC analysis and casualty estimate as a note to the final CDE assessment to provide the combatant command commander with a complete picture of the risks associated with engaging the intended target. However, do not add the HPAC casualty estimate to the overall CDE Level 5 casualty estimate.

(6) Environmental Damage Assessment. The final evaluation of hazards within CDE Level 1 identifies those objects whose engagement could produce widespread, long-term, and/or severe damage to the civilian or noncombatant population and/or the environment, including flooding, uncontrollable fire, and distribution or spillage of hazardous waste. **In almost all cases, environmentally damaging targets are assessed as CDE Level 5 high due to the likelihood of significant casualties. In addition, the presence of an environmental hazard (target or collateral object) may elevate the target to the STAR process even if the CDE is assessed as low due to the environmental risks and expanding the effects of the conflict (see reference d).**

(a) If the target has the potential of causing an environmental hazard, weaponeer the target to achieve the desired effect and provide the weaponeering solution through the combatant command to NCMI for environmental hazard analysis via Chemical Hazard Area Modeling Program (CHAMP). Include CHAMP data in the final CDE assessment, and add any estimated casualties to the overall CDE Level 5 casualty estimate.

(b) If the intended target does not present any environmental concerns, but there is an identified environmental hazard within the CDE Level 1 CHA, continue with the CDE assessment to mitigate the potential weapon's effects on the environmental hazard. If unable to mitigate the weapon's effects, submit the environmental hazard along with the weaponeering solution to NCMI for CHAMP analysis. Add CHAMP data to the overall CDE Level 5 casualty estimate.

(c) If the two cases above do not apply, commanders must still be informed of the risk of errantly engaging an environmental hazard. Therefore, the CDE analyst must still submit the collateral concern environmental hazard

Appendix A  
Enclosure D

D-A-10

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000118

CJCSI 3160.01  
13 February 2009

to NCMI for CHAMP analysis. In this instance, submit the weaponeering solution as in the above two cases but clarify that the selected weapon misses the intended target and impacts the collateral concern environmental hazard. Include the CHAMP data as a note to the final CDE assessment to provide the combatant command commander with a complete picture of the risks associated with engaging the intended target. However, in this case, do not add NCMI's CHAMP data to the overall CDE Level 5 casualty estimate.

(7) CDE Level 1 Evaluation

(a) PID/ROE/Defined Facility Boundary Evaluation. Can I PID the object I want to affect? (PID: defined as “the reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the LOW and applicable ROE.”)

1. If yes, continue with the CDE Level 1 assessment.
2. If no, stop. Target must be PID before continuing.

(b) Dual-Use Evaluation. “Does the target facility provide products/services of both a civilian and military nature or is the facility primarily manned or operated by civilians?”

1. If the answer to either of these cases is yes, the target is dual-use and assessed as “CDE Level 1 high.” Dual-use targets require a CDE Level 5 casualty estimation where all of the personnel within the target facility are characterized as civilian or noncombatant casualties.
2. If the answer is no, then the target is not considered dual-use and the CDE Level 1 assessment is continued.

(c) Protected, Collateral Objects and Human Shields Evaluation. “Are there any protected or collateral objects or involuntary human shields located within the CDE Level 1 CHA?”

1. If the answer is yes, then the target is assessed as CDE Level 1 high, and the CDE Level 1 assessment is continued.
2. If no, the target is eligible for engagement with any conventional weapon in the US inventory with exceptions as noted in the CDE Level 1 CER Reference Table. Continue with the CDE Level 1 assessment.

(d) CBR Plume Hazard Evaluation. “Does the target present a CBR plume hazard?”

Appendix A  
Enclosure D

D-A-11

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000119**

1. If yes, the target is assessed as CDE Level 1 high and requires HPAC analysis and a CDE Level 5 casualty estimate.

2. If no, continue with the CDE Level 1 assessment.

(e) Environmental Damage Evaluation. “Would engagement of this target cause widespread, long-term, and/or severe damage to the civilian or noncombatant population and/or the environment?”

1. If yes, the target is assessed as CDE Level 1 high and requires an environmental hazard CHAMP assessment and a CDE Level 5 casualty estimate.

2. If no, continue with the CDE Level 1 assessment.

(f) CDE Level 1 Final Evaluation. If the target is PID'd; is not characterized as a dual-use facility; does not present either a CBR plume or environmental hazard; and there are no collateral objects and/or involuntary human shields within the CDE Level 1 CHA, the target is assessed as CDE Level 1 Low and may be cleared for engagement with every conventional weapon in the U.S. inventory with exceptions as noted in the CDE Level 1 CER Reference Table. If any of these conditions are not satisfied, the target is assessed as CDE Level 1 High and requires continued evaluation (PID, ROE, DTRA, NCMI, casualty estimate). Ensure PID and ROE issues are resolved prior to continuing to CDE Level 2. **In addition, if the assessment requires a Level 5 Casualty Estimate (CE), ensure this is accomplished even if weapons effects are mitigated to a low assessment. As a result of these special circumstances, the target may also be subject to review via the STAR process (see reference d).**

c. **CDE Level 2 General and Target Size Assessment Overview.** CDE Level 2 begins the process of defining weaponeering options that both achieve the desired target effect and mitigate the potential for collateral damage. This step addresses the third question of the CDM, “Can I mitigate damage to those collateral concerns by attacking the target with a different weapon or with a different method of engagement, yet still accomplish the mission?” CDE Level 2 takes a low risk approach to CDE with the least number of weaponeering and tactical employment restrictions. CDE analysts must use the weaponeering data given to them in the target folder or by the weaponeer. If the CDE analyst cannot achieve a desirable CDE assessment with the weaponeering solution presented they must discuss other options with the weaponeer. A CDE analyst who is also a trained weaponeer could perform both actions; but, either way, the CDE analyst must work with weaponeering personnel to ensure the CDE assessment does not change the intended effects on the target. Two distinct

Appendix A  
Enclosure D

D-A-12

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000120



CJCSI 3160.01  
13 February 2009

assessments are employed within CDE Level 2 to guide weapon class selection (Minimum Target Size Assessment and PGM General Assessment).

(1) The **Minimum Target Size Assessment** evaluates the target engagement with ASUGM or SSBM based on a comparison of the target's size to the weapon system's or delivery platform's delivery error. The Minimum Target Size Assessment is technically supported by the CDE Level 2B ASUGM Minimum Target Size Reference Table and the CDE Level 2C SSBM Minimum Target Size Reference Table. The **PGM General Assessment** evaluates target engagement with PGMs on individual aimpoints while minimizing the weaponing restrictions to either unitary or cluster PGMs. The General Assessment is technically supported by the CDE Level 2A PGM CER Reference Tables.

(a) The **Minimum Target Size Assessment** provides a simple means to determine the feasibility of engaging a target with unguided or ballistic weapons. This assessment is accomplished through the comparison of target area to weapon system/delivery platform TE90. The Minimum Target Size Assessment is based on the principle that weapon systems/delivery platforms with a TE90 less than or equal to the target area have a higher probability of achieving the desired target effect while reducing the risks of collateral damage. The inverse case significantly reduces the probability of achieving the desired target effect while greatly increasing the risks of collateral damage. To accomplish this assessment, CDE Level 2 is broken down into two separate CER Reference Tables: CDE Level 2B for ASUGM and CDE Level 2C for SSBM.

1. CDE Level 2B ASUGM Minimum Target Size Reference Table. The CDE Level 2B Reference Table defines delivery platform specific minimum target sizes for evaluating ASUGM employment against a given target. The minimum target sizes in the table represent either the diameter of a circle or the length of one side of a square based on each delivery platform's specific mean TE90. ASUGM mean TE90 equals the average TE90 for each of the listed delivery platforms. In practical terms, the minimum target size, if taken to form a square, represents the area on the ground within which a single unguided weapon would impact with a 90 percent probability if delivered from the associated platform. Targets evaluated using the data contained in the CDE Level 2B CER Reference Table are not assessed as high or low since no warhead selection has been made. They are considered only for feasibility of engagement by the listed delivery platforms.

2. CDE Level 2C SSBM Minimum Target Size Reference Table. The CDE Level 2C Reference Table defines weapon system specific minimum target sizes for evaluating the feasibility of SSBM employment against a given target considering the target's size. The minimum target sizes represent either

Appendix A  
Enclosure D

D-A-13

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000121

CJCSI 3160.01  
13 February 2009

the diameter of a circle or the length of one side of a square based on the weapon system's mean OA TE90. In practical terms, the minimum target size, if taken to form a square, represents the area on the ground within which a single SSBM warhead would impact to a 90 percent probability if fired from the associated weapon system. Targets evaluated using the data contained in the CDE Level 2C Reference Table are not assessed as high or low since no shell/fuze selection has been made. They are considered only for feasibility of engagement by the listed weapon systems.

(b) CDE Level 2 ASUGM/SSBM Minimum Target Size Assessment.

Large area targets may be engaged with ASUGMs or SSBMs based on the most efficient use of ordnance required to achieve the desired effect or when available weaponeering options are limited due to the tactical situation. Since ASUGMs and SSBMs incur a significantly greater delivery error than PGMs, target size is a major consideration. Additionally, the increased delivery errors associated with ASUGMs and SSBMs present higher risks of collateral damage than PGMs. **Therefore, the CDM does not support a CDE Level 2 Low assessment for these weapons and requires at least a CDE Level 3 assessment.** This requirement for at least a CDE Level 3 assessment provides the commander with a clear indication of the elevated risk of ASUGM or SSBM employment. The following procedures provide a rapid means to determine the suitability and rationality of employing unguided/ballistic munitions and the selection of appropriate delivery platforms and/or weapon systems.

1. Step 1. Review the target information produced in CDE Level 1 to identify protected or collateral objects located within the installation, facility boundary, or target area (bounded area not restricted to a facility). Protected or collateral objects located within the boundaries of a valid military target are not authorized for attack unless there is clear evidence that the adversary is using them to support the war effort and the adversary has been warned to stop doing so and has not heeded the warning. For instance, a chapel has been converted into a command and control facility, or a hospital is being used to store weapons. If clear evidence of LOW violations is not available, collateral objects retain their protected status.

2. Step 2. Determine and record the smallest side or diameter of the target, using one of the following methods (refer to Figure D-A-3).

a. Rectangular Target Method. Measure the length and width of the target facility boundary and record the smaller value. This is the shortest side or diameter of the target facility.

b. Circle Method. Review and select the geographic center point of the target facility boundary. Measure and record the distance from the

Appendix A  
Enclosure D

D-A-14

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000122**

center point to the nearest facility boundary and multiply that distance by a factor of two, producing the shortest facility diameter.

c. Segment Method. Review and divide the target into logical rectangular segments based on the weaponing options available. Measure and record the smaller of the length and width of each rectangular target segment and evaluate each segment individually in the following step.

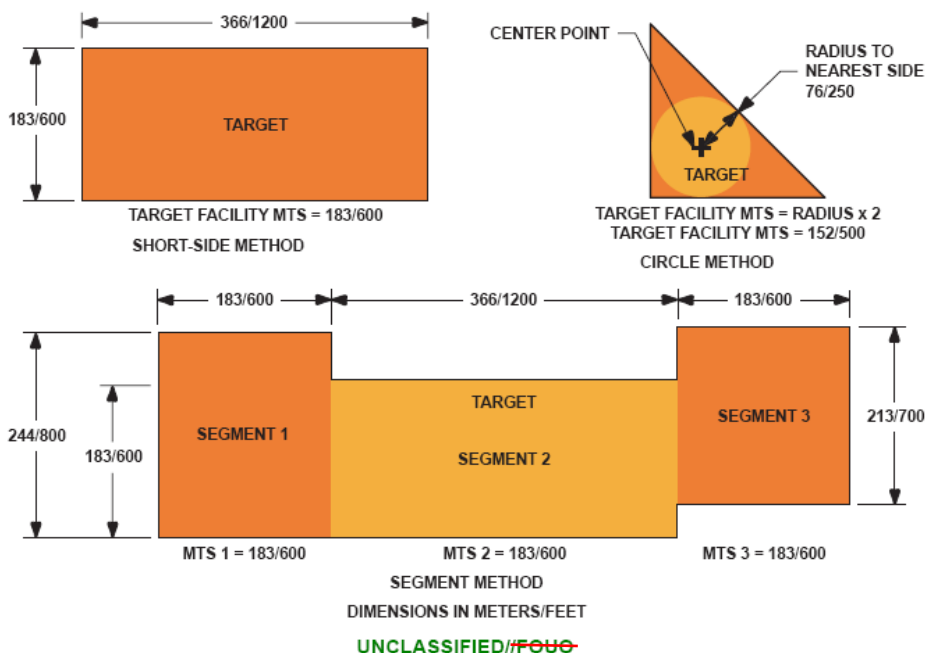


Figure D-A-3. Minimum Target Size Methods

3. Step 3. Compare the target measurements derived in Step 2 with the delivery platform and weapon system specific minimum target size values contained in the CDE Level 2B ASUGM and/or CDE Level 2C SSBM Minimum Target Size Reference Tables.

(c) CDE Level 2 ASUGM/SSBM Minimum Target Size Evaluation

1. If the delivery platform/weapon system minimum target size value is less than or equal to the recorded target or segment short side/diameter value, the delivery platform/weapon system is assessed as feasible for employment to engage the target. Continue to CDE Level 3 and perform a CDE assessment considering the specific delivery system, weapon(s), and tactics required to achieve the desired target effect. CDE Level 2 is not a final step in the CDM for ASUGMs and SSBMs. A CDE Level 3 assessment is required.



CJCSI 3160.01  
13 February 2009

2. If the delivery platform/weapon system minimum target size value is greater than the recorded target or segment short side/diameter value, the delivery platform/weapon system is assessed as unfeasible for employment to engage the target. **In this case, serious consideration must be given to engaging the target only with PGMs.** If PGM employment options are not available within the timeframe required to engage the target, continue to CDE Level 3 and perform a CDE assessment considering the specific delivery system, weapon(s), and tactics to be employed. **A decision to continue presents increased risk of collateral damage.**

(2) The **PGM General Assessment** evaluates the risk of collateral damage by employing either a unitary or cluster PGM without having to select a specific unitary or cluster warhead. The CDE Level 2A CER Reference Table supports the PGM General Assessment.

(a) CDE Level 2A PGM CER Reference Table. The CDE Level 2A CER Reference Table provides two CER values that define CHAs measured from an aimpoint for air-to-surface and surface-to-surface unitary or cluster PGMs. The two CER values are based on the largest PGM CER for each unitary or cluster warhead type taken from the CDE Level 3A CER Reference Table with exceptions noted in CDE Level 2A CER Reference Table.

(b) The PGM Unitary values in the reference table combine the radius of collateral effects from the precision warhead with a TE90 value. The PGM Cluster values in the reference table combine the radius of collateral effects from the warhead, Precision TE90 and the sub-munition pattern radius.

(c) Targets assessed as CDE Level 2 Low present a very low probability of collateral damage but are tactically restricted for execution to PGMs only, slightly elevating the risk to mission.

(d) CDE Level 2 PGM General Assessment. Point targets and targets that present close-in collateral concerns are best serviced by PGMs. The CDE Level 2 PGM General Assessment is a means to assess risk of collateral damage while enabling maximum tactical flexibility, limiting the restrictions on target engagement to either Unitary or Cluster PGMs. There are two methods to perform the General Assessment. The **Aimpoint Method** assesses the risk of collateral damage with engaging each individual aimpoint. This method provides a CDE Level 2 Low assessment for those aimpoints with no collateral concerns within the CHA generated from the appropriate CDE Level 2 CER Reference Table value. The **Facility Method** assesses the risk of collateral damage for all aimpoints within a given target facility simultaneously by applying the appropriate CDE Level 2 CER Reference Table value measured from the target facility boundary. The Aimpoint Method is the preferred

Appendix A  
Enclosure D

D-A-16

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000124

CJCSI 3160.01  
13 February 2009

technique for assessing potential collateral damage since the CDE Level 2 CER Reference Table value is measured from individual aimpoints.

1. Aimpoint Method. Using the aimpoint graphics produced in CDE Level 1, determine a CHA based on the CER value for either unitary or cluster PGMs from the CDE Level 2A CER Reference Table. Apply the CHA around each aimpoint and visually search for collateral objects located within each CHA. Target type will dictate whether a unitary or cluster weapon is appropriate.

2. Facility Method. Using the facility outline graphic from CDE Level 1, determine a CHA based on the CER for either unitary or cluster PGMs from the CDE Level 2A CER Reference Table. Apply the CHA from the facility boundary and visually search for collateral objects located within the CHA. Target type will dictate the most appropriate weapon to employ. If any collateral objects are identified using this method, stop and use the aimpoint method to perform the PGM General Assessment. An example of an appropriate use of the facility method is in the target development phase of the Joint Targeting Cycle wherein the actual desired points of impact are not known.

(e) CDE Level 2 PGM General Evaluation

1. If no collateral objects are located within the CHA, a CDE Level 2 Low (PGM Unitary (or Cluster)) assessment is made for the aimpoint or target facility (depending on the method used). Targets determined to be CDE Level 2 Low may be engaged with any of the PGMs contained in the CDE Level 3A PGM CER Reference Table with exceptions as noted in the CDE Level 2A PGM CER Reference Table.

2. If collateral objects are identified within the CHA, a CDE Level 2 High assessment is made for the aimpoint or target facility (depending on the method used). A CDE Level 3 assessment then is required.

Note: CDE assessments for PGMs are required for each aimpoint within the target facility. The overall target facility CDE assessment equals the highest or most restrictive aimpoint CDE assessment. For example, a target facility has three aimpoints. One aimpoint is assessed as CDE Level 2 Low; a second aimpoint is assessed as CDE Level 3 Low; and the third aimpoint is assessed as CDE Level 4 Low. The target's overall CDE assessment is CDE Level 4 Low.

d. **CDE Level 3 Weaponing Assessment Overview.** CDE Level 3 begins the process of refining weaponing options that both achieve the desired effect on the target and mitigate collateral damage, thereby addressing

Appendix A  
Enclosure D

D-A-17

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000125**

CJCSI 3160.01  
13 February 2009

the third question in the CDM process, “Can I mitigate damage to those collateral concerns by attacking the target with a different weapon or with a different method of engagement, yet still accomplish the mission?” The goal of CDE Level 3 is to achieve a low CDE assessment while limiting the number of tactical weaponeering restrictions. Considering the weapon class and system, delivery platform, and/or PGM warhead type decisions from CDE Level 2, CDE Level 3 determines appropriate delivery systems, warhead, and fuze combinations that mitigate the risk of collateral damage while still achieving the desired effect on the target. There are three tables that support a CDE Level 3 assessment and are defined below.

(1) CDE Level 3A PGM CER Reference Table. The CDE Level 3A CER Reference Table provides two columns of individual warhead CERs, measured from an aimpoint, to define a CHA. The table lists warheads by type: air-to-surface unitary, air-to-surface cluster, and surface-to-surface unitary. The tables are arranged from larger to smaller CER value, enabling the rapid selection of alternate warheads in cases where the warhead restriction in the CDE assessment is not available at the point of execution. The values in the CDE Level 3A CER Reference Table Unmitigated column represent the hazard distance from weapon fragmentation (or blast if no weapon fragmentation or debris exists) to standing, unprotected personnel; while the values in the Mitigated column represent the hazard distance from crater ejecta to standing unprotected personnel. Only warheads capable of delay fuzing to achieve complete burial below grade prior to detonation are provided CER values in the Mitigated column.

(a) CDE Level 3A PGM Unmitigated CERs. The dominant hazard for the Unmitigated column is from fragmentation to standing, unprotected personnel, dressed in a summer-weight uniform on open rolling terrain for a warhead fused for either a surface or air detonation. The Unmitigated column values combine the radius of collateral weapon effects and the Precision TE90 associated with the least accurate PGM guidance system and worst-case pattern radius for cluster munitions. This approach enables the development of warhead specific CER values without considering individual weapon guidance systems. Targets assessed as CDE Level 3 Low (PGM with Unmitigated CER) present a very low probability of collateral damage. However, these targets are tactically restricted for execution to a specific warhead or a warhead with a smaller CER delivered in a PGM only mode, thereby slightly elevating the risk to mission.

(b) CDE Level 3A PGM Mitigated CERs. The Mitigated column numbers in the reference table combine the radius of collateral weapons effects and Precision TE90 associated with the worst case, or least accurate, PGM guidance system for each warhead capable of a delay fuze. Targets assessed as CDE Level 3 Low (PGM with a Mitigated CER) present a low probability of

Appendix A  
Enclosure D

D-A-18

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000126**

CJCSI 3160.01  
13 February 2009

collateral damage. However, these targets are tactically restricted for execution to a specific warhead or one with a smaller CER, delivered in a PGM only mode, thereby elevating the risk to mission because of the requirement to use a delay fuze.

(2) CDE Level 3B ASUGM CER Reference Table. The numbers in the CDE Level 3B CER Reference Table combine the mean Precision TE90 associated with individual delivery platforms, such as F-18, B-52, and F-16, and the CER for each air-to-surface unguided warhead. **There is no delay fuze or bomb burial option in the CDE Level 3B CER Reference Table.** The CDE Level 3B values are measured from either an aimpoint for single warhead deliveries or from the edge of one or more engagement zones (EZs) for multiple warhead deliveries to form the CHA. Targets assessed as CDE Level 3 Low ASUGM present a low probability of collateral damage, but, are tactically restricted to a specific delivery platform and warhead and specific release parameters to define the EZ. As a result the risk to mission increases. Because delivery heading is a significant consideration for EZ orientation, a stated delivery heading restriction is required with CDE Level 3 for multi-warhead deliveries. This restriction further elevates the risk to mission.

(3) CDE Level 3C SSBM CER Reference Table. The numbers in the CDE Level 3C CER Reference Table combine the radius of collateral weapon effects and either the TE90 for the OA or Predicted methods of engagement for each weapon system, shell, and fuze combination listed in the table. The table values are measured from an aimpoint when a converged sheaf is employed or from the outer edge of the dimensions of a circular or linear sheaf to form the CHA. It is important to note that the sheaf and method of engagement are normally specified in the call for fire and are employed consistently throughout the conduct of the fire mission and the CDE assessment. Targets assessed as CDE Level 3 Low SSBM present a low probability of collateral damage, but are tactically restricted for execution to a specific weapon system, shell, fuze, method of engagement, sheaf type, and delivery in an SSBM only mode. Therefore, the risk to mission is increased. Targets assessed as CDE Level 3 Low for SSBMs using the OA method of engagement present an increased probability of collateral damage due to the requirement to employ marking or adjusting rounds and the significant increase in TLE90.

(4) CDE Level 3 Weaponeeing Assessment

(a) CDE Level 3 PGM Weaponeeing Assessment

1. Step 1. Measure and record the distance from each aimpoint to the corresponding nearest collateral concern identified in CDE Level 1.

2. Step 2. Review the CDE Level 1 target information and

Appendix A  
Enclosure D

D-A-19

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000127

CJCSI 3160.01  
13 February 2009

weaponer each aimpoint with the appropriate PGM warhead and fuze option to achieve the desired effect on the target.

3. Step 3. Select the appropriate CER value from the CDE Level 3A PGM CER Reference Table corresponding to either an unmitigated or mitigated weaponing decision.

4. Step 4. Compare the CDE Level 3A PGM CER with the distance to the nearest collateral concern derived in Step 1.

5. CDE Level 3 PGM Weaponing Assessment Evaluation

a. If the CDE Level 3 PGM CER for the selected weaponing decision **is less than or equal to** the distance to the nearest collateral concern, the target is assessed as **CDE Level 3 Low PGM, (Warhead (Unmitigated Case))** or **CDE Level 3 Low PGM, (Warhead, Delay Fuze (Mitigated Case))**.

b. If the CDE Level 3 PGM CER for the selected weaponing decision **is greater than** the distance to the nearest collateral concern, the target is assessed as **CDE Level 3 High** and requires a higher level CDE assessment. If mitigation is employed in the CDE Level 3 assessment, continue to CDE Level 4. If mitigation is not employed in the CDE Level 3 assessment, due to the weaponing solution required to achieve the desired target effect, continue directly to CDE Level 5 to estimate the number of civilian and noncombatant casualties.

(b) CDE Level 3 ASUGM Weaponing Assessment

1. Step 1. Using the target information from CDE Level 1 and the delivery platform selection from CDE Level 2, determine an appropriate method of target engagement, either single or multiple warhead delivery. Continue to weaponer the target to achieve the desired effect. If a multiple warhead delivery is required to achieve the desired effect, compute the length and width of the EZ, such as a bomber box or stick.

2. Step 2. If weaponing a point target for single warhead delivery, annotate aimpoints on each of the desired target elements. If weaponing an area target for a multiple warhead delivery, determine a center aimpoint for the target area, then annotate and orient the EZ to achieve the desired target coverage, ensuring the EZ excludes any collateral concerns located on the target facility. Some targets may require more than one EZ to achieve the desired effect. If a precise aimpoint coordinate mensuration

Appendix A  
Enclosure D

D-A-20

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000128



CJCSI 3160.01  
13 February 2009

capability or imagery is not available, CIB, and Digital Terrain Elevation Data (DTED) are authorized to perform this step.

3. Step 3. Measure and record the distance from either the individual aimpoint(s) for single warhead deliveries or the outer edge of the EZ(s) for multiple warhead deliveries to the nearest collateral concern(s).

4. Step 4. Select the appropriate CER value from the CDE Level 3B ASUGM CER Reference Table corresponding to the delivery platform and warhead weaponeering decision for each aimpoint and/or EZ developed in Step 2 above. Compare the CER to the distance to the nearest collateral concern.

5. CDE Level 3 ASUGM Weaponeering Assessment Evaluation.

a. If the CER value for the selected weaponeering decision is less than or equal to the distance to the nearest collateral concern, the target is assessed as:

(1) Single Warhead: CDE Level 3 Low (ASUGM, Delivery Platform, Warhead).

(2) Multiple Warhead: CDE Level 3 Low (ASUGM, Delivery Platform, Warhead, Heading Restriction: degrees). Multiple warhead deliveries are restricted to the specific delivery heading oriented to the EZ.

b. If the CER value for the selected weaponeering decision is **greater than** the distance to the nearest collateral concern, the target is assessed as **CDE Level 3 High** and requires a CDE Level 4 assessment.

c. The CDE Level 3B ASUGM CER Reference Table only provides unmitigated CERs.

d. For a CDE Level 3 High assessment, serious consideration should be given to only engaging the target with PGMs. However, if PGMs are not available, continue to CDE Level 4.

(c) CDE Level 3 SSBM Weaponeering Assessment

1. Step 1. Using the CDE Level 1 target information, weapon system selection from CDE Level 2, and method of engagement and sheaf specified for the fire mission, weaponeer the target to achieve the desired effect.

2. Step 2. Select an aimpoint for each sheaf planned for employment against the target. Annotate and orient the sheaf(s) to achieve the

Appendix A  
Enclosure D

D-A-21

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000129

desired target coverage, ensuring the sheaf(s) exclude any collateral concerns located on the target facility. Some targets may require more than one sheaf to achieve the desired effect.

3. Step 3. Measure and record the distance from either the individual aimpoint(s) for converged sheaf deliveries or the outer edge of the sheaf(s) for circular or linear sheaf deliveries to the nearest collateral concern identified in CDE Level 1 (refer to Figure D-A-2).

4. Step 4. Select the appropriate value from the CDE Level 3C SSBM CER Reference Table corresponding to the weapon system, shell, fuze, and method of engagement decision for each sheaf developed in Step 2 above. Compare the value from the table to the distance to the nearest collateral concern measured in Step 3. The method of engagement in the assessment is based on the method of target acquisition or location and must remain consistent throughout the CDE assessment.

5. CDE Level 3 SSBM Weaponneering Assessment Evaluation

a. If the CER value from the table for the selected weapon system, shell, fuze, and engagement method **is less than or equal to** the distance to the nearest collateral concern, then the target is assessed as **CDE Level 3 Low (SSBM, Caliber, Weapon System, Shell, Fuze, OA [or "P" Predicted] )**.

b. If the CER value from the table for the selected weapon system, shell, fuze, and method of engagement **is greater than** the distance to the nearest collateral concern, the target is assessed as **CDE Level 3 High** and requires a CDE Level 4 assessment.

c. **For a CDE Level 3 High assessment, serious consideration should be given to only engaging the target with PGMs.** However, if PGMs are not available, continue to CDE Level 4.

e. **CDE Level 4 Refined Assessment Overview.** CDE Level 4 completes the process of defining weaponneering solutions that achieve the desired effect on the target and mitigate the potential for collateral damage. This refines the answer to question three of the CDM, "Can I mitigate damage to those collateral concerns by attacking the target with a different weapon or with a different method of engagement, yet still accomplish the mission?" CDE Level 4 is also the point within the methodology where mitigation techniques besides fuzing are applied. **CDE Level 4 is calculated for less than 1-percent probability of fractional structural damage from blast based on the assumption that noncombatant personnel will be located in noncombatant collateral structures which afford some measure of protection from**

CJCSI 3160.01  
13 February 2009

**fragmentation.** The assumption is supported by the realization that the location and number of transient noncombatant or civilian personnel cannot be accurately predicted in either space or time, therefore, limiting the ability to mitigate collateral effects to only those objects that can be seen, sensed, or known with collection assets. This assumption does not negate the responsibility to account for noncombatants or civilians in the open that can be predicted based on available intelligence, such as: rush hour traffic, a soccer game, or a parade (as examples). CDE Level 4 requires PGM and ASUGM munitions to be fuzed to detonate either in a target structure or, at a minimum, 100-percent below grade for non-structural targets to further mitigate fragmentation effects on unprotected noncombatant personnel. Unprotected personnel located in geospatially defined outdoor collateral concerns must be accounted for in CDE Level 5 using the CDE Level 3 CER and resultant CHA. **The goal of CDE Level 4 is to achieve a low CDE assessment while minimizing tactical restrictions.** CDE Level 4 has three supporting CDE reference tables and their specific attributes are provided below with two noted exceptions: **Cluster/ICM Restriction**--the CDM does not support use of cluster weapons and ICMs within CDE Level 4. Therefore, values for cluster weapons and ICMs are not provided within the CDE Level 4 CER Reference Tables; and **SSBM RAP and Extended/Enhanced Range Munitions Restriction**--RAP and enhanced range munitions are not addressed within CDE Level 4 due to the greatly increased delivery errors associated with these weapons. Hence values for RAP and enhanced range munitions are not provided within the CDE Level 4 SSBM CER Reference Table.

(1) CDE Level 4A PGM CER Reference Table. The CDE Level 4A CER Reference Table provides individual PGM unitary warhead CER values for individual collateral structure types, measured from an aimpoint, to define a CHA. The numbers in the table combine the radius of collateral weapon effects and the Precision TE90 associated with the worst case, or least accurate, PGM guidance system for each warhead. This approach enables the development of warhead specific CER values without considering individual weapon guidance systems. Considering situations that limit or preclude characterizing a structure type, the CDE Level 4A CER Reference Table provides average values for each warhead versus an "unknown" collateral structure type and grades the listed structures on resistance to blast. In addition, given the propensity for weapons to impact long of the target, a stated delivery heading restriction is required within CDE Level 4 for PGMs. Targets assessed as CDE Level 4 Low PGM present a slightly elevated risk of collateral damage, but are tactically restricted for execution to a specific warhead (or one with a smaller CER), delivered with a delay fuze setting, and restricted to a specified delivery heading. Consequently, the risk to mission is elevated. Use of the CDE Level 4A PGM CER Table requires either complete warhead burial in the ground or

D-A-23

Appendix A  
Enclosure D

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000131**



complete internal detonation within a target structure to mitigate the fragmentation effects of the warhead.

(a) Accurate Characterization of Nearby Collateral Structures.

This task can be difficult as it is time consuming and intelligence intensive. CDE Level 4A CER Reference Table values include assumptions designed to account for this and to lower the risk of collateral damage due to mischaracterizing structure types. In particular, the values are not reduced for the mitigating effects of internal or buried detonation in a target structure or for warhead detonation external to the collateral structure.

(b) Nearest, Weakest or Multiple Collateral Concern. The nearest collateral concern generally is used to drive the CDM. In most cases this approach is valid because collateral structures located in the vicinity of a target are similarly constructed and an analyst can more easily characterize the structure types. However, there will be instances when construction types of nearby collateral structures vary greatly and an analyst may need to consider the weakest and not the nearest collateral structure. In these cases, the weakest collateral structure is used to determine a single CER value for each aimpoint. This approach produces a conservative CDE Level 4A CER value for each aimpoint and may include collateral concerns that would not normally be considered at CDE Level 4. Another technique is to characterize each collateral structure near a target developing multiple CHAs and determine the risk of collateral damage to each of the collateral structures. While this method is more time consuming, it would tend to give a more refined casualty estimate for CDE Level 5. The CDE analyst within the current ROE and policies needs to assess the target area and use the method that most accurately reflects the situation at hand. Realize that when using weaker structures a higher casualty estimate in CDE Level 5 could result (more conservative approach) whereas if the stronger building type were used, a lower casualty estimate may result (less conservative approach). Either way, the analyst needs to be consistent in their technique and note all assumptions used when briefing the commander on the CDE estimate and include them in the target folder (electronic or hardcopy).

(2) CDE Level 4B ASUGM CER Reference Table. The numbers in the CDE Level 4B CER Reference Table combine the mean Precision TE90 associated with each delivery platform and the radius of collateral effects associated with each individual air-to-surface unguided warheads, such as a Mk-82. These table values are measured from an aimpoint for a single warhead or the edge of one or more EZs for multiple warhead deliveries to form the CHA. In addition, given that delivery heading is a significant consideration for EZ orientation and that there is a propensity for weapons to impact long of the target, a stated delivery heading restriction is required within CDE Level 4 for ASUGMs. Targets assessed as CDE Level 4 Low ASUGM present an

Appendix A  
Enclosure D

D-A-24

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000132

CJCSI 3160.01  
13 February 2009

elevated risk of collateral damage. These targets are tactically restricted to a specific delivery platform and warhead with a delay fuze setting to achieve a complete detonation below grade, specific release parameters, and a specific delivery heading. These constraints further elevate the risk to the mission.

(3) CDE Level 4C SSBM CER Reference Table. The CDE Level 4C CER Reference Table values combine the radius of collateral weapon effects and either the TE90 for the OA or Predicted methods of engagement for each weapon system, shell, and fuze combination listed in the table. These values are used to form a CHA measured from either an aimpoint when a converged sheaf is used, or from the outer edge of the dimensions of a circular or linear sheaf. For the CDM, a circular sheaf is the default. It is important to note that the sheaf and method of engagement are normally specified in the call for fire and are employed consistently throughout the conduct of the fire mission and the CDE assessment. In addition, the CDE Level 4C table values assume no civilian or noncombatant personnel are exposed in the open. Targets assessed as CDE Level 4 Low SSBM present an elevated risk of collateral damage and are tactically restricted for execution to a specific weapon system, shell, fuze, method of engagement, and sheaf type, thereby elevating the risk to mission. Additionally, targets assessed for SSBMs as CDE Level 4 Low when the OA method of engagement is employed present an increased probability of collateral damage due to the requirement to employ marking or adjusting rounds and the significant increase in TLE associated with OA missions.

(4) Mitigation Techniques. The CDM considers five mitigation techniques. Some of these techniques are built into the methodology as required restrictions; however, other mitigation techniques may be employed given the physical orientation of the target and collateral concerns. Any additional mitigation techniques will be applied in accordance with the guidance prescribed in this instruction (see Table D-A-1 below).

(a) Delay Fuze/Warhead Burial. Delay fuzing for complete warhead burial prior to detonation is a very effective technique for mitigating warhead fragmentation and thus reducing the risk of collateral damage. However, warhead burial prior to detonation produces a significant secondary debris hazard from the material ejected from the resulting crater. This debris hazard prescribes the mitigated values in the CDE Level 3 PGM CER Reference Table and for the PGM and ASUGM tables in CDE Level 4. Warheads contained in the CDE Level 4A PGM CER Reference Table, with exceptions as noted within the table, are restricted to delay fuze settings to achieve either complete warhead burial below grade or complete burial within a target structure prior to detonation to mitigate the primary fragmentation effects of the warheads. Warhead burial reduces the risk of serious or lethal injury to unprotected civilians and noncombatants in the vicinity of the target. Warheads contained

D-A-25

Appendix A  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000133

in the CDE Level 4B ASUGM CER Reference Table are also restricted to delay fuze settings to achieve complete warhead burial below grade prior to detonation to mitigate the primary fragmentation effects of the warheads. SSBMs currently have no delay fuze capability that will achieve complete warhead burial. **Caution should be taken when employing this mitigation technique to ensure the desired targeting effect is not compromised.**

(b) Variable Time (VT)/Proximity Fuze. Fuzing for an air detonation is an effective technique for mitigating the blast effects of warheads and reducing collateral risk to structures. However, the technique presents increased risk to unprotected civilian or noncombatant personnel as the fragmentation pattern is optimized. This mitigation technique is highly recommended in CDE Level 4 for SSBMs for two reasons. First, the assumption in CDE Level 4 is that the civilian and noncombatant population will seek cover in structures, thus protecting them from the fragmentation effects of warheads. Second, SSBMs are area fire weapons that present a significant delivery error problem. In fuzing for an air detonation, an SSBM will not impact a collateral structure near the target. As a result, there is a reduced risk of penetrating the structure and violating the protection afforded to the civilians and noncombatants inside.

(c) Delivery Heading Restrictions. Restricting the delivery heading of warheads is an effective technique for mitigating the risk of range delivery error. Regardless of delivery method, warheads generally have a tendency to impact long of the intended aimpoint. Additionally, weapon testing has revealed the majority of lethal effects occur in the forward quadrants of warhead detonation along the delivery heading. The lethal effects include both fragmentation and secondary debris from the target. Therefore, delivery heading restrictions are built into CDE Level 4 process for both PGMs and ASUGMs to reduce the risk of warheads impacting nearby collateral concerns and to mitigate the fragmentation and secondary debris effects to collateral objects in the target area. PGMs and ASUGMs capable of terminal delivery heading designations are restricted in CDE Level 4 assessments to those headings that cause the warhead to impact away from and parallel to nearby collateral concerns. Delivery-heading restrictions mitigate two phenomena and effects: the occurrence of dominant lethal effects within the forward quadrants (between 270 and 90 degrees relative to the delivery heading) of warhead detonation and the range error probability that warheads impact long of an aimpoint. Delivery headings should be directed towards areas parallel and away from collateral concerns within 2 CEPs of the weapon used. Delivery-heading restrictions may be impractical at the point of execution due to threats or other conditions in the target area. In these cases, command policies, ROE, and target sensitivity will dictate the decision to forgo the delivery-heading restriction, reweaponer the target, achieve effects on the target via other means, or abort the mission.

(d) Shielding. Intervening structures, significant vegetation, and, in some very rare cases, terrain may shield collateral concerns from weapon effects. Shielding has proven a very effective technique for mitigating warhead fragmentation, blast, and debris. However, shielding can only be employed when an entity capable of shielding a warhead's effects is located between the intended aimpoint and a collateral concern. Since shielding is conditional on the target's presentation in the physical environment, it is not built into any of the CER tables, but should be considered between CDE Level 4 and the beginning of CDE Level 5.

(e) Aimpoint Offset. In some instances, depending on the target's composition, size, and the desired effect, the aimpoint may be altered or moved to a location whereby the associated CER and resulting CHA no longer affect a collateral concern. Caution should be taken when employing this mitigation technique to ensure that the desired effect is not compromised by offsetting the aimpoint. Like shielding, this final mitigation technique is conditional on the target's presentation in the physical environment and is not built into any of the levels of the CDM. However, aimpoint offset should be considered between CDE Levels 4 and 5, if appropriate.

| Consideration  | Delay Fuzing/<br>Bomb Burial | VT Fuzing/<br>Air Burst | Shielding | Delivery<br>Heading | Aimpoint<br>Offset |
|--|------------------------------|-------------------------|-----------|---------------------|--------------------|
| Fragmentation  | 1                            | N/A                     | 3         | 4                   | 5                  |
| Blast  | 1                            | 2                       | 3         | N/A                 | 5                  |
| Debris   | N/A                          | 2                       | 3         | N/A                 | 5                  |
| Penetration  | N/A                          | 2                       | N/A       | N/A                 | N/A                |
| Thermal  | 1                            | N/A                     | 3         | N/A                 | N/A                |
| Delivery Error   | N/A                          | 2                       | N/A       | 4                   | N/A                |
| Notes:   |                              |                         |           |                     |                    |
| 1 -- Delay Fuzing that achieves 100 percent bomb burial in the ground or internal detonation within a target structure provides the best mitigation for fragmentation and blast and may minimize thermal effects. Thermal effects should be considered when planning attacks on targets that present a high thermal sensitivity (i.e., wood structures, gas tanks).  |                              |                         |           |                     |                    |
| 2 -- VT Fuzing that achieves an above ground/air burst detonation mitigates blast and debris effects and eliminates penetration effects. VT fuzing is applied as a significant mitigating factor for SSBMs in CDE Level 4 to account for inherent delivery errors.   |                              |                         |           |                     |                    |
| 3 -- Shielding of collateral structures from fragmentation, blast, debris and thermal effects may be achieved by the presence of other combatant structures, walls, vegetation, and terrain features.  |                              |                         |           |                     |                    |
| 4 -- Delivery Heading can mitigate fragmentation effects and minimize risk of delivery error. Testing has demonstrated that most fragmentation effects occur toward the front half of blast and fragmentation warheads. A delivery heading on an axis measured from the nearest collateral object to the target aimpoint should be used for PGMs delivery against targets assessed at CDE Level 4 or Level 5. A delivery heading on an axis parallel to the nearest collateral object should be used for ASUGMs. |                              |                         |           |                     |                    |
| 5 -- Aimpoint Offset may mitigate fragmentation, blast, and debris effects when using PGMs. In some cases, applying aimpoint offset allows employment of larger warheads that achieve the desired effect and mitigate collateral damage.   |                              |                         |           |                     |                    |

Table D-A-1. CDM Mitigation Techniques

(5) CDE Level 4 PGM Refined Assessment

(a) Step 1. Using the weaponeering decisions from CDE Level 3 and considering CDE Level 4 restrictions, either validate the weaponeering from CDE Level 3 or re-weaponeer the target to achieve the desired effect and CDE concerns.

(b) Step 2. Measure and record the distance between each aimpoint and the collateral concern(s) in the vicinity. Characterize and record the structure type for the collateral concerns as defined in the CDE Level 4A PGM CER Reference Table. If unable to determine the structure type, record it as “unknown” (Note: There are very hard and very soft building types in the list. Every effort should be made to identify the most reasonable match before choosing “unknown”).

(c) Step 3. Decide if the nearest or weakest collateral structure will be used or if each collateral structure will be assessed separately. Based on this decision and using the weaponeering decisions from Step 1, choose the appropriate value(s) from the CDE Level 4 PGM CER Reference Table.

(d) Step 4. Compare the value(s) selected from the CDE Level 4A CER Reference Table to the distances between the aimpoint and collateral concerns measured in Step 2.

(e) CDE Level 4 PGM Refined Assessment Evaluation

1. If the CER value from the table for the selected weaponeering decision **is less than or equal to** the distance to the nearest collateral concern, the target is assessed as **CDE Level 4 Low (PGM, Warhead, Delay Fuze, Delivery Heading: degrees - degrees)**.

2. If the CER value for the selected weaponeering decision **is greater than** the distance to the nearest collateral concern, the target is assessed as **CDE Level 4 High** and referred to CDE Level 5.

(6) CDE Level 4 ASUGM Refined Assessment. **Commanders are strongly cautioned that ASUGM use is highly discouraged at CDE Level 4 and above.** Use of ASUGMs should only be attempted when PGMs are not available.

(a) Using the CDE Level 3 weaponeering decisions and distances to the nearest collateral concern(s) and considering the CDE Level 4 restrictions, refer to the CDE Level 4B ASUGM CER Reference Table. Enter the table by delivery platform. Read across to the unguided munition planned for use to

Appendix A  
Enclosure D

D-A-28

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000136**



CJCSI 3160.01  
13 February 2009

determine if the value in the table is less than or equal to the distance to the nearest collateral concern.

(b) CDE Level 4 ASUGM Refined Assessment Evaluation

1. If the CER value for the selected weaponeering decision is **less than or equal to** the distance to the nearest collateral concern, the target is assessed as **CDE Level 4 Low (ASUGM Restricted To** *(the weaponeering solution(s) developed in CDE 3 above, either single warhead: **Delivery Platform, Warhead, Delay Fuze, Delivery Heading: degrees - degrees** or multiple warhead: **Delivery Platform, Warhead, Delay Fuze, Delivery Heading: degrees**)*.

2. If the CER value for the selected weaponeering decision is greater than the distance to the nearest collateral concern the target is assessed as **CDE Level 4 High** and referred to CDE Level 5.

(7) CDE Level 4 SSBM Refined Assessment. **Commanders are strongly cautioned that SSBM use is highly discouraged at CDE Level 4 and above.** Use of SSBMs should only be attempted when PGMs are not available.

(a) Using the weaponeering decisions from CDE Level 3 and considering CDE Level 4 restrictions and the distance to the nearest collateral concern, refer to the CDE Level 4C SSBM CER Reference Table. Enter the table by weapon system, shell, and fuze. Read across to the appropriate technique of fire to determine the CER value.

(b) CDE Level 4 SSBM Refined Assessment Evaluation

1. If the CER value for the selected weaponeering decision is **less than or equal to** the distance to the nearest collateral concern, the target is assessed as **CDE Level 4 low SSBM** *(Restricted to the weaponeering solution(s) developed in CDE 3 above), **Caliber, Weapon System, Shell, Fuze, OA (or "P" Predicted)***.

2. If the CER value for the selected weaponeering decision is greater than the distance to the nearest collateral concern the target is assessed as **CDE Level 4 High** and referred to CDE Level 5.

f. **CDE Level 5 Casualty Assessment Overview.** CDE Level 5 is used when all reasonable and known mitigation techniques have been exhausted and some level of collateral damage appears unavoidable (CDE 4 High, CDE 3 High with outdoor concerns). In addition, CDE Level 5 is also performed when a Level 1 assessment determines CBR, environmental, and/or dual-use targets

Appendix A  
Enclosure D

D-A-29

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000137

CJCSI 3160.01  
13 February 2009

are factors. Once a target is assessed under CDE Level 5 analysis, the target remains classified Level 5 (regardless of the mitigation done previously) due to the level of risk and sensitive nature these factors represent for the combatant command and the national government. The CDE Level 5 casualty assessment answers the fourth and fifth questions of the CDM, “How many civilians and noncombatants do I think will be injured/killed by the attack?” and “Do I need to elevate this decision to the next level of command to attack the target based on the ROE currently in effect?” **Commanders must be aware that they are assuming significant risk of collateral damage when engaging a target assessed under CDE Level 5.**

(1) Similar to the rest of the CDM, the casualty assessment is not an exact science. No precise means exists to predict noncombatant demographics and this effort is limited to the knowledge of the unique characteristics and cultural behaviors of the region and country as well as the population distributions, customs, and cultural practices, as well as particular habits unique to a region. As a reminder, the CDM does not take into account transient civilian or noncombatant personnel or equipment (unless precise data is known). **Therefore, it is critical that CDE Level 5 assessments are treated as estimates and should never be portrayed as an expected “casualty count.”**

(2) However, the LOW requires combatants to refrain from intentionally targeting civilian or noncombatant populations or facilities. The anticipated injury or loss of civilian or noncombatant life, and damage to civilian or noncombatant property, or any combination thereof, incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained. Failure to observe these obligations could result in disproportionate negative effects on civilians and noncombatants and be considered a LOW violation.

(3) The supporting data, tables, and procedures for CE assist in estimating noncombatant casualties and provide a standard method for computing casualty estimates. The commander then uses the CE to determine, under the ROE, if effects can be applied to target and who may approve the application of effects on the target. The primary decision aid is the noncombatant and civilian casualty cutoff value (NCV) and is found in the applicable ROE. Other metrics, such as specific guidance from higher headquarters, may apply more restrictive measures altering the CDM and producing a high CDE assessment. **CDE Level 5 constitutes the only level within the methodology where a final CDE assessment of “high” may be rendered. If a high assessment is rendered, the STAR process is then followed (see reference d) unless approval authority has been delegated by appropriate orders/instructions.**

D-A-30

Appendix A  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000138

CJCSI 3160.01  
13 February 2009

(4) CDE Level 5 Population Density Reference Table. The CDE Level 5 Population Density Reference Table provides a standardized format to assist in the development of data specific to a region or country. Combatant commands are responsible for the development and maintenance of the demographic data used in the table for countries and/or regions in their AOR to support operational planning and execution. The IC is required to support this effort as needed and requested by the combatant commands.<sup>12</sup>

(a) Demographic data contained in the CDE Level 5 Population Density Reference Table (Appendix D) is stated as population per 1000 square feet for each of the listed collateral concern functionalities.

(b) Day and night factors are based on socialized cultural norms for daytime and nighttime functional activities. Episodic event factors are based on standard maximum population densities per 1000 square feet for the events described within the table. Combatant commands may use their discretion, experience, and current intelligence (e.g., pattern of life data) to determine daytime and nighttime cultural norms. If a reasonable assessment for daytime and nighttime cannot be made, the period of time between BMNT (begin morning nautical twilight) and EENT (end evening nautical twilight) for daytime and the period of time between EENT and BMNT for nighttime is the default.

(c) In cases where current intelligence is capable of providing a more refined estimate of population density in a specific collateral concern, that data should be employed in the casualty estimate (e.g., pattern of life).

(5) CDE Level 5 CE Worksheet and Computations. The CDE 5 CE Worksheet provides the standardized means to develop casualty estimates ensuring the CDM's intent of a simple, reasonable, and repeatable process. The worksheet assists the analyst in computing a casualty estimate for those indoor and outdoor collateral concerns or structures, located within or affected by a CDE Level 3 or 4 CER. After each collateral concern is estimated, add casualties from any CBR or environmental hazards and any known involuntary (or those of unknown status) human shields. The total is then rounded up to the next whole number to arrive at a total CE.

(a) Indoor and Outdoor Collateral Concerns. The dominant hazard to civilians or noncombatants located within indoor collateral concerns is blast, while the dominant hazard to civilians or noncombatants located within outdoor collateral concerns is secondary debris or crater ejecta from PGMs or ASUGMs and fragmentation from SSBMs. In these situations, the affected area of indoor collateral concerns is computed based on that portion of the indoor

---

<sup>12</sup> Joint Staff/J-2T is leading effort with the IC for tables to be produced for each combatant command ensuring standardized application of the CDM and facilitate continuity of operations across multiple AORs.

Appendix A  
Enclosure D

D-A-31

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000139**



CJCSI 3160.01  
13 February 2009

collateral concern located within or affected by the chosen warhead's CDE Level 4 CER and resulting CHA. The affected area of outdoor collateral concerns is computed based on that portion of the outdoor collateral concern located within or affected by the CDE Level 3 CER/CHA for ASUGMs or SSBMs, or the CDE Level 3 Mitigated CER/CHA for PGMs, depending on the weapon class selected for employment.

(b) Delay Fuzing. When delay fuzing is not possible, collateral damage mitigation ceases at CDE Level 3. Consequently, a CDE Level 3 CER and resulting CHA must be used to conduct CE in CDE Level 5. This situation is only applicable to certain PGMs and ASUGMs since SSBMs are not capable of delay fuzing to achieve complete warhead burial prior to detonation. In this case, fragmentation is the dominant hazard to civilians or noncombatants in indoor and outdoor collateral concerns. Civilian or noncombatant posture, such as indoor versus outdoor, or protected versus unprotected, plays a significant role in CE computations.

1. If ASUGMs are planned for employment in this case, the affected area of both the indoor and outdoor collateral concerns is computed based on that portion of the collateral concern located within or affected by the selected warhead's CDE Level 3 CER and resulting CHA.

2. If PGMs are planned, the affected area of indoor collateral concerns is computed based on that portion of the indoor collateral concern located within or affected by the chosen warhead's CDE Level 3 Mitigated CER and resulting CHA. The affected area of outdoor collateral concerns is computed based on that portion of the outdoor collateral concern located within or affected by the warhead's CDE Level 3 Unmitigated CER and resulting CHA.

3. Regardless if PGMs or ASUGMs are selected, the CER value used to determine the affected area of indoor collateral concerns is divided in half to create an inner and outer annulus. By creating an inner and outer annulus, the appropriate casualty factor can be applied to the CE calculations. This approach considers the protection collateral structures afford civilians or noncombatants located inside the structures.

(6) Casualty Factor. The casualty factor is based on the type of collateral concern (such as indoor, outdoor, or dual-use). **There are only two options with casualty factor, either 1.0 or .25.** For indoor collateral concerns, the casualty factor reflects the relative location of the collateral structure to the intended impact point of the warhead. **A casualty factor of 1.0 is specified for all outdoor collateral concerns and dual-use targets for which a warhead is planned. If any part of an indoor collateral concern is located within one-half, or the inner annulus, of the appropriate CER and**

Appendix A  
Enclosure D

D-A-32

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000140**

CJCSI 3160.01  
13 February 2009

**resulting CHA, the casualty factor of 1.0 is also specified. A casualty factor of 0.25 is only specified if an indoor collateral concern is not in the inner half and there is some portion of the collateral concern within the outer half, or outer annulus, of the appropriate CER and resulting CHA.**

(7) Dual-Use Casualty Estimation. Casualty estimation for dual-use targets may follow the same procedures stated above using functionality population density values or a refined intelligence based estimate. Due to the sensitive nature of dual-use targets, intelligence analysis is normally performed to estimate the target's population density. If intelligence analysis was performed use this value as the casualty estimate for the dual use target. However, if the analysis was not performed, all personnel expected to be in a dual-use structure at the time of attack are considered civilian and/or noncombatant regardless of how much of the CHA covers the targeted dual-use structure. Therefore, enter a "1.0" for percent affected and enter a casualty factor of "1.0".

(8) Environmental and CBR Plume Hazards. Environmental and CBR plume hazards are assessed based on target functionality, such as hydroelectric dams, chemical plants, and CBR storage. Special consideration must be given to the secondary and tertiary effects of engaging these types of targets.

(a) CBR plume hazard targets present the significant danger of releasing chemical, biological, or radiological clouds into the atmosphere, producing widespread and long-term lethal negative effects on civilians and noncombatants.

(b) Environmental hazard targets present the significant danger of widespread and long-term lethal effects on civilians and noncombatants from ground water contamination, flooding, uncontrollable fire, and spread of disease.

(c) Targets assessed as presenting a CBR plume hazard are referred through the combatant command to DTRA for HPAC analysis. Targets assessed by the combatant command as presenting other environmental hazards are referred to the NCMI for CHAMP environmental analysis. In both cases, characterization of these hazards occurs within CDE Level 1. When produced, casualty estimates from CHAMP and HPAC models are added to the CDE Level 5 CE worksheet as part of the total casualty estimate.

(9) CDE Level 5 Casualty Estimation Assessment. The following steps and supporting population density data for specific regions or countries enable development of CDE Level 5 casualty estimation.

Appendix A  
Enclosure D

D-A-33

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000141**

CJCSI 3160.01  
13 February 2009

(a) Step 1. Review the CDE Level 1 and Level 4 information and identify those collateral concerns adjacent to the target that are affected by the CDE Level 4 computed CHA. In cases where collateral concern functionality is outdoor in nature, use the computed CDE Level 3 CHA to evaluate for casualties. Collateral concerns shielded from the target by other collateral concerns are not considered for casualty estimation.

(b) Step 2. Review the CDE Level 1 information and correlate the functionality of each of the collateral concerns identified in Step 1 to the functionalities contained in the appropriate region or country CDE Level 5 Population Density Reference Table. Record each of these collateral concerns on the CDE Level 5 CE Worksheet.

(c) Step 3. Record the number of floors, length, and width of the area contained within the CDE Level 3 or Level 4 CHA (as appropriate) for each of the collateral concern recorded in Step 2 on the CDE Level 5 CE Worksheet. Simplify this process by measuring the length and width of the affected area for each collateral concern. Do not attempt to convert the measurements for the arc of the circle. Compute the total square footage (Length x width x number of floors) that is encompassed within the CHA for each collateral concern and record this information on the CDE Level 5 CE worksheet.

(d) Step 4. Refer to the appropriate AOR's CDE Level 5 Population Density Reference Table. Enter the table by collateral concern functionality and then select the best match for the collateral concern being evaluated. Annotate the population density for day, night, and episodic events and determine the casualty factor for each collateral concern.

(e) Step 5. Compute CE for each collateral object:

$$CE = \frac{\text{Total Area}}{1,000 \text{ sq ft}} \times \% \text{ Affected Area} \times \text{Population Density per 1,000 sq ft} \times \text{Casualty Factor}$$

(f) Step 6. Repeat the above steps for each of the affected collateral objects and add them together to compute an estimate of casualties.

(g) Step 7. If the target was assessed as a CBR plume or environmental hazard in CDE Level 1, add any casualties derived from DTRA and/or NCMI analysis to the estimated casualties computed in step above. Add any known involuntary (or status unknown) human shields. Round up to the next whole number and record this number as the total casualty estimate.

(10) CDE Level 5 Casualty Estimation Assessment Evaluation

(a) If the casualty estimation is less than or equal to the established

Appendix A  
Enclosure D

D-A-34

**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000142**

CJCSI 3160.01  
13 February 2009

NCV, the target is assessed as CDE Level 5 Low Restricted to (***the weaponeering solution(s) developed in prior steps***), **CE= Day (xx), Night (xx), Episodic (xx)** (*where "xx" indicates the number of estimated casualties, annotating restriction if applicable*).

(b) If the casualty estimation is greater than the NCV, the target is assessed as **CDE Level 5 high Restricted to (*the weaponeering solution(s) developed in prior steps*)**, **CE= Day (xx), Night (xx), Episodic (xx)** (*where "xx" indicates the number of estimated casualties, annotating restriction if applicable*). **Authorizations to engage targets assessed as CDE Level 5 High require SecDef or Presidential approval (see reference d) unless approval authority has been delegated by appropriate orders/instructions.**

D-A-35

Appendix A  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000143

CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

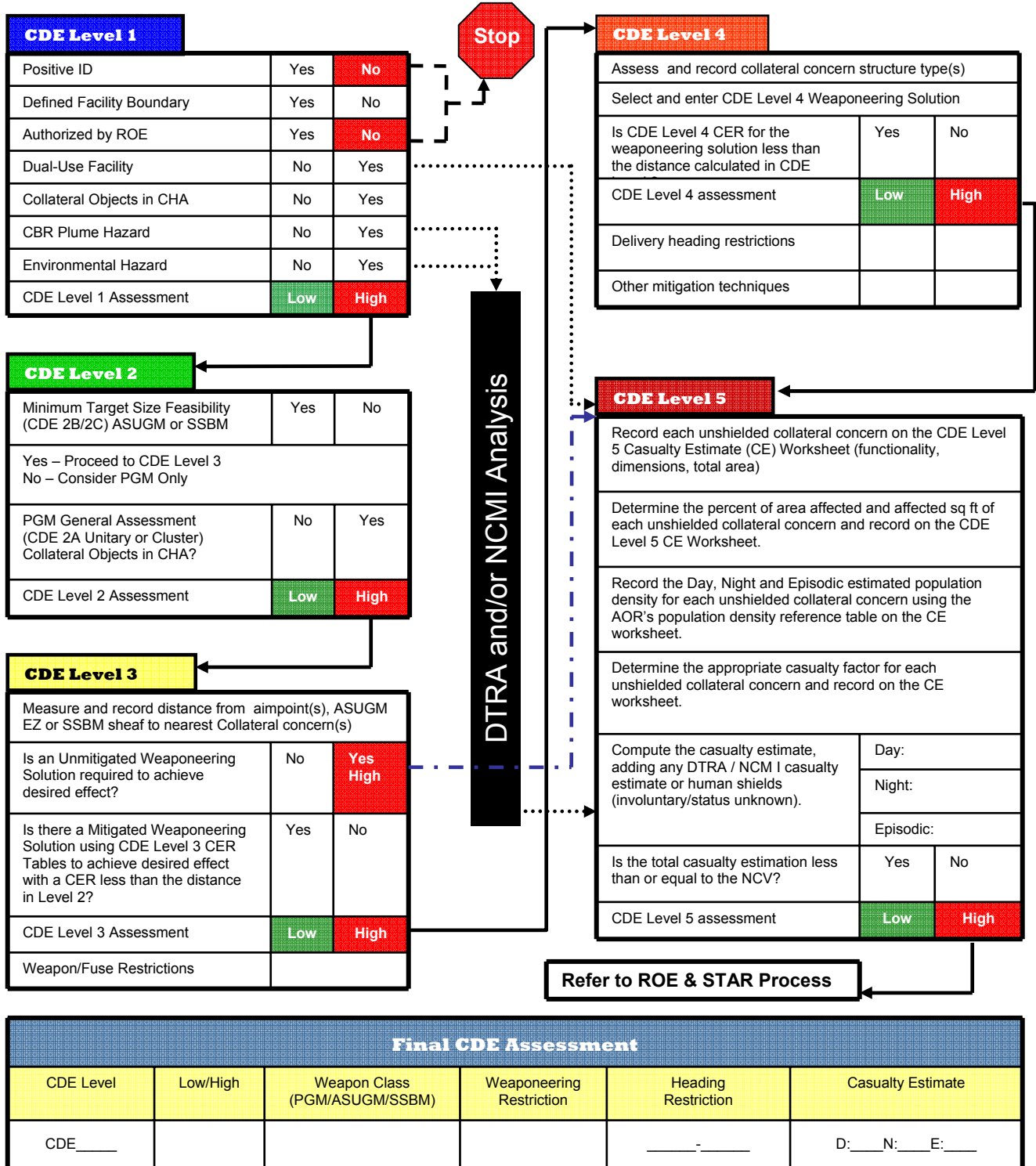
D-A-36

Appendix A  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000144

APPENDIX B TO ENCLOSURE D

CDM PROCESS QUICK GUIDE



CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

D-B-2

Appendix B  
Enclosure D

**DRONES / JS / 000146**

## APPENDIX C TO ENCLOSURE D

## CER REFERENCE TABLE SUMMARY

| CDE Level | Intended Use   | Dominant Hazard  | CER/CHA Criteria and Weapon Restrictions  |
|-----------|--|--|---|
| 1         | Initial assessment for all conventional weapons  | Fragmentation versus personnel   | Less than 10% probability of serious or lethal injury to standing personnel   |
| 2A        | General assessment for unitary and cluster PGMs  |  |   |
| 2B        | Minimum target size assessment for ASUGM based on delivery platform  | Delivery error only  | Less than 10% probability of serious or lethal injury to standing personnel<br><br>No low or high assessment – feasibility only   |
| 2C        | Minimum target size assessment for SSBM based on weapon system   |  |   |
| 3A        | Assessment for each PGM warhead in an unmitigated case   | Fragmentation versus personnel (or blast if no weapon fragments /debris exist) | Less than 10% probability of serious or lethal injury to standing personnel<br><br>Fuze for surface or air detonation   |
|           | Assessment for each PGM warhead in a mitigated case  | Crater ejecta/debris versus personnel (or blast if no ejecta/debris exist)     | Less than 10% probability of serious or lethal injury to standing personnel<br><br>Fuze for complete detonation below grade   |
| 3B        | Assessment for each ASUGM based on delivery platform and warhead in an unmitigated case  | Fragmentation versus personnel (or blast if no weapon fragments/debris exist)  | Less than 10% probability of serious or lethal injury to standing personnel<br><br>Fuze for surface or air detonation<br><br>Heading restriction for multi-warhead delivery   |
| 3C        | Assessment for each SSBM weapon system/ shell/fuze for Observer Adjusted method  |  | Less than 10% probability of serious or lethal injury to standing personnel<br><br>Fuze for surface or air detonation   |
|           | Assessment for each SSBM weapon system/shell/fuze for Predicted method   |  |   |
| 4A        | Refined assessment for each PGM warhead based on collateral structure type in a mitigated case                                       | Blast versus structures leading to blunt trauma injury to personnel            | Less than 1 % structural damage to collateral structure   |
| 4B        | Refined assessment for each ASUGM warhead and associated delivery platform based on nearest collateral structure in a mitigated case |  | Delay fuze for complete detonation below grade or complete detonation within target structure<br><br>Excludes cluster munitions<br><br>Requires delivery heading restrictions |
| 4C        | Refined assessment for each SSBM weapon system/shell/fuze based on nearest collateral structure using Observer Adjusted method       |  | Less than 1 % structural damage to collateral structure<br><br>Excludes ICM, RAP and enhanced range munitions   |
|           | Refined assessment for each SSBM weapon system/shell/fuze based on nearest collateral structure using Predicted method               |  |   |

Appendix C  
Enclosure D

D-C-1

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000147



CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

D-C-2

Appendix C  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000148

CJCSI 3160.01  
13 February 2009

## APPENDIX D TO ENCLOSURE D

## CDE LEVEL 5 POPULATION DENSITY TABLE AND CE WORKSHEET

| <i>Valid for: (AOR/Country)</i>  |                                     |              |                        |
|--|-------------------------------------|--------------|------------------------|
| <b>CDE Level 5 Population Density Reference Table</b>  |                                     |              |                        |
| <b>Collateral Structure Functionality</b>  | <b>Estimated Population Density</b> |              |                        |
|  | <b>Day</b>                          | <b>Night</b> | <b>Episodic Events</b> |
| <b>Residential Structures</b>  |                                     |              |                        |
| Single Family Urban or Small Town, Upper and Middle Class  |                                     |              |                        |
| Single Family Urban or Small Town, Lower Class and Slum  |                                     |              |                        |
| Single Family Village or Rural Scattered, Lower Class  |                                     |              |                        |
| Multi-Family Unit (Apartment, Condominium, Dormitory)  |                                     |              |                        |
| <b>Institutions/Public Service</b>   |                                     |              |                        |
| Religious  |                                     |              |                        |
| Museum   |                                     |              |                        |
| Library  |                                     |              |                        |
| School   |                                     |              |                        |
| College/University   |                                     |              |                        |
| Hospital   |                                     |              |                        |
| <b>Public Service Outlet</b>   |                                     |              |                        |
| Store  |                                     |              |                        |
| Restaurant   |                                     |              |                        |
| Hotel/Motel  |                                     |              |                        |
| <b>Office Building/Industrial Facility</b>   |                                     |              |                        |
| Light Manufacturing  |                                     |              |                        |
| Heavy Manufacturing  |                                     |              |                        |
| Chemical, Refining, Cement   |                                     |              |                        |
| Heat Processing (i.e. foundry)   |                                     |              |                        |
| Craftworks   |                                     |              |                        |
| <b>Transportation Facility</b>   |                                     |              |                        |
| Station (Air, Rail, Bus, Subway, Gas)  |                                     |              |                        |
| Transportation Repair (Garage, Hangar)   |                                     |              |                        |
| Warehouse  |                                     |              |                        |
| <b>Recreation/Entertainment</b>  |                                     |              |                        |
| Indoor (Theater, Gymnasium)  |                                     |              |                        |
| Outdoor Intensive (Stadium, Racetrack)   |                                     |              |                        |
| Outdoor Extensive (Park, Zoo)  |                                     |              |                        |
| <b>Auction</b>   |                                     |              |                        |
| Indoor   |                                     |              |                        |
| Outdoor/Intensive (Theater, Gymnasium, Casino)   |                                     |              |                        |
| <b>Notes:</b>  |                                     |              |                        |
| 1. The table is based on population density per 1000 square feet.  |                                     |              |                        |
| 2. Combatant commands are responsible for tables for their assigned AOR. Combatant commands may use multiple tables to account for the disparity in population density throughout different regions of various countries.  |                                     |              |                        |
| 3. Day and night refer to socialized cultural norms for daytime/nighttime functional activities. Special consideration must be given to unique cultural practices and periodic events (i.e. religious holidays) that may influence the population density during daytime/nighttime hours as well as episodic events. |                                     |              |                        |

D-D-1

Appendix D  
Enclosure D**UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**  
**DRONES / JS / 000149**

CJCSI 3160.01  
13 February 2009

| <b>Casualty Estimation (CE) Worksheet</b>  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
|--|-----|--------|-------|-------------|-------------|-------------------------|----------------|-------------------------------------|-------|----------|------------------------|--------------------------|-------|----------|--|
| <b>Collateral Concern</b><br>(dual-use is always the first entry)  |     |        |       |             |             |                         |                | <b>Estimated Population Density</b> |       |          | <b>Casualty Factor</b> | <b>Casualty Estimate</b> |       |          |  |
| Functionality  | ID# | Length | Width | # of Floors | Total Sq Ft | % Affected (.05 to 1.0) | Affected Sq Ft | Day                                 | Night | Episodic | (0.25 or 1.0)          | Day                      | Night | Episodic |  |
|  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
|  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
|  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| <b>Total Casualty Estimate</b> (add DTRA, NCMI, and human shields estimate as applicable):   |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| <b>Notes:</b>  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 1. This worksheet is used to compute casualty estimates based on the portion of the collateral concern located within a CDE Level 3 or Level 4 CHA with relevant weaponeering and mitigation.  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 2. Collateral concern information<br><ul style="list-style-type: none"> <li>- Enter the functionality type from the appropriate CDE Level 5 Population Density Table for each affected collateral concern. Affected collateral concerns are those with any portion located within either the CDE Level 3 or 4 CHA, except those shielded from warhead effects. If the targeted facility is dual-use enter it on the first line to compute noncombatant and civilian casualties within the targeted structure.</li> <li>- Enter the assigned ID# to each collateral concern or the aimpoint for the targeted dual-use facility.</li> <li>- Enter the length, width, and # floors for each and compute the total sq ft using (L x W x #floors).</li> <li>- Estimate percentage affected for each collateral concern that is located within the appropriate CDE Level 3 or 4 CHA (in 5 percent increments) using the decimal system to show percentage (100% = 1.0, 35% = 0.35). The percentage affected for a dual-use facility is <u>always</u> 1.0.</li> <li>- Compute affected sq ft using (total sq ft x percent affected).</li> </ul>   |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 3. Enter the estimated population density for day, night, and episodic from the AOR's CDE Level 5 Population Density Reference Table based on the collateral concern functionality. For dual-use targets enter the intelligence based casualty estimate developed in CDE Level 1 (if available).   |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 4. Enter the appropriate casualty factor for each collateral concern based on the following:<br><b>Casualty factor = 1.0 for:</b> <ul style="list-style-type: none"> <li>- All dual-use facilities.</li> <li>- Outdoor collateral concern with any portion located within the CDE Level 3 (Mitigated) CHA when a CDE Level 4 assessment is performed.</li> <li>- Outdoor collateral concern with any portion located within the CDE Level 3 (<u>Unmitigated</u>) CHA when a CDE Level 3 assessment is performed as the final step due to inability to delay fuze the weapon. (This only occurs with PGM and ASUGM).</li> <li>- Indoor collateral concern with any portion located within the inner annulus (1/2 of the CER) of the CDE Level 4 CHA when a CDE Level 4 assessment is performed.</li> <li>- Indoor collateral concern with any portion located within the inner annulus (1/2 of the CER) of the CDE Level 3 (Mitigated) CHA when a CDE Level 3 assessment is performed as the final step due to inability to delay fuze the weapon. (This only occurs with PGM and ASUGM).</li> </ul> <b>Casualty factor = 0.25 for:</b> <ul style="list-style-type: none"> <li>- Indoor collateral concern only affected by the outer annulus of the CDE Level 4 CHA when a CDE Level 4 assessment is performed.</li> <li>- Indoor collateral concern only affected by the outer annulus of the CDE Level 3 CHA when a CDE Level 3 (Mitigated) CHA assessment is performed as the final step due to inability to delay fuze the weapon. (This only occurs with PGM and ASUGM).</li> </ul> |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 5. Calculate a casualty estimate for each affected collateral concern for day, night and episodic using:<br><b>Casualty estimate (CE) = (affected sq ft/1000) x (population density) x (casualty factor).</b>  |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |
| 6. Sum the individual collateral concern casualty estimates for each of the periodic conditions (day, night & episodic) to determine the subtotal casualty estimate. Add DTRA, NCMI, or human shield casualty estimate (as applicable). Round up to next whole number. This total is now the total casualty estimate for the target.   |     |        |       |             |             |                         |                |                                     |       |          |                        |                          |       |          |  |

D-D-2

Appendix D  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
**DRONES / JS / 000150**

## APPENDIX E TO ENCLOSURE D

## CDE TRAINING AND CERTIFICATION CRITERIA

1. Due to the strategic risk operations may pose to the U.S. government, due diligence is critical to ensure personnel are trained in the CDM prior to conducting assessments. Combatant commands and supporting components providing forces will ensure personnel conducting CDE are properly trained IAW this instruction and proficiencies are maintained for the duration of an individual's assignment.
2. USJFCOM JTS is the only formal DOD schoolhouse that currently provides training supporting the CDM. In order to be qualified as a CDE analyst, personnel must graduate from the JTS CDE course or one of its mobile training teams. Personnel trained after 30 December 2005 on CJCSM 3160.01B are grandfathered by this CJCSI including those trained by USCENTCOM's MTT. The MTT was the basis for the course now being taught at JTS. Any work those trained CDE analysts performed or will perform is backed by this CJCSI. Combatant commands should review data via normal timelines (see Enclosure A).
3. Personnel who graduate from JTS are a trained CDE analyst. However, they must complete a local certification program developed by applicable combatant command prior to performing CDE assessments (if personnel support more than one combatant command, then requirements local to each combatant command must be met). At a minimum, these certification programs must include verification that the individual is a graduate of the CDM course, that the individual understands mission-specific ROE and policies, and is proficient on tools used by the combatant command to arrive at assessments. Combatant commands are highly encouraged to pair new analysts with experienced analysts until such time their leadership is comfortable with their assessments prior to deriving assessments on their own (no less than 30 days). Once certified, combatant commands will update the J2/J-2T SIPRNET Sharepoint site.
4. In order to graduate from the JTS CDE course, personnel must demonstrate: comprehension of the LOW as it pertains to CDM, an understanding of the underlying technical basis for estimates, and understanding of the limitations of the CDM, and a proficiency of the CDM process producing assessments for all target types.
5. Training Objectives and Program of Instruction. The CDE POI includes 40hrs of instruction, practical exercises, and an end of course exam. Successful completion requires individuals to complete the POI (instruction

Appendix E  
Enclosure D

D-E-1

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000151

and exercises) and score no less than an 80 percent on the exam. POI objectives are:

- a. Comprehend the definition of collateral damage, its causes, and the impact it has on operations and/or national strategic policy.
- b. Comprehend the principles of the LOW and what makes a target Lawful and/or Unlawful.
- c. Know the categories of collateral objects, associated functions, and how to look up CATCODEs for planning relevant to the mission's ROE.
- d. Explain how the CDM treats human shields, dual-use facilities, environmental, and CBR hazards.
- e. Know the types of weapon effects, how they are measured, and demonstrate proficiency in using all of the mitigating techniques outlined in the CDM.
- f. Know the factors that affect delivery accuracy.
- g. Know the five elements of accurate predicted fire and application to CDE.
- h. Demonstrate proficiency in determining minimum target size (MTS) and know the significance of target size in CDE when considering ballistically guided munitions.
- i. Demonstrate proficiency with the seven steps for CDE 1 and when an analyst must either stop the assessment or continue with Level 5 caveats.
- j. Know the dominant hazards for and within each CDE level.
- k. Demonstrate proficiency in determining an appropriate CER: (1) PGM CER using the CDE 3A and 4A reference tables; (2) ASUGM CER using the CDE 3B and 4B reference tables, and (3) SSBM CER using the CDE 3C and 4C reference tables.
- l. Comprehend weaponeering limitations imposed on ASUGM and SSBM employment within CDE 4.
- m. Comprehend the factors leading an analyst to a CDE Level 5 assessment.

- n. Demonstrate proficiency in using the CDE Level 5 Population Density Tables and how that data applies to the overall process.
  - o. Demonstrate proficiency in using the CDE Level 5 casualty worksheet and formula to generate a casualty estimate (student answer within 10 percent of approved answer).
  - p. Explain the risks and limitations associated with the CDM.
  - q. Know where to get the CER and population density tables.
  - r. Be familiar with the automated CDE assessment tools used to produce a CDE assessment.
6. CDE Instructor Criteria. Instructors must be a graduate of the CDM course with a score no less than 90 percent on the final exam and complete the instructor certification program designated by the JTS. CDE Instructors work in an approved CDE school (or associated MTT) and are authorized to teach the JTS approved POI in order to train new CDE analysts.
7. CDE Standardization Instructor Criteria. Individuals scoring a minimum of 90 percent, with demonstrated expertise in the CDE Assessment Process and weapons effects, followed by a period of instruction during which the instructor assists in teaching the course under the tutelage of a standardization instructor. Upon successful completion, a CDE Standardization Instructor is authorized to train new analysts and to certify new instructors using the JTS approved POI. The JTS maintains the criteria and is the authority to certify CDE Standardization Instructors.
8. Maintaining Proficiency. Combatant commands or forces providing direct support to combatant commands will provide opportunities (training or real-world) on a recurring basis for personnel detailed to a CDE billet or function in order to maintain their proficiency.
9. Currency. CDE analysts and instructors who do not perform CDE assessment for a period of twelve or more months must re-certify. At a minimum, re-certification follows the program defined by the combatant command(s) they currently support. The JTS can also serve as a re-certifying authority via training and testing materials over SIPRNET or a MTT if the combatant command is not available.
10. Documentation. Joint Staff/J-2T provides oversight of all CDM training. The central database of approved schoolhouses, trained CDE analysts,

CJCSI 3160.01  
13 February 2009

instructors, standardization instructors, and combatant command certified analysts is maintained via the Joint Staff/J-2T SIPRNET Sharepoint site. Analysts should also maintain a record of their training and proficiency level via their Services' training records.

D-E-4

Appendix E  
Enclosure D

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000154

CJCSI 3160.01  
13 February 2009

ENCLOSURE E

REFERENCES

- a. DOD Directive 2311.01, 9 May 2006, "DoD Law of War Program"
- b. CJCSI 5810.01 series, "Implementation of the DOD Law of War Program"
- c. DIA Publication 5210.002-M, 11 January 2006, "Standard Coding Systems Functional Classification Handbook"
- d. CJCSI 3122.06 series, "Sensitive Target Approval and Review (STAR) Process (U)"
- e. Joint Publication 3-60, 13 April 2007, "Joint Targeting"
- f. General Defense Intelligence Program Directive No. 006, 31 October 2005, "Defense Intelligence Analysis Program"
- g. Joint Publication 3-0, 17 September 2006, "Joint Operations"
- h. Defense Intelligence Report, DI-2820-2-03, 12 March 2003 (current as of 3 January 2006), "Battle Damage Assessment Reference Handbook"
- i. CJCSI 3110.01 series, "Joint Strategic Capabilities Plan (U)"
- j. DIA Instruction 3000.002, 15 July 2008, "U.S./Allied Targeting Analysis Program"
- k. DIA Defense Intelligence Reference Document DDB-2600-725-89, June 1989, "Point Reference Guide Book (U)"
- l. JTCG/ME Publication, 61 JTCG/ME-05-4, 29 September 2008, "Collateral Damage Estimation (CDE) Table Development (U)", 29 September 2008
- m. United States Code 10, Section 153, Chairman's Functions
- n. DOD Directive 5100.1, 1 August 2002 (certified current as of 21 November 2003), "Functions of the Department of Defense and Its Major Components"
- o. DOD Directive 5105.21, 18 March 2008, "Defense Intelligence Agency (DIA)"



CJCSI 3160.01  
13 February 2009

(INTENTIONALLY BLANK)

E-2

Enclosure E

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~  
DRONES / JS / 000156

## GLOSSARY

## PART I -- ABBREVIATIONS AND ACRONYMS

|          |  |
|----------|--|
| AOR      | area of responsibility   |
| ASUGM    | air-to-surface unguided munition                                 |
| BE       | basic encyclopedia   |
| BMNT     | begin morning nautical twilight                                  |
| CATCODE  | category code  |
| CBR      | chemical, biological, and radiological                           |
| CCDR     | combatant commander  |
| CD       | collateral damage  |
| CDE      | collateral damage estimate                                       |
| CDM      | collateral damage estimate methodology                           |
| CDWG     | collateral damage working group                                  |
| CE       | casualty estimation  |
| CE90     | circular error (90 percent probability)                          |
| CER      | collateral effects radii   |
| CHA      | collateral hazard area   |
| CHAMP    | Chemical Hazard Area Modeling Program                            |
| CJCS     | Chairman of the Joint Chiefs of Staff                            |
| CJCSI    | Chairman of the Joint Chiefs of Staff instruction                |
| CJCSM    | Chairman of the Joint Chiefs of Staff manual                     |
| CIB      | controlled image base  |
| COLISEUM | Community On-Line Intelligence System for End Users and Managers |
| CONPLAN  | concept of operations plan                                       |
| CSA      | combat support agency  |
| DOD      | Department of Defense  |
| DIA      | Defense Intelligence Agency                                      |
| DIAP     | Defense Intelligence Analysis Program                            |
| DJ-2     | Directorate for Intelligence, Joint Chiefs of Staff              |
| DTRA     | Defense Threat Reduction Agency                                  |
| EENT     | end evening nautical twilight                                    |
| EXORD    | execute order  |
| EZ       | engagement zone  |
| FAST-CD  | Fast Assessment Strike Tool-Collateral Damage                    |
| GEF      | guidance for the employment of the force                         |

|         |  |
|---------|--|
| GCCS    | Global Command and Control System                              |
| GPS     | Global Positioning System                                      |
| HPAC    | hazard prediction assessment capability                        |
| IAW     | in accordance with   |
| IC      | national intelligence community                                |
| ICM     | improved conventional munitions                                |
| IP      | Internet protocol  |
| JADOCs  | Joint Automated Deep Operations Coordination System            |
| J-2T    | Joint Staff Intelligence, Deputy Director for Targets          |
| JCS     | Joint Chiefs of Staff  |
| JIACG   | Joint Interagency Coordination Group                           |
| JP      | joint publication  |
| JS DSE  | Joint Staff decision support environment                       |
| JSCP    | joint strategic capabilities plan                              |
| JTCG/ME | Joint Technical Coordinating Group for Munitions Effectiveness |
| JTF     | joint task force   |
| JTL     | joint target list  |
| JTT     | Joint Targeting Toolbox  |
| JTS     | Joint Targeting School   |
| LOAC    | law of armed conflict  |
| LOW     | law of war   |
| MIDB    | modernized integrated database                                 |
| MTS     | minimum target size  |
| NAI     | named area of interest   |
| NCMI    | National Center for Medical Intelligence                       |
| NCV     | noncombatant and civilian casualty cutoff value                |
| NOM-DCR | nomination-database change request                             |
| NSL     | no-strike list   |
| OA      | observer adjusted  |
| OGA     | other government agencies                                      |
| PGM     | precision-guided munition                                      |
| POI     | program of instruction   |
| PID     | positive identification  |

|         |   |
|---------|---|
| RAC     | responsible analytic center             |
| RAP     | rocket assisted projectile              |
| RESPROD | responsible producer                    |
| RSS     | root sum square                         |
| RTL     | restricted target list                  |
| ROE     | rules of engagement                     |
| SecDef  | Secretary of Defense                    |
| SIPRNET | secret internet protocol router network |
| SSBM    | surface-to-surface ballistic munition   |
| STAR    | sensitive target approval and review    |
| TE90    | total error 90                          |
| TLE     | target location error                   |
| TLE90   | target location error (90 percentile)   |
| TMS     | Target Management System                |
| TST     | time-sensitive target                   |
| URL     | uniform resource locator                |
| USJFCOM | United States Joint Forces Command      |
| VT      | variable time (fuze)                    |
| WGS-84  | world geodetic system 1984 datum        |

## PART II -- TERMS AND DEFINITIONS

NOTE: The following terminology is limited to the scope or activity of this publication unless otherwise noted. A definitional entry in the Glossary is not approved for general, DOD-wide use nor implies inclusion in the DOD Dictionary of Military and Associated Terms (JP 1-02) unless followed by an explanatory, parenthetical caption.

additional damage. Unintentional or incidental injury or damage to combatant persons or objects that would be lawful military targets in the circumstances ruling at the time.

ballistic munition. A munition that does not rely upon aerodynamic surfaces to produce lift and consequently follows a ballistic trajectory when thrust is terminated.

ballistic trajectory. The trajectory traced after the propulsive force is terminated and the body is acted upon only by gravity and aerodynamic drag. (JP 1-02)

casualty. Any person who is lost to the organization by having been declared dead, duty status-whereabouts unknown, missing, ill, or injured. (JP 1-02)

casualty estimate. The estimated total number of noncombatant and civilian casualties that result from military operations executed on a given target. Also called CE.

casualty factor. A number (either 1.0 or .25) that represents the fraction of personnel inside a collateral structure or outside in an outdoor area likely to become casualties.

civilian. A person who is not a member of the military and who is not taking a direct part in hostilities against a party to the conflict in an armed conflict. collateral concern. Those entities, including persons, structures, and other objects that are considered civilian or noncombatant in nature and not lawful military targets under the Law of War.

collateral damage. Unintentional or incidental injury or damage to persons or objects that would not be lawful military targets in the circumstances ruling at the time. Such damage is not unlawful so long as it is not excessive in light of the overall military advantage anticipated from the attack. Also called CD. (JP 1-02. Source: JP 3-60)

collateral damage estimation/casualty estimation high. Within the appropriate level, either a CDE/CE concern exists or the calculated level of concern exceeds a specified level of risk to civilian and/or noncombatant personnel, facilities and/or environment around the target. Also called CDE/CE high.

collateral damage estimation/casualty estimation low. Within the appropriate level, either no CDE/CE concern exists or the calculated level of concern is below a specified level of risk to civilian and/or noncombatant personnel, facilities and/or environment around the target. Also called CDE/CE low.

collateral effects radius/radii. A radius representing the largest collateral hazard distance for a given warhead, weapon, or weapon class considering predetermined, acceptable collateral damage thresholds that are established for each CDE level. Also known as CER. (Formerly known as Effective Miss Distance or EMD)

collateral hazard area. An area formed by measuring a CER from either the edge of a target facility boundary, the aimpoint for a point target, or the edge of an engagement zone or artillery sheaf for an area target. Also called CHA.

collateral object. Civilian and noncombatant buildings, structures, vehicles, and material that do not support the activities and/or functions of the enemy's military or fighting capability.

cyberspace domain. A global domain within the information environment consisting of the interdependent network of information technology infrastructures, including the Internet, telecommunications networks, computer systems, and embedded processors and controllers (Deputy SecDef memo, 12 May 2008).

dual-use. Targets characterized as having both a military and civilian purpose/function.

enemy combatant. In general, a person engaged in hostilities against the United States or its coalition partners during an armed conflict. The term "enemy combatant" includes both "lawful enemy combatants" and "unlawful enemy combatants."

environmental hazard analysis. Assessment of significant human health implications resulting from exposure to contaminated air, water, and/or soil caused by collateral damage.

Intelligence Community (IC). The IC includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard; and such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the IC. (Public Law 108-458, Section 1073)

intergovernmental organization. An organization created by a formal agreement (e.g., a treaty) between two or more governments. It may be established on a global, regional, or functional basis for wide-ranging or narrowly defined purposes. Formed to protect and promote national interests shared by member states. Examples include the United Nations, North Atlantic Treaty Organization, and the African Union. (JP 1-02)

joint interagency coordination group (JIACG). The JIACG, an element of a geographic combatant commander's staff, is an interagency staff group that establishes or enhances regular, timely, and collaborative working relationships between other government agencies (OGA) (e.g., Central Intelligence Agency, DOS, Federal Bureau of Investigation, US Treasury Department) representatives and military operational planners at the combatant commands. There is currently no standardized structure for the JIACG. Its size and composition depends on the specific operational and staff requirements at each combatant command. The JIACGs complement the interagency coordination that takes place at the national level through DOD and the National Security Council System. JIACG members participate in contingency, crisis action, security cooperation, and other operational planning. They provide a conduit back to their parent organizations to help synchronize joint operations with the efforts of OGA. (JP 3-0)

joint target list. A consolidated list of selected targets, upon which there are no restrictions placed, considered to have military significance in the joint force commander's operational area. Also called the JTL. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02.)

lawful enemy combatant. Lawful enemy combatants, who are entitled to protections under the Geneva Conventions, include members of the regular armed forces of a State party to the conflict; militia, volunteer corps, and organized resistance movements belonging to a State party to the conflict, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the laws of war; and members of regular armed forces who profess allegiance to a government or an authority not recognized as a party to the conflict.

Modernized Integrated Database. The national level repository for the general military intelligence available to the entire Department of Defense Intelligence Information System community and, through Global Command and Control System integrated imagery and intelligence, to tactical units. This data is maintained and updated by the Defense Intelligence Agency. Commands and Services are delegated responsibility to maintain their portion of the database. Also called MIDB. (JP 1-02)

named areas of interest. The geographical area where information that will satisfy a specific information requirement can be collected. Named areas of interest are usually selected to capture indications of adversary courses of action, but also may be related to conditions of the battlespace. Also called NAI (JP 2-01.3)



noncombatant. Military medical personnel, chaplains, and those out of combat, including prisoners of war and the wounded, sick, and shipwrecked.

noncombatant and civilian casualty cut-off value. The casualty threshold for any anticipated effects, which if exceeded, would require the combatant commander to forward a target to the SecDef or President for national-level review as a sensitive target unless delegated otherwise according to the established ROE. Also called NCV.

nongovernmental organization. A private, self-governing, not-for-profit organization dedicated to alleviating human suffering; and/or promoting education, health care, economic development, environmental protection, human rights, and conflict resolution; and/or encouraging the establishment of democratic institutions and civil society. (JP 1-02)

No-Strike entities. No-Strike entities comprise both physical and abstract objects, defined by the law of war, which are functionally characterized as civilian and/or noncombatant in nature; and, therefore are protected entities. No-Strike entities may include, but are not limited to medical, educational, diplomatic, cultural, religious, and historical sites, or other entities that do not functionally support a nation's military capabilities. These entities are generally not lawful targets under normal circumstances; however, if used for the furtherance of military or hostile force objectives, No-Strike entities lose their protected status and may be subject to attack.

No-Strike process. The Secretary of Defense or combatant commander (or designee) designation of entities, or classes of entities, that is to be protected from negative effects during the conduct of military operations. The No-Strike process identifies, analyzes, validates, catalogs, and disseminates information about these entities. The national intelligence community and other U.S. government departments and/or agencies support the No-Strike process.

No-Strike List. A list of objects or entities characterized as protected from the effects of military operations under international law and/or rules of engagement. Attacking these may violate the law of armed conflict or interfere with friendly relations with indigenous personnel or governments. Also called the NSL. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02).

positive identification. The reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the law of war and applicable ROE. Also called PID.

precision-guided munitions. A weapon that uses a seeker to detect electromagnetic energy reflected from a target or reference point and, through



processing, provides guidance commands to a control system that guides the weapon to the target. Also called PGM. (JP 1-02. Source: JP 3-09.1)

responsible analytic center. The intelligence organization that has responsibility for specified topic(s) and/or issue(s) under the Defense Intelligence Analysis Program. Also know as RAC.

restricted target. A valid target that has specific restrictions placed on the actions authorized against it due to operational considerations. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02). Other considerations for restricting targets may include political, intelligence gain/loss, environmental, collateral damage, and/or rules of engagement considerations. These targets may be executed as long as the restrictions are adhered to. Any actions that exceed those restrictions are prohibited until coordinated with and approved by the establishing headquarters.

restricted target list. A list of restricted targets nominated by elements of the joint force and approved by the joint force commander. This list also includes restricted targets directed by higher authorities. Also called RTL. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02).

rules of engagement. Directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered. Also called ROE. (JP 1-02)

sensitive target. Those targets for which planned actions warrant the Secretary of Defense or President of the United States' review and approval. Criteria normally are delineated in OPLAN/CONPLANs, OPORDs, EXORDs, and/or ROE by combatant commanders. Sensitive targets exceed national-level thresholds such as: high collateral damage or collateral effect (e.g., versus civilian and/or noncombatant population, property, infrastructure, facilities); adverse political ramifications (e.g., near the territory of surrounding states); environmental harm/hazard (water contamination, chemical/biological plume hazards); or adverse public sentiment (local or international). (This term and its definition are derived from CJCSI 3122.06 STAR Process and the JSCP. It will be submitted for inclusion in the next edition of JP 1-02).

serious injury. An injury of such severity that there is cause for immediate concern, but there is not imminent danger to life.

target. 1. An entity or object considered for possible engagement or other action. 2. In intelligence usage, a country, area, installation, agency, or

person against which intelligence operations are directed. 3. An area designated and numbered for future firing. 4. In gunfire support usage, an impact burst that hits the target. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02).

target location error. Expressed in terms of circular error, target location error is the error associated with locating the true position of the target. Specifically, TLE90 describes the radius of a circle in the ground plane centered on the target coordinates such that 90 percent of the time the true target location is within. Also called TLE or TLE90.

time-sensitive target. A joint force commander designated target requiring immediate response because it is a highly lucrative, fleeting target of opportunity or it poses (or will soon pose) a danger to friendly forces. Also called TST. (This term and its definition are derived from JP 3-60 and are approved for inclusion in the next edition of JP 1-02).

urban population center. A city, town, or village predominately occupied as a place of residence and/or business.

(INTENTIONALLY BLANK)

# Exhibit 20



March 15, 2017

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
Fax: (703) 613-3007

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155  
Fax: (571) 372-0500

United States Central Command CCJ6-RDF (FOIA)  
7115 South Boundary Boulevard  
MacDill AFB, FL 33621-5101  
Fax: (813) 529-6076

Department of Defense Office of  
Inspector General  
DoD IG FOIA Requester Service Center  
ATTN: FOIA/PA Chief, Suite 10B24  
4800 Mark Center Drive  
Alexandria, VA 22350-1500  
Fax: (571) 372-7498

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001  
Email: MRUFOIA.Requests@usdoj.gov

Melissa Golden (née Kassier)  
Lead Paralegal and FOIA Specialist  
Office of Legal Counsel  
Department of Justice  
Room 5511, 950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
Email: usdoj-officeoflegalcounsel@usdoj.gov

**AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION**  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

**OFFICERS AND DIRECTORS**  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT B. REMAR  
TREASURER

Office of Information Programs and Services  
A/GIS/IPS/RL  
U.S. Department of State  
Washington, DC 20522-8100  
Fax: (202) 261-8579

**Re: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)<sup>1</sup> submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to (1) the legal basis for the United States’ January 29, 2017 raid in al Ghayil, Yemen (the “al Ghayil Raid”); (2) the process by which the government evaluated and approved the al Ghayil Raid, including the evidentiary standard by which the factual evidence for conducting the raid was evaluated; (3) the factual basis for, and process by which, the decision was made to designate certain portions of Yemeni provinces as “areas of active hostilities” prior to the raid; (4) before-the-fact and after-action assessments of civilian or bystander casualties of the raid; and (5) the number, identities, legal status, and affiliations of those killed by the United States during the raid.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

**I. Background**

On January 25, 2017, while dining at the White House, President Donald Trump approved a military raid of the small village of al Ghayil, Yemen.<sup>2</sup> A few days later, in the early hours of January 29, Navy SEAL Team 6 carried out the raid, which left several civilians dead and raised concerns about the legal basis, planning, and execution of the operation.<sup>3</sup> In a press release later that day,

---

<sup>1</sup> The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

<sup>2</sup> Fred Kaplan, *What Happened Behind the Scenes Before the Yemen Raid?*, Slate (Feb. 2, 2017, 6:06 PM), [http://www.slate.com/articles/news\\_and\\_politics/war\\_stories/2017/02/who\\_s\\_to\\_blame\\_for\\_the\\_botched\\_yemen\\_raid\\_that\\_killed\\_a\\_navy\\_seal.html](http://www.slate.com/articles/news_and_politics/war_stories/2017/02/who_s_to_blame_for_the_botched_yemen_raid_that_killed_a_navy_seal.html).

<sup>3</sup> Eric Schmitt & David E. Sanger, *Raid in Yemen: Risky from the Start and Costly in the End*, N.Y. Times (Feb. 1, 2017), <https://nyti.ms/2k15LPn>.

President Trump described the raid as “successful,” a characterization echoed by other White House officials.<sup>4</sup> A number of other officials, including Senator John McCain, have questioned this characterization.<sup>5</sup>

Following the raid, the Department of Defense conducted a review pursuant to Army Regulation 15-6, which involved three separate investigations into the al Ghayil Raid: (1) an investigation into the death of U.S. Navy SEAL Ryan Owens; (2) an investigation into the civilian casualties; and (3) an investigation into the crash and subsequent destruction of the Osprey aircraft.<sup>6</sup> On March 9, 2017, the head of U.S. Central Command, General Joseph Votel, informed the Senate Armed Services Committee that two of the three investigations were complete, leaving only the investigation into the crash of the Osprey tilt-rotor aircraft ongoing.<sup>7</sup>

During his testimony, General Votel disclosed that the investigation into civilian casualties concluded that between four and twelve civilians died during the raid.<sup>8</sup> This tally conflicts with other reports that have placed that number higher. Human Rights Watch, for example, reported that at least fourteen civilians were killed, nine of whom were children.<sup>9</sup> The Bureau of Investigative Journalism reported that twenty-five civilians were killed in the raid.<sup>10</sup> Another

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

<sup>4</sup> Press Release, Office of the Press Secretary, White House, Statement by the President on U.S. Service Member Killed in Yemen (Jan. 29, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/29/statement-president-us-service-member-killed-yemen>; see Aaron Blake, *The White House Has Really Backed Itself Into a Corner on the Yemen Raid*, Wash. Post (Feb. 28, 2017), [http://wapo.st/215Tawb?tid=ss\\_tw](http://wapo.st/215Tawb?tid=ss_tw) (quoting Press Secretary Sean Spicer as saying that the raid was “absolutely a success” and that “anybody who would suggest otherwise doesn’t fully appreciate how successful that mission was”).

<sup>5</sup> Nolan D. McCaskill, *McCain Rebuffs White House’s Call for Apology Over Yemen Raid*, Politico (Feb. 8, 2017, 2:58 PM), <http://politi.co/2k41FYb> (quoting Senator McCain as calling the raid a “failure”); see Ewen MacAskill, Spencer Ackerman & Jason Burke, *Questions Mount Over Botched Yemen Raid Approved by Trump*, Guardian (Feb 2., 2017, 7:32 PM), <https://www.theguardian.com/world/2017/feb/02/trump-approved-yemen-raid-five-days-after-inauguration>.

<sup>6</sup> Gabrielle Levy, *White House Responds to Call for Investigation from Slain SEAL’s Father*, U.S. News (Feb. 27, 2017, 5:09 PM), <https://www.usnews.com/news/politics/articles/2017-02-27/white-house-yemen-raid-that-killed-seal-triggers-three-pronged-pentagon-review>.

<sup>7</sup> Missy Ryan, *Yemen Raid Killed Up to a Dozen Civilians, Military Investigation Says*, Wash. Post (Mar. 9, 2017), [http://wapo.st/2mqJjQZ?tid=ss\\_tw](http://wapo.st/2mqJjQZ?tid=ss_tw); Ryan Browne & Barbara Starr, *What We Know About the Yemen Raid*, CNN (Mar. 11, 2017, 12:48 PM), <http://www.cnn.com/2017/03/11/politics/yemen-raid-details-investigation>.

<sup>8</sup> Ryan, *supra* note 7.

<sup>9</sup> *Yemen: US Should Investigate Civilian Deaths in Raid*, Human Rts. Watch (Feb. 24, 2017, 12:01 AM), <https://www.hrw.org/news/2017/02/24/yemen-us-should-investigate-civilian-deaths-raid>.

<sup>10</sup> Namir Shabibi & Nasser al Sane, *Nine Young Children Killed: The Full Details of Botched US Raid in Yemen*, Bureau of Investigative Journalism (Feb. 9, 2017), <https://www.thebureauinvestigates.com/stories/2017-02-09/nine-young-children-killed-the-full-details-of-botched-us-raid-in-yemen>.



report from Yemen estimates that up to thirty civilians were killed during the raid.<sup>11</sup> Journalist Iona Craig visited al Ghayil, interviewed survivors and witnesses, and reported that at least six women and ten children were killed.<sup>12</sup>

In his testimony, General Votel informed Congress that there were no indicators of “poor decision-making or bad judgment” related to the raid, and he determined that “there was no need for an additional investigation into this particular operation.”<sup>13</sup>

The outcome of the raid and conclusions of the subsequent investigations have raised serious concerns about both the legal and factual bases for the al Ghayil Raid. According to reports, the military obtained a temporary grant of authority to treat portions of Yemen as “areas of active hostilities.”<sup>14</sup> The *New York Times* reported that the Trump administration has exempted certain parts of Yemen from policy constraints laid out by the Obama administration in the Presidential Policy Guidance (“PPG”), which requires “near certainty” that no civilians will be killed in a planned operation.<sup>15</sup> The “temporary” characterization of certain areas of Yemen as “areas of active hostilities” gives rise to concerns about the process by which the administration has made this designation and its factual and legal bases for doing so.

Factually, the raid’s outcome causes concern that the administration acted without adequate evidence and assurance that the raid would be conducted in accordance with legal and policy safeguards against civilian casualties. Additionally, in light of the discrepancy between the government’s announced tally of civilian casualties and the assessments of credible independent reporting and investigating, coupled with the inadequate information the government has released supporting its assessment, the public does not have a sound basis to evaluate government claims of deaths and injuries caused, and the legality of the operation.<sup>16</sup>

To provide the American public with information about the legal and factual bases for the al Ghayil Raid, why certain areas of Yemen were

---

<sup>11</sup> Ryan, *supra* note 7.

<sup>12</sup> Iona Craig, *Death in al Ghayil*, Intercept (Mar. 9, 2017, 9:00 AM), <https://interc.pt/2mK3RF2>.

<sup>13</sup> Alex Emmons, *New Evidence Contradicts Pentagon’s Account of Yemen Raid, but General Closes the Case*, Intercept (Mar. 9, 2017, 6:06 PM), <https://interc.pt/2mGflc7..>

<sup>14</sup> See, e.g., Missy Ryan, Thomas Gibbons-Neff & Ali Al-Mujahed, *Accelerating Yemen Campaign, U.S. Conducts Flurry of Strikes Targeting al-Qaeda*, Wash. Post (Mar. 2, 2017), [http://wapo.st/2lzgXAa?tid=ss\\_tw](http://wapo.st/2lzgXAa?tid=ss_tw).

<sup>15</sup> Charlie Savage & Eric Schmitt, *Trump Administration Is Said to Be Working to Loosen Counterterrorism Rules*, N.Y. Times (Mar. 12, 2017), <https://nyti.ms/2mA3euS>.

<sup>16</sup> Disparities between official government tallies and those of reporters and NGOs are not unique to the Trump administration. See, e.g., Ryan Devereaux, *Obama Administration Finally Releases its Dubious Drone Death Toll*, Intercept (July 1, 2016, 6:18 PM), <http://interc.pt/29fl2XD>.



“temporarily” designated as areas of active hostilities, and the extent of the civilian casualties that resulted from the raid, the ACLU seeks information through this FOIA request.

## **II. Requested Records**

The ACLU seeks the release of any and all records—including legal and policy memoranda, guidance documents, before-the-fact assessments, and after-action reports—that pertain to:

- (1) The legal and policy bases in domestic, foreign, and international law upon which the government evaluated or justified the al Ghayil Raid, including but not limited to records related to the designation of parts of Yemen as “areas of active hostilities,” and the legal and factual basis that the government uses in designating such areas;
- (2) The process by which the government approved the al Ghayil Raid, including which individuals possessed decision-making authority and the evidentiary standard by which the factual evidence was evaluated to support the determination;
- (3) The process by which the decision was made to designate three parts of Yemen as “areas of active hostilities”;
- (4) Before-the-fact assessments of civilian or bystander casualties of the raid and the “after-action” investigation into the raid; and
- (5) The number and identities of individuals killed or injured in the al Ghayil Raid, including but not limited to the legal status of those killed or injured, with these separated out by individuals intentionally targeted and collateral casualties or injuries.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

## **III. Application for Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C.

§ 552(a)(6)(E).<sup>17</sup> There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>18</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>19</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to over 2.5 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>20</sup>

<sup>17</sup> *See also* 32 C.F.R. § 286.8(e) (DoD); 28 C.F.R. § 16.5(e) (DOJ); 22 C.F.R. § 171.11(f) (State Department); 32 C.F.R. § 1900.34 (CIA).

<sup>18</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B) (DoD); 28 C.F.R. § 16.5(e)(1)(ii) (DOJ); 22 C.F.R. § 171.11(f)(2) (State Department); 32 C.F.R. § 1900.34(c)(2) (CIA).

<sup>19</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

<sup>20</sup> *See, e.g.,* Press Release, American Civil Liberties Union, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>21</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>22</sup> The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

---

Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>21</sup> See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program> (quoting ACLU attorney Hugh Handeyside); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

<sup>22</sup> See, e.g., Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ — Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

The ACLU website includes many features on information obtained through the FOIA.<sup>23</sup> For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>24</sup>

---

<sup>23</sup> *See, e.g.*, Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process* (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU Case Page <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU Case Page, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU Case Page, <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *Patriot FOIA*, ACLU Case Page, <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU Case Page, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088>.

<sup>24</sup> *The Torture Database*, ACLU, <https://www.thetorturedatabase.org>; *see also Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>25</sup> Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program<sup>26</sup>; a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>27</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>28</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>29</sup>

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>30</sup> Specifically, the requested records relate to the legal and factual bases for the recent al Ghayil

---

documents; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>25</sup> Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance, ACLU, [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>26</sup> *Bad Trip: Debunking the TSA's 'Behavior Detection' Program*, ACLU (2017), [https://www.aclu.org/sites/default/files/field\\_document/dem17-tsa\\_detection\\_report-v02.pdf](https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf).

<sup>27</sup> *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>28</sup> *Statistics on NSL's Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

<sup>29</sup> Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>30</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B) (DOD); 28 C.F.R. § 16.5(e)(1)(ii) (DOJ); 22 C.F.R. § 171.11(f)(2) (State Department); 32 C.F.R. § 1900.34(c)(2) (CIA).

Raid and the subsequent investigations. As discussed in Part I, *supra*, the al Ghayil Raid is the subject of widespread public controversy and media attention.<sup>31</sup>

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

#### **IV. Application for Waiver or Limitation of Fees**

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).<sup>32</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.

As discussed above, credible media and other investigative accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because little specific information about the legal and factual justification for the raid or the subsequent investigation is publicly available, the records sought are certain to contribute significantly to the public’s understanding of the legal and policy framework under which the government operated and the extent of civilian casualties that occurred during the raid.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

---

<sup>31</sup> *See supra* Part I, at 2-4 nn. 2-15.

<sup>32</sup> 32 C.F.R. § 286.12(l)(1) (DOD); 28 C.F.R. § 16.10(k)(2) (DOJ); 22 C.F.R. § 171.16(a) (State Department); 32 C.F.R. § 1900.13(b)(2) (CIA).



B. The ACLU is a representative of the news media and the records are not sought for commercial use.

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III)<sup>33</sup>; see also *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>34</sup>

<sup>33</sup> See also 32 C.F.R. § 286.12(b)(6) (DOD); 28 C.F.R. § 16.10(b)(6) (DOJ); 22 C.F.R. § 171.14(b)(5)(ii)(C) (State Department); 32 C.F.R. § 1900.02(h)(3) (CIA).

<sup>34</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>35</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

\* \* \*

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 32 C.F.R. § 286.8(e)(1) (DoD); 28 C.F.R. § 16.5(e)(4) (DOJ); 22 C.F.R. § 171.11(f)(4) (State Department); 32 C.F.R. § 1900.34(c) (CIA).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Anna Diakun  
American Civil Liberties Union  
125 Broad Street—18th Floor  
New York, New York 10004  
T: 212.549.2500  
F: 212.549.2654  
adiakun@aclu.org

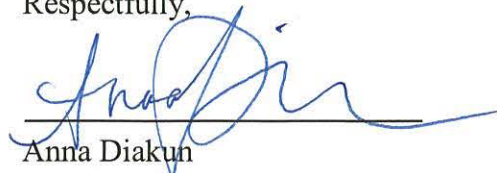
I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

---

<sup>35</sup> In September 2016, the State Department granted a fee waiver to the ACLU with regard to a FOIA request concerning the targeted killing program. Similarly, in March 2009, the State Department also granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.



Respectfully,



Anna Diakun

American Civil Liberties Union  
Foundation

125 Broad Street—18th Floor

New York, New York 10004

T: 212.549.2500

F: 212.549.2654

[adiakun@aclu.org](mailto:adiakun@aclu.org)

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

# Exhibit 21

June 14, 2018

Rebecca Tinio  
Assistant United States Attorney  
Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, New York 10007

**Re: *ACLU et al. v. DOD et al.*, No. 17 Civ. 3391 (PAE)  
Sources Containing Official Acknowledgments**

Dear Ms. Tinio:

Consistent with Judge Engelmayer's request at the June 8, 2018 pre-motion conference, please find attached PDF copies of sources that, in Plaintiffs' view, contain official government acknowledgments. These sources are:

- *Hearing on United States Special Operations Command*, Sen. Comm. on Armed Servs., 115th Cong. 33–34 (2017), available at [https://www.armed-services.senate.gov/imo/media/doc/17-41\\_05-04-17.pdf](https://www.armed-services.senate.gov/imo/media/doc/17-41_05-04-17.pdf).
- *Hearing to Receive Testimony on United States Central Command and United States Africa Command*, Sen. Comm. on Armed Servs., 115th Cong. 88–92 (2017), available at [https://www.armed-services.senate.gov/imo/media/doc/17-18\\_03-09-17.pdf](https://www.armed-services.senate.gov/imo/media/doc/17-18_03-09-17.pdf).
- Letter from President Donald J. Trump to the Speaker of the House of Representatives and the President Pro Tempore of the Senate (June 6, 2017), <https://www.whitehouse.gov/briefings-statements/text-letter-president-speaker-house-representatives-president-pro-tempore-senate>.
- Nicole Gaouette & Barbara Starr, *US Commander Takes Full Responsibility for SEAL Raid in Yemen*, CNN, Mar. 9, 2017, <https://www.cnn.com/2017/03/09/politics/general-votel-seal-raid-yemen-hearing/index.html>.
- Press Briefing, White House Off. of Press Sec'y, Press Briefing by Press Secretary Sean Spicer #7 (Feb. 2, 2017), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020217>.



National Office  
125 Broad Street, 18th floor  
New York NY 10004  
(212) 549-2500  
[aclu.org](http://aclu.org)



National Office  
125 Broad Street, 18th floor  
New York NY 10004  
(212) 549-2500  
aclu.org

- Press Briefing, White House Off. of Press Sec’y, Press Briefing by Press Secretary Sean Spicer (Feb. 27, 2017), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-022717>.
- Press Release, Dep’t of Defense, U.S. Service Member Killed in Raid on Terrorists in Yemen (Jan. 29, 2017), <https://www.defense.gov/News/Article/Article/1063593/usforces-kill-14-al-qaida-in-the-arabian-peninsula-terrorists-in-yemen>.
- Press Release, U.S. Central Command, U.S. Central Command Statement on Yemen Raid (Feb. 1, 2017), <http://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1068267/us-central-command-statement-on-yemen-raid>.
- Terri Moon Cronk, *U.S. Raid in Yemen Garners Intelligence*, DOD News, Jan. 30, 2017, <https://www.defense.gov/News/Article/Article/1064682/us-raid-in-yemen-garners-intelligence/source/GovDelivery>.

While this list contains those sources that Plaintiffs consider to be the most relevant at this time, Plaintiffs may rely on additional information at a future date.

Respectfully,

/s/ Anna Diakun  
Anna Diakun  
Brett Max Kaufman  
Hina Shamsi  
American Civil Liberties  
Union Foundation  
125 Broad Street—18th Floor  
New York, New York 10004

*Counsel for Plaintiffs*

# Exhibit 22

~~SECRET//NOFORN~~  
Official - Sensitive

**Edwards, Ronako**

**From:** Rajpal, Sabeena  
**Sent:** Monday, August 07, 2017 9:52 AM  
**To:** Heifferon, Christina M  
**Subject:** FW: Yemen [redacted]

B5

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

For Yemen FOIA

**Official - Sensitive**

~~SECRET~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: (Derived) Classification derived from previous message(s)

**From:** Wisner, David G  
**Sent:** Thursday, January 26, 2017 5:57 PM  
**To:** Rajpal, Sabeena; Jones, Stuart E; Lenderking, Timothy A; Germain, Ellen J; Weigold Schultz, Eva A; NEA-ARP-Saudi Arabia Desk-DL; CT\_StaffAssistants; Siberell, Justin H; [redacted]; Richards, Marie J; Rangaswamy, Roopa; Siberell, Justin H; Swanson, Nate L; Adler, Michael J; Bell, Zehra H; Tueller, Matthew H; Leaf, Barbara A  
**Cc:** Smith, Demian; Kenney, Kristie A  
**Subject:** Yemen [redacted]

B6

B5

All, the Counselor provided the below readout [redacted] If I missed anything major or mischaracterized anything, perhaps AA/S Jones or Ambassador Tueller might fill in gaps.

B5

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1

DGW

David Wisner  
Special Assistant to the Counselor  
SIPR: [wisnerdg@state.gov](mailto:wisnerdg@state.gov)

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

~~SECRET//NOFORN~~  
Official - Sensitive

JWICS: [dwisner@state.ic.gov](mailto:dwisner@state.ic.gov)  
Office: +1 202 647 4654

Official - Sensitive

~~SECRET//NOFORN~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: OCA: 1.4 a, b, c, d

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

# Exhibit 23



~~SECRET//NOFORN~~  
Official - Sensitive

**Edwards, Ronako**

---

**From:** Rajpal, Sabeena  
**Sent:** Monday, August 07, 2017 9:52 AM  
**To:** Heifferon, Christina M  
**Subject:** FW: Yemen DC Readout

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

For Yemen FOIA

**Official - Sensitive**

~~SECRET~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: (Derived) Classification derived from previous message(s)

---

**From:** Wisner, David G  
**Sent:** Thursday, January 26, 2017 5:57 PM  
**To:** Rajpal, Sabeena; Jones, Stuart E; Lenderking, Timothy A; Germain, Ellen J; Weigold Schultz, Eva A; NEA-ARP-Saudi Arabia Desk-DL; CT\_StaffAssistants; Siberell, Justin H; [redacted]; Richards, Marie J; Rangaswamy, Roopa; Siberell, Justin H; Swanson, Nate L; Adler, Michael J; Bell, Zehra H; Tueller, Matthew H; Leaf, Barbara A  
**Cc:** Smith, Demian; Kenney, Kristie A  
**Subject:** Yemen DC Readout

B6

All, the Counselor provided the below readout of the DC. If I missed anything major or mischaracterized anything, perhaps AA/S Jones or Ambassador Tueller might fill in gaps.

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

DGW

David Wisner  
Special Assistant to the Counselor  
SIPR: [wisnerdg@state.gov](mailto:wisnerdg@state.gov)

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

~~SECRET//NOFORN~~  
Official - Sensitive

JWICS: [dwisner@state.ic.gov](mailto:dwisner@state.ic.gov)  
Office: +1 202 647 4654

Official - Sensitive

~~SECRET//NOFORN~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: OCA: 1.4 a, b, c, d

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

# Exhibit 24

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**Edwards, Ronako**

---

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted] Richardson, Timothy M [redacted]  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen [redacted]

B6

B5

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
SiberellJH@state.gov (unclass: SiberellJH@state.gov)  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 25

**Edwards, Ronako**

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

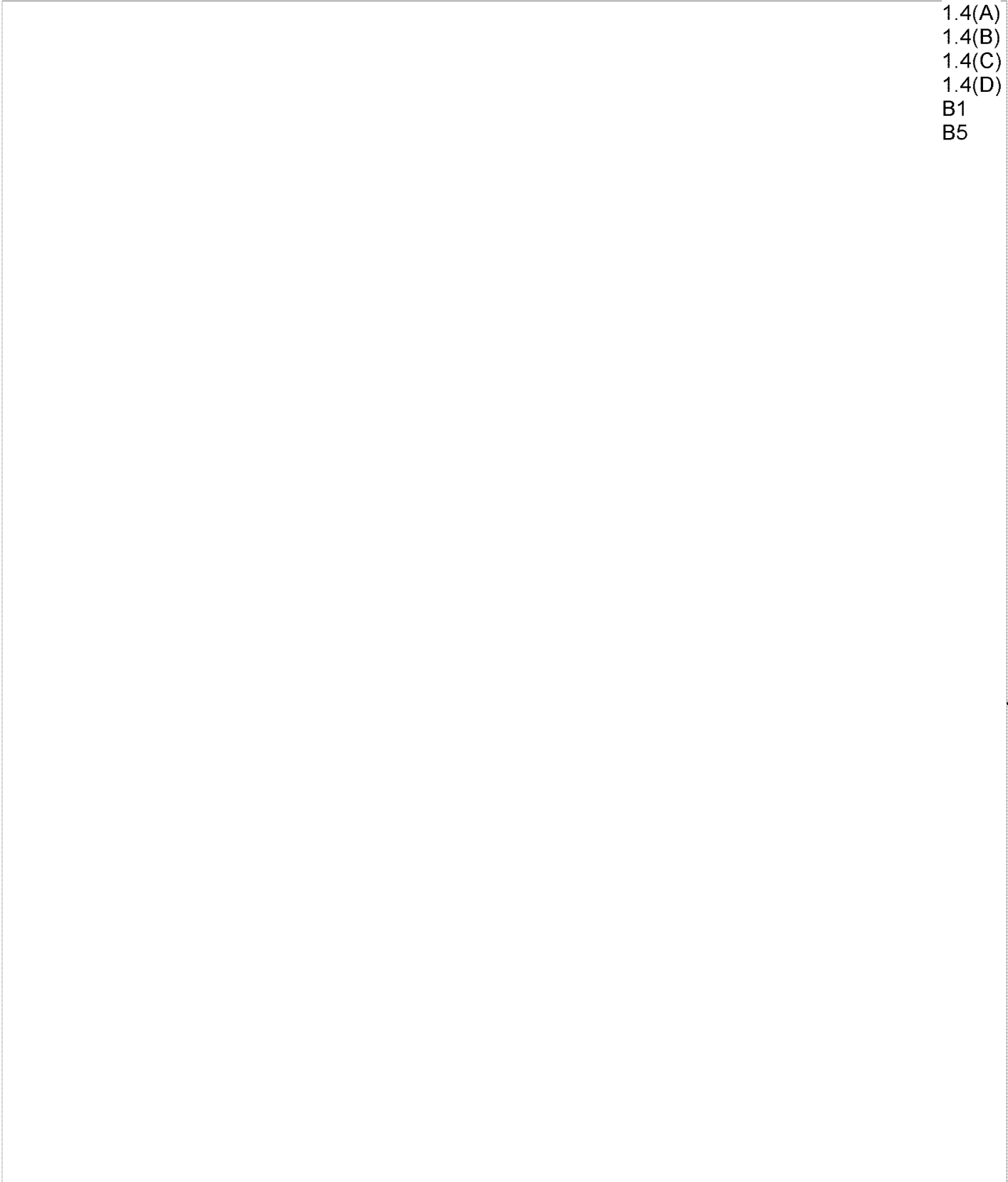
**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted] Richardson, Timothy M; [redacted]  
 [redacted] B6  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen [redacted] B5

[Large redacted area]

1.4(A)  
 1.4(B)  
 1.4(C)  
 1.4(D)  
 B1  
 B5



1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5



--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
[SiberellJH@state.gov](mailto:SiberellJH@state.gov) (unclass: [SiberellJH@state.gov](mailto:SiberellJH@state.gov))  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 26

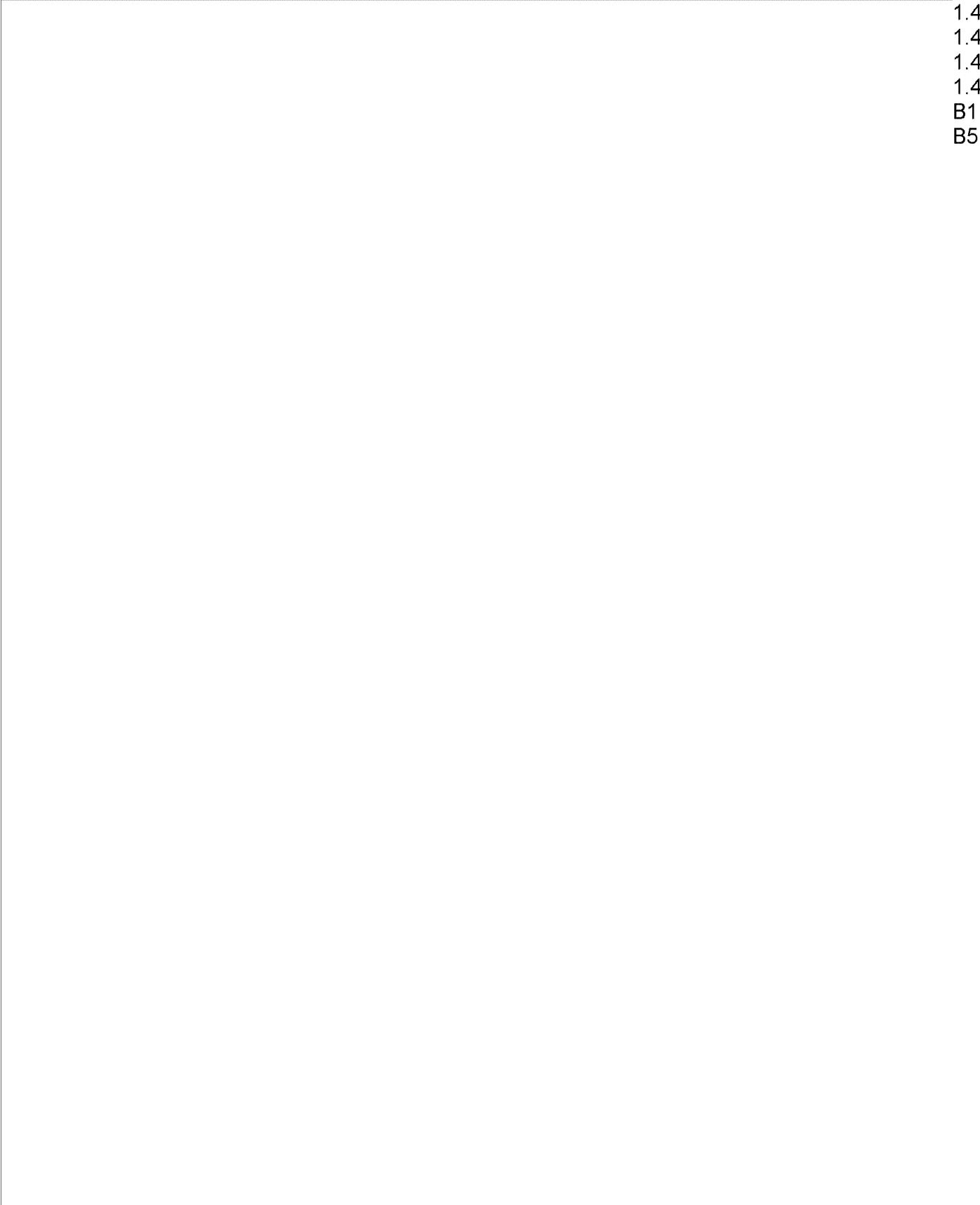
**Edwards, Ronako**

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted]; Richardson, Timothy M; [redacted] B6  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen [redacted] B5

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5



1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
SiberellJH@state.sgov.gov (unclass: SiberellJH@state.gov).  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 27

~~TOP SECRET~~

~~SECRET//NOFORN WITH TOP SECRET//~~

000082

~~NOFORN ATTACHMENTS~~

THE WHITE HOUSE

WASHINGTON

January 26, 2017

MEMORANDUM FOR

MS. KRISTEN BAKOTIC  
Executive Secretary  
Office of the Vice President

MS. KATHERINE WALSH  
Assistant to the President and  
Deputy Chief of Staff

MR. JOSEPH E. MACMANUS  
Executive Secretary  
Department of State

MS. SUSAN M. BRANCATO  
Executive Secretary  
Director of National  
Intelligence

MR. DAVID R. PEARL  
Executive Secretary  
Department of the Treasury

MS. HEATHER N. DANIELS  
Executive Secretary  
National Counterterrorism  
Center

MR. MICHAEL L. BRUHN  
Executive Secretary  
Department of Defense

MS. THERESA RANDALL  
Executive Secretary  
Central Intelligence Agency

MS. TASHINA GAUHAR  
Associate Deputy Attorney  
General  
Department of Justice

MR. NEILESH SHELAT  
Executive Secretary  
U.S. Agency for International  
Development

MS. KIM O'CONNOR  
Executive Secretary  
Department of Homeland Security

MR. RICHARD W. BOLSON  
Special Assistant for  
Interagency Affairs (J-5)  
Joint Chiefs of Staff

MR. JACOB CHRIQUI  
Special Assistant to the  
Representative of the U.S. to  
the United Nations

(1.4)(d), (B)(5) SUBJECT: Deputies Committee Meeting on Yemen (b)(1),(b)(5)  
(b)(1),(b)(5) ~~SECRET~~

(1.4)(d), (B)(5) There will be a Deputies Committee meeting on Yemen (b)(1),(b)(5)  
(b)(1),(b)(5) on Thursday, January 26, 2017, from 2:00 - 3:00 p.m. in  
the White House Situation Room. An annotated agenda is attached

~~SECRET//NOFORN WITH TOP SECRET//~~  
~~NOFORN ATTACHMENTS~~

Classified by: J. Keith Kellogg  
Reason: 1.4(d)  
Declassify on: 1/25/27

OCT 10 2017

R-1 NSC

17-11-1705

~~TOP SECRET~~



~~SECRET/NOFORN WITH TOP SECRET/~~  
~~NOFORN ATTACHMENT~~

at Tab A. Additional background materials are attached at  
Tabs B-D. Please pass the attached to Deputies (to include plus  
one, if applicable). If you have any questions, please contact

(b)(5),(b)(6) Dan Schneiderman at  
(b)(5),(b)(6) Paul Davies (b)(5),(b)(6) and (b)(5),(b)(6)  
(S (17))

(B)(6)

(b)(6)

(b)(6) LTG (Ret) J. Keith Kellogg  
Executive Secretary and  
Chief of Staff

Attachments  
Tab A Agenda

(b)(1),(b)(5)

~~SECRET/NOFORN WITH TOP SECRET/~~  
~~NOFORN ATTACHMENT~~

**TAB A**

~~TOP SECRET//NOFORN~~

000082

(1.4)(d), (B)(5)

DEPUTIES COMMITTEE MEETING ON YEMEN

(b)(1),(b)(5)

DATE: January 26, 2017  
LOCATION: White House Situation Room  
TIME: 2:00 - 3:00 p.m.

AGENDA

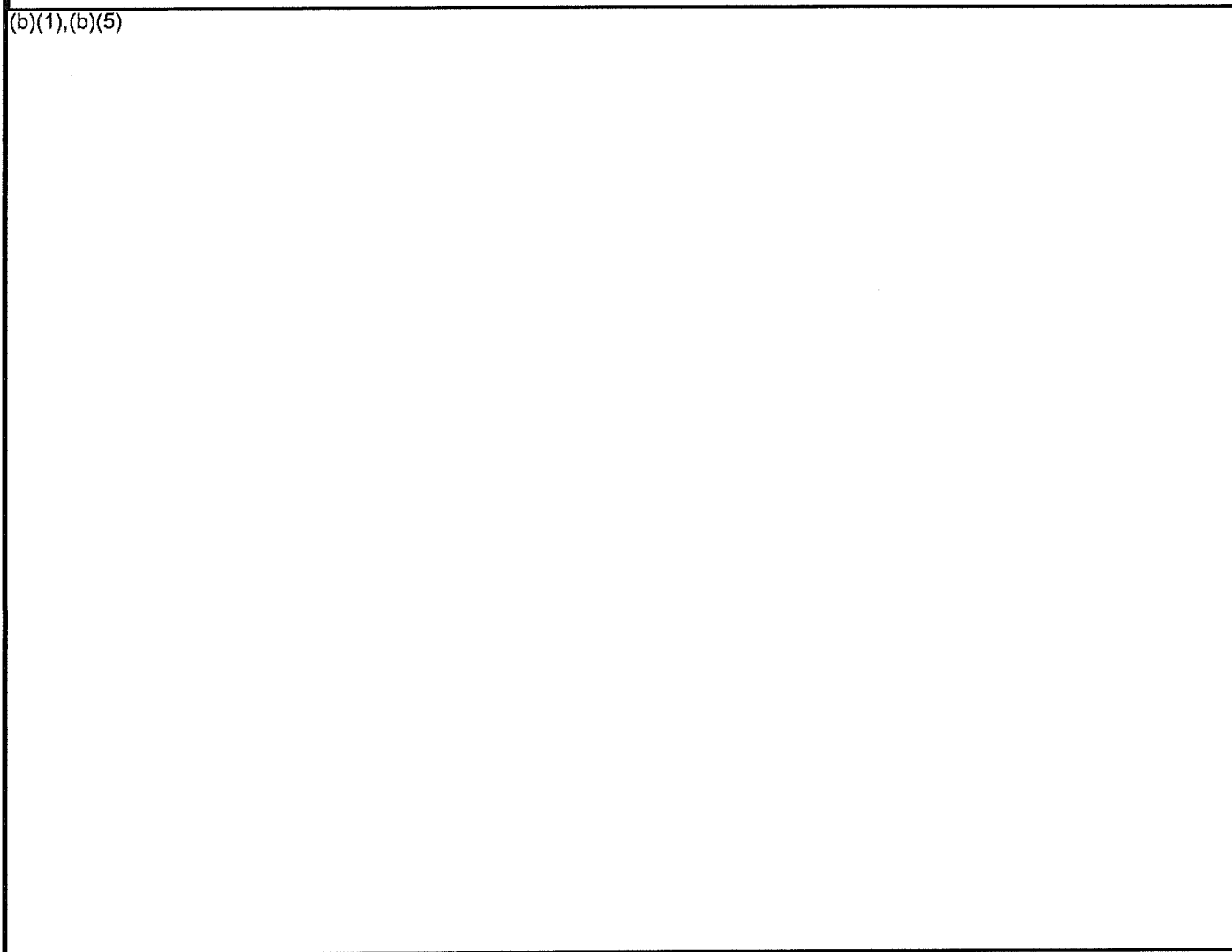
(b)(1),(b)(5)

~~TOP SECRET//NOFORN~~

Classified by: J. Keith Kellogg  
Reason: 1.4(b)(d)  
Declassify on: 1/25/27

~~TOP SECRET//NOFORN~~

(b)(1),(b)(5)



~~TOP SECRET//NOFORN~~

# Exhibit 28

October 19, 2018

**BY EMAIL**

Rebecca S. Tinio  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, New York 10007

Ms. Tinio:

Pursuant to the Court's October 11 scheduling order, ECF No. 93, Plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to inform Defendants Department of State and Department of Defense which documents the ACLU continues to challenge.

The ACLU continues to challenge the following Department of State documents:

- C06432239
- C06432636
- C06432854
- C06432231

The ACLU also continues to challenge the following Department of Defense documents:

- CENTCOM/020-026
- CENTCOM/027-030
- CENTCOM/036-038
- CENTCOM/045-053
- CENTCOM/246-268
- CENTCOM/330-334
- JS/009-011
- JS/022-023
- JS/048-053
- JS/054-056
- JS/057-058
- JS/059-062
- JS/188-191
- JS/261-266
- JS/273-278
- JS/279-282
- JS/330-336



National Office  
125 Broad Street, 18th floor  
New York NY 10004  
(212) 549-2500  
aclu.org

- JS/339-345
- STATE/034-035
- STATE/036-038
- STATE/039-044

The ACLU no longer challenges the following documents:

- CENTCOM/003-005
- CENTCOM/164-166
- CENTCOM/184-186
- CENTCOM/304-307
- JS/240-242



Sincerely,

*/s/ Anna Diakun*

Anna Diakun

Brett Max Kaufman

Hina Shamsi

American Civil Liberties

Union Foundation

125 Broad Street, 18th Floor

New York, New York 10004

adiakun@aclu.org

*Counsel for Plaintiffs*

# Exhibit 29



RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**Edwards, Ronako**

---

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted] Richardson, Timothy M [redacted]  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen DC Readout

B6

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
SiberellJH@state.gov (unclass: SiberellJH@state.gov)  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 30

**Edwards, Ronako**

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted] Richardson, Timothy M; [redacted]  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen DC Readout

B6

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
[SiberellJH@state.gov](mailto:SiberellJH@state.gov) (unclass: [SiberellJH@state.gov](mailto:SiberellJH@state.gov))  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 31



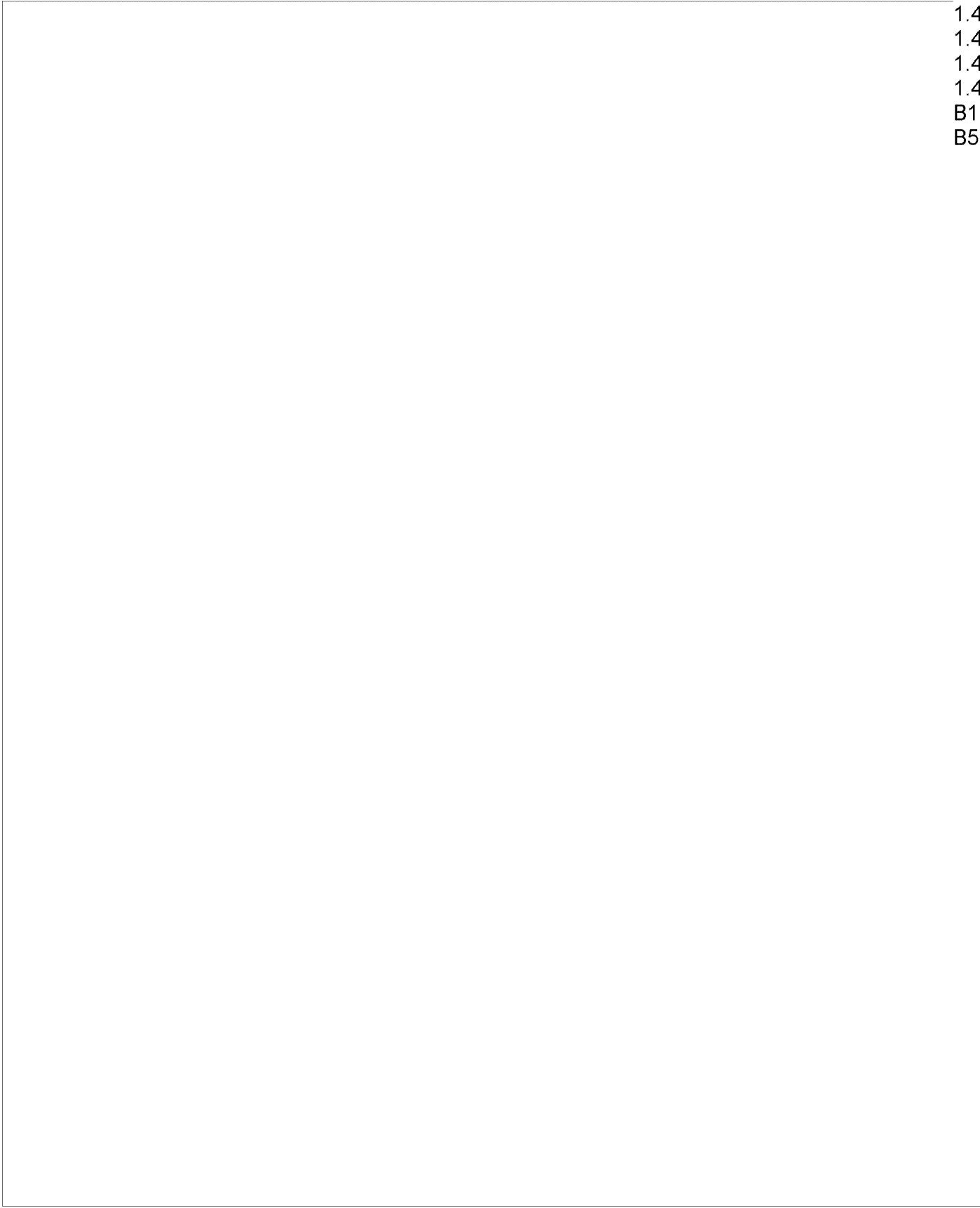
**Edwards, Ronako**

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; Romanowski, Alina L; Richards, Marie J; [redacted]; Richardson, Timothy M; [redacted] B6  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen DC Readout

[Large redacted area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5



1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
SiberellJH@state.gov (unclass: SiberellJH@state.gov).  
Tel: 202-647-9892

**Sensitivity:** Sensitive  
**Classification:** ~~SECRET//NOFORN~~  
**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State  
**Derived From:** DSCG 11-01  
**Declassify On:** 2027/01/06

# Exhibit 32

~~SECRET//NOFORN~~  
Official - Sensitive

**Edwards, Ronako**

**From:** Rajpal, Sabeena  
**Sent:** Monday, August 07, 2017 9:52 AM  
**To:** Heifferon, Christina M  
**Subject:** FW: Yemen DC Readout

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

For Yemen FOIA

DECLASSIFIED BY: Sharon Ahmad,  
Senior Reviewer, 09-28-2018

Official - Sensitive

~~SECRET~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: (Derived) Classification derived from previous message(s)

**From:** Wisner, David G  
**Sent:** Thursday, January 26, 2017 5:57 PM  
**To:** Rajpal, Sabeena; Jones, Stuart E; Lenderking, Timothy A; Germain, Ellen J; Weigold Schultz, Eva A; NEA-ARP-Saudi Arabia Desk-DL; CT\_StaffAssistants; Siberell, Justin H; [redacted]; Richards, Marie J; Rangaswamy, Roopa; Siberell, Justin H; Swanson, Nate L; Adler, Michael J; Bell, Zehra H; Tueller, Matthew H; Leaf, Barbara A  
**Cc:** Smith, Demian; Kenney, Kristie A  
**Subject:** Yemen DC Readout

B6

All, the Counselor provided the below readout of the DC. If I missed anything major or mischaracterized anything, perhaps AA/S Jones or Ambassador Tueller might fill in gaps.

[redacted] 1.4(A)  
[redacted] 1.4(B)  
- The DC approved the DoD concept of operations in support of the UAE's Shabwah operation. [redacted] 1.4(C)  
[redacted] 1.4(D)  
[redacted] B1  
[redacted] B5

DGW

David Wisner  
Special Assistant to the Counselor  
SIPR: [wisnerdg@state.gov](mailto:wisnerdg@state.gov)

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

~~SECRET//NOFORN~~  
Official - Sensitive

JWICS: [dwisner@state.ic.gov](mailto:dwisner@state.ic.gov)  
Office: +1 202 647 4654

Official - Sensitive

~~SECRET//NOFORN~~

Classified By: Kristie Kenney - Ambassador, Office:C, Agency:U.S. Department of State  
Declassify On: 1/26/2042  
Reasons: OCA: 1.4 a, b, c, d

Edwards, Ronako

~~SECRET//NOFORN~~  
Official - Sensitive

# Exhibit 33

(b)(6) USCENTCOM CCJA

**From:** (b)(6) USCENTCOM CCJ3-OSA  
**Sent:** Wednesday, February 01, 2017 4:32 PM  
**To:** (b)(6) USCENTCOM CCJA  
**Subject:** (b)(1),Sec. 1.4(a)  
**Attachments:**

Classification: ~~SECRET//NOFORN~~

As requested...

V/r

(b)(6)

-----Original Message-----

**From:** (b)(6)  
**Sent:** Wednesday, February 01, 2017 6:59 AM  
(b)(6)  
(b)(6)

Classification: ~~SECRET//NOFORN~~

Email providing pathway for delegation of AAH strike authorities. NIGHT ORDER MOD is out.

(b)(6)

-----Original Message-----

**From:** (b)(6)  
**Sent:** Tuesday, January 31, 2017 6:51 PM  
(b)(6)  
(b)(1),Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

Team,

Last minute note I received tonight.

I am working N.O. MOD at this time.

v/r

(b)(6)



-----Original Message-----

From: (b) (6) LTC MIL USA USCENTCOM CCJ3-O  
Sent: Tuesday, January 31, 2017 6:46 PM  
To: Stearney, Scott A RADM MIL USN USCENTCOM CCJ3  
Cc: Dobbels, Daniel A Lt Col MIL USAF USCENTCOM CCJ3-A  
Subject: RE: ~~[S//NF]~~ ~~(S//NF)~~ (INFORMATION) USCENTCOM Intent for Shabwah Kinetic Fires

Classification: ~~SECRET//NOFORN~~

Sir,

I have modified what we were originally going to publish to reflect the comments listed below from the OSD-CG. I do not believe this has to be staffed through (b) (6) as it is in line with what we were previously going to publish.

Pending your approval I will publish the below verbiage in a MOD to tonight's N.O.

v/r

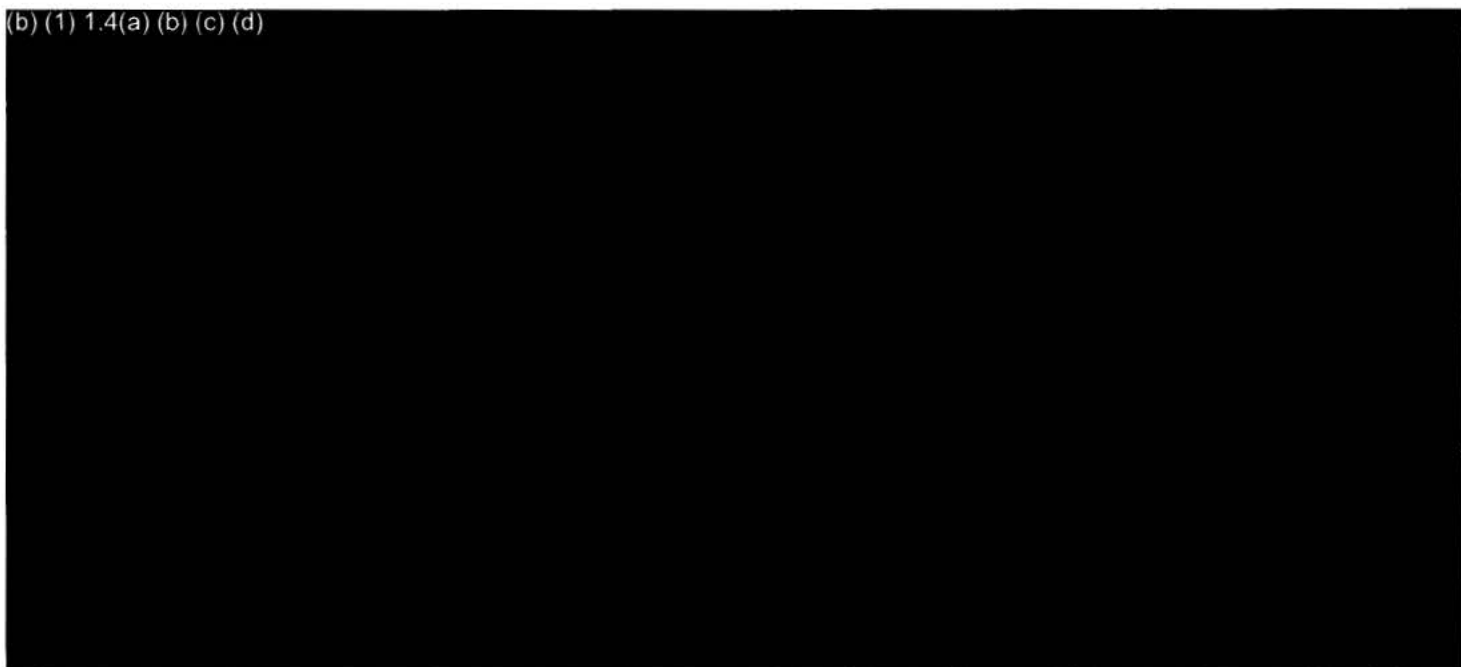
(b) (6)



\_\_\_\_\_ DRAFT COMMENTS FOR YOUR

APPROVAL \_\_\_\_\_

(b) (1) 1.4(a) (b) (c) (d)



(b)(1),(b)(5),Sec. 1.4(a)

-----Original Message-----

From: Stearney, Scott A RADM MIL USN USCENTCOM CCJ3

Sent: Tuesday, January 31, 2017 6:28 PM

To: (b)(6)

Subject: (b)(1),Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

(b)(6) here it is.

-----Original Message-----

From: Votel, Joseph L GEN MIL USA USCENTCOM CCCC

Sent: Tuesday, January 31, 2017 6:20 PM

To: Faller, Craig RADM SD; Dunford, Joseph F Jr Gen USMC JS (US); Stearney, Scott A RADM MIL USN USCENTCOM CCJ3  
Cc: Whelan, Theresa M SES OSD OUSD POLICY (US); Handelman, Kenneth B SES OSD OUSD POLICY (US); Selva, Paul J Gen USAF JS OCJCS (US); Thomas, Raymond A GEN USSOCOM SOCOM CDR; Mayville, William C Jr LTG USARMY JS ODJS (US); McKenzie, Kenneth F Jr LtGen USMC JS J5 (US); Dolan, John L Lt Gen USAF JS J3 (US); Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS; Stearney, Scott A RADM MIL USN USCENTCOM CCJ3; (b)(6); Faller, Craig RADM SD; Koffsky, Paul S SES OSD OGC (US)

Subject: (b)(1),Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

Great --- thanks Craig.

Sterno --- Night Orders pls.

-----Original Message-----

From: Faller, Craig RADM SD (b)(6)

Sent: Tuesday, January 31, 2017 5:59 PM

To: Votel, Joseph L GEN MIL USA USCENTCOM CCCC; Dunford, Joseph F Jr Gen USMC JS (US)  
Cc: Whelan, Theresa M SES OSD OUSD POLICY (US); Handelman, Kenneth B SES OSD OUSD POLICY (US); Selva, Paul J Gen USAF JS OCJCS (US); Thomas, Raymond A GEN USSOCOM SOCOM CDR; Mayville, William C Jr LTG USARMY JS ODJS (US); McKenzie, Kenneth F Jr LtGen USMC JS J5 (US); Dolan, John L Lt Gen USAF JS J3 (US); Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS; Stearney, Scott A RADM MIL USN USCENTCOM CCJ3; (b)(6); Faller, Craig RADM SD; Koffsky, Paul S SES OSD OGC (US)

(b)(1),Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

General Votel,

The Secretary is aligned with your intent. Below paragraph from OSD-GC applies.

Vr/Craig

FROM OSD-GC:

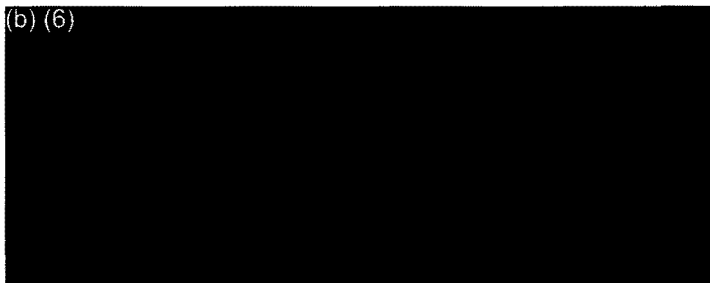
(b) (1) 1.4(a) (b) (c) (d)



Craig Faller, RADM

Sr Military Asst to SecDef

UNCLASS:



RED:

NIPR:

SIPR:

From: Votel, Joseph L GEN MIL USA USCENCOM CCCC [mailto:];  
Sent: Monday, January 30, 2017 7:01 PM  
To: Faller, Craig RADM SD >; Dunford, Joseph F Jr Gen USMC JS (US)  
Cc: Whelan, Theresa M SES OSD OUSD POLICY (US) >; Handelman, Kenneth B SES  
OSD OUSD POLICY (US) >; Selva, Paul J Gen USAF JS OCJCS (US)  
>; Thomas, Raymond A GEN USSOCOM SOCOM CDR  
>; Mayville, William C Jr LTG USARMY JS ODJS (US)  
>; McKenzie, Kenneth F Jr LtGen USMC JS J5 (US)  
>; Dolan, John L Lt Gen USAF JS J3 (US)  
Brown, Charles Q Lt Gen MIL USAF USCENCOM CCDC-DC >; Ferrell, Terry R MG MIL

USA USCENTCOM CCDC-DC-COS (b)(6) Stearney, Scott A RADM MIL USN USCENTCOM CCJ3

(b)(6) USN (US) (b)(6) (b)(6)

(b)(6)

(b)(1), Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

Mr. Secretary and Chairman,

(b)(1),(b)(5), Sec. 1.4(a), Sec. 1.4(d)

Appreciate very much your continued support for our critical efforts to enable (b) success.

(b)  
(1), Sec  
. 1.4(a)

Vr,

Votel

Joseph L. Votel

General, US Army

Commander, US Central Command

(b)(6)



Classified By:Votel, Joseph L GEN MIL USA USCENTCOM CCCC Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/30/2027  
Classification: ~~SECRET//NOFORN~~

Classified By:Votel, Joseph L GEN MIL USA USCENTCOM CCCC Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

Classified By:Stearney, Scott A RADM MIL USN USCENTCOM CCJ3 Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

Classified By:(b)(6) Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

Classified By:(b)(6) Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

Classified By:(b)(6) Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

Classified By (b)(6) Derived From:USCENTCOM SCG, CCR 380-14, 24  
Feb 2016 Declassify On:1/31/2042  
Classification: ~~SECRET//NOFORN~~

# Exhibit 34

(b)(6)

USCENTCOM CCJA

**From:** (b)(6) USCENTCOM CCJ3-OSA  
**Sent:** Thursday, January 26, 2017 11:16 AM  
**To:** (b)(6)  
**Subject:** (b)(1),Sec. 1.4(a)

Classification: ~~SECRET//NOFORN~~

(b)(6)

FYSA, JS GENADMIN below.

V/r,

(b)(6)

-----Original Message-----

**From:** (b)(6)  
**Sent:** Thursday, January 26, 2017 10:56 AM  
**To:** CCJ3 O SA  
**Cc:** TF LNO  
**Subject:** FW: (b)(6)

CLASSIFICATION: ~~SECRET~~  
CAVEATS: NONE  
TERMS: NONE

FYSA.

-----Original Message-----

**From:** (b)(6)  
**Sent:** Thursday, January 26, 2017 10:39 AM

(b)(6)

**Subject:** (b)(1),Sec. 1.4(a)

CLASSIFICATION: ~~SECRET~~  
CAVEATS: NONE  
TERMS: NONE

ALCON,



JS GENADMIN released DTG 261520Z JAN 17

VR/

(b) (6)



-----Original Message-----

From: JOINT STAFF DJ3 WASHINGTON DC [mailto: ]  
Sent: Thursday, January 26, 2017 10:22 AM  
To: [redacted]  
Subject: DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE (S)

PAASZYUW RUEKJCS1255 0261520-SSSS--RUIKAAA.  
ZNY SSSSS ZDH ZUI RUEWMCE2401 0261520  
P 261520Z JAN 17

FM JOINT STAFF DJ3 WASHINGTON DC

TO RUIPAAA/USCENTCOM CCJ3 MACDILL AFB FL RUIPAAA/USCENTCOM JOC MACDILL AFB FL INFO RUEIAAA/USSOCOM  
J3 OPERATIONS DIRECTORATE MACDILL AFB FL RUIKAAA/COMJSOC FT BRAGG NC RUEKJCS/JOINT STAFF J3 DEP-DIR  
SPECIAL OPS WASHINGTON DC RUEKJCS/JOINT STAFF WASHINGTON DC BT S E C R E T SUBJ/DOD SUPPORT TO THE UAE  
SHABWAH OFFENSIVE (S) MSGID/GENADMIN/DJ-3// SUBJ/DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE (S)//

REF/A/DESC: (b) (1) (A) [redacted]  
REF/B/DESC: CONOPS/USCENTCOM/07NOV2016//  
REF/C/DESC: MEMO/SECDEF/241800ZJAN2017//  
REF/D/DESC: CJCS/E-MAIL/25JAN2017//  
REF/E/DESC: POTUS/PPG/22MAY2013//  
AMPN/(S) REFERENCE (REF) A IS (b) (1) (A) [redacted]

[redacted] REF B IS THE U.S. CENTRAL COMMAND (USCENTCOM) CONCEPT OF OPERATIONS (CONOPS) REQUESTING SUPPORT TO UNITED ARAB EMIRATES' (UAE) SHABWAH OFFENSIVE. REF C IS THE SECDEF MEMORANDUM ENDORSING REF B AND SUBMITTING IT FOR PRESIDENTIAL APPROVAL. REF D IS THE CJCS E-MAIL INDICATING THAT THE PRESIDENT HAS APPROVED REF B. REF E IS THE PRESIDENTIAL POLICY GUIDANCE (PPG) ON PROCEDURES FOR APPROVING DIRECT ACTION AGAINST TERRORIST TARGETS LOCATED OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES.// POC (b) (6) [redacted]

[redacted] GENTEXT/REMARKS/ 1. (S) PURPOSE. THIS MESSAGE TRANSMITS SECDEF AND PRESIDENTIAL APPROVAL OF DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE AGAINST AQAP IN YEMEN.

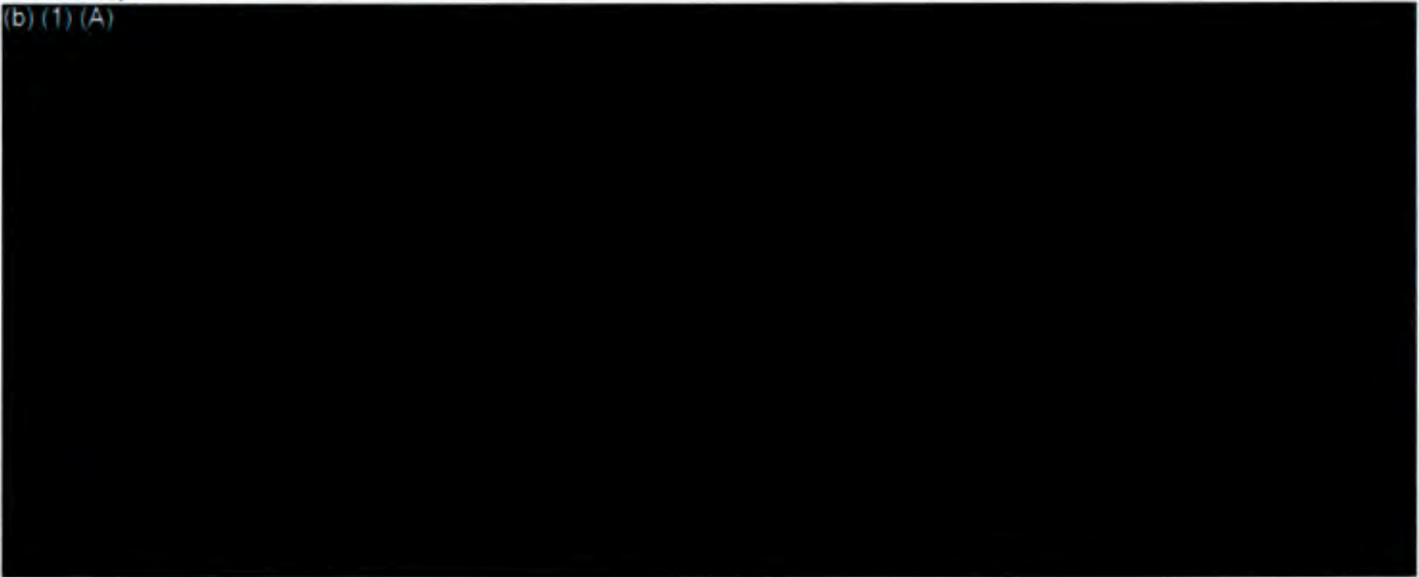
- 2. (U) EXECUTION.
- 2.A. (S) REF A REQUIRES SECDEF AND PRESIDENTIAL APPROVAL OF DIRECT ACTION IN YEMEN.
- 2.B. (S) PER REF B, CDRUSCENTCOM REQUESTED AUTHORIZATION TO SUPPORT THE UAE' OFFENSIVE AGAINST AQAP IN SHABWAH GOVERNORATE, YEMEN.
- 2.C. (S) PER REF C, THE SECDEF APPROVED REF B AND SUBMITTED IT FOR PRESIDENTIAL APPROVAL.
- 2.D. (S) PER REF D, THE POTUS HAS APPROVED REF B.
- 2.E. (S) CDRUSCENTCOM IS AUTHORIZED TO SUPPORT THE UAE SHABWAH OFFENSIVE AS DESCRIBED IN REF B.

(b) (1) (A)



2.E.3. ~~(S)~~ [REDACTED] AN AREA OF ACTIVE HOSTILITIES (AAH) FOR THE PURPOSES OF REF E.  
2.E.4. ~~(S)~~ [REDACTED] WILL MAINTAIN A NON-COMBATANT CASUALTY CUT-OFF VALUE STANDARD OF ZERO (I.E., ZERO EXPECTED CIVILIAN NONCOMBATANT DEATHS) FOR FIRES.

(b) (1) (A)



Classified by: John Dolan, Lt Gen, USAF, DJ-3

Reason: 1.4 (A)

Declassify On: 262359Z Jan 17

BT

#1255

0E67

NNNN

Received from AUTODIN 261521Z Jan 17

DERIVED FROM: NS FPP SCG

CLASSIFIED BY: [REDACTED]

DECLASSIFY ON: 25 YEARS FROM DATE OF ORIGINATION

DATE OF SOURCE: 20121011

CLASSIFICATION: ~~SECRET~~

CAVEATS: NONE

TERMS: NONE

DERIVED FROM: NS FPP SCG

CLASSIFIED BY: (b)(6)  
DECLASSIFY ON: 25 YEARS FROM DATE OF ORIGINATION  
DATE OF SOURCE: 20121011

CLASSIFICATION: ~~SECRET~~  
CAVEATS: NONE  
TERMS: NONE

Classified By: (b)(6) USCENTCOM CCI3-OSA Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb  
2016 Declassify On:1/26/2042  
Classification: ~~SECRET//NOFORN~~

# Exhibit 35

~~SECRET//NOFORN~~



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JAN 24 2017

MEMORANDUM FOR ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY  
AFFAIRS

SUBJECT: ~~(S//NF)~~ Department of Defense Support to UAE Shabwah Offensive in Yemen

~~(S//NF)~~ This memorandum requests and recommends the President's approval of the attached DoD operational proposal to support a ~~(b) (1) (A)~~ for the United Arab Emirates' (UAE's) planned offensive to clear al-Qaida in the Arabian Peninsula (AQAP) from Shabwah Governorate, Yemen. It also requests that ~~(b) (1) (A), (b) (5)~~

~~(b) (1) (A), (b) (5)~~ Please provide my recommendation to the President and request his approval of the proposal.

~~(S)~~ The recommended U.S. assistance to the UAE operation would further the President's policy to disrupt and degrade AQAP's external operations capability and would also strengthen our counterterrorism partnership with a significant regional power. The UAE has proven a reliable and capable partner but lacks the proficiency and capabilities in the areas of support requested. DoD assesses that it can support the UAE's request for U.S. military support with minimal impact on ongoing U.S. operations, including Operation INHERENT RESOLVE. I assess that the force protection risks for U.S. personnel are within acceptable levels.

~~(S//NF)~~ Key elements of DoD's recommended support to the UAE include:

~~(b) (1) 1.4(a) (b) (c) (d), (b) (5)~~

Derived from: Multiple Sources  
Declassify on: December 31, 2037



~~SECRET//NOFORN~~

17-L-0705/CENTCOM/045

~~SECRET//NOFORN~~

(b) (1) 1.4(a) (b) (c) (d), (b) (5)



~~(S//NF)~~ Specifically, I request the President's approval for the following to support the planned UAE offensive in Shabwah, Yemen:

(b) (1) 1.4(a) (b) (c) (d), (b) (5)



~~SECRET//NOFORN~~



~~SECRET//NOFORN~~

(b) (1) 1.4(a) (b) (c) (d), (b) (5)



(U) Thank you for your assistance in presenting this request to the President.

REQUEST URGENT APPROVAL DUE TO OPTIMUM  
CONDITIONS FOR IMMEDIATE COMMENCEMENT.

v/n  
J. Mattis

Attachment:

1. (~~S//NF~~) DoD Concept of Operations for Supporting the UAE Shabwah Offensive

~~SECRET//NOFORN~~

# Exhibit 36



(b)(1),(b)(5),Sec. 1.4(a),Sec. 1.4(c),Sec. 1.4(d)

(b)(1),(b)(5),Sec. 1.4(a),Sec. 1.4(c),Sec. 1.4(d)

17-L-0705/CENTCOM/049

(b)(1),(b)(5), Sec. 1.4(a), Sec. 1.4(b), Sec. 1.4(d)

(b)(1),(b)(5),Sec. 1.4(a),Sec. 1.4(c),Sec. 1.4(d)

(b)(1),(b)(5),Sec. 1.4(a),Sec. 1.4(c),Sec. 1.4(d)

17-L-0705/CENTCOM/052

(b)(1),(b)(5), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)

# Exhibit 37

# Backup Slides

USCENTCOM FOIA 17-0328L

17-L-0705/CENTCOM/245



# Exhibit 38

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(b), Sec. 1.4(c), Sec. 1.4(d)

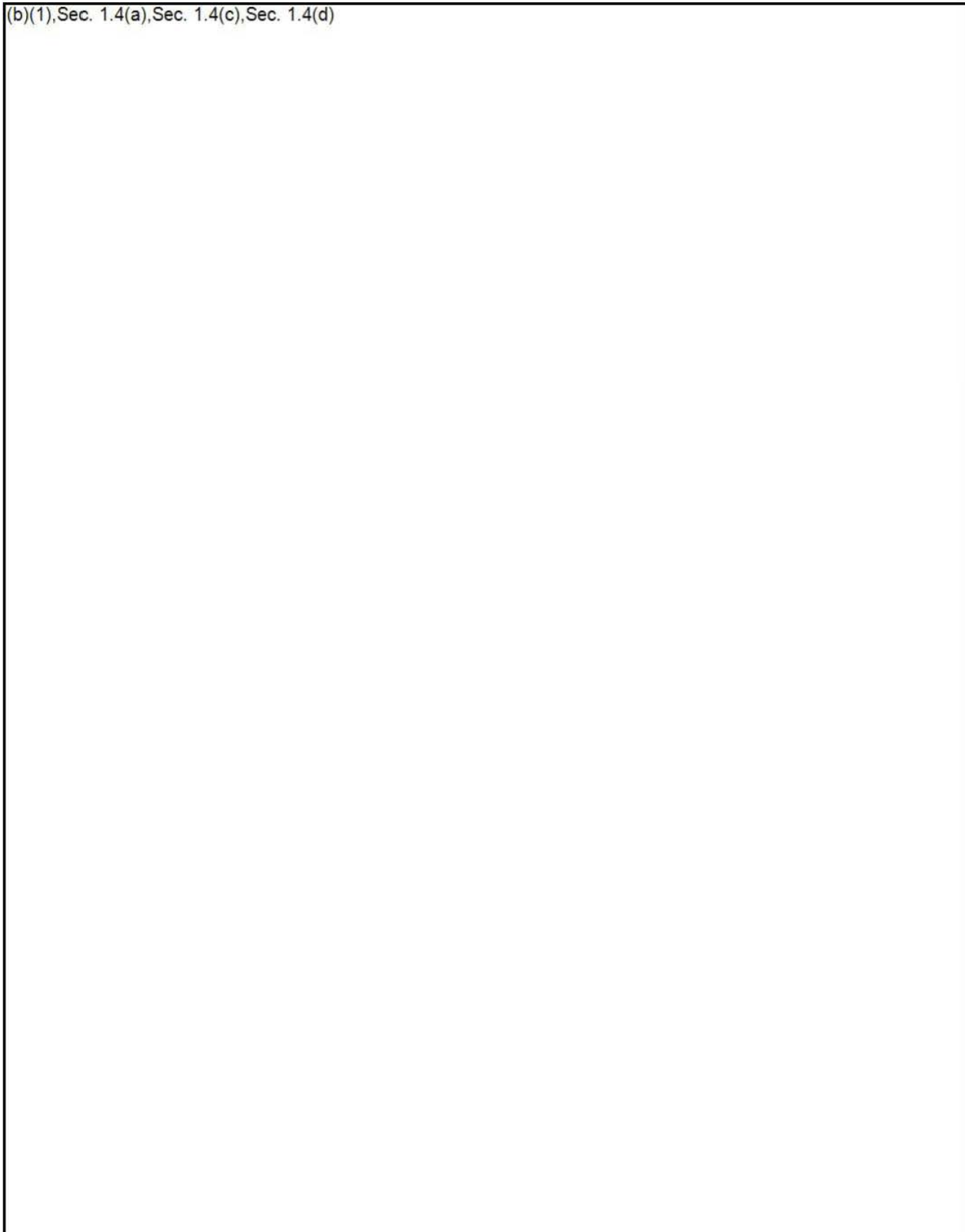
Derived from: Multiple Sources  
Declassify on: December 31, 2036

~~SECRET//NOFORN~~

17-L-0705/JS/009

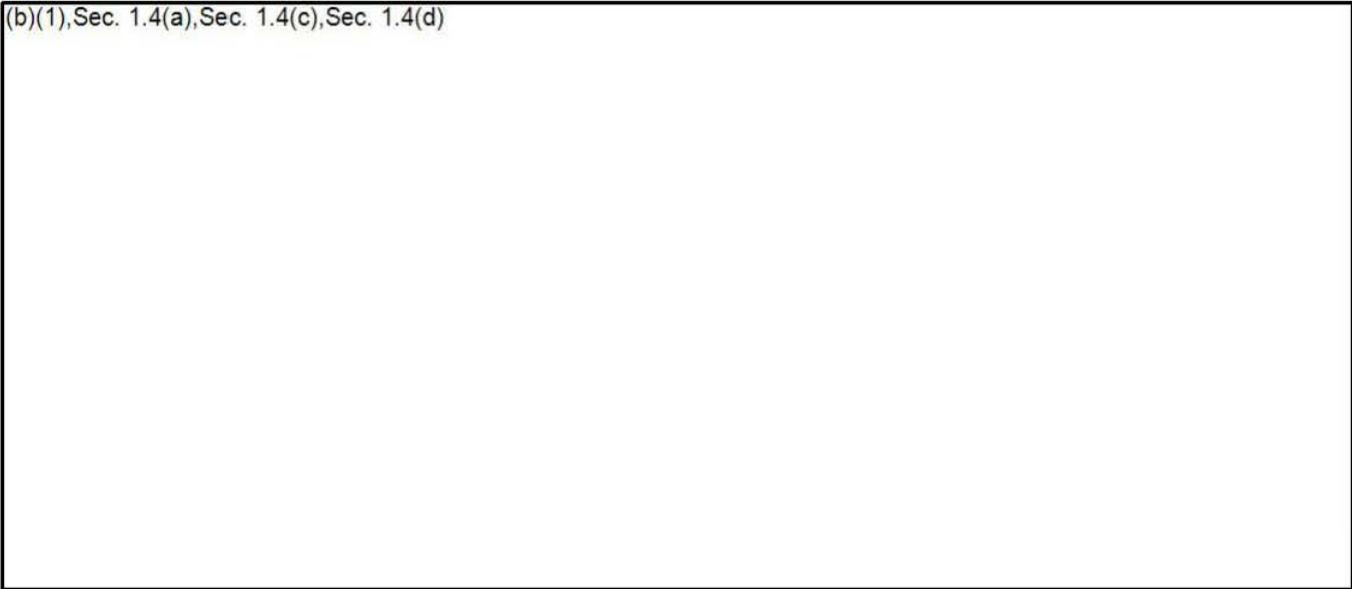
**SECRET//NOFORN**

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



# Exhibit 39

~~SECRET/NOFORN~~

THE WHITE HOUSE  
WASHINGTON

January 27, 2017

MEMORANDUM MEMORIALIZING PRESIDENTIAL AUTHORIZATION

FROM: General Michael T. Flynn, Assistant to the President for National Security Affairs

TO: General James N. Mattis, Secretary of Defense

SUBJECT: Presidential Authorization on Department of Defense Proposals Related to Yemen

PRESIDENTIAL AUTHORIZATION

Secretary of Defense James N. Mattis, on behalf of the Department of Defense, proposed Presidential authorization on the following actions by the United States related to Yemen:

1. The United States provide U.S. military support to the United Arab Emirates (UAE) for [REDACTED] to a UAE-led operation by Yemeni forces against al-Qaida in the Arabian Peninsula (AQAP) in Shabwah, Yemen.

(b) (1) 1.4(a) (b) (c) (d)

On Thursday, January 26, 2017, the President of the United States authorized the Department of Defense to provide U.S. military support to the UAE for [REDACTED] to a UAE-led operation by Yemeni forces against al-Qaida in the Arabian Peninsula (AQAP) in Shabwah, Yemen. The President authorized the following [REDACTED] aspects of this plan:

(b) (1) 1.4(a) (b) (c) (d)

2. To conduct airstrikes against AQAP targets and designate [REDACTED] an "area of active hostilities." with zero expected civilian noncombatant deaths for each such strike;

(b) (1) 1.4(a) (b) (c) (d)

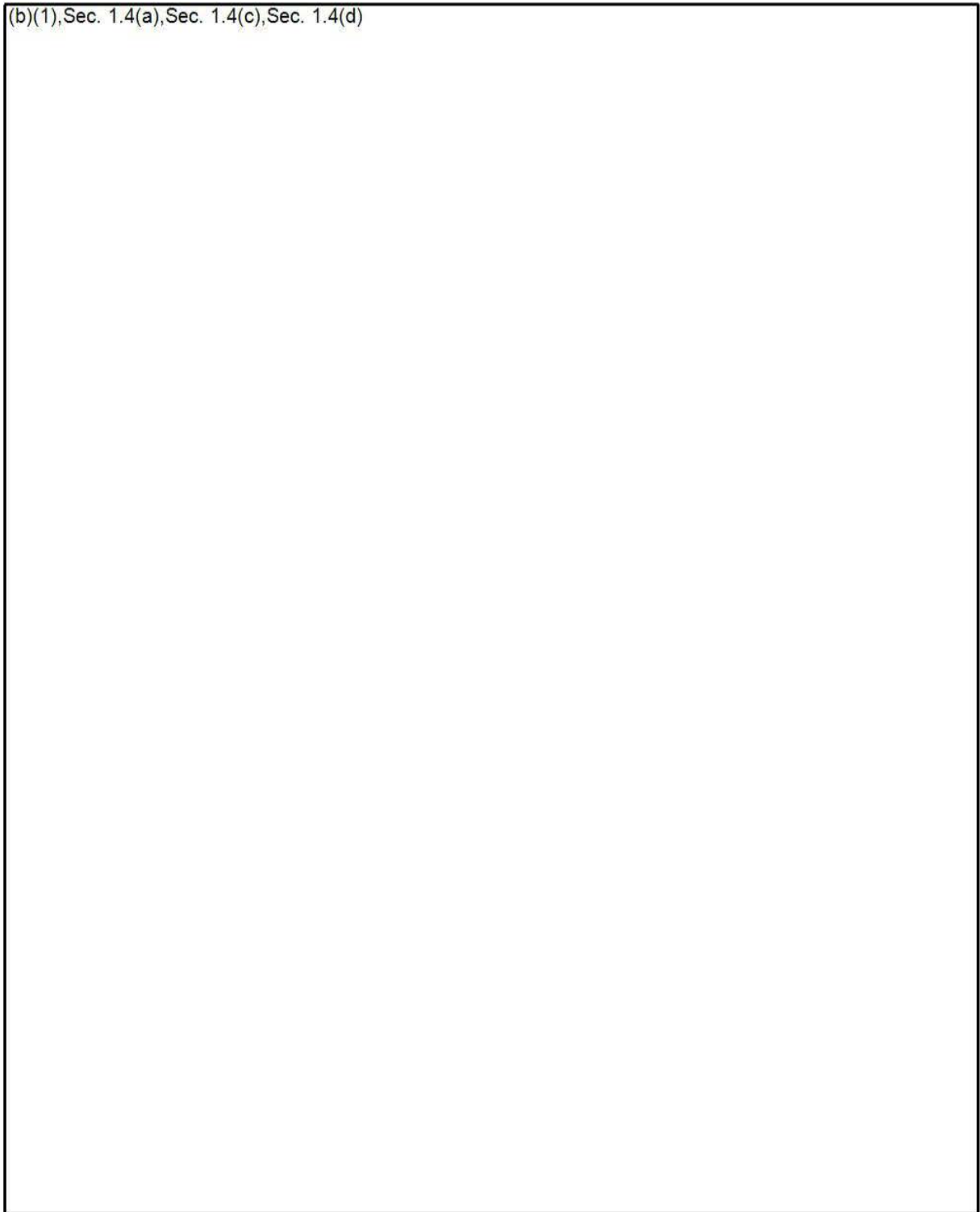
~~SECRET/NOFORN~~

# Exhibit 40



~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



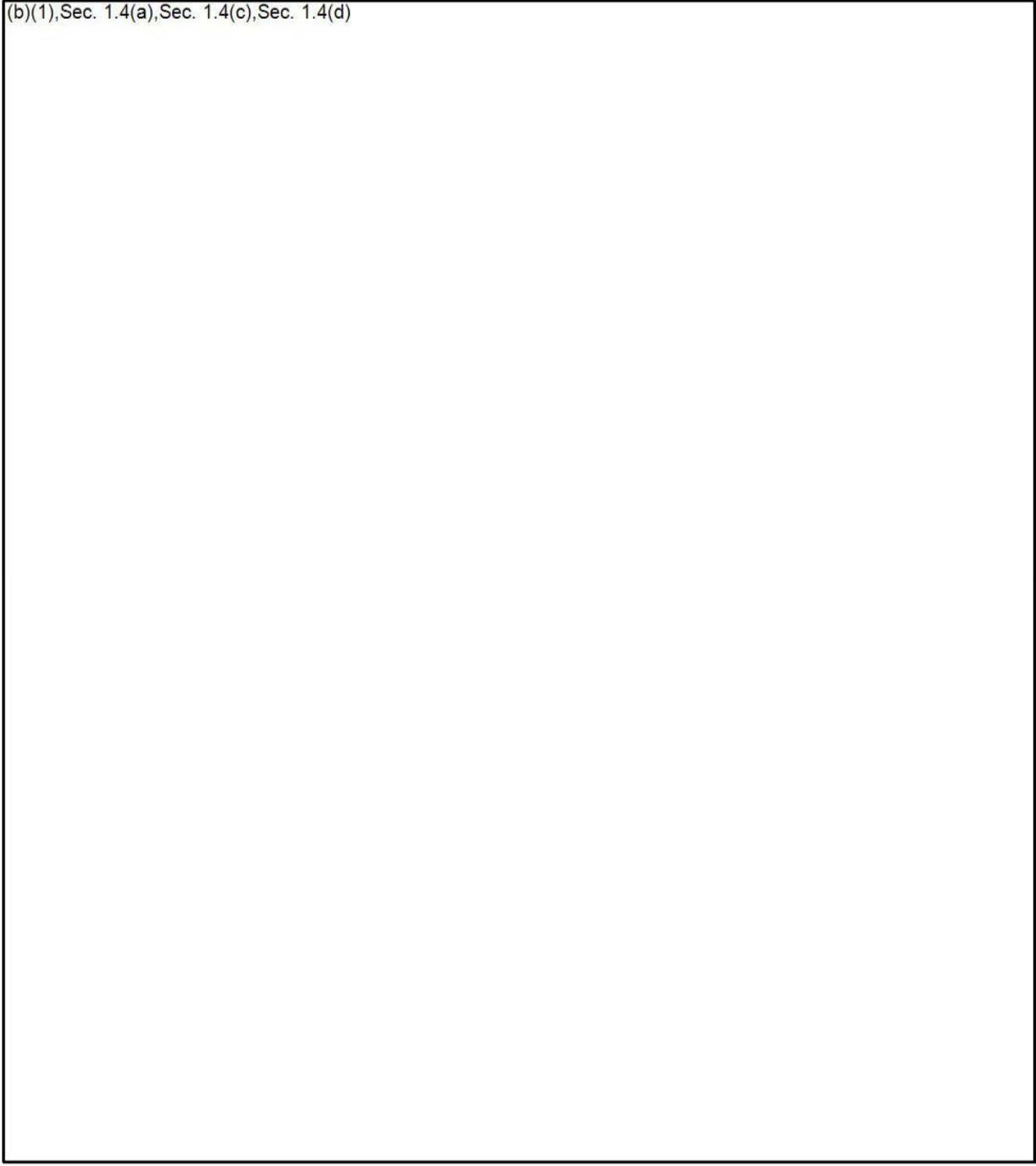
Derived From: Multiple Sources  
Declassify On: 20371231

~~SECRET//NOFORN~~

17-L-0705/JS/048

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

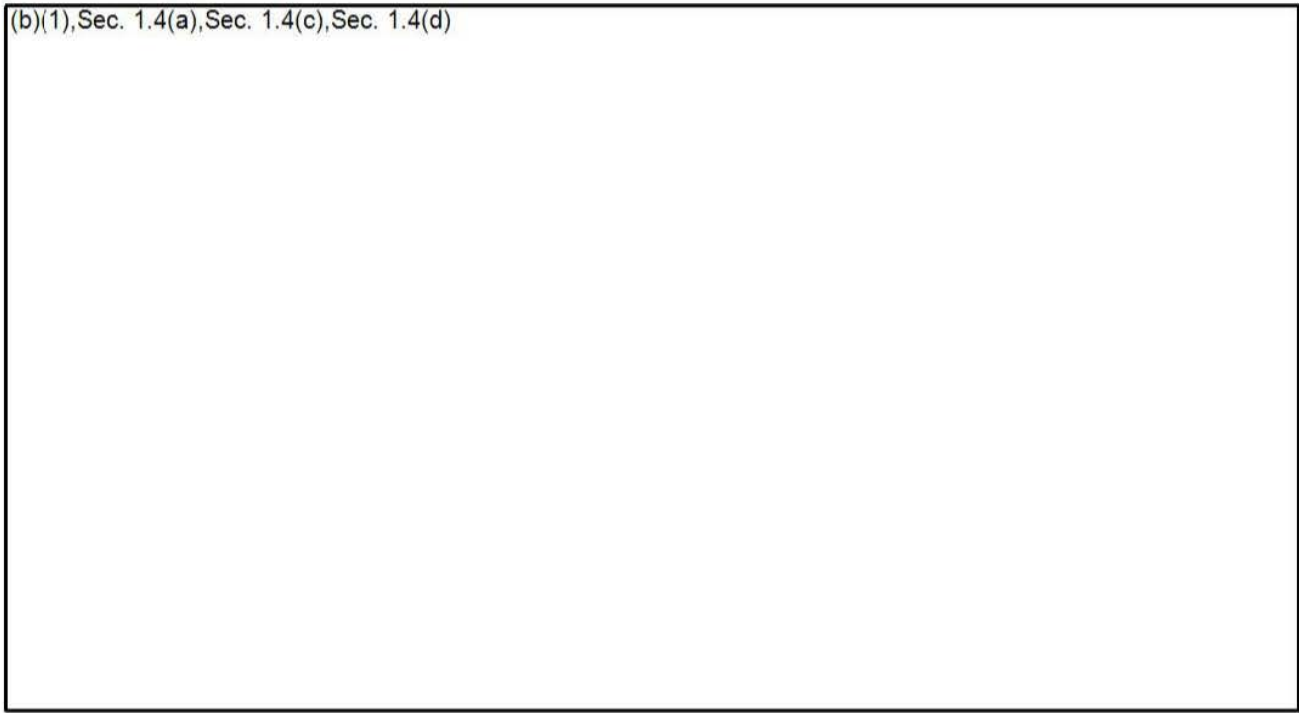
(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

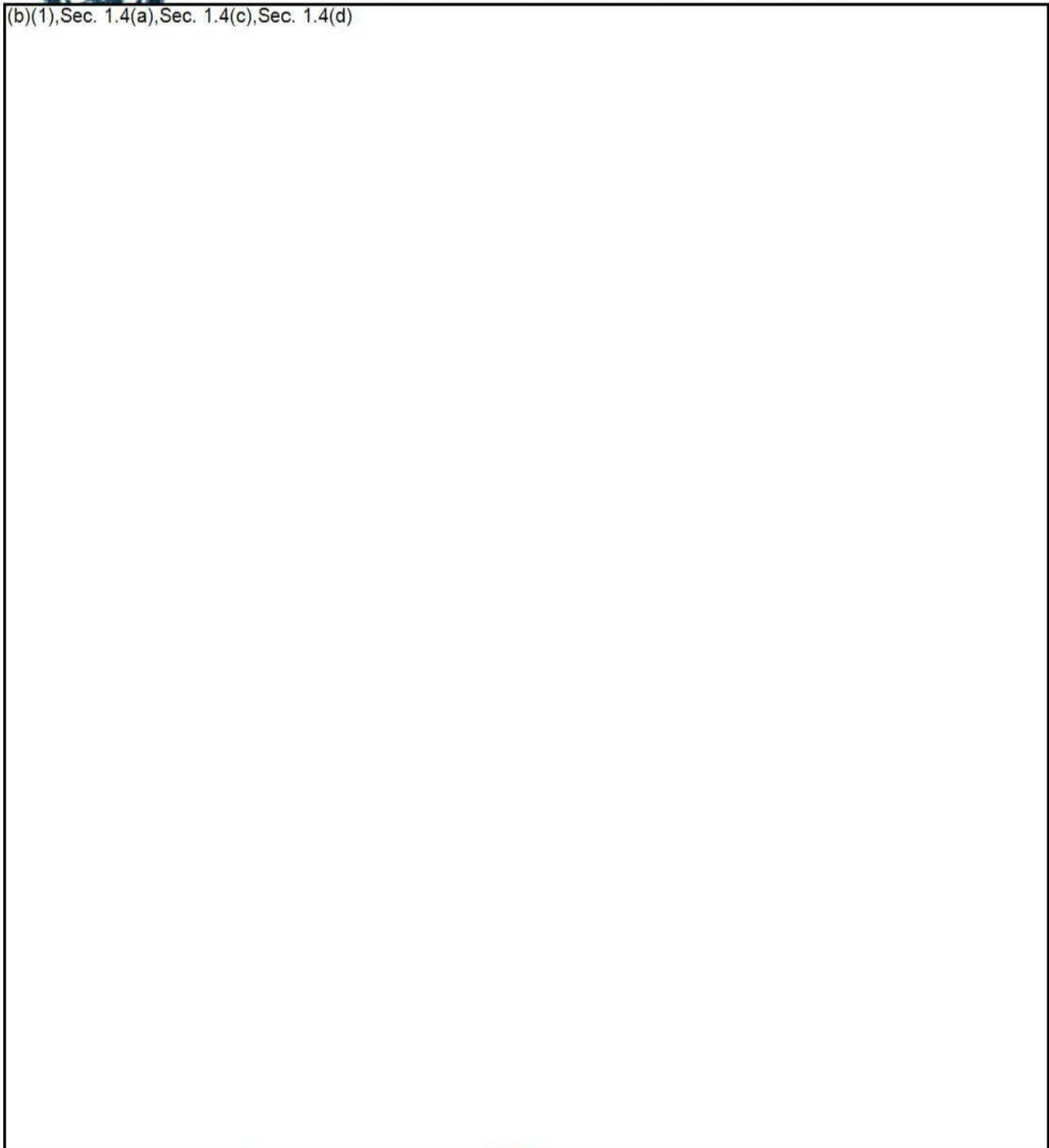
# Exhibit 41

~~SECRET//NOFORN~~



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



Derived from: Multiple Sources  
Declassify on: December 31, 2037



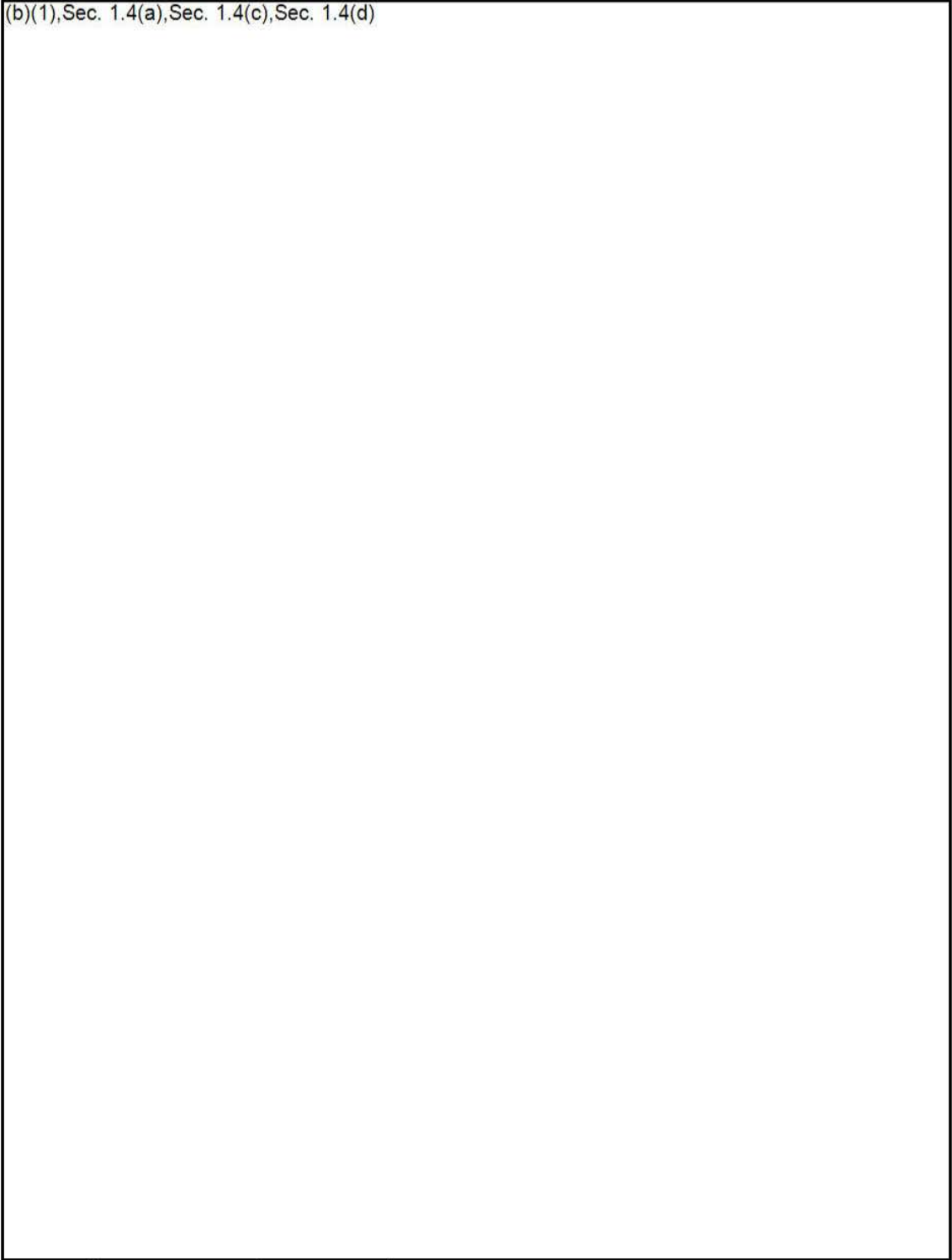
~~SECRET//NOFORN~~

17-L-0705/JS/054



~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

# Exhibit 42

~~SECRET~~

**DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE ~~(S)~~**

Originator: JOINT STAFF DJ3 WASHINGTON DC

DTG: 261520Z Jan 17 Precedence: P DAC: General

To: USCENTCOM CCJ3 MACDILL AFB FL, USCENTCOM JOC MACDILL AFB FL

CC: USSOCOM J3 OPERATIONS DIRECTORATE MACDILL AFB FL, COMJSOC FT BRAGG NC, JOINT STAFF J3 DEP-DIR SPECIAL OPS WASHINGTON DC, JOINT STAFF WASHINGTON DC

PAASZYUW RUEKJCS1656 0332103-SSSS--RUIPAAA.

ZNY SSSSS ZDH ZUI RUEWMCF0463 0332104

P 261520Z JAN 17

FM JOINT STAFF DJ3 WASHINGTON DC

TO RUIPAAA/USCENTCOM CCJ3 MACDILL AFB FL

RUIPAAA/USCENTCOM JOC MACDILL AFB FL

INFO RUEIAAAA/USSOCOM J3 OPERATIONS DIRECTORATE MACDILL AFB FL

RUIKAAA/COMJSOC FT BRAGG NC

RUEKJCS/JOINT STAFF J3 DEP-DIR SPECIAL OPS WASHINGTON DC

RUEKJCS/JOINT STAFF WASHINGTON DC

BT

~~SECRET~~

SUBJ/DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE ~~(S)~~

\*\*\*CORRECTED COPY - CORRECTED THE DATE FOR REF B TO ENSURE THE APPROPRIATE CONOPS IS REFERENCED\*\*\*

MSGID/GENADMIN/DJ-3//

SUBJ/DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE ~~(S)~~//

REF/A/DESC: (b)(1)(A)

REF/B/DESC: CONOPS/DOD/24JAN2017//

REF/C/DESC: MEMO/SECDEF/241800ZJAN2017//

REF/D/DESC: CJCS/E-MAIL/25JAN2017//

REF/E/DESC: POTUS/PPG/22MAY2013//

AMPN/ ~~(S)~~ REFERENCE (REF) A IS (b)(1)(A)

REF B IS THE DOD CONCEPT OF OPERATIONS (CONOPS) FOR SUPPORT TO UNITED ARAB EMIRATES' (UAE) SHABWAH OFFENSIVE. REF C IS THE SECDEF MEMORANDUM ENDORSING REF B AND SUBMITTING IT FOR PRESIDENTIAL APPROVAL. REF D IS THE CJCS E-MAIL INDICATING THAT THE PRESIDENT HAS APPROVED REF B. REF E IS THE PRESIDENTIAL POLICY GUIDANCE (PPG) ON PROCEDURES FOR APPROVING DIRECT ACTION AGAINST TERRORIST TARGETS LOCATED OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES.//

POC: (b)(6)

GENTEXT/REMARKS/

1. ~~(S)~~ PURPOSE. THIS MESSAGE TRANSMITS SECDEF AND PRESIDENTIAL APPROVAL OF DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE AGAINST AQAP IN YEMEN.
2. (U) EXECUTION.
  - 2.A. ~~(S)~~ REF A REQUIRES SECDEF AND PRESIDENTIAL APPROVAL OF DIRECT ACTION IN YEMEN.
  - 2.B. ~~(S)~~ PER REF B, CDRUSCENTCOM REQUESTED AUTHORIZATION TO SUPPORT THE UAE' OFFENSIVE AGAINST AQAP IN SHABWAH GOVERNORATE, YEMEN.
  - 2.C. ~~(S)~~ PER REF C, THE SECDEF APPROVED REF B AND SUBMITTED IT FOR

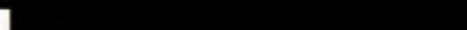
PRESIDENTIAL APPROVAL.


2.D. ~~(S)~~ PER REF D, THE POTUS HAS APPROVED REF B.

2.E. ~~(S)~~ CDRUSCENTCOM IS AUTHORIZED TO SUPPORT THE UAE SHABWAH OFFENSIVE AS DESCRIBED IN REF B.

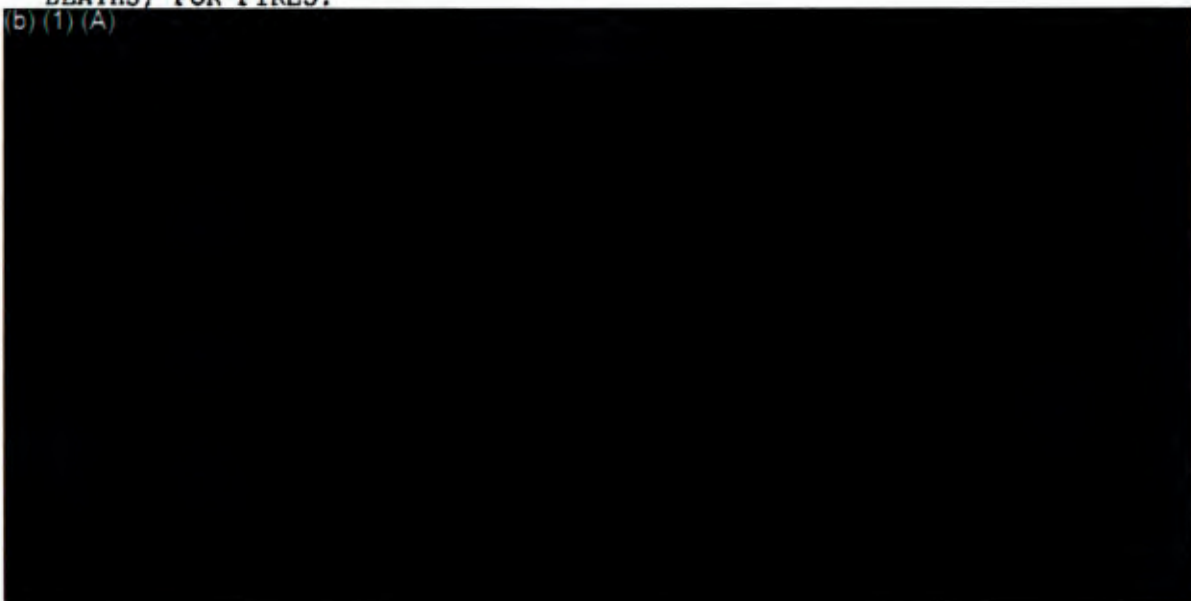
(b) (1) (A)



2.E.3. ~~(S)~~  AN AREA OF ACTIVE HOSTILITIES (AAH) FOR THE PURPOSES OF REF E.

2.E.4. ~~(S)~~  WILL MAINTAIN A NON-COMBATANT CASUALTY CUT-OFF VALUE STANDARD OF ZERO (I.E., ZERO EXPECTED CIVILIAN NONCOMBATANT DEATHS) FOR FIRES.

(b) (1) (A)



Classified by: John Dolan, Lt Gen, USAF, DJ-3

Reason: 1.4 (A)

Declassify On: 262359Z Jan 17

BT

#1656

NNNN

Received from AUTODIN 022104Z Feb 17

17-L-0705/JS/058

# Exhibit 43

(b)(6) Maj USMC JS OCJCS (US)

**From:** (b)(6) COL USARMY CENTCOM CENTCOM HQ (US)  
**Sent:** Tuesday, January 31, 2017 6:13 PM  
**To:** CCJA Op Law; SJAOpLaw; JS Pentagon DoM List LC Bridge  
**Subject:** FW: (S//NF); (S//NF) (INFORMATION) USCENTCOM Intent for Shabwah Kinetic Fires  
**Importance:** Low

Classification: ~~SECRET//NOFORN~~

Team,

LIMDIS - FYSA.

v/r,

(b)(6)

COL (b)(6)

Staff Judge Advocate

U.S. Central Command

Secret: (b)(6)

Unclassified: (b)(6)

Office: (b)(6)  
Mobile  
VOSIP: 302 323 3302

Classified By (b)(6) COL MIL USA USCENTCOM CCJA Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016 Declassify On:1/31/2027  
Classification: ~~SECRET//NOFORN~~

From: Faller, Craig RADM SD [mailto:(b)(6)@mil]  
Sent: Tuesday, January 31, 2017 5:59 PM  
To: Votel, Joseph L GEN MIL USA USCENTCOM CCCC; Dunford, Joseph F Jr Gen USMC JS (US)  
Cc: Whelan, Theresa M SES OSD OUSD POLICY (US); Handelman, Kenneth B SES OSD OUSD POLICY (US); Selva, Paul J Gen USAF JS OCJCS (US); Thomas, Raymond A GEN USSOCOM SOCOM CDR; Mayville, William C Jr LTG USARMY JS ODJS (US); McKenzie, Kenneth F Jr LtGen USMC JS JS (US); Dolan, John L Lt Gen USAF JS J3 (US); Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS; Stearney, Scott A RADM MIL USN USCENTCOM CCIJ3; (b)(6)@CAPT USN (US); (b)(6)@Faller, Craig RADM SD; Koffsky, Paul S SES OSD OGC (US)  
Subject: RE: (S//NF) (S//NF) (INFORMATION) USCENTCOM Intent for Shabwah Kinetic Fires

Classification: ~~SECRET//NOFORN~~

General Votel,

The Secretary is aligned with your intent. Below paragraph from OSD-GC applies.

Vr/Craig

(b)(1), Sec. 1.4(a)

Craig Faller, RADM

Sr Military Asst to SecDef

UNCLASS: (b)(6)  
RED: ...  
NIPR: ...



SIPR: (b)(6)

From: Votel, Joseph L GEN MIL USA USCENTCOM CCCC [mailto:(b)(6)]  
 Sent: Monday, January 30, 2017 7:01 PM  
 To: Faller, Craig RADM USN [mailto:(b)(6)]; Dunford, Joseph F Jr Gen USMC JS (US) [mailto:(b)(6)]; [mailto:(b)(6)]  
 Cc: Whelan, Theresa M SES OSD OUSD POLICY (US) [mailto:(b)(6)]; Handelman, Kenneth B SES OSD OUSD POLICY (US) [mailto:(b)(6)]; Selva, Paul J Gen USAF JS OCJCS (US) [mailto:(b)(6)]; Thomas, Raymond A GEN USSOCOM SOCOM CDR [mailto:(b)(6)]; Mayville, William C Jr LTG USARMY JS ODJS (US) [mailto:(b)(6)]; McKenzie, Kenneth F Jr Lt Gen USMC JS JS (US) [mailto:(b)(6)]; Dolan, John L Lt Gen USAF JS J3 (US) [mailto:(b)(6)]; Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC [mailto:(b)(6)]; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS [mailto:(b)(6)]; Stearney, Scott A RADM MIL USN USCENTCOM CCJ3 [mailto:(b)(6)]; [mailto:(b)(6)] CAPT USN (US) [mailto:(b)(6)]; [mailto:(b)(6)]; [mailto:(b)(6)]  
 Subject: [S//NF] (INFORMATION) USCENTCOM Intent for Shabwah Kinetic Fires

Classification: SECRET//NOFORN

Mr. Secretary and Chairman,

I want to ensure you have visibility on my intention with respect to kinetic fires associated with the Shabwah operation.

(b)(1), Sec. 1.4(a), Sec. 1.4(g)

(b)(1), Sec. 1.4(a), Sec. 1.4(g)

Appreciate very much your continued support for our critical efforts to enable Emirati success.

Vr,

Votel

Joseph L. Votel

General, US Army

Commander, US Central Command

HQ, USCENTCOM

7115 South Boundary Blvd

MacDill AFB, FL 33621-5101

(b)(6)

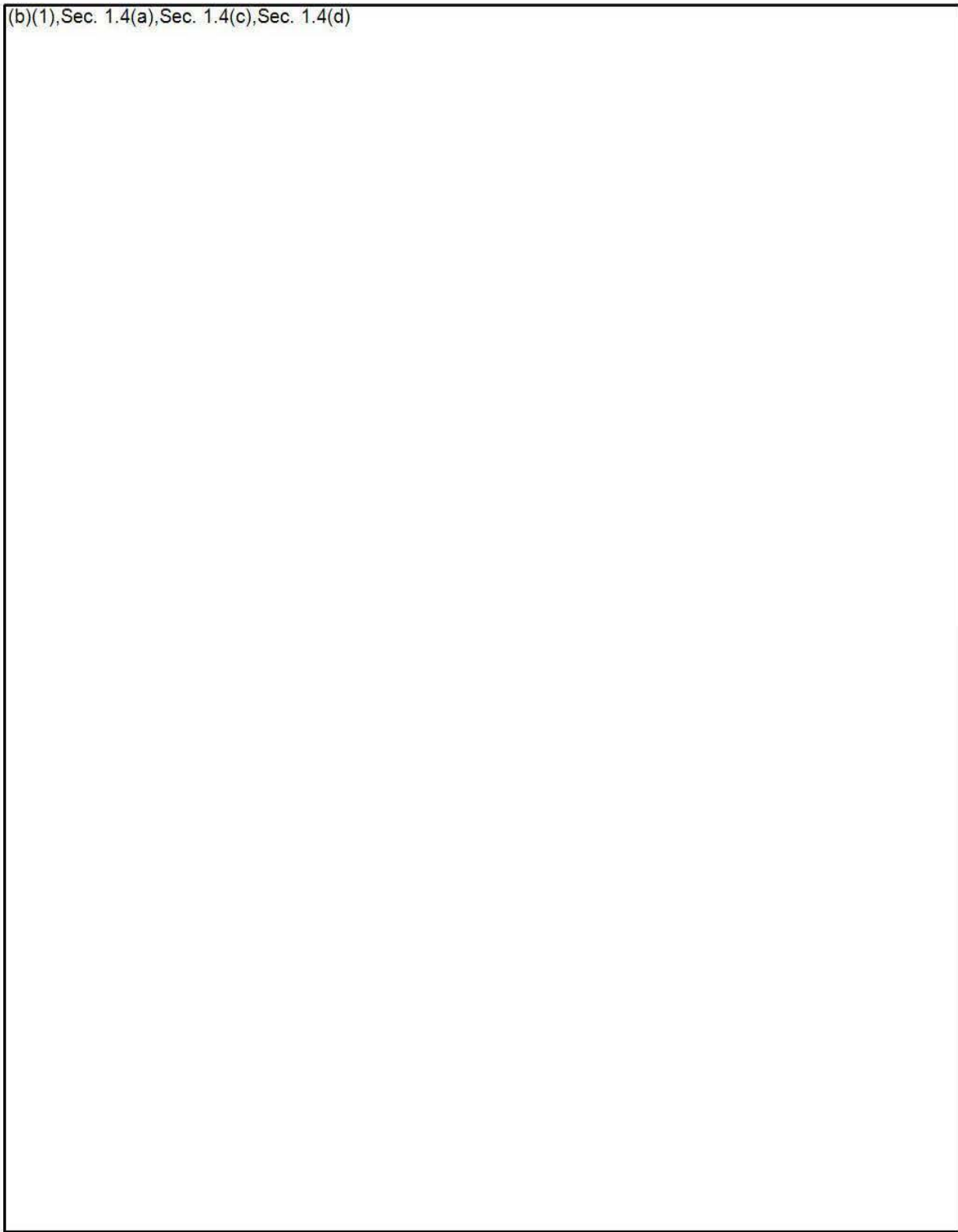
(b)(6)

Classified By: Votel, Joseph L GEN MIL USA USCENTCOM CCCC Derived From: USCENTCOM SCG, CCR 380-14, 24 Feb 2016  
Declassify On: 1/30/2027  
Classification: ~~SECRET//NOFORN~~

# Exhibit 44

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)

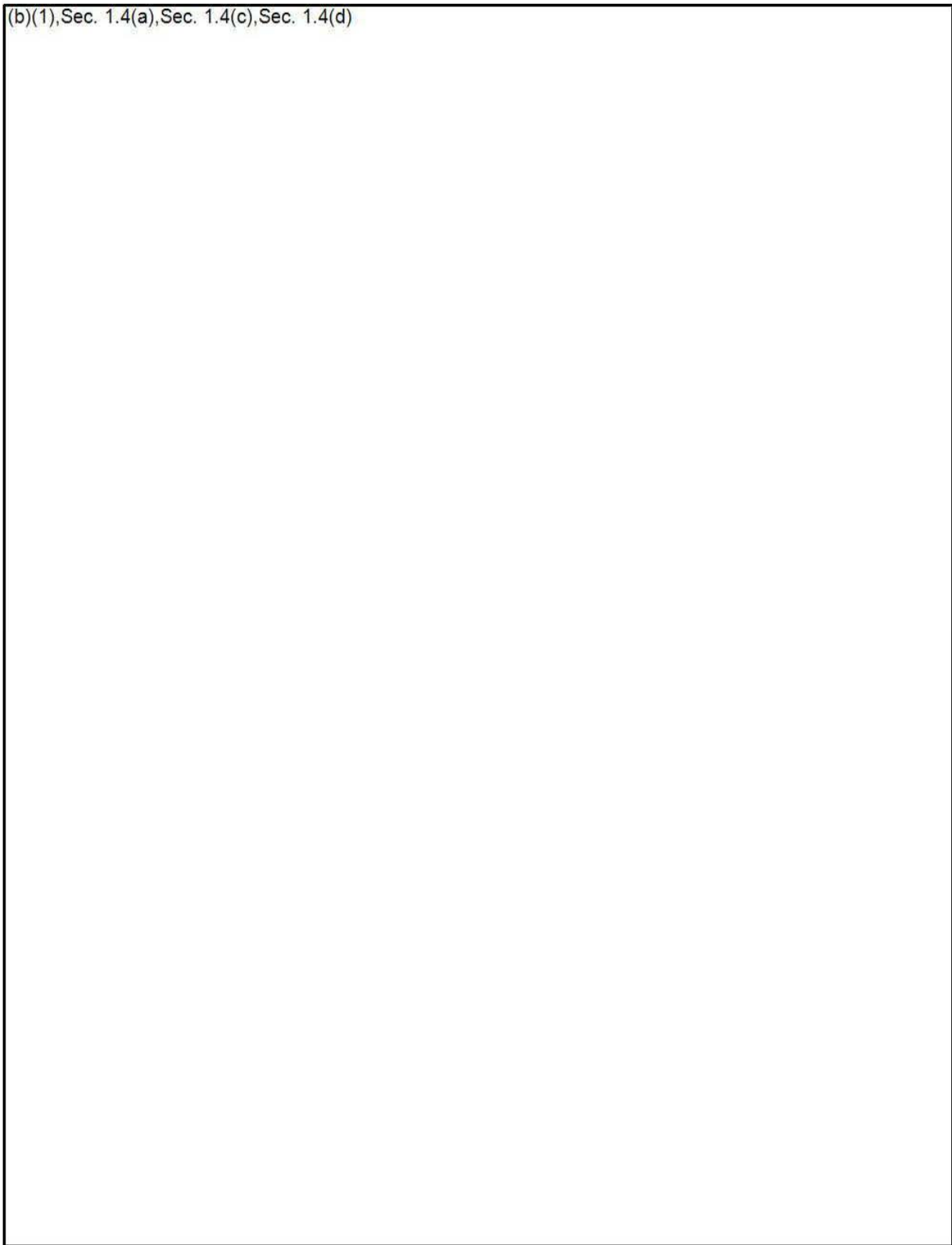


Derived From: Multiple Sources  
Declassify On: 20361231

~~SECRET//NOFORN~~  
17-L-0705/JS/261

~~SECRET//NOFORN~~

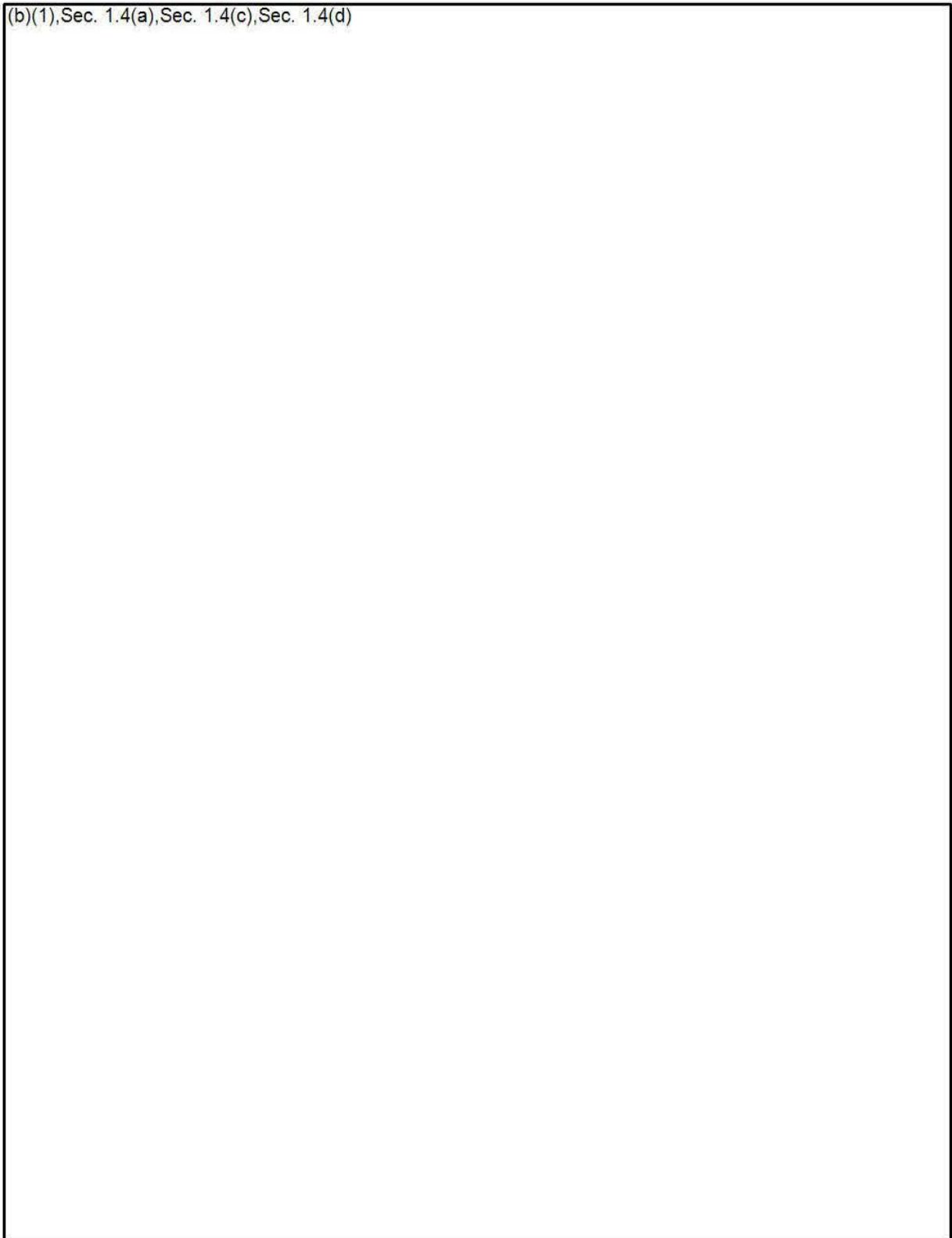
(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)

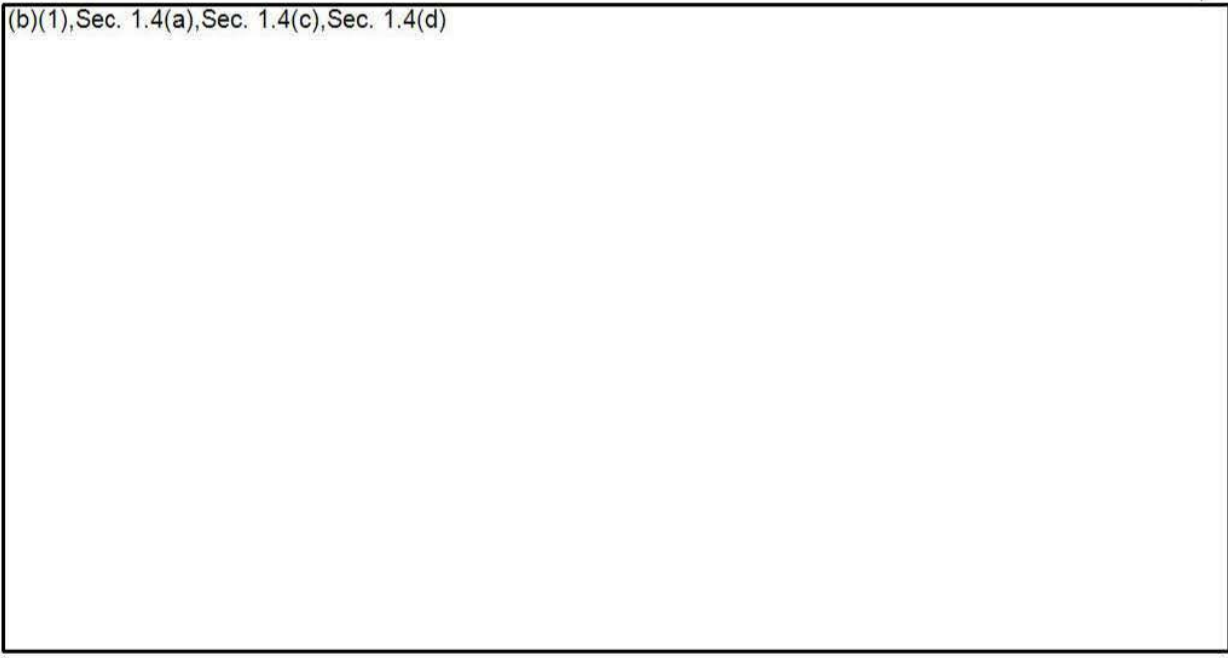


~~SECRET//NOFORN~~  
17-L-0705/JS/265



~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)

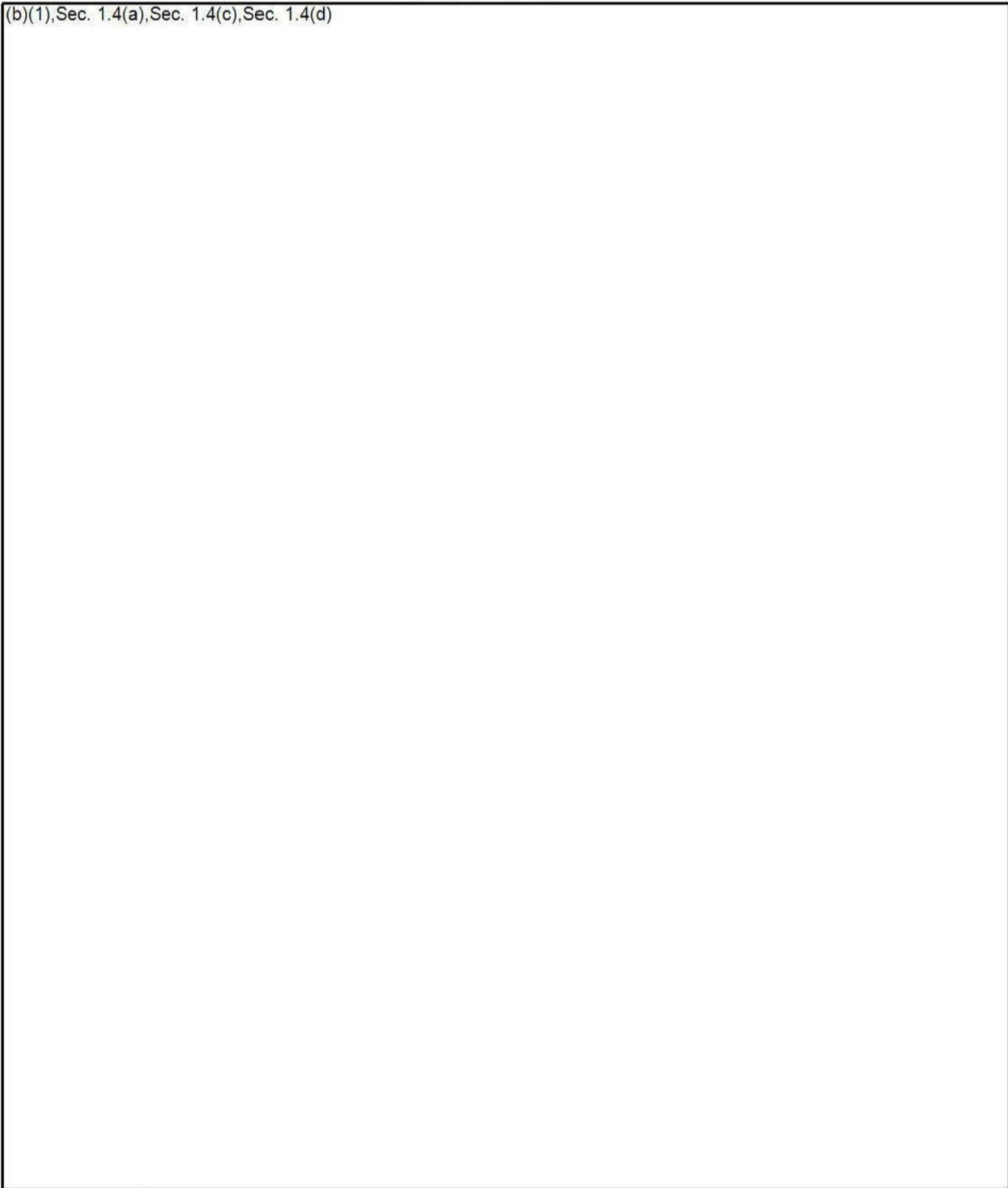


~~SECRET//NOFORN~~

# Exhibit 45

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

17-L-0705/JS/274

~~SECRET//NOFORN~~

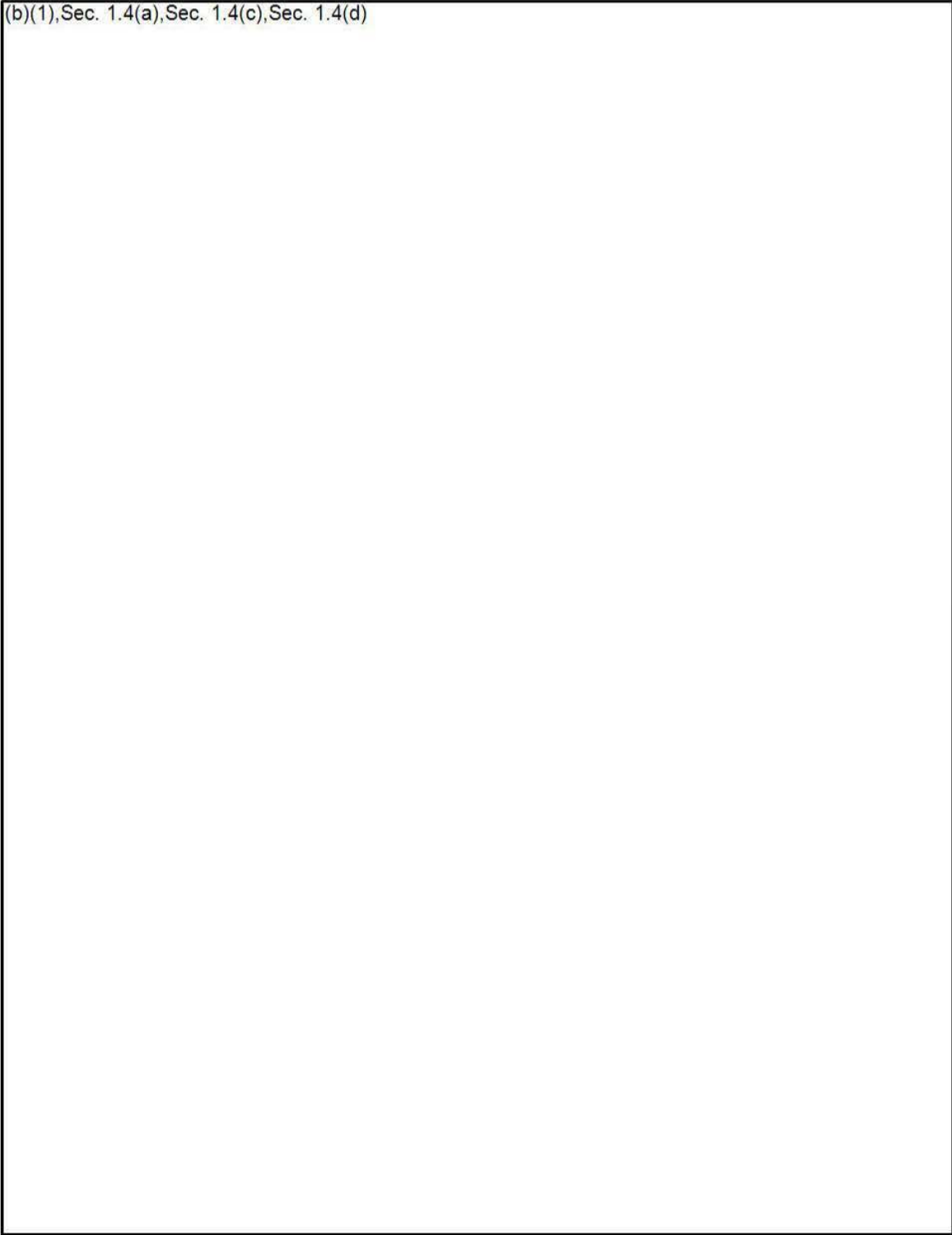
(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

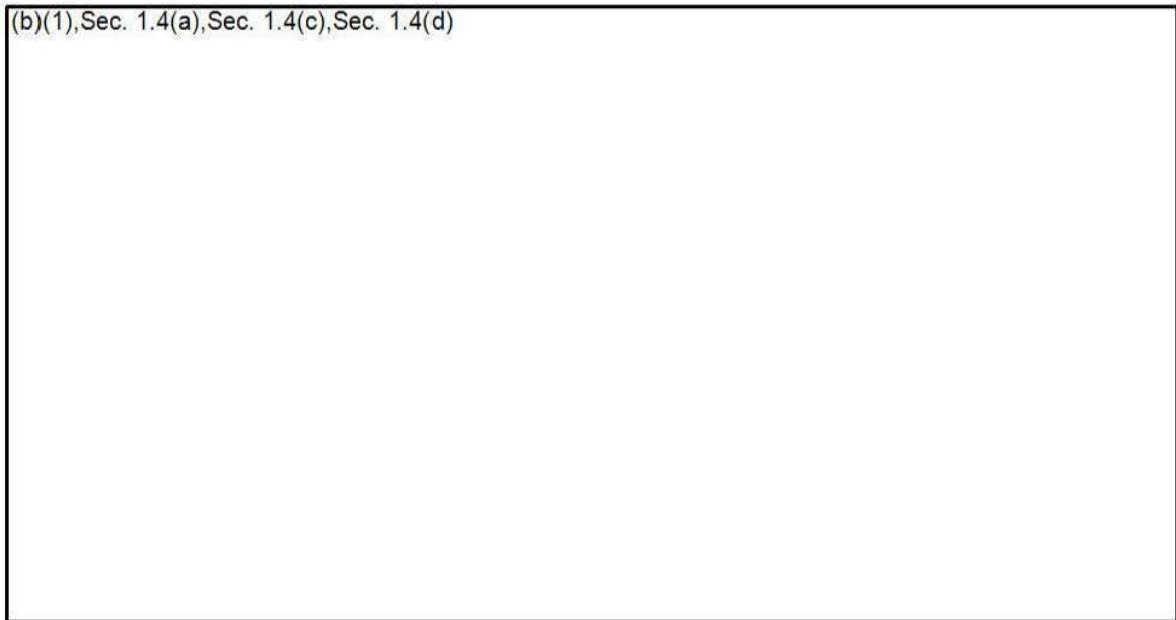
(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~



# Exhibit 46

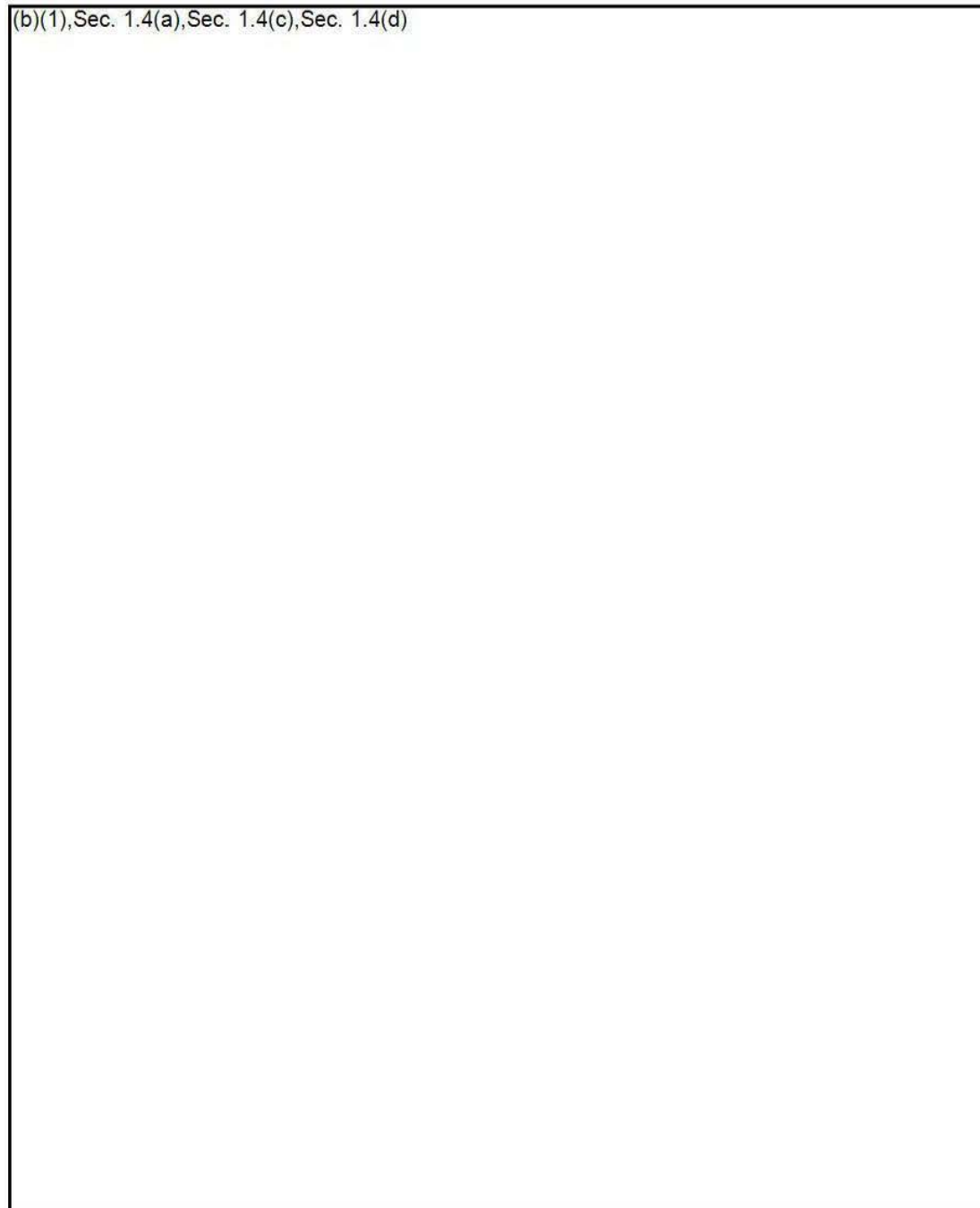
~~SECRET//NOFORN~~



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JAN 24 2017

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



Derived from: Multiple Sources  
Declassify on: December 31, 2037

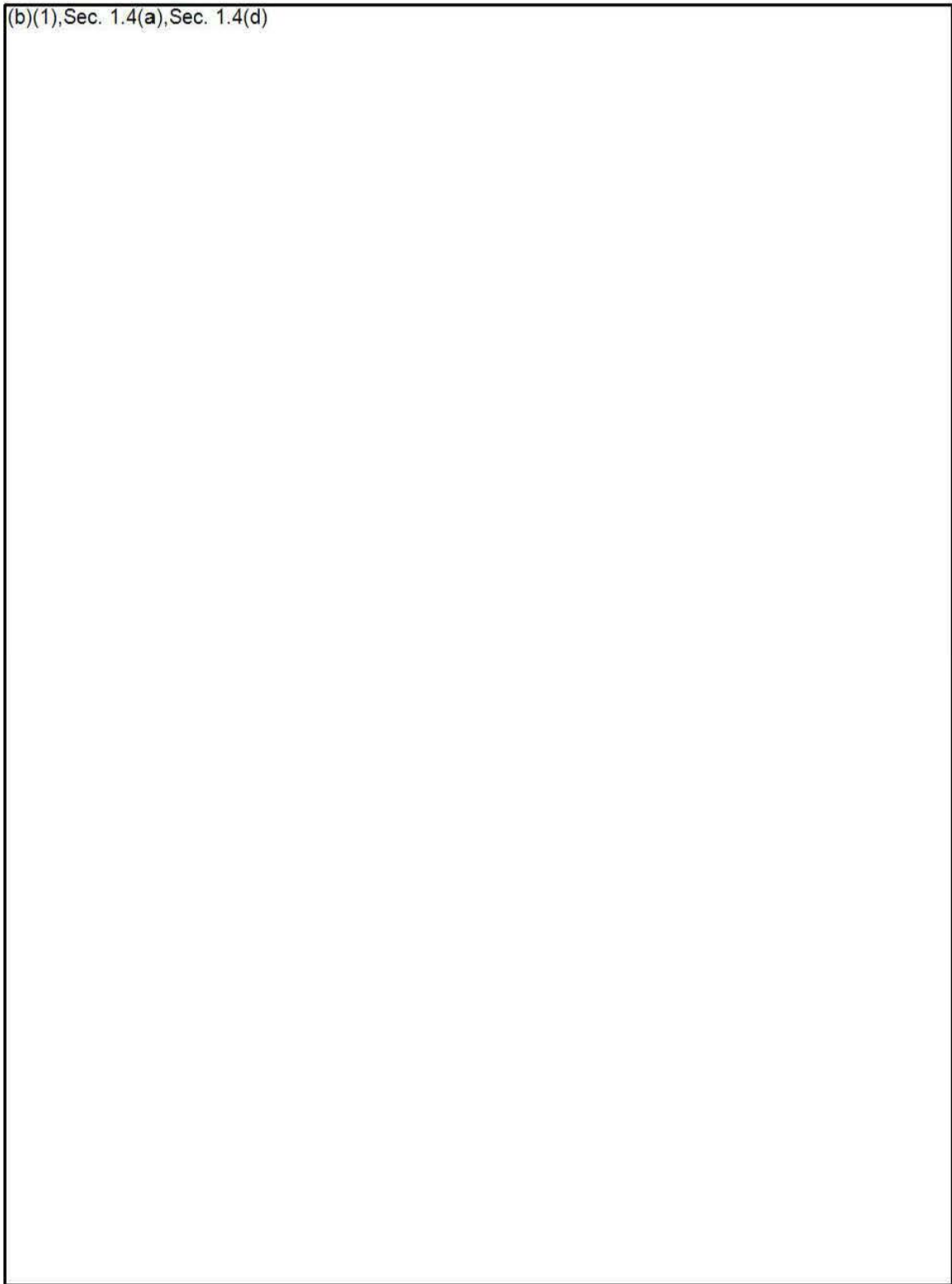


~~SECRET//NOFORN~~

17-L-0705/JS/280

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(d)



~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(b)(1), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)



~~SECRET//NOFORN~~

# Exhibit 47

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)



(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

# Exhibit 48

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)



(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

(b)(1), 1.4(a), 1.4(b), 1.4(c)

# Exhibit 49

006406E1475. 2017\_ 2:12PM S:1e800f+21



~~SECRET//NOFORN~~  
SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

4/20/2017

MEMORANDUM FOR ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY  
AFFAIRS

SUBJECT: ~~(S//NF)~~ Department of Defense Request to Extend the Authorization for DoD  
Support to UAE in Yemen

~~(S//NF)~~ I request that the President extend the authorization for the Department of  
Defense (DoD) to continue supporting the United Arab Emirates' (UAE's) counterterrorism  
operations against al-Qe'ida in the Arabian Peninsula (AQAP) in Yemen through ~~(b) (1) (A)~~  
~~(b) (1) (A)~~ The President approved this authorization on January 26, 2017. My request includes

(b) (1) (A)

~~(S//NF)~~ The U.S. military's precision strikes and shaping operations over the last ~~(b) (1) (A)~~  
have been effective in temporarily degrading AQAP's ability to operate openly and plan attacks  
against Coalition and Yemeni forces. U.S. military operations have strained AQAP's tribal  
relations, elevated AQAP's internal paranoia, and degraded its operational tempo. DoD assesses  
that Yemeni tribes are likely re-evaluating their relationships with AQAP and requesting that  
AQAP depart tribal lands.

(b) (1) 1.4(a) (b) (c) (d), (b) (5)

*for matter*



Derived from: Multiple Sources  
Declassify on: April 27, 2043

~~SECRET//NOFORN~~

17-L-0705/STATE/0034

# Tab B

# Exhibit 50









# Exhibit 51





,









# Exhibit 52

RELEASE IN PART  
1.4(B),B1,B5,1.4(D),1.4(A),1.4(C),B6

**From:** Bell, Zehra H <BellZH@state.sgov.gov>  
**Sent:** Wednesday, January 25, 2017 3:02 PM  
**To:** Gilbert, Stephanie S <GilbertSS@state.sgov.gov>  
**Subject:** FW: Yemen [redacted]  
**Attach:** [redacted]

B5

1.4(B)  
B1  
B5

[redacted]

Official

~~SECRET~~

Classified By: Kristie Kenney - C, Office:Counselor, Agency:U.S. Department of State  
Declassify On: 1/25/2027  
Reasons: (Derived) Classification derived from previous message(s)

**From:** Wisner, David G  
**Sent:** Wednesday, January 25, 2017 2:57 PM  
**To:** Bell, Zehra H  
**Subject:** FW: Yemen [redacted]

Its about this. I asked [redacted] to CC you on the AA.

B6

Official

~~SECRET~~

Classified By: Kristie Kenney - C, Office:Counselor, Agency:U.S. Department of State  
Declassify On: 1/25/2027  
Reasons: Derived Per DSCG.

**From:** [redacted]  
**Sent:** Wednesday, January 25, 2017 2:22 PM  
**To:** Wisner, David G  
**Subject:** Yemen [redacted]

B6

~~SECRET/AF~~

[redacted]

B5  
1.4(D)  
B1

Thanks,

[redacted]

B6

[Redacted]

B6

Near East Unit Chief  
Bureau of Counterterrorism  
U.S. Department of State

[Redacted]

(U [Redacted])  
(SIPR) [Redacted]  
(JWICS) [Redacted]

B6

---

**From:** Siberell, Justin H  
**Sent:** Friday, January 06, 2017 6:45 PM  
**To:** Jones, Stuart E; Lenderking, Timothy A; Kim, Yuri J; Gilbert, Stephanie S; [Redacted] L; Richards, Marie J; [Redacted] Richardson, Timothy M; [Redacted]  
**Cc:** Leaf, Barbara A  
**Subject:** Yemen [Redacted]

B6

B5

[Large Redacted Area]

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1  
B5

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1

1.4(A)  
1.4(B)  
1.4(C)  
1.4(D)  
B1

--js

Justin Siberell  
Acting Coordinator for Counterterrorism  
U.S. Department of State  
[SiberellJH@state.sgov.gov](mailto:SiberellJH@state.sgov.gov) (unclass: [SiberellJH@state.gov](mailto:SiberellJH@state.gov))  
Tel: 202-647-9892

**Sensitivity:** Sensitive

**Classification:** ~~SECRET//NOFORN~~

**Classified By:** Justin Siberell, Deputy Coordinator, CT Bureau, Department of State

**Derived From:** DSCG 11-01

**Declassify On:** 2027/01/06

# Exhibit 53



(b)(6) **Maj USMC JS OCJCS (US)**

**From:** (b)(6) COL USARMY CENTCOM CENTCOM HQ (US)  
**Sent:** Monday, January 30, 2017 7:12 AM  
**To:** CCJA Op Law  
**Cc:** JS Pentagon DoM List LC Bridge; SJAOplaw  
**Subject:** FW: [S] (INFO) (b)(1), Sec. 1.4 Follow Up 29 JAN 17  
**Attachments:** DOD SUPPORT TO THE UAE SHABWAH OFFENSIVE .pdf; Attachment 1 US Support to UAE Shabwah Offensive CONOP CAO 07 2300Z NOV1....pdf; Attachment 2 - SUPPORT TO SHABWAH OFFENSIVE NARRATIVE.PDF; AAH Support to Shabwah Authorities Request CAO 29 1530Z JAN 17 WITH OPS ....pptx

Classification: ~~SECRET~~

(b)(6)

(1) Below is an updated post-op review of Saturday night's mission.

(b)(1), Sec. 1.4(a)

[Redacted content]

v/r,

(b)(6)

COL (b)(6)

Staff Judge Advocate

~~SECRET~~

(b)(1).Sec. 1.4(a)

U.S. Central Command

Secret: (b)(6) centcom.smil.mil <mailto:(b)(6) centcom.smil.mil>

Unclassified: (b)(6) mail.mil <mailto:(b)(6) mail.mil>

Office: (b)(6)  
Mobile  
VOSIP:

Classified By (b)(6) COL MIL USA USCENTCOM CCJA Derived From:USCENTCOM SCG, CCR 380-14, 24 Feb 2016.

Declassify On: 1/29/2042

Classification:SECRET

From: (b)(6) mil.mil <mailto:(b)(6) mil.mil> [mailto:(b)(6) smil.mil]

Sent: Sunday, January 29, 2017 6:25 PM

To: (b)(3):10 U.S.C. § 130b,(b)(6) Vote!, Joseph L GEN MIL USA USCENTCOM CCCC; Thomas, Raymond A GEN USSOCOM SOCOM CDR

Cc: Brown, Charles Q Lt Gen MIL USAF USCENTCOM CCDC-DC, Stearney, Scott A RADM MIL USN USCENTCOM CCJ3; Quantock, Mark R MG MIL USA USCENTCOM CCJ2; Julazadeh, David Brig Gen MIL USAF USCENTCOM CCJ3-A; Ferrell, Terry R MG MIL USA USCENTCOM CCDC-DC-COS; Bontrager, Paul BG MIL USA USCENTCOM CCJ3-A; (b)(6)

<mailto:(b)(6) smil.mil>; (b)(6) Soc.smil.mil <mailto:(b)(6) (b) smil.mil>; (b)(6) smil.mil

<mailto:(b)(6) smil.mil>; TF LNO; (b)(6) smil.mil

<mailto:(b)(6) smil.mil>; (b)(6) smil.mil

<mailto:(b)(6) mil.mil>; (b)(6)

(b)(6) mon.smil.mil <mailto:(b)(6) smil.mil>; (b)(6) COL MIL USA

USCENTCOM CCJA; Yoo, Daniel D MajGen (b)(6)

<mailto:pentagontfno@Soc.smil.mil>; (b)(6) COL MIL USA USCENTCOM CCCC

Subject: (INFO) (b)(1).(b)(6).Se Follow Up 29 JAN 17

CLASSIFICATION: SECRET  
CAVEATS: NONE  
TERMS: NONE

GEN Vote! (b)(6)

Gentlemen,

~~SECRET~~

(b)(1).Sec. 1.4(a)

~~SECRET~~

(b)(1), Sec. 1.4(a)

(b)(1), Sec. 1.4(a), Sec. 1.4(g)

~~SECRET~~

(b)(1), Sec. 1.4(a)

17-L-0705/JS/402

~~SECRET~~

(b)(1), Sec. 1.4(a)

Additionally for your situational awareness:

(b)(1), Sec. 1.4(a), Sec. 1.4(g)

Standing by for questions/guidance.

~~SECRET~~

(b)(1), Sec. 1.4(a)

17-L-0705/JS/403

~~SECRET~~

(b)(1), Sec. 1.4(a)

(b)(1),(b)(3):10 U.S.C. § 130b,(b)(6)

DERIVED FROM: NS FPP SCG

CLASSIFIED BY: (b)(3):10 U.S.C. § 130b,

DECLASSIFY ON: 25 YEARS FROM DATE OF ORIGATION DATE OF SOURCE: 20121011

CLASSIFICATION: ~~SECRET~~

CAVEATS: NONE

TERMS: NONE

~~SECRET~~

(b)(1), Sec. 1.4(a)

5

17-L-0705/JS/404

# Exhibit 54

HOME > MEDIA > NEWS ARTICLES > NEWS ARTICLE VIEW

# Pentagon Spokesman Describes U.S. Raid in Yemen

By Terri Moon Cronk

DoD News, Defense Media Activity

WASHINGTON, May 23, 2017 — Al-Qaida in the Arabian Peninsula is a formidable terror group that remains intent on attacking Americans and the U.S. homeland, Navy Capt. Jeff Davis, director of Pentagon press operations, told reporters today.

Davis addressed yesterday's U.S. Special Operations counterterrorism raid that killed seven al-Qaida in the Arabian Peninsula operatives in Yemen's Marib governorate, located about 150 miles north of Aden, the country's capital.

Special Forces raided an al-Qaida in the Arabian Peninsula compound comprising a few buildings, he said, adding, "[al-Qaida in the Arabian Peninsula was] using this as a headquarters, a place to meet and plan for external operations and to lead the group."

## First Raid Deep In Yemen

The raid marked the first time the United States conducted an operation into Marib governorate, and the location was the deepest the military has gone



Air commandos from the 4th Aircraft Maintenance Squadron fulfill their duties at Hurlburt Field, Fla., July 7, 2016, by working on a AC-130U Spooky gunship. The AC-130's main mission is to provide close air support, air interdiction and armed reconnaissance and was used in the May 22, 2017, counterterrorism raid against al-Qaida in the Arabian Peninsula operatives in the Marib governorate of Yemen. Air Force photo by Airman Dennis Spain

into Yemen to fight al-Qaida in the Arabian Peninsula, Davis said.

“The intent of the raid was to disrupt AQAP operations,” he said, noting that “at least” seven al-Qaida in the Arabian Peninsula militants were killed with small-arms fire and precision airstrikes from an AC-130 gunship.

No civilian casualties were reported, and based on observations on the ground and in the sky, there are no credible indications of such casualties, Davis said.

## **Dangerous Terrorists**

“AQAP has significant amounts of American blood on its hands,” he said. “It is an organization that has used the ungoverned spaces in Yemen to plot, direct and inspire terrorist attacks against America, our citizens and our allies around the world.”

Al-Qaida in the Arabian Peninsula attacked the U.S. embassy in Sanaa, Yemen, in 2008; attempted to down Northwest Airlines Flight 253 on Christmas Day in 2009; and conspired to send explosive-laden parcels to Chicago in 2010, he said.

Al-Qaida in the Arabian Peninsula's English-language magazine, Inspire, also has been used to encourage attacks against the West, Davis said, citing multiple attacks that include the Boston Marathon bombing in 2013, the Fort Hood mass shooting in 2009 and other lone-wolf attacks in the United States and Europe.

## **Yemen Authorized Operation**

Yesterday's raid was conducted under the same U.S. authorities as those granted in advance of the earlier, Jan. 28 raid, which included authorities for airstrikes and follow-on action, he said.

The operation had the support and cooperation of the Yemen government, and was done in conjunction with U.S. partners, the spokesman said.

“We will continue to support Yemen in bringing stability to the region by fighting known terrorist organizations like AQAP,” Davis said.

(Follow Terri Moon Cronk on Twitter: @MoonCronkDoD)



---

## Related Links

---

### **Special Report: Operation Inherent Resolve**

### **U.S. Forces Kill 7 Militants in Yemen Raid**

 al-Qaida  Centcom  Yemen

# Exhibit 55

**Crandall Darse E RDML USN USA MIL**

**From:** Selva Paul J GEN USAF USA MIL  
**Sent:** Friday, January 06, 2017 5:53 AM  
**To:** Dolan John L Lt Gen USAF USA MIL; Taylor Robert S OSD USA GOV; O'Connor Jennifer M OSD USA GOV; McKeon Brian P OSD USA GOV; Lettre Marcel J OSD USA GOV; \*Smith, Eric BGen SD; (b)(6) APT DIA USA MIL  
**Cc:** Whelan Theresa M OSD USA GOV; Lowery Todd R OSD USA GOV; Shanahan John N O-09 OSD USA MIL; Work Robert OSD USA GOV; (b)(6) OSD USA GOV; (b)(6) OSD USA GOV; Pandolfe Frank C VADM USN USA MIL; Mayville William C LTG USA USA MIL; Marrs James R Maj Gen DIA J2 USA MIL; Groen Michael S BGen DIA J2 USA MIL; Maul Trent R DIA J2 USA GOV; Lewis Andrew L RADM USN USA MIL; Dawkins James C BG JSC USA MIL; Elton Albert M MajGen/O-8 JSC USA MIL; Moore Charles L BGen JSC USA MIL; George Randy A BG DIA USA MIL; (b)(6) JSC USA GOV; McKenzie Kenneth F LtGen USMC USA MIL; Crandall Darse E RDML USN USA MIL; D'Annunzio Michael A OSD USA GOV; (b)(6) USA MIL (b)(6) (b)(6) LTC USA USA MIL; 'OCJCS-COMMS'; (b)(6) Lt Col DIA USA MIL; (b)(6) CAPT DIA USA MIL (b)(6) Lt Col USAF USA MIL; (b)(6) N O-05 OSD USA MIL; (b)(6) O-06 OSD USA MIL (b)(6) O-06 OSD USA MIL; (b)(6) Maj DIA USA MIL; (b)(6) MAJ DIA USA MIL; (b)(6) O-06 OSD USA MIL; (b)(6) LtCol DOD JCS USA MIL; (b)(6) COL JSC USA MIL; (b)(6) CDR JSC USA MIL; (b)(6) JCS USA CTR; (b)(6) MAJ/USA JSC USA MIL (b)(6) DIA USA MIL; (b)(6) LTCOL JSC USA MIL; (b)(6) MAJ/O4 JSC USA MIL; (b)(6) (b)(6) CAPT, USN, OSD(P); (b)(6) OSD USA GOV; (b)(6) O-04 OSD USA MIL; (b)(6) OSD USA GOV; (b)(6) OSD USA CTR; (b)(6) (b)(6) TC DIA J26 USA MIL; (b)(6) LCDR DIA J253 USA MIL; (b)(6) (b)(6) DCTC5C USA GOV; (b)(6) MAJ JSC USA MIL; (b)(6) OSD USA GOV; (b)(6) MAJ USA USA MIL; Bentley Christopher F BG JSC USA MIL; Knight William M BrigGen JSC USA MIL; Grynkewich Alexis G BG JSC USA MIL; Walrath Daniel R BG/USA JSC USA MIL; (b)(6) CAPT/NAVY JSC USA MIL  
**Subject:** RE: For Approval: Joint Proposal PPG Variance Request for Direct Action in Yemen

Classification: TOP SECRET//MCS-P; (b)(6) ORCON/NOFORN

Classified By: d927831 (b)(1), 1.4(c)  
Derived From: Multiple Sources  
Declassify On: 25X1, EO 12951

(U) ORCON Warning: Only the components listed below are approved to receive the ORCON information.  
(U) Information marked ORCON from originator none provided is approved for dissemination to: none provided

Recommend approval.

Paul

-----Original Message-----  
From: Dolan John L Lt Gen USAF USA MIL  
Sent: Thursday, January 05, 2017 5:43 PM

DOD / FOD  
 SCI CONTROL  
 R-1 CENTCOM  
 17-L-0700  
 18-SI-001  
 4

To: Taylor Robert S OSD USA GOV <robert.taylor@osdj.ic.gov>; Dolan John L Lt Gen USAF USA MIL  
(b)(6) coe.ic.gov>; Selva Paul J GEN USAF USA MIL (b)(6) coe.ic.gov>; O'Connor Jennifer M OSD USA  
GOV <jennifer.o'connor@osdj.ic.gov>; McKeon Brian P OSD USA GOV <brian.mckeon@osdj.ic.gov>; Lettre Marcel J OSD  
USA GOV <marcel.lettre@osdj.ic.gov>; \*Smith, Eric BGen SD <Eric.Smith@sd.ic.gov>; (b)(6) CAPT DIA USA MIL  
(b)(6) coe.ic.gov>

Cc: Whelan Theresa M OSD USA GOV <theresa.whelan@osdj.ic.gov>; Lowery Todd R OSD USA GOV  
<todd.lowery@osdj.ic.gov>; Shanahan John N O-09 OSD USA MIL <john.shanahan@osdj.ic.gov>; Work Robert OSD USA  
GOV <Robert.Work@sd.ic.gov>; (b)(6) USA GOV <(b)(6)@osdj.ic.gov>; (b)(6) OSD  
USA GOV <(b)(6)@osdj.ic.gov>; Pandolfe Frank C VADM USN USA MIL <(b)(6)@coe.ic.gov>; Mayville  
William C LTG USA USA MIL (b)(6) coe.ic.gov>; Marrs James R Maj Gen DIA J2 USA MIL  
(b)(6) @coe.ic.gov>; Groen Michael S BGen DIA J2 USA MIL <Michael.S.Groen@coe.ic.gov>; (b)(6) DIA  
J2 USA GOV (b)(6) coe.ic.gov>; Lewis Andrew L RADM USN USA MIL (b)(6) coe.ic.gov>; Dawkins  
James C BG JSC USA MIL (b)(6) nccs.ic.gov>; Elton Albert M MajGen/O-8 JSC USA MIL  
(b)(6) nccs.ic.gov>; Moore Charles L BGen JSC USA MIL (b)(6) nccs.ic.gov>; George Randy A BG DIA  
USA MIL (b)(6) coe.ic.gov>; (b)(6) SC USA GOV <(b)(6)@nccs.ic.gov>;  
McKenzie Kenneth F LtGen USMC USA MIL (b)(6) coe.ic.gov>; Crandall Darse E RDML USN USA MIL  
(b)(6) coe.ic.gov>; D'Annunzio Michael A OSD USA GOV <michael.d'annunzio@osdj.ic.gov>; (b)(6)  
OSD USA MIL <(b)(6)@sd.ic.gov>; (b)(6) TC USA USA MIL <(b)(6)@coe.ic.gov>; 'OCJCS-  
COMMS' <OCJCS.COMMS@nccs.ic.gov>; (b)(6) Lt Col DIA USA MIL (b)(6)@coe.ic.gov>;  
(b)(6) CAPT DIA USA MIL <(b)(6)@coe.ic.gov>; (b)(6) Lt Col USAF USA MIL  
<(b)(6)@coe.ic.gov>; (b)(5) O-05 OSD USA MIL (b)(6)@osdj.ic.gov>; (b)(6) O-  
06 OSD USA MIL (b)(6)@osdj.ic.gov>; (b)(6) O-06 OSD USA MIL  
(b)(6)@osdj.ic.gov>; (b)(6) Maj DIA USA MIL (b)(6)@coe.ic.gov>; (b)(6)  
(b)(6) MAJ DIA USA MIL (b)(6) coe.ic.gov>; (b)(6) O-06 OSD USA MIL  
(b)(6)@osdj.ic.gov>; (b)(6) LtCol DOD JCS USA MIL (b)(6)@coe.ic.gov>; (b)(6)  
COL JSC USA MIL <(b)(6)@nccs.ic.gov>; (b)(6) CDR JSC USA MIL <(b)(6)@nccs.ic.gov>; (b)(6)  
(b)(6) USA CTR <(b)(6)@nccs.ic.gov>; (b)(6) /USA JSC USA MIL (b)(6)@nccs.ic.gov>;  
(b)(6) CDR DIA USA MIL (b)(6) coe.ic.gov>; (b)(6) LTCOL JSC USA MIL  
(b)(6)@nccs.ic.gov>; (b)(6) MAJ/O4 JSC USA MIL (b)(6)@nccs.ic.gov>; (b)(6)  
CAPT, USN, OSD(P) <(b)(6)@osdj.ic.gov>; (b)(6) OSD USA GOV <(b)(6)@osdj.ic.gov>; (b)(6)  
P O-04 OSD USA MIL <(b)(6)@osdj.ic.gov>; (b)(6) OSD USA GOV <(b)(6)@osdj.ic.gov>; Tilley  
(b)(6) OSD USA CTR <(b)(6)@osdj.ic.gov>; (b)(6) LTC DIA J26 USA MIL  
(b)(6) coe.ic.gov>; (b)(6) LCDR DIA J253 USA MIL (b)(6) coe.ic.gov>; (b)(6)  
DIA DCTCSC USA GOV <(b)(6)@coe.ic.gov>; (b)(6) MAJ JSC USA MIL <(b)(6)@nccs.ic.gov>;  
(b)(6) OSD USA GOV <(b)(6)@osdj.ic.gov>; (b)(6) MAJ USA USA MIL  
<(b)(6)@coe.ic.gov>; Bentley Christopher F BG JSC USA MIL <christopher.bentley@nccs.ic.gov>; (b)(6)  
William M BrigGen JSC USA MIL (b)(6)@nccs.ic.gov>; Grynkeiwich Alexis G BG JSC USA MIL  
<(b)(6)@nccs.ic.gov>; Walrath Daniel R BG/USA JSC USA MIL (b)(6)@nccs.ic.gov>; (b)(6)  
CAPT/NAVY JSC USA MIL (b)(6)@nccs.ic.gov>

Subject: RE: For Approval: Joint Proposal PPG Variance Request for Direct Action in Yemen

Classification: ~~TOP SECRET//ICS-P~~ (b)(6) ~~ORCON//NOFORN~~

(b)(1), 1.4(c)

Classified By: d930897

Derived From: Multiple Sources

Declassify On: 25X1, EO 12951

(U) ORCON Warning: Only the components listed below are approved to receive the ORCON information.  
(U) information marked ORCON from originator none provided is approved for dissemination to: none provided

Chairman, Vice Chairman, Mr. Lettre, Ms. O'Connor, Mr. McKeon, and Eric,

(b)(1),(b)(5),1.4(a),1.4(c)

V/r,  
Soak

-----Original Message-----

From: Taylor, Robert, S., Mr., OGC [mailto:Robert.Taylor@osdj.ic.gov]

Sent: Tuesday, November 22, 2016 8:24 PM

To: Dolan John L Lt Gen USAF USA MIL (b)(6) Selva Paul J GEN USAF USA MIL

(b)(6)@coe.ic.gov; O'Connor Jennifer M OSD USA GOV <jennifer.o'connor@osdj.ic.gov>; McKeon Brian P OSD USA GOV <brian.mckeon@osdj.ic.gov>; Lettre Marcel J OSD USA GOV <marcel.lettre@osdj.ic.gov>; \*Smith, Eric BGen SD <Eric.Smith@sd.ic.gov>; (b)(6) CAPT DIA USA MIL (b)(6)@coe.ic.gov

Cc: Wheilan Theresa M OSD USA GOV <theresa.wheilan@osdj.ic.gov>; Lowery Todd R OSD USA GOV <todd.lowery@osdj.ic.gov>; Shanahan John N O-09 OSD USA MIL <john.shanahan@osdi.ic.gov>; Work Robert OSD USA GOV <Robert.Work@sd.ic.gov>; (b)(6) OSD USA GOV (b)(6)@osdj.ic.gov; (b)(6) OSD USA GOV (b)(6)@osdj.ic.gov; Pandoife Frank C VADM USN USA MIL (b)(6)@coe.ic.gov; Mayville William C LTG USA USA MIL (b)(6)@coe.ic.gov; Marrs James R Maj Gen DIA J2 USA MIL (b)(6)@coe.ic.gov; Groen Michael S BGen DIA J2 USA MIL (b)(6)@coe.ic.gov; (b)(6) J2 USA GOV (b)(6)@coe.ic.gov; Lewis Andrew L RADM USN USA MIL (b)(6)@coe.ic.gov; Dawkins James C BG JSC USA MIL (b)(6)@nccs.ic.gov; Elton Albert M MajGen/O-8 JSC USA MIL (b)(6)@nccs.ic.gov; Moore Charles L BGEN JSC USA MIL (b)(6)@nccs.ic.gov; George Randy A BG DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) JSC USA GOV (b)(6)@nccs.ic.gov;

McKenzie Kenneth F LtGen USMC USA MIL (b)(6)@coe.ic.gov; Crandall Darse E RDML USN USA MIL (b)(6)@coe.ic.gov; D'Annunzio Michael A OSD USA GOV <michael.d'annunzio@osdi.ic.gov>; (b)(6) OSD USA MIL (b)(6)@sd.ic.gov; (b)(6) LTC USA USA MIL (b)(6)@coe.ic.gov; 'OC/CS-COMMS' <OC/CS-COMMS@nccs.ic.gov>; (b)(6) Lt Col DIA USA MIL (b)(6)@coe.ic.gov;

(b)(6) APT DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) Lt Col USAF USA MIL (b)(6)@coe.ic.gov; (b)(6) O-05 OSD USA MIL (b)(6)@osdj.ic.gov; (b)(6) O-06 OSD USA MIL (b)(6)@osdj.ic.gov; (b)(6) LtCol DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) MAJ DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) O-06 OSD USA MIL (b)(6)@osdj.ic.gov; (b)(6) LtCol DOD JCS USA MIL (b)(6)@coe.ic.gov; (b)(6) COL JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) CDR JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) JCS USA CTR (b)(6)@nccs.ic.gov; (b)(6) MAJ/USA JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) CDR DIA USA MIL (b)(6)@coe.ic.gov; (b)(6) LTCOL JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) B MAJ/O4 JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) APT, USN, OSD(P) (b)(6)@osdj.ic.gov; (b)(6) OSD USA GOV (b)(6)@osdi.ic.gov; (b)(6) O-04 OSD USA MIL (b)(6)@osdj.ic.gov; (b)(6) OSD USA GOV (b)(6)@osdj.ic.gov; (b)(6) OSD USA CTR (b)(6)@osdj.ic.gov; (b)(6) LTC DIA J25 USA MIL (b)(6)@coe.ic.gov; (b)(6) LTCDR DIA J253 USA MIL (b)(6)@coe.ic.gov; (b)(6) DIA DCTC5C USA GOV (b)(6)@coe.ic.gov; (b)(6) MAJ JSC USA MIL (b)(6)@nccs.ic.gov; (b)(6) OSD

USA GOV <(b)(6)@osdj.ic.gov>; (b)(6) MAJ USA USA MIL (b)(6)@coe.ic.gov>;  
Bentley Christopher F BG JSC USA MIL (b)(6)@nccs.ic.gov>; Knight William M BrigGen JSC USA MIL  
(b)(6)@nccs.ic.gov>; Grynkewich Alexis G BG JSC USA MIL (b)(6)@nccs.ic.gov>; Walrath Daniel R  
BG/USA JSC USA MIL (b)(6)@nccs.ic.gov>; (b)(6) CAPT/NAVY JSC USA MIL (b)(6)@nccs.ic.gov>  
Subject: RE: For Approval: Joint Proposal PPG Variance Request for Direct Action in Yemen

Classification: TOP SECRET//HCS-P, (b)(6) //NOFORN

(b)(1), 1.4(c)

Classified By: Robert Taylor  
Derived From: Multiple Sources  
Declassify On: 25X1, EO 12951

On behalf of OGC:

(b)(1), (b)(5), 1.4(a), 1.4(b)

Best,  
Bob Taylor

Robert S. Taylor  
Principal Deputy General Counsel  
Department of Defense

(b)(6)

-----Original Message-----

From: DoJan John L Lt Gen USAF USA MIL [mailto:(b)(6)@coe.ic.gov]  
Sent: Tuesday, November 22, 2016 6:13 PM



To: Selva Paul J GEN USAF USA MIL; O'Connor, Jennifer, M., Ms., OGC; McKeon, Brian, P., Mr., OSD(P); Lettre, Marcel, J., HON, OSD OUSDI; \*Smith, Eric BGen SD; (b)(6) M CAPT DIA USA MIL  
Cc: Whelan, Theresa, M., Ms., OSD(P); Lowery, Todd, R., Mr CIV OSD OUSD(I); Shanahan, John, N., Lt Gen, USAF, OSD OUSD(I); Taylor, Robert, S., Mr., OGC; Work, Robert CIV SD; (b)(6) Mr., OSD(P); (b)(6) Mr., OUSD(I); Pandolfe Frank C VADM USN USA MIL; Mayville William C LTG USA USA MIL; Marrs James R Maj Gen DIA USA MIL; Groen Michael S BGen DIA J2 USA MIL; (b)(6) DIA USA GOV; Dolan John L Lt Gen USAF USA MIL; Lewis Andrew L RADM USN USA MIL; Dawkins James C BG JSC USA MIL; Elton Albert M MajGen/O-8 JSC USA MIL; Moore Charles L BGEN JSC USA MIL; George Randy A BG DIA USA MIL; (b)(6) JSC USA GOV; McKenzie Kenneth F LtGen USMC USA MIL; Crandall Darse E RDML USN USA MIL; D'Annunzio, Michael, A., Mr., OGC; (b)(6) OSD USA MIL; (b)(6) LTC USA USA MIL; 'OCJCS-COMMS'; (b)(6) J Lt Col DIA USA MIL; (b)(6) CAPT DIA USA MIL; (b)(6) Lt Col USAF USA MIL; (b)(6) O-05 OSD USA MIL; (b)(6) COL, USA, OSD OUSD(I); (b)(6) COL, USA, OSD OUSD(I); (b)(6) LtCol DIA USA MIL; (b)(6) Maj DIA USA MIL; (b)(6) MAJ DIA USA MIL; (b)(6) COL, USA, OSD(P); (b)(6) LtCol USAF USA MIL; (b)(6) COL JSC USA MIL; (b)(6) A CDR JSC USA MIL; (b)(6) JCS USA CTR; (b)(6) MAJ/USA JSC USA MIL; (b)(6) CDR DIA USA MIL; (b)(6) LTCOL JSC USA MIL; (b)(6) MAJ/O4 JSC USA MIL; (b)(6) CAPT, USN, OSD(P); (b)(6) Mr., OSD OSD(P); (b)(6) Lt Col, USAF, OSD(P); (b)(6) Mr., OUSD(I); (b)(6) CTR, OSD OUSD(I); (b)(6) USA MIL; (b)(6) LCDR DIA USA MIL; (b)(6) USA GOV; (b)(6) MAJ JSC USA MIL; (b)(6) A., Mr., OSD(P); (b)(6) MAJ USA USA MIL; Bentley Christopher F BG JSC USA MIL; Knight William M BrigGen JSC USA MIL; Grynkewich Alexis G BG JSC USA MIL; Walrath Daniel R BG/USA JSC USA MIL; (b)(6) CAPT/NAVY JSC USA MIL

Subject: For Approval: Joint Proposal PPG Variance Request for Direct Action in Yemen

Classification: TOP SECRET//MCS-P (b)(6) //NOFORN

Classified By: d930897 (b)(1), 1.4(c)

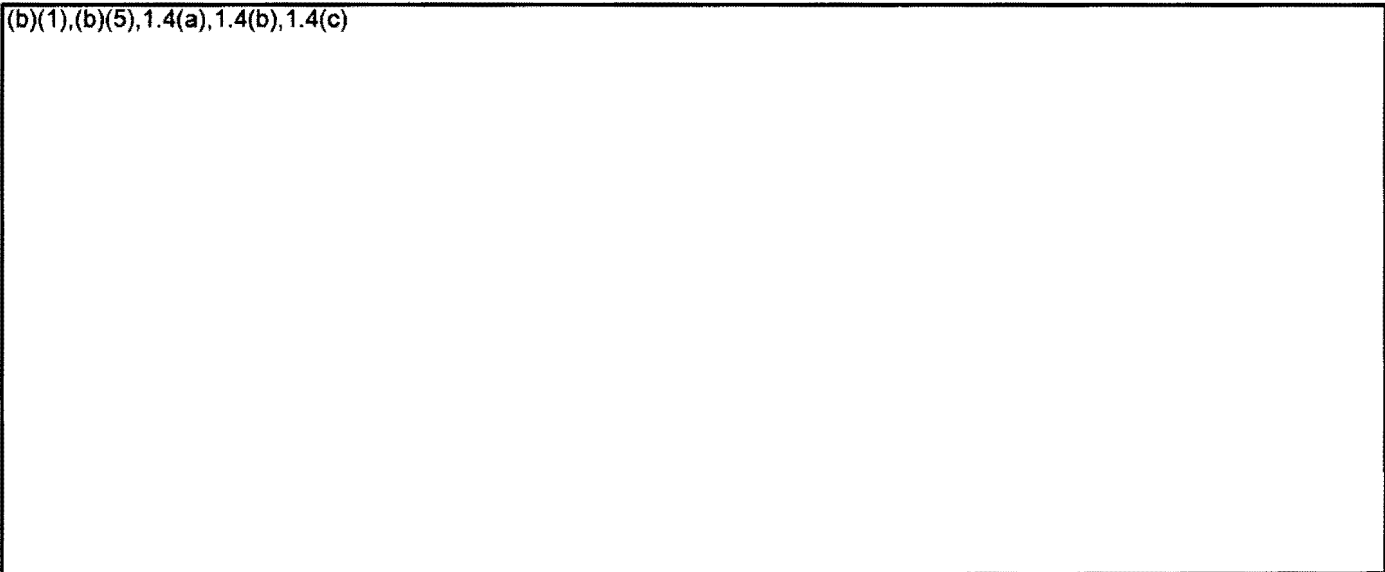
Derived From: Multiple Sources

Declassify On: 25X1, EO 12951

=====

Chairman, Vice Chairman, Mr. Lettre, Ms. O'Connor, Mr. McKeon, and Eric,

(b)(1),(b)(5), 1.4(a), 1.4(b), 1.4(c)



(b)(1),(b)(5),1.4(a),1.4(b),1.4(c)

V/r,

Soak

=====  
~~Classification: TOP SECRET//HCS-P/ [ ]/NOFORN~~

(b)(1),1.4(c)

=====  
~~Classification: TOP SECRET//HCS-P/ [ ]/NOFORN~~

(b)(1),1.4(c)

=====  
~~Classification: TOP SECRET//HCS-P/ [ ]/ORCON/NOFORN~~

(b)(1),1.4(c)

=====  
~~Classification: TOP SECRET//HCS-P/ [ ]/ORCON/NOFORN~~

(b)(1),1.4(c)



# Exhibit 56

(b) (6)

**RES USN USCENTCOM CCJA**

**From:** (b) (6) COL MIL USA USCENTCOM CCJA  
**Sent:** Thursday, January 26, 2017 5:56 PM  
**To:** (b) (6) Col USAF JS OCJCS (US)  
**Cc:** CCJA Op Law; JS Pentagon DoM List LC Bridge; d'Annunzio, Michael A SES OSD OGC (US); (b) (6) CIV OSD OGC (US); (b) (6)  
**Subject:** RE: [S//NF] (S) (b) (1) (A) (b) (6)  
**Attachments:** FW: [S] SHABWAH Bi-Lateral Raid

Classification: ~~SECRET~~//NOFORN

(b) (6)

Thanks. Great discussion. I really appreciated the call, even though we got cut off a bit early. A few follow-ups FYSA:

(1) Please see attached traffic from SECDEF's office conveying mission execution approval and additional PA guidance from POTUS.

(2) GEN Votel has issued an EXORD (via e-mail, to be followed up with a formal order tonight). (b) (1) 1.4(a) (b) (c) (d)

(b) (6)

(b) (6)

(b) (6)

+(b) (6)

v/r,

(b) (6)

COL (b) (6)  
Staff Judge Advocate  
U.S. (b) (6)

(b) (6)

-----Original Message-----

From: (b)(6)

Sent: Thursday, January 26, 2017 12:33 PM

To: (b)(6)

Cc: (b)(6) d'Annunzio, Michael A SES OSD OGC (US) (b)(6)

(b)(6)  
(b)(1), Sec. 1.4(a)

CLASSIFICATION: ~~SECRET~~

(b)  
(6)

(b)(1),(b)(5), Sec. 1.4(a), Sec. 1.4(c), Sec. 1.4(d)

V/r,

(b)(6)

CLASSIFICATION: ~~SECRET~~

Classified By: (b)(6) [redacted] Derived From: USCENCOM SCG, CCR 380-14, 24 Feb

2016 Declassify On: 1/26/2017

Classification: ~~SECRET//NOFORN~~