

# Future of Detention Operations

by

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United States Army War College  
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USAWC STRATEGY RESEARCH PROJECT

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## Abstract

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## **Future of Detention Operations**

The recent release of detainees from Guantanamo Bay, Cuba garnered headline news. The closure of the detention facility at Guantanamo Bay, Cuba is a central issue for President Obama, and an issue he wants completed by the end of his second term. President Obama forcefully reiterated his position on closing the detention facility at Guantanamo Bay during the State of the Union address on 20 January 2015.

As Americans, we have a profound commitment to justice. So it makes no sense to spend \$3 million per prisoner to keep open a prison that the world condemns and terrorists use to recruit. Since I've been president, we've worked responsibly to cut the population of Gitmo in half. Now it is time to finish the job, and I will not relent in my determination to shut it down. It is not who we are. It's time to close Gitmo.<sup>1</sup>

President Obama's 20 January 2015 State of the Union address reechoed his determination to fulfill his Presidential Executive Orders closing the Guantanamo Bay detention facility Cuba signed the 22 January 2009.

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantánamo Bay Naval Base (Guantánamo) and promptly to close detention facilities at Guantánamo, consistent with the national security and foreign policy interests of the United States and the interests of justice.<sup>2</sup>

These two policy statements made by the President of the United States (POTUS) causes some significant strategic challenges in the United States policy approach, in the conduct of detention operations. It is apparent that the Obama administration desires a different approach than the Bush administration in regards to the policies concerning detention operations. Numerous strategic questions faced both the Bush and Obama administrations in regards to the legal status of captured individuals and the legitimacy of potential confinement. Currently, the United States

policy towards terrorism and terrorist is found in the National Security Strategy of 2010. The National Security Strategy of 2010 states that it is necessary to disrupt, dismantle, and defeat al-Qaida and its violent extremist affiliates in Afghanistan, Pakistan, and around the world.<sup>3</sup> The President of the United States (POTUS) reiterated his position on defeating terrorism in the 2015 National Strategic Strategy and wrote “we will meet the persistent threat posed by terrorism today, especially from al-Qaida, ISIL, and their affiliates.”<sup>4</sup> The 2015 National Security Strategy is clear that interdicting terrorist anywhere in the world remains a central policy and a core national interest for the United States.

The President of the United States (POTUS) comments in the 2015 State of the Union demonstrates a conflict between the political charged rhetoric of closing the detention facility at Guantanamo Bay, Cuba versus the core interests in the National Security Strategy of dismantling and defeating terrorism. As long as the United States military continues offensive actions against al-Qaida and their affiliates under 2001 Authorization Use of Military Force (AUMF) detention, at some location, is required. Currently, the only location for long term detention is Guantanamo Bay, Cuba. Additionally, President Obama argues that the detention facility at Guantanamo Bay, Cuba remains a recruiting tool for terrorist. The fact that the detention facility in Guantanamo Bay, Cuba is utilized as a terrorist recruiting tool has some validity, but it does not explain the numerous terrorist attacks against the United States and its interest prior to the opening of Guantanamo Bay, Cuba. The idea that the detention facility at Guantanamo Bay, Cuba is a terrorist recruiting tool rejects the fact that al-Qaida terrorist activities against the United States occurred well prior to the

establishment of any U.S. operated detention facility. Al-Qaida targeted United States interests from the 1990's onward. The United States Embassy in Kenya and Tanzania were bombed in 1998. The USS Cole was attacked in Yemen in 2000. In September 2001 attacks by al-Qaida struck United States soil in New York, Washington D.C., and Pennsylvania. If it is the expectation of the President of the United States (POTUS) to fulfill the strategic policy of defeating terrorism as stated in the 2010 and 2015 National Security Strategy, offensive military actions are required. These offensive military actions will produce detention requirements. The logical extension of the defeat terrorism policy is that terrorists will be targeted, killed, and/or captured, by the United States military or other governmental agencies (OGA), and when captured a detention capability is required.

How and who conducts the detention, the legal processes utilized during detention, the interrogation processes employed, the location of the detention facilities, and finally the release of detainees are highly debated and politically charged issues. Addressing the reality and then planning for the detention of an international terrorist or an Islamic State in Levant (ISIL) fighter is better done before the capture and detention, rather than after the capture and detention. Many of the challenges such as location, classification, and jurisdiction over the detainee are determined during the joint operations planning process.

This paper provides a historical overview of confinement during war, examines the genesis and guiding international law of detention operations, and reviews the detention processes utilized during Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF) in Afghanistan, and the detention facility in Guantanamo Bay, Cuba.

Finally, this paper addresses four strategic questions in regards to the future of detention operations. First, when the United States captures a high-value target, what type of prosecution is pursued? Second, where and how will the individual be detained and what type of review process is utilized? Third, what is the status of the individual detained? Fourth, should one federal agency remain as the executive agent for the detention of non- US citizens who wages war against the United States. Finally, this paper proposes a comprehensive strategic detainee detention process with multiple dispositions.

### History of Detainee Combatants

The necessity to remove combatants from the battlefield existed since the beginning of human conflict. The Romans either killed their enemies or enslaved them. It was not until the end of the 30 Years' War in Europe that processes were established on the return of combatants after the end of hostilities. The establishment of prisoner camps occurred during the French Revolution and the Napoleonic Wars. Norman Cross, England was the first location of a large scale prisoner camp named the Norman Cross Depot for Prisoners of War. Norman Cross received its first prisoner of war in April 1797. The Norman Cross Depot for prisoners remained operational until 1814. At one point, the prisoner of war population swelled to nearly 6,000 prisoners.<sup>5</sup>

During the American Revolution and Napoleonic Wars, prisoner exchanges remained a viable solution in reducing prison populations. Prisoner abuse and neglect were apparent during the Civil War, the worst neglect occurred at Andersonville, Georgia by the Confederate Army. Andersonville prison housed 32,000 prisoners and recorded 12,000 deaths in confinement during its operation.<sup>6</sup> Andersonville was

extremely overcrowded, and diseases such as scurvy, diarrhea, and dysentery were rampant inside the camp.

The 20<sup>th</sup> Century ushered in large scale world wars and global conflicts, resulting in large scale detention of prisoners of war, belligerents, and civilian populations. World War I saw a combined population of prisoners and detained persons of nearly seven million people. A complete accounting of prisoners of war and detained citizenry during World War II is difficult to assess. Germany alone established over 20,000 detention camps from 1933-1944.<sup>7</sup>

#### History of Detained Citizenry

The removal of indigenous personnel, noncombatants, citizens occurred numerous times throughout history. Noncombatants, citizens, or other classification of persons were placed in detention facilities, concentration, and internee camps. The British government, German government, and the United States government among others conducted detention and civilian internment operations throughout the last two centuries. The British military during the Boer Wars removed the Boer women and children and placed them into internment camps in South Africa.<sup>8</sup> The conditions in these camps were unsanitary and extremely harsh. Food was limited and starvation prevalent in those camps. History will not forget the atrocities Germany perpetrated inside the concentration camps of Europe from the 1930's through the end of World War II. Finally, the United States also participated in civilian internment of its own citizens, during World War II. The United States interned 120,000 Japanese Americans from 1942 to 1945. President Franklin Roosevelt signed Executive Order 9066 creating a West Coast exclusionary zone for people of Japanese ethnicity and the establishment of Japanese internment camps.<sup>9</sup> Clearly the treatment by each government towards

detained people remains different. The detention of people is removing their freedom and any detention of a person remains a strategic issue.

### Condification over Time

Detention/confinement remains a part of war and customary laws governed the treatment of prisoners of war and the local populace. The customary laws were unwritten and generally accepted practice in the conduct of war, which included the treatment of prisoners. One of the primary goals of the customary laws was to conduct war without causing unnecessary suffering or destruction, and to provide humane treatment to all persons removed from the fight. <sup>10</sup>

In the mid eighteenth century efforts to codify the conduct of war, in writing, began in the United States, during the Civil War. One of the leading guiding document is offered by the United States in the form of general order 100 issued by President Abraham Lincoln. President Abraham Lincoln signed General Order 100 known as the Lieber Code on 24 April 1863. The Lieber Code provided 157 Articles which addresses the conduct of war. Section III of the Lieber Code provides numerous articles describing the authorized conduct towards prisoners of war. Specifically, the Lieber Instructions forbade the use of torture to extract confessions and provided rights for prisoners of war. <sup>11</sup>

### Geneva Convention

The Hague Convention of 1907 and Geneva Conventions of 1949 were international efforts to draft basic concepts during the conduct of war. The conventions attempted to reduce the harsh suffering of war across the civilian populace by establishing targeting rules and placing non-military targets off limits. Furthermore, the Geneva Convention of 1949 established rules for the treatment of non-combatants;

prisoners of war, sick and wounded, and other detained civilians.<sup>12</sup> The Geneva Convention focuses on treating non-combatants, prisoners of war, civilians, or other detained personnel humanely. In 1975 the U.S. Army described “humanely” as treating people “as you would like to be treated were you captured or detained.”<sup>13</sup> The Geneva Convention extends itself further and specifically prohibits certain acts towards prisoners of war. These acts include; (1) violation to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (2) taking of hostages; (3) outrages upon personal dignity, in particular, humiliating and degrading treatment; (4) the passing of sentences and the carrying out of execution.<sup>14</sup> Additionally, the 1949 Geneva Prisoner of War Convention states that a prisoner of war only provide certain information. The required information for a prisoner of war is “full name, rank, date of birth and service number.”<sup>15</sup> Torture, mental or physical, is not permitted to obtain information from a prisoner. During this period much international understanding of detention was limited to conventional wars and a conventional threat.

The Hague and Geneva Convention provides limited guidance on displaced people or enemy combatants not affiliated to a state actor in the form of Common Article III of the Geneva Convention. Common Article III of the Geneva Convention provides additional guidance on internal conflicts such as “traditional civil wars, internal armed conflicts, which spill over into other States, or internal conflicts in which third States or a multinational forces intervene alongside the host nation government.”<sup>16</sup> Common Article III fits most of the non-state actors within a national accepted border. Common Article III apply to insurgents attempting to remove a sitting government. The Taliban activities in Afghanistan generally fit into Common Article III of the Geneva Convention.

## Authority to Detain

Numerous jurisdiction and laws generally apply to detainees, United States Law, the Law of Armed Conflict, International Human Rights Law, and United Nations Resolutions. The Geneva Convention describes the guidelines and procedures for detention in the Law of Armed Conflict. The authority for United States to detain originates from the United States Constitution, Article I Section 8 “to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”<sup>17</sup> The ability to declare war or express war activities resides in the legislative branch of government and is conveyed by a declaration of war, war resolution, or an Authorization Use of Military Force (AUMF) approved by Congress. Additionally, Article II of the Constitution delegates to the President “war making” powers, it allows the President to direct war activities, such as detention.<sup>18</sup>

The United States Congress authorized the use of Military Force after the September 11, 2001 attacks on the United States in New York City, Washington D.C., and the failed attack which crashed in Western Pennsylvania. The Authorization Use of Military Force (AUMF) authorized the President Bush to conduct offensive action against those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”<sup>19</sup> After the Authorization Use of Military Force (AUMF) was approved by Congress and the executive branch to conducted detention operations at Guantanamo Bay, Cuba. The first detainees arrived to Guantanamo Bay Cuba, on 11 January, 2011.<sup>20</sup>

The ability to conduct long term detention was challenged in Hamdi v Rumsfeld in the Supreme Court in 2004. The Supreme Court in Hamdi v. Rumsfeld asserted that Article II of the US Constitution and the Authorization Use Military Force (AUMF)

provides the legal authority for detention.<sup>21</sup> Additionally, during the wars in Iraq and Afghanistan long term detention occurred in multiple locations by three different Joint Task Forces (JTF). Detention at Guantanamo Bay, Cuba is conducted by Joint Task Force Guantanamo. The Combined Joint Interagency Task Force (CJIATF) 435 at Bagram, Afghanistan conducted detention operations at two locations, first at the Bagram Theater Internment Facility (BTIF) at the Bagram Airfield, and then later at the Detention Facility in Parwan at Camp Sabula-Harrison, Bagram, Afghanistan. Joint Task Force (JTF) 134 conducted large scale detention operations at Camp Bucca, Abu Gharib, Camp Cropper, Fort Suse, Taji, and Ramadi, in Iraq.

One of the many lines of effort in stabilizing a fragile state is the establishment and/or reestablishment of the rule of law. Once the host nation government is reestablished and capable to conduct rule of law activities during conflict and the authority to detain becomes a contentious strategic and complicated issues as evident in Afghanistan and Iraq. As both nations reestablished themselves through elections and constitution ratification it was natural to for those nations to exercise self-determination activities within their borders. Once national self-determination was realized in Iraq and Afghanistan, each sovereign nation desired more influence in the detention process. Efforts were made by United States military in both Iraq and Afghanistan to provide transparency and host nation input into the detention process. The additional authority for Multi National Force Iraq to detain after the Iraq constitution was approved, derived from United Nations Security Council Resolutions 1546, 1637 and 1723 which supported the maintaining of security and stability.<sup>22</sup> President Hamid Karzai in Afghanistan desired more influence over the detention policy and finally

received it with the transfer of Afghanistan detainees to Afghan control from 2012 to 2014. This transfer culminated culminating with the closure of the Detention Facility in Parwan (DFIP) Afghanistan.<sup>23</sup>

## POLICY

Administrative policy guidance for detention operations is outlined in the recently updated Department of Defense Directive 2310.01E titled DOD Detainee Program. The Department of Defense Directive 2310.01E reissued on 19 Aug 2014 rescinds the 2006 Department of Defense 2310.01E. The reissued Department of Defense Directive assigns responsibility for detention operations to the Department of Defense as the executive agent. Responsibilities as the executive agent ensures compliance with United States Law, international law, and established detention policy and procedures.<sup>24</sup>

The Army is the assigned Executive Agent for Detention Operations and retains as the proponent for the Army Regulations 190-8; Enemy Prisoner of War, Retained Personnel, Civilian Internees and Other Detainees. Army Regulation 190-8 purpose is outlined below.

Army Regulation 190-8 provides policy, procedures, and responsibilities for the administration, treatment, employment, and compensation of enemy prisoners of war (EPW), retained personnel (RP), civilian internees (CI) and other detainees (OD) in the custody of U.S. Armed Forces. This regulation also establishes procedures for transfer of custody from the United States to another detaining power.<sup>25</sup>

### Detainee Defined

September 11, 2001 brought to light a new kind of enemy who did not conform into the Geneva Convention construct of combatants. The age of international terrorism brought new challenges in dealing with a new pervasive enemy. The new enemy when

captured did not meet prisoner of war status. The Law of War definition for a detainee is defined below.

Is any person captured, detained, held, or otherwise under the control of DoD personnel. It includes any person held during operations other than war. This is the default term to use when discussing persons who are in custody of U.S. armed forces.<sup>26</sup>

The differences between a prisoner of war and a detainee is first, the type of conflict and second, the belligerents involved. If the belligerents involved have international recognition, meaning the belligerents entered into international agreements and are involved in hostilities, the captured belligerents are considered a prisoner of war. However, if the belligerents do not meet these international standards, the belligerents are categorized as a detainees and are afforded the protections under Common Article III of the Geneva Convention. Terrorist organizations do not meet the criteria or status of a prisoner of war. Additionally, terrorist organizations such as al-Qaida do not follow customary international law nor have they signed the Geneva Convention.

The United States Congress in the National Defense Authorization Act of 2009 further defined detainees into three different categories. The overarching term for a confined combatant/noncombatant is a detainee. The National Defense Authorization Act 2009 created three subcategories of detainees; belligerent, retained personnel, and civilian internees. The term belligerent is further bifurcated to privileged belligerent and unprivileged belligerent. According to Joint Publication 3-63 Detention Operations “privileged belligerents are enemy prisoners of war upon capture are entitled to combatant immunity for their lawful pre-capture war-like acts. They may be prosecuted

for violations of the law of war.”<sup>27</sup> Joint Publications 3-63 defines unprivileged belligerents in the below block text.

Belligerents who do not qualify for the distinct privileges of combatant status. Examples of unprivileged are: (a) Individuals who have forfeited the protections of civilian status by joining or substantially supporting an enemy non-state armed group in the conduct of hostilities, and (b) Combatants who have forfeited the privileged of combatant status by engaging in spying, sabotage, or similar acts behind enemy lines.<sup>28</sup>

### Detainee Categories

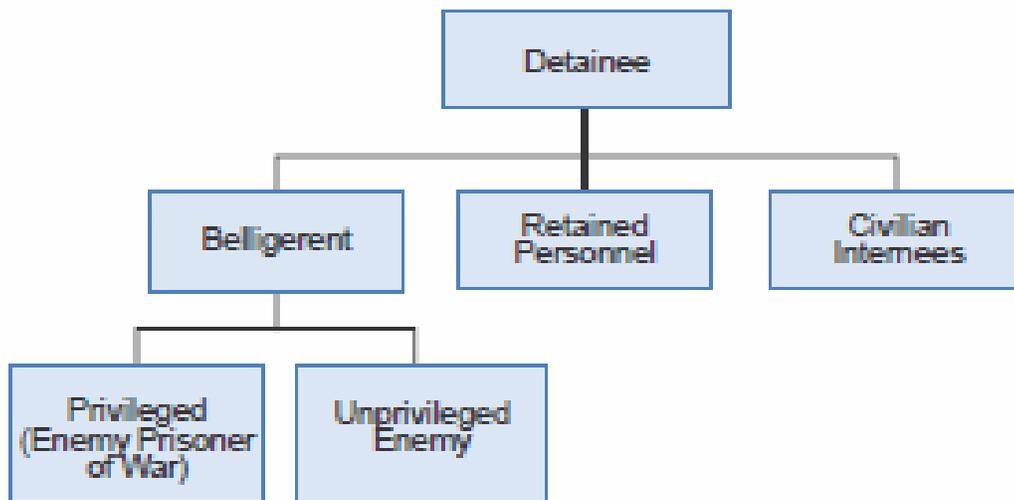


Figure 1. Detainee Categories<sup>29</sup>

Essentially this means privileged belligerents are afforded Common Article IV Geneva Convention protections and unprivileged belligerents are not afforded those same protections.

### Review Processes

The United States Supreme Court in *Hamdi v. Rumsfeld* opined on legal detention, but it also recommended the need for a detainee review process. Once an individual is detained the Geneva Convention requires an Article 5 tribunal to be

conducted to determine the status of the captured individual as combatant or noncombatant. Once the first detention review board is conducted by the capturing unit (Brigade/Division) it is determined if the captured individual is released, detained, or turned over to host nation authorities for processing. Releasing individuals to host nations remains contingent if the host nation has systems in place to conduct detention in accordance with international standards. Releasing to host nation for criminal prosecution is contingent upon the host nations ability to conduct rule of law functions. If detained by capturing coalition forces the captured individual is moved to a theater internment facility operated by the capturing nation or coalition partners.

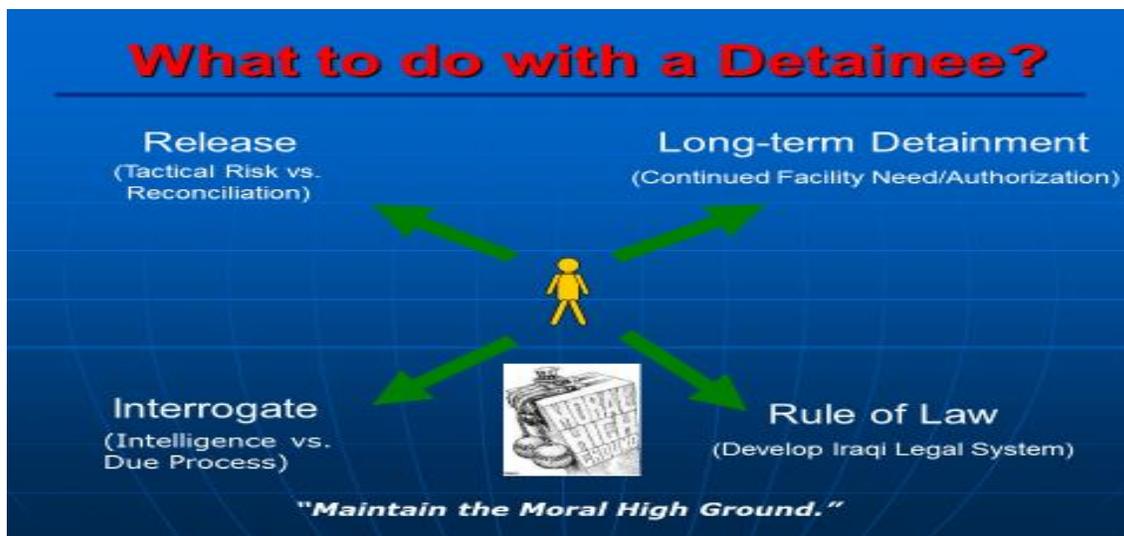


Figure 2. What to do with a Detainee?<sup>30</sup>

Hamdi v. Rumsfeld not only affirmed the right of the United States government's ability to conduct detention but recommends fact finding tribunals Combatant Status Review Tribunal (CSRT). Combatant Status Review Tribunal are not criminal trials. They do not mirror the criminal review process. The Combatant Status Review Tribunal is an administrative process designed to determine whether each detainee under the control of the Department of Defense is in fact an enemy combatant. Combatant Status

Review Tribunals were not created to be a substitute for the writ of habeas corpus.<sup>31</sup>

Each of the detainees at Guantanamo Bay, Cuba has gone through the CSRT process and meet the criteria to be designated as an enemy combatant.<sup>32</sup> The Supreme Court views the combatant status review board as a legitimate process for the conduct of detention that satisfies Geneva Convention requirements. The Combatant Status Review Tribunal board composition and process is described in detail below.

A CSRT is a tribunal, composed of three neutral military officers, who listen to the evidence presented by the government and the detainee and then is "preponderance of the evidence," or whether it is "more likely than not," that the detainee is an enemy combatant. Each detainee is given a personal representative to assist him in presenting his case. The personal representative is a military officer who has the appropriate security clearance to review classified material to assist the detainee. The personal representative is not an attorney. The personal representative can share unclassified information with the detainee and participate in the proceedings as the detainee's representative. Under AR 190-8 and the Geneva Conventions, a detainee is not given a personal representative. Detainees are allowed to attend their CSRTs and have the right to receive an unclassified summary of the evidence to be presented by the government in advance of the hearing. Those are the same rights detainees receive under AR 190-8 and in the Geneva Conventions. The CSRT rules require the government to search all of its files for evidence to suggest that the detainee should not be designated an enemy combatant. This requirement to search for "exculpatory" evidence is similar to the obligation all prosecutors in the United States have to the court, that is, that they must turn over "potentially exculpatory" evidence to the defense. Additionally, if new information is learned relating to the enemy combatant status of a detainee, a new CSRT may be convened to consider the new evidence. There is no such provision in AR 190-8 or the Geneva Conventions. Finally, detainees have an absolute right to appeal their case to the United States Court of Appeals for the District of Columbia Circuit and potentially the United States Supreme Court. Detainees under AR 190-8 and the Geneva Conventions have no appellate rights.<sup>33</sup>

The Department of Defense expanded the review process beyond the detainees at Guantanamo Bay, Cuba. The Deputy Secretary of Defense ordered the implementation of Administrative Review Board (ARBs) May 11, 2004. The

Administrative Review Board is an annual proceeding to determine if continued detention is necessary.

In accordance with policy and guidance set by the Secretary of Defense, the Administrative Review Procedures will encompass an administrative proceeding for consideration of all relevant and reasonably available information to determine whether the enemy combatant represents a continuing threat to the U.S. or its allies in ongoing armed conflict against al Qaida and its affiliates and supporters (e.g., Taliban) and whether are other factors that could form the basis for continued detention(e.g., the enemy combatant's intelligence value and any law enforcement interest in the detainee). The proceeding will result in a recommendation to release, transfer, or continue to detain each enemy combatant. This process is non-adversarial. It provides an enemy combatant the opportunity to review unclassified information relating to his continued detention, and to appear personally to present information relevant to his continued detention, transfer or release.<sup>34</sup>

Thirty days prior to Administrative Review Board the detainee and all relevant governmental agencies are notified of the proceedings. The Administrative Review Board is a three officer panel that examines the evidence and determines if continued detention is necessary. The panel considers intelligence value and law enforcement interest. The panel can make three recommendations in regards to the Administrative Review Board, 1) Release the combatant without limitations 2) transfer the combatant 3) continue to detain the combatant. Transfer of the combatant means transfer to another jurisdiction or nation.

In Iraq Joint Task Force 134 set up a holistic engagement process that incorporated the Iraqi legal process, educational and rehabilitative programs, Multinational Force Review Committee (MNFRC) boards and a community responsibility component.<sup>35</sup> The engagement process was a potential pathway for release. The MNFRC boards essentially was the required detainee review process instituted by Multi National Force Iraq MNF-I. Similarly, in other review processes, detainees were

provided a representative to assist in a panel setting. The panel consisted of at least one military officer and two senior noncommissioned officers. If the panel determined the detainee was no longer a threat, a release letter was drafted for the detainee.<sup>36</sup>

In Afghanistan CJATF 435 adopted a process called the Detainee Review Board (DRB) process. The DRB process similarly to the other review processes fulfilled the legal requirement to conduct an administrative review on each detained individual. The DRB process essentially had five steps. The first step occurred within 14 days of arrival at the detention facility, the detainee was placed in an administrative hold for the interviews. Notification to the detainee was step two of the DRB process. The detainee is provide an unclassified summary of facts, explanation of procedures, and is provided a personal representative. The personal representatives meet with the detainees and explains the DRB process in step three. In step four of the DRB process a three person military panel hears evidence for the detention. The detainee is present and can provide witnesses and evidence in support of his case. In step five the board determines if the detainee meets criteria for continued internment. If the detainee does not meet criteria for continued internment the detainee is recommended for release. If the detainee meets criteria for continued internment three recommendations are provided. The detainee can still be recommended for release if the detainee in no longer a threat to coalition forces or host nation. The detainee is recommended for release to the host nation for reintegration or possible criminal prosecution. Finally, the detainee is recommended for continued detention by coalition forces.<sup>37</sup>

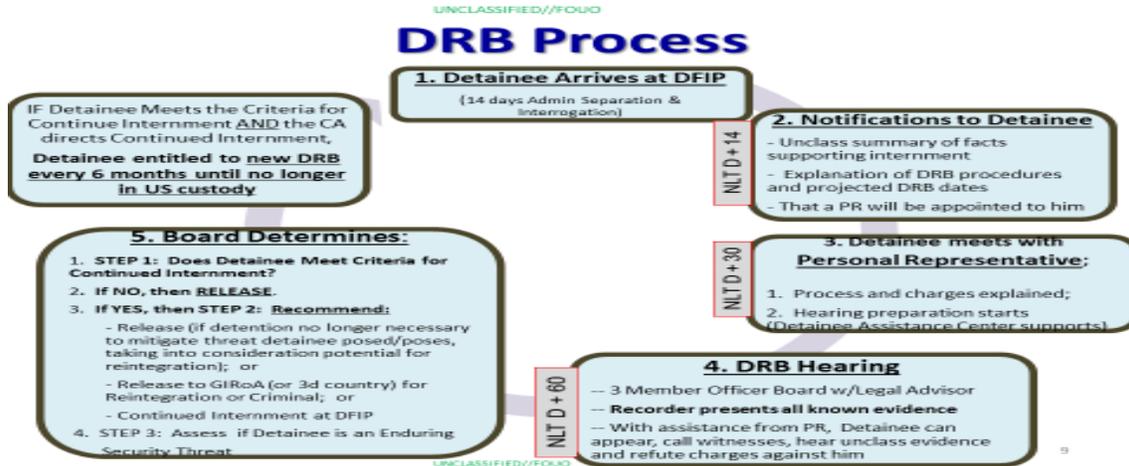


Figure 3. DRB Process<sup>38</sup>

All of the detention facilities operated by the United States in Iraq, Afghanistan, and Guantanamo Bay Cuba adopted and adhered to a review process supported by due process.

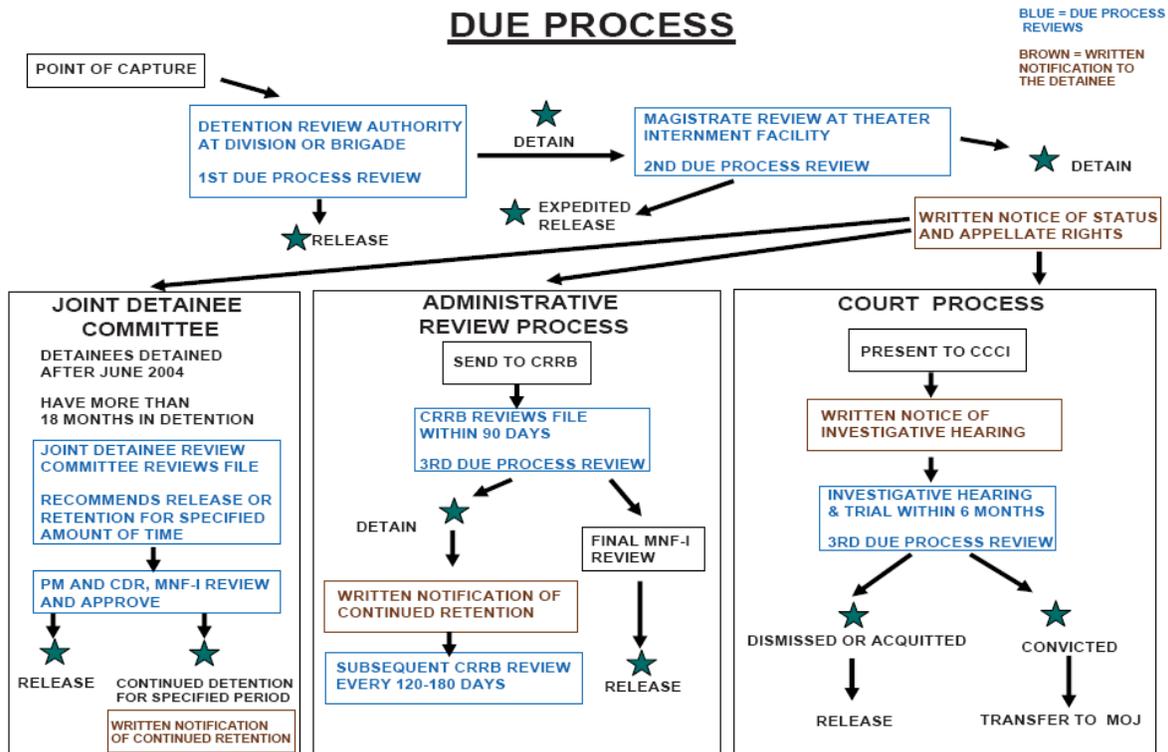


Figure 4. Due Process<sup>39</sup>

## Answering the Question

A general understanding of detention operations is necessary to understand how the United States Government proceeds in conducting detention operations. Once a non-US citizen is captured by the United States Military and is detained, will any other federal agency have jurisdictional claim? The Department of Defense should remain as the executive agent for detention operations for the United States. However, a whole of government approach is necessary to properly conduct detention operations. As previously mentioned each detainee's case is unique and treated as a separate case. It is imperative to identify one governmental agency as the executive agency to conduct detention operations, executive agent to develop policy and provide compliance oversight. Strategically it is critical to utilize one executive agent to interact with other nations on detention policy. The Department of Defense strategically should continue to maintain initial custody of detainees for a number of reasons. First, the Department of Defense maintains the expertise and capability to conduct detention operations. Second, the Justice Department and the Federal Bureau of Prison do not have the experience nor the appropriate facilities to conduct large scale detention operations. Individuals detained and who are later prosecuted by the Justice Department can be placed in a Federal Prison after their federal conviction. Moreover, prosecution and jurisdictional approach for detainees remains a nuanced issue and cannot be addressed in one broad stroke. Each detainees capture, charges, subsequent detention, and prosecution remain specific to that detainee and viewed as an individual case. Some detainees may face federal criminal charges or a military tribunal for their actions. Some detainees may be held as a security threat to the host nation and coalition forces and are held in detention for the duration of the conflict.

The location of future detention facilities remains a vital strategic consideration for numerous reasons. First, detention operations is a large logistic burden and logistic sustainment is critical to the operation of a detention facility. Second, access is vital for those that operate the facility and the detainees. Legal services, religious service, medical services, educational programs, visitation programs, interagency support are all necessities in providing in long term detention. Additionally, considerations for political and legal challenges are necessary in determining the location of a detention facility.

The United States embraces the rule of law in the conduct of detention operations. The United States maintains the legal authority to conduct detention operations as previously discussed. The United States should provide a transparent policy that is thoroughly communicated to the citizens of the United States and to the world concerning the detention disposition process.

The detainee disposition process outlines the specific reason each detainee is held and provides a path to disposition. A proposed strategic model for detainee disposition process is outlined below. The first step in the process is to determine whether to detain or release the detained individual. If the detainee is considered a threat, the panel recommends detention until the conflict is resolved. Once the conflict is concluded repatriation is conducted. If the detainee is no longer considered a threat and does not face a form of prosecution the panel recommends release. The detainee disposition process also considers multiple criminal paths for disposition, military tribunal, federal prosecution, and non-United States host nation or international prosecution. Each of the criminal prosecution pathways account for innocent and guilty verdicts in the process and can lead to incarceration.

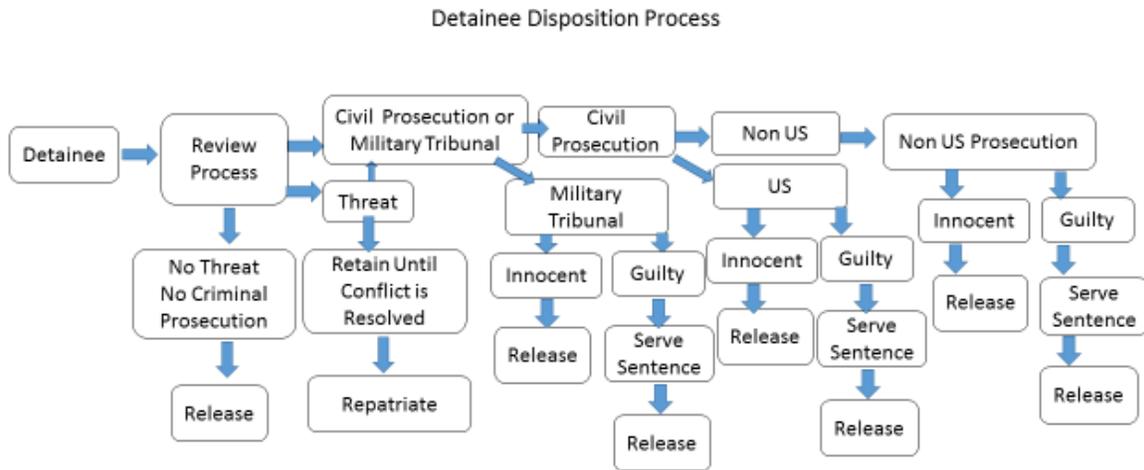


Figure 5. Detainee Disposition Process

As the world continues to be volatile, uncertain, complex and ambiguous, and both state and non-state actors will challenge the core interest of the United States as described in the 2015 National Security Strategy.<sup>40</sup> The United States government and more specifically the Department of Defense must prepare for future conflicts with state and non-state belligerents who threaten our core interests. Future conflicts will result in the need to conduct detention operations.

Detention operations remains a critical and necessary strategic function. Not discussing, considering, or planning for future detention operations at the tactical, operational, and strategic level is folly. Moreover, detention operations are often maligned and dismissed causing leaders and planners to consider detention operation decisions as an after the fact operation. The detainee disposition process outlined above considers the threat, during active conflict, and allows for the rule of law and

prosecutions to occur. This process ensures detention operations becomes a strategic success for the United States and its coalition partners.

## Endnotes

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<sup>14</sup> *Ibid.*

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