



Department of Defense
Office for the Administrative Review of
the Detention of Enemy Combatants (OARDEC)
at U.S. Naval Base Guantanamo Bay, Cuba
1010 Defense Pentagon, Washington, D.C. 20301-1010

OARDECINST 5421.1

7 May 2007

OARDEC INSTRUCTION 5421.1

Subj: PROCEDURE FOR REVIEW OF "NEW EVIDENCE" RELATING TO ENEMY
COMBATANT (EC) STATUS

Ref: (a) Detainee Treatment Act of 2005 (DTA)
(b) Implementation of Combatant Status Review Tribunal Procedures for Enemy
Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba dated July 14, 2006
(c) Revised Implementation of Administrative Review Procedures for Enemy
Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba dated July 14, 2006

1. Purpose: This regulation creates a unified procedure for the submission of new evidence relating to a Guantanamo detainee's EC status, including those who do not receive ARB hearings.

a. Section 1405(a)(3) of the reference (a) provides that Combatant Status Review Tribunal (CSRT) and Administrative Review Board (ARB) procedures, outlined in references (b) and (c), for individuals detained by the Department of Defense at Guantanamo "shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee."

b. Enclosure (13) of reference (c) provides that new information relating to the enemy combatant status of a Guantanamo detainee presented at an ARB shall be brought to the attention of the Deputy Secretary of Defense (DSD). Under that memorandum, the Department reviews new evidence and may either direct that a CSRT convene to reconsider the basis of the detainee's EC status in light of the new information, or determine that the new information does not warrant review by a CSRT.

c. Certain detainees (such as those previously approved for transfer/release or those subject to military commission charges) are not provided ARB hearings.

2. Cancellation: This is the first instruction in this series; no cancellation clause will be used.

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3. Initiation of a "New Evidence Review": A detainee or a person lawfully acting on the detainee's behalf can submit evidence that is new and relates to the detainee's EC status by mailing it to:

Director, OARDEC
1010 Defense Pentagon
Room 3A730
Washington, DC 20301-1010.

a. If any such evidence is submitted by a detainee to his ARB, it will be forwarded to the above office, consistent with the DSD Memorandum on Revised Implementation of Administrative Review Procedures.

b. If an individual submitting information on a detainee's behalf has had access to classified material, it is the responsibility of that individual to follow all applicable information security regulations with respect to the handling of classified or otherwise protected information. These procedures do not absolve those individuals of that responsibility.

4. Definition of "New Evidence"

a. For purposes of these procedures, "new evidence" must meet the following two criteria:

(1) It must be factual information that was not previously presented to the detainee's CSRT, and

(2) It must be information that is material to the factual question of whether the detainee is an EC. Information will be deemed "material" if it creates a substantial likelihood that the "new evidence" would have altered the CSRT's prior determination that the detainee is an enemy combatant, as that term is defined by Deputy Secretary of Defense Order of July 7, 2004, and the Deputy Secretary of Defense Memorandum of July 14, 2006.

b. New "evidence" and "information" does not include legal argument or factual assertions not supported through documentation or witness testimony. For example, documents that merely claim the detainee is not an enemy combatant and/or that primarily focus on the legality of his detention or the propriety of his CSRT/ARB process will not be reviewed under these procedures. Information that contends the detainee is not an enemy combatant and that contains photographs, affidavits, videotaped witness statements or other supporting exhibits may be considered new evidence or information, as would documentation of investigative results.

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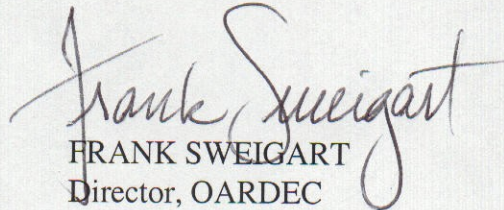
5. Conduct of a "New Evidence Review"

a. Every effort will be made to make a decision regarding whether or not to convene a new CSRT within 90 days of the "new evidence" being received at the above address.

b. If the evidence is found to meet the "new evidence" standard, the DSD will direct that a CSRT convene to reconsider the basis of the detainee's EC status in light of the new information. This CSRT will follow the procedures found in the "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo, Cuba."

c. If the evidence does not meet the "new evidence" standard, a new CSRT will not be convened.

d. The decision to convene a CSRT to reconsider the basis of the detainee's EC status in light of "new evidence" is a matter vested in the unreviewable discretion of the DSD.


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