

May 20, 2021

**VIA ELECTRONIC DELIVERY**

Lloyd J. Austin III  
United States Secretary of Defense  
U.S. Department of Defense

Avril Haines  
Director of National Intelligence  
Office of the Director of National Intelligence

Merrick B. Garland  
Attorney General  
U.S. Department of Justice

Christopher Wray  
Director of the Federal Bureau of Investigation  
U.S. Department of Justice

Dear Secretary Austin, Director Haines, Attorney General Garland, and Director Wray:

We write as members of the Human Rights and Security Coalition<sup>1</sup> in connection with the ongoing executive branch review of Army Field Manual 2–22.3 (Human Intelligence Collector Operations) (“AFM”). We urge you to use the opportunity the review presents to make several revisions to the AFM. Doing so is important not only to better safeguard against a return to U.S. torture in the interrogation context, but also as a step toward dismantling the legal and policy structure of the “forever war” that President Biden is determined to end.

[Section 1045](#) of the Fiscal Year 2016 National Defense Authorization Act – otherwise known as the [McCain-Feinstein Anti-Torture Amendment](#) – requires the Secretary of Defense, in consultation with the Director of National Intelligence (“DNI”), the Attorney General, and the Director of the FBI, to complete a “thorough review” of the AFM every three years. The review is designed to ensure that the AFM provides airtight protection against the use of interrogation methods and related conditions of confinement that could violate the prohibition on torture and cruel, inhuman or degrading treatment or punishment.

We appreciated commitments that Secretary Austin and DNI Haines made when asked during their confirmation processes about detainee treatment generally and the AFM specifically. Secretary Austin [pledged](#) to “exercise leadership” to ensure that interrogations in which the Defense Department is involved are “in keeping with our values,” and to “emphasize the need for the continued safe, humane, and legal care and treatment of detainees.” Director Haines [agreed](#) to advocate for a timely review of the AFM, and with the proposition that the review should be conducted consistent with scientific best practices.

To these ends, and as a step toward fulfilling President Biden’s campaign [promise](#) to “reaffirm the ban on torture,” we urge you to make the following revisions to the AFM:

First, the manual should add to its [current list](#) of explicitly banned actions *all* of the CIA’s so called “[enhanced interrogation techniques](#),” as well as any other forms of torture or cruel,

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<sup>1</sup> The Human Rights and Security Coalition seeks to ensure that the United States’ national security policies abide by its human rights obligations. It does so by promoting transparency, accountability, and oversight in furtherance of our collective human security.

inhuman, or degrading treatment or punishment – whether or not officially authorized – identified in the Senate Select Committee on Intelligence [Study](#) of the CIA’s Detention and Interrogation Program (“Torture Report”) or the Senate Armed Services Committee’s [Inquiry Into the Treatment of Detainees in U.S. Custody](#). This should include, for example, specifically banning “rectal rehydration” and “rectal feeding.” Some, but not all, of these prohibitions existed in the 1992 version of the AFM but were deleted from the 2006 version.

These changes in particular would reflect both [DNI Haines’](#) and [CIA Director William Burns’](#) acknowledgment that the CIA’s program and methods “included torture.”

Second, the AFM should no longer permit the following interrogation methods: “Separation” (which could be interpreted to allow extended isolation, and sensory and sleep deprivation); “Emotional fear up” (where an interrogator creates or preys upon a detainee’s existing fears); and “Emotional futility” (designed to “engender[] a feeling of hopelessness and helplessness on the part of the source”). Each of these methods poses a risk of being interpreted and applied in a manner that could violate the prohibition on torture and cruel, inhuman or degrading treatment or punishment.

Third, the AFM should contain a comprehensive enumeration of the United States’ anti-torture obligations, similar to what now appears in the “[LAW, REGULATORY, AND POLICY PRINCIPLES](#)” section in Chapter 5, and should do so in a manner that avoids any ambiguity about those obligations’ applicability to the approved interrogation methods. As it does now, the section should both reference the “golden rule” and reject the “superior orders” defense.

Finally, it must be clear that the protections set out above, and any additional protections associated with a revised list of approved interrogation methods, apply equally to related conditions of confinement. That was a purpose of section (a)(2)(A) of the McCain-Feinstein Anti-Torture Amendment, which prohibits the government from subjecting anyone covered by the statute “to any interrogation technique or approach, or *any treatment related to interrogation*, that is not authorized by and listed in the [AFM].” (Emphasis added). Clarity on this point is necessary because, as the Torture Report [found](#), the CIA used abusive conditions of confinement to “facilitate” interrogations:

Conditions at CIA detention sites were poor, and were especially bleak early in the program. CIA detainees at the COBALT detention facility were kept in complete darkness and constantly shackled in isolated cells with loud noise or music and only a bucket to use for human waste. Lack of heat at the facility likely contributed to the death of a detainee. The chief of interrogations described COBALT as a “dungeon.” Another senior CIA officer stated that COBALT was itself an enhanced interrogation technique.

Revising the AFM accordingly is additionally important because, as far as we are aware, the Office of Legal Counsel (“OLC”) never formally rescinded a related “torture memo.” That memo – which OLC should rescind now if it has not already – wrongly [concluded](#) that conditions of confinement in the CIA torture program, “considered both separately and collectively,” were “consistent with the requirements of the Detainee Treatment Act.”

President Biden has repeatedly made clear that he is categorically opposed to torture, but it is impossible to know who will be in office when a next crisis occurs. United States law and policy must leave no doubt whatsoever about what conduct is permissible and what is prohibited. The AFM review provides a straightforward opportunity to further that objective through implementation of the above recommendations, none of which would in any way inhibit a legitimate interrogation. We urge you not to let this opportunity pass.

Please contact Scott Roehm at the Center for Victims of Torture ([sroehm@cvt.org](mailto:sroehm@cvt.org)) with any questions or to discuss this issue further.

Sincerely,

American Civil Liberties Union  
Amnesty International USA  
Center for Civilians in Conflict  
Center for Constitutional Rights  
Center for Victims of Torture  
Council on American-Islamic Relations  
Demand Progress Education Fund  
Friends Committee on National Legislation  
Government Information Watch  
Human Rights First  
Human Rights Watch  
National Religious Campaign Against Torture  
Physicians for Human Rights  
September 11 Families for Peaceful Tomorrows  
Win Without War