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Chairman Feinstein and Vice Chairman Chambliss, thank you for the opportunity to appear before you today to discuss our detention policies. It is a privilege to be here. I was asked to take the position of Deputy Assistant Secretary of Defense for Detainee Policy after serving 27 years in the Marine Corps, and I agreed because I believe our ability to capture and detain enemy belligerents is of vital importance to our war-fighting efforts and to our broader national security interests. For that same reason, I welcome this opportunity to discuss our detention policies, because getting the policy right is critical to preserving the capability.

Since its creation, the Office of Detainee Policy, and its predecessor, the Office of Detainee Affairs, has worked closely with the Congress to develop durable detention policies, procedures, and practices that conform with our domestic and international legal obligations, uphold our national values, and protect and further our national security interests. Together, we have learned that there are many challenges when dealing with the complexities associated with detention in a 21st Century asymmetric armed conflict. As President Obama said in his remarks on national security nearly two years ago, "After 9/11, we knew that we had entered a new era."

In the first days of this Administration, the President issued three Executive Orders focused on detention policy. Executive Order 13492 directed the closure of the detention facility at Guantanamo Bay, a policy to which the Administration remains committed because it is important for our national security. The President also set forth a robust agenda to develop a

more sustainable detention policy that reflects our values, including by reaffirming the U.S. commitment to the prohibition on torture; continuing to treat all persons in U.S. custody in armed conflict humanely; and banning any use of abusive interrogation techniques, acknowledging what our men and women in uniform have asserted for years – that the Army Field Manual provides all the flexibility our interrogators need to collect valuable intelligence. . In addition, the Administration established a Special Task Force on Interrogation and Transfer Policies. Among other things, the interagency task force concluded that no techniques beyond those authorized by the Army Field Manual or used by law enforcement were necessary to gather intelligence from detained terrorist suspects.

Traditionally, in war, militaries capture and detain individuals who belong to the enemy's armed forces to mitigate the threat they pose in the ongoing conflict. Modern armed conflict with transnational terrorist organizations severely complicates this effort. Membership in armed groups can be difficult to determine, and the scope of an armed conflict with a transnational non-state actor is difficult to define. As you are well aware, the nature of this conflict puts renewed importance on the intelligence-gathering capabilities of the United States. Recognizing that your focus is on detention and interrogation policies, both within and outside theaters of active hostilities, I would briefly like to outline for you the broader policy context related to detaining individuals captured in our fight against al Qaida.

Our detention policies have evolved over the last decade to reflect the realities of 21st century armed conflict with the intent of preserving the authority to detain belligerents and upholding the credibility of wartime detention under international law. It is vital to our national security that

we maintain the ability to capture and detain individuals who possess intelligence that can aid us in fighting this war. Indeed, the value of this intelligence requires that we maintain a preference for capture over other options. Where the individual poses a significant threat to the United States, we must preserve the ability to legally incapacitate that individual. Currently, we possess a variety of legal tools to accomplish both of those goals, but the flexibility to choose which tool best serves our national security interests, based on the intelligence and the circumstances of each case, is essential to our success. Only with that flexibility can our counterterrorism professionals maximize our ability to gather intelligence and ensure that, at the end of the day, we can keep dangerous individuals off the battlefield.

When it comes to detention pursuant to the law of war, over the years, the Department of Defense has developed and refined a series of review processes in Afghanistan, Iraq, and Guantanamo Bay, each of which is designed to ensure that the United States neither deprives an individual of liberty unnecessarily, nor detains an individual longer than required to mitigate the threat to our national security, including our ongoing military operations.

Building on the earlier processes, Executive Order 13492 provided for a new comprehensive review of every detainee at Guantanamo Bay, to determine whether they should be transferred to their home or a third country, prosecuted by our federal courts or in a military commission, or held in detention pursuant to authority under the Authorization for the Use of Military Force. A Task Force of analysts, agents, officers, and attorneys from the Departments of Defense, State, Homeland Security, Justice, and the Office of the Director of National Intelligence, drawing upon information assembled from agencies across the government, reviewed each individual

detainee to determine an appropriate disposition. Decisions were made by the unanimous agreement of senior officials of the represented agencies.

In Iraq, where our operations are now governed by Iraqi law and the Security Agreement between our two countries, the Department previously set up the Multi-National Forces Review Committee, a board of three officers, to review each detainee's case periodically in order to determine how best to mitigate any continuing threat they may have posed.

In Afghanistan, the Department established a new administrative review system for individuals that also significantly improved on previous iterations. This "Detainee Review Board," which provides each detainee a personal representative before a board of three field grade officers, assesses both the legality of the detainee's detention and the best long-term disposition every six months.

The latest development in the evolution of process for detainees is Executive Order 13567, which defines a process for periodic review of covered detainees. This process will evaluate regularly the necessity of continued detention for each detainee at Guantanamo who is not already identified for transfer or has not been charged or convicted criminally. These measures are in addition to Guantanamo detainees' right to challenge the legality of their detention in Federal court as most have done. The new review process builds upon the interagency review process coordinated by the Department of Justice under Executive Order 13492 and ensures that we will continue to determine whether our national security interests require their continued detention. With respect to those we must continue to detain, borrowing again from the

President's May 2009 National Archives speech, these detainees are "people who, in effect, remain at war with the United States." We will continue to hold these individuals in a manner that complies with our domestic and international obligations, and is consistent with our values.

While we have strengthened our own policies and procedures, we must continue to work with our partners around the world to build their capacity to confront this common challenge. Specifically, we must deepen our cooperation with our international partners to develop credible rehabilitation and reintegration programs as part of a durable counterterrorism legal framework. We must ensure that our detention policies remain principled and consistent with the rule of law, that they evoke credibility with our public and the international community, and that they can be sustained into the future as a useful tool in our counter-terrorism fight.

In applying these policies, first and foremost, we must ensure that we detain the right individuals; we must make certain that those we capture are in fact legally detained as persons who are part of or substantially supporting enemy forces. Providing a principled, credible process is not just about the law – it is also about protecting our service members by ensuring we sustain a continuing ability to remove our enemies from the battlefield. The review processes we apply must be carefully calibrated to both identify those who are lawfully detainable under the law of war and to ensure that no detainee who was mistakenly or unnecessarily detained in the heat of combat continues to be held.

Similarly, we must carefully weigh the costs and benefits of continued detention in our counter-terrorism fight. We continue to detain individuals we assess as posing a threat in our ongoing

conflict and acknowledge that the threat they pose may change over time. In today's conflict, the threat posed by a particular detainee may be mitigated, through participation in a reintegration program or through other focused measures to prevent reengagement. Detention, without a process to assess whether the threat an individual poses can be sufficiently mitigated through means other than detention by the United States, comes at a significant cost with respect to the cooperation and respect of allies and partners – cooperation that is vital to the success of future counterterrorism efforts – as well as a cost to our military capabilities, as unnecessary detention incurs expenses and demands resources that could be better spent elsewhere. Collectively, the review of Guantanamo detainees conducted under Executive Order 13492 and the new Periodic Review Boards comprise such a process.

To address the very complex threat that we face from al-Qa'ida and like-minded terrorist groups, we must retain the flexibility to use all our tools in order to have a framework of detention policies and practices that is principled, credible, and sustainable. By principled, I mean it must provide fair and humane treatment to each detainee, including a process by which we can distinguish between a belligerent who poses a significant threat and one who need not be detained, whose desire to remain a belligerent has ended, or whose threat can be mitigated without further detention.

In order to be credible, this framework must uphold and advance the law in a way that imbues the entire system with legitimacy, so that it will be accepted at home and abroad and serve as a model to influence other countries' conduct. By ensuring our system's credibility, we can

diffuse any criticism that the United States is acting outside the law, and strengthen our effectiveness in combating al-Qa'ida and its associated forces.

Finally, the sustainability of such a framework depends not only on its principled nature and its credibility with our courts, our people, and the international community, but on its ability to address the realities of 21st century warfare, thus maintaining in the law of war an appropriate balance between the principles of military necessity and humanity. Flexibility to use the tool that best serves our national security interests is absolutely essential to accomplishing these objectives.

The Department stands ready to work with this Committee and other interested Members of the Congress to further, in both policy and practice, the requirements of a principled, credible, and sustainable detention policy that maintains the flexibility critical to meeting and addressing our national security needs.