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Law

**DELIVERY OF PERSONNEL TO UNITED
STATES CIVILIAN AUTHORITIES FOR TRIAL**

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Federico)
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This instruction establishes procedures for making Air Force members, civilian personnel, and family members available to US civilian authorities for trial or specified court appearances. It implements Department of Defense (DoD) Directive 5525.9, 27 December 1988, and AFPD 51-10, *Making Military Personnel, Employees, and Dependents Available to Civilian Authorities*. This instruction does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

SUMMARY OF REVISIONS

This revision updates the process for delivery of personnel to civilian authorities for trial.

1. Authority. A general court-martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51-10, paragraphs 1.8 and 1.9, for sources of authority.

2. Assigned Responsibilities:

2.1. The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under paragraph 9.5.

2.2. The Air Force Judge Advocate General (TJAG) may approve requests that fall under paragraph 9.5. or recommend denial of such requests. TJAG or a designee may approve or deny:

2.2.1. Requests for return of members to the United States for delivery to civilian authorities when the request falls under paragraph 9.6.

2.2.2. Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

2.3. The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Ste 343, Bolling AFB DC 20332-5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this instruction; and they handle all communications with requesters.

3. Placing Member Under Restraint Pending Delivery. Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51-10, paragraph 1.5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51-201, *Military Justice Guide*, does not apply.

4. Release on Bail or Recognizance:

4.1. Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions in the event the civilian authority releases the member (**Attachment 1**). The commander designates the member's unit, if the civilian authority is in the immediate vicinity of the member's base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member's name, rank, Social Security number (SSN), organization, and other pertinent information to the member's commander, who then provides further instructions.

4.2. The member's commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Military Personnel Center (AFMPC) assignment office responsible for the member's Air Force specialty code (AFSC), as listed in AFMAN 36-2105, *Officer Classification*, or AFMAN 36-2108, *Airman Classification*. If contact cannot be made with the member's commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFMPC/DPMARS or DPMRPP2.

5. Requests Under the Interstate Agreement on Detainer's Act. When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. section 1, et seq. The Act applies only to **a person who has entered upon a term of imprisonment in a penal or correctional institution** and is, therefore, inapplicable to members in pretrial confinement.

6. Requests By Federal Authorities for Military Personnel Stationed Within the United States and Its Possessions:

6.1. When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

6.2. A US marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in **Attachment 2**

7. Requests By State and Local Authorities When the Requested Member is Located in That State:

7.1. The Air Force normally will turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

7.2. Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of **Attachment 2**, from a duly authorized officer of the state.

7.3. Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement above and in paragraph **6.2.** to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (paragraph **4.**). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

8. Request for Delivery by State Authorities When the Member is Located in a Different State:

8.1. This paragraph applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the armed forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

8.2. The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

9. Requests for Custody of Members Stationed Outside the United States:

9.1. Authority. This section implements Public Law 100-456, section 721(a), and DoD Directive 5525.9, 27 December 1988.

9.2. The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36-3206, *Administrative Discharge Procedures*, and AFI 36-3208, *Administrative Separation of Airmen*.

9.3. Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

9.4. Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

9.5. When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

9.5.1. A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

9.5.2. Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

9.6. Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph 9.5. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

9.7. Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.

10. Returning Members, Employees, and Family Members from Overseas. The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Title 10 U.S.C. section 814, and Public Law 100-456 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

11. Procedures for Return of an Air Force Member to the United States:

11.1. Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities:

11.1.1. Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

11.1.2. Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

11.1.3. Include copies of all relevant requests for assistance, indictments, informations, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or *capias* (writs authorizing arrests), or other process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

11.1.4. Indicate whether the requesting authorities will secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member's release from custody and of the ultimate disposition of the matter.

11.1.5. Any US attorney or assistant US attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

11.2. Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

11.3. Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member's commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in paragraphs **12.1.1.** to 12.1.4 or **13.1.1.** to 13.1.4.

11.4. After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFMPC of the decision to return the member to the United States. AFMPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member's rank and AFSC.

11.5. HQ AFLSA/JAJM notifies requesting authorities of the member's new assignment, port of entry into the United States, and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member's return.

12. Delays in Returning Members to the United States:

12.1. On a request to return a member to the United States for delivery to civilian authorities, TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

12.1.1. Efforts are in progress to resolve the controversy to the satisfaction of the requesting authorities without the member's return to the United States.

12.1.2. Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

12.1.3. Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

12.1.4. Other unusual facts or circumstances warrant delay.

12.2. AFLSA/JAJM promptly reports all delays in cases falling under AFPD 51-10, paragraph 1.3, through SAF/GC and SAF/MI to USD/P&R and to DoD/GC.

12.3. Delays in excess of 90 days are not authorized in cases falling under AFPD 51-10, paragraph 1.3, unless approved by USD/P&R.

13. Denials of a Request for Return of a Member to the United States:

13.1. A request for return of a member to the United States for delivery to civilian authorities may be denied when:

13.1.1. The member's return would have an adverse impact on operational readiness or mission requirements.

13.1.2. An international agreement precludes the member's return.

13.1.3. The member is the subject of foreign judicial proceedings, court-martial, or a DoD, Air Force, or other military department investigation.

13.1.4. The member showed satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance or when other unusual facts or circumstances warrant a denial.

13.2. Commanders promptly send to HQ AFLSA/JAJM information supporting a determination that denial may be appropriate. In cases warranting denial, TJAG promptly sends a recommendation and supporting documentation, through SAF/GC and SAF/MI, to USD/P&R for decision.

13.3. The fact that a recommendation for denial is pending does not by itself authorize noncompliance or a delay in compliance with any provision of this instruction, but TJAG may consider a pending request for denial in determining whether to grant a delay.

14. Compliance With Court Orders by Civilian Employees and Family Members:

14.1. The Air Force expects civilian employees and family members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36-704, *Discipline and Adverse Actions* (PA).

14.2. Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

15. Procedures Involving a Request by Federal or State Authorities for Custody of an Overseas Civilian Employee or a Command-Sponsored Family Member:

15.1. The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

15.2. This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: an arrest warrant; indictment, information, or other document

used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

15.3. To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

16. Reporting Requests for Assistance and Action. The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through channels, to USD/P&R. HQ AFLSA/JAJM conducts all communications with requesters.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General

Attachment 1

COMMANDER'S INSTRUCTION LETTER TO MEMBER

MEMORANDUM FOR (Air Force member)

FROM: (Commander)

SUBJECT: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51-1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank, SSN, organization, the circumstances of your release from custody, and the contents of this letter, including the note below.
2. Certain restrictions may be placed upon you by civilian authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.
3. AFI 51-1001, paragraph 4, provides that the authority to whom you report will notify your commander. If that is not possible, request the nearest Air Force base military personnel flight to contact HQ AFMPC/DPMARS or DPMRPP2 by the fastest means available. Provide your name, rank, SSN, organization, and the circumstances of your release; further instructions will then be given to you.

(SIGNATURE ELEMENT)

Commander

Attachment 2

CIVILIAN AUTHORITY'S ACKNOWLEDGMENT OF TRANSFER OF CUSTODY AND AGREEMENT TO NOTIFY MEMBER'S COMMANDER

1. A warrant for the arrest of (name, rank, and SSN), hereinafter referred to as the "member," and who is charged with (offenses) has been issued by (civilian authority) and in execution, thereof, I accept his or her custody.
2. In consideration of the delivery of member at (location) to me for trial upon the above charge, pursuant to the authority vested in me as (position), I hereby agree to the following:
 - a. The commander, (name, rank, unit, telephone), will be advised of the disposition of the charges.
 - b. The member will be immediately returned to the custody of the military upon completion of the trial, if acquitted; or upon satisfying the sentence imposed, if convicted; or upon other disposition of the case.
 - c. The member's return will be to (location) or to such other place as may be designated by the Department of the Air Force
3. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member
4. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity, or recruiting office nearest place of trial) will be notified

(SIGNATURE ELEMENT)