

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-205**

19 JANUARY 2023

Law



***DELIVERY OF PERSONNEL TO
UNITED STATES CIVILIAN
AUTHORITIES FOR TRIAL AND
CRIMINAL JURISDICTION OVER
CIVILIANS AND DEPENDENTS NOT
IN THE UNITED STATES***

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This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings* and is consistent with the Uniform Code of Military Justice (UCMJ), 18 United States Code (U.S.C.) Section 3261. It establishes procedures for making military members, civilian personnel, and dependents available to U.S. civilian authorities pursuant to a warrant or other valid court order; provides procedures for notice and training under 18 U.S.C. §§ 3261-3267, *Military Extraterritorial Jurisdiction Act* (MEJA); and outlines procedures for the exercise of Article 2(a)(10), UCMJ, jurisdiction over persons serving with or accompanying the armed forces during contingency operations. It applies to uniformed members of the Regular Air Force (RegAF), United States Space Force, Air Force Reserve (AFR) and Air National Guard (ANG) in Title 10 status, Department of the Air Force (DAF) civilian employees (including nonappropriated fund employees), and those who are contractually obligated to comply with DAF publications. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/delta-level requirements in this publication are identified with a tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes and Procedures*, Table A10.1, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain

of command to the appropriate tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the publication OPR. Commanders may not waive non-tiered compliance items in this instruction. See DAFMAN 90-161, paragraph 9.2.2. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the DAF. Compliance with the attachment in this publication is not mandatory. This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Department of Defense Instruction (DoDI) 5400.11, *DoD Privacy and Civil Liberties Programs*. The applicable SORN DoD 0006, *Military Justice and Civilian Criminal Case Records*, is available at <https://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-Wide-Notices/DOD-Wide-Article-List/>.

SUMMARY OF CHANGES

This document has been revised for clarity. Changes include inclusive references to the DAF where provisions apply equally to the Air Force and Space Force, and updates and corrections to applicable authorities. All templates have been removed from this instruction and can now be found only on the Virtual Military Justice Deskbook (VMJD).

Section A—Procedures for Individuals Wanted by Federal, Tribal, State, or Local Authorities for Criminal Acts

1. Overview.

- 1.1. The DAF expects its military personnel, employees, and family members to comply with orders issued by federal, tribal, state, and local courts of competent jurisdiction. This instruction is meant to prevent personnel from using military service or Federal employment, particularly service outside the U.S., to avoid prosecution by civilian U.S. authorities.
- 1.2. Pursuant to Article 14, UCMJ, a member of the armed forces accused of an offense in violation of U.S. federal, tribal, state, or local civilian statutes or regulations, may be delivered to federal, tribal, state, or local civilian authorities for trial upon their request.
- 1.3. Requests by U.S. civilian authorities for DAF military members stationed within the U.S. normally will be granted pursuant to a warrant or other valid court order. This requirement applies regardless of whether DAF law enforcement is involved in the investigation.
- 1.4. Requests by U.S. civilian authorities for DAF military members stationed outside the U.S. will be expeditiously processed in accordance with this instruction.
- 1.5. Employees will be encouraged to comply with court orders. Commanders ordinarily do not have authority to compel compliance with court orders by civilian employees or dependents.

2. Roles and Responsibilities.

2.1. The Judge Advocate General (TJAG) may:

2.1.1. Approve requests to deliver DAF military members from locations outside the U.S. to federal, tribal, state, or local authorities pursuant to a warrant or other valid court order for a felony-level offense, or for non-felony offenses involving the unlawful removal of a child from the jurisdiction of the legal custodian.

2.1.2. Approve or deny requests to deliver DAF military members from locations outside the U.S. for any other offense if doing so is in the best interest of the DAF.

2.1.3. Approve or deny a request to deliver DAF military members stationed within the U.S. to federal, tribal, state, or local authorities pursuant to a warrant or other valid court order for any offense.

2.1.4. Grant a delay of not more than 90 days to complete action on requests to return DAF military members from locations outside the U.S. and must promptly report all delays to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and also to the DoD General Counsel (DoD OGC).

2.2. AF/JAJM must:

2.2.1. Transfer requests to deliver DAF military members from the servicing legal office to TJAG if action by TJAG is requested or required.

2.2.2. Transfer requests for delay in taking action to deliver DAF military members from locations outside the U.S. from the servicing legal office to TJAG for action.

2.2.3. Consult with the servicing legal office on all requests for the delivery of DAF military members from locations outside the U.S.

2.3. Commanders shall act promptly on requests from U.S. civilian authorities. **(T-0)**

2.4. Staff judge advocates shall:

2.4.1. Advise commanders as to whether delivering a DAF military member to civilian authorities pursuant to a request is authorized under this instruction.

2.4.2. Coordinate all requests for the delivery of DAF military members from locations outside the U.S. with AF/JAJM, with an informational copy provided to the DAF military member's chain of command.

2.4.3. Forward requests for delay in taking action to deliver DAF military members from locations outside the U.S. to AF/JAJM (through functional channels).

2.5. Local Manpower and Personnel Flight shall:

2.5.1. Work with the commander to determine the appropriate duty status for DAF military members delivered to civilian authorities and the appropriate personnel tempo code for any orders issued.

2.5.2. Coordinate all requests for the return of DAF military members from locations outside the U.S. with the Air Force Personnel Center, Directorate of Personnel Programs, Military Assignments Branch (AFPC/DP3AM).

2.6. All templates referenced in this instruction can be found on the VMJD on Flite Knowledge Management. Contact AF/JAJM for questions. The link for VMJD is available to Air Force JAG Corps personnel at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251>. Non-Air Force JAG Corps personnel requesting copies of templates should work with the relevant servicing legal office.

2.6.1. Templates. With limited exceptions, legal offices are strongly encouraged to use AF/JAJM-produced templates included on the VMJD.

2.6.2. Modification of Templates. Deviation on substantive provisions is not authorized without prior approval of AF/JAJM; however, templates may be modified to address the facts and circumstances of each individual case (e.g., names, addresses, offense types, etc.). If there is uncertainty about whether a specific provision is substantive, contact AF/JAJM for guidance.

3. Procedures for Delivery of Military Personnel Located Outside the U.S.

3.1. A DAF military member located outside the U.S. may be ordered to return expeditiously, at government expense, to an appropriate port of entry in the U.S. for delivery to requesting civilian authorities, subject to a valid U.S. court order.

3.1.1. “Located outside the U.S.” is defined as physically present in an area other than one of the 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the U.S.

3.1.2. When making a request for the delivery of a DAF military member, the federal, tribal, state, or local authorities making the request must be from the U.S., meaning one of the 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the U.S.

3.1.3. DAF military members include Regular Air Force, United States Space Force, Air Force Reserve members on active or inactive training, or Air National Guard members while in Title 10 status.

3.2. Approval Authority.

3.2.1. A general court-martial convening authority may authorize delivery of DAF military members subject to their command and located outside the U.S. to federal, tribal, state, or local authorities if the member has been charged with or convicted of a felony offense or charged with contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the lawful custodian, and the request is accompanied by a warrant or other valid court order. This authority may be delegated to an installation or equivalent commander.

3.2.2. TJAG may also authorize the delivery of DAF military members located outside the U.S. to federal, tribal, state, or local authorities if the member has been charged with or convicted of a felony offense or charged with contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the lawful custodian, and if the request is accompanied by a warrant or other valid court order. Additionally, TJAG may approve requests to return DAF military members from locations outside the U.S. for any other offense if doing so is in the best interest of the DAF.

3.3. Denial Authority.

3.3.1. Only USD(P&R) may deny a request for delivery of a DAF military member from locations outside the U.S. to U.S. civilian authorities for a felony offense or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the lawful custodian. Such requests should be forwarded to TJAG.

3.3.2. TJAG may deny a request for delivery of DAF military members from locations outside the U.S. in all other cases.

3.3.3. A commander designated under [paragraph 3.2.1](#) may request a denial based on one or more of the following reasons:

3.3.3.1. An international agreement or other overriding legal requirement precludes the member's delivery.

3.3.3.2. The member is the subject of foreign judicial proceedings, a court-martial, or a U.S. military investigation such that the member cannot be immediately made available to civilian authorities.

3.3.3.3. The member has demonstrated that non-compliance with the court order is legally justified or sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good-faith legal efforts to prevent the court order, or other legal reasons.

3.4. Processing the Request for Delivery.

3.4.1. A request for delivery of a DAF military member must be accompanied by a warrant or other valid court order issued by a U.S. federal, tribal, state, or local court of competent jurisdiction. **(T-0)** The request should also indicate all of the following:

3.4.1.1. The U.S. port of entry where the authorities will take custody of the military member.

3.4.1.2. Whether interstate extradition, if necessary, has been arranged.

3.4.1.3. That the authorities accept responsibility for costs associated with transporting the military member from the port of entry to the requesting jurisdiction.

3.4.2. Before ordering delivery of a DAF military member, the commander authorizing delivery will:

3.4.2.1. Coordinate all requests with the servicing legal office.

3.4.2.2. Ensure the servicing legal office attempts to resolve the matter to the satisfaction of the court without returning the member. **(T-0)** The military member will be given the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. The military member may provide evidence of legal efforts to resist the court order or show cause for non-compliance. *See DoDI 5525.09, Compliance with Court Orders by Service Members and DoD Civilian Employees, and Their Family Members Outside the United States.*

3.4.2.3. Provide the military member an Instruction Letter. A template is available on the VMJD. A copy will be provided to the requesting civilian authorities and the DAF unit, activity, or recruiting office designated in the Instruction Letter.

- 3.4.2.4. Require the requesting civilian authority to execute an Acknowledgement and Agreement. A template is available on the VMJD. Provide a copy of the Acknowledgement and Agreement to the military member and to the DAF unit, activity, or recruiting office designated in the agreement.
 - 3.4.2.5. Notify the requesting official of the military member's scheduled travel itinerary, including port of entry and date and time of arrival in the U.S. **(T-0)** Notification must be provided at least 10 days before the member's arrival, absent unusual circumstances. **(T-0)**
 - 3.4.2.6. Work with the Military Personnel Flight to determine the appropriate duty status for the military member and the appropriate personnel tempo code for any orders issued.
- 3.5. Processing Timelines and Requests for Delay.
- 3.5.1. Commanders must act on a request to return a DAF military member from locations outside the U.S. within 30 days of receipt.
 - 3.5.2. The commander may request a delay of not more than 90 days to allow the member an opportunity to resolve the matter or to process a recommendation to USD(P&R) that the request be denied. TJAG is the approval authority for delay requests.
- 3.6. Coordination with AF/JAJM.
- 3.6.1. Every request for delivery made by civilian authorities for a DAF military member, employee, or family member located outside the U.S. must be immediately reported to AF/JAJM (through functional channels). This notification must be made even when the general court-martial convening authority (or designee) approves the request.
 - 3.6.2. AF/JAJM will coordinate requests requiring action by TJAG.
 - 3.6.3. AF/JAJM will coordinate with the Department of the Air Force Office of the General Counsel (SAF/GC), the Office of the Assistant Secretary of the Air Force (Manpower and Reserve Affairs) (SAF/MR), Office of the DoD OGC, and Office of USD(P&R) on any request for delivery of a DAF military member located outside the U.S. for a felony offense or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the lawful custodian.
 - 3.6.4. Within a reasonable amount of time of receiving the report, AF/JAJM will notify the Military Justice Attorney assigned to the National Guard Bureau, Office of the General Counsel, on any request for delivery of a DAF military member who is an Air National Guard member in Title 10 status located outside the U.S. for a felony offense or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the lawful custodian.

4. Procedures for Delivery of Military Personnel Located Within the U.S.

- 4.1. Requests by U.S. federal, tribal, state, and local authorities for delivery of DAF members stationed within the U.S. normally will be granted pursuant to a warrant or other valid court order.

4.1.1. “Located within the U.S.” is defined as physically present in one of the 50 states, the District of Columbia, or any of the commonwealths, territories, and possessions of the U.S.

4.1.2. The federal, tribal, state, or local civilian authorities making the request for delivery of a DAF military member must be from the U.S., meaning one of the 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the U.S.

4.1.3. DAF military members include Regular Air Force, United States Space Force, Air Force Reserve members on active or inactive training, and Air National Guard members while in Title 10 status.

4.1.4. The requirements to follow the procedures in this paragraph are triggered when there is a request from civilian authorities that would require the military to facilitate the arrest or the delivery of the member. For example, a request to access the installation to arrest a military member would trigger the requirement, but an off-base arrest made without any military involvement would not. This requirement applies regardless of whether DAF is involved in the investigation.

4.1.5. Non-federal civilian authorities have no legal authority to conduct an arrest or enforce an order on exclusive federal jurisdiction. In such cases, commanders should coordinate with the servicing installation legal office to discuss available options.

4.2. Approval Authority.

4.2.1. A general court-martial convening authority normally should authorize delivery of DAF military members located within the U.S. and subject to their command to federal, tribal, state, or local authorities. This authority may be delegated to an installation or equivalent commander.

4.2.2. TJAG may also authorize the delivery of DAF military members located within the U.S. to federal, tribal, state, or local authorities.

4.3. Denial Authority. Only TJAG may deny a request for delivery of a DAF military member located within the U.S. to U.S. civilian authorities.

4.4. Extradition.

4.4.1. With respect to interstate extradition, DAF military personnel have the same status as nonmilitary personnel. Accordingly, if state or local civilian authorities located in one state request the delivery of a DAF military member located in another state, the requesting civilian authorities follow normal extradition procedures to arrange custody of the member in the state where the member is located.

4.4.2. Units will not transfer a DAF military member from a base within one state to a base within another state for the sole purpose of making a member amenable to prosecution by civil authorities.

4.5. Processing the Request.

4.5.1. A request for delivery of a DAF military member must be accompanied by a warrant or other valid court order issued by a federal, tribal, state, or local court of competent jurisdiction. **(T-0)**

4.5.2. Before ordering delivery of a DAF military member, the commander authorizing delivery will:

4.5.2.1. Coordinate all requests with the servicing legal office.

4.5.2.2. Provide the military member an Instruction Letter. A template is available on the VMJD. A copy of the Instruction Letter will be provided to the requesting civilian authorities and the DAF unit, activity, or recruiting office designated in the Instruction Letter.

4.5.2.3. Require the requesting civilian authority to execute an Acknowledgement and Agreement. A template is available on the VMJD. Provide a copy to the military member and to the DAF unit, activity, or recruiting office designated in the Agreement.

4.5.2.4. Work with the Military Personnel Flight to determine the appropriate duty status for the military member and the appropriate Personnel Tempo Code for any orders issued.

5. Restraint or Confinement Pending Delivery

5.1. A commander may restrain or confine a DAF military member whose delivery has been requested by civilian authorities if the commander determines there is information establishing probable cause the member committed the offense related to the request, or upon the commander's reasonable belief the member committed the offense and restraint or confinement is necessary. (Note – this initial restraint or confinement is not subject to the standard in Rule for Courts-Martial (R.C.M.) 305.)

5.1.1. The military member must be subject to the command of the officer ordering restraint or confinement. **(T-0)**

5.1.2. Prior to confining or restraining a military member under this paragraph, the commander should consult with the servicing staff judge advocate.

5.2. Additionally, commanders should consult with the servicing staff judge advocate before making a probable cause or reasonable belief determination.

5.2.1. The offense related to the request does not have to be an offense triable by court-martial.

5.2.2. However, if the military member is not delivered to civilian authorities before the 48-hour, 72-hour, and seven-day points, then reviews are required by each of those deadlines, as provided in R.C.M. 305. **(T-0)**

5.3. Restraint or confinement may continue only as long as necessary to ensure delivery.

5.4. Refer to Air Force Joint Instruction (AFJI) 51-707, *Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice*, if the detained service member holds dual citizenship in the country where they are detained or is a foreign national.

6. Release on Bail or Recognizance.

6.1. By the Instruction Letter required under paragraphs 3 and 4, the commander authorizing delivery of a DAF military member to requesting civilian authorities directs the member to report to a designated DAF unit, activity, or recruiting office in the event the member is released on bail or recognizance.

6.1.1. The commander may designate the member's unit of assignment if it is in close proximity to where the member is being held by civilian authorities.

6.1.2. Otherwise, the commander designates the DAF unit, activity, or recruiting office closest to where the member was being held by the civilian jurisdiction. The commander informs the designated DAF unit, activity, or recruiting office of the situation.

6.2. Upon release, the military member will immediately report to the designated DAF unit, activity, or recruiting office. The designated reporting unit immediately sends the member's name, rank, unit, and other pertinent information to the member's commander. The member's commander provides instructions on the member's return and notifies the servicing Manpower and Personnel Flight, who, in turn, notifies the Air Force Personnel Center. The DAF military member, not DAF or anyone in the chain of command, is responsible for adhering to conditions of release.

7. Requests for Civilian Employees.

7.1. Commanders ordinarily do not have authority to compel civilian employees to comply with court orders; however, in accordance with the "basic obligations of public service," civilian employees shall satisfy in good faith their obligations as citizens and "shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." See 5 CFR 2635.101(b)(12) and (b)(14). If a DoD/DAF civilian employee is the subject of the request concerning the court order, the employee will be encouraged to comply with the court order.

7.2. Failure of a civilian employee to comply with a court order may, in limited circumstances, be the basis for withdrawal of command sponsorship and adverse action against the DoD/DAF civilian employee, including removal from Federal Government service. Proposals to take such adverse action must be approved by the DoD Component head concerned and coordinated with the appropriate civilian personnel and legal offices.

8. Requests for Family Members Accompanying DAF Military Members or Civilian Employees at Locations Outside the U.S.

8.1. Commanders ordinarily do not have authority to compel family members to comply with court orders. If a family member of a Service member or DAF civilian is the subject of the request concerning the court order, the family member will be encouraged to comply with the court order.

8.2. Failure of a family member to respond to a court order may be a basis for withdrawing command sponsorship from the family member.

Section B—Procedures for Notice, Training, and Coordination under MEJA, 18 U.S.C. §§

3261 – 3267.

9. Overview. MEJA establishes a separate offense under the United States Code for any act committed outside the U.S. that would constitute a felony-level federal crime if the same act had been committed within the U.S. MEJA applies to military members, former military members, civilians employed by or accompanying the armed forces outside the U.S., and dependents. These individuals may be returned to the U.S. for trial in federal district court. MEJA does not apply to host nationals, but does apply to third-party nationals who are employed by or accompanying the

armed forces outside the U.S. See DoDI 5525.11, *Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members*, paragraphs 6.1.2 through 6.1.9. If there is a conflict between the local status of forces agreement and MEJA regarding the exercise of jurisdiction, the status of forces agreement takes priority.

9.1. A person arrested pursuant to MEJA shall be delivered as soon as practicable to the custody of U.S. civilian law enforcement authority for removal to the U.S. **(T-0)**

9.2. Military authorities will not transfer any person to the U.S. or other foreign country under MEJA, except in limited circumstances as described in DoDI 5525.11, paragraph 6.5.

10. Roles and Responsibilities (outside the U.S.).

10.1. Force Support Squadron commander (or equivalent) must:

10.1.1. Ensure that all individuals to whom MEJA applies receive necessary training within 30 days of arrival to a location outside the U.S. and notify the local staff judge advocate of any individuals requiring such training. It is particularly important that third-party nationals are notified that they are potentially subject to the criminal jurisdiction of the U.S. under MEJA.

10.1.2. Incorporate MEJA training into Newcomers' Orientation for Regular Air Force, Regular Space Force, and family members.

10.1.3. Incorporate MEJA training into New Employees' Orientation.

10.1.4. Inform contractors of other federal agencies or provisional authorities of these briefings and permit them to attend on a voluntary basis.

10.1.5. Assist the installation Security Forces commander and Office of Special Investigations (OSI) detachment commander in determining an accused's last known U.S. residence.

10.2. Security Forces commander and OSI detachment commander must:

10.2.1. Notify the commander of the combatant command, or designee, and their staff judge advocate of an investigation of alleged MEJA violations that may lead to arrest or criminal responsibility within their area of operations. **(T-0)** Provide such notice as soon as practicable. **(T-0)**

10.2.2. Temporarily detain persons as ordered by the commander of the combatant command, or designee, in accordance with the temporary detention parameters in DoDI 5525.11, paragraph 6.2.5. **(T-0)**

10.2.3. Ask the detained person for information about their last residence in the U.S. as part of the initial intake questions. **(T-0)**

10.2.4. Comply with applicable federal civilian employee rights and entitlements, if any, regarding collective bargaining unit representation under 5 U.S.C. Chapter 71, *Labor-Management Relations*, during pretrial questioning and temporary detention of civilian employees. **(T-0)**

10.2.5. To the extent practicable, coordinate investigations under MEJA with the appropriate local law enforcement authorities unless such coordination is not required by

agreement with the host nation. **(T-0)** Prior to coordination, consult with the local staff judge advocate to determine the extent of cooperation required, and to ascertain the host nation's position regarding the exercise of jurisdiction under MEJA.

10.2.6. Forward a copy of the report of investigation, or a summary, with an affidavit to the staff judge advocate (or equivalent) of the Designated Commanding Officer as defined in AFJI 51-706, *Status of Forces Policies, Procedures, and Information*. **(T-0)**

10.2.7. Provide escorts and transfer detained persons as provided in DoDI 5525.11, paragraphs 6.2.6 through 6.2.8. **(T-0)**

10.3. Staff Judge Advocate must:

10.3.1. Provide MEJA training to required personnel upon notification from the Force Support Squadron commander that personnel within the command require training. Such training shall include an explanation of MEJA and a review of persons to whom MEJA applies. **(T-0)**

10.3.2. Provide MEJA training to Security Forces and OSI personnel. Such training should include an explanation of MEJA, a review of persons to whom MEJA applies, the authority to make arrests under MEJA, and the requirements to include questions about a subject's last U.S. residence in routine booking questions.

10.3.3. Upon receipt of notice of an investigation for a possible violation of MEJA, notify the staff judge advocate (or equivalent) of the Designated Commanding Officer (as defined in AFJI 51-706); AF/JAJM; and the Air Force Operations and International Law Directorate (AF/JAO).

10.3.4. Secure an affidavit from the criminal investigator working on the case detailing the probable cause for believing a violation of MEJA has occurred, and the person identified in the affidavit who committed the violation. Forward this affidavit with a copy of the Report of Investigation to the Designated Commanding Officer's staff judge advocate, AF/JAJM, and AF/JAO.

10.3.5. Maintain a current list of military attorneys available in the command to provide limited representation at initial proceedings in the event civilian attorneys are not available. Provide this list to the Federal Magistrate Judge upon request. Coordinate with the Air Force Trial Defense Division (AF/JAJD), prior to placing military defense counsel on the list.

10.3.6. Ensure the person arrested or charged signs the Acknowledgment of Limited Legal Representation. A template is available on the VMJD. Maintain the original in the legal office and give a copy to the designated military defense counsel.

10.3.7. Appoint a judge advocate or civilian attorney-advisor to act as a military representative for the command. The military representative will assist command, law enforcement, U.S. Attorney representatives, and the Federal Magistrate Judge during pretrial matters, initial proceedings, and other procedures required by MEJA and DoDI 5525.11. **(T-0)**

10.3.8. Arrange for videoconferencing support for the initial proceedings. If videoconferencing is unavailable, arrange telephone conferencing.

10.3.9. Forward an annual report to AF/JAJM detailing all cases involving the arrest or temporary detention of persons under MEJA, the number of requests for federal prosecution under MEJA, and the decisions made regarding such requests. **(T-0)** This report covers the preceding calendar year and is due to AF/JAJM (through functional channels) no later than 15 February of each year.

10.4. AF/JAJM must:

10.4.1. Notify SAF/GC and DoD OGC of any investigations or charges initiated under MEJA involving DAF personnel or dependents.

10.4.2. Serve as a liaison between installation legal offices not in the U.S., command legal offices, SAF/GC, DoD OGC, and the Department of Justice (DoJ), as necessary.

10.4.3. Forward the annual MEJA report required under DoDI 5525.11, paragraph 5.5.4, to DoD OGC through SAF/GC. The report is due to DoD OGC by the last day of February for the preceding calendar year.

10.5. As required, AF/JAO shall assist AF/JAJM and staff judge advocates in the identification and interpretation of applicable international law or international agreements with the potential to impact contemplated MEJA actions.

11. Temporary Detention. A Combatant Commander may order the temporary detention of a person within their area of responsibility, outside the U.S., who is arrested or charged under MEJA in accordance with the limits in DoDI 5525.11, paragraph 6.2.5.

12. Initial Proceedings.

12.1. Initial proceedings before a federal magistrate judge are required when a person is arrested or detained by U.S. military authorities under MEJA. **(T-0)** See 18 U.S.C. § 3265.

12.2. The Federal Magistrate Judge will determine whether probable cause exists to believe an offense under MEJA has been committed and the person identified committed it. Initial proceedings will also include a detention hearing, as appropriate.

12.3. Initial proceedings will be conducted within 48 hours of arrest to comply with the ruling in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). **(T-0)**

13. Witness Testimony by Former or Current DAF Personnel.

13.1. AFI 51-301, *Civil Litigation*, paragraph 5.24., provides guidance for the approval and routing of witness requests from DoJ, including those relating to MEJA criminal proceedings.

13.2. Current DAF personnel appearing as witnesses for the U.S. in MEJA criminal proceedings may be funded via AF/JAJM central witness funding.

Section C—Procedures for Jurisdiction, Command Law Enforcement Authority, Notice, and Courts-Martial for DoD/DAF Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Outside the U.S. During Declared War and in Contingency Operations (Article 2(a)(10), UCMJ)

14. Overview. Under Article 2(a)(10), UCMJ, in time of declared war or contingency operation, persons serving with or accompanying an armed force in the field are subject to the UCMJ.

15. Roles and Responsibilities.

15.1. Commanders authorized to act under this section must follow the proper notification requirements and procedures at **paragraph 19** before initiating disciplinary action under Article 2(a)(10), UCMJ. (T-0)

15.2. Staff judge advocates must advise commanders on the proper execution of their authority under this instruction.

16. Limitations on Command Authority.

16.1. Only the Secretary of Defense may exercise convening authority or impose nonjudicial punishment over persons subject to Article 2(a)(10), UCMJ, when any such person:

16.1.1. Commits an offense within the U.S., meaning one of the 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the U.S.;

16.1.2. Was not located outside the U.S., as defined above, at all times during the alleged misconduct; and

16.1.3. Is located in the U.S. at the time the court-martial charges are preferred or notice of nonjudicial punishment is given. *See* Secretary of Defense Memo, 10 March 2008, *UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations* (“SecDef Memo on Art 2, UCMJ, Jurisdiction”), for details on this authority (<https://www.justice.gov/sites/default/files/criminal-hrsp/legacy/2011/02/04/03-10-08dod-ucmj.pdf>).

16.2. Only the Secretary of Defense, geographic combatant commanders, and general courts-martial convening authorities assigned or attached to geographic combatant commands may exercise convening authority or impose nonjudicial punishment over persons subject to Article 2(a)(10) for offenses committed outside the U.S. Geographic combatant commanders may withhold this authority within their command.

16.3. Commanders may not initiate (prefer) court-martial charges or offer nonjudicial punishment until after completing the notification requirements outlined in **paragraph 19**. (T-0) Law enforcement, criminal investigations, and other military justice procedures that precede preferral of charges or an offer of nonjudicial punishment should continue, as applicable, during the notification process.

16.4. Commanders who are authorized to prefer court-martial charges or offer nonjudicial punishment will not exercise those authorities if they receive notice from DoJ that it intends to prosecute a case for the same or related offense. (T-0) This restriction will remain in effect until the DoJ prosecution is completed or terminated. (T-0)

17. Command Law Enforcement Authority.

17.1. Commanders at all levels have the authority to investigate any crime allegedly committed by persons subject to the UCMJ until civilian law enforcement officials assume sole investigative responsibility (subject to AFI 71-101, Volume 1, *Criminal Investigations Program*, paragraph 2.1). Such investigations shall be conducted in accordance with recognized practices with host nation authorities, applicable international agreements, and international law. (T-0)

17.2. Apprehension and Arrest. Military law enforcement officers and military criminal investigators are authorized to apprehend persons subject to the UCMJ in accordance with the requirements of R.C.M. 302. Although all commissioned, warrant, petty, and noncommissioned officers on active duty or inactive duty training may apprehend persons subject to the UCMJ, absent exigent circumstances, civilians should be apprehended by law enforcement personnel. Exigent circumstances may include when law enforcement personnel are unavailable at the time the apprehension is made and the civilian presents a danger to personnel, good order and discipline, operational readiness, or mission accomplishment. This is not an exhaustive list.

17.3. Pretrial Restraint and Confinement. Commanders may order pretrial restraint or confinement of civilians subject to the limitations of R.C.M. 304 and 305, as well as DAFI 51-201, *Administration of Military Justice*. Absent exigent circumstances, personnel subject to Article 2(a)(10), UCMJ, should not be placed in pretrial restraint or confinement without first consulting with the staff judge advocate of the appropriate geographic combatant command.

18. Command Discretion. The unique nature of exercising UCMJ jurisdiction over civilians requires commanders to evaluate legal and policy considerations before initiating any punitive disciplinary action.

18.1. Legal Considerations. Article 2(a)(10), UCMJ, applies to individuals serving with or accompanying the Air Force, Space Force, Army, Navy, Marines, or Coast Guard in the field during declared war or contingency operations. This generally includes DoD/DAF civilian employees and contractors, as well as individuals who are dependent on or connected to the armed forces in some manner. *See United States v. Alaa Mohammad Ali*, 70 M.J. 514 (A.C.C.A. 2011); *United States v. Burney*, 21 C.M.R. 98 (C.M.A. 1956); *Perlstein v. United States et al*, 151 F. 2d. 167 (3d Cir. 1945). It can also include both U.S. citizens and foreign nationals, but international agreements will likely impact punitive action against any foreign nationals. Before taking steps to initiate UCMJ action, it is critical to establish that Article 2(a)(10), UCMJ, jurisdiction applies.

18.2. Policy Considerations. Even if an individual is legally subject to the UCMJ, as a matter of policy the exercise of jurisdiction under Article 2(a)(10), UCMJ, must be based on military necessity to support an effective fighting force and be warranted by circumstances that meet the interests of justice, such as when federal criminal jurisdiction otherwise does not apply, when federal criminal prosecution is not pursued, and/or when the person's conduct is adverse to a significant military interest of the U.S. *See* "SecDef Memo on Art 2, UCMJ, Jurisdiction."

19. Notification Requirements and Procedures. Before initiating any disciplinary action against any person under Article 2(a)(10), UCMJ, commanders, through their staff judge advocates, shall comply with the notification procedures outlined below.

19.1. General Requirements. All levels of command must follow the notification requirements in the "SecDef Memo on Art 2, UCMJ, Jurisdiction," to include forwarding all reasonably available information regarding the investigation, the suspect's last known residence in the U.S., and the reasoning in support of a UCMJ disposition. **(T-0)**

19.2. Non-General Court-Martial Convening Authority Requirements. Commanders who do not hold general court-martial convening authority shall expeditiously forward all available information regarding the alleged misconduct that is potentially subject to Article 2(a)(10),

UCMJ, jurisdiction to the first general court-martial convening authority in the chain of command that is attached or assigned to a geographic combatant command. **(T-0)**

19.3. General Court-Martial Convening Authority Notification Requirements. Commanders who have general court-martial convening authority and who are assigned or attached to a geographic combatant command shall notify, in writing, their respective geographic combatant commander of their intended disposition by court-martial or nonjudicial punishment over persons subject to Article 2(a)(10), UCMJ. **(T-0)**

19.4. Combatant Commander Notification Requirements. In accordance with the DoD guidance in the “SecDef Memo on Art 2, UCMJ, Jurisdiction,” geographic combatant commanders are required to provide notice to DoD OGC before preferring court-martial charges or offering nonjudicial punishment based on Article 2(a)(10), UCMJ. This allows DoD OGC to coordinate with DoJ, who may wish to pursue federal criminal prosecution. The combatant commander may not take disposition on the matter until DoJ has an opportunity to respond in accordance with the timeline set forth in the next paragraph.

19.5. Department of Justice Notification Requirements. In accordance with the DoD guidance in the “SecDef Memo on Art 2, UCMJ, Jurisdiction,” DoJ has 14 days (absent an extension) to notify DoD whether it intends to exercise jurisdiction. If DoJ elects to exercise jurisdiction, authority to convene a court-martial or administer nonjudicial punishment is withheld. If DoJ does not exercise jurisdiction or terminates prosecution, UCMJ action may be initiated by the proper command authorities.

20. Courts-Martial Rights and Procedures. The Manual for Courts-Martial (MCM) ensures a fair trial and due process of law for all persons tried before a court-martial. The following clarifications will assist all parties with interpreting the MCM and applicable regulations.

20.1. Military Defense Counsel. An accused under Article 2(a)(10), UCMJ, has the same rights to counsel as a military accused, including the right to be represented by a detailed military defense counsel, the right to request an individual military defense counsel, and the right to be represented by a civilian defense counsel at no expense to the government.

20.2. Panel Members. Any commissioned officer on active duty pursuant to Title 10 orders is eligible to serve on a court-martial for the trial of any accused under Article 2(a)(10), UCMJ. A convening authority may, but is not required to, consider rank equivalencies when selecting officer members for an accused who holds a federal civilian position. An accused under Article 2(a)(10), UCMJ, does not have the right to request enlisted members.

20.3. Punishments. Subject to limitations in the MCM, a court-martial may adjudge only the following punishments for an accused under Article 2(a)(10), UCMJ: reprimand, fine, restriction to specified limits, confinement, and death.

CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Manual for Courts-Martial, United States (2019 Edition)

5 U.S.C. §§ 7101-7135, *Labor-Management Relations*

10 U.S.C. §§ 801-946, *Uniform Code of Military Justice*

18 U.S.C. §§ 3261-3267, *Military Extraterritorial Jurisdiction Act*

5 CFR § 2635.101, Basic obligation of public service

DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 January 2019

DoDI 5525.09, *Compliance with Court Orders by Service Members and DoD Civilian Employees, and Their Family Members Outside the United States*, 23 April 2019

DoDI 5525.11, *Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members*, 3 March 2005

DAFPD 51-2, *Military Justice and Other Criminal Proceedings*, 21 June 2021

AFJI 51-706, *Status of Forces Policies, Procedures, and Information*, 15 December 1989

AFJI 51-707, *Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice*, 26 February 1971

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 36-2903, *Dress and Personal Appearance of United States Air Force and United States Space Force Personnel*, 7 February 2020

DAFI 51-201, *Administration of Military Justice*, 14 April 2022

AFI 51-301, *Civil Litigation*, 2 October 2018

AFI 71-101, Volume 1, *Criminal Investigations Program*, 1 July 2019

DAFMAN 90-161, *Publishing Processes and Procedures*, 15 April 2022

Secretary of Defense Memo, 10 March 2008, *UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations* (“SecDef Memo on Art 2, UCMJ, Jurisdiction”)

Prescribed Forms

None

Adopted Forms

DAF Form 847, *Recommendation for Change of Publication*, 15 April 2022

Abbreviations and Acronyms

AFI—Air Force Instruction

AFJI—Air Force Joint Instruction

AFMAN—Air Force Manual

AFR—Air Force Reserve

ANG—Air National Guard

DAF—Department of the Air Force

DAFI—Department of Air Force Instruction

DAFMAN—Department of the Air Force Manual

DoD—Department of Defense

DoDI—Department of Defense Instruction

DoJ—Department of Justice

MCM—Manual for Courts-Martial

MEJA—Military Extraterritorial Jurisdiction Act

RegAF—Regular Air Force

OPR—Office of Primary Responsibility

SAF—Secretary of the Air Force

TJAG—The Judge Advocate General

UCMJ—Uniform Code of Military Justice

U.S.C.—United States Code

VMJD—Virtual Military Justice Deskbook

Office Symbols

AFPC/DP3AM—Air Force Personnel Center, Directorate of Personnel Programs, Military Assignments Branch

AF/JAJ—Military Justice and Discipline Directorate

AF/JAJD—Trial Defense Division

AF/JAJM—Military Justice Law and Policy Division

AF/JAO—Operations and International Law Directorate

DoD OGC—Department of Defense Office of General Counsel

OSI—Office of Special Investigations

SAF/GC—Department of the Air Force Office of General Counsel

SAF/MR—Office of the Assistant Secretary of the Air Force (Manpower and Reserve Affairs)

USD(P&R)—Under Secretary of Defense for Personnel and Readiness

Terms

Felony—A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence imposed for commission of the offense.

Court of competent jurisdiction—A court that has the authority both to act on the offense alleged (subject matter jurisdiction) and the alleged offender (personal jurisdiction).

Employee—An employee is a Department of Defense civilian employee, including a non-appropriated fund employee.

Status of Forces Agreement—bilateral international agreements between a sending State (SS) and a receiving State (RS), which define the legal status of SS personnel and property in the territory of the RS. The purpose of such an agreement is to set forth rights and responsibilities between the SS and the host government on such matters as criminal and civil jurisdiction over SS personnel, the wearing of uniforms and the carrying of arms by SS personnel, tax and customs relief for the SS, entry and exit of SS personnel and property, and resolution of damage claims.

United States—The 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the United States.