

Beat: News

Bergdahl prisoner exchange violated the law, U.S. watchdog says

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USPA News - The U.S. Government Accountability Office (GAO) has deemed the controversial prisoner exchange of five senior Taliban leaders at Guantanamo Bay for U.S. Sgt. Bowe Bergdahl as a violation of the law, the watchdog said late Thursday.

GAO Managing Associate General Counsel Edda Emmanuelli Perez said the Pentagon violated section 8111 of the Department of Defense Appropriations Act 2014 by carrying out the exchange, during which five Taliban leaders were transferred from Guantanamo Bay in Cuba to the state of Qatar. In return, Bergdahl, who had been held captive for five years by the Taliban, was released on May 31. The transfer is considered a violation because section 8111 "prohibits DOD from using appropriated funds to transfer any individuals detained at Guantanamo Bay," according to GAO. For it to be lawful, the Pentagon would have needed to notify certain congressional committees via the Secretary of Defense no less than 30 days prior to the transfer. In addition to not notifying congressional committees 30 days prior, the Antideficiency Act was violated due to appropriated funds not being available for the transfer, as no money had been assigned for this particular purpose. "The Antideficiency Act prohibits federal agencies from incurring obligations exceeding an amount available in an appropriation," Perez said. To release or transfer individuals from Guantanamo Bay, the Secretary of Defense is required to give specific determination and notification to certain congressional committees. This includes a "detailed statement of the basis for the transfer or release" and "[an] explanation of why the transfer or release is in the national security interests of the United States," according to Section 1035 of the National Defense Authorization Act for Fiscal Year 2014, the GAO reported. The government watchdog agency continued by stating that the Department of Defense "did not provide written notice to the relevant congressional committees until May 31, 2014, the same day as the transfer." Therefore, the failure to do so also violated Section 1035 of the National Defense Authorization Act, the GAO said. The Pentagon responded, claiming that the law is "unconstitutional as applied to this transfer." If they were to provide notice of the event, it would have obstructed the responsibility of the President in "protecting the lives of Americans abroad and protecting U.S. service members," defense officials said. According to the government watchdog, the Pentagon used at least \$988,400 in excess of appropriations in relation to the prisoner exchange. Therefore, the "DOD should report its Antideficiency Act violation as required by law," they stated. It is not clear what the consequences could be. Since the transfer earlier this year, Bergdahl has returned to active duty after finishing his reintegration process at a Texas hospital, the U.S. Army said previously. Bergdahl is currently assigned to Fort Sam Houston (JBSA), a joint army base in San Antonio, Texas. Bergdahl was previously deployed with 1st Battalion, 501st Infantry Regiment in the 4th Brigade Combat Team of 25th Infantry Division when he disappeared on June 30, 2009, in Afghanistan's Paktika province. The Army subsequently opened an investigation and concluded that Bergdahl had left his base of his own free will without authorization before his capture by the Taliban, though they have not accused him of desertion. The swap for his release in exchange for five Taliban commanders imprisoned at Guantanamo Bay incited a wave of controversy in the United States, with critics calling Bergdahl a deserter who endangered the lives of his colleagues who were attempting to find him. A photo that surfaced previously showed Bergdahl standing next to a senior Taliban leader, who smiles and holds his arm around him. An investigation is continuing into the circumstances of Bergdahl's capture.

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