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Report No. 20121205-012358

August 20, 2013

# Inspector General

United States  
Department of Defense



(b)(6), (b)(7)(C)

United States Army

## WHISTLEBLOWER REPRISAL INVESTIGATION

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**WHISTLEBLOWER REPRISAL INVESTIGATION**

(b)(6) (b)(7)(C)

**U.S. ARMY**

(b)(6) (b)(7)(C)

**, NATO TRAINING MISSION AFGHANISTAN  
KABUL, AFGHANISTAN**

**I. EXECUTIVE SUMMARY**

We conducted this investigation in response to allegations that Lieutenant General (LTG) William B. Caldwell, U.S. Army, former Commander, NATO Training Mission-Afghanistan (NTM-A) and Combined Security Transition Command-Afghanistan, and Major General (MG) Gary S. Patton, U.S. Army, former Deputy Commander, NTM-A, restricted (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), from communicating with a Department of Defense Inspector General (DoD IG) inspection team.

We found that LTG Caldwell sent three emails that attempted to limit Complainant's communication with DoD IG and required all communication with the DoD IG to be approved prior to release. (b)(6) (b)(7)(C)

We further found that MG Patton, acting in LTG Caldwell's absence, forwarded one of LTG Caldwell's emails and ensured that Complainant and one other officer were aware of the restriction. By doing so, he restricted Complainant's communication with DoD IG.

By letters dated June 24, 2013, and June 25, 2013, we provided LTG Caldwell and MG Patton, respectively, the opportunity to comment on the preliminary conclusions. In a memorandum dated June 27, 2013, LTG Caldwell responded to our preliminary report, disagreeing with our conclusions and requesting that the findings that he restricted or attempted to restrict Complainant be unfounded. In a memorandum (which included memoranda in support from Brigadier General John G. Ferrari, former U.S. Army, NTM-A Deputy Commander for Programs, and (b)(6) (b)(7)(C), DoD IG) dated July 10, 2013, MG Patton responded to our preliminary report, also disagreeing with our conclusions and requesting that we revise our report and conclusion to be consistent with his response. After carefully considering LTG Caldwell's and MG Patton's responses, we amended various sections of the report, but did not alter our original conclusions.<sup>1</sup>

We concluded that LTG Caldwell's and MG Patton's restrictive actions violated Title 10, United States Code, Section 1034(a)(1) (10 U.S.C. 1034(a)(1)). (b)(6) (b)(7)(C)

We recommend that the Secretary of the Army take appropriate action against LTG Caldwell and MG Patton.

<sup>1</sup> While we have included what we believe is a reasonable synopsis of LTG Caldwell and MG Patton's responses, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated their comments where appropriate throughout this report and provided a copy of their full responses to the cognizant management officials together with this report.

## II. BACKGROUND

NTM-A was charged with giving the Afghan Ministry of Defense and Ministry of Interior the training and tools necessary to take over defense of their nation in 2014 when NATO hands off responsibility for security to Afghan forces. NTM-A officials were involved in training all aspects of the national defense apparatus and police forces, building legal systems, creating a viable medical system to support their newly robust Army and police, and army development.

NTM-A started with a small number of personnel, but grew to almost 5,000 U.S. and coalition forces. NTM-A advisors embedded with their Afghan counterparts, built relationships, directed funding, and trained the Afghans to take over. NTM-A was divided into functional areas each led by a colonel or general officer.

Most of the systems were essentially starting from scratch. According to the World Health Organization, the national medical system in Afghanistan has been ranked as one of the worst in the world. The military medical system, centered on the Dawood National Military Hospital (NMH), was slightly better, but was still less efficient and effective than a western medical system and was not sufficient to support the Afghan Army involved in daily combat.

Prior to October 28, 2010, NTM-A officials had been laying the groundwork for removing the corrupt Dawood NMH Commander and addressing concerns of pharmaceutical theft. There were several indications from the Afghan Attorney General, Afghan IG, and the Dawood NMH itself that pharmaceuticals and fuel were being stolen, and that corruption was rife throughout the system. Many individuals said that the corruption went all the way to Major General Ahmad Zia Yaftali, the Afghan Surgeon General and Commander of the Dawood NMH.

In late August 2010, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) briefed LTG Caldwell on information that he had gathered about the extent of the corruption in the Afghan medical system. He exchanged several emails with LTG Caldwell after the briefing identifying specifics of the problem. LTG Caldwell asked MG Patton to address the concerns.

On September 25, 2010, LTG Caldwell informed General (GEN) David H. Petraeus,<sup>2</sup> U.S. Army, former Commander, International Security Assistance Force, and U.S. Forces Afghanistan, via email:

...of ongoing fraud and abuse with respect to medications. Activities include diversion, hoarding, and theft of US and MOD [Ministry of Defense] purchased medications resulting in hundreds of ANA [Afghan National Army] soldiers being denied treatment or having to purchase medication at their own expense.

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<sup>2</sup> GEN Petraeus was LTG Caldwell's immediate Commander.

LTG Caldwell also stated:

Believe there will be leadership changes within the Surgeon General's Office. However, any change at the GO level will require engagement with PoA [President of Afghanistan]. Team will continue to address with MoD and ANA leadership to ensure action is taken to remove the corrupt actors.

LTG Caldwell forwarded his GEN Petraeus email to Complainant, his Deputy; the (b) (6), (b) (7)(C), and other senior members of his command.

Although LTG Caldwell was concerned about the corruption and directed his staff to take action to combat it, Complainant; (b) (6), (b) (7)(C) and several other officers grew increasingly concerned in early fall 2010 about the level of corruption and felt it was beyond their ability to evaluate and fix.

On October 28, 2010, Complainant; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) met with Dr. Jackie Kem, Senior Executive Service, civilian Deputy to the Commander, NTM-A, to request an assistance visit from the DoD IG Special Plans and Operations Office (DoD IG SPO) to help root out the corruption. Dr. Kem directed Complainant to contact DoD IG and said he would inform LTG Caldwell.

Immediately after that meeting, Complainant sent an email to Ambassador Kenneth P. Moorefield, Deputy Inspector General (DIG), SPO, requesting a team from DoD IG SPO come to Afghanistan to assess the medical system. The email focused on "discrepancies concerning the distribution of and accounting for pharmaceuticals distributed to the ANA." The email concluded:

... We met with Dr. Kem today and he has briefed LTG Caldwell on the prospect of DOD IG SPO conducting this inspection/assessment. LTG Caldwell and Dr. Kem welcome your involvement. I am drafting a letter for LTG Caldwell to send to General Petraeus informing him of the decision to ask for the assistance of the DoD IG SPO. We do not need P4<sup>3</sup> approval.

LTG Caldwell ordered Complainant to withdraw the request until he informed GEN Petraeus and received permission for an inspection from the Afghan government.<sup>4</sup> LTG Caldwell informed GEN Petraeus on October 29, 2010, and received approval from the Afghan government on November 10, 2010. On November 10, 2010, LTG Caldwell requested that DoD IG SPO inspectors assess the medical logistics system. The team from DoD IG SPO conducted that assessment in Afghanistan from December 1-16, 2010.

<sup>3</sup> P4 was the Command shorthand for GEN Petraeus.

<sup>4</sup> (b) (6), (b) (7)(C)

On February 1, 2011, Complainant accompanied the Afghan MoD IG, MG Abul Fazil, and the Afghan Vice Chief of Staff, LTG Akram, on a follow-up inspection visit to the National Military Hospital. This inspection resulted in a seven-page report<sup>(b)(6) (b)(7)(C)</sup> [REDACTED], which included six numbered findings/recommendations. Subsequently, Complainant sent this report to DoD IG. While the previous DoD IG SPO visit focused on logistical limitations and pharmaceuticals, this report addressed shortcomings in patient care. It included pictures of starving Afghan soldiers in Dawood NMH and reflected the poor treatment they received. The report was titled “MoD IG CJIG Follow-up Inspection of the National Military Hospital 1 February 2011,” Complainant showed it to<sup>(b)(6) (b)(7)(C)</sup> [REDACTED] but not to LTG Caldwell or anyone else in the U.S. military leadership prior to its transmission to DoD IG.

After receipt of Complainant’s February 2011 report, the DoD IG leadership sent a team back in late February 2011 for a “quick look” with a focus on patient care. A Senior Program Analyst, DoD IG SPO, was embedded in the NTM-A command and emailed<sup>(b) (6), (b) (7)(C)</sup> [REDACTED] on February 18, 2011, that Mr. Gordon Heddell, DoD Inspector General, was concerned about the information in Complainant’s report, and a follow-up inspection would be conducted the following week. A team from DoD IG already in Afghanistan evaluated patient care at the hospital from February 21 to 23, 2011.

### III. SCOPE

This investigation evaluated NTM-A Command actions from late October 2010 to March 2011. WRI investigators interviewed more than 20 witnesses including Complainant,<sup>(b)(6) (b)(7)(C)</sup> [REDACTED], LTG Caldwell, and MG Patton. We also reviewed email records, letters, and memoranda, and consulted with the Army Human Resources Command, United States Central Command IG, NTM-A Staff Judge Advocate, and the Defense Criminal Investigative Service.

### IV. STATUTORY AUTHORITY

DoD IG conducted this whistleblower reprisal investigation pursuant to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), “Protected communications; prohibition of retaliatory personnel actions,” which is implemented by DoD Directive 7050.06, “Military Whistleblower Protection.”

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<sup>5</sup> The time and date stamp on some of the emails gathered for this investigation are out of sequence by several hours, apparently due to some servers being located in Kuwait, some in Afghanistan, and some in the United States.

**V. FINDINGS AND ANALYSIS**

**A1. LTG Caldwell Restriction**

**Did the responsible management official restrict Complainant from communicating with an Inspector General? Yes**

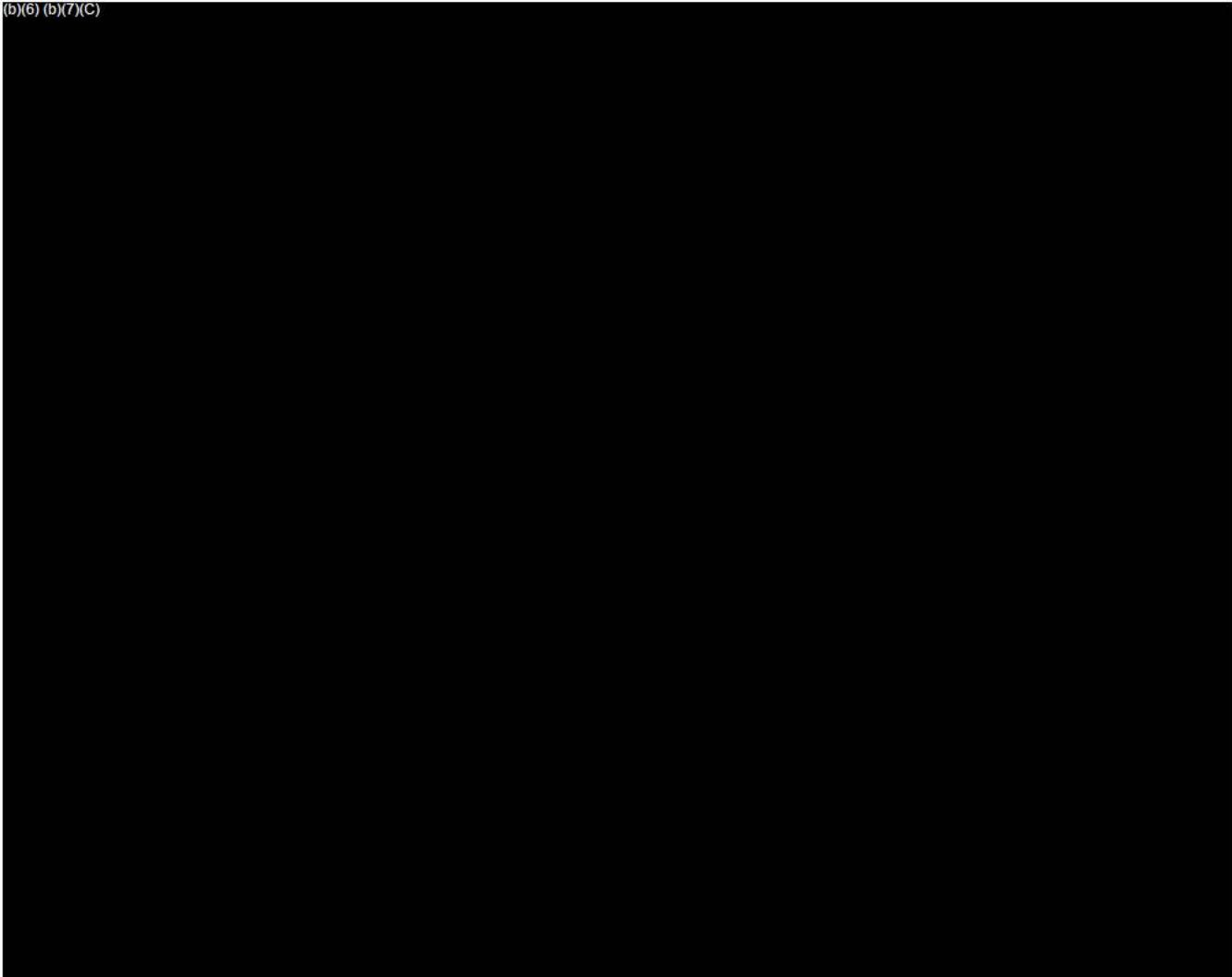
Complainant alleged that LTG Caldwell attempted to restrict communication with DoD IG SPO inspectors during (b)(6) (b)(7) DoD IG visits in (b)(6) (b)(7)(C) and February 2011. We considered these (b)(6) (b)(7)(C) allegations of restriction and analyzed them as such.

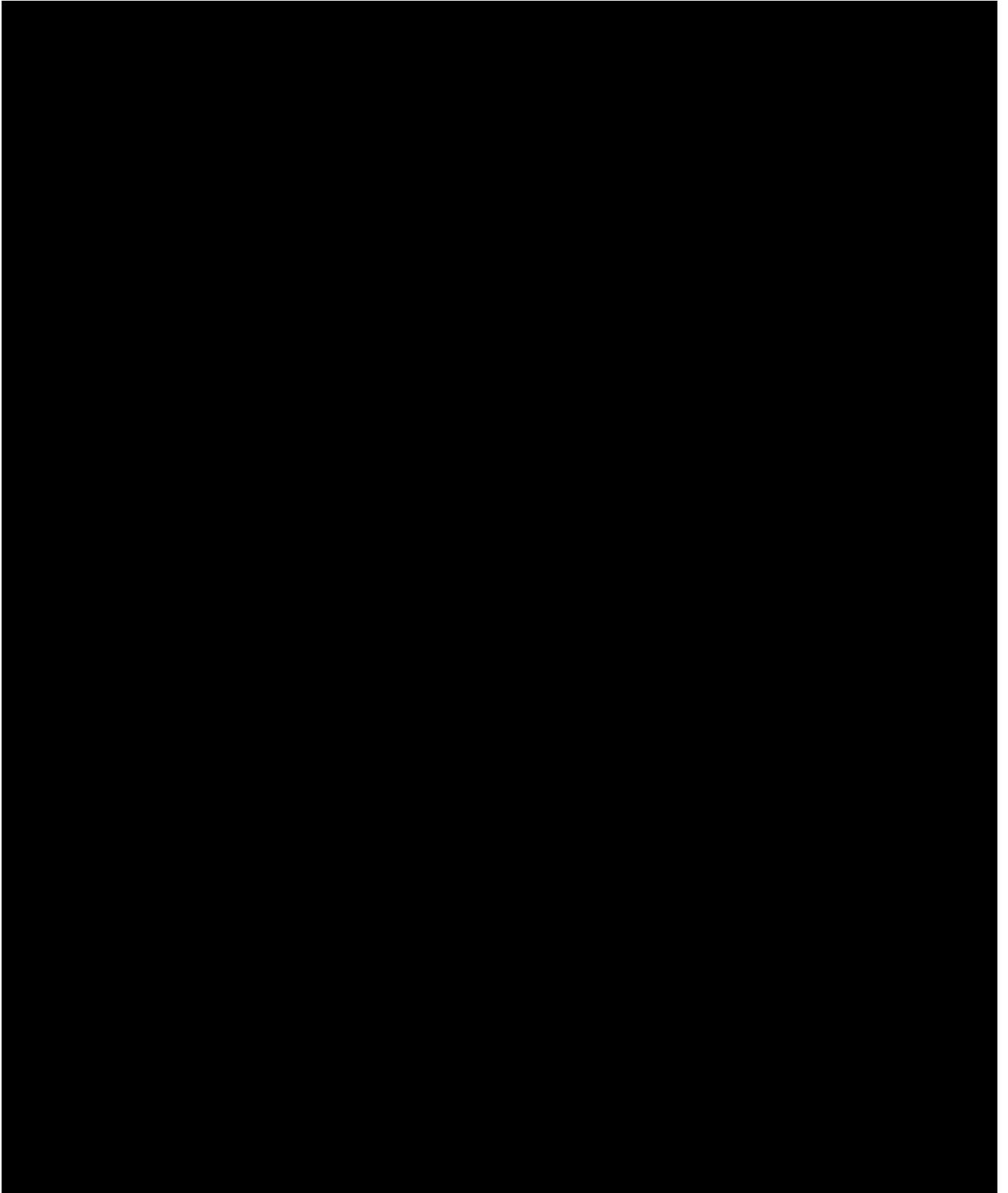
Title 10 U.S.C. 1034(a)(1) states:

(a) Restricting communications with Members of Congress and Inspector General prohibited.—

(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(b)(6) (b)(7)(C)





*Alleged Restriction in February 2011*

On February 19, 2011, LTG Caldwell was scheduled to fly to Brussels for a NATO conference. Either (b)(6), (b)(7)(C) or (b)(6), (b)(7)(C) told him about Complainant's February 1, 2011, report before he left. LTG Caldwell acknowledged in his testimony that he was upset that (b)(6), (b)(7)(C) sent a command product outside the command without giving him the courtesy of seeing it first.

In his memorandum dated June 27, 2013, LTG Caldwell stated that our summary in the preceding paragraph mischaracterized his testimony. We have modified the last sentence in the paragraph above to more accurately reflect LTG Caldwell's testimony. However, his comments on this part of the report did not lead us to modify our conclusions.

Prior to his departure, either late Friday, February 18, 2011, or early Saturday, February 19, 2011, LTG Caldwell gave a verbal order to his Command staff that nothing was to go outside of the Command without his approval. Although this was prompted by Complainant's report, the order was not limited to Complainant or Dawood NMH. We received credible witness testimony that literally nothing was to go outside the Command without LTG Caldwell's approval. LTG Caldwell stated that he did not recall giving this order.

In the days leading up to the February 2011 DoD IG SPO visit, LTG Caldwell sent three emails to the general officers and senior colonels on his staff, including MG Patton, expressing his displeasure with Complainant's report and gave them direction regarding how they were to respond to DoD IG SPO inspectors. Each email reiterated that no information was to be shared outside of the Command without approval.

After arriving in Brussels, LTG Caldwell received an email from (b)(6), (b)(7)(C) at 11:15 p.m. on February 19, 2011. (b)(6), (b)(7)(C) email informed LTG Caldwell of a conversation he had with DIG SPO and the topics the DoD IG SPO inspectors would review during their visit. (b)(6), (b)(7)(C) email to LTG Caldwell had seven addressees. On February 19, 2011 at 10:40 p.m. (as noted above, the date stamp on several emails are out of sequence), LTG Caldwell responded to (b)(6), (b)(7)(C) and added seven more addressees including MG Patton, Complainant, and (b)(6), (b)(7)(C). LTG Caldwell wrote:

(b)(6), (b)(7)(C) -- roger on all...thanks. Believe we have reminded all that NOTHING<sup>8</sup> goes out of our command that I have not personally been, briefed on and approved, and am not delegating this to anyone...we need to ensure our MEDTAG and (b)(6), (b)(7)(C) folks clearly understand this order...thought I was clear on this before-- would appreciate my orders being followed.

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<sup>6</sup> (b)(6), (b)(7)(C)

<sup>7</sup> (b)(6), (b)(7)(C)

<sup>8</sup> Capitalization in original.

On February 20, 2011, LTG Caldwell informed GEN Petraeus that the DoD IG was doing a short notice follow-up visit to the December 2010 visit. At this point, LTG Caldwell realized that his focus needed to be on the NATO conference in Brussels, and that he could not manage the DoD IG SPO visit from Belgium. He delegated approval and information release authority to MG Patton. LTG Caldwell forwarded to MG Patton his informational email to GEN Petraeus and copied nine others, including Complainant and (b)(6) (b)(7)(C). In the forwarded email, he wrote:

(b)(6) (b)(7)(C) - full support from ALL of the staff and our entire command behind MG Patton on this...is our top priority, ALL reporting on this approved by MG Patton...NO ONE will report outside our headquarters anything unless he personally approves.<sup>9</sup>

MG Patton acknowledged LTG Caldwell's order via email. On February 21, 2011, in response to MG Patton's acknowledgement, LTG Caldwell replied to MG Patton and 11 others, including Complainant:

Thanks much Gary....appreciate you taking this one on personally. Apologize it has gotten out of control and reporting has failed to follow the chain of command....have been clear to all-- absolutely nothing leaves our headquarters in response to anyone on this subject unless I personally clear it-- OR you do...but bottom line (b)(6) (b)(7)(C) will NOT release any info that you or me has not personally cleared.

MG Patton forwarded LTG Caldwell's February 21, 2011, email to (b)(6) (b)(7)(C), saying: "(b)(6) (b)(7)(C) - can you pls inform (b)(6) (b)(7)(C) team of this order by CG, if you have not already. Thanks Bill."

(b)(6) (b)(7)(C) forwarded the email to Complainant and (b)(6) (b)(7)(C) and added:

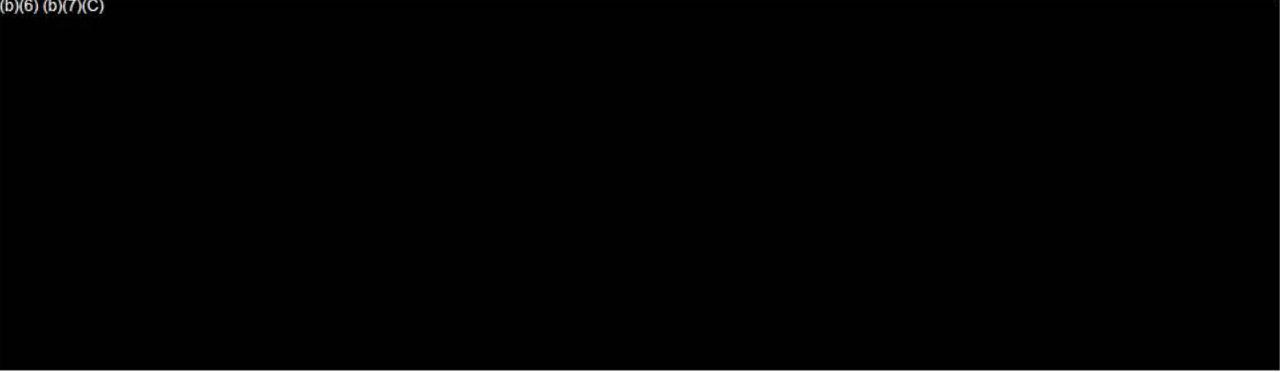
(b)(6) (b)(7)(C)

If the point has not been driven home completely by now, please ensure that you comply to the letter with this direction. ABSOLUTELY NOTHING to leave the HQ on this subject without consent of Gen Patton or CG.

It is common practice for a Command to have one person consolidate requests for information to an IG during an inspection in order to not overwhelm an inspection team, as MG Patton noted in his testimony. Nevertheless, LTG Caldwell's instructions to MG Patton that "absolutely nothing leaves our headquarters in response to anyone on this subject unless I personally clear it" goes far beyond having one person consolidate responses.

<sup>9</sup> Capitalized words were taken directly from the relevant email.

(b)(6) (b)(7)(C)



Complainant showed the February 1, 2011 report to (b)(6) (b)(7)(C), but did not formally staff it, did not show it to MG Patton or LTG Caldwell, and did not tell anyone (including (b)(6) (b)(7)(C)) before he sent it to DoD IG.

LTG Caldwell testified that “an individual has the right to reach out to Congress, to the IG, do whatever they want in their personal capacity to whatever they want to communicate about. I mean, I’m not going to interfere with that.” But if an individual reaches out in his official capacity, representing the Command, LTG Caldwell expressed his belief that it was legitimate to require that individual to coordinate through the chain of command. He testified:

However, if you’re going to communicate my command position then that’s where the whole thing I think comes into question. Because if you’re communicating command position, if you’re representing me, communicating my position, my command’s position, then as I had stated to him on multiple occasions then I did want to have the ability to see and understand what was sent on my behalf.

LTG Caldwell continued that he believed this report was a Command product:

I mean, even in the note to me from (b)(6) (b)(7)(C) he specifically states the NTM A IG Follow Up Report. I mean, it's very clear. This is our Command's official report going forward. He doesn't say, individual X sent this report to the IG. He says, "The NTM A IG Follow Up Report," referring to this being the official documented response of this Command back to a higher Command looking for additional information from us and asking for something, whatever it was.

If it [the February 1, 2011 report] had starving people, I kind of would like to know that. I mean, my gosh, hello. You don't think that's important for me to be personally told by somebody?

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<sup>10</sup> In the absence of NATO guidance on the role of the (b)(6) (b)(7)(C) we relied on the Army Regulation to explain the expected relationship between the Commander and the (b)(6) (b)(7)(C)

Complainant, however, testified that he believed he had to send the report outside of the Command to get action:

But the problem that I had at that point was I'm not going through this again. My staff and I are working way too hard to have this lost within a command structure again, to lose visibility because they just don't want to deal with it. And that's -- again, I wasn't hiding anything from the command. This was an open sore. Okay, this is an open wound and all I was doing is doing my (b)(6) (b)(7)(C) and that's exchanging information.

The February 1, 2011, report Complainant (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) : "MOD IG CJIG Follow Up Inspection" and the coordination with two Afghan Generals. In addition, calling it a "Follow Up" inspection (b)(6) (b)(7)(C) in coordination with DoD IG.

LTG Caldwell testified that context matters when evaluating his emails, and that it was never his intent to limit personal communications. He denied attempting to restrict Complainant from communicating with the IG. He also stated that he believed the recipients of the emails understood his order was not a blanket restriction against talking to the IG; rather, it was narrowly focused on communications made in an "official capacity." He also stated that it was not accurate or fair to take one or two emails out of context.

It was clear that LTG Caldwell did not adequately communicate to his staff a distinction between personal and official capacity in communication with an IG, and that his staff did not view LTG Caldwell's statements as making such a distinction. Although LTG Caldwell did speak to his staff and others on multiple occasions about the general importance of transparency, he was unable to provide us an example, either written or verbal, where he explained any "official capacity" distinction. LTG Caldwell's emails appear to broadly limit the ability of members of the Command to contact outside entities, including the IG and members of Congress. LTG Caldwell's encouragement of transparency as a general concept did not change the restrictive nature of the emails sent to his staff.

Complainant in particular took LTG Caldwell's emails at face value, and he reasonably believed that the emails he received from LTG Caldwell were restrictive. He testified:

I think the intent was pretty clear. It was pretty clear with me that the command didn't want to handle these situations out in the open, okay. They didn't want to ask for outside help. So any attempt for me to engage a higher order of IG was met with a restriction.

As described above, Complainant's report was a Command product, and therefore LTG Caldwell's frustration at Complainant's failure to inform him of its findings before sending it to

DoD IG is understandable and appropriate. Nevertheless, we found LTG Caldwell's subsequent email communications in February 2011 restrictive for the following reasons:

- a) By including (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) in his response to (b) (6), (b) (7)(C), LTG Caldwell made it clear that he was concerned not just with Complainant's February 1, 2011, report, but with what and how (b)(6) (b)(7)(C) and Complainant might communicate to the DoD IG SPO inspectors in the future. In his June 27, 2013, memorandum LTG Caldwell wrote that he "included (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) on these e-mails not to restrict them but to include them in the proper synchronization of the issues and to remind them that the official command items/products had to be properly staffed." However, LTG Caldwell's email made no reference to synchronization or staffing concerns.
- b) LTG Caldwell wrote three emails in February 2011 that were restrictive, two of which explicitly mentioned the (b)(6) (b)(7)(C) none of them explained or clarified the distinction between personal communications and communications made in an "official capacity."
- c) He required that all communication be seen and approved.
- d) He ended the top paragraph of his response to (b) (6), (b) (7)(C) with "...thought I was clear on this before-- would appreciate my orders being followed." LTG Caldwell's June 27, 2013, memorandum stated that his comments did demonstrate his frustration that proper staffing was not being conducted by Complainant and he wanted his staff to know that the direction for proper staffing of command products came "from the top." However, LTG Caldwell's emails did not use the terms "proper staffing" or "command products." Therefore, we have not changed our conclusion.

In his memorandum dated June 27, 2013, LTG Caldwell reiterated that his emails should not be read in isolation or out of context and that his staff knew that he was talking about official command products in his emails. While LTG Caldwell's intent may indeed have been to ensure proper staffing of command products, the plain language of his emails, considered in their proper context, makes no such limitation. Moreover, the evidence established that recipients of the emails, to include Complainant, reasonably interpreted LTG Caldwell's emails as restrictive.

LTG Caldwell also noted that we did not find that anyone failed to communicate with the IG team based on his guidance. In fact, according to LTG Caldwell, all individuals were able to communicate with the IG team because no one was restricted. The fact that members of his command communicated with the DoDIG team does not negate the restrictive nature of his emails.

We concluded that LTG Caldwell attempted to restrict Complainant's communication with DoD IG in February 2011 in violation of 10 U.S.C. 1034.

## A2. MG Patton Restriction

### Did the responsible management official restrict the Complainant from communicating with an Inspector General? Yes

For most of 2010 when LTG Caldwell was off station, MG Patton, as the second highest ranking officer, was acting Commander. Shortly before LTG Caldwell's February 2011 trip to Brussels, the Command gained a new Deputy Commander, MG James B. Mallory, U.S. Army. It is not clear if MG Mallory was appointed as acting Commander when LTG Caldwell traveled to Brussels for the NATO conference from February 19-24, 2011. MG Patton originally testified that he was the acting commander of NTM-A during LTG Caldwell's trip to Brussels, but later clarified his statement by saying that because of MG Mallory's presence in the command at that time, he could not be certain he [MG Patton] was in command. However, it was clear that MG Patton was in charge of the NTM-A response to the upcoming DoD IG visit. LTG Caldwell testified that "Gary Patton has got the authority to make the decisions." Lastly, Complainant believed that MG Patton was in charge in LTG Caldwell's absence.

As stated above, on February 21, 2011, LTG Caldwell emailed MG Patton and said:

...Apologize it has gotten out of control and reporting has failed to follow the chain of command...have been clear to all-- absolutely nothing leaves our headquarters in response to anyone on this subject unless I personally clear it-- OR you do...but bottom line (b)(6) (b)(7)(C) will NOT release any info that you or me has not personally cleared.

MG Patton forwarded LTG Caldwell's February 21, 2011, restrictive email to (b)(6) (b)(7)(C) and said, (b)(6) (b)(7) can you pls inform (b)(6) (b)(7)(C) team of this order by CG, if you have not already. Thanks (b)(6) (b)(7)

As noted above, LTG Caldwell's February 21, 2011, email to MG Patton and others was the third of three restrictive emails he sent from Brussels. The February 21, 2011, email was the only one that MG Patton forwarded to others in the Command, but he was on the "To" or "cc" line for all three, and was thus aware of the restrictive language in LTG Caldwell's other emails. The previous email explicitly designated MG Patton in charge with respect to the DoD IG inspection and the approval authority for all information going to DoD IG. In this email, MG Patton (now in charge of the visit, and having the explicit authority and requirement to approve communication with DoD IG) told (b)(6) (b)(7)(C) to make sure that (b)(6) (b)(7)(C) team followed LTG Caldwell's orders. In other words, MG Patton was telling (b)(6) (b)(7)(C) to ensure that (b)(6) (b)(7)(C) team cleared all communication to DoD IG through him. And he did so without any caveats about official versus personal communications.

In his July 10, 2013, memorandum MG Patton wrote that making the distinction between official versus personal communications was not necessary because the subject line of the email he forwarded was "DOD IG Inspections on KMH Update." Further, MG Patton wrote that the email referred to (b)(6) communications outside the chain of command; there was no evidence (b)(6)

(b) (6) made a personal communication to the DoD IG, and Complainant had the experience and was well positioned to seek clarification if he felt MG Patton was restricting him.

We disagree that the subject line of this email obviates the need for any distinction between official and personal communications. To the contrary, the email clearly places restrictions on (b) (6) (b) (7)(C) team's ability to communicate with DoD IG in the context of the inspection referenced in the email's subject line. On its face, the email in question directs that Complainant will not release "any info" to DoD IG that LTG Caldwell or MG Patton has not personally cleared. The evidence established that recipients of the emails, to include Complainant, reasonably interpreted LTG Caldwell's email, as adopted and forwarded by MG Patton, as restrictive.

MG Patton, having served with LTG Caldwell for approximately a year, and as one of the most senior officers below LTG Caldwell, was uniquely positioned to question the restrictive orders, or at least ask for clarification. Not only did he not question LTG Caldwell's orders, he forwarded them to (b) (6) (b) (7)(C). Given his rank and position, MG Patton had an obligation to ensure that he was not promulgating restrictive orders.

MG Patton denied attempting to restrict Complainant's communication to DoD IG. MG Patton testified that the same day he forwarded LTG Caldwell's email, he met with everyone responsible for assisting with the DoD IG visit. According to MG Patton, during that meeting he told everyone involved that they would be completely open and transparent. We found support that the meeting occurred as MG Patton described. It is important to note, however, that directing the staff to be open and transparent does not remove LTG Caldwell's requirement that he [MG Patton] or LTG Caldwell approve all communication before it goes to DoD IG. MG Patton did not offer any evidence that he clarified or limited the scope of LTG Caldwell's order.

In his July 10, 2013, memorandum MG Patton asserted that Complainant's communication to the DoD IG was not a protected communication under 10 U.S.C. 1034. However, 10 U.S.C. 1034 states that "No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General." It is not necessary for Complainant to have made a protected communication for us to conclude that LTG Caldwell and MG Patton's emails were restrictive.

In his July 10, 2013, memorandum MG Patton wrote that LTG Caldwell's emails, and his decision to forward the third email, did not restrict communication under 10 U.S.C. 1034. Instead, MG Patton asserted that those emails demonstrated an effort to manage communications within LTG Caldwell's staff. MG Patton further wrote that he maintained an atmosphere of transparency and unfettered access which included putting Complainant (b) (6) (b) (7)(C) the DoD IG team during the inspection of NMH. Lastly, the DoD IG praised his support of their visit.

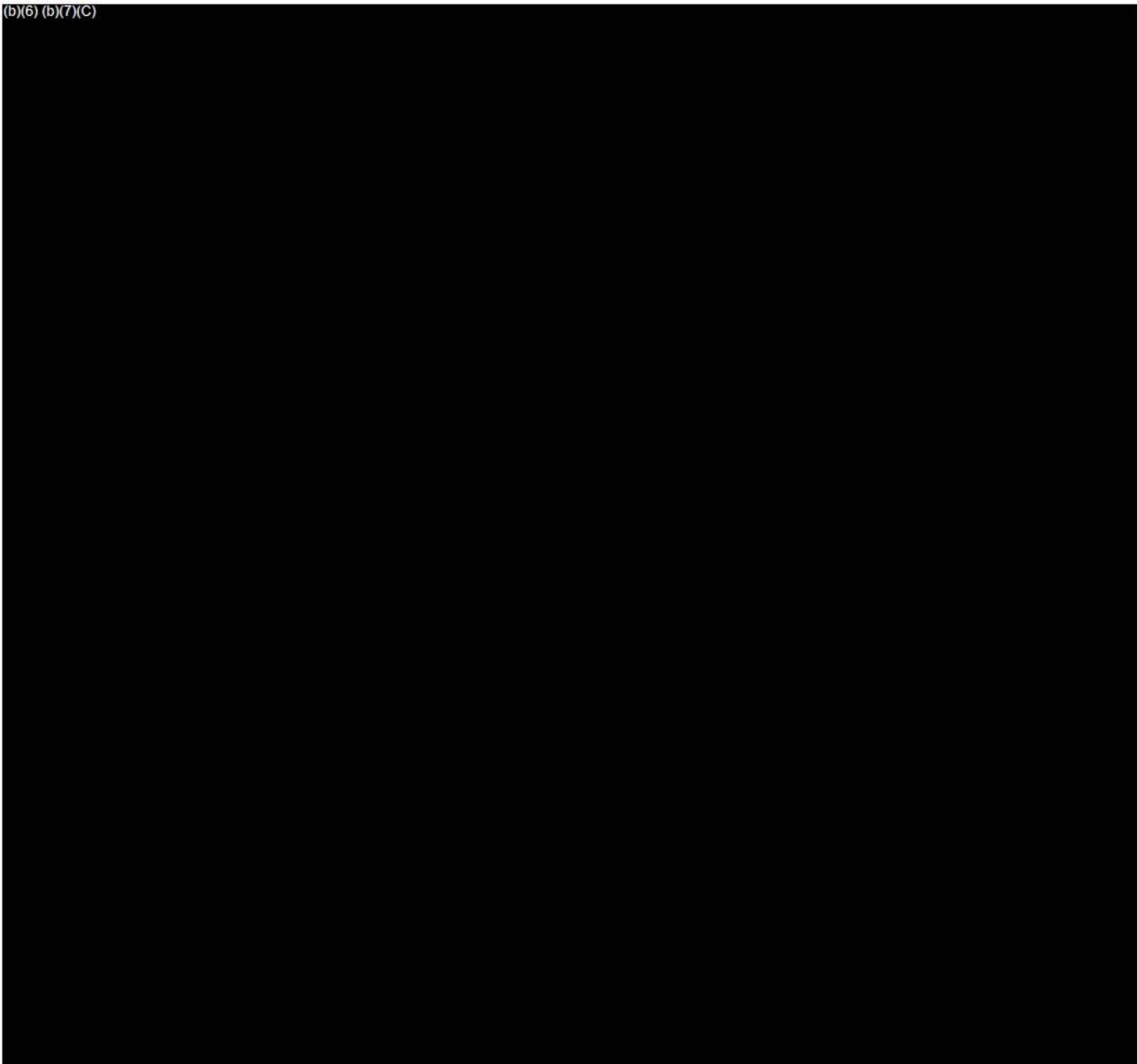
The evidence established that LTG Caldwell's February 21, 2011, email, as adopted and forwarded by MG Patton, was restrictive on its face. Moreover, the evidence established that although MG Patton did assign Complainant (b) (6) (b) (7)(C) the DoD IG team, MG Patton was present

during the entire tour of NMH. Although Complaint had opportunities for private interactions with the DoD IG team during other portions of the visit, MG Patton's personal presence during the most critical part of the inspection underscored the message that no information that was not personally cleared by MG Patton was to leave the command. Finally, the fact that DoD IG has expressed appreciation for MG Patton's assistance with an inspection does not excuse MG Patton's restrictive email.

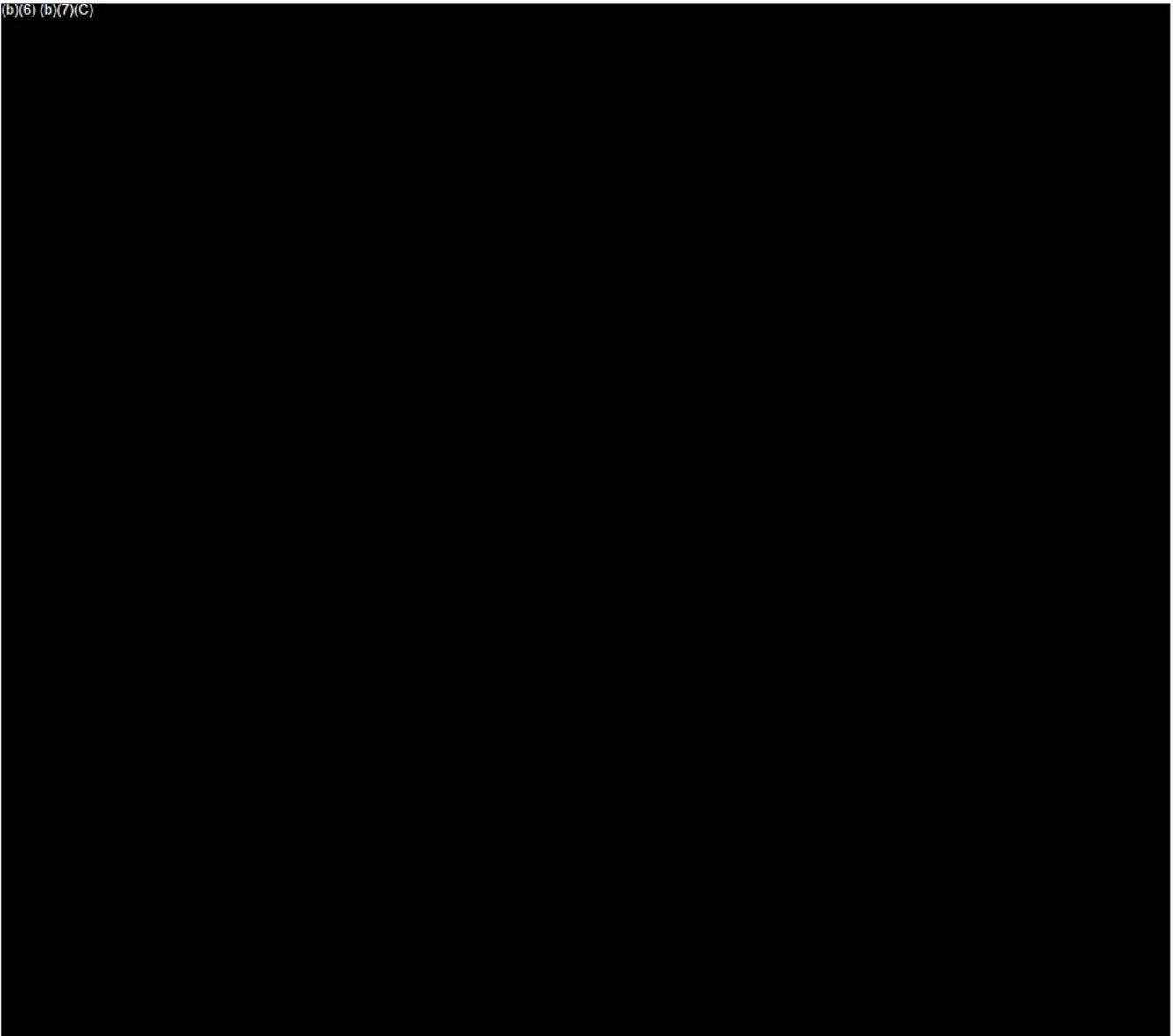
Notwithstanding MG Patton's response, we determined that MG Patton restricted Complainant by forwarding LTG Caldwell's February 21, 2011, email to (b)(6) (b)(7)(C) without asking for clarification or adding any clarification of his own, and directing (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) to make sure the (b)(6) (b)(7)(C) team was aware of LTG Caldwell's order.

## VI. OTHER MATTERS

(b)(6) (b)(7)(C)



(b)(6) (b)(7)(C)



**VII. CONCLUSIONS**

We conclude, based on a preponderance of the evidence:

**A.** (b)(6) (b)(7)(C) 

**B.** In February 2011, LTG Caldwell did restrict Complainant from communicating with the DoD IG via three restrictive emails, including an email that targeted Complainant and (b)(6) (b)(7)(C) and stated that “NOTHING” was to be communicated to the DoD IG without his approval in violation of 10 U.S.C. 1034.

C. In February 2011, MG Patton did restrict Complainant from communicating with the DoD IG in violation of 10 U.S.C. 1034, when, as the acting commander, he forwarded LTG Caldwell's February 21, 2011, direction that nothing was to be communicated to the DoD IG without prior approval to <sup>(b)(6) (b)(7)(C)</sup> [REDACTED] and reinforced LTG Caldwell's message making sure Complainant was aware of LTG Caldwell's order.

#### **VIII. RECOMMENDATIONS**

We recommend that the Secretary of the Army take appropriate action against LTG Caldwell and MG Patton.