

STATEMENT FOR THE RECORD

MR. MARK E. MITCHELL

PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE

SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT

BEFORE THE 115TH CONGRESS

UNITED STATES HOUSE OF REPRESENTATIVES

HOUSE ARMED SERVICES COMMITTEE

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

JULY 11, 2018

Chairwoman Stefanik, Ranking Member Langevin, distinguished members of the subcommittee, thank you for inviting the Department of Defense (DoD), to testify here today on DoD engagement with non-Federal entities (NFEs) in support of DoD foreign assistance activities, specifically humanitarian assistance, humanitarian de-mining, and stabilization activities. Thank you also for inviting the Department of State (“State”), and U.S. Agency for International Development (USAID) to address related matters, including the provision of USG foreign assistance within the context of the broader interagency coordination employed for implementing all such assistance, under the primary responsibility and authority of the Secretary of State for the supervision and direction of all such assistance, I also thank you for your steadfast support for the men and women of the DoD – military and civilian alike – who serve and defend our country.

Before addressing the details of NFE support to DoD foreign assistance activities, I want to express my gratitude for the passion and commitment that many NFEs bring in support of DoD personnel and their dependents. From entertaining our forward deployed troops to supporting our wounded warriors, NFEs play an important role in maintaining the positive morale and welfare of the Joint Force.

The Department’s leadership encourages DoD components to work with NFEs when cooperation will enhance the effectiveness of DoD support to humanitarian and other assistance activities, such as humanitarian assistance, demining, and stabilization. For example, NFEs have played an instrumental role in the success of the last two humanitarian-related Continuing Promise missions. U.S. Southern Command’s Continuing Promise is a ship-based medical, dental, veterinary, and civic action mission with ports of call in Central America, South America and the Caribbean. This civil-military effort included NFE contributions of 548 medical

professionals, \$3.2 million of medical services, and over \$2.5 million of medicine, medical supplies, wheelchairs, clothing, and high-nutrition meals to over 24,000 citizens in the region. USSOUTHCOM reported to me that NFEs were “*indispensable*” to their humanitarian work and to strengthening regional partnerships and improving cooperation.

The Department did issue guidance in April 2013 on Public-Private Partnerships Supporting the DoD Mission. The guidance encourages DoD public private partnerships to facilitate innovation and creative thinking in a wide range of DoD activities, such as logistics, cyber, humanitarian assistance, wounded warrior support, etc. As a result, most of the Combatant Commands established offices and points of contact to interpret the guidance and coordinate partnerships in their areas of responsibility. Although the memo required such partnerships to be consistent with the Joint Ethics Regulations and other policies, it did not provide specific guidance on how to achieve compliance.

Pursuant to the FY 2018 NDAA, my office conducted a review of current DoD policy and regulations on working with NFEs, which per the legislation was to have been done jointly with State. Our findings showed that Combatant Commands lacked a unified understanding of what constitutes legal and ethical engagement with NFEs, and that higher level guidance was necessary to ensure consistency across the DoD enterprise.

We learned that despite promising collaborative potential, there have been instances when Commands have been hesitant to receive, transport, and deliver goods from NFEs outside of the contracting and procurement process. This reluctance was primarily due to understandable concerns about providing, or appearing to provide, preferential treatment, improper endorsement, special access, or unfair competitive advantage. However, some commands have developed

mature processes for receiving and vetting NFE requests to support DoD humanitarian and other assistance activities.

Based on this review, my office has drafted consolidated guidance which State is reviewing as provided for under the NDAA, for the Deputy Secretary of Defense to approve and issue to DoD Components who desire to establish non-binding arrangements with “applicable NFEs” to support the distribution of NFE’s donated goods and associated services in support of DoD humanitarian and other assistance activities. “Applicable NFEs” are (1) U.S.-based, (2) have an independent and audited board of directors, (3) are privately-funded, (4) are tax exempt under section 501(c)(3), (5) provide donated goods and associated services, and (6) do not hold or seek to obtain DoD contracts, grants, and cooperative agreements, which criteria goes beyond those listed in the legislation.

This draft guidance will be interagency cleared. It states guidance based on relevant statute and DoD policies to help Commanders and military lawyers work with NFEs within the bounds of current law and policy, such as the Joint Ethics Regulation, Transportation Air Eligibility, humanitarian assistance, disaster relief, and stabilization policies.

First, this draft guidance highlights that the Denton Program, authorized by 10 U.S. Code § 402, allows DoD components to have donated goods – like those provided by NFEs – transported on DoD aircraft on a space available basis. Moreover, in accordance with our 10 U.S. Code §264b and DoD’s Transportation Air Eligibility policy, Combatant Commands are authorized to fly non-DoD personnel and cargo on fixed-wing DoD aircraft on a reimbursable, space available, and non-interference basis.

Secondly, Commanders may allow applicable NFEs to use facilities, such as forward operating bases, on a non-interference basis at no additional costs to DoD. Any meals provided

to NFEs may be allowed on a cost-reimbursable basis. Although not specifically prescribed in the guidance memo, DoD arrangements should ensure the DoD is protected from liability. The NFE review showed that memoranda of understanding or agreements typically included this provision.

Lastly, our draft guidance requires that any DoD arrangements with an applicable NFE should be coordinated with either State or USAID depending on the activity. DoD is not the lead federal agency for foreign assistance activities. In both foreign disaster relief and stabilization efforts, DoD plays a supporting role as part of a broader U.S. government effort. The former is articulated in statute and DoD policy, and the latter has been approved by the Secretary of State, Secretary of Defense, and USAID Administrator in the recently published Stabilization Assistance Review –. DoD’s Defense Support for Stabilization (DSS) activities, however, are more limited as DoD lacks the authority to provide support for the stabilization activities of other Federal entities or conduct transitional stabilization activities. DoD requested the inclusion of this authority in the FY 2019 National Defense Authorization Act. Our non-emergency (steady-state) humanitarian assistance and demining efforts are in support of both military objectives and humanitarian needs, and as a matter of DoD policy calls for U.S. Embassy and USAID concurrence to ensure such activities complement (and do not duplicate) current and planned State and USAID foreign assistance efforts, as well State concurrence where applicable.

Because the draft guidance is simply a framework for any future written arrangements between DoD components and NFEs, it is not overly prescriptive. We recognize that the exact requirements of any relationship will be situationally-dependent, and as a result, some details – force protection responsibilities, for example – are left to be specified in the future non-binding arrangements.

To conclude, the Department of Defense welcomes the support of non-Federal entities and appreciates their contributions to our mission. We are committed to ensuring continued NFE support, and to coordinating our joint activities with the Department of State, USAID, and the relevant country teams. We look forward to working with the Committees to shape the proposed legislation in a manner consistent with established best practices of humanitarian assistance, including appropriate State and USAID oversight. Looking forward, the Department is hopeful that our updated guidance will enhance our collaborative efforts with NFEs and encourage future partnerships.