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REPORT
110–352

MEJA EXPANSION AND ENFORCEMENT ACT OF 2007

SEPTEMBER 27, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2740]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2740) to require accountability for contractors and contract personnel under Federal contracts, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

59–006

SECTION 1. SHORT TITLE.

This Act may be cited as the "MEJA Expansion and Enforcement Act of 2007".

SEC. 2. LEGAL STATUS OF CONTRACT PERSONNEL.

(a) CLARIFICATION OF THE MILITARY EXTRATERRITORIAL JURISDICTION ACT.—

(1) INCLUSION OF CONTRACTORS.—Subsection (a) of section 3261 of title 18, United States Code, is amended—

(A) by striking "or" at the end of paragraph (1);

(B) by striking the comma at the end of paragraph (2) and inserting "; or"; and

(C) by inserting after paragraph (2) the following:

"(3) while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operation,".

(2) DEFINITION.—Section 3267 of title 18, United States Code, is amended by adding at the end the following:

"(5) The term 'contingency operation' has the meaning given such term in section 101(a)(13) of title 10.".

(b) DEPARTMENT OF JUSTICE INSPECTOR GENERAL REPORT.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to Congress a report in accordance with this subsection.

(2) CONTENT OF REPORT.—The report under paragraph (1) shall include—

(A) a description of the status of Department of Justice investigations of alleged violations of section 3261 of title 18, United States Code, to have been committed by contract personnel, which shall include—

(i) the number of complaints received by the Department of Justice;

(ii) the number of investigations into complaints opened by the Department of Justice;

(iii) the number of criminal cases opened by the Department of Justice; and

(iv) the number and result of criminal cases closed by the Department of Justice; and

(B) findings and recommendations about the number of criminal cases prosecuted by the Department of Justice involving violations of section 3261 of title 18, United States Code.

(3) FORMAT OF REPORT.—The report under paragraph (1) shall be submitted in unclassified format, but may contain a classified annex as appropriate.

SEC. 3. FEDERAL BUREAU OF INVESTIGATION INVESTIGATIVE UNIT FOR CONTINGENCY OPERATIONS.

(a) ESTABLISHMENT OF THEATER INVESTIGATIVE UNIT.—The Director of the Federal Bureau of Investigation shall ensure that there are adequate personnel through the creation of Theater Investigative Units to investigate allegations of criminal violations of section 3261 of title 18, United States Code, by contract personnel.

(b) RESPONSIBILITIES OF THEATER INVESTIGATIVE UNIT.—The Theater Investigative Unit established for a theater of operations shall—

(1) investigate reports that raise reasonable suspicion of criminal misconduct by contract personnel;

(2) investigate reports of fatalities resulting from the use of force by contract personnel; and

(3) upon conclusion of an investigation of alleged criminal misconduct, refer the case to the Attorney General of the United States for further action, as appropriate in the discretion of the Attorney General.

(c) RESPONSIBILITIES OF FEDERAL BUREAU OF INVESTIGATION.—

(1) RESOURCES.—The Director of the Federal Bureau of Investigation shall ensure that each Theater Investigative Unit has adequate resources and personnel to carry out its responsibilities.

(2) NOTIFICATION.—The Director of the Federal Bureau of Investigation shall notify Congress whenever a Theater Investigative Unit is established or terminated in accordance with this section.

(d) RESPONSIBILITIES OF OTHER FEDERAL AGENCIES.—An agency operating in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operation shall cooperate with and support the activities of the Theater Investigative Unit. Any investigation carried out by the Inspector General of an agency shall be coordinated with the activities of the Theater Investigative Unit as appropriate.

SEC. 4. DEFINITIONS.

In this Act:

(1) COVERED CONTRACT.—The term "covered contract" means an agreement—

(A) that is—

(i) a prime contract awarded by an agency;

(ii) a subcontract at any tier under any prime contract awarded by an agency; or

(iii) a task order issued under a task or delivery order contract entered into by an agency; and

(B) according to which the work under such contract, subcontract, or task order is carried out in a region outside the United States in which the Armed Forces are conducting a contingency operation.

(2) AGENCY.—The term "agency" has the meaning given the term "Executive agency" in section 105 of title 5, United States Code.

(3) CONTINGENCY OPERATION.—The term "contingency operation" has the meaning given the term section 101(13) of title 10, United States Code.

(4) CONTRACTOR.—The term "contractor" means an entity performing a covered contract.

(5) CONTRACT PERSONNEL.—The term "contract personnel" means persons assigned by a contractor (including subcontractors at any tier) to perform work under a covered contract.

SEC. 5. EFFECTIVE DATE.

(a) APPLICABILITY.—The provisions of this Act shall apply to all covered contracts and all covered contract personnel in which the work under the contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operationon on or after the date of the enactment of this Act.

(b) IMMEDIATE EFFECTIVENESS.—The provisions of this Act shall enter into effect immediately upon the enactment of this Act.

(c) IMPLEMENTATION.—With respect to covered contracts and covered contract personnel discussed in subsection (a)(1), the Director of the Federal Bureau of Investigation, and the head of any other agency to which this Act applies, shall have 90 days after the date of the enactment of this Act to ensure compliance with the provisions of this Act.

PURPOSE AND SUMMARY

H.R. 2740, the "MEJA Expansion and Enforcement Act of 2007," would make contractors and contract personnel under Federal contracts criminally liable for crimes committed overseas. It would amend the Military Extraterritorial Jurisdiction Act ("MEJA")[1], which criminalizes offenses committed outside the United States by members of the Armed Forces and certain Defense Department contractors, but does not cover all contractors providing services in an overseas military operation. In addition to closing this gap in current law, H.R. 2740 would designate the Justice Department to be the lead agency responsible for investigating allegations of contractor criminal misconduct.

BACKGROUND AND NEED FOR THE LEGISLATION

An estimated 180,000 contractors are currently working in Iraq, and thousands more are working in Afghanistan and elsewhere.[2] Unfortunately, the current law does not make all of these contractors accountable for their criminal conduct. For example, contractors hired through the Defense Department are subject to both the Uniform Code of Military Justice and MEJA, while contractors who commit crimes on Federal property may be prosecuted under the USA PATRIOT Act. The vast majority of armed contractors per-

[1] 18 U.S.C. § 3261 (2006).

[2] T. Christian Miller, *Private Contractors Outnumber U.S. Troops in Iraq,* LOS ANGELES TIMES, July 4, 2007.

forming security functions overseas, however, are not subject to any of these laws.

MEJA is also limited jurisdictionally. As originally enacted in 2000, the Act authorized Federal courts to have jurisdiction over only civilian employees, contractors, and subcontractors affiliated with the Defense Department who commit crimes overseas. In 2005, the Act was amended to expand the court's jurisdiction to include employees of any other Federal agency "supporting the mission of the Department of Defense overseas."[3] In practice, however, many contractors are not contracted through the Defense Department, but through other agencies such as USAID or the Department of Interior, and they do not work directly in support of Defense Department missions.

Although not affiliated with the Defense Department, these contractors usually work under the aegis of the United States government, in pursuit of our Nation's objectives, and on activities that directly impact the success of United States military and civilian missions overseas. Nevertheless, these contractors are not subject to any applicable law imposing criminal liability for criminal actions that they commit. It is essential that the Federal Government have a mechanism for holding such contractors accountable in the event of criminal misconduct.

At the time of this report, Congressional and Administration authorities were investigating an incident in which at least 11 Iraqi civilians were apparently killed by employees of Blackwater, a contracting firm operating under the State Department.[4] The incident enraged the Iraqi government, which accused the firm of shooting civilians with impunity. Defense Secretary Robert Gates also expressed "real concerns" about lack of oversight of such contractors.[5]

In addition, the lack of prosecutions—successful or otherwise—further underscores the inadequacy of current law. At this time, there are 17 pending cases of detainee abuse, including abuses that occurred at the Abu Ghraib prison in Iraq, with the U.S. Attorney's Office in the Eastern District of Virginia.[6] In some of these cases, the Army has found "probable cause" that a crime has been committed, and referred the case to the Justice Department for prosecution. In addition, the press reports that there are hundreds of serious incident reports voluntarily filed by contractors.[7] None of these cases, however, has been prosecuted; and the reason for failure to do so is not known.

In fact, since the wars in Iraq and Afghanistan began, there has been only one successful prosecution of a civilian contractor for wrongdoing, which involved the conviction of a CIA contractor for beating a detainee to death,[8] while, in comparison, there have been

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[3] 18 U.S.C. § 3267 (2006).

[4] Peter Spiegel, *State Department Intercedes in BlackWater Probe,* LOS ANGELES TIMES, Sept. 26, 2007.

[5] Jamie McIntyre, Defense Secretary Sends Team to Review Iraq Contractors, Cnn.com, Sept. 26, 2007, at http://www.cnn.com/2007/POLITICS/09/26/contractor.review

[6] *See War Profiteering and Other Contractor Crimes Committed Overseas: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary,* 100th Cong. (2007) (testimony of Erica Razook).

[7] *Id.; see also* Steve Fainaru, *A Chaotic Day on Baghdad's Airport Road,* WASH. POST, Apr. 15, 2007, at A1.

[8] Yochi Dreazen, *New Scrutiny for Iraq Contractors—Killing by Blackwater Worker Poses Dilemma for U.S. Authorities,* WALL ST. J., May 14, 2007, at A4.

more than four dozen courts-martial commenced against uniformed personnel with respect to law-of-war issues.

H.R. 2740, the "MEJA Expansion and Enforcement Act of 2007," was introduced by Representative David Price (D-NC) on June 15, 2007. The bill ensures that entities under Federal contract who commit crimes overseas do not escape accountability simply because they are not deemed to be "supporting the mission of the Department of Defense." H.R. 2740 also requires the Inspector General of the Justice Department to submit a report to Congress regarding the identification and prosecution of alleged contractor abuses overseas. This requirement is intended to address the Justice Department's apparent failure to aggressively investigate and prosecute crimes committed by contractors over which it currently has jurisdiction. Finally, H.R. 2740 requires the Federal Bureau of Investigation to establish a Theater Investigative Unit to investigate reports of criminal misconduct in regions where contractors are working. This is intended to underscore the importance of providing resources to enforce the law.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 2740, on June 19, 2007. Testimony was received from Erica Razook, Legal Advisor to the Business and Human Rights Program, Amnesty International; and Scott Horton, Adjunct Professor of Law, Columbia University School of Law.

COMMITTEE CONSIDERATION

On July 24, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill, H.R. 2740, favorably reported, by voice vote, a quorum being present. On August 2, 2007, the Committee met in open session and ordered the bill favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 2740.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2740, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2740, the MEJA Expansion and Enforcement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 2740—MEJA Expansion and Enforcement Act of 2007

SUMMARY

The Military Extraterritorial Jurisdiction (MEJA) Expansion and Enforcement Act of 2007 would direct the Federal Bureau of Investigation (FBI) to establish special units to investigate criminal offenses by contract personnel operating in the vicinity of U.S. armed forces overseas. In addition, the bill would broaden the coverage of the laws relating to misconduct by such civilian contract personnel. CBO estimates that implementing H.R. 2740 would cost $23 million over the 2008–2012 period, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending and revenues, but we estimate that any such effects would not be significant.

H.R. 2740 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2740 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	3	5	5	5	5
Estimated Outlays	3	5	5	5	5

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 2740 would have discretionary costs of $23 million over the 2008–2012 period. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow historical patterns for similar activities. In addition, CBO estimates that the bill could have an insignificant effect on direct spending and revenues.

Spending Subject to Appropriation

H.R. 2740 would direct the FBI to establish Theater Investigative Units to investigate criminal offenses by contract personnel operating in the vicinity of U.S. armed forces overseas. Based on the extent of current military operations, CBO anticipates that the FBI would likely establish two or three such units, including one each for Iraq and Afghanistan. Because relatively few offenses are committed by contract personnel, we expect that the FBI would need to hire no more than 30 persons to investigate cases under the bill. Once fully phased in, CBO estimates that the costs of those additional employees would be about $5 million annually, including salaries, benefits, and support costs (including additional security measures required for war zone operations).

For this estimate, CBO assumes that there will continue to be a substantial number of U.S. forces operating in Iraq, Afghanistan, or other locations overseas over the next five years. If the size of the overseas forces declines significantly over that period, the cost of implementing H.R. 2740 could decline as well.

Direct Spending and Revenues

Enacting H.R. 2740 could increase Federal revenues and direct spending as a result of additional criminal penalties assessed for misconduct by contract personnel. Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates, however, that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2740 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)

Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2740 amends existing law to make contractors and contract personnel under Federal contract criminally liable for crimes committed overseas.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 10, 14, 16, and 18 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2740 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the "MEJA Expansion and Enforcement Act of 2007."

Sec. 2. Legal Status of Contract Personnel. Section 2 provides that all contractor personnel operating in contingency operations are accountable under the Military Extraterritorial Jurisdiction Act. This provision extends the Act's jurisdiction to contractors working in an area, or close proximity to an area, where the United States is conducting a military operation. As a result, all private security contractors in these areas, not just those contracted through or supporting Defense Department missions, are made accountable under Federal law. This change in the law responds to the current situation in Iraq and Afghanistan, where a large number of contractors are working pursuant to contractual agreements with a variety of Federal agencies, including the State Department and the Department of the Interior.

Section 2 also requires the Inspector General of the Justice Department to submit a report on the Department's efforts to identify and prosecute alleged contractor abuses in Iraq and Afghanistan. Pursuant to chapter 212 of title 18 of the United States Code, the Justice Department and the Federal courts are responsible for prosecuting and hearing cases, respectively, under MEJA. In addition, section 3.3.3 of Defense Instruction 3040.21, "Contractors Accompanying the Force," states that "only the Department of Justice may prosecute misconduct under applicable Federal laws." Accordingly, section 2 directs the Justice Department Inspector General to report to Congress on the number of incidents of alleged mis-

conduct reported to the Department, the number of investigations undertaken by the Department, and the number of criminal cases opened and closed by the Department. The report must also include findings and recommendations about the number of criminal cases prosecuted by the Department under MEJA.

Sec. 3. Federal Bureau of Investigation Investigative Unit for Contingency Operations. Section 3 requires the Federal Bureau of Investigation (FBI) to establish a Theater Investigative Unit to investigate reports of criminal misconduct in theaters in which contractors are working. The provision gives the FBI Director the discretion to devote adequate resources to these activities, so the Director has the flexibility to ensure that "unneeded resources" will not be utilized for this purpose. The section also requires the FBI to investigate reports of fatalities resulting from the use of force by contract personnel. In the event of force by self-defense, the term "investigate" is worded broadly enough to allow an initial examination to confirm self-defense, without requiring a long, laborious, costly investigation.

The Committee notes that the investigation and prosecution of criminal misconduct by contractors is integral to maintaining support among host nation citizens for United States troops and missions as well as to ensuring the integrity of such missions. Accordingly, the Committee urges the Bureau to ensure that it provides sufficient resources and agents for assertive investigations into allegations of such crimes.

Sec. 4. Definitions. Section 4 defines various terms in the bill. In particular, the definition of "contingency operation" has the same meaning as the term is given in section 101(13) of title 10 of the United States Code.

Sec. 5. Effective Date. Section 5 provides that the Act is applicable to circumstances that take place where the Armed Forces is conducting a contingency operation, on or after the date of enactment of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 212—MILITARY EXTRATERRITORIAL JURISDICTION

§ 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

(1) while employed by or accompanying the Armed Forces outside the United States; **[**or**]**

(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice)**[**,**]***; or*

(3) while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operation,

shall be punished as provided for that offense.

* * * * * * *

§ 3267. Definitions

As used in this chapter:

(1) * * *

* * * * * * *

(5) The term "contingency operation" has the meaning given such term in section 101(a)(13) of title 10.

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