of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term ''program or activity'' means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term ''religious exercise'' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

(Pub. L. 106–274, § 8, Sept. 22, 2000, 114 Stat. 806.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

CHAPTER 21D—DETAINEE TREATMENT

Sec.
2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government.
2000dd–0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment.
2000dd–1. Protection of United States Government personnel engaged in authorized interrogations.

§ 2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government

(a) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) Construction

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) Limitation on supersedure

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109–148, div. A, title X, § 1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109–163, div. A, title XIV, § 1403, Jan. 6, 2006, 119 Stat. 3475.)

REFERENCES IN TEXT

The date ''December 30, 2005'', referred to in subsec. (c), was in the original ''the date of the enactment of this Act'' and was translated as the date of enactment of Pub. L. 109–148.

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections.

SHORT TITLE

Pub. L. 109–148, div. A, title X, § 1001, Dec. 30, 2005, 119 Stat. 2739, and Pub. L. 109–163, div. A, title XIV, § 1401, Jan. 6, 2006, 119 Stat. 3474, provided that: ''This title [enacting this chapter, amending section 2241 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 801 of Title 10, Armed Forces] may be cited as the 'Detainee Treatment Act of 2005'.''

UNITED STATES POLICY TOWARD DETAINEES

Pub. L. 110–53, title XX, § 2034, Aug. 3, 2007, 121 Stat. 517, provided that:

''(a) FINDINGS.—Congress finds the following:

''(1) The National Commission on Terrorist Attacks Upon the United States (commonly referred to as the '9/11 Commission') declared that the United States 'should work with friends to develop mutually agreed-on principles for the detention and humane treatment of captured international terrorists who are not being held under a particular country's criminal laws' and recommended that the United States engage its allies 'to develop a common coalition approach toward the detention and humane treatment of captured terrorists'.

''(2) A number of investigations remain ongoing by countries that are close United States allies in the war on terrorism regarding the conduct of officials, employees, and agents of the United States and of other countries related to conduct regarding detainees.

''(3) The Secretary of State has launched an initiative to try to address the differences between the United States and many of its allies regarding the treatment of detainees.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary, acting through the Legal Adviser of the Department of State, should continue to build on the Secretary's efforts to engage United States allies to develop a common coalition approach, in compliance with Common Article 3 of the Geneva Conventions and other applicable legal principles, toward the detention and humane treatment of individuals detained during Operation Iraqi Freedom, Operation Enduring Freedom, or in connection with United States counterterrorist operations.

''(c) REPORTING TO CONGRESS.—

''(1) BRIEFINGS.—The Secretary of State shall keep the appropriate congressional committees fully and

currently informed of the progress of any discussions between the United States and its allies regarding the development of the common coalition approach described in subsection (b).

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 3, 2007], the Secretary of State, in consultation with the Attorney General and the Secretary of Defense, shall submit to the appropriate congressional committees a report on any progress towards developing the common coalition approach described in subsection (b).

''(d) DEFINITION.—In this section, the term 'appropriate congressional committees' means—

''(1) with respect to the House of Representatives, the Committee on Foreign Affairs, the Committee on Armed Services, the Committee on the Judiciary, and the Permanent Select Committee on Intelligence; and

''(2) with respect to the Senate, the Committee on Foreign Relations, the Committee on Armed Services, the Committee on the Judiciary, and the Select Committee on Intelligence.''

EX. ORD. NO. 13491. ENSURING LAWFUL INTERROGATIONS

Ex. Ord. No. 13491, Jan. 22, 2009, 74 F.R. 4893, provided:

By the authority vested in me by the Constitution and the laws of the United States of America, in order to improve the effectiveness of human intelligence-gathering, to promote the safe, lawful, and humane treatment of individuals in United States custody and of United States personnel who are detained in armed conflicts, to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions, and to take care that the laws of the United States are faithfully executed, I hereby order as follows:

SECTION 1. *Revocation*. Executive Order 13440 of July 20, 2007, is revoked. All executive directives, orders, and regulations inconsistent with this order, including but not limited to those issued to or by the Central Intelligence Agency (CIA) from September 11, 2001, to January 20, 2009, concerning detention or the interrogation of detained individuals, are revoked to the extent of their inconsistency with this order. Heads of departments and agencies shall take all necessary steps to ensure that all directives, orders, and regulations of their respective departments or agencies are consistent with this order. Upon request, the Attorney General shall provide guidance about which directives, orders, and regulations are inconsistent with this order.

SEC. 2. *Definitions*. As used in this order:

(a) ''Army Field Manual 2–22.3'' means FM 2–22.3, Human Intelligence Collector Operations, issued by the Department of the Army on September 6, 2006.

(b) ''Army Field Manual 34–52'' means FM 34–52, Intelligence Interrogation, issued by the Department of the Army on May 8, 1987.

(c) ''Common Article 3'' means Article 3 of each of the Geneva Conventions.

(d) ''Convention Against Torture'' means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100–20 (1988).

(e) ''Geneva Conventions'' means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(f) ''Treated humanely,'' ''violence to life and person,'' ''murder of all kinds,'' ''mutilation,'' ''cruel treatment,'' ''torture,'' ''outrages upon personal dignity,'' and ''humiliating and degrading treatment'' refer to, and have the same meaning as, those same terms in Common Article 3.

(g) The terms ''detention facilities'' and ''detention facility'' in section 4(a) of this order do not refer to facilities used only to hold people on a short-term, transitory basis.

SEC. 3. *Standards and Practices for Interrogation of Individuals in the Custody or Control of the United States in Armed Conflicts*.

(a) *Common Article 3 Standards as a Minimum Baseline*. Consistent with the requirements of the Federal torture statute, 18 U.S.C. 2340–2340A, section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd, the Convention Against Torture, Common Article 3, and other laws regulating the treatment and interrogation of individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.

(b) *Interrogation Techniques and Interrogation-Related Treatment*. Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2–22.3 (Manual). Interrogation techniques, approaches, and treatments described in the Manual shall be implemented strictly in accord with the principles, processes, conditions, and limitations the Manual prescribes. Where processes required by the Manual, such as a requirement of approval by specified Department of Defense officials, are inapposite to a department or an agency other than the Department of Defense, such a department or agency shall use processes that are substantially equivalent to the processes the Manual prescribes for the Department of Defense. Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.

(c) *Interpretations of Common Article 3 and the Army Field Manual*. From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2–22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation—including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2–22.3, and its predecessor document, Army Field Manual 34–52—issued by the Department of Justice between September 11, 2001, and January 20, 2009.

SEC. 4. *Prohibition of Certain Detention Facilities, and Red Cross Access to Detained Individuals*.

(a) *CIA Detention*. The CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.

(b) *International Committee of the Red Cross Access to Detained Individuals*. All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.

SEC. 5. *Special Interagency Task Force on Interrogation and Transfer Policies.*

(a) *Establishment of Special Interagency Task Force.* There shall be established a Special Task Force on Interrogation and Transfer Policies (Special Task Force) to review interrogation and transfer policies.

(b) *Membership.* The Special Task Force shall consist of the following members, or their designees:

(i) the Attorney General, who shall serve as Chair;

(ii) the Director of National Intelligence, who shall serve as Co-Vice-Chair;

(iii) the Secretary of Defense, who shall serve as Co-Vice-Chair;

(iv) the Secretary of State;

(v) the Secretary of Homeland Security;

(vi) the Director of the Central Intelligence Agency;

(vii) the Chairman of the Joint Chiefs of Staff; and

(viii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the department or agency concerned.

(c) *Staff.* The Chair may designate officers and employees within the Department of Justice to serve as staff to support the Special Task Force. At the request of the Chair, officers and employees from other departments or agencies may serve on the Special Task Force with the concurrence of the head of the department or agency that employ such individuals. Such staff must be officers or full-time or permanent part-time employees of the United States. The Chair shall designate an officer or employee of the Department of Justice to serve as the Executive Secretary of the Special Task Force.

(d) *Operation.* The Chair shall convene meetings of the Special Task Force, determine its agenda, and direct its work. The Chair may establish and direct subgroups of the Special Task Force, consisting exclusively of members of the Special Task Force, to deal with particular subjects.

(e) *Mission.* The mission of the Special Task Force shall be:

(i) to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2–22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies; and

(ii) to study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control.

(f) *Administration.* The Special Task Force shall be established for administrative purposes within the Department of Justice and the Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support and funding for the Special Task Force.

(g) *Recommendations.* The Special Task Force shall provide a report to the President, through the Assistant to the President for National Security Affairs and the Counsel to the President, on the matters set forth in subsection (d) within 180 days of the date of this order, unless the Chair determines that an extension is necessary.

(h) *Termination.* The Chair shall terminate the Special Task Force upon the completion of its duties.

SEC. 6. *Construction with Other Laws.* Nothing in this order shall be construed to affect the obligations of officers, employees, and other agents of the United States Government to comply with all pertinent laws and treaties of the United States governing detention and interrogation, including but not limited to: the Fifth and Eighth Amendments to the United States Constitution; the Federal torture statute, 18 U.S.C. 2340–2340A; the War Crimes Act [of 1996], 18 U.S.C. 2441; the Federal assault statute, 18 U.S.C. 113; the Federal maiming statute, 18 U.S.C. 114; the Federal ''stalking'' statute, 18 U.S.C. 2261A; articles 93, 124, 128, and 134 of the Uniform Code of Military Justice, 10 U.S.C. 893, 924, 928, and 934; section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd; section 6(c) of the Military Commissions Act of 2006, Public Law 109–366; the Geneva Conventions; and the Convention Against Torture. Nothing in this order shall be construed to diminish any rights that any individual may have under these or other laws and treaties. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

BARACK OBAMA.

§ 2000dd–0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment

(1) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) Compliance

The President shall take action to ensure compliance with this section, including through the establishment of administrative rules and procedures.

(Pub. L. 109–366, § 6(c), Oct. 17, 2006, 120 Stat. 2635.)

CODIFICATION

Section was enacted as part of the Military Commissions Act of 2006, and not as part of the Detainee Treatment Act of 2005 which comprises this chapter.

§ 2000dd–1. Protection of United States Government personnel engaged in authorized interrogations

(a) Protection of United States Government personnel

In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined

are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel

The United States Government shall provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution or investigation arising out of practices described in that subsection, whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.

(Pub. L. 109–148, div. A, title X, § 1004, Dec. 30, 2005, 119 Stat. 2740; Pub. L. 109–163, div. A, title XIV, § 1404, Jan. 6, 2006, 119 Stat. 3475; Pub. L. 109–366, § 8(a), Oct. 17, 2006, 120 Stat. 2636; Pub. L. 110–181, div. A, title X, § 1063(d)(1), Jan. 28, 2008, 122 Stat. 323; Pub. L. 110–417, [div. A], title X, § 1061(b)(10), Oct. 14, 2008, 122 Stat. 4613.)

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections. The section enacted by Pub. L. 109–148, but not the section enacted by Pub. L. 109–163, was amended by Pub. L. 109–366, see 2006 Amendment notes below. The text of this section is based on the text of section 1004 of Pub. L. 109–148 as amended by Pub. L. 109–366.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–181, § 1063(d)(1), as amended by Pub. L. 110–417, made technical correction to directory language of Pub. L. 109–366, § 8(a)(3). See 2006 Amendment note below.

2006—Subsec. (b). Pub. L. 109–366, § 8(a)(3), as amended by Pub. L. 110–181, § 1063(d)(1), as amended by Pub. L. 110–417, inserted ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

Pub. L. 109–366, § 8(a)(1), (2), substituted ''shall provide'' for ''may provide'' and inserted ''or investigation'' after ''criminal prosecution''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 effective Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted, see section 1061(b) of Pub. L. 110–417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

Pub. L. 110–181, div. A, title X, § 1063(d), Jan. 28, 2008, 122 Stat. 323, provided that the amendments made by section 1063(d), which amended this section and provisions set out as a note under section 801 of Title 10, Armed Forces, are effective as of Oct. 17, 2006, and as if included in Pub. L. 109–366 as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, § 8(b), Oct. 17, 2006, 120 Stat. 2636, provided that: ''Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

''(1) relates to the detention and interrogation of aliens described in such section;

''(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

''(3) relates to actions occurring between September 11, 2001, and December 30, 2005.''

CHAPTER 21E—PRIVACY AND CIVIL LIBERTIES PROTECTION AND OVERSIGHT

Sec.	
2000ee.	Privacy and Civil Liberties Oversight Board.
2000ee–1.	Privacy and civil liberties officers.
2000ee–2.	Privacy and data protection policies and procedures.
2000ee–3.	Federal agency data mining reporting.

§ 2000ee. Privacy and Civil Liberties Oversight Board

(a) In general

There is established as an independent agency within the executive branch a Privacy and Civil Liberties Oversight Board (referred to in this section as the ''Board'').

(b) Findings

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(3) The National Commission on Terrorist Attacks Upon the United States correctly concluded that ''The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.''.

(c) Purpose

The Board shall—

(1) analyze and review actions the executive branch takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and