

efforts and generosity of our armed services, relief professionals, volunteers, and all those who made contributions to the relief effort. We remain committed to helping the citizens of affected nations rebuild their economies, communities, and lives. At this

time of remembrance, the thoughts and prayers of the American people are with those who suffered from this tragedy. May God comfort all those affected by the tsunami and give them strength in the years ahead.

## Statement on Signing the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

*December 30, 2005*

Today, I have signed into law H.R. 2863, the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006." The Act provides resources needed to fight the war on terror, help citizens of the Gulf States recover from devastating hurricanes, and protect Americans from a potential influenza pandemic.

Sections 8007, 8011, and 8093 of the Act prohibit the use of funds to initiate a special access program, a new overseas installation, or a new start program, unless the congressional defense committees receive advance notice. The Supreme Court of the United States has stated that the President's authority to classify and control access to information bearing on the national security flows from the Constitution and does not depend upon a legislative grant of authority. Although the advance notice contemplated by sections 8007, 8011, and 8093 can be provided in most situations as a matter of comity, situations may arise, especially in wartime, in which the President must act promptly under his constitutional grants of executive power and authority as Commander in Chief of the Armed Forces while protecting certain extraordinarily sensitive national security information. The executive branch shall construe these sections in a manner consistent with

the constitutional authority of the President.

Section 8059 of the Act provides that, notwithstanding any other provision of law, no funds available to the Department of Defense for fiscal year 2006 may be used to transfer defense articles or services, other than intelligence services, to another nation or an international organization for international peacekeeping, peace enforcement, or humanitarian assistance operations, until 15 days after the executive branch notifies six committees of the Congress of the planned transfer. To the extent that protection of the U.S. Armed Forces deployed for international peacekeeping, peace enforcement, or humanitarian assistance operations might require action of a kind covered by section 8059 sooner than 15 days after notification, the executive branch shall construe the section in a manner consistent with the President's constitutional authority as Commander in Chief.

A proviso in the Act's appropriation for "Operation and Maintenance, Defense-Wide" purports to prohibit planning for consolidation of certain offices within the Department of Defense. Also, sections 8010(b), 8032, 8037(b), and 8100 purport to specify the content of portions of future budget requests to the Congress. The executive branch shall construe these provisions relating to planning and making of budget recommendations in a manner consistent

with the President's constitutional authority to require the opinions of the heads of departments, to supervise the unitary executive branch, and to recommend for congressional consideration such measures as the President shall judge necessary and expedient.

Section 8005 of the Act, relating to requests to congressional committees for re-programming of funds, shall be construed as calling solely for notification, as any other construction would be inconsistent with the constitutional principles enunciated by the Supreme Court of the United States in *INS v. Chadha*.

The executive branch shall construe section 8104, relating to integration of foreign intelligence information, in a manner consistent with the President's constitutional authority as Commander in Chief, including for the conduct of intelligence operations, and to supervise the unitary executive branch. Also, the executive branch shall construe sections 8106 and 8119 of the Act, which purport to prohibit the President from altering command and control relationships within the Armed Forces, as advisory, as any other construction would be inconsistent with the constitutional grant to the President of the authority of Commander in Chief.

The executive branch shall construe provisions of the Act relating to race, ethnicity, gender, and State residency, such as sections 8014, 8020 and 8057, in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of pro-

tecting the American people from further terrorist attacks. Further, in light of the principles enunciated by the Supreme Court of the United States in 2001 in *Alexander v. Sandoval*, and noting that the text and structure of Title X do not create a private right of action to enforce Title X, the executive branch shall construe Title X not to create a private right of action. Finally, given the decision of the Congress reflected in subsections 1005(e) and 1005(h) that the amendments made to section 2241 of title 28, United States Code, shall apply to past, present, and future actions, including applications for writs of habeas corpus, described in that section, and noting that section 1005 does not confer any constitutional right upon an alien detained abroad as an enemy combatant, the executive branch shall construe section 1005 to preclude the Federal courts from exercising subject matter jurisdiction over any existing or future action, including applications for writs of habeas corpus, described in section 1005.

Language in Division B of the Act, under the heading "Office of Justice Programs, State and Local Law Enforcement Assistance," purports to require the Attorney General to consult congressional committees prior to allocating appropriations for expenditure to execute the law. Because the President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to a requirement to consult with congressional committees or to involve them in executive decision-making, the executive branch shall construe the provision to require only notification. At the same time, the Attorney General shall, as a matter of comity between the executive and legislative branches, seek and consider the views of appropriate committees in this matter as the Attorney General deems appropriate.

Certain provisions in the Act purport to allocate funds for specified purposes as set forth in the joint explanatory statement of

managers that accompanied the Act or other Acts; to make changes in statements of managers that accompanied various appropriations bills reported from conferences in the past; or to direct compliance with a committee report. Such provisions include section 8044 in Division A, and sections 5022, 5023, and 5024 and language under the heading "Natural Resources Conservation Service, Conservation Operations" in Division B, of the Act. Other provisions of the Act, such as sections 8073 and 8082 in Division A, purport to give binding effect

to legislative documents not presented to the President. The executive branch shall construe all these provisions in a manner consistent with the bicameral passage and presentment requirements of the Constitution for the making of a law.

GEORGE W. BUSH

The White House,  
December 30, 2005.

NOTE: H.R. 2863, approved December 30, was assigned Public Law No. 109-148.

### Statement on Signing the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 *December 30, 2005*

Today, I have signed into law H.R. 3010, the "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006." This Act appropriates funds for key domestic programs, including programs to protect America's workers, help educate America's youth, and guard Americans against potential bioterrorism or epidemics.

The executive branch shall construe certain provisions of the Act that purport to require congressional committee approval for the execution of a law as calling solely for notification, as any other construction would be inconsistent with the constitutional principles enunciated by the Supreme Court of the United States in *INS v. Chadha*. These provisions include sections 103, 208, and language under the heading "Pension Benefit Guaranty Corporation Fund."

The executive branch shall construe provisions in the Act that purport to mandate or regulate submission of information to the Congress in a manner consistent with the

President's constitutional authority to withhold information that could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties. Such provisions include language under the heading "Department of Health and Human Services, Office of the Secretary, General Departmental Management."

Certain provisions of the Act relate to race, ethnicity, or gender. The executive branch shall construe such provisions in a manner consistent with the requirement that the Federal Government afford equal protection of the laws under the Due Process Clause of the Fifth Amendment to the Constitution.

GEORGE W. BUSH

The White House,  
December 30, 2005.

NOTE: H.R. 3010, approved December 30, was assigned Public Law No. 109-149.