

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term “land use regulation” means a zoning or landmarking law, or the application 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.)

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, in-

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The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.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

§ 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.

DELEGATION OF FUNCTIONS

Functions of President under par. (3) of this section delegated to Director of National Intelligence by section 4 of Ex. Ord. No. 13440, July 20, 2007, 72 F.R. 40709, set out in a note under section 2441 of Title 18, Crimes and Criminal Procedure.

§ 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.)

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

2006—Subsec. (b). Pub. L. 109-366, §8(a)(3), which directed the insertion of “whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,” after “described in that subsection”, was executed by making insertion after

“described in that subsection,” to reflect the probable intent of Congress.

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

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

(2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and poli-

cies related to efforts to protect the Nation against terrorism.

(d) Functions

(1) Advice and counsel on policy development and implementation

The Board shall—

(A) review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under subsections (d) and (f) of section 485 of title 6;

(B) review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under subsections (d) and (f) of section 485 of title 6;

(C) advise the President and the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the department, agency, or element of the executive branch has established—

(i) that the need for the power is balanced with the need to protect privacy and civil liberties;

(ii) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(2) Oversight

The Board shall continually review—

(A) the regulations, policies, and procedures, and the implementation of the regulations, policies, and procedures, of the departments, agencies, and elements of the executive branch relating to efforts to protect the Nation from terrorism to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of the departments, agencies, and elements of the executive branch relating to efforts to protect the Nation from terrorism to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines issued or developed under subsections (d) and (f) of section 485 of title 6 and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the executive branch relating to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) Relationship with privacy and civil liberties officers

The Board shall—