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Statement on Signing the Department of Homeland Security Appropriations Act, 2007

October 4, 2006

Today, I have signed into law H.R. 5441, the "Department of Homeland Security Appropriations Act, 2007" (the "Act"). The Act appropriates the funds needed to protect the United States against terrorism, secure the Nation's borders, assist States and localities in dealing with natural disasters, and perform the other important functions of the Department of Homeland Security. The Act also strengthens the capabilities of the Federal Emergency Management Agency to prepare for and respond to emergencies requiring action by the Federal Government.

The executive branch shall construe as calling solely for notification the provisions of the Act that purport to require congressional committee approval for the execution of a law. Any other construction would be inconsistent with the principles enunciated by the Supreme Court of the United States in *INS v. Chadha*. These provisions include those under the headings "United States Visitor and Immigrant Status Indicator Technology;" "Automation Modernization, Customs and Border Protection;" "Border Security Fencing, Infrastructure, and Technology, Customs and Border Protection;" "Air and Marine Interdiction, Operations, Maintenance, and Procurement, Customs and Border Protection;" "Automation Modernization, Immigration and Customs Enforcement;" "Protection, Administration, and Training, United States Secret Service;" "Preparedness, Management and Administration;" "United States Citizenship and Immigration Services;" "Management Administration, Science and Technology;" "Research, Development, Acquisition, and Operations, Science and Technology;" and sections 504, 505, 509, 511, and 552.

Section 513 of the Act purports to direct the conduct of security and suitability investigations. To the extent that section 513 relates to access to classified national security information, the executive branch shall construe this provision in a manner consistent with the President's exclusive constitutional authority, as head of the unitary executive branch and as Commander in Chief, to classify and control access to national security information and to determine whether an individual is suitable to occupy a position in the executive branch with access to such information.

To the extent that section 514 of the Act purports to allow an agent of the legislative branch to prevent implementation of the law unless the legislative agent reports to the Congress that the executive branch has met certain conditions, the executive branch shall construe such section as advisory, in accordance with the constitutional principles enumerated in the *Chadha* decision.

The executive branch shall construe section 522 of the Act, relating to privacy officer reports, in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.

To the extent that provisions of the Act, such as section 558, purport to direct or burden the conduct of negotiations by the executive branch with foreign governments or other entities abroad, the executive branch shall construe them as advisory. Such provisions, if construed as mandatory rather than advisory, would impermissibly interfere with the President's constitutional authorities to conduct the Nation's foreign affairs, participate in international negotiations, and supervise the unitary executive branch.

Provisions of the Act, including under the heading "Office of the Secretary and Executive Management" and sections 521, 539, 540, and 559, refer to joint explanatory statements of managers accompanying conference reports on specified acts. Such statements do not satisfy the constitutional requirements of bicameral approval and presentment to the President needed to give them the force of law.

Section 503(c) of the Homeland Security Act of 2002, as amended by section 611 of the Act, provides for the appointment and certain duties of the Administrator of the Federal Emergency Management Agency. Section 503(c)(2) vests in the President authority to appoint the Administrator, by and with the advice and consent of the Senate, but purports to limit the qualifications of the pool of persons from whom the President may select the appointee in a manner that

rules out a large portion of those persons best qualified by experience and knowledge to fill the office. The executive branch shall construe section 503(c)(2) in a manner consistent with the Appointments Clause of the Constitution. Also, section 503(c)(4) purports to regulate the provision of advice within the executive branch and to limit supervision of an executive branch official in the provision of advice to the Congress. The executive branch shall construe section 503(c)(4) in a manner consistent with the constitutional authority of the President to require the opinions of heads of departments and to supervise the unitary executive branch. Accordingly, the affected department and agency shall ensure that any reports or recommendations submitted to the Congress are subjected to appropriate executive branch review and approval before submission.

Section 507(f)(6) of the Homeland Security Act of 2002, as amended by section 611 of the Act, and sections 689i(a)(4)(B)(iv) and 689j(b)(2)(E) of the Act, purport to require in certain circumstances that an executive branch official submit legislation for the consideration of the Congress. The executive branch shall construe such provisions in a manner consistent with the President's constitutional authority to supervise the unitary executive branch and to recommend for congressional consideration such measures as the President shall judge necessary and expedient.

Several provisions of the Act purport to direct the President to perform the President's duties "acting through" a particular officer. These provisions include section 303(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by section 633 of the Act, section 1802 of the Homeland Security Act of 2002, as amended by section 671 of the Act, and sections 643, 644, 689i, and 689j of the Act. The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch.

The executive branch shall construe provisions of the Act relating to race, ethnicity, and gender, such as sections 623 and 697 of the Act, in a manner consistent with the requirement of the Due Process Clause of the Fifth Amendment to the Constitution to afford equal protection of the laws.

Section 1802(a) of the Homeland Security Act of 2002, as amended by section 671 of the Act, calls for the Secretary of Homeland Security "in cooperation with the Department of National Communications System (as appropriate)" and others to develop and update a National Emergency Communications Plan. An examination of the text and structure of the Act reveals that the term "Department of National Communications System" in section 1802(a) is most reasonably construed as a reference to the National Communications System in the Preparedness Directorate of the Department of Homeland Security, to which section 611 of the Act refers in amending section 505 of the Homeland Security Act of 2002, and the executive branch shall so construe it.

George W. Bush

The White House,
October 4, 2006.

NOTE: H.R. 5441, approved October 4, was assigned Public Law No. 109–295.

Remarks at a Reception for Gubernatorial Candidate Bob Beauprez and the Colorado Republican Party in Englewood, Colorado

October 4, 2006

Thanks for coming. I appreciate those kind words—Governor. I'm proud to be here with Bob Beauprez. I've gotten to know him quite well. See, we both served in Washington, DC, together. [*Laughter*] He is a straight thinker. He is a clear thinker. He's a person who understands that as the chief executive officer of a State, that you have to have a vision and the capacity to make decisions necessary to achieve that vision. There's no doubt in my mind he'll make a great Governor for the State of Colorado, and I thank you for supporting him.

And there's no doubt in my mind Claudia will make a fine first lady for the State of Colorado. I know something about first ladies. [*Laughter*] I'm a fortunate man that Laura said yes when I asked her to marry