

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

(Pub. L. 106–274, § 5, Sept. 22, 2000, 114 Stat. 805.)

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.

§ 2000cc–4. Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the “Establishment Clause”). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term “granting”, used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 106–274, § 6, 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.

§ 2000cc–5. Definitions

In this chapter:

(1) Claimant

The term “claimant” means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term “demonstrates” means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term “Free Exercise Clause” means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term “government”—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(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.)

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 crimi-

nal 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.