

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

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