

§ 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.”

§ 2000dd-2. Limitation on interrogation techniques

(a) Limitation on interrogation techniques to those in the Army Field Manual

(1) Army Field Manual 2-22.3 defined

In this subsection, the term “Army Field Manual 2-22.3” means the Army Field Manual 2-22.3 entitled “Human Intelligence Collector Operations” in effect on November 25, 2015, or any similar successor Army Field Manual.

(2) Restriction

(A) In general

An individual described in subparagraph (B) shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in the Army Field Manual 2-22.3.

(B) Individual described

An individual described in this subparagraph is an individual who is—

(i) in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or

(ii) detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.

(3) Implementation

Interrogation techniques, approaches, and treatments described in Army Field Manual 2-22.3 shall be implemented strictly in accord with the principles, processes, conditions, and limitations prescribed by Army Field Manual 2-22.3.