

serving in the grade of lieutenant general or vice admiral who has been selected for appointment to the grade of general or admiral, may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that higher grade for a period of up to 14 days before assuming the duties of a position for which the higher grade is authorized. An officer who is so authorized to wear the insignia of a higher grade is said to be "frocked" to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer has received orders to serve in a position outside the military department of that officer for which that grade is authorized;

(3) the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority) has given approval for the officer to wear the insignia for that grade before assuming the duties of a position for which that grade is authorized; and

(4) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of a higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of a higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED.—The total number of officers who are authorized to wear the insignia for a higher grade under this section shall count against the limitation in section 777(d) of this title on the total number of officers authorized to wear the insignia of a higher grade.

(Added Pub. L. 111-383, div. A, title V, §505(a)(1), Jan. 7, 2011, 124 Stat. 4208.)

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

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Editorial Notes

AMENDMENTS

1994—Pub. L. 103-337, div. A, title IX, §924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted "United States Court of Appeals for the Armed Forces" for "Court of Military Appeals" in item for subchapter XII.

1989—Pub. L. 101-189, div. A, title XIII, §1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98-209, §5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted "IX. Post-Trial Procedure and Review of Courts-Martial" for "IX. Review of Courts-Martial".

1958—Pub. L. 85-861, §33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

SUBCHAPTER I—GENERAL PROVISIONS

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| 802. | 2. | Persons subject to this chapter. |
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| 806. | 6. | Judge advocates and legal officers. |
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| 806b. | 6b. | Rights of the victim of an offense under this chapter. |

Editorial Notes

AMENDMENTS

2013—Pub. L. 113-66, div. A, title XVII, §1701(a)(2), Dec. 26, 2013, 127 Stat. 953, added item 806b.

1989—Pub. L. 101-189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§ 801. Article 1. Definitions

In this chapter (the Uniform Code of Military Justice):

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United

States Air Force Academy, or the United States Coast Guard Academy.

(7) The term “midshipman” means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term “military” refers to any or all of the armed forces.

(9) The term “accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term “military judge” means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a).

[(11) Repealed. Pub. L. 109–241, title II, § 218(a)(1), July 11, 2006, 120 Stat. 526.]

(12) The term “legal officer” means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term “judge advocate” means—

(A) an officer of the Judge Advocate General’s Corps of the Army, the Navy, or the Air Force;

(B) an officer of the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term “record”, when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term “classified information” means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term “national security” means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Pub. L. 89–670, § 10(g), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–179, § 1(1), (2), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, § 2(1), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §§ 2(a), 6(a), Dec. 6, 1983, 97 Stat. 1393, 1400; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, § 1233(f)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 104–106, div. A, title XI, § 1141(b), Feb. 10, 1996, 110 Stat. 467; Pub. L. 107–296, title XVII, § 1704(b)(2), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–241, title II, § 218(a), July 11, 2006, 120 Stat. 526; Pub. L. 114–328, div. E, title LI, § 5101, Dec. 23, 2016, 130 Stat. 2894; Pub. L. 115–91, div. A, title X, § 1081(a)(21), (c)(1)(A), Dec. 12, 2017, 131 Stat.

1595, 1597; Pub. L. 117–81, div. A, title V, § 533, Dec. 27, 2021, 135 Stat. 1695; Pub. L. 117–263, div. A, title V, § 541(a)(1), (b)(1), Dec. 23, 2022, 136 Stat. 2579, 2580.)

AMENDMENT OF SECTION

Pub. L. 117–263, div. A, title V, § 541(a), Dec. 23, 2022, 136 Stat. 2579, provided that, effective immediately after the coming into effect of the amendments made by section 533 of Pub. L. 117–81 (amending this section, see below) and applicable with respect to offenses that occur after that date, paragraph (17)(A) of this section is amended by striking “section 920 (article 120)” and inserting “section 919a (article 119a), section 920 (article 120), section 920a (article 120a)”. See 2022 Amendment note below.

Pub. L. 117–263, div. A, title V, § 541(b), Dec. 23, 2022, 136 Stat. 2580, provided that, effective Jan. 1, 2025, and applicable with respect to offenses that occur after that date, paragraph (17)(A) of this section is amended:

(1) by striking “or”; and

(2) by striking “of this title” and inserting “, or the standalone offense of sexual harassment punishable under section 934 (article 134) of this title in each instance in which a formal complaint is made and such formal complaint is substantiated in accordance with regulations prescribed by the Secretary concerned”.

See 2022 Amendment note below.

Pub. L. 117–81, div. A, title V, §§ 533, 539C, Dec. 27, 2021, 135 Stat. 1695, 1699, provided that, effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability, this section is amended:

(1) by inserting after paragraph (10) the following new paragraph:

“(11) The term ‘military magistrate’ means a commissioned officer certified for duty as a military magistrate in accordance with section 826a of this title (article 26a).”; and

(2) by adding at the end the following new paragraphs:

“(17) The term ‘covered offense’ means—

“(A) an offense under section 917a (article 117a), section 918 (article 118), section 919 (article 119), section 920 (article 120), section 920b (article 120b), section 920c (article 120c), section 925 (article 125), section 928b (article 128b), section 930 (article 130), section 932 (article 132), or the standalone offense of child pornography punishable under section 934 (article 134) of this title;

“(B) a conspiracy to commit an offense specified in subparagraph (A) as punishable under section 881 of this title (article 81);

“(C) a solicitation to commit an offense specified in subparagraph (A) as punishable under section 882 of this title (article 82); or

“(D) an attempt to commit an offense specified in subparagraph (A), (B), or (C) as punishable under section 880 of this title (article 80).

“(18) The term ‘special trial counsel’ means a judge advocate detailed as a special trial counsel in accordance with section 824a of this title (article 24a) and includes a judge advocate appointed as a lead special trial counsel pursuant to section 1044f(a)(2) of this title.”

See 2021 Amendment notes below.

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 801 | 50:551 (less (9)). | May 5, 1950, ch. 169, § 1 (Art. 1 (less (9))), 64 Stat. 108. |

The words “In this chapter” are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word “chapter” is substituted for the word “code”.

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words “commissioned officer” are substituted for the word “officer” for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)–(7), and (9)–(12) of the revised section, the word “means” is substituted for the words “shall be construed to refer to” and “shall be construed to refer * * * to”.

In clause (1), the words “service in” are substituted for the words “part of” to conform to section 1 of title 14. The words “Department of the Treasury” are substituted for the words “Treasury Department”.

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words “the United States Air Force Academy” are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word “refers” is substituted for the words “shall be construed to refer”.

In clause (12), the words “Marine Corps” are inserted to make explicit that the clause applies to the Marine Corps. The word “commissioned” is inserted for clarity.

Editorial Notes

AMENDMENTS

2022—Par. (17)(A). Pub. L. 117–263, §541(b)(1), struck out “or” after “section 932 (article 132),” and substituted “, or the standalone offense of sexual harassment punishable under section 934 (article 134) of this title in each instance in which a formal complaint is made and such formal complaint is substantiated in accordance with regulations prescribed by the Secretary concerned” for “of this title”.

Pub. L. 117–263, §541(a)(1), substituted “section 919a (article 119a), section 920 (article 120), section 920a (article 120a)” for “section 920 (article 120)”.

2021—Par. (11). Pub. L. 117–81, §533(1), added par. (11).

Pars. (17), (18). Pub. L. 117–81, §533(2), added pars. (17) and (18).

2017—Pub. L. 115–91, §1081(c)(1)(A), which directed insertion of “(the Uniform Code of Military Justice)” after “chapter” in introductory provisions, was not executed in light of the prior amendment by section 1081(a)(21) of Pub. L. 115–91, to reflect the probable intent of Congress. See Amendment note below and section 1081(c)(4) of Pub. L. 115–91, set out as an Effective Date of 2017 Amendment note below.

Pub. L. 115–91, §1081(a)(21), inserted “(the Uniform Code of Military Justice)” after “chapter” in introductory provisions.

2016—Cl. (10). Pub. L. 114–328, §5101(a), amended cl. (10) generally. Prior to amendment, cl. (10) read as follows: “The term ‘military judge’ means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).”

Cl. (13)(A). Pub. L. 114–328, §5101(b)(1), substituted “the Army, the Navy, or the Air Force” for “the Army or the Navy”.

Cl. (13)(B). Pub. L. 114–328, §5101(b)(2), struck out “the Air Force or” after “an officer of”.

2006—Cl. (11). Pub. L. 109–241, §218(a)(1), struck out cl. (11) which read as follows: “The term ‘law specialist’ means a commissioned officer of the Coast Guard designated for special duty (law).”

Cl. (13)(C). Pub. L. 109–241, §218(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “an officer of the Coast Guard who is designated as a law specialist.”

2002—Cl. (1). Pub. L. 107–296 substituted “an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security” for “the General Counsel of the Department of Transportation”.

1996—Cls. (15), (16). Pub. L. 104–106 added cls. (15) and (16).

1988—Cl. (1). Pub. L. 100–456 substituted “term ‘Judge’” for “term ‘judge’”.

1987—Cls. (1), (3) to (14). Pub. L. 100–180 inserted “The term” after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98–209, §2(a), added officers of the Coast Guard who are designated as law specialists to definition of “Judge Advocate”.

Cl. (14). Pub. L. 98–209, §6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90–632 substituted “military judge” for “law officer” as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, §1(1), struck out “Navy or” before “Coast Guard”.

Cl. (13). Pub. L. 90–179, §1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of “Judge Advocate General” applicable to the Coast Guard when operating as a service in the Navy.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–263, div. A, title V, §541(a)(2), Dec. 23, 2022, 136 Stat. 2580, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect immediately after the coming into effect of the amendments made by section 533 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1695) [amending this section] as provided in section 539C of that Act (10 U.S.C. 801 note) and shall apply with respect to offenses that occur after that date.”

Pub. L. 117–263, div. A, title V, §541(b)(2), Dec. 23, 2022, 136 Stat. 2580, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 2025, and shall apply with respect to offenses that occur after that date.”

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–81, div. A, title V, §539C, Dec. 27, 2021, 135 Stat. 1699, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this part [part 1 (§§531–539C) of subtitle D of title V of div. A of Pub. L. 117–81, enacting sections 824a and 1044f of this title and amending this section and sections 822, 823, 827, 832, 834, 844, 853a, 865 to 867, and 869 of this title] shall take effect on the date that is two years after the date of the enactment of this Act [Dec. 27, 2021] and shall apply with respect to offenses that occur after that date.

“(b) REGULATIONS.—

“(1) REQUIREMENT.—The President shall prescribe regulations to carry out this part not later than two years after the date of the enactment of this Act.

“(2) IMPACT OF DELAY OF ISSUANCE.—If the President does not prescribe the regulations necessary to carry out this part before the date that is two years after the date of the enactment of this Act, the amendments made by this part shall take effect on the date on which such regulations are prescribed and shall

apply with respect to offenses that occur on or after that date.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title V, §531(p), Dec. 12, 2017, 131 Stat. 1388, provided that: “The amendments made by this section [amending sections 806b, 830a, 838, 853a, 856, 858a, 858b, 862, 863, 866, 946, 1059, and 1408 of this title and provisions set out as a note below] shall take effect immediately after the amendments made by the Military Justice Act of 2016 (division E [§§ 5001-5542] of Public Law 114-328 [enacting, amending, and transferring numerous sections throughout this chapter]) take effect as provided for in section 5542 of that Act (130 Stat. 2967) [set out below].”

Pub. L. 115-91, div. A, title X, §1081(c)(4), Dec. 12, 2017, 131 Stat. 1599, provided that: “The amendments made by this subsection [amending this section and sections 673, 674, 806b, 816, 839, 843, 848, 853, 853a, 864, 865, 866, 869, 882, 919a, 920, 928, 932, 937, 1034, and 1044e of this title and section 8312 of Title 5, Government Organization and Employees] shall take effect immediately after the amendments made by the Military Justice Act of 2016 (division E [§§ 5001-5542] of Public Law 114-328 [enacting, amending, and transferring numerous sections throughout this chapter]) take effect as provided for in section 5542 of that Act (130 Stat. 2967) [set out below].”

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. E, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2967, as amended by Pub. L. 115-91, div. A, title V, §531(n)(1), Dec. 12, 2017, 131 Stat. 1387, provided that: “(a) IN GENERAL.—Except as otherwise provided in this division [div. E (§§ 5001-5542) of Pub. L. 114-328, see Tables for classification], the amendments made by this division [enacting, amending, and transferring numerous sections throughout this chapter] shall take effect on the date designated by the President [Jan. 1, 2019, with certain conditions and exceptions, see Ex. Ord. No. 13825, set out below], which date shall be not later than the first day of the first calendar month that begins two years after the date of the enactment of this Act [Dec. 23, 2016].

“(b) IMPLEMENTING REGULATIONS.—The President shall prescribe regulations implementing this division and the amendments made by this division by not later than one year after the date of the enactment of this Act, except as otherwise provided in this division.

“(c) APPLICABILITY.—

“(1) IN GENERAL.—Subject to the provisions of this division and the amendments made by this division, the President shall prescribe in regulations whether, and to what extent, the amendments made by this division shall apply to a case in which a specification alleges the commission, before the effective date of such amendments, of one or more offenses or to a case in which one or more actions under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), have been taken before the effective date of such amendments.

“(2) INAPPLICABILITY TO CASES IN WHICH CHARGES ALREADY REFERRED TO TRIAL ON EFFECTIVE DATE.—Except as otherwise provided in this division or the amendments made by this division, the amendments made by this division shall not apply to any case in which charges are referred to trial by court-martial before the effective date of such amendments. Proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

“(3) PUNITIVE ARTICLE AMENDMENTS.—

“(A) IN GENERAL.—The amendments made by title LX [§§ 5401-5452 of div. E of Pub. L. 114-328, enacting, amending, and transferring numerous sections within subchapter X of this chapter, see Tables for classification] shall not apply to any offense committed before the effective date of such amendments.

“(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to invalidate the prosecution of

any offense committed before the effective date of such amendments.

“(4) SENTENCING AMENDMENTS.—The regulations prescribing the authorized punishments for any offense committed before the effective date of the amendments made by title LVIII [§§ 5301-5303 of div. E of Pub. L. 114-328, amending sections 856 to 857a, 858a, 858b, and 871 of this title] shall apply to the authorized punishments for the offense, as in effect at the time the offense is committed.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-209, §12(a), Dec. 6, 1983, 97 Stat. 1407, provided that:

“(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

“(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

“(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

“(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

“(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.”

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-632, §4, Oct. 24, 1968, 82 Stat. 1343, provided that:

“(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

“(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

“(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968].”

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89-670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Act Aug. 10, 1956, ch. 1041, §51, 70A Stat. 640, provided that: "Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XI, §1101, Feb. 10, 1996, 110 Stat. 461, provided that: "This title [enacting sections 857a, 858b, and 876b of this title, amending this section and sections 802, 832, 847, 857, 860, 862, 866, 895, 920, and 937 of this title, repealing section 804 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 802, 857, 858b, and 876b of this title, and amending provisions set out as a note under section 942 of this title] may be cited as the 'Military Justice Amendments of 1996'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: "This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-209, §1(a), Dec. 6, 1983, 97 Stat. 1393, provided that: "This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-81, §1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: "This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'."

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90-632, §1, Oct. 24, 1968, 82 Stat. 1335, provided: "That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'."

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90-179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90-179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90-179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Act Aug. 10, 1956, ch. 1041, §49(e), 70A Stat. 640, provided that: "In chapter 47 of title 10, United States

Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of title 6.

APPLICABILITY TO THE UNITED STATES COAST GUARD

Pub. L. 117-81, div. A, title V, §539B, Dec. 27, 2021, 135 Stat. 1699, provided that: "The Secretary of Defense shall consult and enter into an agreement with the Secretary of Homeland Security to apply the provisions of this part [part 1 (§§531-539C) of subtitle D of title V of div. A of Pub. L. 117-81, enacting sections 824a and 1044f of this title, amending this section and sections 822, 823, 827, 832, 834, 844, 853a, 865 to 867, and 869 of this title, and enacting provisions set out as a note under this section] and the amendments made by this part, and the policies, mechanisms, and processes established pursuant to such provisions, to the United States Coast Guard when it is operating as a service in the Department of Homeland Security."

ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM

Pub. L. 116-92, div. A, title V, §540I, Dec. 20, 2019, 133 Stat. 1369, provided that:

"(a) IN GENERAL.—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.

"(b) SECRETARY OF DEFENSE AND RELATED ACTIVITIES.—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019]:

"(1) For each court-martial conducted by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—

"(A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;

"(B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.

"(2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—

"(A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and

"(B) describes how such a review should be conducted.

"(3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—

"(A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system;

"(B) take steps to address the causes of any such disparities, as appropriate.

"(c) DAC-IPAD ACTIVITIES.—

"(1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:

“(A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.

“(B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

“(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

“(2) INFORMATION FROM FEDERAL AGENCIES.—

“(A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigation files, charge sheets, records of trial, and personnel records.

“(B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

“(3) REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

“(4) DEFINITIONS.—In this subsection:

“(A) The term ‘independent committee DAC-IPAD’ means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374) [10 U.S.C. 1561 note], commonly known as the ‘DAC-IPAD’.

“(B) The term ‘case’ means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouses or intimate partner for which an investigation has been opened by a criminal investigative organization.

“(C) The term ‘completed’, with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

“(D) The term ‘contact sexual assault offense’ means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

“(E) The term ‘penetrative sexual assault offense’ means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.”

PILOT PROGRAMS ON DEFENSE INVESTIGATORS IN THE
MILITARY JUSTICE SYSTEM

Pub. L. 116–92, div. A, title V, §540J, Dec. 20, 2019, 133 Stat. 1371, provided that:

“(a) IN GENERAL.—Each Secretary of a military department shall carry out a pilot program on defense investigators within the military justice system under the jurisdiction of such Secretary in order to do the following:

“(1) Determine whether the presence of defense investigators within such military justice system will—

“(A) make such military justice system more effective in providing an effective defense for the accused; and

“(B) make such military justice system more fair and efficient.

“(2) Otherwise assess the feasibility and advisability of defense investigators as an element of such military justice system.

“(b) ELEMENTS.—

“(1) INTERVIEW OF VICTIM.—A defense investigator may question a victim under a pilot program only upon a request made through the Special Victims’ Counsel or other counsel if the victim does not have such counsel.

“(2) UNIFORMITY ACROSS MILITARY JUSTICE SYSTEMS.—The Secretary of Defense shall ensure that the personnel and activities of defense investigators under the pilot programs are, to the extent practicable, uniform across the military justice systems of the military departments.

“(c) REPORT.—

“(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs under subsection (a).

“(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

“(A) A description of each pilot program, including the personnel and activities of defense investigators under such pilot program.

“(B) An assessment of the feasibility and advisability of establishing and maintaining defense investigators as an element of the military justice systems of the military departments.

“(C) If the assessment under subparagraph (B) is that the establishment and maintenance of defense investigators as an element of the military justice systems of the military departments is feasible and advisable, such recommendations for legislative and administrative action as the Secretary of Defense considers appropriate to establish and maintain defense investigators as an element of the military justice systems.

“(D) Any other matters the Secretary of Defense considers appropriate.”

CHIEF MEDICAL OFFICER AT UNITED STATES NAVAL
STATION, GUANTANAMO BAY, CUBA

Pub. L. 116–92, div. A, title X, §1046, Dec. 20, 2019, 133 Stat. 1586, provided that:

“(a) CHIEF MEDICAL OFFICER.—

“(1) IN GENERAL.—There shall be at United States Naval Station, Guantanamo Bay, Cuba, a Chief Medical Officer of United States Naval Station, Guantanamo Bay (in this section referred to as the ‘Chief Medical Officer’).

“(2) GRADE.—The individual serving as Chief Medical Officer shall be an officer of the Armed Forces who holds a grade not below the grade of colonel, or captain in the Navy.

“(3) CHAIN OF COMMAND.—Notwithstanding sections 162 and 164 of title 10, United States Code, the Chief Medical Officer shall be assigned and report to the Assistant Secretary of Defense for Health Affairs, with duty at United States Naval Station, Guantanamo Bay, Cuba, in the performance of duties and the exercise of powers of the Chief Medical Officer under this section.

“(b) DUTIES.—

“(1) IN GENERAL.—The Chief Medical Officer shall oversee the provision of medical care to individuals detained at Guantanamo.

“(2) QUALITY OF CARE.—The Chief Medical Officer shall ensure that medical care provided as described in paragraph (1) meets applicable standards of care.

“(c) POWERS.—

“(1) IN GENERAL.—The Chief Medical Officer shall make medical determinations relating to medical care for individuals detained at Guantanamo, including—

“(A) decisions regarding assessment, diagnosis, and treatment; and

“(B) determinations concerning medical accommodations to living conditions and operating procedures for detention facilities.

“(2) RESOLUTION OF DECLINATION TO FOLLOW DETERMINATIONS.—If the commander of Joint Task Force Guantanamo or the Commander of United States Southern Command declines to follow a determination of the Chief Medical Officer under paragraph (1), the matter covered by such determination shall be resolved by the Assistant Secretary of Defense for Health Affairs, in consultation with the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, not later than seven days after receipt by both Assistant Secretaries of written notification of the matter from the Chief Medical Officer.

“(3) SECURITY CLEARANCES.—The appropriate departments or agencies of the Federal Government shall, to the extent practicable in accordance with existing procedures and requirements, process expeditiously any application and adjudication for a security clearance required by the Chief Medical Officer to carry out the Chief Medical Officer’s duties and powers under this section.

“(d) ACCESS TO INDIVIDUALS, INFORMATION, AND ASSISTANCE.—

“(1) IN GENERAL.—The Chief Medical Officer may secure directly from the Department of Defense access to any individual, information, or assistance that the Chief Medical Officer considers necessary to enable the Chief Medical Officer to carry out this section, including full access to the following:

“(A) Any individual detained at Guantanamo.

“(B) Any medical records of any individual detained at Guantanamo.

“(C) Medical professionals of the Department who are working, or have worked, at United States Naval Station, Guantanamo Bay.

“(2) ACCESS UPON REQUEST.—Upon request of the Chief Medical Officer, the Department shall make available to the Chief Medical Officer on an expeditious basis access to individuals, information, and assistance as described in paragraph (1).

“(3) LACK OF EXPEDITIOUS AVAILABILITY.—If access to individuals, information, or assistance is not made available to the Chief Medical Officer upon request on an expeditious basis as required by paragraph (2), the Chief Medical Officer shall notify the Assistant Secretary of Defense for Health Affairs and the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, who shall take actions to resolve the matter expeditiously.

“(e) DEFINITIONS.—In this section:

“(1) INDIVIDUAL DETAINED AT GUANTANAMO DEFINED.—The term ‘individual detained at Guantanamo’ means an individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

“(A) is not a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or a member of the Armed Forces of the United States; and

“(B) is—

“(i) in the custody or under the control of the Department of Defense; or

“(ii) otherwise detained at United States Naval Station, Guantanamo Bay.

“(2) MEDICAL CARE.—The term ‘medical care’ means physical and mental health care.

“(3) STANDARD OF CARE.—The term ‘standard of care’ means evaluation and treatment that is accept-

ed by medical experts and reflected in peer-reviewed medical literature as the appropriate medical approach for a condition, symptoms, illness, or disease and that is widely used by healthcare professionals.”

SENTENCING IN CERTAIN TRANSITIONAL CASES

Pub. L. 115–91, div. A, title V, §531(o), Dec. 12, 2017, 131 Stat. 1387, provided that:

“(1) IN GENERAL.—In any transition-period court-martial, the relevant sentencing sections of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), shall be applied as follows:

“(A) Except as provided in subparagraph (B), the relevant sentencing sections shall be applied as if the amendments to such sections made by the Military Justice Act of 2016 (division E of Public Law 114–328 [enacting, amending, and transferring numerous sections throughout this chapter]) and this section [see section 531(p) of Pub. L. 115–91, set out as an Effective Date of 2017 Amendment note above] had not been enacted.

“(B) If the accused so requests, the relevant sentencing sections shall be applied as amended by the Military Justice Act of 2016 (division E of Public Law 114–328) and this section.

“(2) DEFINITIONS.—In this subsection:

“(A) TRANSITION-PERIOD COURT-MARTIAL.—The term ‘transition-period court-martial’ means a court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that consists of both of the following:

“(i) A prosecution of one or more offenses committed before the date designated by the President under section 5542(a) of the Military Justice Act of 2016 (division E of Public Law 114–328; 130 Stat. 2967) [set out above].

“(ii) A prosecution of one or more offenses committed on or after that date.

“(B) RELEVANT SENTENCING SECTIONS.—The term ‘relevant sentencing sections’ means section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), and any other sections (articles of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that, by regulation prescribed by the President, are designated as relevant to sentencing for the purposes of paragraph (1).”

IMPROVED IMPLEMENTATION OF CHANGES TO UNIFORM CODE OF MILITARY JUSTICE

Pub. L. 114–92, div. A, title V, §543, Nov. 25, 2015, 129 Stat. 820, provided that: “The Secretary of Defense shall examine the Department of Defense process for implementing statutory changes to the Uniform Code of Military Justice for the purpose of developing options for streamlining such process. The Secretary shall adopt procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the Uniform Code of Military Justice are implemented.”

REENACTMENT AND MODIFICATION OF CERTAIN PRIOR REQUIREMENTS FOR CERTIFICATIONS RELATING TO TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES

Pub. L. 114–92, div. A, title X, §1034(a)–(f), Nov. 25, 2015, 129 Stat. 969, 970, provided that:

“(a) CERTIFICATION REQUIRED PRIOR TO TRANSFER.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual’s country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to the appropriate committees of Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify the appropriate committees of Congress of promptly after issuance).

“(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary that—

“(1) the transfer concerned is in the national security interests of the United States;

“(2) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo concerned is to be transferred—

“(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

“(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

“(C) has taken or agreed to take appropriate steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests; and

“(D) has agreed to share with the United States any information that is related to the individual;

“(3) if the country to which the individual is to be transferred is a country to which the United States transferred an individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, and such transferred individual subsequently engaged in any terrorist activity, the Secretary has—

“(A) considered such circumstances; and

“(B) determined that the actions to be taken as described in paragraph (2)(C) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

“(4) includes an intelligence assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or foreign entity concerned in relation to the certification of the Secretary under this subsection.

“(c) COORDINATION WITH PROHIBITION ON TRANSFER TO CERTAIN COUNTRIES.—While the prohibition in section 1033 [of Pub. L. 114-92, 129 Stat. 968] is in effect, no certification may be made under subsection (b) in connection with the transfer of an individual detained at Guantanamo to a country specified in such section.

“(d) RECORD OF COOPERATION.—In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the national security of the United States if released for the purpose of making a certification under subsection (b), the Secretary may give favorable consideration to any such individual—

“(1) who has substantially cooperated with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense; and

“(2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for continued cooperation with United States intelligence and law enforcement authorities.

“(e) REPORT.—Whenever the Secretary makes a certification under subsection (b) with respect to an individual detained at Guantanamo, the Secretary shall submit to the appropriate committees of Congress, together with such certification, a report that shall include, at a minimum, the following:

“(1) A detailed statement of the basis for the transfer of the individual.

“(2) An explanation why the transfer of the individual is in the national security interests of the United States.

“(3) A description of actions taken to mitigate the risks of reengagement by the individual as described in subsection (b)(2)(C), including any actions taken to address factors relevant to an applicable prior case of reengagement described in subsection (b)(3).

“(4) A copy of any Periodic Review Board findings relating to the individual.

“(5) A copy of the final recommendation by the Guantanamo Detainee Review Task Force established pursuant to Executive Order 13492 [set out below] relating to the individual and, if applicable, updated information related to any change to such recommendation.

“(6) An assessment whether, as of the date of the certification, the country to which the individual is to be transferred is facing a threat that could substantially affect its ability to exercise control over the individual.

“(7) A classified summary of—

“(A) the individual’s record of cooperation, if any, while in the custody of or under the effective control of the Department of Defense; and

“(B) any agreements and mechanisms in place to provide for continuing cooperation.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) The term ‘individual detained at Guantanamo’ means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

“(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

“(B) is—

“(i) in the custody or under the control of the Department of Defense; or

“(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

“(3) The term ‘foreign terrorist organization’ means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

“(4) The term ‘state sponsor of terrorism’ has the meaning given that term in section 301(13) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8541(13)).”

TRANSFERS TO FOREIGN COUNTRIES OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 113-66, div. A, title X, §1035(a)–(e), Dec. 26, 2013, 127 Stat. 851–853, which related to authority, determinations, and notification regarding transfers to foreign countries of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, was repealed by Pub. L. 114-92, div. A, title X, §1034(g), Nov. 25, 2015, 129 Stat. 971.

NOTICE TO CONGRESS ON USE OF NAVAL VESSELS FOR DETENTION OF INDIVIDUALS

Pub. L. 112-239, div. A, title X, §1024(a), Jan. 2, 2013, 126 Stat 1912, provided that: “Not later than 30 days after first detaining an individual pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) on a naval vessel outside the United States, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the detention. In the case of such an individual who is transferred or released before the submittal of the notice of the individ-

ual's detention, the Secretary shall also submit to such Committees notice of the transfer or release."

NOTICE REQUIRED PRIOR TO TRANSFER OF CERTAIN INDIVIDUALS DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN

Pub. L. 112-239, div. A, title X, §1025, Jan. 2, 2013, 126 Stat. 1913, provided that:

"(a) NOTICE REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees notice in writing of the proposed transfer of any individual detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) who is a national of a country other than the United States or Afghanistan from detention at the Detention Facility at Parwan, Afghanistan, to the custody of the Government of Afghanistan or of any other country. Such notice shall be provided not later than 10 days before such a transfer may take place.

"(b) ASSESSMENTS REQUIRED.—Prior to any transfer referred to under subsection (a), the Secretary shall ensure that an assessment is conducted as follows:

"(1) In the case of the proposed transfer of such an individual by reason of the individual being released, an assessment of the threat posed by the individual and the security environment of the country to which the individual is to be transferred.

"(2) In the case of the proposed transfer of such an individual to a country other than Afghanistan for the purpose of the prosecution of the individual, an assessment regarding the capacity, willingness, and historical track record of the country with respect to prosecuting similar cases, including a review of the primary evidence against the individual to be transferred and any significant admissibility issues regarding such evidence that are expected to arise in connection with the prosecution of the individual.

"(3) In the case of the proposed transfer of such an individual for reintegration or rehabilitation in a country other than Afghanistan, an assessment regarding the capacity, willingness, and historical track records of the country for reintegrating or rehabilitating similar individuals.

"(4) In the case of the proposed transfer of such an individual to the custody of the Government of Afghanistan for prosecution or detention, an assessment regarding the capacity, willingness, and historical track record of Afghanistan to prosecute or detain long-term such individuals.

"(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate."

REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES

Pub. L. 112-239, div. A, title X, §1028, Jan. 2, 2013, 126 Stat. 1914, related to requirements for certifications relating to the transfer of detainees at United States Naval Station, Guantanamo Bay, Cuba, to foreign countries and other foreign entities, prior to repeal by Pub. L. 113-66, div. A, title X, §1035(f)(2), Dec. 26, 2013, 127 Stat. 853.

RIGHTS UNAFFECTED

Pub. L. 112-239, div. A, title X, §1029, Jan. 2, 2013, 126 Stat. 1917, provided that: "Nothing in the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81 [see Tables for classification]) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person

inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws."

NOTIFICATION OF TRANSFER OF A DETAINEE HELD AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 112-87, title III, §308, Jan. 3, 2012, 125 Stat. 1883, provided that:

"(a) REQUIREMENT FOR NOTIFICATION.—The President shall submit to Congress, in classified form, at least 30 days prior to the transfer or release of an individual detained at Naval Station, Guantanamo Bay, Cuba, as of June 24, 2009, to the country of such individual's nationality or last habitual residence or to any other foreign country or to a freely associated State the following information:

"(1) The name of the individual to be transferred or released.

"(2) The country or the freely associated State to which such individual is to be transferred or released.

"(3) The terms of any agreement with the country or the freely associated State for the acceptance of such individual, including the amount of any financial assistance related to such agreement.

"(4) The agencies or departments of the United States responsible for ensuring that the agreement described in paragraph (3) is carried out.

"(b) DEFINITION.—In this section, the term 'freely associated States' means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

"(c) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this section shall be construed to supersede or otherwise affect the following provisions of law:

"(1) Section 1028 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112-81, formerly set out below].

"(2) Section 8120 of the Department of Defense Appropriations Act, 2012 [div. A of Pub. L. 112-74, 125 Stat. 833]."

[Memorandum of President of the United States, Jan. 27, 2012, 77 F.R. 11371, delegated to the Secretary of State, in consultation with the Secretary of Defense, the function to provide to Congress the information specified in section 308(a) of Pub. L. 112-87, set out above.]

DETENTION AUTHORITY AND PROCEDURES, TRANSFER CERTIFICATIONS AND PROSECUTION CONSULTATION REQUIREMENT

Pub. L. 112-81, div. A, title X, §§1021-1025, 1028, 1029, Dec. 31, 2011, 125 Stat. 1562-1565, 1567, 1569, as amended by Pub. L. 113-66, div. A, title X, §1035(f)(1), Dec. 26, 2013, 127 Stat. 853, provided that:

"SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

"(a) IN GENERAL.—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

"(b) COVERED PERSONS.—A covered person under this section is any person as follows:

"(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

"(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly

supported such hostilities in aid of such enemy forces.

“(c) DISPOSITION UNDER LAW OF WAR.—The disposition of a person under the law of war as described in subsection (a) may include the following:

“(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

“(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84)).

“(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

“(4) Transfer to the custody or control of the person’s country of origin, any other foreign country, or any other foreign entity.

“(d) CONSTRUCTION.—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

“(e) AUTHORITIES.—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

“(f) REQUIREMENT FOR BRIEFINGS OF CONGRESS.—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be ‘covered persons’ for purposes of subsection (b)(2).

“SEC. 1022. MILITARY CUSTODY FOR FOREIGN AL-QAEDA TERRORISTS.

“(a) CUSTODY PENDING DISPOSITION UNDER LAW OF WAR.—

“(1) IN GENERAL.—Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107–40) in military custody pending disposition under the law of war.

“(2) COVERED PERSONS.—The requirement in paragraph (1) shall apply to any person whose detention is authorized under section 1021 who is determined—

“(A) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and

“(B) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

“(3) DISPOSITION UNDER LAW OF WAR.—For purposes of this subsection, the disposition of a person under the law of war has the meaning given in section 1021(c), except that no transfer otherwise described in paragraph (4) of that section shall be made unless consistent with the requirements of section 1028.

“(4) WAIVER FOR NATIONAL SECURITY.—The President may waive the requirement of paragraph (1) if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

“(b) APPLICABILITY TO UNITED STATES CITIZENS AND LAWFUL RESIDENT ALIENS.—

“(1) UNITED STATES CITIZENS.—The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

“(2) LAWFUL RESIDENT ALIENS.—The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

“(c) IMPLEMENTATION PROCEDURES.—

“(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 31, 2011], the President shall issue, and submit to Congress, procedures for implementing this section.

“(2) ELEMENTS.—The procedures for implementing this section shall include, but not be limited to, procedures as follows:

“(A) Procedures designating the persons authorized to make determinations under subsection (a)(2) and the process by which such determinations are to be made.

“(B) Procedures providing that the requirement for military custody under subsection (a)(1) does not require the interruption of ongoing surveillance or intelligence gathering with regard to persons not already in the custody or control of the United States.

“(C) Procedures providing that a determination under subsection (a)(2) is not required to be implemented until after the conclusion of an interrogation which is ongoing at the time the determination is made and does not require the interruption of any such ongoing interrogation.

“(D) Procedures providing that the requirement for military custody under subsection (a)(1) does not apply when intelligence, law enforcement, or other Government officials of the United States are granted access to an individual who remains in the custody of a third country.

“(E) Procedures providing that a certification of national security interests under subsection (a)(4) may be granted for the purpose of transferring a covered person from a third country if such a transfer is in the interest of the United States and could not otherwise be accomplished.

“(d) AUTHORITIES.—Nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with regard to a covered person, regardless whether such covered person is held in military custody.

“(e) EFFECTIVE DATE.—This section shall take effect on the date that is 60 days after the date of the enactment of this Act, and shall apply with respect to persons described in subsection (a)(2) who are taken into the custody or brought under the control of the United States on or after that effective date.

“SEC. 1023. PROCEDURES FOR PERIODIC DETENTION REVIEW OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

“(a) PROCEDURES REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth procedures for implementing the periodic review process required by Executive Order No. 13567 [set out below] for individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note).

“(b) COVERED MATTERS.—The procedures submitted under subsection (a) shall, at a minimum—

“(1) clarify that the purpose of the periodic review process is not to determine the legality of any detainee’s law of war detention, but to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States;

“(2) clarify that the Secretary of Defense is responsible for any final decision to release or transfer an individual detained in military custody at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Executive Order referred to in subsection (a), and that in making such a final decision, the Secretary shall consider the recommendation of a periodic review board or review committee established pursuant to such Executive Order, but shall not be bound by any such recommendation;

“(3) clarify that the periodic review process applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time; and

“(4) ensure that appropriate consideration is given to factors addressing the need for continued detention of the detainee, including—

“(A) the likelihood the detainee will resume terrorist activity if transferred or released;

“(B) the likelihood the detainee will reestablish ties with al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners if transferred or released;

“(C) the likelihood of family, tribal, or government rehabilitation or support for the detainee if transferred or released;

“(D) the likelihood the detainee may be subject to trial by military commission; and

“(E) any law enforcement interest in the detainee.

“(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

“SEC. 1024. PROCEDURES FOR STATUS DETERMINATIONS.

“(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth the procedures for determining the status of persons detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) for purposes of section 1021.

“(b) ELEMENTS OF PROCEDURES.—The procedures required by this section shall provide for the following in the case of any unprivileged enemy belligerent who will be held in long-term detention under the law of war pursuant to the Authorization for Use of Military Force:

“(1) A military judge shall preside at proceedings for the determination of status of an unprivileged enemy belligerent.

“(2) An unprivileged enemy belligerent may, at the election of the belligerent, be represented by military counsel at proceedings for the determination of status of the belligerent.

“(c) APPLICABILITY.—The Secretary of Defense is not required to apply the procedures required by this section in the case of a person for whom habeas corpus review is available in a Federal court.

“(d) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the appropriate committees of Congress a report on any modification of the procedures submitted under this section. The report on any such modification shall be so submitted not later than 60 days before the date on which such modification goes into effect.

“(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

“SEC. 1025. REQUIREMENT FOR NATIONAL SECURITY PROTOCOLS GOVERNING DETAINEE COMMUNICATIONS.

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall develop and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a national security protocol governing communications to and from individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note), and related issues.

“(b) CONTENTS.—The protocol developed pursuant to subsection (a) shall include Department of Defense policies and procedures regarding each of the following:

“(1) Detainee access to military or civilian legal representation, or both, including any limitations on such access and the manner in which any applicable legal privileges will be balanced with national security considerations.

“(2) Detainee communications with persons other than Federal Government personnel and members of the Armed Forces, including meetings, mail, phone calls, and video teleconferences, including—

“(A) any limitations on categories of information that may be discussed or materials that may be shared; and

“(B) the process by which such communications or materials are to be monitored or reviewed.

“(3) The extent to which detainees may receive visits by persons other than military or civilian representatives.

“(4) The measures planned to be taken to implement and enforce the provisions of the protocol.

“(c) UPDATES.—The Secretary of Defense shall notify the congressional defense committees of any significant change to the policies and procedures described in the protocol submitted pursuant to subsection (a) not later than 30 days after such change is made.

“(d) FORM OF PROTOCOL.—The protocol submitted pursuant to subsection (a) may be submitted in classified form.

“[SEC. 1028. Repealed. Pub. L. 113-66, div. A, title X, § 1035(f)(1), Dec. 26, 2013, 127 Stat. 853.]

“SEC. 1029. REQUIREMENT FOR CONSULTATION REGARDING PROSECUTION OF TERRORISTS.

“(a) IN GENERAL.—Before seeking an indictment of, or otherwise charging, an individual described in subsection (b) in a Federal court, the Attorney General shall consult with the Director of National Intelligence and the Secretary of Defense about—

“(1) whether the more appropriate forum for prosecution would be a Federal court or a military commission; and

“(2) whether the individual should be held in civilian custody or military custody pending prosecution.

“(b) APPLICABILITY.—The consultation requirement in subsection (a) applies to—

“(1) a person who is subject to the requirements of section 1022, in accordance with a determination made pursuant to subsection (a)(2) of such section; and

“(2) any other person who is held in military detention outside of the United States pursuant to the authority affirmed by section 1021.”

[Memorandum of President of the United States, Feb. 28, 2012, 77 F.R. 12435, delegated the waiver authority conferred upon the President by section 1022(a)(4) of Pub. L. 112-81, set out above, to the Attorney General, in consultation with other senior national security officials, including the Secretaries of State, Defense, and Homeland Security, Director of National Intelligence, Chairman of the Joint Chiefs of Staff, Director of the Central Intelligence Agency, and Director of the Federal Bureau of Investigation, as well as any other officials the President may designate.]

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL

Pub. L. 111-84, div. A, title X, § 1038, Oct. 28, 2009, 123 Stat. 2451, provided that:

“(a) PROHIBITION.—Except as provided in subsection (b), effective one year after the date of the enactment of this Act [Oct. 28, 2009], no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility in connection with hostilities may be interrogated by contractor personnel.

“(b) AUTHORIZED FUNCTIONS OF CONTRACTOR PERSONNEL.—Contractor personnel with proper training and security clearances may be used as linguists, inter-

preters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of persons as described in subsection (a) if—

“(1) such personnel are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and

“(2) appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor’s performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

“(c) DISCHARGE BY GOVERNMENT PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that, by not later than one year after the date of the enactment of this Act, the Department of Defense has the resources needed to ensure that interrogations described in subsection (a) are conducted by appropriately qualified government personnel.

“(d) WAIVER.—

“(1) WAIVERS AUTHORIZED.—The Secretary of Defense may waive the prohibition under subsection (a) for a period of 60 days if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States.

“(2) LIMITATION ON DELEGATION.—

“(A) IN GENERAL.—The waiver authority under paragraph (1) may not be delegated to any official below the level of the Deputy Secretary of Defense, except in the case of a waiver for an individual interrogation that is based on military exigencies, in which case the delegation of the waiver authority shall be done pursuant to regulations that the Secretary of Defense shall prescribe but in no instance may the latter delegation be below the level of combatant commander of the theater in which the individual is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility within that theater.

“(B) DEADLINE FOR REGULATIONS.—The Secretary of Defense shall prescribe the regulations referred to in subparagraph (A) by not later than 30 days after the date of the enactment of this Act.

“(3) CONGRESSIONAL NOTIFICATION.—Not later than five days after the Secretary issues a waiver pursuant to paragraph (1), the Secretary shall submit to Congress written notification of the waiver.”

NO MIRANDA WARNINGS FOR AL QAEDA TERRORISTS

Pub. L. 111–84, div. A, title X, §1040, Oct. 28, 2009, 123 Stat. 2454, provided that:

“(a) NO MIRANDA WARNINGS.—

“(1) IN GENERAL.—Absent a court order requiring the reading of such statements, no member of the Armed Forces and no official or employee of the Department of Defense or a component of the intelligence community (other than the Department of Justice) may read to a foreign national who is captured or detained outside the United States as an enemy belligerent and is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility the statement required by *Miranda v. Arizona* (384 U.S. 436 (1966)), or otherwise inform such an individual of any rights that the individual may or may not have to counsel or to remain silent consistent with *Miranda v. Arizona* (384 U.S. 436 (1966)).

“(2) NONAPPLICABILITY TO DEPARTMENT OF JUSTICE.—This subsection shall not apply to the Department of Justice.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘foreign national’ means an individual who is not a citizen or national of the United States.

“(B) The term ‘enemy belligerent’ includes a privileged belligerent against the United States and an unprivileged enemy belligerent, as those terms are defined in section 948a of title 10, United States Code, as amended by section 1802 of this Act.

“(b) REPORT REQUIRED ON NOTIFICATION OF DETAINEES OF RIGHTS UNDER *MIRANDA v. ARIZONA*.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on how the reading of rights under *Miranda v. Arizona* (384 U.S. 436 (1966)) to individuals detained by the United States in Afghanistan may affect—

“(1) the tactical questioning of detainees at the point of capture by United States Armed Forces deployed in support of Operation Enduring Freedom;

“(2) post-capture theater-level interrogations and intelligence-gathering activities conducted as part of Operation Enduring Freedom;

“(3) the overall counterinsurgency strategy and objectives of the United States for Operation Enduring Freedom;

“(4) United States military operations and objectives in Afghanistan; and

“(5) potential risks to members of the Armed Forces operating in Afghanistan.”

REQUIREMENT FOR VIDEOTAPING OR OTHERWISE ELECTRONICALLY RECORDING STRATEGIC INTELLIGENCE INTERROGATIONS OF PERSONS IN THE CUSTODY OF OR UNDER THE EFFECTIVE CONTROL OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title X, §1080, Oct. 28, 2009, 123 Stat. 2479, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(15), Jan. 7, 2011, 124 Stat. 4373, provided that:

“(a) VIDEOTAPING OR OTHER ELECTRONIC RECORDING REQUIRED.—In accordance with the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto, and the guidelines developed pursuant to subsection (f), the Secretary of Defense shall ensure that each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility is videotaped or otherwise electronically recorded.

“(b) CLASSIFICATION OF INFORMATION.—To protect United States national security, the safety of the individuals conducting or assisting in the conduct of a strategic intelligence interrogation, and the privacy of persons described in subsection (a), the Secretary of Defense shall provide for the appropriate classification of videotapes or other electronic recordings made pursuant to subsection (a). The use of such classified videotapes or other electronic recordings in proceedings conducted under the Detainee Treatment Act of 2005 (title XIV of Public Law 109–163 and title X of Public Law 109–148), chapter 47A of title 10, United States Code, as amended by section 1802 of this Act, or at any other judicial or administrative forum under any other provision of law shall be governed by applicable rules, regulations, and laws that protect classified information.

“(c) STRATEGIC INTELLIGENCE INTERROGATION DEFINED.—For purposes of this section, the term ‘strategic intelligence interrogation’ means an interrogation of a person described in subsection (a) conducted at a theater-level detention facility.

“(d) EXCLUSION.—Nothing in this section shall be construed as requiring—

“(1) any member of the Armed Forces engaged in direct combat operations to videotape or otherwise electronically record an interrogation of a person described in subsection (a); or

“(2) the videotaping of or otherwise electronically recording of tactical questioning, as such term is defined in the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto.

“(e) WAIVER.—

“(1) WAIVERS AUTHORIZED.—The Secretary of Defense may, as an exceptional measure, as part of a specific interrogation plan for a specific person described in subsection (a), waive the requirement in that subsection on a case-by-case basis for a period not to exceed 30 days, if the Secretary—

“(A) makes a determination in writing that such a waiver is necessary to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(2) SUSPENSIONS AUTHORIZED.—The Secretary may temporarily suspend the requirement under subsection (a) at a specific theater-level detention facility for a period not to exceed 30 days, if the Secretary—

“(A) makes a determination in writing that such a suspension is vital to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(3) LIMITATION ON DELEGATION OF AUTHORITY.—This authority of the Secretary under this subsection may only be delegated as follows:

“(A) In the case of the authority under paragraph (1), such authority may not be delegated below the level of the combatant commander of the theater in which the detention facility holding the person is located.

“(B) In the case of the authority under paragraph (2), such authority may not be delegated below the level of the Deputy Secretary of Defense.

“(4) EXTENSIONS.—The Secretary may extend a waiver under paragraph (1) for one additional 30-day period, or a suspension under paragraph (2) for one additional 30-day period, if—

“(A) the Secretary—

“(i) in the case of such a waiver, makes a determination in writing that such an extension is necessary to the national security interests of the United State [sic]; or

“(ii) in the case of such a suspension, makes a determination in writing that such an extension is vital to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(f) GUIDELINES.—

“(1) DEVELOPMENT OF GUIDELINES.—The Secretary of Defense, acting through the Judge Advocates General (as defined in section 801(1) of title 10, United States Code, (Article 1 of the Uniform Code of Military Justice)), shall develop and adopt uniform guidelines for videotaping or otherwise electronically recording strategic intelligence interrogations as required under subsection (a). Such guidelines shall, at a minimum—

“(A) promote full compliance with the laws of the United States;

“(B) promote the exploitation of intelligence;

“(C) address the retention, maintenance, and disposition of videotapes or other electronic record-

ings, consistent with subparagraphs (A) and (B) and with the interests of justice; and

“(D) ensure the safety of all participants in the interrogations.

“(2) SUBMITTAL TO CONGRESS.—Not later than 30 days after the date of the enactment of this section [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the guidelines developed under paragraph (1). Such report shall be in an unclassified form but may include a classified annex.”

REPORTS ON GUANTANAMO BAY PRISONER POPULATION

Pub. L. 111-32, title III, §319, June 24, 2009, 123 Stat. 1874, as amended by Pub. L. 114-92, div. A, title X, §§1038(a), 1039, Nov. 25, 2015, 129 Stat. 974; Pub. L. 116-92, div. E, title LVII, §5701(a)(2), Dec. 20, 2019, 133 Stat. 2159, provided that:

“(a) REPORTS REQUIRED.—Not later than 60 days after the date of the enactment of this Act [June 24, 2009] and annually thereafter, the President shall submit to the members and committees of Congress specified in subsection (b) a report on the prisoner population at the detention facility at Naval Station Guantanamo Bay, Cuba.

“(b) SPECIFIED MEMBERS AND COMMITTEES OF CONGRESS.—The members and committees of Congress specified in this subsection are the following:

“(1) The majority leader and minority leader of the Senate.

“(2) The Chairman and Ranking Member on the Committee on Armed Services of the Senate.

“(3) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate.

“(4) The Chairman and Vice Chairman of the Committee on Appropriations of the Senate.

“(5) The Speaker of the House of Representatives.

“(6) The minority leader of the House of Representatives.

“(7) The Chairman and Ranking Member on the Committee on Armed Services of the House of Representatives.

“(8) The Chairman and Vice Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

“(9) The Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives.

“(c) MATTERS TO BE INCLUDED.—Each report submitted under subsection (a) shall include the following:

“(1) The name and country of origin of each detainee at the detention facility at Naval Station Guantanamo Bay, Cuba, as of the date of such report.

“(2) A current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Naval Station Guantanamo Bay.

“(3) A current accounting of all the measures taken to transfer each detainee listed under paragraph (1) to the individual’s country of citizenship or another country.

“(4) A current description of the number of individuals released or transferred from detention at Naval Station Guantanamo Bay who are confirmed or suspected of returning to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

“(5) An assessment of any efforts by al Qaeda to recruit detainees released from detention at Naval Station Guantanamo Bay.

“(6) A summary of all known contact between any individual formerly detained at Naval Station Guantanamo Bay and any individual known or suspected to be associated with a foreign terrorist group, which contact included information or discussion about planning for or conduct of hostilities against the United States or its allies or the organizational, logistical, or resource needs or activities of any terrorist group or activity.

“(7) For each individual described in paragraph (4), the date on which such individual was released or transferred from Naval Station Guantanamo Bay and the date on which it is confirmed that such individual is suspected or confirmed of reengaging in terrorist activities.

“(8) The average period of time described in paragraph (7) for all the individuals described in paragraph (4).

“(d) ADDITIONAL MATTERS TO BE INCLUDED IN INITIAL REPORT.—The first report submitted under subsection (a) shall also include the following:

“(1) A description of the process that was previously used for screening the detainees described by subsection (c)(4) prior to their release or transfer from detention at Naval Station Guantanamo Bay, Cuba.

“(2) An assessment of the adequacy of that screening process for reducing the risk that detainees previously released or transferred from Naval Station Guantanamo Bay would return to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

“(3) An assessment of lessons learned from previous releases and transfers of individuals who returned to terrorist activities for reducing the risk that detainees released or transferred from Naval Station Guantanamo Bay will return to terrorist activities after their release or transfer.”

[Pub. L. 114-92, div. A, title X, §1038(b), Nov. 25, 2015, 129 Stat. 974, provided that: “Nothing in the amendment made by subsection (a) [amending section 319(c) of Pub. L. 111-32, set out above, by adding par. (6)] shall be construed to terminate, alter, modify, override, or otherwise affect any reporting of information required under section 319(c) of the Supplemental Appropriations Act, 2009 [Pub. L. 111-32, set out above] before the date of the enactment of this section [Nov. 25, 2015].”]

[Memorandum of President of the United States, July 17, 2009, 74 F.R. 35765, provided that the reporting function conferred upon the President by section 319(a), (c)(1) to (3) of Pub. L. 111-32, set out above, is assigned to the Attorney General, and the reporting function specified in section 319(a), (c)(4), (5), (d) of Pub. L. 111-32 is assigned to the Director of National Intelligence, in consultation with the Secretary of Defense.]

POLICY ON ROLE OF MILITARY MEDICAL AND BEHAVIORAL SCIENCE PERSONNEL IN INTERROGATION OF DETAINEES

Pub. L. 109-163, div. A, title VII, §750, Jan. 6, 2006, 119 Stat. 3364, provided that:

“(a) POLICY REQUIRED.—The Secretary of Defense shall establish the policy of the Department of Defense on the role of military medical and behavioral science personnel in the interrogation of persons detained by the Armed Forces. The policy shall apply uniformly throughout the Armed Forces.

“(b) REPORT.—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the policy established under subsection (a). The report shall set forth the policy, and shall include such additional matters on the policy as the Secretary considers appropriate.”

DETAINEE INTERROGATION, STATUS REVIEW, AND TREATMENT

Pub. L. 109-163, div. A, title XIV, §§1402, 1405, 1406, Jan. 6, 2006, 119 Stat. 3475, 3476, 3479, as amended by Pub. L. 111-84, div. A, title XVIII, §1803(b)(2), as added Pub. L. 111-383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

“SEC. 1402. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

“(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or

under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

“(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

“(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

“SEC. 1405. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

“(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

“(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

“(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

“(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the ‘Designated Civilian Official’) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

“(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

“(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

“(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

“(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

“(B) the probative value, if any, of any such statement.

“(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Jan. 6, 2006].

“(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60

days before the date on which such modification goes into effect.

“(d) ANNUAL REPORT.—

“(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

“(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

“(A) The number of detainees whose status was reviewed.

“(B) The procedures used at each location.

“(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

“(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

“(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

“(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

“(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

“(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

“(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

“(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

“(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

“(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

“(3) Repealed. Pub. L. 111-84, div. A, title XVIII, § 1803(b)(2), as added Pub. L. 111-383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

“(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

“(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

“(g) UNITED STATES DEFINED.—For purposes of this section, the term ‘United States’, when used in a geographic sense, is as defined in section 101(a)(38) of the

Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

“(h) EFFECTIVE DATE.—

“(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Jan. 6, 2006].

“(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

“SEC. 1406. TRAINING OF IRAQI SECURITY FORCES REGARDING TREATMENT OF DETAINEES.

“(a) REQUIRED POLICIES.—

“(1) IN GENERAL.—The Secretary of Defense shall prescribe policies designed to ensure that all military and civilian Department of Defense personnel or contractor personnel of the Department of Defense responsible for the training of any unit of the Iraqi Security Forces provide training to such units regarding the international obligations and laws applicable to the humane treatment of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

“(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment that such training has been provided.

“(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

“(b) ARMY FIELD MANUAL.—

“(1) TRANSLATION.—The Secretary of Defense shall provide for the unclassified portions of the United States Army Field Manual on Intelligence Interrogation to be translated into Arabic and any other language the Secretary determines appropriate for use by members of the Iraqi security forces.

“(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be distributed to all appropriate officials of the Iraqi Government, including, but not limited to, the Iraqi Minister of Defense, the Iraqi Minister of Interior, senior Iraqi military personnel, and appropriate members of the Iraqi Security Forces with a recommendation that the principles that underlay the manual be adopted by the Iraqis as the basis for their policies on interrogation of detainees.

“(c) TRANSMITTAL TO CONGRESSIONAL COMMITTEES.—Not less than 30 days after the date on which policies are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

“(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Jan. 6, 2006], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.”

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1405(d) of Pub. L. 109-163, set out above, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.]

Pub. L. 109-148, div. A, title X, §§ 1002, 1005, 1006, Dec. 30, 2005, 119 Stat. 2739, 2740, 2744, as amended by Pub. L. 109-366, §§ 9, 10, Oct. 17, 2006, 120 Stat. 2636, 2637; Pub. L. 110-181, div. A, title X, § 1063(d)(2), Jan. 28, 2008, 122 Stat. 323; Pub. L. 111-84, div. A, title XVIII, § 1803(b)(1), formerly § 1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered § 1803(b)(1) by Pub. L. 111-383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

“SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

“(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

“(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

“(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

“SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

“(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

“(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

“(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

“(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the ‘Designated Civilian Official’) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

“(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

“(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

“(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

“(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

“(B) the probative value (if any) of any such statement.

“(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Dec. 30, 2005].

“(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

“(d) ANNUAL REPORT.—

“(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

“(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

“(A) The number of detainees whose status was reviewed.

“(B) The procedures used at each location.

“(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

“(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

“(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

“(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

“(i) who is, at the time a request for review by such court is filed, detained by the United States; and

“(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

“(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

“(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

“(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

“(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

“[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, §1803(b)(1), formerly §1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered §1803(b)(1) by Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

“(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

“(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an

alien detained as an enemy combatant outside the United States.

“(g) UNITED STATES DEFINED.—For purposes of this section, the term ‘United States’, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

“(h) EFFECTIVE DATE.—

“(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Dec. 30, 2005].

“(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

“SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

“(a) REQUIRED POLICIES.—

“(1) IN GENERAL.—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

“(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

“(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005].

“(b) ARMY FIELD MANUAL.—

“(1) TRANSLATION.—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic [sic] and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

“(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

“(c) TRANSMITTAL OF REGULATIONS.—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

“(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Dec. 30, 2005], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.”

SENSE OF CONGRESS CONCERNING DETAINEES; ACTIONS TO PREVENT ABUSE

Pub. L. 108–375, div. A, title X, §§1091, 1092, Oct. 28, 2004, 118 Stat. 2068, 2069, provided that:

“SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

“(a) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

“(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

“(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

“(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

“(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

“(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regulations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

“(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who have served, or who are serving, in Operation Iraqi Freedom; and

“(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

“(b) POLICY.—It is the policy of the United States to—

“(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States;

“(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

“(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

“(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee’s status is determined by a competent tribunal; and

“(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

“(c) DETAINEES.—For purposes of this section, the term ‘detainee’ means a person in the custody or under the physical control of the United States as a result of armed conflict.

“SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

“(a) POLICIES REQUIRED.—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act [Oct. 28, 2004] regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members

of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

“(b) MATTERS TO BE INCLUDED.—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

“(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

“(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

“(B) establishes standard operating procedures for the treatment of detainees.

“(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

“(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

“(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

“(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

“(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on the law of war, the Geneva Conventions, and the obligations of the United States under international law.”

Executive Documents

DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM

Military Order of President of the United States, dated Nov. 13, 2001, 66 F.R. 57833, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, 115 Stat. 224) [50 U.S.C. 1541 note] and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. Findings.

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks [50 U.S.C. 1621 note]).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability

and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

SEC. 2. Definition and Policy.

(a) The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

SEC. 3. Detention Authority of the Secretary of Defense.

Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

SEC. 4. *Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.* [Superseded by Ex. Ord. No. 13425, set out as a note under section 948b of this title.]

SEC. 5. *Obligation of Other Agencies to Assist the Secretary of Defense.*

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

SEC. 6. *Additional Authorities of the Secretary of Defense.*

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

SEC. 7. *Relationship to Other Law and Forums.*

(a) Nothing in this order shall be construed to—

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order—

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term "State" includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

SEC. 8. *Publication.*

This order shall be published in the Federal Register.

GEORGE W. BUSH.

[For supersedure of provisions of Military Order of President of the United States, dated Nov. 13, 2001, set out above, related to trial by military commission, see Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, set out as a note under section 948b of this title.]

EX. ORD. NO. 13492. REVIEW AND DISPOSITION OF INDIVIDUALS DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF DETENTION FACILITIES

Ex. Ord. No. 13492, Jan. 22, 2009, 74 F.R. 4897, as amended by Ex. Ord. No. 13823, §2(a), Jan. 30, 2018, 83 F.R. 4831, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantanamo Bay Naval Base (Guantanamo) and promptly to close detention facilities at Guantanamo, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Definitions.* As used in this order:

(a) "Common Article 3" means Article 3 of each of the Geneva Conventions.

(b) "Geneva Conventions" means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(c) "Individuals currently detained at Guantanamo" and "individuals covered by this order" mean individuals currently detained by the Department of Defense in facilities at the Guantanamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

SEC. 2. *Findings.*

(a) Over the past 7 years, approximately 800 individuals whom the Department of Defense has ever determined to be, or treated as, enemy combatants have been detained at Guantanamo. The Federal Government has moved more than 500 such detainees from Guantanamo, either by returning them to their home country or by releasing or transferring them to a third country. The Department of Defense has determined that a number of the individuals currently detained at Guantanamo are eligible for such transfer or release.

(b) Some individuals currently detained at Guantanamo have been there for more than 6 years, and most have been detained for at least 4 years. In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantanamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice. Merely closing the facilities without promptly determining the appropriate disposition of the individuals detained would not adequately serve those interests. To the extent practicable, the prompt and appropriate disposition of the individuals detained at Guantanamo should precede the closure of the detention facilities at Guantanamo.

(c) The individuals currently detained at Guantanamo have the constitutional privilege of the writ of habeas corpus. Most of those individuals have filed petitions for a writ of habeas corpus in Federal court challenging the lawfulness of their detention.

(d) It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantanamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantanamo require a comprehensive interagency review.

(e) New diplomatic efforts may result in an appropriate disposition of a substantial number of individuals currently detained at Guantanamo.

(f) Some individuals currently detained at Guantanamo may have committed offenses for which they should be prosecuted. It is in the interests of the United States to review whether and how any such individuals can and should be prosecuted.

(g) It is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances of the individuals currently detained at Guantanamo who have been charged with offenses before military commissions pursuant to the Military Commissions Act of 2006, Public Law 109-366, as well as of the military commission process more generally.

SEC. 3. [Revoked by Ex. Ord. No. 13823, §2(a), Jan. 30, 2018, 83 F.R. 4831, set out below.]

SEC. 4. *Immediate Review of All Guantanamo Detentions.*

(a) *Scope and Timing of Review.* A review of the status of each individual currently detained at Guantanamo (Review) shall commence immediately.

(b) *Review Participants.* The Review shall be conducted with the full cooperation and participation of the following officials:

(1) the Attorney General, who shall coordinate the Review;

(2) the Secretary of Defense;

(3) the Secretary of State;

(4) the Secretary of Homeland Security;

(5) the Director of National Intelligence;

(6) the Chairman of the Joint Chiefs of Staff; and

(7) other officers or full-time or permanent part-time employees of the United States, including employees with intelligence, counterterrorism, military, and legal expertise, as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.

(c) *Operation of Review.* The duties of the Review participants shall include the following:

(1) *Consolidation of Detainee Information.* The Attorney General shall, to the extent reasonably practicable, and in coordination with the other Review participants, assemble all information in the possession of the Federal Government that pertains to any individual currently detained at Guantanamo and that is relevant to determining the proper disposition of any such individual. All executive branch departments and agencies shall promptly comply with any request of the Attorney General to provide information in their possession or control pertaining to any such individual. The Attorney General may seek further information relevant to the Review from any source.

(2) *Determination of Transfer.* The Review shall determine, on a rolling basis and as promptly as possible with respect to the individuals currently detained at Guantanamo, whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release. The Secretary of Defense, the Secretary of State, and, as appropriate, other Review participants shall work to effect promptly the release or transfer of all individuals for whom release or transfer is possible.

(3) *Determination of Prosecution.* In accordance with United States law, the cases of individuals detained at Guantanamo not approved for release or transfer shall be evaluated to determine whether the Federal Government should seek to prosecute the detained individuals for any offenses they may have committed, including whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and the Review participants shall in turn take the necessary and appropriate steps based on such determinations.

(4) *Determination of Other Disposition.* With respect to any individuals currently detained at Guantanamo whose disposition is not achieved under paragraphs (2) or (3) of this subsection, the Review shall select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals. The appropriate authorities shall promptly implement such dispositions.

(5) *Consideration of Issues Relating to Transfer to the United States.* The Review shall identify and consider

legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantanamo to facilities within the United States, and the Review participants shall work with the Congress on any legislation that may be appropriate.

SEC. 5. *Diplomatic Efforts.* The Secretary of State shall expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement this order.

SEC. 6. *Humane Standards of Confinement.* No individual currently detained at Guantanamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions. The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantanamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.

SEC. 7. *Military Commissions.* The Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted.

SEC. 8. *General Provisions.*

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

EX. ORD. NO. 13567. PERIODIC REVIEW OF INDIVIDUALS DETAINED AT GUANTÁNAMO BAY NAVAL STATION PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE

Ex. Ord. No. 13567, Mar. 7, 2011, 76 F.R. 13277, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force of September 2001 (AUMF), Public Law 107-40, and in order to ensure that military detention of individuals now held at the U.S. Naval Station, Guantánamo Bay, Cuba (Guantánamo), who were subject to the interagency review under section 4 of Executive Order 13492 of January 22, 2009, continues to be carefully evaluated and justified, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Scope and Purpose.* (a) The periodic review described in section 3 of this order applies only to those detainees held at Guantánamo on the date of this order, whom the interagency review established by Executive Order 13492 has (i) designated for continued law of war detention; or (ii) referred for prosecution, except for those detainees against whom charges are pending or a judgment of conviction has been entered.

(b) This order is intended solely to establish, as a discretionary matter, a process to review on a periodic basis the executive branch's continued, discretionary exercise of existing detention authority in individual cases. It does not create any additional or separate source of detention authority, and it does not affect the scope of detention authority under existing law. De-

tainees at Guantánamo have the constitutional privilege of the writ of habeas corpus, and nothing in this order is intended to affect the jurisdiction of Federal courts to determine the legality of their detention.

(c) In the event detainees covered by this order are transferred from Guantánamo to another U.S. detention facility where they remain in law of war detention, this order shall continue to apply to them.

SEC. 2. Standard for Continued Detention. Continued law of war detention is warranted for a detainee subject to the periodic review in section 3 of this order if it is necessary to protect against a significant threat to the security of the United States.

SEC. 3. Periodic Review. The Secretary of Defense shall coordinate a process of periodic review of continued law of war detention for each detainee described in section 1(a) of this order. In consultation with the Attorney General, the Secretary of Defense shall issue implementing guidelines governing the process, consistent with the following requirements:

(a) *Initial Review.* For each detainee, an initial review shall commence as soon as possible but no later than 1 year from the date of this order. The initial review will consist of a hearing before a Periodic Review Board (PRB). The review and hearing shall follow a process that includes the following requirements:

(1) Each detainee shall be provided, in writing and in a language the detainee understands, with advance notice of the PRB review and an unclassified summary of the factors and information the PRB will consider in evaluating whether the detainee meets the standard set forth in section 2 of this order. The written summary shall be sufficiently comprehensive to provide adequate notice to the detainee of the reasons for continued detention.

(2) The detainee shall be assisted in proceedings before the PRB by a Government-provided personal representative (representative) who possesses the security clearances necessary for access to the information described in subsection (a)(4) of this section. The representative shall advocate on behalf of the detainee before the PRB and shall be responsible for challenging the Government's information and introducing information on behalf of the detainee. In addition to the representative, the detainee may be assisted in proceedings before the PRB by private counsel, at no expense to the Government.

(3) The detainee shall be permitted to (i) present to the PRB a written or oral statement; (ii) introduce relevant information, including written declarations; (iii) answer any questions posed by the PRB; and (iv) call witnesses who are reasonably available and willing to provide information that is relevant and material to the standard set forth in section 2 of this order.

(4) The Secretary of Defense, in coordination with other relevant Government agencies, shall compile and provide to the PRB all information in the detainee disposition recommendations produced by the Task Force established under Executive Order 13492 that is relevant to the determination whether the standard in section 2 of this order has been met and on which the Government seeks to rely for that determination. In addition, the Secretary of Defense, in coordination with other relevant Government agencies, shall compile any additional information relevant to that determination, and on which the Government seeks to rely for that determination, that has become available since the conclusion of the Executive Order 13492 review. All mitigating information relevant to that determination must be provided to the PRB.

(5) The information provided in subsection (a)(4) of this section shall be provided to the detainee's representative. In exceptional circumstances where it is necessary to protect national security, including intelligence sources and methods, the PRB may determine that the representative must receive a sufficient substitute or summary, rather than the underlying information. If the detainee is represented by private counsel, the information provided in subsection (a)(4) of this section shall be provided to such counsel unless the

Government determines that the need to protect national security, including intelligence sources and methods, or law enforcement or privilege concerns, requires the Government to provide counsel with a sufficient substitute or summary of the information. A sufficient substitute or summary must provide a meaningful opportunity to assist the detainee during the review process.

(6) The PRB shall conduct a hearing to consider the information described in subsection (a)(4) of this section, and other relevant information provided by the detainee or the detainee's representative or counsel, to determine whether the standard in section 2 of this order is met. The PRB shall consider the reliability of any information provided to it in making its determination.

(7) The PRB shall make a prompt determination, by consensus and in writing, as to whether the detainee's continued detention is warranted under the standard in section 2 of this order. If the PRB determines that the standard is not met, the PRB shall also recommend any conditions that relate to the detainee's transfer. The PRB shall provide a written summary of any final determination in unclassified form to the detainee, in a language the detainee understands, within 30 days of the determination when practicable.

(8) The Secretary of Defense shall establish a secretariat to administer the PRB review and hearing process. The Director of National Intelligence shall assist in preparing the unclassified notice and the substitutes or summaries described above. Other executive departments and agencies shall assist in the process of providing the PRB with information required for the review processes detailed in this order.

(b) *Subsequent Full Review.* The continued detention of each detainee shall be subject to subsequent full reviews and hearings by the PRB on a triennial basis. Each subsequent review shall employ the procedures set forth in section 3(a) of this order.

(c) *File Reviews.* The continued detention of each detainee shall also be subject to a file review every 6 months in the intervening years between full reviews. This file review will be conducted by the PRB and shall consist of a review of any relevant new information related to the detainee compiled by the Secretary of Defense, in coordination with other relevant agencies, since the last review and, as appropriate, information considered during any prior PRB review. The detainee shall be permitted to make a written submission in connection with each file review. If, during the file review, a significant question is raised as to whether the detainee's continued detention is warranted under the standard in section 2 of this order, the PRB will promptly convene a full review pursuant to the standards in section 3(a) of this order.

(d) *Review of PRB Determinations.* The Review Committee (Committee), as defined in section 9(d) of this order, shall conduct a review if (i) a member of the Committee seeks review of a PRB determination within 30 days of that determination; or (ii) consensus within the PRB cannot be reached.

SEC. 4. Effect of Determination to Transfer. (a) If a final determination is made that a detainee does not meet the standard in section 2 of this order, the Secretaries of State and Defense shall be responsible for ensuring that vigorous efforts are undertaken to identify a suitable transfer location for any such detainee, outside of the United States, consistent with the national security and foreign policy interests of the United States and the commitment set forth in section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105-277).

(b) The Secretary of State, in consultation with the Secretary of Defense, shall be responsible for obtaining appropriate security and humane treatment assurances regarding any detainee to be transferred to another country, and for determining, after consultation with members of the Committee, that it is appropriate to proceed with the transfer.

(c) The Secretary of State shall evaluate humane treatment assurances in all cases, consistent with the

recommendations of the Special Task Force on Interrogation and Transfer Policies established by Executive Order 13491 of January 22, 2009.

SEC. 5. *Annual Committee Review.* (a) The Committee shall conduct an annual review of sufficiency and efficacy of transfer efforts, including:

(1) the status of transfer efforts for any detainee who has been subject to the periodic review under section 3 of this order, whose continued detention has been determined not to be warranted, and who has not been transferred more than 6 months after the date of such determination;

(2) the status of transfer efforts for any detainee whose petition for a writ of habeas corpus has been granted by a U.S. Federal court with no pending appeal and who has not been transferred;

(3) the status of transfer efforts for any detainee who has been designated for transfer or conditional detention by the Executive Order 13492 review and who has not been transferred; and

(4) the security and other conditions in the countries to which detainees might be transferred, including a review of any suspension of transfers to a particular country, in order to determine whether further steps to facilitate transfers are appropriate or to provide a recommendation to the President regarding whether continuation of any such suspension is warranted.

(b) After completion of the initial reviews under section 3(a) of this order, and at least once every 4 years thereafter, the Committee shall review whether a continued law of war detention policy remains consistent with the interests of the United States, including national security interests.

SEC. 6. *Continuing Obligation of the Departments of Justice and Defense to Assess Feasibility of Prosecution.* As to each detainee whom the interagency review established by Executive Order 13492 has designated for continued law of war detention, the Attorney General and the Secretary of Defense shall continue to assess whether prosecution of the detainee is feasible and in the national security interests of the United States, and shall refer detainees for prosecution, as appropriate.

SEC. 7. *Obligation of Other Departments and Agencies to Assist the Secretary of Defense.* All departments, agencies, entities, and officers of the United States, to the maximum extent permitted by law, shall provide the Secretary of Defense such assistance as may be requested to implement this order.

SEC. 8. *Legality of Detention.* The process established under this order does not address the legality of any detainee's law of war detention. If, at any time during the periodic review process established in this order, material information calls into question the legality of detention, the matter will be referred immediately to the Secretary of Defense and the Attorney General for appropriate action.

SEC. 9. *Definitions.* (a) "Law of War Detention" means: detention authorized by the Congress under the AUMF, as informed by the laws of war.

(b) "Periodic Review Board" means: a board composed of senior officials tasked with fulfilling the functions described in section 3 of this order, one appointed by each of the following departments and offices: the Departments of State, Defense, Justice, and Homeland Security, as well as the Offices of the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff.

(c) "Conditional Detention" means: the status of those detainees designated by the Executive Order 13492 review as eligible for transfer if one of the following conditions is satisfied: (1) the security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available.

(d) "Review Committee" means: a committee composed of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

SEC. 10. *General Provisions.* (a) Nothing in this order shall prejudice the authority of the Secretary of De-

fense or any other official to determine the disposition of any detainee not covered by this order.

(b) This order shall be implemented subject to the availability of necessary appropriations and consistent with applicable law including: the Convention Against Torture; Common Article 3 of the Geneva Conventions; the Detainee Treatment Act of 2005; and other laws relating to the transfer, treatment, and interrogation of individuals detained in an armed conflict.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Nothing in this order, and no determination made under this order, shall be construed as grounds for release of detainees covered by this order into the United States.

BARACK OBAMA.

EX. ORD. NO. 13823. PROTECTING AMERICA THROUGH LAWFUL DETENTION OF TERRORISTS

Ex. Ord. No. 13823, Jan. 30, 2018, 83 F.R. 4831, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Findings.* (a) Consistent with long-standing law of war principles and applicable law, the United States may detain certain persons captured in connection with an armed conflict for the duration of the conflict.

(b) Following the terrorist attacks of September 11, 2001, the 2001 Authorization for Use of Military Force (AUMF) and other authorities authorized the United States to detain certain persons who were a part of or substantially supported al-Qa'ida, the Taliban, or associated forces engaged in hostilities against the United States or its coalition partners. Today, the United States remains engaged in an armed conflict with al-Qa'ida, the Taliban, and associated forces, including with the Islamic State of Iraq and Syria.

(c) The detention operations at the U.S. Naval Station Guantánamo Bay are legal, safe, humane, and conducted consistent with United States and international law.

(d) Those operations are continuing given that a number of the remaining individuals at the detention facility are being prosecuted in military commissions, while others must be detained to protect against continuing, significant threats to the security of the United States, as determined by periodic reviews.

(e) Given that some of the current detainee population represent the most difficult and dangerous cases from among those historically detained at the facility, there is significant reason for concern regarding their reengagement in hostilities should they have the opportunity.

SEC. 2. *Status of Detention Facilities at U.S. Naval Station Guantánamo Bay.* (a) Section 3 of Executive Order 13492 of January 22, 2009 (Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities) [formerly set out above], ordering the closure of detention facilities at U.S. Naval Station Guantánamo Bay, is hereby revoked.

(b) Detention operations at U.S. Naval Station Guantánamo Bay shall continue to be conducted consistent with all applicable United States and international law, including the Detainee Treatment Act of 2005 [see Short Title note set out under section 2000dd of Title 42, The Public Health and Welfare].

(c) In addition, the United States may transport additional detainees to U.S. Naval Station Guantánamo Bay when lawful and necessary to protect the Nation.

(d) Within 90 days of the date of this order, the Secretary of Defense shall, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of any other appropriate execu-

tive departments and agencies as determined by the Secretary of Defense, recommend policies to the President regarding the disposition of individuals captured in connection with an armed conflict, including policies governing transfer of individuals to U.S. Naval Station Guantánamo Bay.

(e) Unless charged in or subject to a judgment of conviction by a military commission, any detainees transferred to U.S. Naval Station Guantánamo Bay after the date of this order shall be subject to the procedures for periodic review established in Executive Order 13567 of March 7, 2011 (Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force) [set out above], to determine whether continued law of war detention is necessary to protect against a significant threat to the security of the United States.

SEC. 3. *Rules of Construction.* (a) Nothing in this order shall prevent the Secretary of Defense from transferring any individual away from the U.S. Naval Station Guantánamo Bay when appropriate, including to effectuate an order affecting the disposition of that individual issued by a court or competent tribunal of the United States having lawful jurisdiction.

(b) Nothing in this order shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful permanent residents of the United States, or any persons who are captured or arrested in the United States.

(c) Nothing in this order shall prevent the Attorney General from, as appropriate, investigating, detaining, and prosecuting a terrorist subject to the criminal laws and jurisdiction of the United States.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 13825. 2018 AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

Ex. Ord. No. 13825, Mar. 1, 2018, 83 F.R. 9889, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice (UCMJ), 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

SECTION 1. Part II, Part III, and Part IV of the Manual for Courts-Martial, United States, are amended as described in Annex 1, which is attached to and made a part of this order [not set out in the Code].

SEC. 2. The amendments in Annex 1 shall take effect on the date of this order, subject to the following:

(a) Nothing in Annex 1 shall be construed to make punishable any act done or omitted prior to the date of this order that was not punishable when done or omitted.

(b) Nothing in Annex 1 shall be construed to invalidate the prosecution of any offense committed before the date of this order. The maximum punishment for an offense committed before the date of this order shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(c) Nothing in Annex 1 shall be construed to invalidate any nonjudicial punishment proceeding, restraint,

investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action shall proceed in the same manner and with the same effect as if the amendments in Annex 1 had not been prescribed.

SEC. 3. (a) Pursuant to section 5542 of the Military Justice Act of 2016 (MJA) [Pub. L. 114–328, set out as an Effective Date of 2016 Amendment note above], division E of the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, 130 Stat. 2000, 2967 (2016), except as otherwise provided by the MJA or this order, the MJA shall take effect on January 1, 2019.

(b) Nothing in the MJA shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(c) Nothing in title LX of the MJA shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishment for an offense committed before January 1, 2019, shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(d) Nothing in the MJA shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 1, 2019. Except as otherwise provided in this order, the MJA shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if the MJA had not been enacted.

SEC. 4. The Manual for Courts-Martial, United States, as amended by section 1 of this order, is amended as described in Annex 2, which is attached to and made a part of this order [not set out in the Code].

SEC. 5. The amendments in Annex 2, including Appendix 12A, shall take effect on January 1, 2019, subject to the following:

(a) Nothing in Annex 2 shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(b) Nothing in section 4 of Annex 2 shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishment for an offense committed before January 1, 2019, shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(c) Nothing in Annex 2 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 1, 2019. Except as otherwise provided in this order, the amendments in Annex 2 shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been prescribed.

SEC. 6. (a) The amendments to Articles 2, 56(d), 58a, and 63 of the UCMJ [10 U.S.C. 802, 856(d), 858a, 863] enacted by sections 5102, 5301, 5303, and 5327 of the MJA apply only to cases in which all specifications of offenses committed on or after January 1, 2019.

(b) If the accused is found guilty of a specification alleging the commission of one or more offenses before January 1, 2019, Article 60 of the UCMJ [10 U.S.C. 860], as in effect on the date of the earliest offense of which the accused was found guilty, shall apply to the convening authority, in addition to the suspending authority in Article 60a(c) [10 U.S.C. 860a(c)] as enacted by the MJA, to the extent that Article 60:

(1) requires action by the convening authority on the sentence;

(2) permits action by the convening authority on findings;

(3) authorizes the convening authority to modify the findings and sentence of a court-martial, dismiss any charge or specification by setting aside a finding of guilty thereto, or change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification;

(4) authorizes the convening authority to order a proceeding in revision or a rehearing; or

(5) authorizes the convening authority to approve, disapprove, commute, or suspend a sentence in whole or in part.

SEC. 7. The amendment to Article 15 of the UCMJ [10 U.S.C. 815] enacted by section 5141 of the MJA shall apply to any nonjudicial punishment imposed on or after January 1, 2019.

SEC. 8. The amendments to Articles 32 and 34 of the UCMJ [10 U.S.C. 832, 834] enacted by sections 5203 and 5205 of the MJA apply with respect to preliminary hearings conducted and advice given on or after January 1, 2019.

SEC. 9. The amendments to Article 79 of the UCMJ [10 U.S.C. 879] enacted by section 5402 of the MJA and the amendments to Appendix 12A to the Manual for Courts-Martial, United States, made by this order apply only to offenses committed on or after January 1, 2019.

SEC. 10. Except as provided by Rule for Courts-Martial 902A, as promulgated by Annex 2, any change to sentencing procedures:

(a) made by Articles 16(c)(2), 19(b), 25(d)(2) and (3), 39(a)(4), 53, 53a, or 56(c) of the UCMJ [10 U.S.C. 816(c)(2), 819(b), 825(d)(2) and (3), 839(a)(4), 853, 853a, 856(c)], as enacted by sections 5161, 5163, 5182, 5222, 5236, 5237, and 5301 of the MJA; or

(b) included in Annex 2 in rules implementing those articles, applies only to cases in which all specifications allege offenses committed on or after January 1, 2019.

SEC. 11. The amendments to Article 146 of the UCMJ [10 U.S.C. 946] enacted by section 5521 of the MJA and the new Article 146a [10 U.S.C. 946a] enacted by section 5522 of the MJA shall take effect on the day after the report for fiscal year 2017 required by Article 146(c) of the UCMJ (as in effect before the MJA's amendments) is submitted in accordance with Article 146(c)(1), but in no event later than December 1, 2018.

SEC. 12. In accordance with Article 33 of the UCMJ [10 U.S.C. 833], as amended by section 5204 of the MJA, the Secretary of Defense, in consultation with the Secretary of Homeland Security, will issue nonbinding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to the disposition of charges and specifications in the interest of justice and discipline under Articles 30 and 34 of the UCMJ [10 U.S.C. 830, 834]. That guidance will take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Federal Government with respect to the disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

DONALD J. TRUMP.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;