

Executive Order—Detention and Interrogation of Enemy Combatants

EXPLANATORY STATEMENT

Detention and Interrogation of Enemy Combatants

Our Nation remains engaged in a global armed conflict with ISIS, al Qaeda, the Taliban, and other associated international ~~jihadi~~ Islamist terrorist groups. This conflict is not of our choosing, but was declared against us by the ~~jihadi~~ terrorist organizations groups that have plotted and carried out mass attacks against the United States, its citizens, and its allies beginning well before the atrocities of September 11, 2011, and continuing to this day. ~~Our~~ In this global war on terrorism, experience confirms that the effective defense of our ~~Nation~~ homeland and our national interests depends upon the ability of the United States, acting in accordance with our Constitution, our laws, and our international commitments, to obtain critical intelligence information about developing threats. Experience has also shown that obtaining critical intelligence information is vital to taking determined offensive action, including military action, against those groups that make war on us and that are actively plotting further attacks.

While there has been continuity in many of the military and intelligence policies of the United States in the ~~global war on terrorism~~, fight against radical Islamism, the United States has refrained from exercising certain authorities critical to its defense. On January 22, 2009, President Obama ordered a halt to all classified intelligence interrogations by the Central Intelligence Agency, including the use of interrogation policies authorized by Congress. President Obama also ordered an end to the detention of alien enemy combatants at Guantanamo Bay Naval Base (Guantanamo). There also occurred an extended interruption in the military commission process for the trial of alien enemy combatants who committed heinous acts. Furthermore, the Nation's most sensitive classified interrogation methods were exposed to the enemy through public disclosures, and the Attorney General reopened criminal probes into the actions of intelligence officers, which had a predictably negative impact on the morale of our intelligence community.

Congress recently imposed further restrictions on the ability of the Central Intelligence Agency to maintain an effective and lawful interrogation program. The National Defense Authorization Act for the Fiscal Year 2016 (NDAA) codifies some of the restrictions in President Obama's Executive Order by prohibiting anyone in "the custody or under the effective control of an officer, employee or other agent of the United States Government" or anyone "detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict" from being interrogated using any interrogation technique that is not contained in the Army Field Manual 2-22.3. The NDAA further provides that the Army Field Manual shall not include techniques using "force," and that it shall be public, and thereby, requires that the United States publicly identify the interrogation techniques it might employ against terrorists in the custody of the U.S. military or intelligence officials. The NDAA thus provides a significant statutory barrier to the resumption of the CIA interrogation program.

EXECUTIVE ORDER

DETENTION AND INTERROGATION OF ENEMY COMBATANTS

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. *Revocation of Executive Orders.* Executive Orders 13491 and 13492 of January 22, 2009, are revoked, and Executive Order 13440 is reinstated to the extent permitted by law.

Sec. 2. *Findings.* (a) After the terrorist attacks on September 11, 2001, the United States determined that it would detain at the U.S. Naval Station, Guantánamo Bay, aliens who were part of or supporting al Qaeda, the Taliban, and associated forces, and who had engaged in hostilities against the United States, its citizens, its allies, or its coalition partners.

(b) The detention facilities at United States Naval Station, Guantánamo Bay, are legal, safe, and humane, and are consistent with international conventions regarding the laws of war.

(c) Over 30 percent of detainees released from Guantánamo have returned to armed conflict, according to unclassified reporting. This group of detainees includes at least 12 individuals released from Guantánamo who have conducted attacks against U.S. personnel or allied forces in Afghanistan, killing six Americans, including a civilian aid worker.

(d) It is in the interests of the United States that the executive branch ensures the continuation of the detainee facilities at Guantánamo Bay as a critical tool in the fight against international jihadist terrorist radical Islamist groups who are engaged in armed conflict with the United States, its allies, and its coalition partners and who threaten the national security of the United States.

Sec. 3. *Continuing State of Armed Conflict with International Terrorist Groups.* The United States remains engaged in a global armed conflict with al Qaeda, the Taliban, and associated forces, including with members of the Islamic State in Iraq and Syria, and with those who fight on behalf of or provide substantial support to or harbor such groups in furtherance of hostilities against the United States, its citizens, or its coalition partners.

Sec. 4. *Military Detention of Alien Enemy Combatants at Guantánamo Bay Naval Base.*

(a) Subject to further direction from the President and consistent with the requirements of law, the Secretary of Defense shall maintain and continue to use the detention and trial facilities at Guantánamo Bay Naval Base for the detention and trial by military commission of alien enemy combatants captured in the armed conflict described in section 3 of this order, including for the detention and trial of newly captured alien enemy combatants, as appropriate.

(b) The Secretary of Defense shall suspend any existing transfer efforts pending a new review as to whether any such transfers are in the national security interests of the United States.

(c) Nothing in this order shall supersede the authority of the Secretary of Defense to detain enemy combatants in other facilities available to the United States for the lawful custody of military detainees.

Sec. 5. *Review of Military Interrogation Policies.* The Secretary of Defense, in consultation with the Attorney General and other senior national security officers as appropriate, shall review the interrogation policies set forth in the Army Field Manual 2-22.3 of September 6, 2006, and shall make such modifications in and additions to those policies, as consistent with the law, for the safe, lawful, and effective interrogation of enemy combatants captured in the global war on terrorism fight against radical Islamism.

Sec. 6. *Policy Review Concerning Enemy Combatants Captured By Law Enforcement Agencies of the United States.* The Attorney General, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, shall review the policies and procedures set forth in Presidential Policy Directive 14 of February 28, 2012 ("PPD-14"), and shall recommend to the President any modifications to PPD-14 that he determines are necessary, lawful, and appropriate. Such review and recommendations shall be completed within 120 days from the date of this order.

Sec. 7. *Policy Review and Recommendations Concerning a Program of Interrogation Operated by the Central Intelligence Agency.* The Director of National Intelligence, in consultation with the Attorney General, the Director of the Central Intelligence Agency, and other senior national security officers as appropriate, shall review the current intelligence needs of the United States in the global war on terrorism fight against radical Islamism and shall:

(a) recommend to the President whether to reinstate a program of interrogation of high-value alien terrorists to be operated outside the United States and whether such program should include the use of detention facilities operated by the Central Intelligence Agency (CIA);

(b) recommend to the President any updates or modifications to Executive Order 13440 of July 20, 2007, that the Director deems necessary or appropriate;

(c) recommend any legislative proposals that would be necessary to protect our national security and to permit the resumption of an effective and lawful interrogation program.

Sec. 8. *Policy ~~Review~~ and ~~Recommendations~~ Concerning ~~on resuming the~~ Military ~~e~~Commissions ~~process~~.* The Secretary of ~~d~~Defense, in consultation with the ~~a~~Attorney ~~g~~General, ~~and the~~ ~~d~~Director of ~~n~~National ~~i~~ntelligence, and other senior national security officers as appropriate, shall review the whether to resume use of the military commissions system and recommend to the President how best to employ the system going forward to provide for the swift and just trial and punishment of illegal-unlawful enemy combatants detained in the armed conflict with violent Islamic extremists.

Sec. 98. Standards of Treatment for Enemy Combatants. (a) No person in the custody of the United States shall at any time be subjected to torture or cruel, inhuman, or degrading treatment or punishment, as proscribed by U.S. law.

(b) The detention, treatment, interrogation, and transfer of enemy combatants in the global war on fight against radical Islamism terrorism by officers, employees, and other agents of the United States shall comply with all laws of the United States.

Sec. 109. 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, 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.