

Executive Order (Options)—Detention and Interrogation of Enemy Combatants [First 100 Days]

EXPLANATORY STATEMENT

Detention and Interrogation of Enemy Combatants

Our Nation remains engaged in a global armed conflict with al Qaeda, the Taliban, and other associated international jihadist terrorist groups. This conflict is not of our choosing, but was declared against us by the jihadist groups that have plotted and carried out mass attacks against the United States, its citizens, and its allies beginning well before the atrocities of 9/11 and continuing to this day. In this global war on terrorism, experience confirms that the effective defense of our Nation 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 and to take 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, the United States has refrained from exercising certain core authorities critical to our defense. On January 22, 2009, the President ordered a halt to all classified intelligence interrogations by the CIA, including the use of interrogation policies indisputably authorized by Congress, and the President ordered an end to the detention of alien enemy combatants at Guantanamo Bay Naval Base (“GTMO”). There also occurred an extended interruption in the military commission process for the trial of alien enemy combatants who committed heinous war crimes. 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.

The accompanying proposals set out a range of four options for potential executive orders—ranging from the narrowest (Option 1) to the most comprehensive (Option 2)—designed to reverse ill-considered policy decisions, to ensure the continued maintenance and use of the facilities at GTMO for the effective detention and trial by military commission of the most dangerous alien enemy combatants, and, if determined appropriate, to initiate immediately an interagency process for the development of effective and lawful detention and interrogation practices that implement the full statutory authorities provided by Congress. Because torture and cruel, inhuman, or degrading treatment or punishment are wrong and not in keeping with American values, no policy or practice developed for use by the United States shall involve such treatment, and all policies and practices shall fully comply with the requirements and limitations of the Constitution and laws of the United States, as well as applicable international humanitarian obligations.

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EXECUTIVE ORDER (OPTIONS)

Detention and Interrogation of Enemy Combatants

OPTION 1 (Narrowest):

Simply revoke Executive Order 13491 of January 22, 2009, which ordered a halt to the CIA program of detention and interrogation and restricted all interrogation to the Army Field Manual, unless otherwise authorized by the President; and Executive Order 13492 of January 22, 2009, which ordered the closing of the GTMO detention and trial facility and required expedited dispositions for the remaining detainees held at GTMO. These two executive orders could be revoked as part of a general order revoking many of the executive orders issued since January 20, 2009.

Note: Revoking EO 13491 will automatically reinstate Executive Order 13440 of July 20, 2007, which established standards for a CIA program of detention and interrogation to comply with Common Article 3 of the Geneva Conventions. However, revoking EO 13491 will not restart the CIA program or resolve questions about authorized interrogation practices beyond the Army Field Manual. Under this option, those matters would still need to be addressed, if and as appropriate, through additional directives to subordinate officers, which need not be done by executive order.

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OPTION 2 (Most Comprehensive):

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.

Sec. 2. 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 other associated international jihadist terrorist groups and with those who fight on behalf of or provide substantial support or haven to such groups in furtherance of hostilities against the United States, its citizens, its allies, or its coalition partners.

Sec. 3. Military Detention and Trial of Alien Enemy Combatants at Guantanamo Bay Naval Base. Subject to further direction from the President and consistent with the requirements of law, the Secretary of Defense shall maintain and continue to utilize the detention and trial facilities at Guantanamo Bay Naval Base for the detention and trial by military commission of alien enemy combatants captured in the global war on terrorism described in section 2, including for the detention and trial of newly captured alien enemy combatants, as appropriate. 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. 4. 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 he deems appropriate for the safe, lawful, and effective interrogation of enemy combatants captured in the global war on terrorism, including through the approval of a classified annex to the Army Field Manual.

Sec. 5. Policy Review Concerning Enemy Combatants Captured By Law Enforcement Agencies of the United States. The Attorney General, in consultation with the Secretary of Homeland Security, the Secretary of Defense, 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 or appropriate. Such review and recommendations shall be completed expeditiously.

Sec. 6. 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 and other senior national security officers as appropriate, shall review the current intelligence needs of the United States in the global war on terrorism 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 by the Central Intelligence Agency (“CIA”) and whether such program should include the use of special detention facilities operated by the CIA;
- (b) recommend to the President any updates or modifications to Executive Order 13440 of July 20, 2007, that he deems necessary or appropriate; and
- (c) develop for potential use by the CIA in such program a set of classified interrogation policies and practices that are safe, effective, and consistent with all legal requirements set forth in section 7 of this order and in Executive Order 13440, as modified.

Sec. 7. 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 United States law.
- (b) The detention, treatment, interrogation, and transfer of enemy combatants in the global war on terrorism by officers, employees, and other agents of the United States shall comply with the Constitution and laws of the United States and with applicable international obligations.

Sec. 8. General Provisions.

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

(b) 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.

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OPTION 3 (Same as Option 2 but Without Reference to a CIA Program):

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.

Sec. 2. 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 other associated international jihadist terrorist groups and with those who fight on behalf of or provide substantial support or haven to such groups in furtherance of hostilities against the United States, its citizens, its allies, or its coalition partners.

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Sec. 5. Policy Review Concerning Enemy Combatants Captured By Law Enforcement Agencies of the United States. The Attorney General, in consultation with the Secretary of Homeland Security, the Secretary of Defense, 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 or appropriate. Such review and recommendations shall be completed expeditiously.

Sec. 6. General Provisions.

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

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OPTION 4 (Same as Option 3 but Without Review of Army Field Manual):

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.

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Sec. 5. General Provisions.

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

(b) 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.