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For Information  
Office of the  
Deputy Secretary of Defense

# President's Statement on Signing of H.R. 2863, the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006"

Today, I have signed into law H.R. 2863, the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006". This Act provides resources needed to fight the war on terror, help citizens of the Gulf States recover from devastating hurricanes, and protect Americans from a potential influenza pandemic.

Sections 8007, 8011, and 8093 of the Act prohibit the use of funds to initiate a special access program, a new overseas installation, or a new start program, unless the congressional defense committee is notified in advance. The Supreme Court of the United States has stated that the President's authority to classify and control access to information bearing on the national security flows from the Constitution and does not depend upon a legislative grant of authority. Although the advance notice contemplated by sections 8007, 8011, and 8093 can be provided in most situations as a matter of comity, it is not required, especially in wartime, in which the President must act promptly under his constitutional executive power and authority as Commander in Chief of the Armed Forces while protecting extraordinarily sensitive national security information. The executive branch shall construe these sections in a manner consistent with the constitutional authority of the President.

Section 8059 of the Act provides that, notwithstanding any other provision of law, no funds at the Department of Defense for fiscal year 2006 may be used to transfer defense articles or services, other than intelligence services, to another nation or an international organization for international peacekeeping, peace enforcement, or humanitarian assistance operations, until 15 days after the executive branch notifies six committees of the Congress of the planned transfer. To the extent that the protection of the U.S. Armed Forces deployed for international peacekeeping, peace enforcement, or humanitarian assistance operations might require action of a kind covered by section 8059, within 15 days after notification, the executive branch shall construe the section in a manner consistent with the President's constitutional authority as Commander in Chief.

A proviso in the Act's appropriation for "Operation and Maintenance, Defense-Wide" purports to require planning for consolidation of certain offices within the Department of Defense. Also, sections 8032, 8037(b), and 8100 purport to specify the content of portions of future budget requests to the Congress. The executive branch shall construe these provisions relating to planning and management of budget recommendations in a manner consistent with the President's constitutional authority to request and receive the opinions of the heads of departments, to supervise the unitary executive branch, and to recommend to the Congress for congressional consideration such measures as the President shall judge necessary and appropriate.

Section 8005 of the Act, relating to requests to congressional committees for reprogramming, shall be construed as calling solely for notification, as any other construction would be inconsistent with the constitutional principles enunciated by the Supreme Court of the United States in *INS v. Chadha*.

The executive branch shall construe section 8104, relating to integration of foreign intelligence information, in a manner consistent with the President's constitutional authority as Commander in Chief.

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including for the conduct of intelligence operations, and to supervise the unitary executive branch. The executive branch shall construe sections 8106 and 8119 of the Act, which purport to prohibit the President from altering command and control relationships within the Armed Forces, as advisory only. Any other construction would be inconsistent with the constitutional grant to the President of the authority as Commander in Chief.

The executive branch shall construe provisions of the Act relating to race, ethnicity, gender, and disability, such as sections 8014, 8020 and 8057, in a manner consistent with the requirement of equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch as Commander in Chief and consistent with the constitutional limitations on the judicial power to assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks. Further, in light of the principles announced by the Supreme Court of the United States in 2001 in *Alexander v. Sandoval*, and noting that the structure of Title X do not create a private right of action to enforce Title X, the executive branch shall construe Title X not to create a private right of action. Finally, given the decision of the Congress in subsections 1005(e) and 1005(h) that the amendments made to section 2241 of title 28, U.S.C., shall apply to past, present, and future actions, including applications for writs of habeas corpus described in that section, and noting that section 1005 does not confer any constitutional right on an alien detained abroad as an enemy combatant, the executive branch shall construe section 1005 to preclude the Federal courts from exercising subject matter jurisdiction over any existing or future actions, including applications for writs of habeas corpus, described in section 1005.

Language in Division B of the Act, under the heading "Office of Justice Programs, State and Foreign Affairs Enforcement Assistance," purports to require the Attorney General to consult with Congress prior to allocating appropriations for expenditure to execute the law. Because the President's constitutional authority to supervise the unitary executive branch and take care that the laws be faithfully executed cannot be made by law subject to a requirement to consult with Congress, the executive branch will not involve them in executive decision-making, the executive branch shall construe the provision as advisory only notification. At the same time, the Attorney General shall, as a matter of comity between the executive and legislative branches, seek and consider the views of appropriate committees in the Senate as the Attorney General deems appropriate.

Certain provisions in the Act purport to allocate funds for specified purposes as set forth in the explanatory statement of managers that accompanied the Act or other Acts; to make change of appropriations statements of managers that accompanied various appropriations bills reported from Congress; or to direct compliance with a committee report. Such provisions include section 8044 in Division A, and sections 5022, 5023, and 5024 and language under the heading "Natural Resources Conservation Service, Conservation Operations" in Division B, of the Act. Other provisions of the Act, such as sections 8073 and 8082 in Division A, purport to give binding effect to legislative documents not presented to the President. The executive branch shall construe all these provisions in a manner consistent with the bicameral passage and presentment requirements of the Constitution for the making of a law.

GEORGE W. BUSH

THE WHITE HOUSE,

December 30, 2005.

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