

President's Remarks at Homeland Security Bill Signing

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Office of the Press Secretary
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Today I have signed into law H.R. 5005, the "Homeland Security Act of 2002." The Act restructures and strengthens the executive branch of the Federal Government to better meet the threat to our homeland posed by terrorism. In establishing a new Department of Homeland Security, the Act for the first time creates a Federal department whose primary mission will be to help prevent, protect against, and respond to acts of terrorism on our soil.

Section 103(a)(8) of the Act provides for 12 Assistant Secretary positions without defined titles or duties in the new Department that are to be "appointed by the President, by and with the advice and consent of the Senate." Sections 201(b)(1) and 201(b)(2) of the Act provide for two Assistant Secretary positions with defined titles and duties that are to be "appointed by the President." The text and structure of the Act make clear that these two presidentially appointed Assistant Secretary positions were created in addition to the 12 unspecified Assistant Secretary positions, and the executive branch shall construe the relevant provisions accordingly.

With respect to section 201(h), upon the recommendations of the Secretary of Homeland Security, the Director of Central Intelligence, the Secretary of Defense, the Assistant to the President for National Security Affairs, and other appropriate executive branch officials, I will determine which elements of the Department of Homeland Security are concerned with the analysis of foreign intelligence information.

Section 214(a)(1)(D)(ii) provides that voluntarily shared critical infrastructure information shall not be used or disclosed by any Federal employee without the written consent of the person or entity submitting the information, except when disclosure of the information would be to the Congress or the Comptroller General. The executive branch does not construe this provision to impose any independent or affirmative requirement to share such information with the Congress or the Comptroller General and shall construe it in any event in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

Section 231 establishes an "Office of Science and Technology" within the National Institute of Justice, and under the general authority of the Assistant Attorney General for the Office of Justice Programs. According to subsection 231(b), "[t]he Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual." The executive branch will construe this provision in a manner consistent with the requirements of the Appointments Clause of Article II of the Constitution. Because the Director would exercise significant governmental authority and thus be an "officer" whose appointment must be made in conformity with the Appointments Clause, I hereby direct the Attorney General to appoint the Director.

Section 232(e) of the Act provides that the Director of the Office of Science and Technology within the Department of Justice shall have sole authority over decisions relating to publications issued by the Office. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch.

Section 306(a) of the Act provides that research conducted by the Department shall be unclassified "to the greatest extent practicable." In addition, section 425 adds section 44901(d)(3) to title 49 of the United States Code, requiring the submission of classified reports concerning the screening of checked baggage for explosives in the aviation system to certain committees of Congress. The executive branch shall construe and carry out these provisions, as well as other provisions of the Act, including those in title II of the Act, in a manner consistent with the President's constitutional and statutory authorities to control access to and protect classified information, intelligence sources and methods, sensitive law enforcement information, and information the disclosure of which could otherwise harm the foreign relations or national security of the United States.

Section 311(h) of the Act provides for the preparation and transmittal to the Congress of reports prepared by

the Homeland Security Science and Technology Advisory Committee. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Several sections of the Act, including section 414, 476, and 873(c), purport to require the submission of budget requests for the new Department to the Congress and to require such requests to be in a particular form. The executive branch shall construe this provision in a manner consistent with the constitutional authority of the President to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Section 452(c)(2) of the Act prohibits various officers of the Department or the Office of Management and Budget from reviewing reports and other material prepared by the Citizenship and Immigration Services Ombudsman. The executive branch shall construe this section in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.

Section 473(f) of the Act purports to require the Secretary of Homeland Security or the Attorney General to comply with requests from the General Accounting Office (GAO) for certain information in the course of GAO preparation of reports on demonstration projects relating to disciplinary action. The executive branch shall construe this provision in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

Provisions in the Act, including sections 418(b), 428(e)(7)(B), 460, 477(c)(2)(F), 882(c)(3), and 893(a) purport to require executive branch officials to submit to the Congress plans for internal executive branch activities or recommendations relating to legislation. The executive branch shall construe such provisions in a manner consistent with the President's constitutional authorities to supervise the unitary executive branch and to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Section 507 describes some of the functions of the Federal Emergency Management Agency, specifically referencing "the functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)." Because section 503(1) transfers all functions of the Federal Emergency Management Agency to the Department of Homeland Security, including those existing pursuant to laws other than the Stafford Act, the executive branch shall not construe the specification of the Stafford Act in section 507 as limiting in any way the transfer of the other authorities currently belonging to the Federal Emergency Management Agency.

Section 812(a) authorizes Inspectors General and their assistants and agents to make criminal arrests without warrants for any Federal felony if they have "reasonable grounds to believe" that the subject committed or is committing the offense. Because the Supreme Court has held that the standard of probable cause applies to all arrests, regardless of circumstances, the grounds for making an arrest under this standard are only "reasonable" if they include probable cause to believe that the subject has committed or is committing a crime. The Inspectors General, their assistants, and agents must accordingly have probable cause before making an arrest pursuant to this section. The authority to make criminal arrests and to exercise other law enforcement authorities conveyed by this section is to be exercised in accordance with guidelines promulgated by the Attorney General, as provided by section 6(e)(4) of the Inspector General Act of 1978, as added by section 812(a).

Section 873(b) describes conditions under which gifts or donations of services or property of the Department may be accepted, used, or disposed of by third parties. The executive branch shall construe this provision in a manner consistent with existing legal authorities being transferred to the Department of Homeland Security and shall not construe it to effect an implied repeal of any such authority.

Section 878 provides that the Secretary of Homeland Security shall appoint a senior official in the Department to assume primary responsibility for certain counternarcotics efforts and to serve as the United States Interdiction Coordinator for the Office of National Drug Control Policy. In making this appointment, the Secretary of Homeland Security will consult with and seek recommendations from the Director of the Office of National Drug Control Policy.

Section 879 establishes an Office of International Affairs with responsibilities to promote information and

education exchange with foreign nations with respect to best practices and technologies relating to homeland security. This Office will carry out these functions in close coordination with the Department of State and other relevant Government agencies.

Section 886 recites a series of findings and provides the sense of the Congress concerning aspects of section 1385 of title 18, United States Code, commonly known as the Posse Comitatus Act. This provision does not purport to alter, modify, or otherwise affect the Posse Comitatus Act or judicial interpretations of that Act, and the executive branch shall construe this provision accordingly.

Section 895 of the Act purports to amend Rule 6(e) of the Federal Rules of Criminal Procedure by expanding the permissible scope of grand jury information that may be shared by prosecutors. On April 29, 2002, however, the Supreme Court proposed a set of amendments to Rule 6 that, under section 2074 of title 28, are scheduled to take effect on December 1, 2002. There is no indication that the Congress' different amendments to Rule 6(e) were intended to reject the Supreme Court's pending proposal, and my Administration will construe the Act so that the Supreme Court's proposed amendments to Rule 6 will still go into effect, without alteration, on December 1, 2002. As a result of those intervening amendments, when section 895 becomes effective in 60 days, its directions for amendment will no longer correspond to the underlying text of Rule 6(e). In the next Congress, technical amendments will be necessary to add the changes in this section to those already accomplished by the Supreme Court pursuant to sections 2072 and 2074 of title 28.

Section 1313(a)(2) provides authority to the Administrative Office of the United States Courts to establish a program for providing voluntary separation incentive payments to "individuals serving in the judicial branch." Based upon an understanding of the intent of this provision, as well as appropriate respect for principles of judicial independence, the executive branch shall construe "individuals serving in the judicial branch" to exclude those individuals serving as members of the Federal judiciary.

Section 1331 adds an amended section 4107(b)(1)(A) to title 5, United States Code, which requires that, in exercising authority to assign and fund academic degree training for certain Federal employees, an agency "take into consideration the need to maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service." The executive branch shall construe this provision in a manner consistent with the Equal Protection component of the Due Process Clause of the Fifth Amendment to the Constitution.

GEORGE W. BUSH

THE WHITE HOUSE,

November 25, 2002.

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