

THE HOLIDAY FRIDAY DOCUMENT DUMP SIGNING STATEMENT

The Administration has, as expected, buried its signing statement for ~~the Defense Authorization~~ in a holiday Friday document dump.

Correction: As DDay corrects me, this is not yet the NDAA signing statement, which is still coming.

I'm actually fascinated by the way they've suggested that they consider some of the detainee provisions to violate separation of powers. They couch their objections in language explicitly referring to the restrictions on transferring Gitmo detainees. They then say there are other "similar" provisions to which they also object. But they don't name those provisions!

I have previously announced that it is the policy of my Administration, and **in the interests of promoting transparency** in Government, to indicate when a bill presented for Presidential signature includes provisions that are subject to well-founded constitutional objections. The Department of Justice has advised that a small number of provisions of H.R. 2055 raise constitutional concerns.

In this bill, the Congress has once again included provisions that would bar the use of appropriated funds for transfers of Guantanamo detainees into the United States (section 8119 of Division A), as well as transfers to the custody or effective control of foreign countries unless specified conditions are met (section 8120 of Division A). **These provisions are similar to others found in the National Defense Authorization Act for Fiscal Year 2012.** My Administration has repeatedly

communicated my objections to these provisions, including my view that they could, under certain circumstances, violate constitutional separation of powers principles. In approving this bill, **I reiterate the objections my Administration has raised regarding these provisions, my intent to interpret and apply them in a manner that avoids constitutional conflicts,** and the promise that my Administration will continue to work towards their repeal.
[my emphasis]

~~Now, in its veto threat capitulation, the Administration emphasized the uncertainty the bill (now law) presents for counterterrorism professionals.~~

While we remain concerned about the uncertainty that this law will create for our counterterrorism professionals, the most recent changes give the President additional discretion in determining how the law will be implemented, consistent with our values and the rule of law, which are at the heart of our country's strength.

[snip]

As a result of these changes, we have concluded that the language does not challenge or constrain the President's ability to collect intelligence, incapacitate dangerous terrorists, and protect the American people, and the President's senior advisors will not recommend a veto. However, if in the process of implementing this law we determine that it will negatively impact our counterterrorism professionals and undercut our commitment to the rule of law, we expect that the authors of these provisions will work quickly and tirelessly to correct these problems.

And frankly, I think the Administration is absolutely right to be concerned about the way these provisions—particularly, the presumptive military detention for some alleged terrorists—will screw up FBI’s efforts to investigate and capture terrorists.

But rather than explicitly focusing on this problem in the signing statement in the same way they did in the veto threat withdrawal, they simply invoke provisions similar to the Gitmo transfer restrictions, without naming them.

~~Not only is this a missed opportunity to make a strong defense of our civilian counterterrorism efforts which have been far more successful than military commissions.~~ But it leaves open the possibility that the Administration’s biggest objection isn’t about presumptive military detention but other limits on executive power.

It is par for the course for the Administration to keep secret which provisions it intends to “apply in a manner that avoids constitutional conflicts” even while celebrating its own “transparency.”