



## **McCain-Feinstein Anti-Torture Amendment: STRENGTHENS U.S. BAN ON TORTURE**

Senators John McCain (R-AZ) and Dianne Feinstein (D-CA) introduced an amendment to the National Defense Authorization Act for FY 2016 designed to strengthen the prohibition on torture and ensure that the United States never engages in torture again. The amendment passed the Senate by a vote of 78-21. A slightly modified<sup>1</sup> version of the amendment was signed into law on November 25, 2015.

### [McCain-Feinstein anti-torture amendment](#)<sup>2</sup>:

**Makes the U.S. Army Field Manual on Interrogations the single standard for all U.S. government interrogations.** Any person in the custody or under the effective control of the U.S. or detained in a U.S. facility in any armed conflict can only be subjected to interrogation techniques authorized by the [Army Field Manual 2-22.3, Human Intelligence Collector Operations](#) (Interrogation Manual). Federal law enforcement officials would however be permitted to continue to use approved, non-coercive techniques.

McCain-Feinstein builds on the Detainee Treatment Act and codifies key interrogation provisions from Obama's 2009 Executive Order. The [Detainee Treatment Act](#), which was approved in 2005 with strong bi-partisan support, required Defense Department personnel to follow the Interrogation Manual. In 2009, all government agencies conducting interrogations outside a law enforcement context were required to follow the Interrogation Manual via [Executive Order](#).

The Interrogation Manual includes clear prohibitions on torture, and is effective. The Interrogation Manual explicitly prohibits waterboarding, forced nudity and other forms of torture and only allows interrogation methods expressly described in the manual. The Interrogation Manual also requires that all prisoners and detainees be treated humanely and explicitly prohibits cruel, inhuman and degrading treatment. In 2009, a "Special Task Force on Interrogations" which included the CIA unanimously concluded that "the

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<sup>1</sup> For an explanation of the differences and the intent of Congress for the changes see Senators Feinstein and McCain colloquy as entered into the Senate Congressional Record at S7186 (October 7, 2015) available at <https://www.gpo.gov/fdsys/pkg/CREC-2015-10-07/pdf/CREC-2015-10-07-senate.pdf>.

<sup>2</sup> National Defense Authorization Act for Fiscal Year 2016, section 1045, available at <https://www.congress.gov/bill/114th-congress/house-bill/1735/text#toc-H75DFAC1D0A7148B4A454E532D7E864A6>.

practices and techniques identified by the [Interrogation] Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations.”<sup>3</sup>

**Requires the Interrogation Manual to be reviewed and revised to ensure interrogation practices are lawful, do not involve the use or threat of force, and be kept public.** The Secretary of Defense, in coordination with the Attorney General, the FBI Director, and the Director of National Intelligence must complete a thorough review of the Interrogation Manual, and revise as necessary, to ensure that it complies with U.S. legal obligations and the practices do not involve the use or threat of force. The review must be completed within 3 years of enactment, and recur every three years thereafter. The High-Value Detainee Interrogation Group (HIG) must submit a report on best practices for interrogation that do not involve the use of force. The Interrogation Manual, any revisions, and the HIG report must be made public.

The intelligence community endorsed having the Interrogation Manual be kept public under the Bush administration. In 2006, Lt. General John Kimmons, Army Deputy Chief of Staff for Intelligence announced that the new manual would remain wholly unclassified and public, and that none of the techniques needed to be secret.<sup>4</sup>

**Requires the International Committee of the Red Cross (ICRC) to have prompt access to all detainees in U.S. custody regardless of location.** The ICRC must be notified of, and have prompt access to, any person detained in an armed conflict in the custody or under the effective control of the U.S. or detained in a U.S. owned, operated, or controlled facility.

### **Significance of McCain-Feinstein anti-torture amendment**

**Prevents any future torture program from being authorized again.** Had the McCain-Feinstein amendment been in place following the 9/11 attacks it would have significantly bolstered other prohibitions on torture and made it far more difficult, if not impossible, for the CIA to establish and operate their torture program. The Interrogation Manual explicitly prohibits waterboarding, forced nudity and other forms of torture employed by the CIA and it specifies that only interrogation methods that are expressly described in the Interrogation Manual are permitted. In addition, under McCain-Feinstein no prisoner could have been hidden away at CIA "black sites" without access to the Red Cross.

**Sends a strong, bi-partisan message that the United States should not engage in torture again.** Since 2005, large bi-partisan majorities of the U.S. Congress have voted to repudiate the use of torture and cruelty across political lines. Congress passed the Detainee Treatment Act of 2005 by a vote of 90-9. McCain-Feinstein amendment passed the Senate by a vote of 78-21, including the Chair and Ranking Member of each of the Intelligence, Armed Services, Judiciary, Foreign Relations, and Homeland Security committees.

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<sup>3</sup> <http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>.

<sup>4</sup> <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3712>.