

Presidential executive orders and directives concerning terrorism



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Abstract

Executive Orders as stated in Article II, of the United States Constitution, are perhaps the oldest and best-known use of presidential powers. The United States Constitution says the executive order is a proclamation by the president to direct federal agencies and officers to enforce laws that already exist or to exercise additional authorities given to the president (Eaves, 2013). These orders provide instructions to federal officials and agencies and are intended to govern the execution of public policy. They are not legislation and do not have to be approved by Congress, but do, however, have the strength of law, depending on the suggested action. The implication here is that the order or directive itself does not carry the full force of the law, but rather the contents of the order and its' relation to existing authorities help determine its' legal effect (Gaines & Kappeler, 2012, p. 84). If an executive order is considered to be illegal, Congress does have an ability to overturn it as a means to check the powers of the president. The occurrence of such an overturn rarely happens.

Presidential Executive Orders and Directives Concerning Terrorism

From President Clinton to President Obama

Instructions issued by the President to federal officials and agencies in how to govern the execution of public policy under presidential authority are known as executive orders., which after being signed, then placed into the Federal Register, and after thirty days that executive order shall become effective. There are several reasons for the issuing of executive orders; one is the operational management of the executive branch, second is the <https://assignbuster.com/presidential-executive-orders-and-directives-concerning-terrorism/>

operational control of federal agencies or officials, and the third is to carry out statutory or constitutional presidential responsibilities. Presidential directive or as some call them a presidential memorandum are according to the Department of Justice, have the same effect as an executive. The “ presidential directive has the same applicable substantive legal effect as an executive order. It is the element substance of the presidential action that is determinative, not the form of the document conveying that action (Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order, 2014)”. Today executive orders have taken on a new role and are used not only as a means to fight terrorists and curb acts of terrorism but to ensure the safety and security of every American as well as those visiting the United States and critical infrastructures within the United States and abroad. Even before September. 11, 2001, United States presidents have issued executive orders and directives designed to address the threat of terrorisms.

History of Executive Orders

In the history of executive orders; one would see that the very first presidential executive order ever issued was a proclamation signed by George Washington on April 22, 1793, which give instructions to federal officers to prosecute any citizens, who were interfering with the war between England and France. In the year 1861, the eve of the Civil War, Abraham Lincoln used an executive order to oversee a crisis when Congress was out of session. Armed militias were attacking federal troops were passing through Virginia and Maryland. One of their leaders, John Merryman, who was the leader of one of the most active militias, he was captured and locked up in Fort McHenry outside Baltimore. His lawyers appealed for his legal right to

appear in court to determine if he was being held awfully, using what is known as habeas corpus. By issuing an executive order, Lincoln called for a deferral of Merryman's right to habeas corpus. Later, Lincoln stated his actions to Congress, which then passed the Habeas Corpus Act of 1863, which gave the president the power that Lincoln had assumed.

World War I and II and the New Deal era saw the most significant use of executive powers. Franklin D. Roosevelt issued three thousand, five hundred and twenty-two executive orders in his time in office. The most controversial order was an issue by Harry Truman when in 1952 he issued the following executive order for the federal government to seize control and take over operations of the nation's steel mills. The owners sued to block the seizure and take over, and this became the case of *Youngstown Sheet & Tube v. Sawyer* which made it all the way to the United States Supreme Court of the land (Supreme Court).

When we fast forward to the present era, we see the United States and the world for that matter, facing a crisis over terrorism which created even more controversy executive orders. The era of President Clinton, Bush, and Obama saw the rise in terrorism-related executive orders that still exist to this day. Below is a brief of the executive orders created and enforced during their time in office.

President Bill Clinton 1993 – 2001

Some would wonder what former President Bill Clinton has to do with protecting the United States against terrorism. The answer is, we all remember the terrorist attack on the World Trade Towers on September 11,

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2001, but that was not the first attack on the World Trade Towers. February 26, 1993, at 12: 18 pm, a Ryder truck with a 1, 220-pound bomb, was parked in the parking garage below the World Trade Center in an attempt to bring down the tower. It detonated, killing six people and injuring more than 1, 000 (CNN 2018). This attack and others like it were the forerunners to President Clinton executive orders which laid the foundation of a policy for the prevention of terrorism. President Clinton issued several executive orders to cover the four broad areas of government policy related to homeland security (Gaines & Kappeler, 2012). Proliferation – control over the proliferation of weapons of mass destruction also known as WMDs. Financial Transactions – control over any financial, funding or any other means of transactions that could be used to support terrorism. Intelligence Information – the gathering of intelligence to be used to prevent and stop terrorism. Protection – to prevent attacks on our critical national infrastructure system.

Proliferations of Weapons of Mass Destruction

On November 14, 1994, under the International Emergency Economic Powers Act (50 U. S. C. 1701) and the National Emergencies Act (50 U. S. C 1601) which allow the President to enact orders and directives, President Clinton created the Executive Order # 12938 Proliferation of Weapons of Mass Destruction. This order defines that the proliferation of nuclear, biological, and chemical weapons and their delivery system to be an atypical and particular threat to the national security which cannot be allowed. The order does the following;

1. Established coordination to control proliferation
2. Establish a system of control

3. Imposed sanctions

Prohibiting Transactions with Terrorist which Threatened to Disrupt the Middle East Peace Process

As the Middle East Peace talks were under way, President Clinton was concerned that terrorist groups would act to disrupt the peace talks. To combat this, President Clinton issued Executive Order # 12947 which prohibited financial transactions between any U. S. citizens and any group allocated by the secretary of state, the secretary of the treasury or the attorney general as instituting a significant risk of committing acts of violence that effect or principle is disrupting the Middle East peace process. This order was later modified in 1998 by Executive Order #13099 which widened its scope and focused its necessities against terrorist groups and specifically named Osama bin Laden and al Qaeda and individuals as terrorists. The order was again modified by President Bush in 2001, with Executive Order # 13224: “ Blocking Property and prohibiting transactions with a person who commits or threaten to commit or supports terrorism. Here one can see the both President Clinton and President Bush laid the foundation to by which to deal with individuals, countries, and group that interfere with the peace process (Gaines & Kappeler, 2012).”

Blocking Property and the Prohibiting of Transactions with the Taliban

The area under the control of the Taliban at the time is known as a haven and center of maneuvering for Osama bin Laden, and the al Qaeda organizations and their continuing threats of violence in the United States, establishing an unusual and extraordinary threat to national security.

Therefore, the blocking of Taliban financial assets in Afghanistan was the

reason for President Clinton's executive order of July 4, 1999. The exporting or the importing of " any contribution or funds, goods, or services to or for the benefit of the Taliban" or the import/export, sale, or supply, directly or indirectly, from the United States who regulated or afforded " financial, material, or technological support for the Taliban shall be held (Gaines & Kappeler, 2012).

Foreign Intelligence Physical Searches

The above order, issued on February 9, 1995, based on the Foreign Intelligence Surveillance Act created in 1978 and authorized the attorney general " to sanction physical searches, without a court order, to gain foreign intelligence knowledge for periods of up to one year" and to approve submissions to the Foreign Intelligence Surveillance Court. The order later became problematic because of the issue over domestic surveillance programs used by the National Security Agency. Because of that, it mandated that such searches are to be reviewed by the court, but the action taking in the Foreign Intelligence Surveillance Court is not for public use, little public information over those reviews is available.

Critical Infrastructure Protection

In President Clinton executive order issued on July 15, 1996, it recognized that national infrastructure protection is undeniably essential for the safe and efficient operation of infrastructure within the United States and that their failure or obliteration would leave a devastating impact on both defense and economic security in the United States. This purpose of this order was to identify and to consult with other parties having interests in critical infrastructure assurance, assessing the scope and nature of threats,

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determining legal and policy issues, and making recommendations. In correlation with protecting infrastructure, the Infrastructure Protection Task Force was created within the Department of Justice with the function to provide or facilitate and coordinate guidelines to detect, prevent, halt or confine and attack, issue threat and warning notices, provide training and education, conduct after-action analysis, and coordinate with the pertinent law enforcement authorities. The order was the foundation for much of the development of the National Infrastructure Protection Plan that serves as the foundation for protecting our critical infrastructure assets. President Clinton did issue many other executive orders which enlarge the framework for the creation of an operational policy on how to combat the daily threats of terrorism, not only that; they create the basis for subsequent decisions that follow.

President George W. Bush 2001 – 2009

Less than a year into President George W. Bush term office, he faced one of the most terrible terrorist attacks in modern history. While sitting in a classroom in Sarasota, FL, filled with children, he learned about the first plane that hit one of the World Trade towers which at the time was believed to be a terrible accident at first. Then came the second plane which hit the other tower; a third crash into the Pentagon and another crash in a field in Pennsylvania. The realization that these were not random accidents, but acts of terrorism on American soil, hit those guarding the President and he was rushed back aboard Air Force One which then flew the President off into the sky. Those acts brought about the beginning of a new era for America, a

change which we are still feeling this effect today and the beginning of Homeland Security.

The Establishing the Office of Homeland Security and the Homeland Security Council

On October 8, 2001, President George W. Bush issued the most critical executive orders of his term of office, executive order 13228, This order was the creation of the Office of Homeland Security and also the creation of the Homeland Security Council. These offices consisted of various representatives of the executive branches and had the job of creating policy and advising the President of the United States on security issues. The Office of Homeland Security has five essential responsibilities at the time; one was to combine the work of the federal, state and local agencies to coordinate efforts into one force to fight terrorism. Second, is to prepare for and mitigate the consequences of terrorist threats and attacks, followed by, third, to coordinate efforts to prevent terrorist attacks with the United States. Fourth, is to protect critical infrastructure, and fifth, to respond to and promote recovery from any terrorist threats and attacks (Gaines & Kappeler, 2012).

National Counterterrorism Center

On August 27, 2004, executive order 13354 created an essential step to coordinate intelligence operations, which were the result of poor communications and the sharing of information between intelligence agencies. This order resulted in the creation of the National Counterterrorism Center to coordinate all counterterrorism activities on United States soil. The following is the section as it appears in Executive Order 13354:

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(a) Serve as the principal organization in the United States Government for analyzing and assimilating all intelligence controlled or acquired by the United States Government about terrorism and counterterrorism, excluding purely domestic counterterrorism information. The Center may, with applicable law, receive, retain, and disseminate information from any Federal, State, or local government, or another mechanism necessary to accomplish its responsibilities regarding the policy which is set forth in section one of this order; and agencies sanctioned to direct counterterrorism activities may query center data for any information to assist in their responsibilities;

(b) Conduct strategic, the operational projection for counterterrorism activities, assimilating all instruments of national power, involving diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies;

(c) Assign operational responsibilities to front-runner agencies for counterterrorism activities that are consistent with applicable law and that support strategic plans to counter terrorism. The Center shall ensure that agencies have access to and receive intelligence needed to accomplish their assigned activities. The Center shall not direct the execution of operations. Agencies shall inform the National Security Council and the Homeland Security Council of any objections to designations and assignments made by the Center in the planning and coordination of counterterrorism activities;

(d) Perform as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support; and

(e) Ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis (Executive Order 13354).

Interrogation of Terrorist Suspects

Waterboarding, chaining, nudity, this is some of these called enhanced interrogating practices along with CIA black sites is what one is talking about here under executive order 13440 which is the interpretation of the Geneva conventions common article 3 as applied to a program of detention and interrogation operated by the Central Intelligence Agency. This order was designed mainly to target al Qaeda, the Taliban, and other to strip them of the protections under the rules of the Third Geneva Convention relating to the treatment of prisoners of war. Altogether there were thirteen enhanced interrogation techniques, abdominal slap, attention grasp, cramped confinement, dietary manipulation, facial hold, facial slap/insult slap, nudity, stress positions, sleep deprivation, wall standing, walling, waterboarding, water dousing (Press, 2014). The idea behind their techniques was to walk right up to the edge of the law to gather actionability intelligence.

Presidential Directives Enhancing Homeland Security

Over the length of his presidency, President George W. Bush issues several executive orders dealing with the issues of supplementing the powers

homeland security and to protect the United States against the threats of terrorism. Following is a list of some of those executive orders;

13311 Which is Homeland security Information Sharing,

13356, Deals with strengthening the sharing of terrorism information to protect Americans,

13260, The establishing of the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security,

13407 Public alert and warning system

Including with those executives, orders were at least 24 " Homeland directives which they immediately put into effect.

President Barack Obama 2009 – 2017

The controversy over waterboarding and allegations that detainees abused during the past administration years lead to President Obama to revoke the executive order 13440 by issuing executive order 13491 in the interest of national security and justice. He then went further by the creation of executive order 13492 on January 22, 2009, which deals with the review and disposition of individuals detained at the Guantanamo Bay Naval Base and closure of detention facilities (Gaines & Kappeler, 2012). That same day an executive order was created to establish a special interagency task force on detainee disposition to identify such options as apprehension, detention, trial, transfer, release or other temperaments necessary in the interests of the security of the United States and justice.

Ensuring Lawful Interrogations

At the beginning of his term of office, there has been a significant public debate on how the detainee, while being detained by the CIA and others were being treated. How should enemy combatants and others suspected of terrorist activities be treated, after what they did on 9/11, where 2996 American lives killed that day? America is the beacon of freedom and justice for all people with the purpose of defending liberty from hatred and evil. America was better than the terrorist who is why President Obama revoked President Bush executive orders and required federal agencies to follow the interrogation techniques outlined in the Army Field Manual, to close detention facilities, and to provide the International Red Cross with notification and timely access to any person detained.

Conclusion

As one can see that Presidents Clinton, Bush, and Obama, created/ issued much of the executives' orders one see today, to deal with the rising tide of terrorism during their time in office. These executive orders were no easy task to create or are they easy to remove when one considers the time frame and the legal aspects of those orders. When one talks about executive orders, they can be an essential tool for presidents to use to bypass Congress, which creates the fear that presidents would use executive orders to upset the system of check and balance that the Constitution set up, reasoning is executive orders do not need congressional approval. Most executive orders are created under explicit constitutional authority from Congress and do have the effect of law. Such executive orders usually are created to impose sanctions, determine the legal rights, limit agency

discretion, and do require immediate compliance. Also, the federal courts consider such orders to be the comparison of federal statutes; however, in order to have the effect of law, all executive orders must be posted and appear in the Federal Register. The primary object of executives orders is to guide federal agencies in doing their jobs within the federal government, and every president from George Washington to Trump has used them for one reason or another. While the legislative branch of the government cannot stop executives order or do they need to approve one, but they can cut funding for the orderly implementation, or the next president if they do not like the order can issue a new one overriding the previous one. The power of the president using executive order can do good or in some cases make things worst which is why people need to understand what executives orders are and what they do.

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