

to Rico, and each territory and possession of the United States;

(3) the term “demonstrates” means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term “exercise of religion” means religious exercise, as defined in section 2000cc-5 of this title.

(Pub. L. 103-141, § 5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106-274, § 7(a), Sept. 22, 2000, 114 Stat. 806.)

#### AMENDMENTS

2000—Par. (1). Pub. L. 106-274, § 7(a)(1), substituted “or of a covered entity” for “a State, or a subdivision of a State”.

Par. (2). Pub. L. 106-274, § 7(a)(2), substituted “term ‘covered entity’ means” for “term ‘State’ includes”.

Par. (4). Pub. L. 106-274, § 7(a)(3), substituted “religious exercise, as defined in section 2000cc-5 of this title” for “the exercise of religion under the First Amendment to the Constitution”.

### § 2000bb-3. Applicability

#### (a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

#### (b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

#### (c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(Pub. L. 103-141, § 6, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106-274, § 7(b), Sept. 22, 2000, 114 Stat. 806.)

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-274 struck out “and State” after “Federal”.

### § 2000bb-4. Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the “Establishment Clause”). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term “granting”, used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 103-141, § 7, Nov. 16, 1993, 107 Stat. 1489.)

## CHAPTER 21C—PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Sec.  
2000cc. Protection of land use as religious exercise.

Sec.

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### § 2000cc. Protection of land use as religious exercise

#### (a) Substantial burdens

##### (1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

##### (2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

**(b) Discrimination and exclusion****(1) Equal terms**

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

**(2) Nondiscrimination**

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

**(3) Exclusions and limits**

No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

(Pub. L. 106-274, §2, Sept. 22, 2000, 114 Stat. 803.)

## SHORT TITLE

Pub. L. 106-274, §1, Sept. 22, 2000, 114 Stat. 803, provided that: “This Act [enacting this chapter and amending sections 1988, 2000bb-2 and 2000bb-3 of this title] may be cited as the ‘Religious Land Use and Institutionalized Persons Act of 2000’”.

**§ 2000cc-1. Protection of religious exercise of institutionalized persons****(a) General rule**

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

**(b) Scope of application**

This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106-274, §3, Sept. 22, 2000, 114 Stat. 804.)

**§ 2000cc-2. Judicial relief****(a) Cause of action**

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

**(b) Burden of persuasion**

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free

Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.

**(c) Full faith and credit**

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

**(d) Omitted****(e) Prisoners**

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

**(f) Authority of United States to enforce this chapter**

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

**(g) Limitation**

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106-274, §4, Sept. 22, 2000, 114 Stat. 804.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 106-274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Prison Litigation Reform Act of 1995, referred to in subsec. (e), is Pub. L. 104-134, title I, §101(a) [title VIII], Apr. 26, 1996, 110 Stat. 1321, 1321-66, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3601 of Title 18, Crimes and Criminal Procedure, and Tables.

## CODIFICATION

Section is comprised of section 4 of Pub. L. 106-274. Subsec. (d) of section 4 of Pub. L. 106-274 amended section 1988(b) of this title.

**§ 2000cc-3. Rules of construction****(a) Religious belief unaffected**

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

**(b) Religious exercise not regulated**

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

**(c) Claims to funding unaffected**

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

**(d) Other authority to impose conditions on funding unaffected**

Nothing in this chapter shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

**(e) Governmental discretion in alleviating burdens on religious exercise**

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

**(f) Effect on other law**

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

**(g) Broad construction**

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

**(h) No preemption or repeal**

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

**(i) Severability**

If any provision of this chapter or of an amendment made by this chapter, or any appli-

cation of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

(Pub. L. 106-274, § 5, Sept. 22, 2000, 114 Stat. 805.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 106-274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

**§ 2000cc-4. Establishment Clause unaffected**

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 106-274, § 6, Sept. 22, 2000, 114 Stat. 806.)

**§ 2000cc-5. Definitions**

In this chapter:

**(1) Claimant**

The term "claimant" means a person raising a claim or defense under this chapter.

**(2) Demonstrates**

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

**(3) Free Exercise Clause**

The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

**(4) Government**

The term "government"—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

**(5) Land use regulation**

The term "land use regulation" means a zoning or landmarking law, or the application

of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

**(6) Program or activity**

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

**(7) Religious exercise**

**(A) In general**

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

**(B) Rule**

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

(Pub. L. 106-274, § 8, Sept. 22, 2000, 114 Stat. 806.)

**CHAPTER 21D—DETAINEE TREATMENT**

Sec.	
2000dd.	Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government.
2000dd-1.	Protection of United States Government personnel engaged in authorized interrogations.

**§ 2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government**

**(a) In general**

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

**(b) Construction**

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

**(c) Limitation on supersedure**

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

**(d) Cruel, inhuman, or degrading treatment or punishment defined**

In this section, the term "cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United

States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109-148, div. A, title X, §1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109-163, div. A, title XIV, § 1403, Jan. 6, 2006, 119 Stat. 3475.)

REFERENCES IN TEXT

The date "December 30, 2005", referred to in subsec. (c), was in the original "the date of the enactment of this Act" and was translated as the date of enactment of Pub. L. 109-148.

CODIFICATION

Pub. L. 109-148 and Pub. L. 109-163 enacted identical sections.

SHORT TITLE

Pub. L. 109-148, div. A, title X, § 1001, Dec. 30, 2005, 119 Stat. 2739, and Pub. L. 109-163, div. A, title XIV, § 1401, Jan. 6, 2006, 119 Stat. 3474, provided that: "This title [enacting this chapter, amending section 2241 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 801 of Title 10, Armed Forces] may be cited as the 'Detainee Treatment Act of 2005'."

**§ 2000dd-1. Protection of United States Government personnel engaged in authorized interrogations**

**(a) Protection of United States Government personnel**

In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

**(b) Counsel**

The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in