

FAQ: The McCain-Feinstein Anti-Torture NDAA Amendment

- ☑ **Question:** What is the McCain-Feinstein amendment to the FY 2016 NDAA?
- ☑ **Answer:** The McCain-Feinstein amendment is designed to ensure that all agencies and departments use lawful, effective interrogation techniques that will enhance our national security and reflect American values. It does the following: 1) codifies the Army Field Manual (AFM) on Human Intelligence Collector Operations as the standard for interrogations across the government; 2) requires that the International Committee of the Red Cross (ICRC) be provided notification of and access to detainees in a timely manner when they are taken into U.S. custody; and 3) mandates a review of the Army Field Manual to ensure that its interrogation approaches are lawful, humane, and based on the most up-to-date science.

- ☑ **Question:** Does the McCain-Feinstein amendment ban “enhanced interrogation” techniques?
- ☑ **Answer:** So-called “enhanced interrogation” techniques such as waterboarding, sleep deprivation, stress positions, and sensory deprivation are already unlawful under the relevant international and domestic law that bans torture and other forms of cruel treatment of detainees. However, policymakers and lawyers in the executive branch improperly interpreted the law to allow for these techniques. By restricting government agencies and departments—including the Central Intelligence Agency (CIA)—to the interrogation approaches listed in the AFM, the McCain-Feinstein amendment ensures that the abusive approaches that some call “enhanced interrogation” can never again be authorized.

- ☑ **Question:** Don’t we need “enhanced interrogation” to gather the intelligence that’s needed to stop terrorist attacks?
- ☑ **Answer:** There is no evidence that so-called “enhanced interrogation techniques” provided any unique intelligence to stop terrorist attacks. The executive summary, findings, and conclusions of the Senate Select Committee on Intelligence’s (SSCI) study on the post-9/11 CIA detention and interrogation program showed how the alleged intelligence successes attributed to “enhanced interrogation” were gained through lawful interrogation methods or other means. While the CIA disputes some aspects of that study, it largely agrees with this conclusion. CIA Director Brennan, responding to the study, stated: “[L]et me be clear. [The CIA has] not concluded that it was the use of EITs within [the detention and interrogation] program that allowed us to obtain useful information from detainees subjected to them.”¹ The vast majority of professional interrogators and intelligence-professionals oppose the use of so-called “enhanced interrogation” as an unreliable and ineffective means of gathering intelligence.²

¹ <https://www.cia.gov/news-information/speeches-testimony/2014-speeches-testimony/remarks-as-prepared-for-delivery-cia-director-john-o-brennan-response-to-ssci-study-on-the-former-detention-and-interrogation-program.html>

² Human Rights First Media Briefing Call, December 9, 2014, available at <http://www.humanrightsfirst.org/sites/default/files/120914-Torture-Transcript.pdf>. See also Statement of National Security, Intelligence, and Interrogation Professionals, October 1, 2014, <http://www.humanrightsfirst.org/sites/default/files/Torture-Statement-09-30-14.pdf>.

- ✔ **Question:** Isn't the AFM meant for interrogations of lower-level soldiers by lower-level soldiers? Wouldn't it be inappropriate for use against a high-level terrorism suspect?
- ✔ **Answer:** The AFM on interrogations includes sufficient flexibility to allow for sophisticated interrogation approaches in many contexts, including interrogations of high-level terrorism suspects. An interagency taskforce composed of all relevant agencies and departments—including the CIA—concluded that no additional interrogation approaches are necessary beyond those listed in the AFM, or other approved law enforcement interrogations.³ The McCain-Feinstein amendment also mandates a review of the AFM to allow additional lawful and effective interrogation techniques based on the most up-to-date science and best practices.

- ✔ **Question:** The SSCI report's conclusions were portrayed by some as unreliable, based on a partisan effort. How can we be confident that we won't need "enhanced interrogation" in the future?
- ✔ **Answer:** Whether one agrees with the SSCI report or not, there is near unanimous agreement among professional interrogators and intelligence leaders that so-called "enhanced interrogations" and other forms of torture and detainee abuse are not an appropriate and lawful means to gather intelligence. CIA Director Brennan agrees. He stated the following in response to release of the SSCI report: "[W]hile I am the Director of the CIA, this program will not under any circumstances be reinitiated. I personally remain firm in my belief that enhanced interrogation techniques are not an appropriate method to obtain intelligence and that their use impairs our ability to continue to play a leadership role in the world."⁴

³ Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President, available at <http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>. ("After extensively consulting with representatives of the Armed Forces, the relevant agencies in the Intelligence Community, and some of the nation's most experienced and skilled interrogators, the Task Force concluded that the Army Field Manual provides appropriate guidance on interrogation for military interrogators and that no additional or different guidance was necessary for other agencies. These conclusions rested on the Task Force's unanimous assessment, including that of the Intelligence Community, that the practices and techniques identified by the Army Field Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations.")

⁴ https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf