

courts to bring their own independent judgment to bear on questions of law and mixed questions of law and fact that come before them on habeas corpus.

In the great 1803 case of *Marbury v. Madison*, Chief Justice John Marshall explained for the Supreme Court that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” Section 104(3) would be subject to serious constitutional challenge if it were read to preclude the Federal courts from making an independent determination about “what the law is” in cases within their jurisdiction. I expect that the courts, following their usual practice of construing ambiguous statutes to avoid constitutional problems, will read section 104 to permit independent Federal court review of constitutional claims based on the Supreme Court’s interpretation of the Constitution and Federal laws.

Section 104(4) limits evidentiary hearings in Federal habeas corpus cases when “the applicant has failed to develop the factual basis of a claim in State court proceedings.” If this provision were read to deny litigants a meaningful opportunity to prove the facts necessary to vindicate Federal rights, it would raise serious constitutional questions. I do not read it that way. The provision applies to situations in which “the applicant has failed to develop the factual basis” of his or her claim. Therefore, section 104(4) is not triggered when some factor that is not fairly attributable to the applicant prevented evidence from being developed in State court.

Preserving the Federal courts’ authority to hear evidence and decide questions of law has implications that go far beyond the issue of prisoners’ rights. Our constitutional ideal of a limited government that must respect individual freedom has been a practical reality because independent Federal courts have the power “to say what the law is” and to apply the law to the cases before them. I have signed this bill on the understanding that the courts can and will interpret these provisions of section 104 in accordance with this ideal.

This bill also makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial re-

lief for long-term legal residents and restrict a key protection for battered spouses and children. The provisions will produce extraordinary administrative burdens on the Immigration and Naturalization Service. The Administration will urge the Congress to correct them in the pending immigration reform legislation.

I also regret that the Congress included in this legislation a commission to study Federal law enforcement that was inspired by special interests who are no friends of our Nation’s law enforcement officers. The Congress has responsibility to oversee the operation of Federal law enforcement; to cede this power to an unelected and unaccountable commission is a mistake. Our Nation’s resources would be better spent supporting the men and women in law enforcement, not creating a commission that will only get in their way.

I hope that there will be an opportunity to revisit these and other issues, as well as some of the other proposals this Administration has made, but upon which the Congress refused to act.

This legislation is a real step in the right direction. Although it does not contain everything we need to combat terrorism, it provides valuable tools for stopping and punishing terrorists. It stands as a tribute to the victims of terrorism and to the men and women in law enforcement who dedicate their lives to protecting all of us from the scourge of terrorist activity.

William J. Clinton

The White House,
April 24, 1996.

NOTE: S. 735, approved April 24, was assigned Public Law No. 104-132.

Executive Order 13000—Order of Succession of Officers To Act as Secretary of Defense
April 24, 1996

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Succession to Act as the Secretary of Defense. (a) In the event of the death, permanent disability, or resignation of the Secretary of Defense, the incumbents holding the Department of Defense positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of Defense as Acting Secretary of Defense:

- (1) Deputy Secretary of Defense.
- (2) Secretary of the Army.
- (3) Secretary of the Navy.
- (4) Secretary of the Air Force.
- (5) Under Secretary of Defense for Acquisition and Technology.
- (6) Under Secretary of Defense for Policy.
- (7) Under Secretary of Defense (Comptroller).
- (8) Under Secretary of Defense for Personnel and Readiness.
- (9) Deputy Under Secretary of Defense for Acquisition and Technology.
- (10) Deputy Under Secretary of Defense for Policy.
- (11) Director of Defense Research and Engineering.
- (12) The Assistant Secretaries of Defense, the Director of Operational Test and Evaluation, and the General Counsel of the Department of Defense, in the order fixed by their length of service as permanent appointees in such positions.
- (13) Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.
- (14) Assistant Secretaries of the Army, the Navy, and the Air Force whose appointments are vested in the President, and General Counsels of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(b) In the event of the temporary absence or temporary disability of the Secretary of Defense, the incumbents holding the Department of Defense positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of Defense as Acting Secretary of Defense.

(1) In these instances, the designation of an Acting Secretary of Defense applies only

for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of Defense is temporarily absent from his position, the Secretary may continue to exercise the powers and fulfill the duties of this office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraphs (a)(12)–(14) of this section who have the same appointment date shall be determined by the Secretary of Defense at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of Defense under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

Sec. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of Defense pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

Sec. 3. Revocation of Prior Executive Order. Executive Order No. 12787 of December 31, 1991, is hereby revoked.

William J. Clinton

The White House,
April 24, 1996.

[Filed with the Office of the Federal Register, 8:45 a.m., April 25, 1996]

NOTE: This Executive order was published in the *Federal Register* on April 26.

Statement on Signing the 13th Continuing Resolution

April 24, 1996

Today I have signed into law H.J. Res. 175, the Thirteenth Continuing Resolution for fiscal year 1996.

House Joint Resolution 175 provides for a temporary extension of appropriations—through April 25—for activities covered by