111TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
*1st Session* } { 111–189

RESOLUTION OF INQUIRY REQUESTING THAT THE PRESIDENT AND DIRECTING THAT THE ATTORNEY GENERAL TRANSMIT TO THE HOUSE OF REPRESENTATIVES ALL INFORMATION IN THEIR POSSESSION RELATING TO SPECIFIC COMMUNICATIONS REGARDING DETAINEES AND FOREIGN PERSONS SUSPECTED OF TERRORISM

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JUNE 26, 2009.—Referred to the House Calendar ordered to be printed

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Mr. CONYERS, from the Committee on the Judiciary, submitted the following

# ADVERSE REPORT

together with

## MINORITY VIEWS

[To accompany H. Res. 537]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 537) requesting that the President and directing that the Attorney General transmit to the House of Representatives all information in their possession relating to specific communications regarding detainees and foreign persons suspected of terrorism, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

CONTENTS

## PURPOSE AND SUMMARY

On June 11, 2009, Congressman Mike Rogers (R-MI) introduced H. Res. 537, a resolution of inquiry. The resolution requests the President, and directs the Attorney General, to transmit to the House of Representatives not later than 14 days after the date of adoption of the resolution, copies of any portions of all documents, records, and communications in their possession referring or relating to the notification of rights under *Miranda v. Arizona,* 384 U.S. 436 (1966), by the Department of Justice, including all component agencies, to foreign persons, captured in Afghanistan, who are suspected of terrorism and detainees in the custody of the Armed Forces of the United States in Afghanistan.

## BACKGROUND

### HOUSE RESOLUTIONS OF INQUIRY

Under the rules and precedents of the House of Representatives, a resolution of inquiry is one of the methods that the House can use to obtain information from the Executive Branch.[1] It "is a simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch."[2] The typical practice has been to use the verbs "request" when asking for information from the President and "direct" when addressing executive department heads.[3] Clause 7 of Rule XIII of the Rules of the House of Representatives provides that if the Committee to which the resolution is referred does not act on it within 14 legislative days, a privileged motion to discharge the resolution from the Committee is in order on the House Floor.

### PURPOSE OF H. RES. 537

Following a recent fact-finding trip to Afghanistan, Congressman Mike Rogers claimed that the Obama Administration has instituted a new policy of having FBI agents provide *Miranda* rights to detainees captured and held at U.S. detention facilities.[4] According to Congressman Rogers, this alleged policy change is creating chaos among CIA, FBI, and military personnel, and is raising concerns about soldiers' ability to pursue intelligence in the field.[5] Congressman Rogers introduced H. Res. 537 to request the President and direct the Attorney General to produce documents pertaining to the alleged policy change.

### THE JUSTICE DEPARTMENT CONFIRMS THERE WAS NO POLICY CHANGE

According to the Justice Department, there have been no changes to the policy regarding when to Mirandize terrorist suspects

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[1] Christopher Davis, House Resolutions of Inquiry, CRS Report, November 25, 2008, at 1 (quoting U.S. Congress, House, Deschler's Precedents of the United States House of Representatives, H. Doc. 94–661, 94th Cong., 2nd Sess., vol. 7, ch. 24, § 8.

[2] Id.

[3] Id.

[4] Stephen Hayes, "Miranda Rights for Terrorists," Weekly Standard, June 10, 2009, available at http://www.weeklystandard.com/weblogs/TWSFP/2009/06/miranda_rights_for_terrorists.asp.

[5] "U.S. Lawmaker Says Obama Administration Ordered FBI to Read Rights to Detainees," FoxNews.com, June 11, 2009.

abroad. Justice Department spokesman Dean Boyd stated on June 11 that "[t]here has been no policy change nor blanket instruction for FBI agents to Mirandize detainees overseas," adding "[w]hile there have been specific cases in which FBI agents have Mirandized suspects overseas, at both Bagram and in other situations, in order to preserve the quality of evidence obtained, there has been no overall policy change with respect to detainees."[6]

THE FBI CONFIRMS THERE WAS NO POLICY CHANGE

In a June 12 letter to Congressman Frank Wolf, FBI Director Robert Mueller confirmed that "there has been no policy change and no blanket instruction issued for FBI agents to Mirandize detainees overseas."[7] Director Mueller further explained that "FBI agents have been trained to analyze whether *Miranda* is appropriate to use on a case-by-case basis and to consider providing Miranda warnings if prosecution in the United States may occur."[8] The Director noted that FBI agents have occasionally given *Miranda* warnings to persons captured overseas, at Bagram and elsewhere, but only when "a determination was made that a prosecution in an Article III court may be in the interest of national security and that providing *Miranda* warnings . . . was . . . desirable to maximize the likelihood that any resulting statements would be admissible at trial."[9] In order to place the issue in its proper context, the Director explained that *Miranda* warnings have been provided to Bagram detainees only in a small number of cases out of over 4,000 individuals whom the FBI has been involved in detaining and interrogating.[10]

When recently asked about the FBI's occasional provision of *Miranda* warnings, General David Petraeus, who supervises Afghanistan military operations as the head of U.S. Central Command, made clear that this does not create any problems for the military. He explained that "[t]his is the FBI doing what the FBI does. . . .

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[6] Id. In addition, on June 23, 2009, Assistant Attorney General for Legislative Affairs Ron Weich stated in a telephone call to Democratic and Republican Committee staff that there has been no policy change. He noted that the Department has for years had a practice of Mirandizing terrorist suspects only on a case-by-case basis when an assessment has been made that there is a possibility of prosecution in an Article III court, in order to enhance national security. In those cases, he explained, administering *Miranda* warnings strengthens the prosecution. Regarding the documents that H. Res. 537 seeks to acquire, Mr. Weich said that the Department has performed a review to determine whether there are any documents that evidence a new policy regarding *Miranda* warnings for terrorist suspects abroad, and he explained that they found nothing, since there is no such policy. In addition, he said the only documents that would be responsive to the resolution are individual case files on terrorist suspects, which may contain information regarding whether *Miranda* warnings were given during particular interrogations. According to Mr. Weich, these files have sensitive national security information, and their disclosure would also jeopardize the cases themselves.

[7] Letter from FBI Director Robert S. Mueller, III to Congressman Frank Wolf, June 12, 2009. A copy of the letter was also sent to Congressman Rogers, and was made part of the record during the Committee's June 24, 2009 meeting to consider the resolution.

[8] Id.

[9] Id.

[10] Id. In the same letter, Director Mueller also described the so-called "Global Justice" proposal, which seeks "to have a process that ensures all available intelligence from the intelligence community is consolidated for decision makers so that they have the best available information when determining the strategy for handling certain terrorists overseas." He further noted that the proposal "would also ensure . . . that intelligence is gathered in a manner that best preserves future options vis-a-vis the individual terrorist at issue, including gathering evidence in a manner that ensures its integrity. . . ." Importantly, Director Mueller explained that "[f]ar from a policy change, the proposal would focus on the best way to manage and deploy interagency teams overseas, train the teams, and provide them forensic support. The proposal has never had any connection to changes in FBI policy on when *Miranda* warning[s] should be administered to detainees overseas."

These are cases where they are looking at potential criminal charges. Were comfortable with this." [11]

### THE PRACTICE OF MIRANDIZING TERRORIST SUSPECTS OCCURRED DURING THE PREVIOUS ADMINISTRATION

The practice of sometimes administering *Miranda* warnings to terrorist suspects is not unique to the Obama Administration.[12] Director Mueller's letter states that the practice has been occurring "[f]or years." [13] Indeed, when the Bush Administration announced in early 2008 that it intended to bring capital murder charges against six men allegedly linked to the 9/11 terrorist attacks, it did so based partly on information that the men disclosed to FBI questioners without the use of coercive interrogation tactics and after having been read rights similar to a standard U.S. *Miranda* warning, while they were detained at Guantanamo Bay.[14] The Obama Administration has also confirmed that Bush Administration officials administered *Miranda* warnings to suspects overseas in some instances.[15]

## HEARINGS

No hearings were held in the Committee on H. Res. 537.

## COMMITTEE CONSIDERATION

On June 24, 2009, the Committee met in open session and ordered H. Res. 537 adversely reported, without amendment, by a rollcall vote of 13 yeas to 12 nays, a quorum being present.

## COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall vote occurred during the Committee's consideration of H. Res. 537:

H. Res. 537 was ordered reported unfavorably by a vote of 13 to 12.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Conyers, Jr., Chairman | X | | |
| Mr. Berman | X | | |
| Mr. Boucher | | | |
| Mr. Nadler | X | | |
| Mr. Scott | X | | |
| Mr. Watt | | | |
| Ms. Lofgren | | | |
| Ms. Jackson Lee | | | |

[11] See "Petraeus on Miranda Rights at Bagram," available at http://www.prospect.org/csnc/blogs/tapped__archive?month=06&year=2009&base__name=petreaus__on__miranda__rights__at&2.

[12] Josh White, Dan Eggen and Joby Warrick, "U.S. to Try 6 On Capital Charges Over 9/11 Attacks: New Evidence Gained Without Coercive Tactics," Wash. Post, February 12, 2008, A1.

[13] Letter from FBI Director Robert S. Mueller, III, to Congressman Frank Wolf, June 12, 2009.

[14] Id.

[15] See "Obama Administration Says Some Detainees Overseas Are Being Mirandized—and Bush Did It, Too," ABC News, June 11, 2009, available at http://blogs.abcnews.com/politicalpunch/2009/06/obama-administration-says-some-detainees-overseas-are-being-mirandized.html.

ROLLCALL NO. 1—Continued

| | Ayes | Nays | Present |
|---|---|---|---|
| Ms. Waters | | | |
| Mr. Delahunt | | | |
| Mr. Wexler | X | | |
| Mr. Cohen | X | | |
| Mr. Johnson | | | |
| Mr. Pierluisi | | | |
| Mr. Quigley | X | | |
| Mr. Gutierrez | X | | |
| Mr. Sherman | | | |
| Ms. Baldwin | | | |
| Mr. Gonzalez | X | | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Ms. Sánchez | | | |
| Ms. Wasserman Schultz | X | | |
| Mr. Maffei | X | | |
| Mr. Smith, Ranking Member | | X | |
| Mr. Sensenbrenner, Jr. | | X | |
| Mr. Coble | | X | |
| Mr. Gallegly | | | |
| Mr. Goodlatte | | | |
| Mr. Lungren | | X | |
| Mr. Issa | | X | |
| Mr. Forbes | | X | |
| Mr. King | | X | |
| Mr. Franks | | X | |
| Mr. Gohmert | | X | |
| Mr. Jordan | | X | |
| Mr. Poe | | | |
| Mr. Chaffetz | | X | |
| Mr. Rooney | | | |
| Mr. Harper | | X | |
| Total | 13 | 12 | |

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementing the resolution would not result in any significant costs. The Congressional Budget Office did not provide a cost estimate for the resolution.

## PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable, because H. Res. 537 does not authorize funding.

## CONSTITUTIONAL AUTHORITY STATEMENT

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives is inapplicable, because H. Res. 537 is not a bill or a joint resolution that may be enacted into law.

## ADVISORY ON EARMARKS

Clause 9 of rule XXI of the Rules of the House of Representatives is inapplicable, because H. Res. 537 is not a bill or joint resolution.

## SECTION-BY-SECTION ANALYSIS

H. Res. 537 requests the President, and directs the Attorney General, to transmit to the House of Representatives not later than 14 days after the date of adoption of the resolution, copies of any portions of all documents, records, and communications in their possession referring or relating to the notification of rights under *Miranda v. Arizona,* 384 U.S. 436 (1966), by the Department of Justice, including all component agencies, to foreign persons, captured in Afghanistan, who are suspected of terrorism and detainees in the custody of the Armed Forces of the United States in Afghanistan.

## MINORITY VIEWS

For the reasons outlined below, we strongly disagree with the majority's partisan decision to unfavorably report H. Res. 537, a resolution of inquiry seeking information from the Administration regarding its reported new policy to increasingly provide *Miranda* warnings to terrorists detained in Afghanistan.

Based on recent reports, the Administration has embarked on a new policy in which increasing numbers of terrorists detained in Afghanistan are being read *Miranda* warnings. These warnings, as developed and required by the Supreme Court,[1] are given by law enforcement officers and agents to criminal defendants, and they generally consist of the following formulation: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney present during questioning. If you cannot afford an attorney, one will be appointed for you. Do you understand these rights?" *Miranda* warnings are only given when criminal prosecution is the goal, but our goal in the war on terrorism should not be the prosecution of criminals in court. It should be the defeat of terrorists on the battlefield.

### THE NEED FOR THE RESOLUTION

According to multiple reports, the Administration has embarked on a new policy in which increasing numbers of terrorists detained in Afghanistan are being given *Miranda* warnings. Such a policy

[1] *See Miranda v. Arizona,* 384 U.S. 436 (1966).

will have grave implications for our national security because it indicates an approach to the war on terror in which terrorists will be treated more like domestic criminal defendants, and less like foreign enemies with a military and political agenda against the United States as a nation. Because such a policy shift would have dramatic effects on America's security, the House should immediately take up House Resolution 537.

This resolution of inquiry requests that the Administration provide all documents and communications relating to this reported new policy to the House of Representatives so it can fulfill its constitutional duty to oversee and formulate America's national security policies.

During the campaign, President Obama made clear he preferred having prosecutors deal with terrorists like ordinary criminals to having our military deal with them for what they are: sworn enemies engaged in a war against all Americans. During an interview with ABC News, Obama said "And, you know, let's take the example of Guantanamo. What we know is that, in previous terrorist attacks—for example, the first attack against the World Trade Center, we were able to arrest those responsible, put them on trial. They are currently in U.S. prisons, incapacitated." [2]

However, the bipartisan 9/11 Commission firmly and unanimously rejected that approach, stating in its report that "The law enforcement process is concerned with proving the guilt of persons apprehended and charged . . . It was not designed to ask if the events might be harbingers of worse to come." [3] Indeed, the criminal-prosecution approach employed prior to 9/11 was an abject failure. During the eight years prior to 9/11, even with the highest conceivable conviction rate of 100 percent, fewer than three dozen terrorists were neutralized through successful prosecution.[4] Even worse, trials in the criminal justice system inevitably caused more terrorism by increasing opportunities for terrorist propaganda, leaving too many militants in place, and divulging too much information in court that tipped off other terrorists and allowed them to evade capture.[5]

The Obama Administration's first foray back toward the criminal prosecution approach to terrorism has already resulted in a sweetheart deal for Ali Saleh Kahlah al-Marri, who admitted to plotting attacks with cyanide gas at U.S. dams, waterways, and tunnels.[6] That hard-core terrorist, who was an al-Qaeda member since 1998, copped a plea in which he stands to receive, at most, only 15 years in prison.[7] As retired Commander Kirk Lippold points out, that's "the same sentence as a person tried for identity theft or fraud." [8]

That maximum 15-year sentence is especially absurd when we recall that the lowest-level member of "Blind Sheikh" Rahman's cell—which bombed the World Trade Center in 1993—received 25

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[2] "Transcript: Jake Tapper Interviews Barack Obama," ABC News (June 16, 2008).

[3] The 9/11 Commission Report, at 73.

[4] Andrew C. McCarthy and Alykhan Velshi, "We Need a National Security Court" (The American Enterprise Institute 2007) at 6, 9. Terrorism trials take months to complete, often following many years of pretrial discovery and court proceedings. Typically, the appeals also take years to complete. *See id.* at 6 n.9.

[5] *See id.*

[6] Carrie Johnson, "Marri Admits Conspiring with Al-Qaeda Operatives; Faces Up to 15 Years," *The Washington Post* (May 1, 2009).

[7] Andrew McCarthy, "Sweetheart Deal for a Terrorist," National Review Online (May 5, 2009).

[8] Carrie Johnson, "Marri Admits Conspiring with Al-Qaeda Operatives; Faces Up to 15 Years," *The Washington Post* (May 1, 2009).

years in prison.[9] That low-level terrorist received a 25-year sentence when he had been recruited by the cell only at the very end of attack preparations and transported gasoline to a bomb-construction safehouse.[10] That 25-year sentence for a low-level terrorist reflects a depth of resolve against terrorism that the more recent 15-year sentence against a hard-core terrorist does not.

More recently, the Attorney General announced in May that the Justice Department would be prosecuting known terrorist Ahmed Ghailani in federal court.[11] That prosecution is based on a March 12, 2001, indictment for terrorism conducted prior to 9/11.[12] Since then, Ghailani roamed free and served al-Qaeda as a document forger, trainer at a terrorist camp, and bodyguard for Osama bin Laden until he was captured by the U.S. military in July, 2004.[13] The Ghailani prosecution is an exercise in looking backward, not forward. But only by looking forward can we prevent the next attack.

We're all familiar with the *Miranda* warnings from numerous television shows. *Miranda* warnings, spelling out the constitutional rights to which Americans are entitled, are only given when criminal prosecution is the goal. Our goal in the war on terrorism should not be the prosecution of criminals in court, but rather it should be the defeat of terrorists on the battlefield far from America. Now comes word that the Obama Administration is increasingly providing *Miranda* warnings to captured terrorists, a clear indication it's intending to pursue more civil justice in the courtroom against America's enemies, and less military justice in the war on terror.

Before President Obama assumed office, the U.S. already granted enemy combatants more procedural rights than had ever been granted before by any nation in the history of the world. Now President Obama wants to extend to known terrorists the full gamut of constitutional rights afforded criminal defendants on trial in the U.S.

President Obama's own Solicitor General, Elena Kagan, filed a legal brief opposing a court's authority to order foreign terrorists released in this country.[14] In it, she repeatedly recognizes "the critical distinction" the Supreme Court has drawn "between an alien who has effected an entry into the United States and one who has never entered."[15] Indeed, Solicitor General Kagan cautioned the Supreme Court not to "blur the previously clear distinction between aliens outside the United States and aliens inside this country or at its borders."[16] "This basic distinction," she continued, "serves as the framework on which our immigration laws are structured, and repeatedly has been recognized as significant not just under the Constitution but also as a matter of statutory and treaty law."[17] By bringing more terrorists onto U.S. soil, even for pur-

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[9] Andrew McCarthy, "Sweetheart Deal for a Terrorist," National Review Online (May 5, 2009).
[10] Andrew McCarthy, "Sweetheart Deal for a Terrorist," National Review Online (May 5, 2009).
[11] http://www.usdoj.gov/opa/pr/2009/May/09-nsd-494.html.
[12] http://www.usdoj.gov/opa/pr/2009/May/09-nsd-494.html.
[13] Charles D. Stimson, "First—and Perhaps Last—Gitmo Inmate Brought to America," The Heritage Foundation (June 13, 2009), available at http://www.heritage.org/Press/Commentary/ed061209c.cfm.
[14] See Andrew McCarthy, "Justice Denies the Uighers . . . For Now," *National Review* (June 2, 2009).
[15] Id.
[16] Id.
[17] Id.

poses of prosecuting them, the President risks granting them even more constitutional rights, by his Solicitor General's own admission.

That the Administration may be planning on bringing more terrorists to the U.S. was indicated to Rep. Mike Rogers of Michigan.[18] Rep. Rogers is a former special agent of the Federal Bureau of Investigation and U.S. Army officer and now a senior Republican on the House Permanent Select Committee on Intelligence. He recently traveled to Afghanistan on a fact-finding trip, and what he heard from officials there startled him. He said he was told there that "The administration has decided to change the focus to law enforcement . . . You have foreign fighters who are targeting U.S. troops today—foreign fighters who go to another country to kill Americans. We capture them . . . and [we]'re reading them their rights—Mirandizing these foreign fighters."[19] And once terrorists are given the right to remain silent, of course, they do just that. The result is no interrogations, no information, and more attacks.

Just ask 9/11 mastermind Khalid Sheikh Mohammad. When he was captured in 2003, he was not cooperative. According to President Clinton's CIA Director, George Tenet, he said "I'll talk to you guys after I get to New York and see my lawyer."[20] But no one read him any *Miranda* rights, and instead his interrogation went forward, whether or not he wanted it to. As a result, Director Tenet said the information we obtained from him saved lives and helped defeat al-Qaeda.[21] President Obama's Director of National Intelligence, Admiral Dennis Blair, confirmed these facts recently when he wrote in an April 16, 2009, unclassified internal memo to employees of the Central Intelligence Agency that "High value information came from interrogations in which those [enhanced interrogation] methods were used and provided a deeper understanding of the al Qa'ida organization that was attacking this country."

As Director Tenet wrote in his memoirs, "I believe none of these successes would have happened if we had had to treat [this terrorist] like a white-collar criminal—read him his *Miranda* rights and get him a lawyer who surely would have insisted that his client simply shut up."[22]

The Justice Department claims that there has been no recent change in overall policy, but several of the individuals responsible for conducting the interrogations of detainees told Rep. Rogers that a "change of policy" is exactly what has occurred.[23]

We are aware of one situation in which the previous Administration gave *Miranda* warnings to a high-level detainee, but those warnings were given under unique circumstances in which a female detainee who is married to Khalid Sheikh Mohammad's nephew was waiting to be interrogated by FBI officials in Afghanistan, and then she grabbed the rifle of an army warrant officer and attempted to shoot and kill her captors. It was after this crime that

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[18] "Resolution: Are Terrorist Suspects Mirandized?" Office of Rep. Mike Rogers (R-MI) (June 12, 2009).

[19] See Stephen F. Hayes, "Miranda Rights for Terrorists," Weekly Standard Blog (June 10, 2009), available at http://www.weeklystandard.com/weblogs/TWSFP/2009/06/miranda__rights__for__terrorists.asp.

[20] Id.

[21] Id.

[22] Id.

[23] *See* Stephen Hayes, "You Have the Right to Remain Silent . . ." *The Weekly Standard* (June 22, 2009).

she was read her *Miranda* rights. She was not read her rights after her initial detention, but only after she committed the subsequent crime of attempted murder at a U.S. detention facility.[24]

Apparently, the increased use of *Miranda* warnings for terrorists by the Obama Administration is in fact part of a new policy the *Los Angeles Times* described in May. According to that report, "The FBI and Justice Department plan to significantly expand their role in global counter-terrorism operations, part of a U.S. policy shift that will replace a CIA-dominated system of clandestine detentions and interrogations with one built around transparent investigations and prosecutions. Under the 'global justice' initiative, which has been in the works for several months, FBI agents will have a central role in overseas counter-terrorism cases [and] expand their questioning of suspects. . . ."[25]

The reports that detainees are increasingly being told of a right to remain silent is disturbing not only for its policy implications, but also because it appears to violate one of President Obama's own policy statements. In a "60 Minutes" interview aired in March, Obama said "Now, do these [detainees] deserve *Miranda* rights? Do they deserve to be treated like a shoplifter down the block? Of course not."[26]

Even Attorney General Eric Holder once recognized the need to be able to detain and interrogate terrorists outside the normal process of criminal prosecution, going so far as to say that terrorists are not even entitled to prisoner-of-war protections under the Geneva Conventions. In an interview on CNN in January 2002, Mr. Holder said, rightly in our view, that:

> One of the things we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located; under the Geneva Convention you are really limited in the amount of information that you can elicit from people . . . If, for instance, Mohamed Atta had survived the attack on the World Trade Center, would we now be calling him a prisoner of war? I think not.[27]

It now appears, however, that the President and the Attorney General may be going well beyond considering terrorists captured on the battlefield prisoners of war by contemplating their detention in U.S. prisons as criminal defendants. With any increased reliance on criminal trials in the war on terror comes the detention of more terrorists in U.S. prisons and jails. Even Robert Mueller, the Director of the FBI, is concerned about that prospect. As the Associated Press reported, when one member of this committee "prodded Mueller to agree that [terrorists] could be safely kept in maximum security prisons in the United States . . . Mueller balked at [the]

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[24] *See* Stephen Hayes, "Obama Justice Department Hoes Silent on Miranda," Weekly Standard Blog (June 12, 2009).

[25] Josh Meyer, "FBI Planning a Bigger Role in Terrorism Fight," *The Los Angeles Times* (May 28, 2009).

[26] *See* video clip here: http://www.realclearpolitics.com/video/2009/06/10/flashback__obama__says__detainees__dont__deserve__miranda__rights.html.

[27] *See* "2002 Video Flashback—Eric Holder: Terrorist Detainees Don't Fall Under Geneva Conventions," available at http://newsbusters.org/blogs/kerry-picket (also featuring video of Holder interview).

suggestion, noting that in some instances imprisoned gang leaders have run their operations from inside prisons." [28]

The Senate Majority Leader, Harry Reid, has echoed Director Mueller's concerns. When asked whether he believed prisoners should ever be transferred into an American prison, he said, "Not in the United States." [29]

We must assure the American people that the United States is not starting to treat sworn foreign enemies of America who are waging a war against us as common criminals who are due to be informed of their *Miranda* rights. And the only way to do that is to support this resolution of inquiry so that Congress can review and evaluate the Administration's approach to how to treat our enemies and have a debate over that approach and change it if warranted. Our constitutional obligations require nothing less.

This resolution simply requests that the Administration produce to the House of Representatives documents and communications regarding any policy of notification of *Miranda* rights by the Department of Justice to both foreign persons captured in Afghanistan who are suspected of terrorism and to detainees in the custody of U.S. armed forces in Afghanistan. Securing the production of these documents is the least we can do to provide both the transparency the Obama Administration claims to support and the information the American people and their elected representatives deserve.

LAMAR SMITH.
F. JAMES SENSENBRENNER, JR.
HOWARD COBLE.
ELTON GALLEGLY.
BOB GOODLATTE.
DANIEL E. LUNGREN.
DARRELL E. ISSA.
J. RANDY FORBES.
STEVE KING.
TRENT FRANKS.
LOUIE GOHMERT.
JIM JORDAN.
TED POE.
JASON CHAFFETZ.
TOM ROONEY.
GREGG HARPER.

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[28] "FBI Director Concerned About Gitmo Releases," The Associated Press (May 21, 2009).
[29] Emily Pierce, "Reid Says Gitmo Prisoners Will Not Be Transferred to U.S.," *Roll Call* (May 19, 2009).