

DIRECTING THE ATTORNEY GENERAL OF THE UNITED STATES TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES, NOT LATER THAN 14 DAYS AFTER THE DATE OF THE ADOPTION OF THIS RESOLUTION, ANY DOCUMENTS AND LEGAL MEMORANDA IN THE ATTORNEY GENERAL'S POSSESSION RELATING TO THE PRACTICE OF TARGETED KILLING OF UNITED STATES CITIZENS AND TARGETS ABROAD

DECEMBER 18, 2012.—Referred to the House Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

### ADVERSE REPORT

[To accompany H. Res. 819]

[Including Committee Cost Estimate]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 819) directing the Attorney General of the United States to transmit to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, any documents and legal memoranda in the Attorney General's possession relating to the practice of targeted killing of United States citizens and targets abroad, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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### **Purpose and Summary**

H. Res. 819, introduced by Rep. Kucinich, directs the Attorney General to transmit to the House of Representatives any documents and legal memoranda in the Attorney General's possession relating to the practice of targeted killing of United States citizens and targets abroad.

### **Background and Need for the Legislation**

Per the Rules of the House, a Member may address a resolution of inquiry "to the head of an executive department." The resolution is privileged and may be considered at any time after it is properly reported or discharged from the committee(s) of jurisdiction. If the resolution is not reported to the House within 14 legislative days after its introduction, a motion to discharge the committee from its further consideration is privileged. Should the committee(s) of referral report within the 14 day period, only a designee of the committee can move to proceed to the consideration of the resolution on the floor.<sup>1</sup>

The Administration's targeted killing of terrorists abroad is a proper and important matter for Congressional oversight. But a resolution of inquiry is a rare procedure. More traditional paths of oversight have been yielding information about the Administration's targeted killing of U.S. citizen terrorists abroad. Because the Administration has not yet demonstrated the sort of obstruction in this matter that would warrant a resolution of inquiry, the resolution should be reported unfavorably.

For example, ordinary oversight processes for keeping the House and Senate Intelligence Committees apprised of the targeted killing program appear to have been followed. Title 50 requires the Director of National Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action to furnish to the congressional intelligence committees any information or material concerning covert actions (including the legal basis under which the covert action is being or was conducted) which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees.<sup>2</sup>

Additionally, the House and Senate Intelligence Committees continue to conduct robust oversight into the drone program that targets terrorists and their associates. As of June of this year, both Intelligence Committees conducted 28 monthly in-depth oversight meetings to review strike records and question every aspect of the program including legality, effectiveness, precision, foreign policy implications and the care that is taken to minimize noncombatant casualties.<sup>3</sup>

Oversight of the program has also been ongoing, with some progress, on the Judiciary Committee. On December 4, 2012, Ranking Member Conyers (D-MI), Representative Nadler (D-NY), and Representative Scott (D-VA) sent a follow up letter to Attorney General Holder requesting additional information regarding the

<sup>1</sup> See Rules of the House of Representatives, Rule XIII, Clause 7.

<sup>2</sup> See 50 USC 413b.

<sup>3</sup> Ken Dilanian, "Congress zooms in on drone killings," *Los Angeles Times*, June 25, 2012.

legal and factual justifications behind the use of targeted drone killings of both U.S. citizens and non-citizens. This was a follow up letter from a May 21, 2012 request in which they received some responsive documents, including a White Paper describing the legal rationale behind the al-Awlaki killing. The Department has not expressed an unwillingness to cooperate with the latest request.

Administration officials have also disclosed their legal rationale for this program in public addresses. In an address to the Yale Law School, Department of Defense General Counsel Jeh Charles Johnson stated that belligerents who also happen to be U.S. citizens do not enjoy immunity where non-citizen belligerents are valid military objectives. He relied on principles from *Ex Parte Quirin*<sup>4</sup> and *Hamdi v. Rumsfeld*<sup>5</sup>, which stated that “[a] citizen, no less than an alien, can be ‘part of or supporting forces hostile to the United States or coalition partners’ and ‘engaged in an armed conflict against the United States.’”<sup>6</sup>

Finally, the Attorney General and others have addressed the legality of using targeted killings of U.S. citizens abroad. The Attorney General publicly stated that “an operation using lethal force in a foreign country, targeted against a U.S. citizen who is a senior operational leader of al-Qaeda or associated forces, and who is actively engaged in planning to kill Americans, would be lawful at least in the following circumstances: first, the U.S. government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States; second, capture is not feasible; and third, the operation would be conducted in a manner consistent with applicable law of war principles.”<sup>7</sup>

### **Hearings**

No hearings were held in the Committee on H. Res. 819.

### **Committee Consideration**

On December 13, 2012 the Committee met in open session and ordered the resolution H. Res. 819 adversely reported without amendment, by voice vote, 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 there were no recorded votes during the Committee’s consideration of H. Res. 819.

### **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 Rep-

<sup>4</sup>317 U.S. 1 (1942).

<sup>5</sup>542 U.S. 507 (2004).

<sup>6</sup>Jeh Charles Johnson, (February 2012) Dean’s Lecture at Yale Law School, New Haven, CT.

<sup>7</sup>Eric Holder, (March 2012) Speech Before the Northwestern School of Law, Chicago, IL.

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. 819 does not authorize funding.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 819 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

### **Section-by-Section Analysis**

H. Res. 819 directs the Attorney General to transmit to the House of Representatives any documents and legal memoranda in the Attorney General's possession relating to the practice of targeted killing of United States citizens and targets abroad.