111TH CONGRESS
1st Session
" HOUSE OF REPRESENTATIVES ! REPORT
111–221

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

REPORT
OF THE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ON
H. RES. 602

JULY 23, 2009.—Referred to the House Calendar and ordered to be printed

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CONTENTS

	Page
Purpose and Background	1
Legislative History	2
Communications with the Executive Branch	2
Committee Position	4
Committee Cost Estimate	4
Compliance with House Rule XXI	4
Oversight Findings	5
Constitutional Authority Statement	5
Statement of Federal Mandates	5
Record Vote	5
Changes in Existing Law Made by the Bill, as Reported	5
Additional and Dissenting Views	5

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Mr. SKELTON, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany H. Res. 602]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the resolution (H. Res. 602) requesting that the President and directing that the Secretary of Defense 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, report favorably thereon with an amendment and recommend that the resolution be agreed to.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the House of Representatives requests the President, and directs the Secretary of Defense, to transmit to the House of Representatives, not later than the later of the date that is 90 days after the date of the adoption of this Resolution or December 31, 2009, a report on how the reading of rights under *Miranda* v. *Arizona* (384 U.S. 436 (1966)) to individuals detained by the United States in Afghanistan may affect—

(1) the rules of engagement of the Armed Forces deployed in support of Operation Enduring Freedom;

(2) post-capture interrogations and intelligence-gathering activities conducted as part of Operation Enduring Freedom;

(3) the overall counterinsurgency strategy and objectives of the United States for Operation Enduring Freedom;

(4) United States military operations and objectives in Afghanistan; and

(5) potential risks to members of the Armed Forces operating in Afghanistan.

PURPOSE AND BACKGROUND

On June 26, 2009, Congressman Mike Rogers (R-MI) introduced House Resolution 602, a resolution of inquiry. The resolution requests the President, and directs the Secretary of Defense, 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.

Clause 7 of rule XIII of the Rules of the House of Representatives provides for a committee to report on a qualifying resolution of inquiry, such as House Resolution 602, within 14 legislative days or a privileged motion to discharge the committee is in order. House Resolution 602 was referred to the Committee on Armed Services on May 21, 2009.

Under the rules and precedents of the House, a resolution of inquiry is one of the means by which the House may request information from the head of one of the executive departments. It is a simple resolution making a demand of the head of an executive department to furnish the House of Representatives with specific information in the possession of the executive branch. It is not used to request opinions or to require an investigation on a subject.

On July 21, 2009, the Committee on Armed Services took up House Resolution 602 for the purpose of reporting a recommendation to the House. House Resolution 602 was amended to require that the Secretary of Defense submit a plan, by December 31, 2009, or three months after the adoption of the resolution, whichever comes later, on the impact of giving *Miranda* warnings to detainees overseas has on five factors.

LEGISLATIVE HISTORY

House Resolution 602 was introduced on June 26, 2009, and referred to the Committee on Armed Services.

On July 21, 2009, the Committee on Armed Services held a mark-up session to consider House Resolution 602, as introduced. The committee, a quorum being present, ordered to be reported House Resolution 602, as amended, to the House with a favorable recommendation by a voice vote.

COMMUNICATIONS WITH THE EXECUTIVE BRANCH

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, July 21, 2009.

Hon. IKE SKELTON,
Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I write to correct a serious misimpression that has arisen in recent weeks, that the United States military may be providing *Miranda* warnings to terrorist suspects in Afghanistan. This is completely inaccurate.

The record should be clear: The essential mission of our nation's military, in times of armed conflict, is to capture or engage the enemy; it is not evidence collection or law enforcement. Members of the U.S. military do not provide *Miranda* warnings to those they capture.

Meanwhile, it has been the longstanding practice of the U.S. government, spanning administrations of both parties, to use all instruments of national power to defeat terrorist extremists. This has included, and will continue to include, the prosecution of some terrorists in Article III courts. In that event, U.S. law enforcement personnel have, in a handful of situations, been permitted to question detainees who are potential prospects for prosecution, accompanied by *Miranda* warnings. Such interviews, accompanied by *Miranda* warnings, are permitted by the Department of Defense only *after* the military's intelligence-gathering functions have been completed with respect to that detainee. These types of interviews are not given, and should not be given, if the military commanders on the ground conclude that doing so will hinder our military operations or intelligence-gathering efforts.

Though the instances of "Mirandized" interviews of U.S. military detainees are few and far between, we oppose any legislative effort to ban them altogether. Our commanders themselves would say doing so is contrary to national security, because it would limit the option to prosecute terrorists in Article III courts, and jeopardize those cases that we do prosecute. Our government must maintain all lawful options for fighting international terrorism, not limit them.

Sincerely,

JEH CHARLES JOHNSON,
General Counsel.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, July 21, 2009.

Hon. IKE SKELTON,
Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.

Hon. HOWARD P. "BUCK" MCKEON,
Ranking Member, Committee on Armed Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN AND RANKING MEMBER MCKEON: I am writing to correct some serious misinformation about the reading of *Miranda* warnings to terrorist suspects in Afghanistan and to oppose efforts to curtail the appropriate and limited use of this practice as part of a coordinated, multifaceted strategy to defeat terrorism.

It has been suggested that a new policy has been put into effect to read *Miranda* warnings to captured terrorists on the battlefield. This is untrue. It has been the longstanding practice of the U.S. government, including administrations of both parties, to use *Miranda* warnings in a very small number of cases in which it is important to our national security to ensure that statements made by terrorist suspects can be used in a criminal prosecution.

The warnings are given in locations removed from the battlefield, and only after the military's intelligence-gathering and force protection needs have been met. The decision as to whether or not to give a warning is made by experienced career professionals in consultation with military and intelligence officials. The warnings are never given if the professionals conclude that doing so will hinder our counterterrorism efforts.

Over the course of the last two decades, Mirandized statements obtained from non-U.S. citizens detained overseas have played a critical role in winning convictions and lengthy sentences in terrorism cases. For example, in the 1993 World Trade Center bombing case and the plot to bomb U.S. airlines, Ramzi Ahmed Yousef was sentenced to 240 years in prison and Abdul Hakim Murad and Wali Khan Amin Shah were sentenced to life in prison. In the 1998 East African embassy bombing case, Mohamen Sadeek Odeh, Mohamed Rashed Daoud Al-'Owhali, Wadih El-Hage and Khalfan Khamis Mohamed were each sentenced to life in prison. And in the 1985 case of the hijacking of Royal Jordanian Flight 402, Fawaz Yunis was sentenced to 30 years imprisonment.

In these and other cases, the use of Mirandized statements has enabled the government to keep all options on the table, thus helping to ensure that those who commit terrorist acts against our citizens can be brought to justice and given lengthy sentences, whether in federal courts or military commissions.

Were Congress to prohibit use of *Miranda* warnings, the government would be deprived of an important weapon against our enemies. Our military, law enforcement, and intelligence professionals must have access to all lawful instruments of national power to protect the country and ensure that terrorists are brought to justice. The judicious use of *Miranda* warnings preserves the full range of options available for dealing with terrorists. If Congress takes that option away, there will be an increased risk that those who have done us harm, who have killed Americans and would do so again, might go free.

This is not about giving rights to terrorists. It is about bringing them to justice. By ensuring that any statements they make are admissible at trial, we help ensure that they will no longer be a threat to American lives and American security.

Sincerely,

ERIC H. HOLDER, Jr.,
Attorney General.

COMMITTEE POSITION

On July 21, 2009, the Committee on Armed Services, a quorum being present, ordered to be reported House Resolution 602, as amended, to the House with a favorable recommendation by a voice vote.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates the costs of implementing the resolution would be minimal. The Congressional Budget Office did not provide a cost estimate for the resolution.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI, House Resolution 602 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, Section 8 of the United States Constitution.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

RECORD VOTE

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no record votes taken with respect to the committee's consideration of House Resolution 602.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3(e) of rule XIII of the Rules of the House of Representatives requires an elaboration or description of how the reported bill proposes to repeal or amend a statute or part thereof. There were no changes in existing law made by House Resolution 602, as reported.

ADDITIONAL AND DISSENTING VIEWS

Clause 3(a) of rule XIII requires that the report include all supplemental, minority, or additional views that have been submitted. None have been submitted by the time of the filing of the report.