

RESOLUTION OF INQUIRY DIRECTING THE ATTORNEY GENERAL TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES ALL INFORMATION IN THE ATTORNEY GENERAL'S POSSESSION RELATING TO THE TRANSFER OR RELEASE OF DETAINEES HELD AT NAVAL STATION, GUANTANAMO BAY, CUBA, INTO THE UNITED STATES

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JULY 31, 2009.—Referred to the House Calendar and 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. 636]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 636) directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession relating to the transfer or release of detainees held at Naval Station, Guantanamo Bay, Cuba, into the United States, 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

On July 13, 2009, Congressman Frank Wolf (R-VA) introduced H. Res. 636, a resolution of inquiry. The resolution 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 document, memo, or correspondence of the Department of Justice, including the Federal Bureau of Investigation and United States Marshal Service, or any portion of any such document, memo, or correspondence, that refers or relates to (1) any guidance, recommendations, or logistical preparations made since January 20, 2009, for the transfer or release of the detainees held at Naval Station, Guantanamo Bay, Cuba (hereinafter “Naval Station”), into the United States; (2) the identities of any detainees that have been cleared for release into the United States and any information about the capture, detention, and threat assessment of such detainees; (3) the countries that have been contacted by Government officials to request their acceptance of detainees currently held at Naval Station; and (4) the legal guidance regarding the transfer, detention, or release of detainees held at Naval Station into the United States.

## BACKGROUND

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.<sup>1</sup> 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.”<sup>2</sup> The typical practice has been to use the verb “request” when asking for information from the President, and “direct” when addressing Executive department heads.<sup>3</sup> 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.

While appreciative of Representative Wolf’s interest in the issues surrounding the closure of Guantanamo, the Committee nonetheless believes that, for the reasons summarized below, the resolution is unwarranted.

As to requests for information on the alleged release into the United States of Guantanamo detainees, the recently enacted Defense supplemental appropriations resolution (P.L. 111–32) mandates that no such detainee may be released into the United States.

As to the names of countries that have been contacted by U.S. Government officials to request their acceptance of detainees currently held at Guantanamo, insisting that this information be divulged would, in the Committee’s view, inappropriately interfere

<sup>1</sup>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.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

with the constitutional responsibility of the Executive to conduct foreign policy, including holding sensitive preliminary discussions on a confidential basis. In this particular instance, it could be expected to materially interfere with efforts to close Guantanamo, by prematurely disclosing the name of any country even contemplating accepting detainees.

Moreover, the Defense supplemental appropriations resolution already requires that information on the name of each detainee, risk assessment, and terms of any agreement with any country be provided to Congress 15 days before any transfer to another country occurs.

And as to information regarding any Guantanamo detainee to be transferred to the U.S. for detention or trial, the Defense supplemental appropriations resolution already requires that information on risk assessment, costs, legal rationale, associated court demands, plans for risk mitigation, and notification to State officials be provided to Congress 45 days before any such transfer occurs.

Additional information regarding this matter is being provided through regular Committee oversight, and from briefings and reports from the Administration's Guantanamo-related task forces. The Defense supplemental appropriations resolution also requires that, before Guantanamo is closed, the President is to submit to Congress a report describing the disposition or legal status of each detainee.

In light of these facts, the Committee is adversely reporting H. Res. 636 to the House, without amendment.

#### HEARINGS

No hearings were held in the Committee on H. Res. 636.

#### COMMITTEE CONSIDERATION

On July 29, 2009, the Committee met in open session and ordered H. Res. 636 adversely reported, without amendment, by a rollcall vote of 14 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. 636:

H. Res. 636 was ordered reported unfavorably by a vote of 14 to 12.

#### ROLLCALL NO. 1

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

## ROLLCALL NO. 1—Continued

|                                 | Ayes | Nays | Present |
|---------------------------------|------|------|---------|
| Mr. Wexler .....                |      |      |         |
| Mr. Cohen .....                 |      |      |         |
| Mr. Johnson .....               | X    |      |         |
| Mr. Pierluisi .....             | X    |      |         |
| Mr. Quigley .....               |      |      |         |
| Mr. Gutierrez .....             |      |      |         |
| Mr. Sherman .....               |      |      |         |
| Ms. Baldwin .....               | X    |      |         |
| Mr. Gonzalez .....              | X    |      |         |
| Mr. Weiner .....                | X    |      |         |
| Mr. Schiiff .....               | X    |      |         |
| Ms. Sánchez .....               |      |      |         |
| Ms. Wasserman Schultz .....     |      |      |         |
| Mr. Maffei .....                | X    |      |         |
| Mr. Smith, Ranking Member ..... |      | X    |         |
| Mr. Sensenbrenner, Jr. ....     |      |      |         |
| Mr. Coble .....                 |      | X    |         |
| Mr. Gallegly .....              |      |      |         |
| Mr. Goodlatte .....             |      |      |         |
| Mr. Lungren .....               |      | X    |         |
| Mr. Issa .....                  |      |      |         |
| Mr. Forbes .....                |      | X    |         |
| Mr. King .....                  |      | X    |         |
| Mr. Franks .....                |      | X    |         |
| Mr. Gohmert .....               |      | X    |         |
| Mr. Jordan .....                |      | X    |         |
| Mr. Poe .....                   |      | X    |         |
| Mr. Chaffetz .....              |      | X    |         |
| Mr. Rooney .....                |      | X    |         |
| Mr. Harper .....                |      | X    |         |
| Total .....                     | 14   | 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 resolution 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. 636 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. 636 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. 636 is not a bill or a joint resolution.

#### SECTION-BY-SECTION ANALYSIS

H. Res. 636 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 document, memo, or correspondence of the Department of Justice, including the Federal Bureau of Investigation and United States Marshal Service, or any portion of any such document, memo, or correspondence, that refers or relates to (1) any guidance, recommendations, or logistical preparations made since January 20, 2009, for the transfer or release of the detainees held at Naval Station, Guantanamo Bay, Cuba (hereinafter “Naval Station”), into the United States; (2) the identities of any detainees that have been cleared for release into the United States and any information about the capture, detention, and threat assessment of such detainees; (3) the countries that have been contacted by Government officials to request their acceptance of detainees currently held at Naval Station; and (4) the legal guidance regarding the transfer, detention or release of detainees held at Naval Station into the United States.

#### MINORITY VIEWS

We support House Resolution 636 because the President made a rash decision, after only one day in office, to close the Guantanamo Bay terrorist detention facility within one year. After six months, the Administration still hasn’t produced a plan to do so.

And the absence of a clear reason to close Gitmo proves the President’s decision was premature at best and dangerous at worst.

On Wednesday, July 29, we considered H. Res. 636, a resolution of inquiry introduced by Representative Frank Wolf of Virginia, which would require the Justice Department to give basic information to Congress regarding its Gitmo plans.

This information includes documents that relate to any preparations for the transfer or release into the U.S. of the detainees held at Gitmo; the identities of any detainees who have been cleared for release into the U.S.; any information about the capture, detention, and threat assessment of those detainees; and relevant guidelines regarding the transfer, detention or release of Gitmo detainees.

We would have expected this resolution to be reported out favorably so the full House could vote on it, because Democratic leaders

themselves have chided the Administration for its failure to produce this and other information related to its plans to close Gitmo.

According to *Roll Call*, “Democratic leaders are . . . indignant that the President has asked for money before presenting a plan. . . . In anticipation of receiving a plan for the prison’s closure this month, House and Senate leaders had already delayed consideration of their Defense appropriations bills—traditionally one of the first spending measures to see action.”<sup>1</sup>

According to the Democratic Chairman of the House Defense Appropriations Subcommittee, the Administration “will have no money available until we get a plan. It’s that simple.”<sup>2</sup> Speaker Pelosi herself said, “We’ll wait for a plan.”<sup>3</sup>

And House Appropriations Chairman David Obey said “so far as we can tell there is yet no concrete program for [closing Gitmo] . . . I’m not much interested in wasting my energy defending a theoretical program.”<sup>4</sup>

Clearly, the Administration’s program will remain theoretical until we get answers to the basic questions posed in H. Res. 636.

The recent experiment in Bermuda makes clear the need for transparency. After the Department of Justice announced that four detainees had been resettled in Bermuda, the shocked Police Commissioner there said a preliminary threat assessment of the men found them to be “high risk.”<sup>5</sup>

And according to ABC News, “The Obama administration put out some seemingly mixed messages on the . . . transfer, saying that their release to Bermuda would make the U.S. safer, while insisting the government would guard against their travel to the U.S.”<sup>6</sup>

What sense does it make to say detainees are not a threat, when at the same time we take precautions to ensure that those same detainees are prohibited from entering the United States?

Who are the people at Gitmo? They are al-Qaeda financial specialists, organizational experts, bomb-makers, and recruiters. In camp inspections, it has been discovered that detainees were being trained by other detainees in bomb-making, weapons handling, and tactics. Serious plots to kill guards emerged from even medium-security cell blocks.<sup>7</sup>

Ever wonder what it’s like to be a guard at Guantanamo Bay? They receive, on average, 450 assaults annually.<sup>8</sup> More than half the assaults require some sort of medical attention.<sup>9</sup> Detainees tell guards they’ll have al-Qaeda members rape and murder their families.<sup>10</sup>

<sup>1</sup>Emily Pierce and Jennifer Bendery, “Democrats Demand Gitmo Plan,” *Roll Call* (July 22, 2009).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>Megan Scully, “Obey Rejects Obama’s Request for Funds to Shutter Guantanamo Detention Center,” *CongressDaily* (May 5, 2009).

<sup>5</sup>“Police Commissioner Only Knew of Detainees’ Arrival on Thursday,” *The (Bermuda) Royal Gazette* (June 17, 2009).

<sup>6</sup>Jake Tapper, “Four Uighurs Resettled in Bermuda,” ABC News Political Punch (June 11, 2009), available at <http://blogs.abcnews.com/politicalpunch/2009/06/four-uighurs-settled-in-bermuda.html>.

<sup>7</sup>Lt. Col. Gordon Cucullu, *Inside GITMO: The True Story Behind the Myths of Guantanamo Bay* (HarperCollins 2009), at 102.

<sup>8</sup>*Id.* at 177.

<sup>9</sup>*Id.* at 177.

<sup>10</sup>*Id.* at 121.

Amazingly, the Administration has now delayed the deadline to develop a plan for closing Gitmo to just days before the final deadline for shutting it down.<sup>11</sup> As the Democrats on the committee reported H. Res. 636 unfavorably, the full House of Representatives will not be able to require the disclosure of this basic information. Consequently, there will be insufficient time for the American people to voice their opinions, and for Congress to provide the necessary review, to ensure the Administration's decisions will not endanger American lives before it's too late. This result is unfortunate, given that members of the Democratic majority were, until last January, demanding at least this level of congressional involvement in these important decisions.

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<sup>11</sup>Emily Pierce and Jennifer Bendery, "Democrats Demand Gitmo Plan," *Roll Call* (July 22, 2009).