

REQUESTING THE PRESIDENT TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES ALL DOCUMENTS IN THE POSSESSION OF THE PRESIDENT RELATING TO THE EFFECTS ON FOREIGN INTELLIGENCE COLLECTION OF THE TRANSFER OF DETAINEES HELD AT NAVAL STATION, GUANTANAMO BAY, CUBA, INTO THE UNITED STATES

DECEMBER 16, 2009.—Referred to the House Calendar and ordered to be printed

Mr. REYES, from the Permanent Select Committee on Intelligence, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 923]

The Permanent Select Committee on Intelligence, to whom was referred the resolution (H. Res. 923) requesting the President to transmit to the House of Representatives all documents in the possession of the President relating to the effects on foreign intelligence collection of the transfer of detainees held at Naval Station, Guantanamo Bay, Cuba, into the United States, 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 President is requested to transmit to the House of Representatives not later than 14 days after the adoption of this resolution a document (which may be transmitted in classified form, if appropriate) that provides a summary of the effects on foreign intelligence collection of the transfer of detainees held at Naval Station, Guantanamo Bay, Cuba, into the United States.

PURPOSE

H. Res. 923 requests that the President submit to the House of Representatives a summary, in classified form if necessary, of the effects that the transfer of detainees held at the U.S. Naval Station at Guantanamo Bay, Cuba, to the United States might have on the collection of foreign intelligence information.

BACKGROUND

On January 22, 2009, President Barack Obama issued Executive Order 13492, Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities. The order requires that the detention facilities at Guantanamo Bay be closed promptly “in order to effect the appropriate disposition” of the detainees held there.

On November 13, 2009, Attorney General Eric Holder announced that several of these detainees would be transferred to the United States for prosecution. The plans to transfer these detainees, along with the prospect that other detainees may be transferred, to the United States have led some to ask whether these transfers would have an effect on the government’s foreign intelligence collection efforts.

The resolution asks the President to provide a summary of the effects that these transfers might have on U.S. intelligence collection efforts.

SCOPE OF COMMITTEE REVIEW

No hearings were held in the Committee on H. Res. 923.

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 are incorporated in the descriptive portion of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply, as H. Res. 923 does not authorize funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Clause 3(d)(1) of rule XIII of the House of Representatives does not apply, as H. Res. 923 is not a bill or a joint resolution that may be enacted into law.

COMMITTEE CONSIDERATION AND ROLL CALL VOTES

On December 15, 2009, the Committee met in open session and ordered the resolution, as amended, to be reported favorably to the House.

In open session, the Committee considered the text of the resolution, H. Res. 923.

Chairman Reyes offered an amendment to H. Res. 923, which requests that the President provide a summary, in classified form if necessary, of the effects of detainee relocation on intelligence collection. The amendment was approved by a record vote of 10 ayes and 7 noes.

Voting aye: Mr. Reyes, Mr. Hastings, Ms. Eshoo, Mr. Holt, Mr. Ruppertsberger, Mr. Thompson, Ms. Schakowsky, Mr. Schiff, Mr. Smith, Mr. Boren.

Voting no: Mr. Hoekstra, Mr. Gallegly, Mr. Thornberry, Mr. Rogers, Mr. Miller, Mr. Conaway, Mr. King.

The Committee then voted to favorably report H. Res. 923, as amended, by a record vote of 10 ayes and 7 noes.

Voting aye: Mr. Reyes, Mr. Hastings, Ms. Eshoo, Mr. Holt, Mr. Ruppersberger, Mr. Thompson, Ms. Schakowsky, Mr. Schiff, Mr. Smith, Mr. Boren.

Voting no: Mr. Hoekstra, Mr. Gallegly, Mr. Thornberry, Mr. Rogers, Mr. Miller, Mr. Conaway, Mr. King.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF THE
AMENDMENT

This resolution requests that the President submit to the House of Representatives a summary, in classified form if necessary, of the effects that the transfer of detainees held at the U.S. Naval Station at Guantanamo Bay, Cuba, might have on collection of foreign intelligence information.

STATEMENT OF FEDERAL MANDATES STATEMENT

H. Res. 923 includes no Federal mandates.

STATEMENT ON CONGRESSIONAL EARMARKS

Clause 9 of rule XXI of the Rules of the House of Representatives does not apply, as H. Res. 923 is not a bill or a joint resolution.

CONGRESSIONAL BUDGET OFFICE 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.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H. Res. 923 makes no changes to existing law.

MINORITY VIEWS

The potential relocation of hardcore al Qaeda terrorists into the United States has significant ramifications for both national security and the security of the individual communities to which detainees from the Guantanamo Bay detention facility may be moved. Accordingly, we have been gravely disappointed at the failure of this Administration to keep the Congress fully and currently informed with respect to its intentions in this regard. It is unfortunate that it is necessary to file a Resolution of Inquiry to try to obtain even basic information on the potential hazards and consequences of such a move, and it is disappointing that the Committee would water down such a resolution by allowing the Administration to provide only the information it chooses instead of conducting meaningful oversight.

While we support any effort to obtain further information from the Executive Branch on this subject, we cannot endorse this resolution in its current form. We hope that the so-called “most open and transparent Administration in history” will be more forthcoming going forward, and that the Committee will be more willing to do the oversight work it is charged under the Constitution.

As introduced by Ranking Member Hoekstra, H. Res. 923 requested the President to produce to the Committee all documents that relate to the potential effects on intelligence collection that may result from bringing Guantanamo detainees to the United States. The potential loss of such intelligence collection should be central to any consideration of whether to relocate detainees from the existing facility at Guantanamo into the United States.

This matter is extremely timely. The Obama Administration has recently announced that it intends to move hardcore al Qaeda terrorists to the United States for detention, even though right now that use of funds is prohibited by law and even though it has refused to brief either this Committee or the Committee on Armed Services in advance with respect to its intentions. In fact, we learned that this move was impending when a draft Executive Order was made public—not by the “most open and transparent Administration in history,” but instead by an Internet Weblog. The decision was made even though the relevant Committees of Congress still have not been consulted.

The American people have a right to know what kind of hardcore terrorists are being brought to their neighborhoods, what kind of threats they pose, and the serious questions that do not yet appear to have been addressed that *must* be answered before taking such an extreme step. One of these questions is the impact that such a move could have on intelligence collection, including potential warning of future attacks on the United States, or intelligence that could affect the safety and security of the American communities in which these terrorists will be relocated. The resolution also

would require fuller disclosure and transparency on potential intelligence losses.

We have asked repeatedly for briefings on this matter, beginning almost immediately after the President's Executive Order to implement his campaign promise to close Guantanamo by the end of the year—a promise that almost certainly will not be kept. For almost a year now, there has been little but stonewalling and a refusal to discuss the hard questions. We have asked until we are blue in the face. There have been no answers. We hope that all Members of this Committee would want any information that is available to conduct oversight on this topic, because we currently have almost none. This resolution should not be contentious or controversial, and all Members of the Committee should have supported it on a bipartisan basis.

Instead, the Committee on a partisan vote adopted an amendment to water down the Resolution of Inquiry. It now requests only an Administration-prepared “summary” of the information instead of the documents themselves. This completely defeats the purpose and Constitutional function of Congressional oversight. We simply cannot outsource our responsibilities to the Administration. The Committee has to conduct vigorous and independent oversight, and the amendment accomplishes neither.

The lack of transparency is not limited to the Administration. We also must note that on December 8, 2009, Republican members of the Illinois delegation—including Representatives Manzullo, Shimkus, Biggert, Kirk, Johnson, Roskam and Schrock—requested access to classified information held by the Committee that should be highly relevant to any decision to bring Guantanamo detainees to the State of Illinois. Ranking Member Hoekstra reinforced this request in a followup letter dated December 11, 2009 and made an independent motion under the Committee Rules that a redacted version of the classified material be made available to these Members. The Committee Rules explicitly require such requests to be considered at the “earliest practicable opportunity”, and yet the Chairman refused to schedule the matter at the Committee business meeting considering this request.

The Committee Rules nowhere authorize consideration to be delayed for the purpose of consulting the Executive Branch, which was the reason cited for the delay. The information is highly material to the decision that will directly affect citizens in the districts of each of these Members of Congress. Simple fairness demands that we consider this request immediately, yet that was not done as we believe was required. Accordingly, we wish to note this point of order and our objection for the record.

The decisions that have been announced on Guantanamo detainees need to be fully considered in sunlight, not forced upon an American people who have not been given access to all of the facts. This Committee has a right to know on behalf of the American people, and we will continue to press for some meaningful transparency.

PETER HOEKSTRA.
ELTON GALLEGLY.
MAC THORBERRY.
MIKE ROGERS.
SUE MYRICK.
ROY BLUNT.
JEFF MILLER.
K. MICHAEL CONAWAY.
PETER T. KING.

