

113TH CONGRESS
2^D SESSION

S. RES. 355

Calling on the Government of the Islamic Republic of Afghanistan to cease the extra-judicial release of Afghan detainees, carry out its commitments pursuant to the Memorandum of Understanding governing the transfer of Afghan detainees from United States custody to Afghan control and to uphold the Afghan Rule of Law with respect to the referral and disposition of detainees.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2014

Mr. GRAHAM (for himself, Mr. DONNELLY, Mr. CHAMBLISS, Mr. BLUNT, Ms. AYOTTE, Mr. MCCAIN, Mr. BLUMENTHAL, Mr. INHOFE, and Mr. LEVIN) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Calling on the Government of the Islamic Republic of Afghanistan to cease the extra-judicial release of Afghan detainees, carry out its commitments pursuant to the Memorandum of Understanding governing the transfer of Afghan detainees from United States custody to Afghan control and to uphold the Afghan Rule of Law with respect to the referral and disposition of detainees.

Whereas, on March 9, 2012, Afghan General Abdul Rahim Wardak and United States Marine General John Allen signed a Memorandum of Understanding in which the United States reaffirmed its commitment to transfer Af-

ghan nationals detained by the United States Armed Forces at the Detention Facility in Parwan (DFIP) to Afghanistan, provided that the Government of Afghanistan establish an administrative detention regime under its domestic law and comply with its international obligations with respect to due process;

Whereas, on March 25, 2013, a Memorandum of Understanding between the United States and Afghanistan called for the creation of an Afghan Review Board (ARB) to convene under Afghan law to determine the disposition of all Afghan detainees;

Whereas, in the event of a dispute over the disposition of detainees, the March 2013 Memorandum of Understanding also commits the Government of Afghanistan to exchange views and information between the Minister of Defense and the Commander of United States Forces, Afghanistan before any detainee is released;

Whereas the Government of Afghanistan has announced the imminent release of 65 dangerous individuals from the DFIP without referral to the Afghan justice system, despite evidence showing these detainees have engaged in violent crimes against the Afghan people and under protest from United States Forces, Afghanistan;

Whereas detainees from this group of 65 are directly linked to attacks wounding or killing 32 United States or Coalition Forces and attacks wounding or killing 23 Afghan National Security Forces or Afghan civilians;

Whereas the United States Government has declassified and provided hundreds of pages of evidence and investigative leads to the ARB;

Whereas the Justice Center in Parwan has successfully adjudicated more than 3,000 criminal cases of individuals who committed acts of terror against Coalition Forces, Afghan National Security Forces, and the people of Afghanistan;

Whereas there is a legitimate force protection concern for the lives of Coalition Forces and Afghan National Security Forces if any disputed individual is released, since the primary weapon of choice is the improvised explosive device, which also poses a significant threat to Afghan civilians;

Whereas there is evidence that some detainees already released by the ARB have rejoined the fight against Coalition Forces;

Whereas, despite evidence to the contrary, President of Afghanistan Hamid Karzai stated the prisoners set to be released are innocent and must be released;

Whereas releasing the dangerous detainees deprives the people of Afghanistan of their day in court and undermines the rule of law in the country;

Whereas the release of detainees under these conditions is not authorized, and the ARB is performing an extra-judicial function, contrary to the rule of law in Afghanistan; and

Whereas this extra-judicial action harms the prospective Bilateral Security Agreement between the United States and Afghanistan for post-2014 United States military presence in the country: Now, therefore, be it

1 *Resolved*, That the Senate—

1 (1) insists President of Afghanistan Hamid
2 Karzai honor the terms included in the Memo-
3 randum of Understanding, dated March 25, 2013;

4 (2) insists that if the Afghan Review Board
5 (ARB) will not follow the conditions set forth in the
6 Memorandum of Understanding, that the ARB shall
7 be dismantled and the National Directorate for Se-
8 curity (NDS) and Afghan prosecutors shall deter-
9 mine how to handle the remaining detainees;

10 (3) urges close and continuing communication
11 between the Minister of Defense and the Com-
12 mander of United States Forces, Afghanistan prior
13 to the release of any detainee;

14 (4) urges the Government of Afghanistan to
15 cease the extra-judicial release of detainees and in-
16 stead refer the dangerous individuals and the re-
17 mainder of the ARB cases for prosecution at the
18 Justice Center in Parwan or for investigation by the
19 NDS; and

20 (5) calls on the Secretary of State to consider
21 the Government of Afghanistan's adherence to exist-
22 ing detainee memoranda of understanding in imple-
23 menting the certification requirements for assistance
24 for Afghanistan under section 7044(3) of the De-
25 partment of State, Foreign Operations, and Related

- 1 Programs Appropriations Act, 2014 (division K of
- 2 Public Law 113–76).

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