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2D SESSION

S. RES. 403

Expressing the sense of the Senate that Umar Farouk Abdulmutallab should be tried by a military tribunal rather than by a civilian court.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2010

Mr. VITTER (for himself, Mr. CORNYN, Mr. INHOFE, Mr. BENNETT, Mr. CHAMBLISS, Mr. ENSIGN, and Mr. WICKER) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate that Umar Farouk Abdulmutallab should be tried by a military tribunal rather than by a civilian court.

Whereas Umar Farouk Abdulmutallab, a Nigerian citizen, attempted to blow up a transcontinental airliner, Northwest Airlines Flight 253, over Detroit, Michigan, on Christmas Day 2009;

Whereas Abdulmutallab boarded Flight 253 in Amsterdam using an unrevoked United States visa after having traveled from Yemen, purchasing his ticket with cash, and checking no luggage;

Whereas prior to the attack on Flight 253, Abdulmutallab's father, a prominent Nigerian banker, warned officials at

the United States Embassy in Nigeria that his son was being influenced by Islamic extremists in Yemen;

Whereas United States intelligence officials learned, based on intercepted al Qaeda communications from Yemen in November 2009, that a man named “Umar Farouk” had volunteered for an upcoming terrorist attack and had been in contact with Anwar al-Awlaki, the same Yemen-based radical cleric who sent more than a dozen e-mail messages to the Fort Hood shooter, Nidal Malik Hasan;

Whereas in November 2009, the National Security Agency also intercepted a phone conversation involving al Qaeda operatives in Yemen discussing an unnamed Nigerian man;

Whereas in December 2009, intelligence officials learned that al Qaeda operatives in Yemen were looking for “ways to move people to the West” and specifically mentioning the Christmas Day date;

Whereas the Central Intelligence Agency (CIA) had issued finished intelligence regarding Abdulmutallab by Christmas Day 2009, which both the CIA and the National Counterterrorism Center (NCTC) had access to, but did not disseminate more broadly within the intelligence community due to the absence of a photograph of Abdulmutallab, despite the fact that other counterterrorism groups already possessed such a photograph;

Whereas the intelligence agencies for the United Kingdom revoked Abdulmutallab’s British visa because of a fraudulent visa application;

Whereas after Abdulmutallab was apprehended by United States Customs agents and local police following his failed attack on Flight 253, he spoke freely about receiv-

ing training from members of al Qaeda in the Arabian Peninsula and stated that other jihadists would follow him;

Whereas local agents of the Federal Bureau of Investigation (FBI) interrogated Abdulmutallab for 50 minutes, during which time Abdulmutallab disclosed information concerning his training in Yemen and the operation of al Qaeda in the Arabian Peninsula;

Whereas after 50 minutes, the FBI stopped its interrogation of Abdulmutallab, agreeing to continue the interrogation after he received medical attention for the burns on his legs and groin caused by the failed bomb he had sewn in his underwear;

Whereas before the FBI agents resumed the interrogation, Attorney General Eric Holder made the decision to extend the rights required under *Miranda v. Arizona*, 384 U.S. 436 (1966) to Abdulmutallab and to treat him as a common criminal rather than a unprivileged enemy belligerent who would be subject to military law;

Whereas the FBI agents, following the decision of Attorney General Holder, read Abdulmutallab his Miranda rights, including his right to a lawyer and his right to remain silent, at which point Abdulmutallab stopped divulging information and remained silent;

Whereas information concerning Yemeni terror networks, terrorist training operations, and al Qaeda in the Arabian Peninsula are of the utmost value to the United States in its ongoing war against international terrorism;

Whereas Attorney General Holder made the decision to extend Miranda rights to Abdulmutallab without consulting the Director of National Intelligence, Dennis Blair, the

Secretary of Homeland Security, Janet Napolitano, the NCTC Director, Michael Leiter, the Secretary of Defense, Robert Gates, or the FBI Director, Robert Mueller;

Whereas Attorney General Holder did not consult the High-Value Detainee Interrogation Group (HIG), which, according to Director Blair, “was created exactly for th[e] purpose” of making “a decision on whether . . . a certain person who’s detained should be treated as . . . a case for federal prosecution”;

Whereas despite the fact that President Barack Obama created the HIG for the specific purpose of interrogating high-value detainees in order to obtain intelligence, the HIG was not yet operational by Christmas Day 2009;

Whereas given the evidence against Abdulmutallab and the numerous witnesses onboard Flight 253 who saw him attempt to detonate an explosive device, it was not necessary to secure testimony admissible in civilian court by providing Miranda rights to Abdulmutallab;

Whereas even if testimony that would be admissible in a civilian court was believed to be necessary, Abdulmutallab qualified for an exception to the requirements under Miranda that permits law enforcement officers to interrogate individuals with possible knowledge of an impending terrorist attack;

Whereas despite the fact that the United States is at war with al Qaeda and deeply concerned about the operation of Islamic terrorist networks in the Arabian Peninsula and in Yemen, a country that continues to harbor the terrorists who attacked the U.S.S. Cole, Attorney General Holder, under the guidance of President Obama, subse-

quently ordered that Abdulmutallab be prosecuted on criminal charges in a United States civilian court rather than in a military tribunal;

Whereas under the international law of armed conflict, the United States has the authority to detain enemies who have engaged in combatant actions until the end of hostilities;

Whereas, on September 18, 2001, the Congress passed a Joint Resolution authorizing the use of military force (Public Law 107–40; 50 U.S.C. 1541 note), stating that “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons”;

Whereas following extensive debate and numerous hearings on the topic, both the Senate and the House of Representatives passed the Military Commissions Act of 2009, which became law on October 28, 2009 (title XVIII of Public Law 111–84); and

Whereas pursuant to the President’s authority under the United States Constitution as the Nation’s Commander-in-Chief, as well as the Congressional authorization for the use of military force under Public Law 107–40, the President has both the authority and the responsibility to detain Abdulmutallab and other foreign terrorists and prosecute them through a military tribunal for their terrorist actions on behalf of al Qaeda: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) foreign terrorists who are enemies of the
3 United States should not be afforded the same
4 rights under the Constitution as United States citi-
5 zens;

6 (2) the most important duty of the Attorney
7 General is to protect the United States from its ter-
8 rorist enemies;

9 (3) the decision by Attorney General Holder to
10 truncate Abdulmutallab’s interrogation after only 50
11 minutes cost the United States Government untold
12 intelligence and has made America less safe;

13 (4) Attorney General Holder should not provide
14 Abdulmutallab with a civilian trial, nor should he
15 have ordered that Abdulmutallab be advised of his
16 right to remain silent;

17 (5) to the extent possible, foreign terrorist
18 enemy combatants should be tried in military tribu-
19 nals rather than in civilian courts;

20 (6) to the extent that foreign terrorists are
21 prosecuted in civilian courts, they should be thor-
22 oughly interrogated for information necessary to
23 protect the United States before they are provided
24 with a lawyer and informed of their right to remain
25 silent; and

1 (7) at a minimum, the Attorney General should
2 consult with the Director of the Federal Bureau of
3 Investigation, the Director of National Intelligence,
4 the Director of the Central Intelligence Agency, the
5 Secretary of Homeland Security, the Director of the
6 National Counterterrorism Center, the Secretary of
7 Defense, congressional leaders, or the President be-
8 fore unilaterally deciding to terminate the interroga-
9 tion of a key intelligence source and provide a ter-
10 rorist enemy with the same rights as those that are
11 guaranteed under the Constitution for United States
12 citizens.

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