

House Calendar No. 133

113TH CONGRESS
2D SESSION

H. RES. 644

[Report No. 113-569]

Condemning and disapproving of the Obama administration's failure to comply with the lawful statutory requirement to notify Congress before releasing individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing national security concerns over the release of five Taliban leaders and the repercussions of negotiating with terrorists.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2014

Mr. RIGELL (for himself, Mr. RIBBLE, Mr. BARROW of Georgia, and Mr. RAHALL) submitted the following resolution; which was referred to the Committee on Armed Services

JULY 31, 2014

Additional sponsors: Mr. AUSTIN SCOTT of Georgia, Mr. STUTZMAN, Mr. HARRIS, Mr. GERLACH, Mr. WITTMAN, Mr. HURT, Mr. STEWART, Mr. RICE of South Carolina, Mr. DESJARLAIS, Mr. THORNBERRY, Mr. LANCE, Mr. SMITH of Texas, Mr. HUNTER, Mr. WILSON of South Carolina, Mr. GOODLATTE, Mr. PEARCE, Mr. MCKEON, Mr. GRIFFIN of Arkansas, Mrs. WALORSKI, Mr. CHABOT, Mr. LANKFORD, Mr. COOK, Mr. WEBER of Texas, Mr. COLLINS of New York, Mr. SALMON, Mr. YOHO, Mr. SOUTHERLAND, Mr. COTTON, Mr. WOLF, Mr. FORBES, Mr. PERRY, Mr. STIVERS, Mr. ROKITA, Mr. SMITH of Nebraska, Mr. LONG, Mr. BYRNE, Mr. MESSER, Mr. PRICE of Georgia, Mr. ROE of Tennessee, Mr. SENSENBRENNER, Mr. KINGSTON, Mr. WOODALL, Mr. CONAWAY, Mr. PALAZZO, Mr. BUCHANAN, Mr. RODNEY DAVIS of Illinois, Mr. FITZPATRICK, Mr. DENHAM, Mr. BROOKS of Alabama, Mr. TURNER, Mr. GOHMERT, Mr. COLE, Mr. SCHOCK, Mr. GOSAR, Mr. GRIFFITH of Virginia, Mr. NUGENT, Mrs. BLACKBURN, Mr. SHUSTER, Mr. MARINO, Mrs. BACHMANN, Mrs. HARTZLER, Mr. CARTER, Mrs. NOEM, Mr. WOMACK, Mr. MULVANEY, Mr. HULTGREN, Mrs. ELLMERS, Mr. LAMALFA, Mr. MCKINLEY, Mr. MILLER of Florida, Mr. FLEMING, Mrs. BLACK, Mr. POMPEO, Mr. KLINE, Mr. DESANTIS, Mr. JONES, Mr. CRAWFORD, Mr.

HENSARLING, Mr. COBLE, Mr. CALVERT, Mr. NUNNELEE, Mr. WENSTRUP, Mr. BENTIVOLIO, Mr. BARLETTA, Mr. LOBIONDO, Mr. LATTA, Mr. ADERHOLT, Mrs. WAGNER, Mr. CAMPBELL, Mr. SAM JOHNSON of Texas, and Mr. CRAMER

JULY 31, 2014

Reported with amendments, referred to the House Calendar, and ordered to be printed

[Strike out the preamble and insert the part printed in italic]

[Strike out all after the resolving clause and insert the part printed in italic]

RESOLUTION

Condemning and disapproving of the Obama administration's failure to comply with the lawful statutory requirement to notify Congress before releasing individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing national security concerns over the release of five Taliban leaders and the repercussions of negotiating with terrorists.

Whereas ~~section 1035~~ of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 801 note) clearly requires the Secretary of Defense to notify the appropriate committees of Congress at least 30 days before the transfer or release of an individual detained at United States Naval Station, Guantanamo Bay, Cuba;

Whereas, on May 31, 2014, the Department of Defense executed the release of five senior Taliban detainees held at United States Naval Station, Guantanamo Bay, Cuba;

Whereas the five released Taliban detainees are all senior Taliban leaders: Abdul Haq Wasiq was the Taliban Deputy Minister of Intelligence, Mullah Norullah Noori was the Taliban military commander at Mazar-e-Sharif,

Mullah Mohammad Fazl was the Taliban Deputy Minister of Defense, Khairullah Said Wai Khairkwa was the Taliban Minister of Interior, and Mohammad Nabi Omari was the Taliban commander of secret police;

Whereas these five senior Taliban leaders have associations with al-Qaeda or have engaged in hostilities against the United States or its coalition partners;

Whereas these five senior Taliban detainees held leadership positions within the Taliban when it provided safehaven for al-Qaeda to conduct planning, training, and operations for the September 11, 2001, attacks;

Whereas the President has stated that there is “absolutely” a possibility of the released detainees returning to activities that are detrimental to the United States, and, according to media reports, United States intelligence officials told members of the Senate that four of the five detainees are expected to return to the battlefield;

Whereas Secretary Hagel stated before the Committee on Armed Services of the House of Representatives on June 11, 2014, that the threat, “should these five detainees return and reintegrate with the Taliban, their focus would almost certainly be on Taliban efforts inside Afghanistan,” where the United States and coalition partners will retain military and civilian personnel;

Whereas in 2010, after an extensive evaluation meant to identify detainees who could be transferred out of the detention facility at United States Naval Station, Guantanamo Bay, Cuba, the Obama administration determined that these five should remain in United States detention because they were “too dangerous to transfer” because

each “poses a high level of threat that cannot be mitigated sufficiently except through continued detention”;

Whereas the Obama administration negotiated, through intermediaries in the Government of Qatar, with the Taliban, with whom the United States remains engaged in active combat, and with the Haqqani Network, which the State Department has designated as foreign terrorist organization, and who had held Sergeant Bowe Bergdahl captive;

Whereas congressional notification was not received until June 2, 2014, three days after such individuals were released, and 33 days after the date on which such notification was required by law;

Whereas the Obama administration admits that it made no effort to comply with the 30-day notification requirement;

Whereas Obama administration officials acknowledge that approximately 80 or 90 employees within the administration were knowledgeable of the transfer of the five Taliban detainees prior to their release;

Whereas the Obama administration has offered differing, unconvincing, and conflicting explanations of why it failed to comply with the 30-day notification requirement and has described the failure to notify Congress as an “oversight”;

Whereas article II, section 3 of the Constitution states that the President “shall take care that the laws be faithfully executed”;

Whereas, on January 15, 2009, the Office of Legal Counsel in the Department of Justice acknowledged that Congress possesses under article I of the Constitution “significant war powers”, including legislative authority concerning the detention and release of enemy combatants;

Whereas the Obama administration has complied with section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113–76) in all previous detainee transfers from United States Naval Station, Guantanamo Bay, Cuba, since the date of the enactment of each such Act; and

Whereas the leadership and the leaders of the national security committees of the Senate and House of Representatives are on record, specifically in 2011, as opposing the transfer of detainees in exchange for a prisoner of war; Now, therefore, be it

Whereas section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 801 note) requires the Secretary of Defense to notify the appropriate committees of Congress not later than 30 days before the transfer or release of any individual detained at United States Naval Station, Guantanamo Bay, Cuba (hereinafter referred to as “GTMO”);

Whereas on May 31, 2014, the Department of Defense transferred five Taliban detainees held at GTMO to the State of Qatar;

Whereas according to declassified United States government documents, the five detainees were all senior Taliban leaders: Abdul Haq Wasiq was the Taliban Deputy Minister of Intelligence, Mullah Norullah Noori was the Taliban military commander at Mazar-e-Sharif, Mullah Mohammad Fazl was the Taliban Deputy Minister of Defense, Khairullah Said Wai Khairkwa was the Taliban Minister of Interior, and Mohammad Nabi Omari was the Taliban communications chief and border chief;

Whereas these five senior Taliban leaders have had associations with al-Qaeda or have engaged in hostilities against the United States or its coalition partners;

Whereas these five senior Taliban detainees held leadership positions within the Taliban in Afghanistan when it provided safehaven for al-Qaeda to conduct planning, training, and operations for the September 11, 2001, attacks;

Whereas in 2010, after an extensive evaluation meant to identify detainees who could be transferred out of the detention facility at GTMO, the Obama administration determined that these five should remain in United States detention because they were “too dangerous to transfer” because each “poses a high level of threat that cannot be mitigated sufficiently except through continued detention”;

Whereas the President has stated that there is “absolutely” the “possibility of some” of these former Taliban detainees “trying to return to activities that are detrimental to” the United States;

Whereas other former GTMO detainees that were transferred have become leaders of al-Qaeda affiliates actively plotting against the United States and are “involved in terrorist or insurgent activities”;

Whereas Secretary of Defense Chuck Hagel testified before the Committee on Armed Services of the House of Representatives that, pursuant to an agreement with Qatar, the five former detainees transferred in May would not be allowed to leave Qatar for one year, but after that date there would be no restrictions on the movement of the former detainees;

Whereas notwithstanding the fact that Qatar is an important regional ally, after another GTMO detainee was transferred to Qatar in 2008, Qatar apparently had difficulty

implementing the assurances Qatar gave the United States in connection with that detainee's transfer;

Whereas senior officials in the Obama administration negotiated, through intermediaries in the government of Qatar, with the Taliban, and with the Haqqani Network, which the Department of State has designated as a foreign terrorist organization, and which held Sergeant Bowe Bergdahl captive;

Whereas Secretary Hagel testified to the Committee on Armed Services of the House of Representatives that negotiations for the transfer of the five Taliban detainees in exchange for Sergeant Bergdahl began in January 2014;

Whereas the General Counsel of the Department of Defense signed a memorandum of understanding with the Attorney General of the State of Qatar on May 12, 2014, regarding the security conditions for transfer of these five Taliban detainees;

Whereas in addition to an unknown number of officials of Qatar, senior Obama administration officials acknowledge that approximately 80 or 90 individuals within the Obama administration were knowledgeable of the planned transfer of the five Taliban detainees prior to their transfer;

Whereas Congress was not notified of the transfer until June 2, 2014, three days after such individuals were transferred, and 33 days after the date on which such notification was required by section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113-76);

Whereas the Secretary of Defense, in consultation with the President and other senior Obama administration officials, did not comply with the 30-day notification requirement;

Whereas article II, section 3 of the Constitution stipulates that the President “shall take care that the laws be faithfully executed”;

Whereas on January 15, 2009, the Office of Legal Counsel in the Department of Justice acknowledged that, under article I of the Constitution, Congress possesses legislative authority concerning the detention and release of enemy combatants;

Whereas the Obama administration has complied with the law in all other detainee transfers from GTMO since the date of the enactment of prevailing law; and

Whereas in 2011, after leaders of the Senate and House of Representatives expressed their bipartisan opposition to the prospective transfer of these Taliban detainees from GTMO, senior Obama administration officials assured these Senators and Members of Congress that there would be no exchange of Taliban detainees for Sergeant Bergdahl, and that any transfer of Taliban detainees that might otherwise occur would be part of a reconciliation effort with the Taliban and the Government of Afghanistan and that such a transfer would only take place in consultation with Congress pursuant to law: Now, therefore, be it

1 ~~Resolved, That the House of Representatives—~~

2 ~~(1) condemns and disapproves of the failure of~~

3 ~~the Obama administration to comply with the lawful~~

4 ~~30-day statutory reporting requirement in executing~~

1 the release of five senior members of the Taliban
2 from detention at United States Naval Station,
3 Guantanamo Bay, Cuba;

4 (2) expresses grave concern over national secu-
5 rity implications that may arise due to the release of
6 Taliban officials, including the national security
7 threat to the people and Armed Forces of the United
8 States and complications of the current efforts of
9 the United States to combat terrorism worldwide;

10 (3) expresses grave concern over the repercus-
11 sions of negotiating with terrorists, and the risk that
12 such negotiations with terrorists may further en-
13 courage hostilities and the abduction of Americans
14 as a means of further prisoner exchanges;

15 (4) stipulates that further violations of the law
16 set forth in section ~~1035~~ of the National Defense
17 Authorization Act for Fiscal Year 2014 (Public Law
18 ~~113-66~~; 10 U.S.C. 801 note) and section ~~8111~~ of
19 the Department of Defense Appropriations Act,
20 2014 (Public Law ~~113-76~~) are unacceptable;

21 (5) declares grave misgivings about the prospect
22 of any other similar transfers from United States
23 Naval Station, Guantanamo Bay, Cuba, even if un-
24 dertaken pursuant to statutory requirements; and

1 (6) expresses that the Obama administration's
2 release of the five detainees has burdened unneces-
3 sarily the trust and confidence in the administra-
4 tion's commitment and ability to constructively en-
5 gage and work with the legislative branch, and
6 therefore works against what is in the best interest
7 of the people of the United States.

8 *That the House of Representatives—*

9 (1) *condemns and disapproves of the failure of*
10 *the Obama administration to comply with the lawful*
11 *30-day statutory reporting requirement in executing*
12 *the transfer of five senior members of the Taliban*
13 *from detention at United States Naval Station,*
14 *Guantanamo Bay, Cuba;*

15 (2) *expresses grave concern about the national se-*
16 *curity risks associated with the transfer of five senior*
17 *Taliban leaders, including the national security*
18 *threat to the American people and the Armed Forces*
19 *of the United States;*

20 (3) *expresses grave concern over the repercussions*
21 *of negotiating with terrorists, even when conducted*
22 *through intermediaries, and the risk that such nego-*
23 *tiations with terrorists may further encourage hos-*
24 *tilities and the abduction of Americans;*

1 (4) stipulates that further violations of the law
2 set forth in section 1035 of the National Defense Au-
3 thorization Act for Fiscal Year 2014 (Public Law
4 113–66; 10 U.S.C. 801 note) and section 8111 of the
5 Department of Defense Appropriations Act, 2014
6 (Public Law 113–76) are unacceptable;

7 (5) expresses that these actions have burdened
8 unnecessarily the trust and confidence in the commit-
9 ment and ability of the Obama administration to
10 constructively engage and work with Congress; and

11 (6) expresses relief that Sergeant Bergdahl has
12 returned safely to the United States.

Amend the title so as to read: “Resolution con-
demning and disapproving of the failure of the Obama
administration to comply with the lawful statutory re-
quirement to notify Congress before transferring individ-
uals detained at United States Naval Station, Guanta-
namo Bay, Cuba, and expressing concern about the na-
tional security risks over the transfer of five Taliban
leaders and the repercussions of negotiating with terror-
ists.”.

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