

111TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
111-383

DIRECTING THE SECRETARY OF DEFENSE TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES COPIES OF ANY DOCUMENT, RECORD, MEMO, CORRESPONDENCE, OR OTHER COMMUNICATION OF THE DEPARTMENT OF DEFENSE, OR ANY PORTION OF SUCH COMMUNICATION, THAT REFERS OR RELATES TO THE TRIAL OR DETENTION OF KHALID SHEIKH MOHAMMED, WALID MUHAMMAD SALIH MUBAREK BIN 'ATTASH, RAMZI BINALSHIBH, ALI ABDUL AZIZ ALI, OR MUSTAFA AHMED ADAM AL HAWSAWI

R E P O R T

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H. RES. 924

together with

ADDITIONAL AND DISSENTING VIEWS



DECEMBER 17, 2009.—Referred to the House Calendar and ordered to be printed.

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DECEMBER 17, 2009.—Referred to the House Calendar and ordered to be printed

Mr. SKELTON, from the Committee on Armed Services,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H. Res. 924]

The Committee on Armed Services, to whom was referred the resolution (H. Res. 924) directing the Secretary of Defense to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of Defense, or any portion of such communication, that refers or relates to the trial or detention of Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarek Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, or Mustafa Ahmed Adam al Hawsawi, having considered the same, report favorably thereon with amendments and recommend that the resolution as amended be agreed to.

The amendments are as follows:

Strike all after the resolving clause and insert the following:

That the House of Representatives directs the Secretary of Defense to transmit the following documents and records to the House of Representatives not later than 30 days prior to the transfer of Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, or Mustafa Ahmed Adam al Hawsawi from the United States Naval Station, Guantanamo Bay, Cuba, to the United States:

(1) As required by section 1041 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), an assessment of the risks that the detainee poses to the national security of the United States once he is transferred to the United States for trial.

(2) As required by section 1041 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), measures to mitigate any risks described in paragraph (1).

(3) The location or locations at which the detainee will be held.

(4) The costs associated with the transfer, mitigation of the risks described in paragraph (2), and any other costs related to the execution of the comprehensive plan required by section 1041 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84).

(5) A summary of the consultation required by section 1041(d) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84).

(6) As required by section 1041 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), a certification by the Attorney General that under the comprehensive plan referred to in paragraph (4) the detainee poses little or no security risk to the United States.

Amend the title so as to read:

Resolution directing the Secretary of Defense to transmit to the House of Representatives certain documents in the possession of the Department of Defense relating to detainees held at the United States Naval Station, Guantanamo Bay, Cuba, who are to be prosecuted in the United States.

PURPOSE AND BACKGROUND

On November 19, 2009, Congressman Howard P. “Buck” McKeon (R–CA) introduced House Resolution 924, a resolution of inquiry. The resolution, as introduced, would direct the Secretary of Defense to transmit to the House of Representatives not later than 14 days after the date of the adoption of the resolution, copies of any document, record, memo, correspondence, or other communication of the Department of Defense, or any portion of such communication, that refers or relates to the trial or detention of Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin ’Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, or Mustafa Ahmed Adam al Hawsawii.

Clause 7 of rule XIII of the Rules of the House of Representatives provides for a committee to report on a qualifying resolution of inquiry, such as House Resolution 924, within 14 legislative days or a privileged motion to discharge the committee is in order. House Resolution 924 was referred to the Committee on Armed Services on November 19, 2009.

Under the rules and precedents of the House, a resolution of inquiry is one of the means by which the House may request information from the head of one of the executive departments. It is a simple resolution making a demand of the head of an executive department to furnish the House of Representatives with specific information in the possession of the executive branch. It is not used to request opinions or to require an investigation on a subject.

On December 15, 2009, the Committee on Armed Services took up House Resolution 924 for the purpose of reporting a recommendation to the House. House Resolution 924 was amended to direct the Secretary of Defense to transmit to the House of Representatives certain documents and records not later than 30 days prior to the transfer of Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin ’Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, or Mustafa Ahmed Adam al Hawsawii from the United States Naval Station, Guantanamo Bay, Cuba, to the United States, to in-

clude, as also required by section 1041 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), the location(s) at which the detainee will be held, costs, a summary of the consultation required by section 1041, and certification that the detainee poses little or no risk in compliance with section 1041. Additionally, the title of House Resolution 924 was amended so as to read: “A resolution directing the Secretary of Defense to transmit to the House of Representatives certain documents in the possession of the Department of Defense relating to detainees held at the United States Naval Station, Guantanamo Bay, Cuba, who are to be prosecuted in the United States.”

LEGISLATIVE HISTORY

House Resolution 924 was introduced on November 19, 2009, and referred to the Committee on Armed Services.

On December 15, 2009, the Committee on Armed Services held a mark-up session to consider House Resolution 924, as introduced. The committee, a quorum being present, ordered to be reported House Resolution 924, as amended, to the House with a favorable recommendation by a voice vote.

COMMITTEE POSITION

On December 15, 2009, the Committee on Armed Services, a quorum being present, ordered to be reported House Resolution 924, as amended, to the House with a favorable recommendation by a voice vote.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates the costs of implementing the resolution would be minimal. The Congressional Budget Office did not provide a cost estimate for the resolution.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI, House Resolution 924 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, Section 8 of the United States Constitution.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104-4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

RECORD VOTE

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, a record vote was taken with respect to the committee's consideration of House Resolution 924. The record of this vote is included in this report.

**COMMITTEE ON ARMED SERVICES
111TH CONGRESS
ROLL CALL**

Amendment # 1 **Date: December 15, 2009**
Description: Substitute to H.Res. 924 **Offered by: Mr. Skelton**

Rep.	Aye	No	Present	Rep.	Aye	No	Present
Mr. Skelton	x			Mr. McKeon		x	
Mr. Spratt	x			Mr. Bartlett			x
Mr. Ortiz	x			Mr. Thornberry		x	
Mr. Taylor	x			Mr. Jones			
Mr. Abercrombie				Mr. Akin		x	
Mr. Reyes	x			Mr. Forbes			
Dr. Snyder	x			Mr. Miller			
Mr. Smith	x			Mr. Wilson		x	
Ms. Sanchez				Mr. LoBiondo		x	
Mr. McIntyre	x			Mr. Bishop			
Mr. Brady	x			Mr. Turner		x	
Mr. Andrews	x			Mr. Kline		x	
Mrs. Davis	x			Mr. Rogers		x	
Mr. Langevin	x			Mr. Franks		x	
Mr. Larsen	x			Mr. Shuster		x	
Mr. Cooper	x			Mrs. McMorris Rodgers		x	
Mr. Marshall	x			Mr. Conaway		x	
Ms. Bordallo	x			Mr. Lamborn		x	
Mr. Ellsworth	x			Mr. Wittman		x	
Mr. Murphy (PA)	x			Ms. Fallin		x	
Mr. Johnson	x			Mr. Hunter		x	
Ms. Shea-Porter	x			Dr. Fleming		x	
Mr. Courtney	x			Mr. Coffman		x	
Mr. Loeb sack	x			Mr. Rooney		x	
Mr. Sestak	x			Mr. Platts		x	
Ms. Giffords	x						
Ms. Tsongas	x						
Mr. Nye	x						
Ms. Pingree	x						
Mr. Kissell	x						
Mr. Heinrich	x						
Mr. Kratovil	x						
Mr. Massa	x						
Mr. Bright	x						
Mr. Murphy (NY)	x						
Mr. Owens	x						
Mr. Boren	x						

Roll Call Vote Total: 35 Ayes 20 Noes 1 Present

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3(e) of rule XIII of the Rules of the House of Representatives requires an elaboration or description of how the reported bill proposes to repeal or amend a statute or part thereof. There were no changes in existing law made by House Resolution 924, as reported.

ADDITIONAL VIEWS BY CONGRESSWOMAN CATHY
McMORRIS RODGERS

It disturbs me that this Administration believes that the benefits of trying Khalid Sheikh Mohammed and the four other co-conspirators in the United States and in a U.S. courtroom outweigh the benefits of trying them before the military commissions. This is unacceptable. I think it is critical that we understand the basis for Attorney General Holder's decision. Does he believe that terrorists deserve the rights afforded by the constitution and that those rights outweigh the security of actual U.S. citizens? These are terrorists who were detained outside the United States. These are terrorists who were detained in a war zone. These are terrorists who want to kill Americans. Military Commissions are no doubt the appropriate forum for trying alleged war crimes. For example, in a military commission, an affidavit stating that the terrorists were captured on the battlefield can be used without the servicemember or unit testifying with the terrorist present. This is not the case in our justice system. The military commission at Guantanamo was designed specifically to protect our intelligence and the methods used to gather it. This is not the case in our justice system where in the interest of fairness, information is disclosed to the defendants. The courtroom at Guantanamo was constructed, at a cost of millions of dollars to taxpayers of the United States, to handle classified information and security needs. Moreover, the rules for conducting criminal trials in federal courts have been designed to prosecute conventional crimes by conventional criminals not terrorists who want to destroy America and its citizens. Finally, I would just like to add that if the Department of Justice believes that defendants will be found guilty—What does this say about the premise that defendants in our justice system are presumed innocent before proven guilty? What does that mean for all future defendants? What kind of precedent does this set?

CATHY McMORRIS RODGERS.

DISSENTING VIEWS

We write in dissent to H. Res. 924 and feel that by rejecting the underlying resolution and voting in favor of the Chairman's substitute the committee missed an opportunity to exercise forceful oversight. Instead of simply restating current law, as the substitute mandated, the underlying resolution would have required the Department of Defense to provide Congress with all information referring or relating to the trial or detention of the terrorists responsible for the September 11th attacks on the World Trade Center and the Pentagon. This is precisely the type of oversight the American people demand and deserve.

Nearly eleven months ago in one of his first acts in the White House, President Obama signed an executive order which ordered the detention facility in Guantanamo Bay, Cuba (GTMO) closed by January 2010. At the time many of us doubted the wisdom of the decision and questioned whether the President had a plan in place to execute the decision. We worried that the President was making policy without fully grasping the difficulty of the problem and was blindly carrying out a campaign promise.

Over ten months later the President still does not have a plan. The questions have only increased and the concerns continue to grow. Instead of providing a clear plan to the American people, we've seen piecemeal decisions, lacking coherence and explanation.

As if there was any doubt about our concern, on the same day the committee marked up H. Res. 924, the Administration announced that terrorists held at the Guantanamo detention facility would be transferred to a facility in Thomson, Illinois.

Like the Thomson announcement, the decision to prosecute in New York City Khalid Sheikh Mohammed and the four other 9/11 co-conspirators flies in the face of the will of the American people and a bipartisan majority of the Congress, which have already rejected bringing terrorists to U.S. soil for long-term detention. Current law prohibits it and future law should do the same. Instead of exercising caution and prudence, the Administration's policy appears as if it is willing to transfer detainees out of GTMO at any cost.

This decision is misguided. It is dangerous. It is wrong. Consistent with the rest of the President's detainee policy, the Administration made this announcement without having a credible policy explanation for its decision. More than a month after Attorney General Holder made the announcement on November 13th, this committee still has not received an answer to the basic question of why President Obama decided to transfer Khalid Sheikh Mohammed to the heart of New York and not prosecute him in a military commission.

Shortly after the Attorney General's announcement, the Ranking Members of the relevant national security committees sent a letter

to President Obama asking that he provide Congress answers to a number of basic questions, including:

- What is the Administration's detention strategy?
- Will the Administration give key stakeholders a voice before it imports terrorists into the United States?
- Can the Administration guarantee its ability to effectively detain and prosecute detainees on U.S. soil?
- How will the Administration control the movements and communications of the detainees in the U.S.?

Nearly a month later we have not received a response—these questions remain unanswered. There has been no consultation with the Congress.

The concerns we raise are bipartisan—they reflect a deep anxiety shared by Americans across this country.

After much delay and with the prospect of facing the committee markup of H. Res. 924 without a briefing, the Administration finally sent witnesses last Thursday to discuss the decision in a classified session. We were underwhelmed by the information we received and left feeling that the session taught us nothing new. Rather, the session made us question whether there was any legitimate policy rationale underlying this decision. Time and time again in the briefing, we did not receive a clear answer as to why the Administration made this decision. Instead, we were basically told to accept the decision and move on.

We dissent from H. Res. 924 as reported because we are not ready to move on. We cannot accept this decision in silence. Transferring detainees into U.S. territory, giving the self-professed mastermind of the 9/11 attacks a platform to spread his venomous ideology, is a matter of public policy where the record underlying the decision should come to light.

The resolution of inquiry, as originally drafted, would have provided the American people answers to questions the Administration has failed to provide, such as: on what policy grounds did the Administration decide to detain in the United States Khalid Sheikh Mohammed and the four co-conspirators; how does this keep America safe; and why did the Administration decide not to use the commission system that this committee recently reformed to prosecute those responsible for the attacks on the Pentagon and New York City?

This committee has tried to get this information from the Administration. Unfortunately, even a classified session could not induce an open and transparent discussion. If the representatives of the Administration cannot talk clearly and answer basic questions, then our only choice is to let the written record speak for them. Nine months after the President signed the Executive Order we have had no consultation and we remain unable to get a straight story.

Simply asking for the Administration to comply with the existing law, as the Chairman's substitute requires, does nothing new. It invites the Administration to continue the status quo of handing the Congress pre-cooked decisions without engaging the Congress on the risks and benefits of its decisions. By not adopting the underlying resolution the majority voted against learning more about the

President's controversial decision and stood against revealing to the American people the full story behind the decision.

We believe that if the President can give Khalid Sheikh Mohammed all the constitutional rights associated with being detained and prosecuted in the United States, then he should also give the American people the right to understand the basis of his decision. We deeply regret the majority chose not to support the underlying resolution. As a result, we failed to exercise the oversight our constituents expect and deserve.

HOWARD P. "BUCK" McKEON.
MAC THORNBERRY.
W. TODD AKIN.
J. RANDY FORBES.
JEFF MILLER.
JOE WILSON.
FRANK A. LOBIONDO.
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JOHN KLINE.
MIKE ROGERS.
TRENT FRANKS.
BILL SHUSTER.
CATHY McMORRIS RODGERS.
K. MICHAEL CONAWAY.
DOUG LAMBORN.
ROB WITTMAN.
MARY FALLIN.
DUNCAN HUNTER.
JOHN C. FLEMING.
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