

On July 29, 2010 Mr. Adam Schiff (D) of California (29th Dist.) introduced

Questioning of Terrorism Suspects Act of 2010

H.R. 5934

A BILL

To declare the sense of Congress that the public safety exception to the constitutional requirement for what are commonly called *Miranda* warnings allows for unwarned interrogation of terrorism suspects, and to amend section 3501 of title 18, United States Code, to assure the admissibility of certain confessions made by terrorism suspects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Questioning of Terrorism Suspects Act of 2010’.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) The United States Supreme Court, in *New York v. Quarles*, 467 U.S. 649 (1984), determined that there is an exception to the constitutional requirement for what are commonly called *Miranda* warnings in situations posing a threat to public safety.
- (2) Terrorist plots have often consisted of coordinated attacks on multiple targets.
- (3) Captured terrorists may be the best and sometimes only source of intelligence necessary to prevent pending or planned attacks.
- (4) The initial hours and days after capture are often the most valuable from an intelligence collection perspective. Due to the complexity of terrorist plots, an extended interview may be necessary to procure the information necessary to protect the public from a pending or planned attack.
- (5) Just as courts have held that the public safety exception established in *Quarles* exists even when questioning is designed solely to protect the lives of police officers, the public safety exception in the terrorism context is broad enough to include questioning necessary to protect the lives of troops on the battlefield from a pending or planned attack.
- (6) Given the nature of international terrorism investigations, it is often necessary to question captured terrorists overseas in cooperation with other countries.

(7) In many cases, the full warnings set out in *Miranda* cannot be provided to terrorism suspects in foreign custody, since the rights referenced in *Miranda* may not be available to the individual in that particular country.

SEC. 3. PUBLIC SAFETY EXCEPTION TO *MIRANDA* RULE IN TERRORISM INVESTIGATIONS.

It is the sense of Congress that the public safety exception to the constitutional requirement for what are commonly called *Miranda* warnings allows unwarned interrogation of terrorism suspects for as long as is necessary to protect the public from pending or planned attacks when a significant purpose of the interrogation is to gather intelligence and not solely to elicit testimonial evidence.

SEC. 4. ADMISSIBILITY OF CERTAIN CONFESSIONS MADE DURING TERRORISM INVESTIGATIONS.

(a) Intelligence Gathering To Protect the Public Safety -- Section 3501 of title 18, United States Code, is amended by adding at the end the following:

‘(f)(1)(A) In the case of an individual who is a terrorism suspect, upon ex parte application made by the Government within 6 hours immediately following the person’s arrest or other detention, that individual may be taken before a magistrate not later than 48 hours after arrest or other detention and any confession made within those 48 hours shall not be considered inadmissible solely because the individual was not presented to a magistrate earlier.

‘(B) Such an application must contain a certification by the Attorney General or the Deputy Attorney General, and the Director of National Intelligence or the Principal Deputy Director of National Intelligence, that--

‘(i) the individual with respect to whom the application is made is a terrorism suspect; and

‘(ii) the individual may be able to provide intelligence necessary to protect the public safety.

‘(C) Upon ex parte application, the appropriate judicial officer shall, for good cause shown and subject to such conditions as that officer may prescribe, extend the time limitation provided by this subsection for an additional 48 hours. Such application may be filed in camera and the court’s order shall be subject to interlocutory appeal.

‘(2) As used in this subsection, the term ‘terrorism suspect’ means a person suspected of international terrorism or domestic terrorism as those terms are defined in section 2331.’.

(b) Overseas Terrorism Investigations -- It is the sense of Congress that a confession given during overseas questioning of a terrorism suspect in foreign custody shall not be rendered

inadmissible for failure to provide *Miranda* warnings, if such confession was voluntarily given and reliable.

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