

FBI memo orders delayed Miranda warnings for “terror” suspects

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The Obama administration has moved to weaken the Miranda rights of those held as domestic terror suspects, significantly strengthening exceptions to procedures that have governed the handling of criminal suspects for more than four decades.

An FBI memorandum dated October 21, 2010 instructs federal agents to interrogate suspected “operational terrorists” about immediate threats to public safety without advising them of their Miranda rights to remain silent and have an attorney present.

The three-page unsigned memo, obtained recently by the *New York Times*, encourages agents to utilize a broad interpretation of what constitutes public safety-related issues. The FBI directive constitutes the latest action by the Obama administration expanding the anti-democratic, police-state methods begun under George W. Bush in the “war on terror.”

Specifically, the memo states: “In light of the magnitude and complexity of the threat often posed by terrorist organizations ... the circumstances surrounding an arrest of any operational terrorist may warrant significantly more extensive public safety interrogation without Miranda warnings than would be permissible in an ordinary criminal case.”

The Miranda warning entered US criminal procedures in 1966, when the US Supreme Court ruled in *Miranda v. Arizona*, in which a defendant sued after his conviction on the basis of a confession obtained following a brutal police interrogation.

The warning read by police to an arrested person follows this general wording: “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney.”

A 1984 Supreme Court decision amended these

Miranda rights, allowing for the questioning of suspects for a limited time before issuing the warning in cases where the arresting officers determined that “public safety” was at imminent risk.

The FBI memo takes this further, stating, “There may be exceptional cases in which, although all relevant public safety questions have been asked, agents nonetheless conclude that continued unwarned interrogation is necessary to collect valuable and timely intelligence *not related to any immediate threat*, and that the government’s interest in obtaining this intelligence outweighs the disadvantages of proceeding with unwarned interrogation” (emphasis added).

While agents are urged to obtain authorization from FBI headquarters and Department of Justice attorneys before delaying reading suspects their rights, the memo states that when this is not possible “the agents on the scene who are interacting with the arrestee are in the best position to assess what questions are necessary to secure their safety and the safety of the public, and how long the post-arrest interview can practically be delayed.”

The memo identifies some of the circumstances when “more extensive public safety interrogation without Miranda warnings” might apply:

“Depending on the facts, such interrogation might include, for example, questions about possible impending or coordinated terrorist attacks; the location, nature, and threat posed by weapons that might pose an imminent danger to the public; and the identities, locations, and activities or intentions of accomplices who may be plotting additional imminent attacks.”

The memo’s reference to “accomplices” is particularly ominous, as it could be used against supporters of Hamas, Hezbollah or other groups described broadly by the government as opponents of

the US and its “allies,” such as Israel, or dictatorships in the Middle East, Africa and elsewhere.

The instructions in the FBI memo amount to a back-door maneuver by the Obama administration to attack Miranda rights by executive order. Last May, Attorney General Eric Holder announced that the administration was seeking passage of legislation to weaken or eliminate these rights for anyone arrested on suspicion of connection to terrorism.

The administration never produced a proposal to that effect. The idea failed to win sufficient support in Congress, both from Democrats who balked at tampering with Supreme Court precedent, and Republicans who oppose civilian custody for terror suspects.

The administration has, however, been criticized for its use of Miranda in two domestic terrorism arrests. Umar Farouk Abdulmutallab, the alleged Christmas Day 2009 bomber, was read his rights less than an hour after his interrogation began. Times Square bombing suspect Faisal Shahzad was questioned for three to four hours before being read his rights.

Critics from the right argue that much more lengthy delays should be used in such cases, or that these suspects should be denied their rights altogether or be taken into military custody. While the Obama administration has countered that the government’s prosecutions in these cases have not been damaged, the FBI memo suggests that in future interrogations government agents will be given wider latitude to delay reading such suspects their Miranda rights.

John Brennan, Obama’s chief counterterrorism adviser, defended the broad interpretation of the “public safety” exceptions in a prepared statement. “Where our laws provide additional flexibility, we must empower our counterterrorism professionals to leverage it,” he said. “Our law enforcement officers deserve clarity.”

California Rep. Adam Schiff, the top Democrat on the House Intelligence Committee, commented to the *Wall Street Journal*, “I don’t think the administration can accomplish what I think needs to be done by policy guidance alone. It may not withstand the scrutiny of the courts in the absence of legislation.”

That is far from clear, as the Supreme Court has moved in recent months to weaken Miranda rights. In a 5-4 ruling last June, the high court removed the “heavy

burden” previously required under Miranda for the government to “demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination” and right to counsel in cases where the defendant challenges the admissibility of information obtained during interrogation.

The release of the FBI memo on delaying Miranda rights is only the latest in a series of measures by the Obama administration attacking the democratic and constitutional rights of citizens and non-citizens alike and building up the powers of the state.

The administration has invoked the “state secrets” doctrine repeatedly to block court cases on torture, rendition and warrantless wiretapping. In recent weeks, the White House announced that the Guantánamo Bay prison camp would remain open, that some suspects there would be detained indefinitely without trial, and that others would be brought before military tribunals.



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