



Office of the Attorney General  
Washington, D. C. 20530

October 19, 2010

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Eric Holder", written over the printed name of the Attorney General.

SUBJECT: Guidance for Conducting Interviews without Providing *Miranda* Warnings in Arrests of Terrorism Suspects

With my approval, the Federal Bureau of Investigation (FBI) has issued guidance for law enforcement agents, FBI field offices, and JTTFs concerning custodial interrogation of an operational terrorist arrested within the United States. In particular, that guidance discusses the interrogation of an operational terrorist that is conducted without provision of an advice of rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). This memorandum provides corresponding guidance to federal prosecutors if an agent consults about whether to proceed with unwarned custodial interrogation in the circumstances the FBI guidance addresses.

The FBI guidance primarily concerns the "public safety" exception recognized in *New York v. Quarles*, 467 U.S. 649 (1984), which held that, if law enforcement officials engage in custodial interrogation that is "reasonably prompted by a concern for the public safety," any statements the individual provides in the course of such interrogation shall not be inadmissible on the ground that the questioning was conducted without *Miranda* warnings. The FBI guidance explains that in light of the magnitude and complexity of the threat often posed by terrorist organizations, particularly international terrorist organizations, and the nature of their attacks, the circumstances surrounding an arrest of an operational terrorist may warrant significantly more extensive public safety interrogation than would be permissible in an ordinary criminal case. The FBI guidance instructs that, after any and all applicable public safety questions have been exhausted, agents should advise the arrestee of his *Miranda* rights and seek a waiver of those rights before any further interrogation occurs, absent exceptional circumstances. Specifically, there may be exceptional situations in which continued unwarned interrogation is necessary to collect valuable and timely intelligence, and the government's interest in obtaining this intelligence – lawfully but without *Miranda* warnings – outweighs the disadvantages of proceeding in this fashion. In such a situation, the FBI guidance directs agents to consult, when possible, with FBI Headquarters (including the Office of General Counsel) and Department of Justice attorneys regarding the interrogation strategy to be followed prior to reading the defendant his *Miranda* rights.<sup>1</sup>

<sup>1</sup> Neither the FBI guidance nor this memorandum addresses un-*Mirandized* questioning of suspects who are under indictment or represented by counsel. In those circumstances, which may present special legal and/or ethical concerns, prosecutors should whenever possible consult with the Department's Professional Responsibility Advisory

FOIA Exemption 5

Finally, note that the FBI guidance makes clear that, in all cases, presentment of an arrestee should not be delayed simply to continue interrogation, unless the arrestee has waived prompt presentment.

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Office and/or the National Security Division as appropriate prior to advising an agent to conduct unwarned interrogation.

FOIA Exemption 5