

May 17, 2010

Dear Attorney General Holder,

We, the undersigned organizations, write to express our concern about your recent call to restrict the constitutional rights of individuals in the United States suspected of terrorist activity by seeking to codify or expand the “public safety exception” to *Miranda v. Arizona*. Current law provides ample flexibility to protect the public against imminent terrorist threats while still permitting the use of statements made by the accused in a criminal prosecution. Weakening *Miranda* would undercut our fundamental Fifth Amendment rights for no perceptible gain.

As you know, the Supreme Court crafted the “public safety exception” to *Miranda* more than 25 years ago in *New York v. Quarles*. This exception permits law enforcement to temporarily interrogate suspected terrorists without advising them of their *Miranda* rights – including the right to remain silent and the right to an attorney – when “reasonably prompted by a concern for public safety.” It allows federal agents to ask the questions necessary to protect themselves and the public from imminent threats before issuing a *Miranda* warning. Provided the interrogation is non-coercive, any statements obtained from a suspect during this time may be admissible at trial.

Law enforcement used the *Quarles* “public safety exception” to question Umar Farouk Abdulmutallab, the so-called “underwear bomber,” and Faisal Shahzad, the alleged “Times Square bomber.” Both suspects reportedly provided interrogators with valuable intelligence during that time and continued to do so even after being advised of their rights. As you observed during your May 9, 2010, appearance on “Meet the Press,” “the giving of *Miranda* warnings has not stopped these terror suspects from talking to us. They have continued to talk even though we have given them a *Miranda* warning.”

In the nearly nine years since the attacks of 9/11, the Department of Justice has obtained convictions in more than 400 international terrorism or terrorism-related cases without weakening *Miranda* or risking the safety of Americans. The “public safety exception” is exception enough. Should the need arise to conduct an un-Mirandized interrogation unrelated to any immediate threat to public safety, law enforcement is free to do so under the Constitution. *Miranda* imposes no restriction on the use of unadvised statements for the purpose of identifying or stopping terrorist activity. The Fifth Amendment only requires that such statements be inadmissible for the purposes of criminal prosecution. Yet even this requirement has exceptions. Un-Mirandized statements obtained outside the public safety exception may still be used for impeachment, and physical evidence discovered as a result of such statements may also be admissible.

We understand that the Department of Justice must confront serious threats to our national security and is responsible for taking the necessary steps to protect the safety of the American people. For this reason, we understand the Department’s reliance on the public safety exception in the Abdulmutallab and Shahzad investigations. We believe, however, that current law provides all the

flexibility that is necessary and constitutionally permissible. *Miranda* embodies a centuries-old tradition designed to prevent coerced confessions that lead to wrongful incarceration and diminish our collective security. Codifying or expanding the public safety exception would almost certainly lead to the exception being invoked far more often than is strictly necessary and would function as an end run around the constitutional requirements of *Miranda*. We therefore urge you to reconsider your call for Congressional action to expand the public safety exception.

We would be very interested in meeting with you or your staff to discuss this issue further.

Sincerely,

National Association of Criminal Defense Lawyers
Alliance for Justice
American Civil Liberties Union
Appeal for Justice
Asian Law Caucus
Bill of Rights Defense Committee
Brennan Center for Justice
Coalition for Humane Immigrant Rights of Los Angeles
Council on American-Islamic Relations
Center for International Policy
Center for Media and Democracy
Defending Dissent Foundation
Democrats.com
DownsizeDC.org, Inc.
Freedom and Justice Foundation
Friends Committee on National Legislation
Government Accountability Project
High Road for Human Rights
Human Rights First
Human Rights Watch
Muslim Legal Fund of America
New Security Action
No More Guantánamos
OneAmerica
Open Society Policy Center
Peace Action Montgomery
People For the American Way
Progressive Democrats of America
The Rights Working Group
U.S. Bill of Rights Foundation
Robert Jackson Steering Committee
Roderick MacArthur Justice Center
WarIsACrime.org
Witness Against Torture
World Organization for Human Rights USA