



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

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MEMORANDUM FOR DIRECTOR, UNITED STATES MARSHALS SERVICE  
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION  
DIRECTOR, BUREAU OF PRISONS  
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS  
AND EXPLOSIVES

FROM: THE ACTING DEPUTY ATTORNEY GENERAL 

SUBJECT: Guidance to Law Enforcement Agents on the Role of FBI/JTTFs and Custodial Interrogation for Public Safety and Intelligence-Gathering Purposes of Operational Terrorists Arrested Inside the United States

The FBI has recently issued the attached guidance to FBI field offices and Joint Terrorism Task Forces (JTTFs). The guidance reaffirms FBI policy concerning custodial interrogation for public safety and intelligence-gathering purposes of operational terrorists arrested in the United States. It will be included in the next edition of the Domestic Investigations and Operations Guide, which will be issued in the near future.

Although the FBI has the lead responsibility for investigating terrorist acts or terrorist threats within the United States, there may be cases in which law enforcement agents in your components confront operational terrorists in circumstances that give rise to an immediate concern for the safety of the public or the arresting agents. Consistent with existing federal law, regulations, and policy, your law enforcement agents should notify the appropriate JTTF upon identifying any individual who is engaged in terrorist activities or in acts in preparation for terrorist activities within the United States, and closely coordinate in such cases with the FBI, including with respect to interrogation of such individuals. Because your agents may be involved in such interrogations, please ensure that your component issues appropriate guidance that is consistent with the attached FBI memorandum. In order to ensure that the Department's approach to this issue is consistent, your guidance should be coordinated with the National Security Division before it is issued.

## **Custodial Interrogation for Public Safety and Intelligence-Gathering Purposes of Operational Terrorists Arrested Inside the United States<sup>1</sup>**

Identifying and apprehending suspected terrorists, interrogating them to obtain intelligence about terrorist activities and impending terrorist attacks, and lawfully detaining them so that they do not pose a continuing threat to our communities are critical to protecting the American people. The Department of Justice and the FBI believe that we can maximize our ability to accomplish these objectives by continuing to adhere to FBI policy regarding the use of *Miranda* warnings for custodial interrogation of operational terrorists<sup>2</sup> who are arrested inside the United States:

1. If applicable, agents should ask any and all questions that are reasonably prompted by an immediate concern for the safety of the public or the arresting agents without advising the arrestee of his *Miranda* rights.<sup>3</sup>
2. After 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 described below.
3. 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.<sup>4</sup> In these

<sup>1</sup> This guidance applies only to arrestees who have not been indicted and who are not known to be represented by an attorney. For policy on interrogation of indicted defendants, see DIOG [section citation forthcoming]. For policy on contact with represented persons, see DIOG section [section citation forthcoming].

<sup>2</sup> For these purposes, an operational terrorist is an arrestee who is reasonably believed to be either a high-level member of an international terrorist group; or an operative who has personally conducted or attempted to conduct a terrorist operation that involved risk to life; or an individual knowledgeable about operational details of a pending terrorist operation.

<sup>3</sup> The Supreme Court held in *New York v. Quarles*, 467 U.S. 649 (1984), that if law enforcement officials engage in custodial interrogation of an individual 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 in any criminal proceeding on the basis that the warnings described in *Miranda v. Arizona*, 384 U.S. 436 (1966), were not provided. The Court noted that this exception to the *Miranda* rule is a narrow one and that "in each case it will be circumscribed by the [public safety] exigency which justifies it." 467 U.S. at 657.

<sup>4</sup> The Supreme Court has strongly suggested that an arrestee's Fifth Amendment right against self-incrimination is not violated at the time a statement is taken without *Miranda* warnings, but instead may be violated only if and when the government introduces an unwarned statement in a criminal proceeding against the defendant. See *Chavez v. Martinez*, 538 U.S. 760, 769 (2003) (plurality op.); *id.* at 789 (Kennedy, J., concurring in part and

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instances, agents should seek SAC approval to proceed with an unwarned interrogation after the public safety questioning is concluded. Whenever feasible, the SAC will consult with FBI-HQ (including OGC) and Department of Justice attorneys before granting approval. Presentment of an arrestee may not be delayed simply to continue the interrogation, unless the defendant has timely waived prompt presentment.

The determination whether particular unwarned questions are justified on public safety grounds must always be made on a case-by-case basis based on all the facts and circumstances. 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 without *Miranda* warnings than would be permissible in an ordinary criminal case. Depending on the facts, such interrogation might include,

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As noted above, if there is time to consult with FBI-HQ (including OGC) and Department of Justice attorneys regarding the interrogation strategy to be followed prior to reading the defendant his *Miranda* rights, the field office should endeavor to do so. Nevertheless, 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 while interrogation strategy is being discussed.

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dissenting in part); *cf. also id.* at 778-79 (Souter, J. concurring in the judgment); *see also United States v. Patane*, 542 U.S. 630, 641 (2004) (plurality opinion) (“[V]iolations [of the Fifth Amendment right against self-incrimination] occur, if at all, only upon the admission of unwarned statements into evidence at trial.”); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) (“[A] violation [of the Fifth Amendment right against self-incrimination] occurs only at trial.”).

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