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July 15, 2004

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Ashcroft:

I am writing to you about a secretive intelligence practice known as "extraordinary rendition," in which terrorist suspects detained by U.S. authorities or foreign authorities acting in concert with the United States are sent to foreign nations for interrogation and torture. This practice raises serious human rights concerns.

Extraordinary rendition received attention by the American public after September 26, 2002, when Canadian citizen Maher Arar was detained in New York by U.S. authorities on suspicion of connections to al Qaeda. Under an order signed by a senior Justice Department official, Larry D. Thompson[1], Arar was flown to Jordan and then taken to Syria, where he reportedly was imprisoned and tortured by Syrian authorities. He was released ten months later and never charged with a crime.

After Canadian Prime Minister Paul Martin formally complained to U.S. authorities, Ambassador Paul Cellucci declared that that the U.S. reserves the right to "act unilaterally" and undertake extraordinary rendition as desired.[2] You later justified Acting Attorney General Thompson's decision by declaring that the decision was made on the basis of "assurances" from Syria that it would not torture Arar.[3] Further, Imad Moustapha, Syria's highest-ranking diplomat to the U.S., has said that Syrian intelligence had never heard of Arar before the U.S. government asked Syria to take him into custody.[4]

The State Department's 2003 Country Reports on Human Rights Practices details extensive torture methods used in Syrian prisons, including "administering electrical shocks; pulling out fingernails; forcing objects into the rectum; beating, sometimes while the victim is suspended from the ceiling; hyperextending the spine; bending the detainees into the frame of a wheel and whipping exposed body parts; and using a chair that bends backwards to asphyxiate the victim or fracture the victim's spine." Additionally, the State Department report notes that "Torture was most likely to occur while detainees were

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[1] "Top Justice Aide Approved Sending Suspect to Syria," *Washington Post*, November 19, 2003.
[2] "Arar case may be repeated: Cellucci," *Toronto Star*, December 4, 2003.
[3] "U.S. trusted Syria's assurances on Arar: Ashcroft," *Globe and Mail*, November 21, 2003.
[4] "His Year in Hell," 60 Minutes, *CBS News*, January 21, 2004.

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being held at one of the many detention centers run by the various security services throughout the country, particularly while the authorities were attempting to extract a confession or information." In former Director George Tenet's November 6, 2003 remarks at the National Endowment for Democracy, he declared that "Dictators in Iraq and Syria promised the restoration of national honor, a return to ancient glories. They've left instead a legacy of torture, oppression, misery, and ruin."

The Arar case, while disturbing, is all the more troubling because there is strong reason to believe it is not an isolated example. Media reports have detailed numerous cases of extraordinary rendition directed and facilitated by U.S. authorities of suspects held at U.S. direction by allied governments.[5] Diplomats and intelligence officials have repeatedly confirmed that extraordinary renditions continue to take place.[6] On October 17, 2002, former Director Tenet gave testimony before the Joint House and Senate Select Intelligence Committees, stating "by 11 September, CIA (in many cases with the FBI) had rendered 70 terrorists to justice around the world."

As you know, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the U.S. on October 21, 1994, specifically addresses this issue in Article 3:

> *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

I have recently introduced H.R. 4674, which directs the Department of State to transmit to Congress a list of countries in which torture or cruel, inhuman or degrading treatment is commonly practiced in interrogation or detention, and prohibits rendition, transfer, or return of any individual to any nation on this list. The bill grants limited waivers to this prohibition if the President certifies that the nation in question has made significant, verifiable progress in eliminating the use of torture or that, at a minimum, a recognized independent humanitarian organization will have immediate, unfettered and continuing access to the individual in question. The bill explicitly permits legal, treaty-based extradition, in which the subject has recourse to a U.S. court to appeal his extradition on the basis of concerns that he may be tortured if extradited.

In light of the seriousness of this issue, I respectfully request your assistance in answering the following questions. Please reply in unclassified format, although you may include a classified annex if necessary.

1. How many individuals have been subject to extraordinary rendition from United States territory since September 11, 2001?

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[5] "U.S. ships Al Qaeda suspects to Arab states," *Christian Science Monitor*, July 26, 2002.
[6] "U.S. Behind Secret Transfer of Terror Suspects," *Washington Post*, March 11, 2002; "Questioning Terror Suspects in a Dark and Surreal World," *New York Times*, March 9, 2003; "U.S. Pledges Not to Torture Terror Suspects," *Washington Post*, June 27, 2003.

2. How many individuals have been subject to extraordinary rendition under U.S. supervision, direction or instigation from foreign nations since September 11, 2001?

3. To what countries have these individuals been rendered? Of these countries, which ones are identified as consistent human rights abusers in the most recent State Department Country Reports on Human Rights Practices?

4. Has extraordinary rendition resulted in significant intelligence findings reported back to U.S. intelligence? Please provide examples.

5. Why is the assurance by a known human rights abuser such as Syria with a well-documented record of torturing prisoners sufficient to convince the U.S. government that a prisoner rendered will be safe from torture techniques?

6. Does the U.S. accept "assurances" from other known human rights abusers as sufficient to permit extraordinary rendition?

7. Given the fact that the United States is a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) and is therefore bound by its provisions, what is the legal basis for the U.S. engaging in the practice of extraordinary rendition?

8. Has any legal analysis been performed of whether U.S. rendition efforts are consistent with the requirements of Article 3 of the Torture Convention? If so, please provide me with a copy. If not, please explain why such analysis has not been performed in light of the potential legal and political consequences of U.S. violations of the Convention.

9. What are the Department's views regarding H.R. 4674?

I appreciate your assistance on this important matter and look forward to a response by August 16. If you have any questions please contact Dr. Colin McCormick of my staff, at 202-225-2836.

Sincerely,

Edward J. Markey
Member of Congress

cc: The Honorable Colin Powell
The Honorable Donald Rumsfeld
Robert S. Mueller
John E. McLaughlin
Condoleezza Rice