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October 1, 2004

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Ave. NW
Washington D.C. 20500

Dear Mr. President:

I am writing to you about the "9/11 Commission Recommendations Implementation Act of 2004," H.R. 10. As you know, the House Republican Leadership has inserted provisions into this bill which would facilitate the extradition or deportation of certain foreigners from the U.S. to countries where they may face torture.

The provisions I am referring to are contained in sections 3032 and 3033 of H.R. 10. These provisions would authorize the Secretary of Homeland Security to revise regulations prescribed pursuant to the obligations the U.S. assumed under the U.N. Convention Against Torture. Under the bill, the Secretary would be required to exclude certain aliens from the protection of section 241(b)(3)(B) of the Immigration and Nationality Act (U.S.C. 1231 (b)(3)(B)), including rendering aliens deemed ineligible for withholding or deferral of removal under the Convention Against Torture. The provision limits judicial review of the new regulations that would be required under the bill to facilitate the deportation of aliens to countries where they may be tortured, stating that "no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, except as part of review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252)."

Section 3032 also would change the burden of proof on the alien detainee seeking to challenge a proposed deportation in a manner, which appears to violate the U.N. Convention Against Torture and the Senate's understanding when it ratified the treaty in 1994. That Senate understanding stated in part:

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(2) That the United States understands the phrase, " where there are substantial grounds for believing that he would be in danger of being subjected to torture," as

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used in Article 3 of the Convention, to mean "it is more likely than not that he would be tortured."

Existing INS regulations, following the Senate understanding and the requirements of the Convention against torture, follow a "more likely than not standard." In stark contrast, section 3032 (3) states that: "the burden of proof is on the applicant…to establish by clear and convincing evidence that he or she would be tortured…" Human rights groups have publicly voiced their concerns that the "clear and compelling evidence" standard may be extremely difficult or even impossible for a detainee to satisfy.[1]

The provisions further authorize the Secretary of Homeland Security to remove an alien to "any country whose government will accept the alien into that country" (Section 3033). In essence the Secretary is given virtually unfettered power to send a detainee to any country, regardless if the detainee is not a citizen of that country and regardless if the country has a known record of torture. The U.S. already has sent detained foreigners to countries that – according the State Department's Annual Human Rights Report – practice torture, including Syria and Egypt. The best known example of this occurred in September 2002 when Maher Arar, a Canadian citizen, was detained and later deported to Syria where he was imprisoned and tortured. Authorities never found any terrorist connections, and he has never been charged or convicted with any crime relating to any terrorist activity. [2]

I have long been concerned about current rendition practices and earlier this year, I introduced H.R. 4674, a bill that would bar the U.S. from deporting, extraditing, or otherwise rendering persons to foreign nations known to engage in the practice of torture. My bill currently has 23 cosponsors and has been endorsed by Amnesty International, Human Rights Watch, and other human rights organizations. Next week I intend to offer an amendment to strike the outsourcing of torture provisions from the Republican 9/11 Commission bill and replace it with my bill.

Mr. President, on June 22, 2004, following the revelations of the abuses at the Abu Graib prison in Iraq, you made a strong statement condemning torture. At that time your stated:

> "Let me make very clear the position of my government and our country. We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not part of our soul and our being."

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[1] "Plan Would Let U.S. Deport Suspects to Nations that Might Torture Them," *Washington Post*, September 30, 2004.
[2] "His Year in Hell," *CBS News*, January 21, 2004.

Just yesterday a newspaper quoted a Justice Department spokesperson as saying that the Department supported these provisions.[3] In light of your strong statement against torture and the Justice Department's apparent endorsement of the provisions, I respectfully request your views on Sections 3032 and 3033 of H.R. 10. In light of the impending House floor vote on this bill on the week of October 4th, I request that you please let the Congress know now – before the vote -- where you stand on this issue before we take up and approve a provision that would legitimize the outsourcing of torture to other countries. I would also respectfully request your reviews on my proposed legislation, H.R. 4674, which would restrict extraordinary rendition to countries that practice torture.

Thank you for your consideration of this request.

Sincerely,

Edward J. Markey
Member of Congress

[3] "Plan Would Let U.S. Deport Suspects to Nations that Might Torture Them," *Washington Post*, September 30, 2004.