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CO-CHAIR:
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February 11, 2009

The Honorable Andrew Tyrie
Chairman
All Party Parliamentary Group on Extraordinary Rendition
House of Commons
London
The United Kingdom SW1A 0AA
VIA FACSIMILE: 011-44-207-219-0625

Re: February 11, 2009 Hearing on Binyam Mohamed

Dear Chairman Tyrie:

I want to thank you for the opportunity to provide a statement for your hearing regarding the February 4th British High Court ruling with respect to Binyam Mohamed. I ask that my attached letter to Attorney General Eric Holder and Secretary of State Hillary Clinton be entered into the record of your proceedings.

Respectfully yours,

Bill Delahunt

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CO-CHAIR:
CONGRESSIONAL COAST GUARD CAUCUS
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February 10, 2009

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
VIA FACSIMILE: 202-305-2643

The Honorable Hillary R. Clinton
Secretary of State
U.S. Department of State
2201 C St., NW
Washington, DC 20520
VIA FACSIMILE: 202-647-1618

Dear Mr. Attorney General and Madam Secretary:

I write today concerning a February 4, 2009, opinion issued by the High Court of Justice, Queen's Bench Division, in England.[1] That case was brought by Binyam Mohamed to obtain information that he needed to defend himself against charges brought under the United States Military Commissions Act. Mr. Mohamed, who was charged based on confessions that he made while being detained by or on behalf of the United States, alleges that his confessions were the result of torture.

Mr. Mohamed's lawyers have been given information regarding his treatment in redacted form and the Military Commission charges have been dismissed without prejudice. The question before the High Court of Justice in its February 4th opinion was whether the Court's summary regarding Mr. Mohamed's treatment should be redacted from its final public opinion. According to the Court, there is nothing in the summary that would threaten national security[2] and the summary is "highly material" to Mr. Mohamed's allegation of torture.[3]

The Court ultimately decided not to make this information public, despite its conclusion that "the requirements of open justice, the rule of law and democratic accountability

[1] The Application of Binyam Mohamed v. the Secretary of State for Foreign and Commonwealth Affairs. Case No. CO/4241/2008, 2009 EWHC 152 (opinion issued February 4, 2009).
[2] Id., para. 68.
[3] Id., para. 14, 68

demonstrate the very considerable public interest in making the redacted paragraphs public . . . ."[4] In reaching this conclusion, the Court deferred to British Foreign Secretary David Miliband, who reported that the US Government threatened to cut off intelligence sharing if the redacted paragraphs were made public, thus placing UK national security at risk.[5] Mr. Miliband subsequently denied that an express threat was made.[6]

Nevertheless, I am concerned that the US Government would object to the release of information when, according to the Court, no national security interest was implicated.[7] Indeed, the Court notes that the United States provided no reason for not having disseminated the information itself.[8] It is clear from the opinion that the summary addresses Mr. Mohamed's treatment as a detainee,[9] not legitimate state secrets.

The United States should not restrict access to intelligence solely to prevent information that might prove politically embarrassing from becoming public, when it poses no legitimate national security threat.[10] This is especially the case when the information in question bears on an allegation as deeply troubling as torture. I respectfully urge you to review the summary and consider carefully the Obama Administration's position on this matter. Unless it poses a legitimate threat of harm to US national security, I suggest that the US Government itself should make that information public or at least remove our objection to its release in the published opinion from the Queen's Court. As that Court noted, justice and democratic accountability overwhelmingly support the release of this information. With this case, let us indicate that the United States is making a clear break from past practices and will no longer hide evidence of detainee abuse from public scrutiny.

I look forward to hearing from you on this matter. If you have any questions, please contact Natalie Coburn, Counsel to the Foreign Affairs Subcommittee on International Organizations, Human Rights and Oversight at (202) 226-6434.

Respectfully yours,

Bill Delahunt

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[4] Id., para. 54.
[5] Id., para. 62.
[6] "David Miliband Denies Claim of US threat over Binyam Mohamed's Alleged Torture," www.timesonline.com, Feb. 5, 2009.
[7] Id. para. 68 (noting, among others things, that it is "difficult to conceive that a democratically elected and accountable government could possibly have any rational objection to placing into the public domain such a summary of what its own officials reported as to how a detainee was treated by them and which made no disclosure of sensitive intelligence matters.").
[8] Id., para. 71.
[9] Id., para. 14.
[10] Id. para. 69 ("we did not consider that a democracy governed by the rule of law would expect a court in another democracy to suppress a summary of the evidence contained in reports by its own officials or officials of another State where the evidence was relevant to allegations of torture and cruel, inhuman or degrading treatment, politically embarrassing though it might be.").