

Requester's Name: Joe Cyr

FOIA/PA NO.: 2009-021

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Documents from OIG Office of Inspections

11 PAGE(S) OF DOCUMENT(S)

RELEASED IN PART (RIP)

EXEMPTIONS CITED

2, 5, 6

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## **Maher Arar Timeline & Decision to Deport to Syria – media accounts**

### **Basic Timeline of Events**

At some point prior to September 26, 2002, Maher Arar's name was apparently placed on a U.S. immigration/terrorism watch list.

On September 26, 2002, Arar was returning alone from a family vacation in Tunisia to Montreal traveling through New York's JFK Airport on his Canadian passport. He arrived at JFK at approximately 2:00 p.m. At JFK, INS officials detained Mr. Arar because his name was on the watch list. An NYPD officer and an FBI agent interrogated him for several hours on the 26<sup>th</sup> and continued on the 27<sup>th</sup>, without notifying Canadian officials or allowing him to contact a lawyer.

**Late on September 27, 2002, an INS official informed Mr. Arar that he was a "special interest," and that they wanted him to voluntarily go to Syria. They asked him to sign a form that they did not let him read and he signed it.** Later that evening, Mr. Arar was taken to the Metropolitan Detention Center where he was strip searched, given an unidentified injection, and placed in a cell. After five days, Mr. Arar was allowed a phone call.

**On October 2 or 3, 2002, Mr. Arar was told he was going to be deported and was given a document to choose where he wanted to be deported. Mr. Arar indicated he wanted to go to Canada and that he had no concerns about going to Canada and signed it.**

On October 4, 2002, the Canadian Consul visited Mr. Arar and told him he would not be deported to Syria and that a lawyer was being arranged. On October 5, 2002, a lawyer visited Mr. Arar. On the night of October 6, Mr. Arar was taken from his cell to a room and questioned about why he did not want to go back to Syria. His lawyer was not present during that time. He was asked to sign a document but refused to do so.

On October 7, 2002, then Acting Attorney General Larry D. Thompson signed the order to deport Mr. Arar to Syria on national security grounds and "declaring that to send the man, Maher Arar, home to Canada would be 'prejudicial to the interests of the United States.'" (Priest, "Top Justice Aide Approved Sending Suspect to Syria," 11/19/03, p. A28; and "Man Was Deported After Syrian Assurances," 11/20/03, p. A24, *Washington Post*.)

On October 8, 2002, Mr. Arar was informed of what was said to be a decision by the INS Director. Mr. Arar was told that based on classified information that couldn't be revealed, he would be deported to Syria and that INS doesn't deal with the Geneva Convention regarding torture. Mr. Arar was flown to Washington D.C., where a "special removal unit" boarded the plane, and then on to Amman, Jordan where they arrived on October 9, 2002, and Mr. Arar was reportedly turned over to Jordanian officials.

According to Mr. Arar's statement, the Jordanian authorities blindfolded him, put him in a van and beat him while taking him to a building where he was fingerprinted and questioned. He was then put in another car and driven to what he thought was the Syrian border where he changed

cars and was taken to what he was told was the Palestinian branch of Syrian military intelligence, and this is where he remained for 10 months and 10 days.

Alternately, there are suggestions that Mr. Arar was detained and interrogated in a CIA facility in Jordan for 12 days before being sent to Syria. (Brown, "Canadians Ask Probe of Deportation to Syria," *Washington Post*, 10/09/03; Taylor, "The Deportation of Maher Arar," *Open Source Politics*, 10/22/03) Canadian Foreign Affairs Minister Bill Graham "wouldn't answer questions about what he knows about Arar's interrogation in Jordan before he was sent to Syria." ("Easter accused of stonewalling, refuses to launch Arar investigation," 10/10/03; accessed 1/6/04 at <http://www.cbc.ca/cgi-bin/templates/print.cgi?/2003/10/09/arar031009> )

On October 21, 2002, Mr. Arar was seen in Syria, and on October 22, 2002, the Canadian Foreign Affairs Department said that Arar was being held in Syria.

Mr. Arar was held in a Syrian prison where he claims he was tortured and was released by Syria on October 5, 2003. He returned to Montreal on October 6, 2003.

Note: Unless otherwise noted, the above summary was compiled largely from:  
Canadian Broadcasting Corporation, <http://www.cbc.ca/news/background/arar/>  
Maher Arar: Timeline, 11/06/03 update  
Maher Arar: Statement, 11/04/03  
and several *Washington Post* articles

### U.S. Actions/Involvement

U.S. officials have said Arar was deported because he was suspected of being a terrorist according to several intelligence sources. Mr. Arar said that the Americans had a copy of his Ottawa apartment lease when they were questioning him.

"Ottawa asks U.S. for explanation of Arar case, but turns down public inquiry," 11/5/03. Accessed 1/06/04 at <http://www.cbc.ca/stories/2003/11/05/maherarar031105>.

A State Department official said that Arar was detained in New York "after his name appeared on an immigration watch list," and that "U.S. immigration law gives the attorney general the discretion to deport an alien to the country in which he was born."

Brown, "Canadians ask probe of deportation to Syria," *Washington Post*, 10/9/03, p. A08

American Ambassador to Canada Paul Cellucci said that "Arar was deported on the advice of Canadian authorities" whom he declined to name. On April 29, 2003, Mr. Cellucci told a group in Ottawa, "Mr. Arar is very well known to Canadian law enforcement. They understand our handling of the case. They wouldn't be happy to see him come back to Canada."

Taylor, "The Deportation of Maher Arar," *Open Source Politics*, 10/22/03; accessed 1/6/04 at

[http://www.ospolitics.org/legalwrites/archives/2003/10/22/the\\_deport.php](http://www.ospolitics.org/legalwrites/archives/2003/10/22/the_deport.php).

Brown, "Canadian sent to Mideast files suit; Deportee alleging torture seeks redress from Jordan, Syria, U.S.," *Washington Post*, 11/25/03, p. A25

A DOJ spokesman said “the removal of Mr. Arar was accomplished after interagency consultation and in full compliance with the law and with all relevant international treaties and conventions.”

Priest, “Top Justice aide approved sending suspect to Syria.” *Washington Post*, 11/19/03, p. A28

**U.S. officials said they decided to send Arar to Syria only after the CIA received assurances from Syria that it would not torture him. A DOJ spokesman confirmed that these Syrian assurances allowed the U.S. to legally send Arar to Syria.**

Priest, “Man was deported after Syrian assurances.” *Washington Post*, 11/20/03, p. A24

Brown. “Canadian sent to Mideast files suit; Deportee alleging torture seeks redress from Jordan, Syria, U.S.” *Washington Post*, 11/25/03, p. A25

U.S. officials have said that Arar “was seized as part of a secret procedure known as ‘rendition,’ in which terrorism suspects are turned over to foreign countries known to torture people in their custody.” Just before Arar was handed over in Jordan, the U.S. authorities returned his passport, hand luggage and laptop.

Brown. “Ex-Detainee details fearful path to Syria: Torture followed handover by American ‘Removal’ Unit.” *Washington Post*, 11/12/03, p. A14

**U.S. officials said Arar was deported because he was on a terrorist watch list after being linked to terrorist groups by “multiple international intelligence agencies.” Unnamed officials said that Arar fits the profile of a covert CIA “extraordinary rendition” – the practice of turning over low-level, suspected terrorists to foreign intelligence services, some of which are known to torture prisoners. A senior U.S. intelligence official discussed the secret rendition policy saying that there have been “a lot of rendition activities” since 9/11, and “they have been very productive.” Intelligence officials claim renditions are a legitimate option for dealing with suspected terrorists. The U.S. government officially rejects that it knowingly sends suspects to be tortured, but officials do admit it happens sometimes.** A senior intelligence official said that DOJ didn’t have enough evidence to detain Arar, and “the CIA doesn’t keep people in this country.” Due to that and “with a secret presidential ‘finding’ authorizing the CIA to place suspects in foreign hands without due process, Arar may have been one of the people whisked overseas by the CIA.” With renditions – a covert action – CIA teams work with foreign intelligence services and capture suspected terrorists in one country and then render them to another, often after U.S. interrogators have tried to get information from the suspects. Congress knows of the broad authority to conduct renditions, but is not informed of individual cases.

Brown & Priest. “Deported terror suspect details torture in Syria; Canadian’s case called typical of CIA,” *Washington Post*, 11/05/03, p. A01

### Canadian Actions/Involvement

Members of Canada’s Parliament are asking questions about the role of Canadian officials, including the Royal Canadian Mounted Police (RCMP), had in giving information to U.S. officials that led to Arar’s arrest and ultimate deportation to Syria.

Brown. “Canadians ask probe of deportation to Syria.” *Washington Post*, 10/9/03, p. A08

Canada's government is questioning what information the RCMP gave to U.S. authorities. They will also ask the Syrian ambassador about Arar's claims of torture.

Brown & Priest, "Deported terror suspect details torture in Syria; Canadian's case called typical of CIA," *Washington Post*, 11/05/03, p. A01

Canadian Solicitor General Wayne Easter admitted publicly that Canada contributed information that led to Arar's arrest. He told reporters, "This information didn't just come from Canada alone. The information comes from sources globally." Canadian officials have said previously that they did not participate in the decision to send Arar to Syria.

Priest, "Man was deported after Syrian assurances," *Washington Post*, 11/20/03, p. A24

Canadian Mounties had been investigating Mr. Arar for a year and had "quietly asked the U.S. government to pick him up."

Applebaum, "A coalition that dare not speak its name," *Washington Post*, 7/16/03, p. A23

According to Lorne Waldman, a lawyer for Mr. Arar, the Canadian Security Intelligence Service (CSIS) (Canada's civilian spy agency) had an officer in Syria not long after Mr. Arar was imprisoned there, and the CSIS office accepted a file on Arar from the Syrians. CSIS denied it had any involvement with the arrest, deportation or detention in Syria of Arar.

"Hold an inquiry into the Arar case," *The Globe and Mail*, 11/5/03, p. A24; accessed 1/6/04 at <http://www.theglobeandmail.com/servlet/ArticleNews/TPStory/LAC/20031105/EARAR05/?query=editorial>

### Syrian Actions/Involvement

Imad Moustafa, charge d'affaires at the Syrian Embassy in Washington, said that Syria had no reason to imprison Arar. He said that U.S. intelligence officials told Syrian intelligence officials that Arar was an al Qaeda member and that Syria agreed to take him as a favor and as a gesture of goodwill to the U.S.

Priest, "Top Justice aide approved sending suspect to Syria," *Washington Post*, 11/19/03, p. A28

Moustafa said that U.S. officials told the Syrians that they had "solid information" on Arar's al Qaeda links but never produced any.

Brown & Priest, "Chretien protests deportation of Canadian; Prime Minister calls U.S. treatment of terror suspect 'completely unacceptable'," *Washington Post*, 11/6/03, p. A24

Syria does not allow its citizens to denounce their citizenship.

ISP- -2004  
Bunder A  
Tab 18

[redacted]  
From: [redacted]  
Sent: Wednesday, August 04, 2004 10:37 AM  
To: [redacted]  
Subject: Re: Maher Arar

[redacted]  
You should contact Steven Watt, one of the attorneys at the Center for Constitutional Rights who is working on the Arar case and he will put you in touch directly with Arar's attorney in Canada. Steven's direct extension is 212-[redacted] and his email is [redacted]. Please let me know if I can be helpful in any other way.

[redacted]  
Amnesty International USA  
202-544-0200, ext. [redacted]  
[redacted]

[redacted] b2  
[redacted] gov>  
08/03/2004 07:40 AM

To: [redacted] (E-mail)"  
cc:  
Subject: Maher Arar

b6

[redacted]  
As you know, the Department of Homeland Security, Office of Inspector General, is reviewing the "extraordinary rendition" of Mr. Maher Arar. As part of our review, we would like to interview Mr. Arar. We would prefer to arrange the interview through Mr. Arar's legal counsel.

We would greatly appreciate your assistance in obtaining contact information for Mr. Arar's legal counsel.

Thank you.

[redacted]  
Chief Inspector  
Office of Evaluations, Inspections, and Special Reviews  
Office of the Inspector General  
Department of Homeland Security

[redacted] b2



# Homeland Security

ISF- \_\_\_\_\_ - 2004  
Binder A  
Tas 19

August 19, 2004

[Redacted]

Amnesty International USA  
600 Pennsylvania Ave. SE, 5th Floor  
Washington, DC 20003

Dear [Redacted]

I am writing to you in response to your letter of July 16, 2004, concerning the case of Maher Arar. I wanted to provide you with the status of our ongoing review of the Arar case and to clarify the scope of our review.

I would have expected our review to be completed by now. However, our work has been delayed and may not be completed in a timely matter for reasons beyond our control. Here is a brief explanation of our efforts to date.

On January 8, 2004, I sent a letter to the Bureau of Immigration and Customs Enforcement (ICE) officially announcing the start of our review of the Arar case. By mid-January, we learned that there were restrictions on parts of the material that we sought to review. ICE officials said that some of the information that we sought was classified. With respect to other information, department attorneys said that we could not have access on grounds of privilege related to the civil litigation that Mr. Arar has brought against the federal government.

Not until mid-May were we able to review the classified documents that initially we had been told might not be made available to us. During this same period, we sought to interview present and former government employees about their role in the Arar matter. Concurrently, we discussed with government attorneys the privilege issues that were cited as the basis for blocking our access to additional documents that we believe exist and impeding our requests to interview potential witnesses. In regard to these efforts, we have had no success, although we continue to press our arguments. Because government counsel continues to assert the privilege issue or decline to waive it, which we understand could be done, our efforts to complete the review have been stymied. Our negotiations with government counsel are continuing and we hope to have access to the requested information soon.

As to the scope of our work, our review is focused solely on the Arar case for the time being. By limiting the scope of our review in this fashion, we have been attempting to expedite the conclusion of it.

That said, we are asking ICE to provide us with information concerning any other extraordinary renditions that may have occurred since 1998. Presuming we obtain that information (if there is

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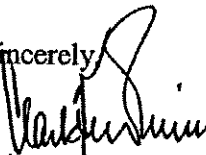
any), we will review it and consider conducting reviews of these additional extraordinary renditions in the future.

We have two objectives for our review of the Arar case. We seek to understand the decision making process and policies followed by U.S. immigration officials when deciding to send Mr. Arar to Syria rather than Canada. Further, we seek to determine whether in the case of Arar, U.S. immigration officials complied with applicable laws and regulations governing the removal of aliens.

You noted in your letter that the term "extraordinary rendition" has no legal or generally acknowledged meaning. While we have not confirmed past instances of alleged extraordinary renditions, anecdotal information that we have received indicates that these cases usually involve the transportation of individuals between two countries other than the United States. To the extent that these alleged activities involve U.S. agencies other than DHS, we will be unable, of course, to confirm whether they may have occurred or the circumstances under which they may have occurred because our jurisdiction extends only to DHS.

Thank you for your interest in this important matter. DHS compliance with laws and regulations and the protection of civil liberties and civil rights will always be priorities for my office. If I can be of any further assistance, please contact me, or your staff may contact my congressional and media liaison officer, Tamara Faulkner, at (202) 254-4100.

Sincerely,



Clark Kent Ervin  
Inspector General

cc: Mr. Peter Rosenblum  
Clinical Professor in Human Rights  
Human Rights Clinic, Columbia Law School

[REDACTED]  
Human Rights First

[REDACTED]  
Human Rights Watch

Ms. Laura W. Murphy and Timothy H. Edgar  
American Civil Liberties Union

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IS91-\_\_\_\_-2004  
 Binder BC1  
 Tab 24

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From: [REDACTED] b2  
 Sent: Monday, February 28, 2005 12:05 PM  
 To: [REDACTED] (E-mail); [REDACTED]  
 Subject: In-Case-You-Missed-This-NYTimes-Arar-Piece....

Previous  Next  Index

## It's Called Torture

Publication: New York Times

Date: 2005 February 28

Author: Bob Herbert

As a nation, does the United States have a conscience? Or is anything and everything O.K. in post-9/11 America? If torture and the denial of due process are O.K., why not murder? When the government can just make people vanish - which it can, and which it does - where is the line that we, as a nation, dare not cross?

When I interviewed Maher Arar in Ottawa last week it seemed clear that however thoughtful his comments, I was talking with the frightened, shaky successor of a once robust and fully functioning human being. Torture does that to a person. It's an unspeakable crime, an affront to one's humanity that can rob you of a portion of your being as surely as acid can destroy your flesh.

Mr. Arar, a Canadian citizen with a wife and two young children, had his life flipped upside down in the fall of 2002 when John Ashcroft's Justice Department, acting at least in part on bad information supplied by the Canadian government, decided it would be a good idea to abduct Mr. Arar and ship him off to Syria, an outlaw nation that the Justice Department honchos we'll knew was addicted to torture.

Mr. Arar was not charged with anything, and yet he was deprived not only of his liberty, but of all legal and human rights. He was handed over in shackles to the Syrian government and, to no one's surprise, promptly brutalized. A year later he emerged, and still no charges were lodged against him. His torturers said they were unable to elicit any link between Mr. Arar and terrorism. He was sent back to Canada to face the torment of a life in ruins.

Mr. Arar's is the case we know about. How many other individuals have disappeared at the hands of the Bush administration? How many have been sent, like the victims of a lynch mob, to overseas torture centers? How many people are being held in the C.I.A.'s highly secret offshore prisons? Who are they and how are they being treated? Have any been wrongly accused? If so, what recourse do they have?

President Bush spent much of last week lecturing other nations about freedom, democracy and the rule of law. It was a breathtaking display of chutzpah. He seemed to me like a judge who starves his children and then sits on the bench to hear child abuse cases. In Brussels Mr. Bush said he planned to remind Russian President Vladimir Putin that democracies are based on, among other things, "the rule of law and the respect for human rights and human dignity."

Someone should tell that to Maher Arar and his family.

Mr. Arar was the victim of an American policy that is known as extraordinary rendition. That's a euphemism. What it means is that the United States seizes individuals, presumably terror suspects, and sends them off without even a nod in the direction of due process to countries known to practice torture.

A Massachusetts congressman, Edward Markey, has taken the eminently sensible step of introducing legislation that would ban this utterly reprehensible practice. In a speech on the floor of the House, Mr. Markey, a Democrat, said, "Torture is

2/28/2005

morally repugnant whether we do it or whether we ask another country to do it for us. It is morally wrong whether it is captured on film or whether it goes on behind closed doors unannounced to the American people."

Unfortunately, the outlook for this legislation is not good. I asked Pete Jeffries, the communications director for House Speaker Dennis Hastert, if the speaker supported Mr. Markey's bill. After checking with the policy experts in his office, Mr. Jeffries called back and said: "The speaker does not support the Markey proposal. He believes that suspected terrorists should be sent back to their home countries."

~~Surprised, I asked why suspected terrorists should be sent anywhere. Why shouldn't they be held by the United States and prosecuted?~~

"Because," said Mr. Jeffries, "U.S. taxpayers should not necessarily be on the hook for their judicial and incarceration costs."

It was, perhaps, the most preposterous response to any question I've ever asked as a journalist. It was not by any means an accurate reflection of Bush administration policy. All it indicated was that the speaker's office does not understand this issue, and has not even bothered to take it seriously.

More important, it means that torture by proxy, close kin to contract murder, remains all right. Congressman Markey's bill is going nowhere. Extraordinary rendition lives.

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Regards,

[Redacted]

[Redacted]

Office of Inspections, Evaluations and Special Reviews  
Office of Inspector General  
Department of Homeland Security

E-mail: [Redacted]  
Phone: [Redacted]  
Fax: [Redacted]

b2

Snail Mail:  
DHS/Office of Inspector General/ STOP 2600

[Redacted] b2  
245 Murray Drive, Building 410  
Washington, DC 20528

b6



# Homeland Security

ISP-\_\_\_\_-2004  
Binder A  
Tab 14

August 9, 2004

MEMORANDUM FOR: The Honorable Michael J. Garcia  
Assistant Secretary, Bureau of Immigration and Customs Enforcement

FROM: Clark Kent Ervin  
Inspector General

SUBJECT: Removal of Immigration Detainee to Syria

On January 8, 2004, we initiated a review of an incident involving Mr. Maher Arar, a citizen of Syria and Canada. Mr. Arar was detained by Immigration and Naturalization Service authorities in New York City in September 2002 and was later removed to Syria in what has been characterized as an "extraordinary rendition." Mr. Arar has since returned to Canada and has alleged that he was tortured while in Syrian custody.

While our review has focused on the particulars of the Arar case, we would like to determine whether Mr. Arar's treatment

[REDACTED]

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If you have questions, please call me, or have your staff contact Robert L. Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews, at (202) 254-4100, or [REDACTED] Chief Inspector, Inspections, Evaluations, and Special Reviews, at (202) 254- [REDACTED]

b6

b2

cc [REDACTED] ICE Liaison

b6

ISP- [redacted] 2004  
Border A  
S 11



DEPARTMENT OF HOMELAND SECURITY  
Office of Inspector General  
Washington, DC 20528

January 23, 2004

MEMORANDUM

TO: Michael J. Garcia, Assistant Secretary  
Bureau of Immigration and Customs Enforcement

FROM: *Richard L. Skinner*  
Clark Kent Ervin  
*for* Inspector General

SUBJECT: OIG Review of Maher Arar's Alien File

The Office of Inspector General has initiated a review of the removal of Mr. Maher Arar to Syria by the Immigration and Naturalization Service (INS).<sup>1</sup> INS authorities in New York initially detained Mr. Arar in September 2002.

To fulfill our review objectives, we wish to review all documents previously held by INS or now held by the Bureau of Immigration and Customs Enforcement (ICE) regarding Mr. Arar and the circumstances of his apprehension and removal, including his classified and unclassified A Files, and any other documents or communications of any kind that pertain to these events. As such, we request that no documents relevant to our review be permitted to leave the custody of ICE until we have had an opportunity to examine and copy their contents. We are aware of reports that a lawsuit has been filed. If other demands for these materials arise because of civil litigation matters or any other investigation or review that might ensue, we will endeavor to complete our work in a timely fashion so as not to delay such requests; however, it is critical that these materials not be edited, altered, or released from ICE custody until our examination of them has been completed. OIG's receipt of these documents and information will not affect the ability of the Department to assert any applicable privileges otherwise existing.

If you have any questions concerning this inspection, please call me or Robert Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews, at (202) 254-4100, or [redacted] at (202) 254-[redacted] b2

cc: [redacted]  
Audit Liaison  
Department of Homeland Security

[redacted]  
Audit Liaison  
Bureau of Immigration and Customs Enforcement

<sup>1</sup> Memorandum from Clark Kent Ervin, Inspector General, to Michael J. Garcia, Assistant Secretary, Bureau of Immigration and Customs Enforcement, dated January 9, 2004.

b6

Requester's Name: Joe Cyr  
FOIA/PA NO.: 2009-021

MIXED DOCUMENTS

48 (RIF)

51 (RIP)

2 (WIF)

2 (DUP)

           (REFERRED)

254 (NR)

Requester's Name: Joe Cyr

FOIA/PA NO.: 2009-021

## Documents from OIG Office of Administration

### MIXED DOCUMENTS

1 (RIF)

6 (RIP)

           (WIF)

2 (DUP)


           (NR)



# Homeland Security

August 10, 2004

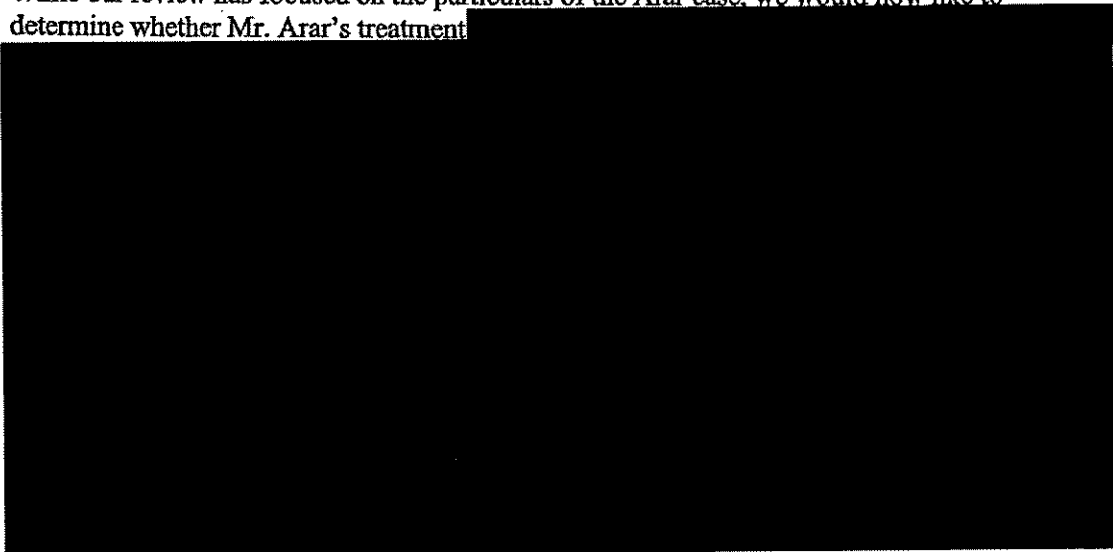
MEMORANDUM FOR: Michael J. Garcia  
Assistant Secretary  
Bureau of Immigration and Customs Enforcement

FROM: Clark Kent Ervin   
Inspector General


SUBJECT: Removal of Immigration Detainee to Syria

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If you have questions, please call me, or your staff may contact Robert L. Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews, at (202) 254-4100, or  Chief Inspector, Inspections, Evaluations, and Special Reviews, at (202) 254-

b6

b2

b6

cc:  ICE Liaison

Congress of the United States  
Washington, DC 20515

July 3, 2007

The Honorable Richard L. Skinner  
Inspector General  
Office of the Inspector General  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Mr. Skinner:

We are writing to inquire about a report with respect to the Bureau of Immigration and Customs Enforcement's dealings with Canadian citizen Maher Arar in 2002. In December 2003, Chairman Conyers requested that your office conduct an investigation into Mr. Arar's rendition to Syria. In a letter dated July 14, 2004, which we have enclosed with this letter, your predecessor, Clark Ervin, indicated that an inquiry had begun on January 8, 2004.

At that point, Mr. Ervin stated that the investigative process regarding classified materials had been "unduly protracted and frustrating" and that, while some documents and information had been provided for review, the Department of Justice was withholding additional information by claiming privilege related to ongoing litigation filed by Mr. Arar against the federal government. Mr. Ervin expressed his belief that the assertion of legal privilege regarding materials was not valid with regard to his office's investigation, and he pledged to continue seeking access to documents and information related to Mr. Arar's rendition. We understand that this report may now be complete and we therefore request that you provide us our offices with copies. We will ensure that any report or information that is designated as classified is secured and reviewed in accordance with our established procedures for reviewing and safeguarding such information. To the extent that any unclassified summaries have been prepared for materials designated as classified, we also ask that you provide us with copies of those summaries.

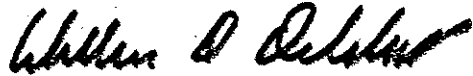
As Chairmen of the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight and the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties, we are investigating the case of Mr. Arar and intend to hold a joint hearing on this matter. We believe that this report would significantly aid us in our preparation for this hearing. Mr. Arar's case has generated a great deal of concern on Capitol Hill and across the country. It deserves to be thoughtfully reviewed. Only with access to relevant data can Congress make a balanced and fair assessment of our government's dealings with Mr. Arar.



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Since we intend to hold the hearing during the last week of July, please respond to our request by July 20, 2007. If you have any questions, please contact [REDACTED] or [REDACTED]

Sincerely,



WILLIAM D. DELAHUNT

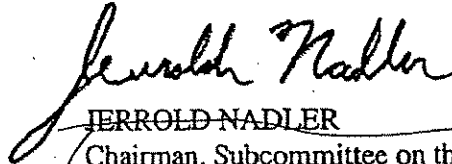
Chairman

Subcommittee on

International Organizations,

Rights, and Oversight

Committee on Foreign Affairs



JERROLD NADLER

Chairman, Subcommittee on the

Constitution, Civil Rights and

Civil Liberties

Committee on the Judiciary

**Faulkner, Tamara**

b6  
From: Ervin, Clark  
Sent: Thursday, September 09, 2004 1:58 PM  
To: [REDACTED]  
Cc: Skinner, Richard; Redman, Lisa; [REDACTED] Ashbaugh, Robert; Faulkner, Tamara; Reback, Richard  
Subject: RE: mtg request from Human Rights Watch

b5  
[REDACTED] let's reschedule for a time when Reback can be there too.  
[REDACTED]

-----Original Message-----

b6  
From: [REDACTED]  
Sent: Thursday, September 09, 2004 12:22 PM  
To: Ervin, Clark  
Cc: Skinner, Richard; Redman, Lisa; [REDACTED]  
Ashbaugh, Robert; Faulkner, Tamara; Reback, Richard  
Subject: RE: mtg request from Human Rights Watch

The Human Rights Watch people are asking about our availability again. I have a tentative hold on September 15 at 10 a.m. for this meeting. The IG, Bob Ashbaugh and Rick Reback (or a representative if the primary person is not available) should be at the meeting. Do I have concurrence so I can let the Human Rights Watch people know?

b6  
[REDACTED]  
-----Original Message-----

From: Ervin, Clark  
Sent: Friday, August 27, 2004 12:53 PM  
To: Ashbaugh, Robert; [REDACTED]  
Cc: Skinner, Richard; Ervin, Clark; Redman, Lisa; [REDACTED]  
Subject: Re: mtg request from Human Rights Watch

b5  
[REDACTED]  
-----Original Message-----

b6  
From: Ashbaugh, Robert <[REDACTED]>  
To: [REDACTED]  
Cc: Skinner, Richard [REDACTED] Ervin, Clark  
[REDACTED] Redman, Lisa <[REDACTED]>

Sent: Fri Aug 27 12:14:18 2004  
Subject: RE: mtg request from Human Rights Watch

b5  
[REDACTED]

b5

b6 PS. September 14th morning is taken with the [REDACTED] briefing on intel oversight so we cant meet then.

-----Original Message-----

From: [REDACTED]  
Sent: Friday, August 27, 2004 8:44 AM  
To: Ashbaugh, Robert  
Cc: Skinner, Richard; Ervin, Clark; Redman, Lisa  
Subject: FW: mtg request from Human Rights Watch

Bob,

Your thoughts on this request, please.

-----Original Message-----

From: Redman, Lisa  
Sent: Friday, August 27, 2004 8:42 AM  
To: [REDACTED]  
Subject: RE: mtg request from Human Rights Watch

b6 please do, thanks.

-----Original Message-----

From: [REDACTED]  
Sent: Friday, August 27, 2004 8:41 AM  
To: Redman, Lisa  
Subject: RE: mtg request from Human Rights Watch

Should I forward this to Bob?  
~~~~~

-----Original Message-----

From: Redman, Lisa  
Sent: Friday, August 27, 2004 8:39 AM  
To: [REDACTED] Skinner, Richard  
Subject: RE: mtg request from Human Rights Watch

b6 Thanks [REDACTED] Rick, the case they refer to is one of Bob's inspection issues; [REDACTED]

b5

-----Original Message-----

b6 From: [REDACTED]  
Sent: Friday, August 27, 2004 8:33 AM  
To: Redman, Lisa  
Subject: FW: mtg request from Human Rights Watch

As requested.  
~~~~~

-----Original Message-----

b6 From: Skinner, Richard  
b2 Sent: Friday, August 27, 2004 8:29 AM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Re: mtg request from Human Rights Watch

b5

Forward to Lisa. [REDACTED]

-----Original Message-----

From: [REDACTED]  
To: Ervin, Clark [REDACTED] Skinner, Richard [REDACTED]  
Redman, Lisa [REDACTED]

Sent: Fri Aug 27 08:22:04 2004  
Subject: FW: mtg request from Human Rights Watch

Good morning, again.

Please let me know how you want to handle this request.

-----Original Message-----

From: [REDACTED]  
Sent: Thursday, August 26, 2004 4:56 PM  
To: [REDACTED]  
Subject: mtg request from Human Rights Watch

Dear [REDACTED]

I'm writing on behalf of [REDACTED] to request a meeting with Inspector General Ervin and the relevant staff on September 14 or 15 to discuss the on-going investigation into the Maher Arar case and the use of diplomatic assurances in rendition cases. We are particularly interested in discussing cases where issues of possible mistreatment may arise and our legal expert on these subjects for Human Rights Watch, [REDACTED] will be in town for a short time to join this meeting.

Thank you very much for your attention and I look forward to hearing from you.

Sincerely,

[REDACTED]  
Advocacy Associate  
Human Rights Watch  
[REDACTED]

b6

Faulkner, Tamara

From: [REDACTED]  
Sent: Thursday, September 09, 2004 12:52 PM  
To: Ashbaugh, Robert; Ervin, Clark  
Cc: Skinner, Richard; Redman, Lisa; [REDACTED] Faulkner,  
Tamara; Reback, Richard  
Subject: RE: mtg request from Human Rights Watch

b6

That is correct. The out-of-town expert is here on 9/14 and 9/15 only. The IG has almost a full schedule on 9/14. That was why I could not squeeze it in that day. However, if he is going to do a drop-by only, that is a different story.

No one is available in the morning on 9/14 due to the IAIP briefing. The Human Rights Watch people already have an appointment at 1:30.

If we agree to this, how about 3:30 on 9/14? Are the mandatory attendees available then?.

[REDACTED]

-----Original Message-----

From: Ashbaugh, Robert  
Sent: Thursday, September 09, 2004 12:43 PM  
To: [REDACTED] Ervin, Clark  
Cc: Skinner, Richard; Redman, Lisa; [REDACTED]  
Faulkner, Tamara; Reback, Richard  
Subject: RE: mtg request from Human Rights Watch

b6

Rick R. is not available that day. Clark is planning to do a drop-by. At this point, insofar as I am aware, only David Hiles and I are scheduled attendees. (For some reason I think Rick S. is also unavailable.) [REDACTED]

b5

[REDACTED] In fact, that is reason why it was scheduled when it was -- because the out of town expert was going to be in town.

-----Original Message-----

**Duplicate Info**

## Deletion Page

Requester: Joe Cyr  
Request #: 2009-021

2 page(s) containing duplicate information  
is/are held in the file.

Requester's Name: Joe Cyr  
FOIA/PA NO.: 2009-021

Documents from OIG Office of Audits

MIXED DOCUMENTS

6 (RIF)

\_\_\_\_\_ (RIP)

\_\_\_\_\_ (WIF)

\_\_\_\_\_ (DUP)

230 (NR)

**DEPARTMENT OF HOMELAND SECURITY**

**Office of Inspector General**



**FISCAL YEAR 2006  
ANNUAL PERFORMANCE PLAN  
(REVISED APRIL 2006)**



## Deletion Page

Requester: Joe Cyr

Request #: 2009-021

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This document contains:

32 pages which were deleted as Non-Responsive.  
Responsive pages are provided after this deletion page.

Description of Document: OIG Fiscal year 2006 Annual Performance Plan.

immigration proceedings or while awaiting removal; and, removing individuals, especially criminals and other threats to national security and public safety, who are unlawfully present in the United States. The immigration enforcement process starts with apprehension and ends with a grant of approval to stay in the United States or be removed. The Executive Office of Immigration Review of the DOJ determines the legal status and admissibility of an alien. Aliens are detained according to priorities, such as legal requirements, funding sources, availability of detention facilities, and resource limitations. As required by law, aliens convicted of aggravated felonies are the first priority, followed by other aliens convicted of criminal behavior, with administrative deportation cases given the lowest priority. The detention period varies according to the circumstances of each alien but can be as short as few days and as long as a period of years. The average detention stay is about 40 days.

***Audit Objective:*** Determine whether ICE has sufficient resources and facilities to house detainees. *Office of Audits*

### **Removal of Canadian National to Syria**

The OIG is evaluating the decision by the INS to remove a Canadian and Syrian citizen to Syria where he alleges that he was tortured. The INS at JFK International Airport detained this person on September 26, 2002, while he was returning to Montreal from a family vacation in Tunisia. He was carrying a Canadian passport. According to news reports, U.S. officials alleged that he had connections to al-Qaeda; he was consequently detained and questioned before being removed (an “extraordinary rendition”) to Syria. The Ranking Member of the House Committee on the Judiciary requested the review.

***Inspection Objectives:*** Determine how U.S. immigration officials arrived at their decision to remove this person to Syria and whether the decision was made within prescribed INS policies. *Office of Inspections and Special Reviews*

### **Policies and Procedures Governing ICE Disciplinary Process**

This review will evaluate efforts undertaken by ICE to establish a single, integrated disciplinary process among its subordinate agencies that can be characterized as being uniform, timely, and equitable in the application of disciplinary action for substantiated employee misconduct. In addition to providing an opportunity to examine ICE’s integration efforts, the review is prompted by difficulty the OIG has encountered in seeking to determine the outcome of completed investigations referred to the component for appropriate action. The review will include: (1) the relationship between the entities that are responsible for investigating employee misconduct and the human resources (HR) entities that are then responsible for processing disciplinary action when allegations of employee misconduct appear to be substantiated; (2) any backlogs that may exist involving substantiated cases of employee misconduct for which no disciplinary action has been prescribed; and (3) the length of time taken to prescribe disciplinary action in response to what appear to be substantiated cases.

**DEPARTMENT OF HOMELAND SECURITY**

**Office of Inspector General**



**FISCAL YEAR 2007**

**ANNUAL PERFORMANCE PLAN**

## Deletion Page

Requester: Joe Cyr

Request #: 2009-021

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This document contains:

92 pages which were deleted as Non-Responsive.  
Responsive pages are provided after this deletion page.

Description of Document: OIG Fiscal year 2007 Annual Performance Plan.

**Inspection Objectives:** Determine whether: (1) the actions of ICE and FBI personnel were appropriate; and (2) whether the agreement promotes effective and efficient cooperation and coordination of terrorist finance investigations.

#### **Removal of a Canadian Citizen to Syria (Congressional)**

Our office is evaluating the decision by the INS to remove a Canadian and Syrian citizen to Syria where he alleges that he was tortured. The INS at JFK International Airport detained this person on September 26, 2002, while he was returning to Montreal from a family vacation in Tunisia. He was carrying a Canadian passport. According to news reports, U.S. officials alleged that he had connections to al-Qaeda; he was consequently detained and questioned before being removed (an "extraordinary rendition") to Syria. The Ranking Member of the House Committee on the Judiciary requested the review.

**Inspection Objectives:** Determine how U.S. immigration officials arrived at their decision to remove this person to Syria and whether the decision was made within prescribed INS policies.

#### **Assessment of the Effectiveness of ICE Fugitive Operations Teams**

ICE has received significant funding to support its fugitive apprehension teams. The teams are supposed to identify, locate, and apprehend fugitives. Even though ICE's resources for this activity are growing, so is the absconder population. This is a follow-up review to our recently issued *Review of the Immigration and Customs Enforcement's Compliance Enforcement Unit*.

**Inspection Objectives:** To determine the efficacy of (1) the processes used by the teams to locate and apprehend absconders and fugitives, (2) the removal of apprehended absconders and fugitives, and (3) whether participating on the teams runs counter to ICE's mission.

#### **Assessment of the Effectiveness of ICE's Management of Post-Final Order Custody Reviews**

Sec. 241(a) of the Immigration and Nationality Act provides that "[e]xcept as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')" 8 USC §1231(a)(1)(A). The statute provides exceptions when removal within the 90-day period is not possible (such as when the alien's country of citizenship will not accept the alien). It also permits detention to continue beyond the 90-day period for aliens charged with certain types of immigration violations who have not been removed, or where the Attorney General determines that the aliens present a risk to the community or a risk of flight. Pursuant to 8 Code of Federal Regulations §241.4(h), aliens held more than 90 days after issuance of a final removal order are entitled to an administrative review to determine if their continued custody is warranted.

**DEPARTMENT OF HOMELAND SECURITY**

**Office of Inspector General**



**FISCAL YEAR 2008**

**ANNUAL PERFORMANCE PLAN**

## Deletion Page

Requester: Joe Cyr

Request #: 2009-021

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This document contains:

106 pages which were deleted as Non-Responsive.  
Responsive pages are provided after this deletion page.

Description of Document: OIG Fiscal year 2008 Annual Performance Plan.

### **Removal of a Canadian Citizen to Syria (Congressional)**

*start – February 2004*

*publish – January 2008*

Our office is evaluating the decision by the Immigration and Naturalization Service (INS) to remove a Canadian and Syrian citizen to Syria, where he alleges that he was tortured. The INS at John F. Kennedy International Airport detained this person on September 26, 2002, while he was returning to Montreal from a family vacation in Tunisia. He was carrying a Canadian passport. According to news reports, U.S. officials alleged that he had connections to al-Qaeda; he was consequently detained and questioned before being removed (an “extraordinary rendition”) to Syria. The Ranking Member of the House Committee on the Judiciary requested the review.

*Objectives:* Determine how U.S. immigration officials arrived at their decision to remove this person to Syria and whether the decision was made within prescribed INS policies.

*Office of Inspections*

### **Conditions of Detention for ICE Detainees: Special Review of Two Cases Involving Detainee Deaths**

*start – May 2007*

*publish – February 2008*

Various reports have criticized whether ICE detention standards and oversight result in sufficient guidance to ensure that ICE detainees with symptoms of serious medical conditions receive appropriate and timely care. Untimely or inappropriate care increases the risk of detainee injury and death, plus the risk of preventable harm to all ICE detainees.

*Objectives:* Determine whether ICE officials and contractors complied with all relevant detention standards, processes, and procedures, particularly the standard for medical care, in the event of a detainee’s death, including notifications to next-of-kin and disposition of property. *Office of Inspections*

### **ICE's Visa Security Program**

*start – March 2007*

*publish – February 2008*

On September 26, 2003, the Departments of State (State) and Homeland Security signed a Memorandum of Understanding (MOU) per the Homeland Security Act of 2002. This MOU set the terms under which the two departments will work together in the visa adjudication process (Section 428 of the Homeland Security Act). However, overlap in missions and responsibilities between State and DHS staff continues to pose a problem in some embassies. This review will assess the competing authorities and procedures in visa screening that result when State Diplomatic Security Bureau Officers, State Consular



Requester's Name: Joe Cyr  
FOIA/PA NO.: 2009-021

Documents from the OIG Office of Inspections

MIXED DOCUMENTS

41 (RIF)

45 (RIP)

2 (WIF)

           (DUP)

           (REFERRED)

24 (NR)

## Deletion Page

Requester: Joe Cyr

Request #: 2009-021

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This document contains:

24 pages which were deleted as Non-Responsive.  
Responsive pages are provided after this deletion page.

Description of Document: OIG Office of Inspections description of projects for FY 2007.

### **Removal of a Canadian Citizen to Syria**

The OIG is evaluating the decision by the INS to remove a Canadian and Syrian citizen to Syria where he alleges that he was tortured. The INS at JFK International Airport detained this person on September 26, 2002, while he was returning to Montreal from a family vacation in Tunisia. He was carrying a Canadian passport. According to news reports, U.S. officials alleged that he had connections to al-Qaeda; he was consequently detained and questioned before being removed (an “extraordinary rendition”) to Syria. The Ranking Member of the House Committee on the Judiciary requested the review.

*Inspection Objectives:* Determine how U.S. immigration officials arrived at their decision to remove this person to Syria and whether the decision was made within prescribed INS policies.

*Office of Inspections*

# Non-Responsive

**Project #: ISP-2004-24**  
The Removal of a Canadian Citizen to Syria (OIG-08-18)

<b>DOCUMENT TITLE</b>	
	<b>Testimony</b>
1	Congressional Testimony of Kent Roach, October 18, 2007
2	Congressional Testimony of David Cole, October 18, 2007
3	Congressional Testimony of Maher Arar, October 18, 2007
4	Congressional Testimony of Inspector General Richard L. Skinner, June 5, 2008
	<b>Interviews</b>
4	Interview Agenda of [REDACTED], June 2, 2008, and hand written notes,
5	Interview of [REDACTED] handwritten notes, 6/5/07
	Interview of [REDACTED] handwritten notes, 11/5/07
6	Interview of [REDACTED] sing-in sheet, 2/22/07
7	Phone call with [REDACTED] hand written notes, 12/3/07
	<b>Department of Justice Documents</b>
8	Memo from James Ziglar to J. Scott Blackman, October 7, 2002
9	Memo from James Ziglar to the Attorney General, October 7, 2002
10	Letter to DHS OIG Office of Inspections from the DOJ Office of Professional Responsibility, April 2, 2007
	<b>Congressional Correspondence</b>
11	Letter to Rep. Jerrold Nadler from DHS OIG, July 27, 2007
12	Letter to Michael Chertoff from Reps. Jerrold Nadler and William Delahunt, February 29, 2008
13	Letter to Michael Chertoff from Rep. John Conyers, Jr., January 10, 2008
14	Letter to Rep. John Conyers, Jr. from DHS EXECSEC, January 23, 2008
15	Letter to Michael Chertoff from Rep. John Conyers, Jr., February 23, 2005
16	Letter to Rep. John Conyers, Jr. with copy of redacted report, from DHS OIG, June 2, 2008
	<b>Other Documents (Hearing Prep)</b>

b6

17	Memo and Order of U.S. District Judge, E.D. of N.Y. in Arar v. Ashcroft, et. al., filed Jul 28, 2006
18	Memo in Support of the United State's Assertion of State Secrets Privilege in Arar v. Ashcroft, et. al., E.D. of N.Y.
19	Harper's Magazine, "The Missing IG Report on Maher Arar," by Scott Horton
20	Department of State Country Reports on Human Rights Practicies in Syria, 2000
21	CRS Report, "Rendition: Constraints Imposed by Laws on Torture," by Michael John Garcia, Updated October 12, 2007
	<b>Congressional Hearing Transcripts</b>
22	Joint House Foreign Affairs, House Judiciary Committee Hearing, October 18, 2007
23	House Foreign Affairs Committee Hearing, October 24, 2007
24	House Judiciary Committee Hearing, March 5, 2008
	<b>Miscellaneous Documents</b>
	Media Articles
	Records of Classified Document Transmittal (October 24, 2006 through May 29, 2008)
	Emails (May 18, 2006 through December 11, 2007) printed for the Inspector General's review

ISP- 2004  
Bunder (1)  
Tab 17

b6  
From: [REDACTED]  
Sent: Wednesday, February 11, 2004 7:37 PM  
To: [REDACTED]  
Subject: MAHER ARAR and Capitol Hill

[Congressional Record: February 10, 2004 (Senate)]  
[Page S781-S785]  
From the Congressional Record Online via GPO Access  
[wais.access.gpo.gov]  
[DOCID: cr10fe04-161]

THE CASE OF MAHER ARAR

Mr. LEAHY. Mr. President, I rise to speak about a very troubling case of rendition and alleged torture that became public last fall. This is the case of Maher Arar, a Canadian and Syrian citizen, who was deported from the United States to Syria last year, who was held and interrogated for months by the Syrians at the Bush administration's request, and who claims to have suffered torture while in custody there.

Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport in September 2002 as he attempted to change planes on his way home to Canada from Tunisia. He claims that he was interrogated by an FBI agent and a New York City police officer, and that he was denied access to a lawyer. He further claims that he repeatedly told U.S. officials that he feared he would be tortured if deported to Syria. After being held for nearly two weeks in a federal detention center in New York, Mr. Arar was transferred by U.S. authorities to Syria. Arar claims that he was physically tortured during the first two weeks of his detention in Syria, and that he was subjected to severe psychological abuse over the following ten months, including being held in a grave-like cell and being forced to undergo interrogation while hearing the screams of other prisoners.

Syria has a well-documented history of state-sponsored torture. In fact, President Bush stated on November 7, 2003, that Syria has left "a legacy of torture, oppression, misery, and ruin" to its people. Stories like Mr. Arar's are appalling and, if true, seriously

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damage our credibility as a responsible member of the international community.

When unrelated allegations of rendition and possible breaches of the Convention Against Torture ("Torture Convention") surfaced in the summer of 2003, I wrote to administration officials asking for guarantees that the United States is complying with its obligations under this Convention. I received a response from the General Counsel of the Department of Defense, William J. Haynes. His letter contained a welcome commitment by the administration that it is the policy of the United States to comply with all of its legal obligations under the Torture Convention. I wrote to Mr. Haynes again for clarification on a number of points, such as how the administration reconciled this statement of policy with reported acts of rendition and accusations of the use of interrogation techniques rising to or near the level of torture. After 2 months with no response, another letter, this one not from Haynes himself but from a subordinate, was delivered late at night on the eve of Mr. Haynes' November 19, 2003 confirmation hearing for a seat on the Fourth Circuit Court of Appeals. That letter was totally unresponsive to my questions.

Because Mr. Arar claims that he was interrogated by an FBI agent, I wrote to FBI Director Mueller on November 17, 2003 for more information on the case. Later that week, when press accounts indicated that the deportation of Mr. Arar was approved by the Department of Justice ('DOJ'), I wrote to Attorney General Ashcroft to ask a number of additional questions. Neither of these letters has been answered.

Administration officials claim that the CIA received assurances from Syria that it would not torture Mr. Arar, and yet, spokesmen for DOJ have not explained why they believed the Syrian assurances to be credible. Nor have they explained inconsistencies in statements coming from officials at different agencies. Although the administration has officially welcomed statements by the Syrian government that Mr. Arar was not tortured, other unnamed officials have been quoted in the press as saying that, while in captivity in Syria, Mr. Arar confessed under torture that he had gone to Afghanistan for terrorist training. I have asked DOJ to address that shocking contradiction and also to explain whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government.

Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Torture Convention, which the United States has ratified.

Recently, the Canadian government announced a full inquiry into the deportation of Mr. Arar to Syria and his alleged torture there. This inquiry will also examine the role played by Canadian officials in the case to determine whether the Canadian government was complicit in the rendition of Mr. Arar. And just weeks ago, a non-profit organization, the Center for Constitutional Rights, filed a constitutional and human rights case on behalf of Mr. Arar with the U.S. District Court for the Eastern District of New York challenging the decision by federal officials to deport him to Syria. As the Washington Post editorialized on February 2, 2004, "The government should be obliged to spell out how this decision came to be made and why."

I urge my colleagues to follow this Federal court case the Canadian inquiry closely. If the allegations by Mr. Arar are true, then our government has much to answer for. The case has already damaged our standing with foreign governments, many of which we have criticized in the past for relying on torture in interrogations. If the U.S. is "subcontracting" interrogation of terrorism suspects to nations that bend the rules on torture, it undermines our reputation as a Nation of laws, it hurts our credibility in seeking to uphold human rights, and it invites others to use the same tactics.

I ask unanimous consent to print the letters I mentioned and the Washington Post editorial in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Post, February 2, 2004]

#### Mr. Arar's Lawsuit

The Federal lawsuit filed last week by Maher Arar--the Syrian-born Canadian whom the federal government deported to Syria--offers a good opportunity to shed some light on one of the more peculiar civil liberties cases to arise during the war on terrorism. Mr. Arar and the U.S. government agree on the barest outlines of his story: He was flying home from Tunisia to Canada in the fall of 2002 on a path that took him through New York. He had, however, been placed on the terrorist watch list. When he presented his Canadian passport, he was detained for more than a week and--despite his pleas to be sent to Canada--was sent to Syria. There he was held for 10 months until intervention by the Canadian government secured his release.

That is where agreement ends. Mr. Arar denies any connection to al Qaeda. He claims to have been savagely

tortured in his country of birth. And he alleges that he was sent to Syria, rather than to Canada, precisely so that he would be tortured--to be precise, "so that Syrian authorities would interrogate him in ways that [American officials] believed themselves unable to do directly." All of which, if true, would violate this country's international treaty obligations, which prohibit turning someone over to a government likely to mistreat that person. In Canada, Mr. Arar's case has become a cause, cited as an example of American arrogance and contempt for Canada's interests and citizens.

The American government firmly--if vaguely--denies any wrongdoing. It still claims that its information on Mr. Arar was solid, though it refuses to release any of what it terms "sensitive national security information." Mr. Arar is a member of al Qaeda, the Justice Department alleged in a recent statement. Anonymous officials have been quoted in press accounts saying that he was carrying a list of al Qaeda operatives and that then-Deputy Attorney General Larry D. Thompson signed an order certifying that returning Mr. Arar to Canada would be "prejudicial to the interests of the United States." The department says that Mr. Arar's deportation to Syria was "fully within the law and applicable international treaties and conventions." Far from intending that Syria would torture him, in fact, the department claims that it was "provided with reliable assurances that Mr. Arar would be treated humanely."

There are two questions that we hope this litigation would shed light upon. The first is whether Mr. Arar was, in fact, a would-be-terrorist. The second is why he was sent to a country known for abusing human rights, instead of being sent to Canada or detained here as an enemy combatant. What was the goal, if not to delegate to the Syrians torture that American authorities cannot engage in? At the least, the government should be obliged to spell out how this decision came to be made and why.

U.S. Senate,

Washington, DC, June 2, 2003.

Hon. Condoleezza Rice,  
National Security Adviser, The White House,  
Washington, DC.

Dear Dr. Rice: Over the past several months, unnamed Administration officials have suggested in several press accounts that detainees held by the United States in the war on terrorism have been subjected to "stress and duress" interrogation techniques, including beatings, lengthy sleep and food deprivation, and being shackled in painful positions for extended periods of time. Our understanding is that these statements pertain in particular to interrogations conducted by the Central Intelligence Agency in Afghanistan and other locations outside the United States. Officials have also stated that detainees have been transferred for interrogation to governments that routinely torture prisoners.

These assertions have been reported extensively in the international media in ways that could undermine the credibility of American efforts to combat torture and promote the rule of law, particularly in the Islamic world.

I appreciate President Bush's statement, during his recent meeting with U.N. High Commissioner for Human Rights Sergio De Mello, that the United States does not, as a matter of policy, practice torture. I also commend the Administration for its willingness to meet with and respond to the concerns



of leading human rights organizations about reports of mistreatment of detainees. At the same time, I believe the Administration's response thus far, including in a recent letter to Human Rights Watch from Department of Defense General Counsel William Haynes, while helpful, leaves important questions unanswered.

The Administration understandably does not wish to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism. But it should affirm with clarity that America upholds in practice the laws that prohibit the specific forms of mistreatment reported in recent months. The need for a clear and thorough response from the Administration is all the greater because reports of mistreatment initially arose not from outside complaints, but from statements made by administration officials themselves.

With that in mind, I would appreciate your answers to the following questions:

[[Page S783]]

First, Mr. Haynes' letter states that when questioning enemy combatants, U.S. personnel are required to follow "applicable laws prohibiting torture." What are those laws? Given that the United States has ratified the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), is this Convention one of those laws, and does it bind U.S. personnel both inside and outside the United States?

Second, does the Administration accept that the United States has a specific obligation under the CAT not to engage in cruel, inhuman and degrading treatment?

Third, when the United States ratified the CAT, it entered a reservation regarding its prohibition on cruel, inhuman and degrading treatment, stating that it interprets this term to mean "the cruel, unusual and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th amendments to the Constitution." Are all U.S. interrogations of enemy combatants conducted in a manner consistent with this reservation?

Fourth, in its annual Country Reports on Human Rights Practices, the State Department has repeatedly condemned many of the same "stress and duress" interrogation techniques that U.S. personnel are alleged to have used in Afghanistan. Can you confirm that the United States is not employing the specific methods of interrogation that the State Department has condemned in countries such as Egypt, Iran, Eritrea, Libya, Jordan and Burma?

Fifth, the Defense Department acknowledged in March that it was investigating the deaths from blunt force injury of two detainees who were held at a Bagram air base in Afghanistan. What is the status of that investigation and when do you expect it to be completed? Has the Defense Department or the CIA investigated any other allegations of torture or mistreatment of detainees, and if so, with what result? What steps would be taken if any U.S. personnel were found to have engaged in unlawful conduct?

Finally, Mr. Haynes' letter offers a welcome clarification that when detainees are transferred to other countries, "U.S. Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured." How does the administration follow up to determine if these pledges of humane treatment are honored in practice, particularly when the governments in question are known to practice torture?

I believe these questions can be answered without revealing sensitive information or in any way undermining the fight against international terrorism. Defeating terrorism is a

national security priority, and no one questions the imperative of subjecting captured terrorists to thorough and aggressive interrogations consistent with the law.

The challenge is to carry on this fight while upholding the values and laws that distinguish us from the enemy we are fighting. As President Bush has said, America is not merely struggling to defeat a terrible evil, but to uphold "the permanent rights and the hopes of mankind." I hope you agree that clarity on this fundamental question of human rights and human dignity is vital to that larger struggle.

Thank you for your assistance.

Sincerely,

Patrick Leahy,

U.S. Senator.

General Counsel of the

Department of Defense,

Washington, DC, June 25, 2003.

Hon. Patrick J. Leahy,  
U.S. Senate,  
Washington, DC.

Dear Senator Leahy: I am writing in response to your June 2, 2003, letter to Dr. Rice raising a number of legal questions regarding the treatment of detainees held by the United States in the wake of the September 11, 2001, attacks on the United States and in this Nation's war on terrorists of global reach. We appreciate and fully share your concern for ensuring that in the conduct of this war against a ruthless and unprincipled foe, the United States does not compromise its commitment to human rights in accordance with the law.

In response to your specific inquiries, we can assure you that it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture. Its obligations include conducting interrogations in a manner that is consistent with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") as ratified by the United States in 1994. And it includes compliance with the Federal anti-torture statute, 18 U.S.C. Sec. 2340-2340A, which Congress enacted to fulfill U.S. obligations under the CAT. The United States does not permit, tolerate or condone any such torture by its employees under any circumstances.

Under Article 16 of the CAT, the United States also has an obligation to "undertake . . . to prevent other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture." As you noted, because the terms in Article 16 are not defined, the United States ratified the CAT with a reservation to this provision. This reservation supplies an important definition for the term "cruel, inhuman, or degrading treatment or punishment." Specifically, this reservation provides that "the United States considers itself bound by the obligation under article 16 to prevent, 'cruel, inhuman or degrading treatment or punishment' only in so far as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.

As your letter stated, it would not be appropriate to

catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism, and thus we cannot comment on specific cases or practices. We can assure you, however, that credible allegations of illegal conduct by U.S. personnel will be investigated and, as appropriate, reported

to proper authorities. In this connection, the Department of Defense investigation into the deaths at Bagram, Afghanistan, is still in progress. Should any investigation indicate that illegal conduct has occurred, the appropriate authorities would have a duty to take action to ensure that any individuals responsible are held accountable in accordance with the law.

With respect to Article 3 of the CAT, the United States does not "expel, return ('refouler') or extradite" individuals to other countries where the U.S. believes it is "more likely than not" that they will be tortured. Should an individual be transferred to another country to be held on behalf of the United States, or should we otherwise deem it appropriate, United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored.

In closing, I want to express my appreciation for your thoughtful questions. We are committed to protecting the people of this Nation as well as to upholding its fundamental values under the law.

Sincerely,  
William J. Haynes II.

U.S. Senate,

Washington, DC, September 9, 2003.

William J. Haynes II,  
General Counsel, Department of Defense,  
Defense Pentagon, Washington, DC.

Dear Mr. Haynes: Thank you for your June 25, 2003, letter concerning U.S. policy with regard to the treatment of detainees held by the United States.

I very much appreciate your clear statement that it is the policy of the United States to comply with all of its legal obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). I also welcome your statement that it is United States policy to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with our government's obligation, under Article 16 of the CAT, "to prevent other acts of cruel, inhuman, or degrading treatment or punishment" as prohibited under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

This statement of policy rules out the use of many of the "stress and duress" interrogation techniques that have been alleged in press reports over the last several months, including beatings, lengthy sleep and food deprivation, and shackling detainees in painful positions for extended periods of time. It should also go a long way towards answering concerns that have been expressed by our friends overseas about the treatment of detainees in U.S. custody. It should strengthen our nation's ability to lead by example in the protection of human rights around the world, and our ability to protect Americans, including our service members, should

they be detained abroad.

At the same time, the ultimate credibility of this policy will depend on its implementation by U.S. personnel around the world. In that spirit, I would appreciate it if you could clarify how the administration's policy to comply with the CAT is communicated to those personnel directly involved in detention and interrogation? As you note in your letter, the U.S. obligation under Article 16 of the CAT is to "undertake . . . to prevent" cruel, inhuman or degrading treatment or punishment. What is the administration doing to prevent violations? Have any recent directives regulations or general orders been issued to implement the policy your June 25 letter describes? If so, I would appreciate receiving a copy.

I understand that interrogations conducted by the U.S. military are governed at least in part by Field Manual 34-52, which prohibits "the use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind." This field manual rightly stresses that "the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear." Are there further guidelines that in any way add to, define, or limit the prohibitions contained in this field manual? What mechanisms exist for ensuring compliance with these guidelines?

Most important, I hope you can assure me that interrogators working for other agencies, including the CIA, operate from the same guidelines as the Department of Defense. If CIA or other interrogation guidelines in use by any person working for or on behalf of the U.S. government differ, could you clarify how, and why?

[[Page S784]]

I am pleased that before handing over detainees for interrogation to third countries, the United States obtains specific assurances that they will not be tortured. I remain concerned, however, that mere assurances from countries that are known to practice torture systematically are not sufficient. While you state that the United States would follow up on any credible information that such detainees have been mistreated, how would such information emerge if no outsiders have access to these detainees? Has the administration considered seeking assurances that an organization such as the International Committee for the Red Cross have access to detainees after they have been turned over? If not, I urge you to do so.

Finally, has the administration followed up on specific allegations reported in the press that such detainees may have been tortured, including claims regarding a German citizen sent to Syria in 2001, and statements by former CIA official Vincent Cannistrano concerning an al-Qaeda detainee sent from Guantanamo to Egypt (see enclosed articles)?

Thank you again for your response to my last letter.

With best regards,

Patrick Leahy,

U.S. Senator.

Department of Defense,

Office of General Counsel,

Washington, DC, November 18, 2003.

Hon. Patrick J. Leahy,  
U.S. Senate,

Washington, DC.

Dear Senator Leahy: I am responding to your September 9, 2003 letter, which follows up on the June 25, 2003 letter from Mr. Haynes concerning U.S. policy on the treatment of detainees held by the United States in the war on terrorism. The earlier letter to you and an April 2, 2003 letter to the Executive Director of Human Rights Watch (enclosed) contain precise statements of U.S. policy. As statements of U.S. policy, they reflect the policy applicable to the Executive Branch.

Your letter inquired about Department of Defense (DoD) implementation of the policy described in the June 25 letter. The Department takes its compliance with U.S. obligations very seriously. For that reason, the Department has a Law of War Program, which is governed by DoD directive 5100.77 (December 9, 1998), a copy of which is enclosed. That Directive, among other things, provides that it is DoD policy to ensure that DoD components observe the law of war obligations of the United States, and that those components implement an effective program to prevent violations of the law of war. Through the Law of War Program, the Department seeks to prevent law of war violations through training and by instructing DoD personnel about U.S. obligations, and ensuring that qualified legal advisers are available at all levels of command to provide advice on compliance with the law of war.

Moreover, DoD personnel are instructed to report allegations of mistreatment of or injuries to detained enemy combatants through normal command channels for ultimate transmission to appropriate authorities. Individual military personnel bear a responsibility to ensure their compliance. Commanding officers carry the additional responsibility to be aware of and to direct the conduct of the men and women under their command in order to, among other things, ensure their compliance with U.S. obligations in matters such as the treatment of those detained in an armed conflict. Although our principal institutional focus is, as it should be, on compliance with the law of war and avoiding and preventing violations of it, DoD also has an effective military criminal justice system for detecting, investigating, prosecuting, and punishing misconduct by military personnel should it occur.

Your letter also asked whether follow-up had occurred regarding allegations appearing in stories in the Washington Post on January 31, 2003, in Newsday on February 6, 2003, and in the Los Angeles Times on March 3, 2003. With respect to the first story, it does not allege unlawful activity by any U.S. official because participation in questioning abroad and knowledge of transfers to third countries, without more, do not contravene the law. With respect to the second story, the allegations of improper treatment it contains are by an individual who has not been a Central Intelligence Agency employee since well before 2001. With respect to the final story, the unnamed sources are quoted as saying that they did not know details, but they nevertheless then speculated about what was happening. To the extent that it might be possible to construe the latter two stories as containing allegations about the treatment of individuals while outside military control, I understand that the Office of the Director of Central Intelligence (DCI) has copies of these articles and is responsible for appropriate action.

Please allow me to emphasize that press stories often contain allegations that are untrue, and that my mention of the office of the DCI indicates nothing concerning the merits of those allegations and it does not express a view concerning what action might be appropriate.

I appreciate very much the opportunity to address your concerns. The Administration is committed to carrying out the

law as we continue our dedicated efforts to protect Americans from terrorism.

Sincerely,

Daniel J. Dell'Orto,

Principal Deputy General Counsel.

U.S. Senate,

Committee on the Judiciary,

Washington, DC, November 17, 2003.

Hon. Robert S. Mueller,  
Director, Federal Bureau of Investigation,  
Washington, DC.

Dear Director Mueller: I am writing to inquire about the role the FBI may have played in the extraordinary rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

Press reports indicate that Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport as he attempted to change planes on his way home to Canada from Tunisia. Mr. Arar claims that he was then interrogated by an FBI agent and a New York City police officer. He further claims that, "They told me I had no right to a lawyer because I was not an American citizen," and that he repeatedly told U.S. officials that he feared he would be tortured if returned to Syria. "Deported Terror Suspect Details Torture in Syria," Washington Post, November 5, 2003. After being held for nearly two weeks in a federal detention center, Mr. Arar alleges that he was then handed over to U.S. intelligence officials who flew him to Jordan and turned him over to Jordanian authorities, who beat him. He was then taken to Syria, where he was detained and allegedly tortured over a period of ten months.

While the Bush administration officially denies engaging in extraordinary renditions of this sort, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a "secret rendition policy." Id. This policy was described as "a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process." Id.

I find Mr. Arar's claims and the underlying rendition policy deeply troubling and would like information on the role of the FBI, if any, in this case.

1. Under what specific authority was Mr. Arar detained, first at the airport and then at the federal detention center in Brooklyn?

2. Is it true that one or more FBI agents interrogated Mr. Arar after he was detained by immigration officers at JFK airport?

3. If so, is it true that Mr. Arar was denied access to counsel?

4. Did the FBI participate in any manner in the transfer of Mr. Arar to Washington, D.C., Jordan, Syria, or to any other location?

5. An intelligence official is quoted in the Washington Post story as saying, "The Justice Department did not have enough evidence to detain him when he landed in the United States." If this is true and if, as has also been reported in the press, U.S. officials were in contact with Canadian authorities, why did the FBI and/or other officials choose not to turn Arar over to Canadian authorities?

6. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the "United

States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country." Did the United States seek assurances from Jordan and/or Syria that Mr. Arar would not be subject to torture, or to cruel, or inhuman, or degrading treatment or punishment while in the custody of either nation? If so, what steps did the United States take after his rendition to assess compliance with such assurances in this case? Were the assurances provided in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If no assurances were obtained, please explain why not.

7. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subjected to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

8. Are you aware of a "secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process"? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

9. Has the FBI participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

Thank you for your prompt answers to these questions.

Sincerely,

Patrick Leahy,

U.S. Senator.

U.S. Senate,

Committee on the Judiciary,

Washington, DC, November 21, 2003.

Hon. John Ashcroft,  
Attorney General, Department of Justice,  
Washington, DC.

Dear Attorney General Ashcroft: I am writing to inquire about the rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

I wrote to FBI Director Robert Mueller about this case on Monday, November 17. (See attached). Since that time, additional

[[Page S785]]

information on this case has been provided to the press, mainly in statements by unnamed administration officials, but also by Department of Justice (DOJ) spokespersons.

Washington Post articles indicate that the deportation of Mr. Arar was approved on October 7, 2002, by then-Deputy Attorney General Larry Thompson, who signed the order in his capacity as Acting Attorney General. "Man Was Deported After Syrian Assurances," Washington Post, November 20, 2003 [hereinafter Washington Post, Nov. 20, 2003]; "Top Justice Aide Approved Sending Suspect to Syria," Washington Post, November 19, 2003. The same story states that U.S. officials "decided to send [Arar] to Syria last year only after the CIA received assurances from Syria that it would not torture

the man." Washington Post, Nov. 20, 2003. And yet, ``spokesmen at the Department of Justice declined to comment on why they believed the Syrian assurances to be credible." Id.

Mr. Arar claims that he was, in fact, tortured while in Syrian custody. The Syrian government has denied that Arar was subjected to torture, but statements from U.S. officials contradict that assertion. In a November 15 New York Times article, ``American officials who spoke on condition of anonymity," were quoted as saying that Arar ``confessed under torture in Syria that he had gone to Afghanistan for terrorist training, named his instructors and gave other intimate details." ``Qaeda Pawn, U.S. Calls Him. Victim, He Calls Himself," New York Times, November 15, 2003 (emphasis added). I find this statement to be shocking in light of the administration's assertions that it acted within the scope of its international treaty obligations.

Mr. Arar claims to have stated repeatedly to his U.S. interrogators that he feared torture at the hands of the Syrian government. Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Convention Against Torture, which the United States has ratified.

The statements by Mr. Arar and the unnamed sources in the New York Times article cited above beg the question of whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government. This question is especially critical in light of President Bush's statement on November 7, 2003, that Syria has left ``a legacy of torture, oppression, misery, and ruin" to its people.

In light of the above facts and assertions, I request that you provide detailed answers to the following questions:

1. Under what specific authority was Mr. Arar detained, first at John F. Kennedy Airport and then at the federal detention center in Brooklyn, New York?
2. Is it true that Mr. Arar was denied access to counsel, as he claims?
3. An intelligence official is quoted in a November 5 Washington Post story as saying, ``The Justice Department did not have enough evidence to detain him when he landed in the United States." ``Deported Terror Suspect Details Torture in Syria," Washington Post, November 5, 2003. It has also been reported that U.S. officials were in contact with Canadian authorities regarding this case. Given that Mr. Arar, a Canadian citizen, resides in Canada and was traveling home to Canada when he was detained at the airport, why did the officials choose not to turn Arar over to Canadian authorities?

4. Did you become aware of Mr. Arar's case at any point between his detention on September 26, 2002, and October 7, 2002, the date the deportation order was signed by Mr. Thompson? Did Mr. Thompson, who was serving as Acting Attorney General when he signed the order, consult with you before signing the order? Did you approve this action?

5. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the ``United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country." The November 20 Washington Post article cited above confirms that assurances were obtained from Syria. What was the scope of such assurances? Were they provided to the U.S. government in writing? If so, please provide a copy to the Committee. If



such a document is classified, please arrange for cleared staff to view it. If the assurances were not provided in writing, please explain why written assurances were not sought or provided.

6. What steps did the United States take after Arar's rendition to assess compliance with the assurances provided by Syria in this case?

7. Is the statement of an unnamed official above that Arar "confessed under torture" accurate? If so, then Syria's actions violated the assurances provided to the U.S. before Arar's rendition. What has the U.S. done (a) to investigate such non-compliance and (b) to hold Syria accountable for such violations.

8. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subject to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

9. According to the November 5 Washington Post article cited in question 3, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a "secret rendition policy." This policy was described as "a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process." Are you aware of a "secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process"? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

10. Has the FBI or DOJ authorized or participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

11. In its effort to fight terrorism, the administration has focused on individuals who have connections to Al Qaeda that need to be further explored, and has argued that it has the right to detain and interrogate prisoners in Guantanamo Bay, perhaps as unlawful combatants or enemy combatants, as long "as it is necessary to help win the war against the Al Qaeda network and its allies." Washington Post, "High Court Will Hear Appeals From Guantanamo Prisoners," November 11, 2003. Notwithstanding my concerns about the legal status of those detained at Guantanamo, and the administration's treatment of enemy combatants in general, it would seem that Mr. Arar fit the classic administration profile for someone who should be detained in Guantanamo. Presumably, Mr. Arar would have been safer in detention at Guantanamo Bay than in Syria.

a. Was the option to detain Arar as an enemy combatant in Guantanamo Bay considered and rejected in favor of rendition to Syria? If so, on what basis was the decision made to send him to Syria?

b. Where there is more than one destination country to which detainees may be rendered, do you believe there should be a policy to render detainees to the country where torture is least likely (e.g., a country that does not have a history of documented humanitarian abuses)?

c. What is the standard applied by the administration in determining whether to deport an individual, transfer the individual to custody at Guantanamo Bay, or to charge the individual with a crime?

Thank you for your prompt answers to these questions.

Sincerely,

U. S. Senator.

Patrick Leany,

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DEPARTMENT OF HOMELAND SECURITY  
OFFICE OF INSPECTOR GENERAL

FACSIMILE TRANSMITTAL SHEET

b6, 7C

TO:	[REDACTED]	FROM:	[REDACTED] b6
COMPANY:	FBI	DATE:	4/28/2004
FAX NUMBER:	202-324-[REDACTED]	TOTAL NO. OF PAGES INCLUDING COVER:	3
PHONE NUMBER:	202-324-[REDACTED]	RE:	

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY

NOTES/COMMENTS:

REQUEST FOR INFORMATION

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[REDACTED]  
202 254 [REDACTED]

(UNCLASSIFIED WHEN SEPARATED  
FROM CLASSIFIED ENCLOSURE)

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**DEPARTMENT OF HOMELAND SECURITY**

Office of Inspector General  
Washington, DC 20528

April 27, 2004

MEMORANDUM

b6, 7C

TO:

[REDACTED]

Acting Unit Chief, Counter Terrorism Law II  
Office of General Counsel  
Federal Bureau of Investigation

FROM:

*Robert L. Ashbaugh*  
Robert L. Ashbaugh

Assistant Inspector General for Inspection, Evaluations, and Special  
Reviews

SUBJECT:

(S) [REDACTED]

(U) The Department of Homeland Security (DHS) Office of Inspector General is reviewing the case of Mr. Maher Arar. Mr. Arar was detained by Immigration and Naturalization Service authorities in New York in September 2002 and later removed to Syria. Mr. Arar has since returned to Canada and has alleged that he was tortured while in Syria.

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(S) [REDACTED]

(S) [REDACTED]

(S) [REDACTED]

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(U) We do not require copies of the information. We will review relevant documents at your location and take notes as appropriate.

(U) Prior to release of the draft report, we will provide FBI with the opportunity to review our report to ensure that we have not inadvertently included classified information or sensitive information that should not be released to the general public.

(U) If you have any questions concerning this request, please contact me at (202) 254-4100, or [REDACTED] at (202) 254-[REDACTED]. We look forward to working with you and your staff.

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Classified by: Director  
Federal Bureau of Investigation  
Reason: 1.5 (b), (c), and (d)  
Declassify on: May 1, 2014

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\*\*\*\*\* - COMM. JOURNAL- \*\*\*\*\*

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**DHS OIG Briefing to Representative John Conyers, Chairman  
Committee on the Judiciary, House of Representatives**

**DHS OIG Review "The Removal of a Canadian Citizen to Syria"**

**(U) Overview**

- I. (U) Scope of Review, Limitations to Our Methodology, and What We Did Not Cover
- II. (U) Challenges Encountered During the Review
- III. (U) Timeline of our review "The Removal of a Canadian Citizen to Syria"
- IV. (U) Timeline of the events surrounding Arar's arrival, apprehension, and removal
- V. (U) Results of Review
- VI. (U) Recommendations

**I.**

**(U) Scope of Review and What We Did Not Cover**

- I. (U) We initiated this review at the request of the then-Ranking Member, Committee on the Judiciary, United States House of Representatives.

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2. (U) Our objectives were to examine
  - a. The determination of inadmissibility made concerning Arar's application for admission into the United States;
  - b. The process that determined to which country Arar would be returned; and,
  - c. The process used to assess Arar's eligibility for protection under the United Nations Convention Against Torture (CAT).<sup>1</sup>
3. (U) Limitations to Our Methodology
  - a. We confined our review to assessing the actions taken by the INS regarding the Arar case. When the DHS was created in March 2003, the INS was dissolved and its functions were transferred to DHS.
  - b. Our jurisdiction was limited to an examination of components of DHS; in this case, the legacy operations of INS.
  - c. (S) [REDACTED]
  - d. (S) [REDACTED]

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<sup>1</sup> (U) *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3, June 26, 1987.



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4. What we did not do

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b. (U) We did not determine whether it was appropriate for Arar to have been the subject of a TPOFF lookout, nor whether he is or should remain on any Federal government watch list.

## II.

(U) We encountered several challenges that impeded our progress.

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2. (U) In addition, we were confronted with the issue that **Arar is suing the U.S. government** and several individually named U.S. government officials for his alleged mistreatment by both U.S. and Syrian authorities. Government and private counsel expressed concern that our interviews of some witnesses might constitute a waiver of privileges that counsel would want to preserve for the litigation with Arar. Discussions between attorneys and their clients are privileged and are protected from disclosure.

3. (U) DHS and DOJ attorneys opined that **providing this information to us might constitute a waiver of the privilege**. A waiver would make the information provided to us discoverable and available to Arar and his attorneys in his litigation. On December 10, 2004, OIG counsel negotiated a protocol whereby the information and interviews that we requested would be provided to us, that the provision of this information would not constitute a waiver of the privilege, and that DHS OGC would have the opportunity to review our draft report prior to publication to identify any information that may be privileged. Further discussions were necessary to clarify details of the protocols.

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4. (U) We were **unable to interview the principal INS decision-makers** involved in the Arar case, including the former INS Commissioner, former INS Chief of Staff, and former INS General Counsel, since they have left government service and declined our requests for interviews. Many of the decisions concerning Arar were made during conversations between these individuals.
5. (U) We also requested an interview with Arar. We believed that the inclusion of his testimony in our report was vital to providing an accurate and complete accounting of the events from his arrest at JFK on Thursday, September 26, 2002, to his removal on Tuesday, October 8, 2002. However, citing the ongoing litigation of his case in both Canada and the United States, **Arar's counsel declined several requests for an interview.**
6. (U) Finally, we were **hindered by the amount of time that has lapsed** since this event occurred – more than four years. While the memories of some of the people who we interviewed were extremely vivid, others' memories had faded to the point that they only vaguely remembered Arar's name. Even though the documentation of the events was sparse, we were able to compile enough written records to corroborate the information that we obtained through interviews and to reconstruct significant events of this case.
7. (U) Most agencies that reviewed the draft versions of our report said both versions contained **privileged information.** For example, the DHS OGC said that the majority of both versions of the draft report contained information protected by privileges including, but not limited to, attorney-client, attorney work product, and deliberative process. Furthermore, ICE said that both versions of the draft included privileged information and information exempt from public release under the Freedom of Information Act. We attempted to write a publicly available version of the classified report. However, we were unable to do so. We will, instead, publish a **brief unclassified executive summary** of the full report.

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**III.**

**(U) Timeline of our review of "The Removal of a Canadian Citizen to Syria"**

1. (U) **Request** letter from Representative John Conyers dated December 16, 2003
2. (U) Review assigned to the DHS OIG Office of Inspections on January 9, 2004
3. (U) Reviewed unclassified Arar Alien-file on January 15, 2004, told that some documents are privileged and can't be released without permission
4. (U) **Held Entrance Conference** with ICE on February 3, 2004
5. (U) Worked to obtain permission to access to classified documents during March 2004
6. (U) Reviewed some classified information at ICE HQ during May 2004
7. (U) Letter sent to Representative John Conyers on the status of the review dated July 14, 2004
8. (U) Arar, through his counsel, declines request to be interviewed by the OIG on September 21, 2004
9. (U) Email sent to Arar's counsel requesting an interview October 20, 2004
10. (U) Agreement reached between OIG and DHS OCG on access to privileged information dated and signed December 10, 2004
11. (U) Interviews conducted of former INS attorneys during February 2005
12. (S) 

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13. (S)

[REDACTED]

14. (U) Interviews conducted of additional former INS attorneys during July and August 2005

15. (U) Conducted interviews of former INS asylum officers in NYC October 5 and 6, 2005

16. (U) Letter sent to Arar's counsel requesting interview dated December 14, 2005

17. (U) Interview conducted of [REDACTED] Deputy Attorney General (DAG), on December 15, 2005

18. (U) Interview conducted of CIA official at CIA HQ February 8, 2006

19. (U) First interview conducted of [REDACTED] DAG, on April 4, 2006

20. (U) Delivered classified draft report (classified SECRET) to DOJ OIG on September 21, 2006

21. (U) DOJ OIG referred our draft report (classified SECRET) to DOJ Office of Professional Responsibility (OPR) on or about October 10, 2006

22. (S)

[REDACTED]

23. (S)

[REDACTED]

24. (S)

[REDACTED]

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25. (S)

[REDACTED]

26. (U) Delivered drafts (classified and version for public release) to ICE, DOJ Office of Legal Counsel (which would handle distribution to other DOJ entities including FBI), DHS OGC, USCIS, CBP, and State Department during January 23 – 29, 2007

27. (U) Interview conducted (recorded and classified SECRET) of [REDACTED] in the OADG, on February 2, 2007; [REDACTED] challenges the accuracy of the reports page by page

28. (U) Second interview conducted (recorded and classified SECRET) of [REDACTED] DAG, on February 22, 2007; [REDACTED] challenges the accuracy of the reports page by page

29. (U) State Department comments received on March 5, 2007

30. (U) [REDACTED], DOJ OPR, reviews work papers March 7, 2007

31. (U) Meet with two former INS (now with USCIS) attorneys to discuss their comments to the draft March 15, 2007

32. (U) ICE comments received on March 19, 2007

33. (U) DOJ OPR copies all unclassified work papers at OIG HQ on April 16, 2007

34. (U) DOJ OPR obtains copies of classified [REDACTED] interview tapes (put on CD by USSS via INV)

35. (U) Additional former INS ([REDACTED]) attorney reviews draft report at OIG HQ on June 4, 2007; attended DOJ OPR interview the former INS on June 5, 2007

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36. (U) Based on the comments of the two former ODAG attorneys, the three former INS attorneys, ICE, and the State Department, we revised the entire report as we deemed appropriate and wrote the management comments and OIG analysis section

37. (S)

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38. (S)

b6 (U) 39. [REDACTED] and [REDACTED] attorney [REDACTED] reviewed the revised draft report at OIG HQ on November 5, 2007. They asked questions about the report and our methodology. We answered their questions. They did not provide any comments to the report.

(U) 40. Delivered revised draft report (classified SECRET/NOFORN) to DHS OGC on November 8, 2007.

(U) 41. Delivered revised draft report (classified SECRET/NOFORN) to CBP on November 9, 2007, and ICE and USCIS on November 13, 2007.

(U) 42. On November 14, 2007, CBP declined to provide comments to the revised draft report

(U) 43. Delivered revised draft report (classified SECRET/NOFORN) to DOJ Office of Legal Counsel on November 27, 2007.

(U) 44. DHS OGC provided comments to the report over the phone on November 29, 2007, and during subsequent conversations. We made changes to the report as appropriate.

(U) 45. On December 3, 2007, ICE declined to provide comments to the revised draft report

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(U) 46. Met with former INS [REDACTED] to discuss revised draft on December 3, 2007. Based on the attorney's few minor comments and one substantive comment, changes are made to the report.

(U) 47. Officials from the DOJ Office of Legal Counsel of the Office of the Deputy Attorney General provide comments to the revised draft report over the phone on December 4, 2007. We made changes to the report as appropriate.

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(U) 48. [REDACTED] provides comments to the revised final report over the phone on December 15, 2007. We made changes to the report as appropriate.

(U) 49. During early December discussions are held to determine the appropriate classification of a paragraph in the report that is based on an improperly marked INS document "Memorandum for File" with TOP SECRET//X1 in the header and footer. On December 6, 2007, the Chief of the Administrative Security Division of the DHS Office of Security advises us that the document has been down graded to SECRET.

(U) 50. Delivered final report (classified SECRET//NOFORN) and unclassified summary to ICE on December 10, 2007.

(U) 51. Delivered final report (classified SECRET//NOFORN) and unclassified summary to DHS OGC, CBP, and USCIS on December 11, 2007.

(U) 52. Delivered final report (classified SECRET//NOFORN) and unclassified summary to House Judiciary Committee on December 12, 2007.

(U) 53. Delivered 16 copies of the final report (classified SECRET//NOFORN) and 16 copies of the unclassified summary to DHS Executive Secretariat on December 11, 2007.

(U) 54. Delivered final report (classified SECRET//NOFORN) and unclassified summary to State Department Office of Legal Advisor on January 16, 2007.

(U) 55. Delivered final report (classified SECRET//NOFORN) and unclassified summary to DOJ Office of Legal Counsel on January 17, 2007.

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(U) 56. On January 18, 2007, delivered one copy each of final report (classified SECRET/NOFORN) and unclassified summary to the DOJ OIG and the DOJ OPR.

IV.

(U) **Timeline of the events surrounding Arar's arrival, apprehension, and removal**

1. (U) Maher Arar is a dual citizen of Canada and Syria and a resident of Ottawa, Canada. He had spent three months in Tunisia with his wife and two children.
2. (U) On Thursday, September 26, 2002, Arar arrived at JFK aboard American Airlines flight 65. He had spent three months in after an intermediate stop in Zurich, Switzerland. His trip originated in Tunisia.
3. (U) After his arrival at JFK at 1:55 p.m., Arar presented a Canadian passport for admission into the United States as a nonimmigrant in order to transit through JFK to catch a flight for Montreal, Canada, which was scheduled to depart at 5:05 p.m. that day. Arar did not formally apply for admission to the United States, but because he did not have a transit visa, by operation of law he was deemed an applicant for admission.
4. (U) On Thursday, September 26, 2002, at 1:06 p.m., INS inspectors at JFK conducted a routine screening of the passenger manifest, provided by the Advance Passenger Information System (APIS), for Arar's inbound flight. The results of the screening showed that Arar was the subject of a TPOFF lookout. According to instructions contained in the lookout, INS inspectors notified the FBI's New York JTTF. JTTF agents proceeded to JFK to interview Arar.
5. (U) The INS inspector at the primary inspections station sent Arar to secondary inspections to confirm whether Arar was the person specified in the TPOFF lookout. INS inspectors in secondary inspections confirmed that Arar was the person named in the lookout.

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6. (U) After his apprehension at JFK, INS inspectors afforded Arar the opportunity to call the Canadian consulate on Thursday, September 26, 2002, but he elected not to call.
7. (U) At 3:00 p.m., JTTF agents, consisting of INS special agents, New York City Police Department Intelligence Division detectives, and FBI special agents, interviewed Arar.
8. (U) DOJ and INS officials in Washington, DC learned of Arar's apprehension on the evening of Thursday, September 26, 2002. A meeting took place in the office of the INS Commissioner involving the Commissioner, the INS Chief of Staff, and INS attorneys. [REDACTED]
9. (U) The JTTF interview continued until Friday, September 27, 2002. The JTTF investigators concluded that Arar was of no investigative interest to the JTTF and directed the INS inspectors to take whatever action INS deemed appropriate. However, the JTTF investigators requested that INS detain Arar while he awaited the flight to Zurich as JTTF investigators planned to re-interview Arar at 8:00 a.m. on Friday, September 27, 2002.
10. (S) [REDACTED]
11. (U) INS inspectors offered Arar the opportunity to withdraw his application for admission into the United States. Arar agreed to withdraw his application for admission. INS inspectors prepared INS Form I-275, Withdrawal of Application for Admission/Consular Notification, which Arar signed. INS planned to return Arar to Zurich on Friday, September 27, 2002.
12. (U) On Friday, September 27, 2002, INS inspectors, at the direction of the INS Eastern Regional Director, canceled Arar's original withdrawal of application and planned return to Switzerland. INS inspectors, again at the direction of the INS Eastern Regional Director, offered Arar a new opportunity to withdraw if he agreed to return to Syria. When he refused, INS inspectors told Arar that if he did not agree to return to Syria, he would be charged as a terrorist and removed under section 235(c) of the INA.

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13. (U) When the withdrawal of application and removal to Switzerland was cancelled, Arar asked to call the Canadian consulate on Friday, September 27, 2002. According to an INS inspector, this request was denied by the New York JTTF because it was concerned that an outside phone call might jeopardize the investigation of Arar.

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14. (U)

[REDACTED]

15. (S)

[REDACTED]

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16. (U) As these discussions were taking place in Washington, DC, Arar was transported on Saturday, September 28, 2002, from JFK to the Federal Bureau of Prison's (BOP) Metropolitan Detention Center (MDC) located in Brooklyn, NY.

17. (S)

[REDACTED]

18. (S)

[REDACTED]

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19. (U) Arar was served with the INS Form I-147 on Tuesday, October 1, 2002. The form advised Arar that he would be removed from the United States under the section 235(c) proceeding and he was given 5 days to respond. Both the INS Assistant District Director for Inspections and Arar signed the form. INS ensured that Arar was provided with a list of pro bono attorneys when he was served with the I-147 on Tuesday, October 1, 2002, as a matter of INS procedure. When Arar was served with the I-147 on Tuesday, October 1, 2002, he was provided with a list of foreign consulates in New York City, including both the Canadian and Syrian consular offices.

20. (U) On Wednesday, October 2, 2002, the INS attorneys are brought into the Arar case for the purpose of making the CAT assessment.

21. (U) According to the complaint filed by Arar against the U.S. government, a Canadian consular officer visited him at MDC on Thursday, October 3, 2002.

22. (U)

[REDACTED]

23. (U) On Friday, October 4, 2002, the INS Eastern Regional Director provided a memorandum to Arar requesting that he designate the country to which he wanted to be removed. Arar requested that he be sent to Canada.

24. (S)

[REDACTED]

25. (U) In early October 2002, almost a week after his Thursday, September 26, 2002 apprehension at JFK, Arar's family in Canada contacted a private immigration attorney in New York City. They knew Arar had been detained by INS but did not know the basis for his detention or where he was held.

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26. The immigration attorney met with Arar on Saturday, October 5, 2002. Their meeting was held in an interview room at the MDC and lasted about one and a half hours.
27. (U) On Saturday evening, October 5, 2002, INS Headquarters notified the New York Asylum Office that it would conduct an interview on Sunday, October 6, 2002. The supervisory asylum officers were to interview Arar to determine if he feared being returned to Syria, Canada, or any other country because he might be tortured.
28. (U) On Sunday, October 6, 2002, the operations order to remove Arar was prepared, and the country clearances were requested for the escort officers and flight crew and sent to the U.S. Embassies in Rome, Italy and Amman, Jordan. These actions were taken before the protection interview was conducted, before the completion and serving of the I-148, before the CAT assessment was made, and before the assurances were provided to INS
29. (U) On Sunday, October 6, 2002, at approximately 4:30 p.m., the INS attorney sent the email to the INS Command Center directing it to notify Arar's attorneys. The INS Command Center completed the notification about 5:00 p.m. Arar's immigration attorney was not in the office on Sunday and an INS official in New York left a voice mail message. The criminal attorney was also contacted. Arar's criminal attorney said he could not attend the interview and requested that it be rescheduled for Monday, October 7, 2002. His request was denied.
30. (U) On Sunday, October 6, 2002, the INS investigators provided limited background on Arar's case to the supervisory asylum officers who would interview Arar. They were only told that Arar was detained on a terrorism-related charge. The supervisory asylum officers said that they were told to ascertain if Arar had a fear of returning to Canada, Syria, or any other country. Their line of questioning was not to mention CAT, protection, or credible fear.
31. (U) The interview was conducted at MDC beginning about 9:00 p.m. on Sunday, October 6, 2002. The supervisory asylum officers described Arar as calm, albeit evidently annoyed about his situation. He requested counsel several times during the interview. The supervisory asylum officers explained to him that his attorneys were notified but were not coming. Arar repeatedly said that he did not want to go to Syria. He stated that he feared being arrested and tortured in Syria because he had not performed his mandatory military service.

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32. (U) The interview lasted almost six hours, until about 2:30 a.m. on Monday, October 7, 2002. The supervisory asylum officers left the interview room several times to consult with INS Headquarters on questions they had asked and Arar's responses.

33. (U)

[REDACTED]

34. (S)

[REDACTED]

35. (U) In a letter to the INS Eastern Regional Director, dated Monday, October 7, 2002, the Acting Attorney General disregarded Arar's request to return to Canada because it would be "prejudicial to the interest of the United States." The Deputy Attorney General signed this memorandum as the Acting Attorney General because the Attorney General was out of the country at the time.

36. (U) On the morning of Monday, October 7, 2002, Arar's immigration attorney listened to the voice mail message left on Sunday, October 6, 2002, by the INS official in New York. The immigration attorney said that the message was that "a hearing" would be held for Arar at 7:00 p.m. that evening at MDC. The immigration attorney said the message did not specify what day, but she assumed that it was 7:00 p.m. on Monday, October 7, 2002. The immigration attorney thought it was odd that an immigration interview would be scheduled for that hour. The immigration attorney contacted MDC to obtain more information about the interview and learned that Arar had been moved to INS' Varick Street Service Processing Center in New York City. The immigration attorney then contacted the Varick Street facility and learned that Arar was being processed (photographed and fingerprinted) and would be moved to the INS contract

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detention facility in Elizabeth, NJ. At that point, the immigration attorney believed that Arar's case was proceeding routinely because the processing at Varick Street and the transfer to New Jersey were normal immigration procedures.

37. (U) On Monday, October 7, 2002, the INS Eastern Regional Director signed the I-148 that ordered Arar's removal. That same day the INS Commissioner signed the memorandum that authorized Arar's removal to Syria. The memorandum discussed Arar's inadmissibility under section 235(c), the order of removal made earlier by the INS Eastern Regional Director, and the Attorney General's disapproval of Arar's request to be removed to Canada.

38. (U) At approximately 4:30 a.m. on Tuesday, October 8, 2002, Arar was served with the I-148 while being transported to an airport in New Jersey. The I-148 specified the section 235(c) proceeding, his alleged association with Al-Qaeda, and his impending removal to Syria. An unclassified addendum was provided to Arar included with the I-148, which Arar had never seen before. The unclassified addendum discussed his alleged relationships with two suspected Al-Qaeda terrorists and concluded that because he was a member of Al-Qaeda he was inadmissible to the United States. Arar never responded to the I-147. The unclassified addendum mentioned the classified addendum, which Arar never saw.

39. (U) On Tuesday, October 8, 2002, Arar was transported by an INS "Special Response Team" to Teterboro Airport in New Jersey, where he was flown by private aircraft to Dulles International Airport near Washington, DC. At Dulles, an INS "special removal unit" boarded the plane, then accompanied Arar to Amman, Jordan, where he arrived on Wednesday, October 9, 2002. Arar was later transferred to the custody of Syrian officials.

40. (U) Arar's immigration attorney attempted to locate Arar by calling the Elizabeth, NJ detention facility on Tuesday, October 8, 2002. However, facility officials were unable to locate Arar at the facility. Finally, on Wednesday, October 9, 2002, INS officials told her that Arar had been removed from the United States. While the INS officials did not specify the removal country, the immigration attorney assumed it was not Canada or Switzerland because she believed Arar's family would have known. Arar's immigration attorney learned through media articles published weeks later that Arar had been removed to Syria.

41. (U) Arar was released by Syrian authorities and returned to Canada in October 2003, about a year after his initial apprehension at JFK. He alleged that he was beaten and tortured while in the custody of the Syrian government. Arar sued the governments of Canada and the United States for the alleged wrongful removal to Syria. The Canadian

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government appointed a special commission to conduct an inquiry regarding the involvement of the Canadian government in the Arar matter in February 2004. The commission completed its work in October 2005 and released a report detailing its findings and recommendations in September 2006. The commission released additional information in August 2007 that had been redacted from the September 2006 report.

V.

**(U) Results of Review**

1. (U) INS appropriately determined that Arar was inadmissible under relevant provisions of immigration law. INS officials analyzed the derogatory information regarding Arar's background, sought clarification of facts and statements made by the U.S. agencies that provided the information, and determined the appropriateness of the specific immigration charge. Because of the particular removal proceeding used by INS, Arar was not entitled to a complete statement of the facts about him, a hearing before an immigration judge, or any appeal.
2. (U) Syria was designated as Arar's country of removal. INS could have attempted to remove Arar to Canada, his country of citizenship, or Switzerland, his point of embarkation to the United States. Further, Arar specifically requested to be returned to Canada and formally stated his opposition to returning to Syria. However, the Acting Attorney General ruled against removing Arar to Canada because it was determined that removal to Canada was prejudicial to the interests of the U.S. Also, U.S. officials determined that they could ignore Arar's request and choose any of the three countries as a destination to remove Arar.
3. (U) INS followed procedures in assessing Arar's eligibility for protection under CAT

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[REDACTED] The assurances upon which INS based Arar's removal were ambiguous regarding the source or authority purporting to bind the Syrian government to protect Arar.

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VI.

**(U) Recommendations**

(U) In its response to the recommendations contained in this report, ICE concurred with the recommendations and has taken steps to implement them. However, it is notable that ICE concurred with the recommendations with the "understanding that the OIG concluded that INS did not violate any then-existing law, regulation, or policy with respect to the removal" of Arar. Based on the documentation we reviewed and the interviews we conducted, it does not appear that any INS personnel whose activities we reviewed violated any then-existing law, regulation, or policy with respect to the removal of Arar. However, that should not be construed to mean that we have completely discounted that possibility, especially since we did not have the opportunity to interview all the individuals involved in this matter. Nonetheless, we have reviewed ICE's responses to the recommendations and consider both recommendations resolved and closed.

(U) Recommendation 1. Implement a policy to afford aliens, subject to removal under section 235(c) proceedings of the Immigration and Nationality Act, a specified minimum amount of time to respond to the initial charges against them.

**(U) ICE Response**

(U) ICE concurred with this recommendation. In its response, ICE explained that the Assistant Secretary for ICE issued policy guidance that an alien removed according to 235(c) proceedings will be provided a minimum of 15 calendar days to submit a written statement and any other additional information to the Assistant Secretary for consideration. ICE added that the number of days could be reduced after consultation with the Secretary of Homeland Security.

(U) Additionally, ICE said that it would forward the policy guidance to the Commissioner of CBP for consideration as the Assistant Secretary for ICE's authority only pertains to ICE employees.

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**(U) OIG Analysis**

(U) We conclude that the Assistant Secretary for ICE's policy guidance fully complies with this recommendation. Therefore, this recommendation is resolved and closed.

(U) Recommendation 2. Implement a policy that requires ICE to consult with DOS before accepting assurances not provided by DOS in removal proceedings involving aliens charged under section 235(c).

**(U) ICE Response**

(U) In response to this recommendation, ICE said that it will consult with DOS before accepting assurances with respect to aliens in removal proceeding under 235(c).

**(U) OIG Analysis**

(U) We conclude that the Assistant Secretary for ICE's policy guidance fully complies with this recommendation. Therefore, this recommendation is resolved and closed.

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**DEPARTMENT OF HOMELAND SECURITY  
Office of Inspector General**

**(U) The Removal of a Canadian Citizen to Syria**



Derived from: Multiple Sources  
Declassify On: 20300114

**OIG-08-18**

**March 2008**

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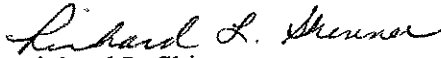
# Homeland Security

## (U) Preface

(U) The Department of Homeland Security Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

(U) This report assesses the processes and procedures used by U.S. immigration officials to deny Maher Arar admission to the United States and subsequently remove him to Syria. It is based on interviews with employees and officials of relevant agencies and institutions and a review of applicable documents.

(U) The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

  
Richard L. Skinner  
Inspector General

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5 U.S.C. § 552 (b)(2)

# OIG

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*Department of Homeland Security  
Office of Inspector General*

## (U) Executive Summary

(U) Maher Arar, a dual citizen of Canada and Syria, arrived at John F. Kennedy (JFK) International Airport in Queens, NY. His flight originated in Tunisia and arrived at JFK on Thursday, September 26, 2002, from Zurich, Switzerland. Arar applied for admission to the United States so he could transfer to his connecting flight to Canada, his country of residence.

(U) Arar was identified as a special interest alien who was suspected of affiliations with a terrorist organization. He was apprehended by inspectors of the Immigration and Naturalization Service (INS) at JFK, questioned by federal agents, and transferred to a nearby federal detention center. INS determined Arar inadmissible to the United States on the grounds that he was a member of a foreign terrorist organization and was removed on Tuesday, October 8, 2002. INS flew him to Amman, Jordan, and he was later taken into custody by Syrian officials. After Arar returned to Canada in October 2003, he alleged that he was beaten and tortured while in the custody of the Syrian government.

(U) Our review examined (1) the process applied by INS in determining that Arar was inadmissible to the United States, (2) the process to designate Syria as Arar's country of removal, and (3) how INS assessed Arar's eligibility for protection under the *United Nations Convention Against Torture*. For more information about our purpose, scope, and methodology, please see Appendix A.

(U) INS appropriately determined that Arar was inadmissible under relevant provisions of immigration law. INS officials analyzed the derogatory information regarding Arar's background, sought clarification of facts and statements made by the U.S. agencies that provided the information, and determined the appropriateness of the specific immigration charge. Because of the particular removal proceeding used by INS, Arar was not entitled to a complete statement of the facts about him, a hearing before an immigration judge, or any appeal.

(U) The Removal of a Canadian Citizen to Syria

(U) Syria was designated as Arar's country of removal. INS could have attempted to remove Arar to Canada, his country of citizenship, or Switzerland, his point of embarkation to the United States. Further, Arar specifically requested to be returned to Canada and formally stated his opposition to returning to Syria. However, the Acting Attorney General ruled against removing Arar to Canada because it was determined that removal to Canada was prejudicial to the interests of the U.S. Also, U.S. officials determined that they could ignore Arar's request and choose any of the three countries as a destination to remove Arar.

(U) INS followed procedures in assessing Arar's eligibility for protection under Article 3 of the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).<sup>1</sup> [REDACTED]

Per consultation with DHS  
5 USC § 552 (b)(5)

[REDACTED]. The assurances upon which INS based Arar's removal were ambiguous regarding the source or authority purporting to bind the Syrian government to protect Arar.

(U) We are making the following recommendations to the Assistant Secretary for Immigration and Customs Enforcement:

(U) **Recommendation #1:** Implement a policy to afford aliens subject to removal under section 235(c) proceedings of the Immigration and Nationality Act, a specified minimum amount of time to respond to the initial charges against them.

(S) **Recommendation #2:** [REDACTED]

5 USC § 552 (b)(1)

<sup>1</sup> (U) *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3, June 26, 1987.

## **(U) Background**

### **(U) Maher Arar**

(U) Maher Arar is a dual citizen of Canada and Syria, and a resident of Ottawa, Canada. On Thursday, September 26, 2002, Arar arrived at JFK aboard American Airlines flight 65. He had just spent three months in Tunisia with his wife and two children. Arar arrived at JFK after an intermediate stop in Zurich, Switzerland. After his arrival at JFK at 1:55 p.m., Arar presented a Canadian passport for admission into the United States as a nonimmigrant in order to transit through JFK to catch a flight for Montreal, Canada, which was scheduled to depart at 5:05 p.m. that day. Arar did not formally apply for admission to the United States, but because he did not have a transit visa, by operation of law he was deemed an applicant for admission.

(U) En route from Zurich, Arar was identified in the Department of State's (DOS) "TIPOFF" system as a "special interest" alien who was suspected of affiliations to terrorist activity and was described as "armed and dangerous." The TIPOFF database, at the time of Arar's arrival in the United States, was the principal database containing names of known and suspected terrorists. If an INS inspector queried the TIPOFF system with passenger information from the Advance Passenger Information System and a match occurred, the INS inspector would receive a message that the alien was the subject of a lookout. A lookout is an entry in one of several immigration and security databases that lists previously deported aliens, criminal aliens, or other aliens who were of interest to law enforcement agencies. If an alien is the subject of a lookout, this is an indication that an alien might be inadmissible to the United States and requires additional review at a U.S. port of entry (POE). Before Arar arrived at JFK, a team from the New York Federal Bureau of Investigation's (FBI) Joint Terrorism Task Force (JTTF) was dispatched to interview Arar upon his arrival at JFK.

(U) Upon his arrival, Arar was immediately referred by INS inspectors to secondary inspections. The JTTF investigators interviewed Arar that afternoon at the INS secondary inspections facility at JFK's American Airlines terminal. The JTTF investigators concluded that they had no interest in Arar as an investigative subject. Arar was turned over to INS inspectors who determined that he was inadmissible to the United States. The INS inspectors allowed Arar to voluntarily withdraw his application for admission so he could return to Zurich, his original point of embarkation. Arar agreed to withdraw his application for admission to the United States in order to return to Zurich. While waiting for his flight to depart, Arar continued to be

(U) The Removal of a Canadian Citizen to Syria



detained for additional interviews with the JTTF. The next day, Friday, September 27, 2002, INS made the decision to rescind the original offer to Arar to withdraw his application.

(U) Arar was determined by INS to be inadmissible to the United States on the grounds that he was a member of a foreign terrorist organization. On Tuesday, October 8, 2002, Arar was transported by an INS "Special Response Team" to Teterboro Airport in New Jersey, where he was flown by private aircraft to Dulles International Airport near Washington, DC. At Dulles, an INS "special removal unit" boarded the plane, then accompanied Arar to Amman, Jordan, where he arrived on Wednesday, October 9, 2002. Arar was later transferred to the custody of Syrian officials.

(U) Arar was released by Syrian authorities and returned to Canada in October 2003, about a year after his initial apprehension at JFK. He alleged that he was beaten and tortured while in the custody of the Syrian government. Arar sued the governments of Canada and the United States for the alleged wrongful removal to Syria.

(U) The Canadian government appointed a special commission to conduct an inquiry regarding the involvement of the Canadian government in the Arar matter in February 2004.<sup>2</sup> The commission completed its work in October 2005 and released a redacted report detailing its findings and recommendations in September 2006. In August 2007, the commission released additional information that was redacted from the September 2006 report.

### **(U) Federal Court Ruling**

(U) On February 16, 2006, the U.S. District Court, Eastern District of New York, issued a ruling on the complaint that Arar filed against the U.S. government. Arar's complaint consisted of four counts of alleged wrongdoing by the U.S. government:<sup>3</sup>

- (U) 1. Violated the Torture Victim Prevention Act by "conspiring with and/or aiding and abetting Jordanian and Syrian officials to bring about his [Arar's] torture."

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<sup>2</sup> (U) See the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar website at <http://www.ararcommission.ca/eng/index.htm>.

<sup>3</sup> (U) Maher Arar v. Ashcroft, et al, 414 F. Supp. 2d 250 (E.D. NY 2006).

- (U) 2. Violated Arar's Fifth Amendment rights by "knowingly and intentionally subjecting him to torture and coercive interrogation in Syria."
- (U) 3. As a result of the actions of the U.S. government, Arar was subjected to "arbitrary and indefinite detention in Syria."
- (U) 4. Arar suffered "outrageous, excessive, cruel, inhumane and degrading conditions of confinement" while in INS detention in New York.

(U) The judge, in his deliberations, considered the jurisdictional basis and legal sufficiency of Arar's complaint. The judge ruled, in the first three counts of the complaint, that there was no jurisdictional basis for Arar's complaint. He dismissed the first three counts with prejudice. On the fourth count, he ruled that Arar had not sufficiently identified the specific actions taken by the U.S. government that substantiated his claim that his detention in New York violated his civil rights. However, the judge left open the possibility for Arar to replead the fourth count by dismissing it without prejudice.

(U) On July 14, 2006, Arar notified the court that he would not replead the fourth count. On August 16, 2006, the court entered judgment dismissing Arar's claims for declaratory relief against the defendants in their official capacities with prejudice; dismissing his claims against officials of the U.S. government in their individual capacities with prejudice; and dismissing Arar's claims against all John Doe defendants with prejudice.

(U) The judge's ruling considered the technical merits of Arar's complaint without addressing the validity or appropriateness of the actions taken by the U.S. government in the matter. On September 12, 2006, Arar appealed to the U.S. Court of Appeals for the Second Circuit.

## (U) Results of Review

### (U) Inadmissibility Determination

(S)

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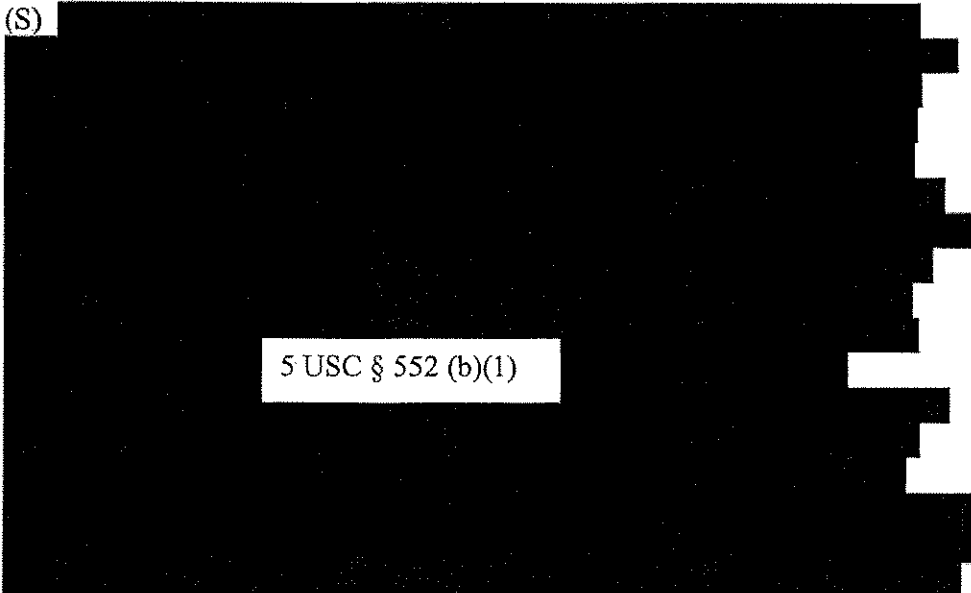
(U) INS elected to remove Arar pursuant to section 235(c). The section 235(c) removal proceeding is rarely used to exclude someone from the United States. Most aliens found inadmissible are removed pursuant to INA section 240 proceedings.<sup>4</sup> Section 240 removal proceedings involve hearings before immigration judges, the aliens' right of access to counsel, and the aliens' right to appeal immigration judges' decisions to the Board of Immigration Appeals. By using a section 235(c) proceeding, INS could use classified information to substantiate the charge without any risk that the classified information would be disclosed during an open hearing in an immigration court.

**(U) Apprehension at JFK**

(U) On Thursday, September 26, 2002, at 1:06 p.m., INS inspectors at JFK conducted a routine screening of the passenger manifest, provided by the Advance Passenger Information System (APIS), for Arar's inbound flight. APIS, at the time of Arar's arrival in the United States, was a system used to identify inadmissible aliens and prevent their entry into the United States. Air carriers participating in APIS submitted passenger data when their planes departed foreign airports for the United States. The results of the screening showed that a passenger on American Airlines flight 65 from Zurich, due in at 1:55 p.m., was the subject of a TIPOFF lookout. The passenger was Maher Arar. According to instructions contained in the lookout, INS inspectors notified the FBI's New York JTTF. JTTF agents proceeded to JFK to interview Arar.

<sup>4</sup> (U) Section 240 of the INA is codified at 8 U.S.C. § 1229a.

(U) Arar arrived at JFK, after having been in Tunisia with his family, and applied for admission into the United States in transit to Canada. He was scheduled to depart JFK for Montreal at 5:05 p.m. However, the INS inspector at the primary inspections station sent Arar to secondary inspections to confirm whether Arar was the person specified in the TIPOFF lookout.<sup>5</sup> INS inspectors in secondary inspections confirmed that Arar was the person named in the lookout. At 3:00 p.m., JTTF agents, consisting of INS special agents, New York City Police Department Intelligence Division detectives, and FBI special agents, interviewed Arar.

(S)  5 USC § 552 (b)(1)

<sup>5</sup> (U) INS inspectors screen all arriving aliens during the primary inspections process. The INS inspectors ask the aliens basic questions, verify the identity of the aliens, review their travel and identity documents for validity, and query their names and passport numbers in various U.S. immigration databases. If the INS inspectors believe or suspect that the aliens might not be admissible into the United States or they find derogatory information concerning the aliens during the database queries, the aliens are further screened in the secondary inspections process. In secondary inspections, INS inspectors interview the aliens and conduct additional database queries. A final determination on the aliens' admissibility is usually made in secondary inspections, as well as the applicability of any administrative or criminal charges.

<sup>6</sup> (U) A nonimmigrant applicant for admission who is inadmissible for non-serious, non-deliberate immigration violations may be offered a Withdrawal of Application for Admission at a POE, rather than be detained for a removal hearing before an immigration judge or placed in expedited removal proceedings. The offer of withdrawal is discretionary on the part of INS and acceptance is voluntary on the part of the alien in lieu of removal proceedings. Aliens who withdraw their applications for admission are not considered formally removed and therefore do not require permission to reapply for admission to the United States. Once the reason for the alien's inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States. An alien who is permitted to withdraw must depart immediately from the United States, or as soon as return transportation can be arranged. (INA, section 235(a)(4), and Code of Federal Regulations (CFR), Title 8, section 235.4.)

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(U) Arar agreed to withdraw his application for admission. INS inspectors prepared INS Form I-275, Withdrawal of Application for Admission/Consular Notification, which Arar signed. INS planned to return Arar to Zurich on Friday, September 27, 2002. At this point in time, INS inspectors at JFK were handling Arar's case as a routine matter. As with the New York JTTF, the INS inspectors at JFK had no idea that there was such high-level interest in Arar in Washington, DC. However, the JTTF investigators requested that INS detain Arar while he awaited the flight to Zurich as JTTF investigators planned to re-interview Arar at 8:00 a.m. on Friday, September 27, 2002.

**(U) High Level Interest in Arar**

(U) DOJ and INS officials in Washington, DC learned of Arar's apprehension on the evening of Thursday, September 26, 2002. A meeting took place in the office of the INS Commissioner involving the Commissioner, the INS Chief of Staff, and INS attorneys.

Per consult with DHS  
5 USC § 552 (b)(5)

(U) On Friday, September 27, 2002, INS inspectors, at the direction of the INS Eastern Regional Director, canceled Arar's original withdrawal of application and planned return to Switzerland. INS inspectors, again at the direction of the INS Eastern Regional Director, offered Arar a new opportunity to withdraw if he agreed to return to Syria. When he refused, INS inspectors told Arar that if he did not agree to return to Syria, he would be charged as a terrorist and removed under section 235(c) of the INA. The former INS Eastern Regional Director said that all discussions regarding the Arar case occurred with INS operations staff and attorneys at INS Headquarters. The Regional Director could not specifically recall who first discussed returning Arar to Syria. The Regional Director also could not recall when the 235(c) proceeding against Arar was first considered, but believed that it occurred during discussions with INS Headquarters. The Regional Director said that when he first became involved, he was unaware that an I-275 had been prepared earlier that would have allowed Arar to return to Switzerland. It was only after INS Headquarters contacted the INS Eastern Regional Director about Arar, sometime after the INS inspectors at JFK prepared the I-275, that he became involved in the processing of the case and cancelled the original I-275.

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Per consult with DHS  
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Second, the porous nature of the U.S.-Canadian border would enable Arar to easily return to the United States.

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<sup>7</sup> (U) An abbreviated summary of this report is available at [www.ararcommission.ca/eng/SummaryInCameraHearings-Dec20.pdf](http://www.ararcommission.ca/eng/SummaryInCameraHearings-Dec20.pdf).

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(U) Use of Classified Information

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5 USC § 552 (b)(1)

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(U) Arar was served with the INS Form I-147 on Tuesday, October 1, 2002.<sup>8</sup>  
The form advised Arar that he would be removed from the United States

<sup>8</sup> (U) The Form I-147, "Notice of Temporary Inadmissibility," informs the alien that he or she was found inadmissible and denotes the INA provision governing inadmissibility. The form usually affords the alien the opportunity to respond

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under the section 235(c) proceeding and he was given 5 days to respond. Both the INS Assistant District Director for Inspections and Arar signed the form. However, the form did not specify the underlying reasons for the section 235(c) proceeding, nor did it inform Arar of the country to which he would be removed. Work on the draft I-148 classified addendum continued throughout the week (after October 1, 2002). Versions of the draft were exchanged several times for review and comment between INS, the FBI, and INS' Eastern Region office.

**(U) Process Concerns**

(U) As these discussions were taking place in Washington, DC, Arar was transported on Saturday, September 28, 2002, from JFK to the Federal Bureau of Prison's (BOP) Metropolitan Detention Center (MDC) located in Brooklyn, NY. The detention facilities at JFK were intended for short periods of detention, usually a maximum of 12 hours. In BOP detention facilities, Special Housing Units (SHU) are designed to segregate inmates who commit disciplinary infractions or who require administrative separation from the rest of the facility's population. Arar was held in the most restrictive type of SHU - an Administrative Maximum (ADMAX) SHU. According to BOP officials, ADMAX units are not common in most BOP facilities because the conditions of confinement for disciplinary segregation or administrative detention in a normal SHU are usually sufficient for correcting inmate misbehavior and addressing security concerns. Detainees in the ADMAX SHU are restricted to their cells, have limited use of telephones with strict frequency and duration restrictions, and can only move outside their cells for specific purposes and while restrained and accompanied by MDC staff. While this transfer was not necessarily intended to frustrate any attempt by Arar to seek assistance or legal representation, MDC's restrictive environment contributed to his difficulties in obtaining counsel and advice on his immigration case.

**(U) Legal Representation**

(U) [REDACTED] Per consult with DHS 5 USC § 552 (b)(5) [REDACTED] INS was aware of two attorneys who represented Arar, which we confirmed during our interviews. INS provided Arar with a list of pro bono attorneys when he was served with the I-147 on Tuesday, October 1, 2002, as a matter of INS procedure. Arar's family did not contact an immigration attorney in New York City to locate Arar until after Arar was served with the I-147.

to the charges within a specified period of time. The I-147 served on Arar did not provide details of the charges against him, but did assert his alleged membership in Al-Qaeda.

**(U) The Removal of a Canadian Citizen to Syria**

Therefore, the INS attorneys that were discussing this on Monday, September 30, 2002, had no knowledge of the actions either contemplated or taken by Arar's family to obtain legal representation for Arar. An ODAG attorney told us that Arar had access to counsel, as his attorney visited him at the MDC.

(U) Consular Notification

(U) Another immigration process issue concerned consular notification. INS was required to notify every alien of his or her right to communicate by telephone with appropriate officers of the alien's country of nationality in the United States, when the alien's removal could not be accomplished immediately and the alien must be placed in detention for longer than 24 hours.<sup>9</sup>

(U) After his apprehension at JFK, INS inspectors afforded Arar the opportunity to call the Canadian consulate on Thursday, September 26, 2002, but he elected not to call. However, when the withdrawal of application and removal to Switzerland was cancelled, Arar asked to call the Canadian consulate on Friday, September 27, 2002. According to an INS inspector, this request was denied by the New York JTTF because it was concerned that an outside phone call might jeopardize the investigation of Arar. When Arar was served with the I-147 on Tuesday, October 1, 2002, he was provided with a list of foreign consulates in New York City, including both the Canadian and Syrian consular offices. We know of only one telephone call that Arar made during his detention in New York. That was made to his family in Ottawa, Canada, who notified the Office for Canadian Consular Affairs. According to the complaint filed by Arar against the U.S. government, a Canadian consular officer visited him at MDC on Thursday, October 3, 2002. Arar's alien file (A-file) included a notation that an official from the Canadian consulate visited him on this day. Further, Arar's immigration attorney confirmed this visit. We did not interview Canadian officials for our report. However, the visit is described in the RCMP Report, p. 18 (see footnote 7).

(U) Time to Respond to Charges

(U) One final issue with process involved the amount of time Arar was allowed to respond to the I-147 before he was served with the final order of removal.

Per consult with DHS  
5 USC § 552 (b)(5)

<sup>9</sup> (U) 8 CFR section 236.1(e), and the INS Inspectors' Field Manual, section 17.156.

[REDACTED]

(U) [REDACTED]

Per consult with DHS and DOJ  
5 USC § 552 (b)(5)

Arar was served with the I-147 on Tuesday, October 1, 2002, and did not file a response. The I-148 addendum was completed on Monday, October 7, 2002. Arar was served with the I-148 and the unclassified addendum at 4:30 a.m. on Tuesday, October 8, 2002, while being transported to the airport en route to Syria.

**(U) Attorney Visit with Arar**

(U) In early October 2002, almost a week after his Thursday, September 26, 2002 apprehension at JFK, Arar's family in Canada contacted a private immigration attorney in New York City. They knew Arar had been detained by INS but did not know the basis for his detention or where he was held. The immigration attorney agreed to determine the circumstances of Arar's detention. Importantly though, the immigration attorney never became Arar's "attorney of record." The immigration attorney was retained by Arar's family only to ascertain the circumstances of detention and never filed a Form G-28 with the immigration court or INS.<sup>11</sup> The immigration attorney later provided Arar with contact information for the criminal attorney.

(U) The immigration attorney met with Arar on Saturday, October 5, 2002. Their meeting was held in an interview room at the MDC and lasted about one and a half hours. The meeting was non-contact as the immigration attorney and Arar were separated by a glass partition. The immigration attorney described Arar as emotional and distraught, and confused about the nature of the immigration charges. He was also adamantly opposed to being removed to Syria. The immigration attorney assured Arar that if he was afraid to go to

<sup>10</sup> (U) A *habeas corpus* petition is a petition filed with a court by a person who objects to his or another's detention or imprisonment. A writ of *habeas corpus* is a judicial mandate to a prison official, or an official ordering detention, ordering that a detainee be brought to the court so it can determine whether or not that person is imprisoned lawfully, and whether or not he or she should be released from custody.

<sup>11</sup> (U) Immigration attorneys, as well as representatives of religious, charitable, social service, or similar organizations, who are representing specific aliens before the immigration court, the Executive Office for Immigration Review, are required to file a Form G-28.

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Syria, he could apply for protection. During the visit, Arar said that a representative from the Canadian government had visited him at MDC on Thursday, October 3, 2002.

(U) During their visit, the immigration attorney recalled that Arar had an INS Form I-862, Notice to Appear (NTA) he had received.<sup>12</sup> However, INS officials said that an NTA was never served on Arar as it was inappropriate for the charge. We could not find any record of an NTA ever being served on Arar. According to the attorney, Arar did not mention the 5-day deadline. At the time of this meeting, Arar's response was due the next day.<sup>13</sup>

(U) The immigration attorney presumed that Arar's case would go through normal processes, which meant Arar would have had a bond hearing in a few days, at which time a date would be set for his hearing before an immigration judge. Knowledge of the 5-day response time could have signaled to the immigration attorney that Arar was being subjected to an extraordinary process.

(U) Summary

(S) [REDACTED]  
5 USC § 552 (b)(1)

(U) We are aware that Arar has denied any terrorist connections. Further, according to media reports, while in its custody, the Syrian government obtained a confession from Arar but could find no terrorist link.<sup>14</sup> However, at the time, INS could not dismiss derogatory information provided, nor did it have the capability to independently verify the information.

(S) [REDACTED]  
5 USC § 552 (b)(1)

<sup>12</sup> (U) An NTA is a charging document issued by INS to an alien to commence formal removal proceedings under section 240 of the INA.

<sup>13</sup> (U) The I-147 was served on Arar on Tuesday, October 1, 2002. His response was due Sunday, October 6, 2002. This meeting took place on Saturday, October 5, 2002.

<sup>14</sup> (U) *The New York Times*, February 15, 2005.

(U) Being removed under section 235(c) meant that Arar was not entitled to a hearing before an immigration judge or any subsequent opportunity to appeal. However, Arar might have been eligible for protection under the CAT.

(U) Given the seriousness of the charges, the intent to remove him to Syria, and his highly restrictive detention conditions at MDC, we question the reasonableness of the length of time he was given to comprehend and respond to the charges against him and his ability to obtain counsel. Arar was in a maximum security detention facility and as such, was virtually incapable of harming national security or public safety and had very limited opportunities to communicate with anyone. An ODAG attorney said that the process to remove Arar moved very quickly. However, he said that it was imperative to resolve the matter consistent with applicable law.

### **(U) Recommendation**

(U) We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

(U) **Recommendation #1:** Implement a policy to afford aliens subject to removal under section 235(c) proceedings of the Immigration and Nationality Act, a specified minimum amount of time to respond to the initial charges against them.

### **(U) Country Designation Process**

(U) The determination to remove Arar to Syria was more controversial. While he was both a Canadian and Syrian national, his Syrian passport had expired. Further, most aliens found inadmissible at a U.S. POE are returned to the country from which they departed for the United States. In Arar's case, that would have been Switzerland. Canada was also an option and would have been a more efficient country of return, both logistically and economically.

### **(U) Initial Discussions Regarding Syria**

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(U) Two ODAG attorneys described a meeting on Thursday, October 3, 2002, between all three ODAG attorneys we identified as being involved in the matter and the INS Commissioner.

Per consult with DOJ  
5 USC § 552 (b)(5)

(U) On Friday, October 4, 2002, the INS Eastern Regional Director provided a memorandum to Arar requesting that he designate the country to which he wanted to be removed. Arar requested that he be sent to Canada. However, in a letter to the INS Eastern Regional Director, dated Monday, October 7, 2002, the Acting Attorney General disregarded Arar's request to return to Canada because it would be "prejudicial to the interest of the United States."<sup>15</sup>

(U) According to one INS attorney, the decision to remove Arar to Syria was made during a meeting between INS, including the INS Commissioner and General Counsel, and two ODAG attorneys on Friday, October 4, 2002, in the DOJ Command Center.<sup>16</sup> However, two ODAG attorneys told us that the INS Commissioner was still considering where to remove Arar on Saturday, October 5, 2002, and Sunday, October 6, 2002. Notes taken during a meeting on Saturday, October 5, 2002, by one of the ODAG attorneys seem to indicate that the Commissioner had not made a final decision on where to remove Arar on that day.

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5 USC § 552 (b)(1)

<sup>15</sup> (U) The Deputy Attorney General signed this memorandum as the Acting Attorney General because the Attorney General was out of the country at the time.

<sup>16</sup> (U) Both ODAG attorneys told us that, as staff of the Deputy Attorney General, they did not have the legal authority to direct the INS Commissioner to make a decision.

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**(U) Country Designation Law**

(U) Under section 240 removal procedures, the INA directs removal to the country of embarkation, in this case Switzerland.<sup>17</sup> If the country of embarkation is unwilling to receive the alien, then other choices become available, such as country of citizenship or birth, in Arar's case Canada or Syria.<sup>18</sup>

(U) Section 241(b)(2) of the INA, 8 U.S.C. § 1231(b)(2), establishes for those aliens not removed under section 240 proceedings, e.g., those removed under section 235(c), other rules for determining the country for removal with the first consideration being the country that the alien designates. While Arar designated Canada, there is no evidence that Canada officially refused to accept him.

(U) The INA gave the Attorney General the authority to disregard the alien's country of choice under certain circumstances, such as when the alien fails to designate a country promptly. Significantly, the Attorney General can disregard the alien's country of choice if the Attorney General determines that removal to that country is prejudicial to the United States, which was the provision invoked in Arar's case. We do not know on what basis the Acting Attorney General deemed Arar's return to Canada as prejudicial to the interests of the United States. The memorandum signed by the Acting Attorney General did not specify the reason why Arar's return to Canada would be prejudicial to the interests of the United States. However, one INS attorney told us that there was concern about the porous nature of the U.S.-Canadian border and that returning Arar to Canada would not prevent him from returning to the United States for nefarious purposes.

(U) An INS attorney told us that INS had the understanding that the designation of a country was a process of moving down the list of options until the next in order could work, and that the process should have stopped with the country of citizenship or the country of embarkation.<sup>19</sup> This approach is used under section 240 removal proceedings, not for other types of removals.

(U)

Per Consult with DHS  
5 USC § 552 (b)(5)

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<sup>17</sup> (U) 8 U.S.C. § 1231(b)(1)(A).

<sup>18</sup> (U) 8 U.S.C. § 1231(b)(1)(C).

<sup>19</sup> (U) INA, section 241(b)(1)(C), 8 U.S.C. § 1231(b)(1)(C).

Per Consult with DHS and DOJ  
5 USC § 552 (b)(5)

**(U) Summary**

(U) Syria was designated as Arar's country of removal

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5 USC § 552 (b)(5)

(U) The usual disposition of a removal action would have involved removing Arar to Switzerland or transporting him to the nearby country where he resided and had citizenship, not to transport him to a nation where his proof of citizenship had lapsed.

**(U) Convention Against Torture Assessment**

(U) We reviewed the process that INS used to determine Arar's protection needs under CAT. The INS concluded that Arar was entitled to protection from torture and that returning him to Syria would more likely than not result in his torture.

Per Consult with DHS 5 USC § 552 (b)(5)

However, the validity of the assurances to protect Arar appears not to have been examined.

(U) On Wednesday, October 2, 2002, an INS attorney was brought into the Arar case for the purpose of helping to conduct the CAT assessment. The INS attorney did not know when the Syrian country determination was made, but that it was likely made before Wednesday, October 2, 2002. By that date, it appeared to the attorney that the section 235(c) proceeding and Syrian removal decisions were finalized, which triggered the need for a CAT assessment.

(U) The regulations at 8 CFR § 235.8 for conducting removal proceedings under section 235(c) are less comprehensive than those for conducting section 240 proceedings in order to allow for flexibility in administering the section 235(c) proceedings. Under section 240 removal proceedings, aliens are afforded the opportunity to claim protection under CAT in hearings before immigration judges. The decisions of the immigration judges are subject to review by the Board of Immigration Appeals, and ultimately in U.S. federal

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courts. However, one INS attorney wanted to slow the process to preclude mistakes and to ensure that Arar had proper legal representation.

**(U) CAT Description**

(U) According to Article 3 of the CAT, no country shall remove an alien to another country “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>20</sup> Substantial grounds as defined by 8 CFR § 208.16(c)(2) means that “more likely than not” if the alien is returned to a particular country, the alien would be tortured. In making this determination, INS must consider all relevant country conditions including “the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”<sup>21</sup>

(U) According to U.S. regulations implementing the CAT, an alien’s removal order in section 235(c) proceedings shall not be executed in circumstances that would violate the CAT.<sup>22</sup> Under section 235(c), claims for CAT protection by aliens apprehended in the United States and subject to removal were determined by the Attorney General.

**(U) Notification of Eligibility for Protection Under CAT**

(U) [REDACTED]

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5 USC § 552 (b)(5)

**(U) Debate Over Legal Representation for Protection Interview**

(U) [REDACTED]

Per Consult with DHS  
5 USC § 552 (b)(5)

<sup>20</sup> (U) *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3, June 26, 1987.

<sup>21</sup> (U) *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3, June 26, 1987.

<sup>22</sup> (U) 8 CFR section 235.8(b)(4).

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Per Consult with DHS  
5 USC § 552 (b)(5)

The INS attorney told us that Arar's attorneys were contacted by telephone at their office telephone numbers – not at their home telephone numbers. An ODAG attorney who we interviewed did not recall the process or the timing for notifying Arar's counsel of the protection interview.

(U) On Sunday, October 6, 2002, at approximately 4:30 p.m., the INS attorney sent the email to the INS Command Center directing it to notify Arar's attorneys. The INS Command Center completed the notification about 5:00 p.m. Arar's immigration attorney was not in the office on Sunday and an INS official in New York left a voice mail message. The criminal attorney was also contacted. Arar's criminal attorney said he could not attend the interview and requested that it be rescheduled for Monday, October 7, 2002. His request was denied.

**(U) Protection Interview at MDC**

(U) On Saturday evening, October 5, 2002, INS Headquarters notified the New York Asylum Office that it would conduct an interview on Sunday, October 6, 2002. The supervisory asylum officers were to interview Arar to determine if he feared being returned to Syria, Canada, or any other country because he might be tortured. They were to obtain from Arar specific information that would support his claims of fear. The supervisory asylum officers were not told the identity of the subject or the purpose of the interview. They were directed to meet INS investigators at the INS New York District Office on Sunday afternoon. Asylum officers conduct interviews to support the establishment of an alien's "credible fear" of persecution or torture, as well as eligibility for asylum. "Credible fear" of persecution means that there is a significant possibility, taking into account the credibility of the

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statements made by the alien in support of the alien's claim and other relevant facts presented to an immigration officer, that the alien could establish eligibility for asylum under U.S. law.<sup>23</sup>

(U) The asylum officers were not to make a judgment or determination as to Arar's eligibility for protection under CAT. That responsibility rested with the INS Commissioner. INS attorneys would consider the information provided by Arar during the protection interview and any other information that they deemed relevant to Arar's case when making the CAT protection determination. The INS attorneys, through the INS General Counsel, would then make a recommendation to the Commissioner.

Per consult with DHS  
5 USC § 552 (b)(2), (b)(5)

(U) INS attorneys prepared a line of questioning for the protection interview [REDACTED] In an email, an INS attorney wrote that the questions had been "cleared" by an ODAG attorney.

(U) On Sunday, October 6, 2002, the INS investigators provided limited background on Arar's case to the supervisory asylum officers who would interview Arar. They were only told that Arar was detained on a terrorism-related charge. The supervisory asylum officers said that they were told to ascertain if Arar had a fear of returning to Canada, Syria, or any other country. Their line of questioning was not to mention CAT, protection, or credible fear.

(U) The interview was conducted at MDC beginning about 9:00 p.m. on Sunday, October 6, 2002. The supervisory asylum officers described Arar as calm, albeit evidently annoyed about his situation. He requested counsel several times during the interview. The supervisory asylum officers explained to him that his attorneys were notified but were not coming. Arar repeatedly said that he did not want to go to Syria. He said that he feared being arrested and tortured in Syria because he had not performed his mandatory military service.

(U) The supervisory asylum officers did not find Arar's concerns persuasive and continued to attempt to elicit other information from him that would more convincingly indicate whether he would be persecuted or tortured if removed to Syria. At one point, Arar said he would be persecuted because he was a Sunni Muslim but did not further elaborate. He denied being a member of any terrorist organization. As the interview progressed, Arar became increasingly unresponsive.

<sup>23</sup> 8 U.S.C. § 1225(b)(1)(B)(v).

(U) The interview lasted almost six hours, until about 2:30 a.m. on Monday, October 7, 2002. The supervisory asylum officers left the interview room several times to consult with INS Headquarters on questions they had asked and Arar's responses. INS Headquarters provided follow-up questions for the supervisory asylum officers to ask Arar. At the conclusion of the interview, Arar was presented with a typed statement of the interview. The statement was read to Arar and he was provided a copy, which he refused to sign.<sup>24</sup>

**(U) CAT Assessment**

(U) INS was to assess the applicability of the CAT to an alien to ensure that INS would "not execute a removal order ... under circumstances that violate" the United States' CAT obligations.<sup>25</sup> INS attorneys prepared Arar's CAT assessment.

[REDACTED]

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[REDACTED]

26

(U) [REDACTED]

Per consult with DHS  
5 USC § 552 (b)(5)

[REDACTED]

**(U) Reliable Assurances**

(U) Assurances, obtained from a specific country to guarantee that an alien would not be tortured if the alien were removed to that country, are normally obtained through DOS. The Secretary of State then provides the assurances

<sup>24</sup> (U) At their meeting on Saturday, October 5, 2002, Arar's immigration attorney told him not to sign any documents.

<sup>25</sup> (U) 8 CFR § 235.8(b)(4).

<sup>26</sup> (U) Christian Science Monitor, "US Ships Al Qaeda Suspects to Arab State," (July 26, 2002).

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received from the relevant country's government to the Attorney General.<sup>27</sup> The nature and reliability of such assurances, and any arrangements through which such assurances might be verified, requires careful evaluation before any decision is reached that removal is consistent with the United States' CAT obligations.

(U) According to the CAT regulations, 8 CFR § 208.18(c), the Attorney General shall determine whether the assurances are "sufficiently reliable" to allow the alien's removal to the designated country in a manner consistent with CAT obligations. Once these assurances are received and approved by the Attorney General, the alien's claim for protection under the CAT is not reviewable by any immigration court or officer. However, the INS attorneys involved in this matter said that Arar could have filed a *habeas corpus* petition in federal district court.

(S) [REDACTED]

5 USC § 552 (b)(1)

(S) [REDACTED]

5 USC § 552 (b)(1)

<sup>27</sup> (U) The Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country. If the Secretary of State forwards such assurances to the Attorney General for consideration, the Attorney General shall determine, "*in consultation with the Secretary of State,*" whether the assurances are sufficiently reliable to allow the alien's removal to that country consistent with Article 3 of the CAT. (8 CFR section 208.18(c)) (emphasis added). The INS Commissioner [REDACTED]

<sup>28</sup> (S) [REDACTED] declined to be interviewed for this review. Per consult with DOS 5 USC § 552 (b)(5)

(U) The Removal of a Canadian Citizen to Syria

5 USC § 552 (b)(1)

(S//NF) 5 USC § 552 (b)(1)

(S) 5 USC § 552 (b)(1)

(S) 5 USC § 552 (b)(1)

<sup>29</sup> (U) *Second Periodic Report of the United States of America to the Committee Against Torture*, May 6, 2005.

(U) The Removal of a Canadian Citizen to Syria

Per consult with DOS  
5 USC § 552 (b)(1) and (b)(5)

(U) Per consult with DOS  
5 USC § 552 (b)(5)

**(U) Removal**

(U) On the morning of Monday, October 7, 2002, Arar's immigration attorney listened to the voice mail message left on Sunday, October 6, 2002, by the INS official in New York. The immigration attorney said that the message was that "a hearing" would be held for Arar at 7:00 p.m. that evening at MDC. The immigration attorney said the message did not specify what day, but she assumed that it was 7:00 p.m. on Monday, October 7, 2002. The immigration attorney thought it was odd that an immigration interview would be scheduled for that hour. The immigration attorney contacted MDC to obtain more information about the interview and learned that Arar had been moved to INS' Varick Street Service Processing Center in New York City.

(U) The immigration attorney then contacted the Varick Street facility and learned that Arar was being processed - photographed and fingerprinted - and would be moved to the INS contract detention facility in Elizabeth, NJ. At that point, the immigration attorney believed that Arar's case was proceeding routinely because the processing at Varick Street and the transfer to New Jersey were normal immigration procedures.

(U) On Sunday, October 6, 2002, the operations order to remove Arar was prepared, and the country clearances were requested for the escort officers and flight crew and sent to the U.S. Embassies in Rome, Italy and Amman, Jordan.<sup>30</sup> These actions were taken before the protection interview was conducted, before the completion and serving of the I-148, before the CAT assessment was made, and before the assurances were provided to INS.

(U) The INS attorney working on the CAT assessment did not realize that Arar's removal would occur immediately upon service of the I-148. In other removal proceedings, there was always a period of time between the final

<sup>30</sup> (U) The U.S. government formally requests permission from another government when officials of the U.S. government are traveling to or through that country on official U.S. government business.

(U) The Removal of a Canadian Citizen to Syria

determination of inadmissibility and the execution of the removal order. The attorney told us that he believed the decision to remove Arar to Syria had been made before the CAT assessment was performed.

(U) On Monday, October 7, 2002, the INS Eastern Regional Director signed the I-148 that ordered Arar's removal. That same day the INS Commissioner signed the memorandum that authorized Arar's removal to Syria. The memorandum discussed Arar's inadmissibility under section 235(c), the order of removal made earlier by the INS Eastern Regional Director, and the Attorney General's disapproval of Arar's request to be removed to Canada.

(U) At approximately 4:30 a.m. on Tuesday, October 8, 2002, Arar was served with the I-148 while being transported to an airport in New Jersey.<sup>31</sup> The I-148 specified the section 235(c) proceeding, his alleged association with Al-Qaeda, and his impending removal to Syria. An unclassified addendum was provided to Arar included with the I-148, which Arar had never seen before. The unclassified addendum provided to Arar discussed his alleged relationships with two suspected Al-Qaeda terrorists and concluded that because he was a member of Al-Qaeda he was inadmissible to the United States. Arar never responded to the I-147. The unclassified addendum mentioned the classified addendum, which Arar never saw. Arar was flown to Amman, Jordan via Washington, DC in the custody of INS detention and removal officers. Arar was later transferred to the custody of Syrian officials.

(U) Arar's immigration attorney attempted to locate Arar by calling the Elizabeth, NJ detention facility on Tuesday, October 8, 2002. However, facility officials were unable to locate Arar at the facility. Finally, on Wednesday, October 9, 2002, INS officials told her that Arar had been removed from the United States. While the INS officials did not specify the removal country, the immigration attorney assumed it was not Canada or Switzerland because she believed Arar's family would have known. Arar's immigration attorney learned through media articles published weeks later that Arar had been removed to Syria.

#### **(U) Summary**

(U) The method of the notification of the interview to Arar's attorneys and the notification's proximity to the time of the interview were questionable. INS attorneys believed that Arar and his attorney would have had the

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<sup>31</sup> (U) According to the INS operations order developed for Arar's removal, Arar was transported by nine members of INS' Special Response Team (SRT) in a convoy of four vehicles. The SRT members were equipped with their service weapons in addition to Remington 870 shotguns and M-4 rifles. They were wearing ballistic vests and helmets.

**(U) The Removal of a Canadian Citizen to Syria**



opportunity to review the I-148 after its issuance and INS attorneys expected the “inevitable habeas” to be filed at any time. However, that opportunity was never realized as Arar was removed immediately after service of the I-148.

Per consult with DHS  
5 USC § 552 (b)(5)

(U) [REDACTED] the United States had labeled him as associated with Al-Qaeda.

(U) [REDACTED] Per consult with DHS  
5 USC § 552 (b)(5)

(S) [REDACTED] 5 USC § 552 (b)(1)

**(U) Recommendation**

(U) We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

(S) **Recommendation #2:** [REDACTED] 5 USC § 552 (b)(1)

**(U) Management Comments and OIG Analysis**

(S) [REDACTED] 5 USC § 552 (b)(1)

(U) The Removal of a Canadian Citizen to Syria

5 USC § 552 (b)(1)

(U) We have decided to forgo publishing a lengthy, public version of this report, as many of the events surrounding the removal of Arar involve information protected by privileges such as attorney-client, attorney work product, and deliberative process. We are unable to provide a meaningful, detailed account of these events without discussing privileged information. Most agencies that reviewed the draft versions of our report said both versions contained privileged information. For example,

Per consult with DHS  
5 USC § 552 (b)(5)

We will, instead, publish and make available to the public a brief unclassified executive summary of the full report.

(U) After submitting the drafts for review, during February 2007, we met with two former ODAG attorneys who had been involved in this matter to discuss their comments and concerns regarding the draft reports. An official from ODAG and an official from the DOJ Office of Legal Counsel accompanied both ODAG attorneys.

Per consult with DOJ  
5 USC § 552 (b)(5)

<sup>32</sup> Per the agreement reached between the DHS Office of Inspector General and the DHS Office of General Counsel, which is attached to this report as Appendix E, we provided an advance copy of our draft report to the DHS Office of General Counsel for review in September 2006.

(U) The Removal of a Canadian Citizen to Syria

Based on their comments, we made changes to the draft classified report that we deemed appropriate.

(U) Additionally, three attorneys with USCIS, who had been involved in this matter as INS attorneys to varying degrees, provided comments on both versions of the draft and suggested some changes. We met the three USCIS attorneys, two during March 2007 and one during June 2007, to discuss their comments to the draft report. These attorneys confirmed that their comments were not necessarily representative of USCIS or DHS. Rather, their comments reflected their individual recollection of the events related to the removal of Arar. Based on their comments, we made changes to the draft classified report that we deemed appropriate.

(U) DOS, in its comments, asked that the term "special interest alien" be removed from the report, and it requested that we replace the term "TIPOFF" with "TECS."<sup>33</sup> In a discussion with a DOS employee about DOS' comments, the employee said that the term "special interest alien" has different meanings to different agencies and DOS was trying to discontinue the use of this term. Additionally, the DOS employee said that the term "TIPOFF" is no longer in use. However, the DOS employee told us that term "special interest alien" was in use at the time of this matter, and "TIPOFF" as it is used in our report to describe the database queried by INS inspectors, is correct in the context of the time Arar arrived at JFK on Thursday, September 26, 2002. Thus, we did not change the report to replace those terms.

(U) In its comments on the draft reports, ICE said that it had no knowledge that Arar's Syrian passport had expired. ICE asked us to provide the source of the information that Arar's Syrian passport had expired. While we have no direct evidence that Arar's Syrian passport had expired before the time he applied for admission to the United States, the record of Arar's protection interview indicated that Arar recalled his Syrian passport had expired by approximately 1996. According to the record of the interview, Arar said that his father had renewed his Syrian passport for five years in approximately 1991, although Arar could not recall the exact year. Moreover, there is no evidence that Arar presented a Syrian passport—valid or expired—or had a Syrian passport in his possession when he applied for admission to the United States. There is, however, direct evidence that he presented a valid Canadian passport when he arrived at JFK on Thursday, September 26, 2002. We maintain that the documentation we reviewed supports the conclusion that Arar's Syrian passport had expired prior to September 2002.

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<sup>33</sup> (U) Formerly, the acronym "TECS" stood for Treasury Enforcement Communication System. Now a system that is used by DHS, "TECS" stands for The Enforcement Communications System.

(U) The Removal of a Canadian Citizen to Syria

(U) Both ICE, in its comments, and two USCIS attorneys who reviewed the drafts, requested that the term “diplomatic assurances” not be used in the report. ICE requested that we simply use the term “assurances” as statute does not require DOS involvement when obtaining assurances for an alien being removed according to 235(c) proceedings. The two USCIS attorneys requested that the term “diplomatic assurances” be replaced with “evidence.” A USCIS attorney told us that the INS Commissioner did not find assurances reliable as indicated in our report. Rather, according to this attorney, the INS Commissioner was presented additional “evidence” that other INS staff were never made aware of, and based on that evidence, made a new CAT assessment determining that it was “*not* more likely than not” that Arar would be tortured if he were removed to Syria (emphasis added). The USCIS attorney did not say what the evidence was. We have not seen any documentation that the INS Commissioner made any CAT assessment other than the assessment we discuss in the report. Thus, we did not change the report to reflect an additional CAT assessment. However, we are persuaded that the term “diplomatic assurances” could be misconstrued. Furthermore, we agree that under statute obtaining CAT assurances for an alien being removed according to 235(c) proceedings does not necessarily require the involvement of DOS. Therefore, we have decided to change the report to remove the modifier “diplomatic” from the term “diplomatic assurances.” In the draft report, we replaced the term “diplomatic assurances” with “reliable assurances” or simply “assurances.” “Reliable assurances” was the term INS used in its CAT assessment of Arar.

### **(U) Revised Draft Submitted**

(U) During November 2007 and after making changes to the draft classified report described above, we submitted a revised classified draft report to the DHS Office of General Counsel, ICE, CBP, USCIS, and the DOJ Office of Legal Counsel. CBP did not have any comments to the revised report, and ICE declined to provide any additional comments beyond its comments to the draft reports.

(U) Additionally, during November 2007, an ODAG attorney and his private attorney reviewed the revised classified report at our offices. This ODAG attorney declined to provide any comments.

(U) An attorney from USCIS, who had been involved in this matter as an INS attorney, and an attorney from the DHS Office of General Counsel provided comments to the revised classified draft during November 2007. The attorney from the DHS Office of General Counsel provided comments during a few

(U) **The Removal of a Canadian Citizen to Syria**

telephone conversations. DHS Office of General Counsel did not provide any written comments to the revised draft. The attorney from USCIS returned the classified draft report to us with comments written in the margin of the report. Based on their comments, we made changes to the revised classified report that we deemed appropriate.

(U) During early December 2007, officials from the DOJ Office of Legal Counsel and ODAG, provided comments to the classified report orally over the telephone. Also, one of the ODAG attorneys who reviewed and commented on the draft report reviewed the revised draft in December 2007. The attorney provided comments to us orally over the telephone. Based on their comments, we made changes to the report that we deemed appropriate.

### **(U) ICE Responses to Recommendations**

(U) In its response to the recommendations contained in this report, ICE concurred with the recommendations and has taken steps to implement them. However, it is notable that ICE concurred with the recommendations with the “understanding that the OIG concluded that INS did not violate any then-existing law, regulation, or policy with respect to the removal” of Arar. Based on the documentation we reviewed and the interviews we conducted, it does not appear that any INS personnel whose activities we reviewed violated any then-existing law, regulation, or policy with respect to the removal of Arar. However, that should not be construed to mean that we have completely discounted that possibility, especially since we did not have the opportunity to interview all the individuals involved in this matter. Nonetheless, we have reviewed ICE’s responses to the recommendations and consider both recommendations resolved and closed.

### **(U) Recommendation 1**

(U) Implement a policy to afford aliens subject to removal under section 235(c) proceedings of the Immigration and Nationality Act, a specified minimum amount of time to respond to the initial charges against them.

#### **(U) ICE Response**

(U) ICE concurred with this recommendation. In its response, ICE explained that the Assistant Secretary for ICE issued policy guidance that an alien removed according to 235(c) proceedings will be provided a minimum of 15 calendar days to submit a written statement and any other additional information to the Assistant Secretary for consideration. ICE added that the

(U) The Removal of a Canadian Citizen to Syria

number of days could be reduced after consultation with the Secretary of Homeland Security.

(U) Additionally, ICE said that it would forward the policy guidance to the Commissioner of CBP for consideration as the Assistant Secretary for ICE's authority only pertains to ICE employees.

**(U) OIG Analysis**

(U) We conclude that the Assistant Secretary for ICE's policy guidance fully complies with this recommendation. Therefore, this recommendation is resolved and closed.

**(U) Recommendation 2**

(S) [REDACTED] 5 USC § 552 (b)(1) [REDACTED]  
[REDACTED]

**(U) ICE Response**

(U) In response to this recommendation, ICE said that it will consult with DOS before accepting assurances with respect to aliens in removal proceeding under 235(c).

**(U) OIG Analysis**

(U) We conclude that the Assistant Secretary for ICE's policy guidance fully complies with this recommendation. Therefore, this recommendation is resolved and closed.

(U) Appendix A

(U) Purpose, Scope, and Methodology

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(U) We initiated this review at the request of the then-Ranking Member, Committee on the Judiciary, United States House of Representatives.<sup>34</sup> We began our fieldwork in January 2004. Our objectives were to examine (1) the determination of inadmissibility made concerning Arar's application for admission into the United States; (2) the process that determined to which country Arar would be returned; and, (3) the process used to assess Arar's eligibility for protection under the CAT.

(S)

5 USC § 552 (b)(1)

(S)

5 USC § 552 (b)(1)

(U) In addition, we were confronted with the issue that Arar is suing the U.S. government and several individually named U.S. government officials for his alleged mistreatment by both U.S. and Syrian authorities.<sup>36</sup> Government and private counsel expressed concern that our interviews of some witnesses

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<sup>34</sup> (U) See Appendix C.

<sup>35</sup> (U) See Appendix D.

<sup>36</sup> (U) At the time of issuance of our report, the United States District Court, Eastern District of New York had entered judgment dismissing with prejudice all of Arar's claims. Arar has appealed to the U.S. Court of Appeals for the Second Circuit.

(U) Appendix A

(U) Purpose, Scope, and Methodology

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might constitute a waiver of privileges that counsel would want to preserve for the litigation with Arar. Discussions between attorneys and their clients are privileged and are protected from disclosure. In this case, the attorneys involved are the government agencies' attorneys who provided legal advice and guidance to agency officials (the clients) concerning the Arar matter. We sought to interview the agency officials regarding their decisions and the advice that they received.

(U) DHS and DOJ attorneys opined that providing this information to us might constitute a waiver of the privilege.<sup>37</sup> A waiver would make the information provided to us discoverable and available to Arar and his attorneys in his litigation. On December 10, 2004, OIG counsel negotiated a protocol whereby the information and interviews that we requested would be provided to us, that the provision of this information would not constitute a waiver of the privilege, and that DHS' Office of General Counsel would have the opportunity to review our draft report prior to publication to identify any information that may be privileged.<sup>38</sup> Further discussions were necessary to clarify details of the protocols. We were able to proceed with our interviews in July 2005.

(U) Upon resumption of our work, we encountered a third impediment. Many of the principal decision-makers involved in the Arar case have left government service and declined our requests for interviews. As they are no longer DHS employees, we cannot compel them to speak with us. These decision makers included the former INS Commissioner, former INS Chief of Staff, and former INS General Counsel. Some of these individuals wanted to be interviewed but, because of the pending litigation, declined on the advice of their counsel. Many of the decisions concerning Arar were made during conversations between these individuals.

(U) We also requested an interview with Arar. We believed that the inclusion of his testimony in our report was vital to providing an accurate and complete accounting of the events from his arrest at JFK on Thursday, September 26, 2002, to his removal on Tuesday, October 8, 2002. However, citing the ongoing litigation of his case in both Canada and the United States, Arar's counsel declined several requests for an interview.

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<sup>37</sup> (U) Information would include internal memoranda, notes, and interviews.

<sup>38</sup> (U) "Joint Memorandum Regarding Treatment of Privileged Information in Arar v. Ashcroft, et al.," December 10, 2004. See Appendix E.



(U) Appendix A

(U) Purpose, Scope, and Methodology

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(U) Finally, we were hampered by the amount of time that has lapsed since this event occurred – more than four years. While the memories of some of the people who we interviewed were extremely vivid, others' memories had faded to the point that they only vaguely remembered Arar's name. Even though the documentation of the events was sparse, we were able to compile enough written records to corroborate the information that we obtained through interviews and to reconstruct significant events of this case.

(U) The Removal of a Canadian Citizen to Syria

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(U) Appendix B  
(U) Management Response to Draft Report

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Office of the Assistant Secretary

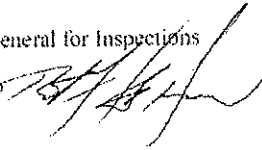
U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

February 29, 2008

MEMORANDUM FOR: Carlton I. Mann  
Assistant Inspector General for Inspections

FROM: Robert F. De Antonio   
Director  
Audit Liaison Office

SUBJECT: Response to OIG Draft Report: "The Removal of a Canadian  
Citizen to Syria"

U.S. Immigration and Customs Enforcement (ICE) submits the following in response to the recommendations of the subject draft report to facilitate Office of Inspector General (OIG) publishing of the final report.

This agency asserts any applicable privilege and Freedom of Information Act (FOIA)/ Privacy Act (PA) exemption as to both the classified and unclassified versions and supporting materials, including, but not limited to: state secrets, attorney-client, attorney work products, deliberative processes, and law enforcement and/or investigative files.

**OIG Recommendation 1:** ICE concurs, noting that it does so with the understanding that OIG concluded that the Immigration and Naturalization Service (INS) did not violate any then-existing law, regulation, or policy with respect to the removal of Maher Arar. The Assistant Secretary for ICE has issued policy guidance on the use of INA § 235(c), providing that upon service of Form I-147 (Notice of Temporary Inadmissibility) on an alien, such alien will be provided a minimum of 15 calendar days to submit a written statement and any additional information for consideration by the Assistant Secretary. This policy will provide an alien in Section 235(e) proceedings a specified minimum amount of time to respond to the initial charges. The 15-day period may be abbreviated at the discretion of the Assistant Secretary after consultation with the Secretary of Homeland Security.

This policy will be forwarded to the Commissioner of U.S. Customs and Border Protection for consideration inasmuch as this agency's authority to order the 15-day timeframe in INA § 235(c) proceedings extend only to ICE employees.

**OIG Recommendation 2:** ICE concurs, noting that it does so with the understanding that OIG concluded that INS did not violate any then-existing law, regulation, or policy with respect to the removal of Maher Arar.

ICE is prepared to provide briefings as needed on classified and unclassified elements of this matter.

~~LAW ENFORCEMENT SENSITIVE~~

[www.ice.gov](http://www.ice.gov)

(U) The Removal of a Canadian Citizen to Syria

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(U) Appendix C  
(U) Representative John Conyers' Letter

JAMES SCHLESINGER, JR., Wisconsin  
CHAIRMAN  
JOHN J. HYDE, Illinois  
FRANK R. RAYBURN, Texas  
MARK S. SHUTTLE, Texas  
TONY GALESSY, California  
BEN ROSEN, California  
EVE CHABOT, Ohio  
LARRY L. RICHMOND, Tennessee  
JIM GANNON, Utah  
BUD SHULTZ, Florida  
JIM H. HESTER, Indiana  
LUC BRIDGES, Mississippi  
KELLEY, Florida  
LUSHA A. HART, Pennsylvania  
ST. PIERRE, Arizona  
KE PENCE, Indiana  
VINCE FORTNEY, Virginia  
EVE KING, Iowa  
BOB CANTO, Texas  
MIKE PENCE, Florida  
VICKI BLANKEN, Tennessee

ONE HUNDRED EIGHTH CONGRESS  
Congress of the United States  
House of Representatives  
COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20516-8216  
(202) 228-3851  
<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan  
RANKING MEMBER  
HOWARD L. Berman, California  
PICK BOLTON, Virginia  
RONALD MADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
COLLIER L. WATTS, North Carolina  
JOE LUDWIG, California  
MEL JACOBSON, Texas  
MADON WATERS, California  
MARTIN J. MERRILL, Massachusetts  
WILLIAM D. DELAMONTE, Massachusetts  
ROBERT HOLLAND, Florida  
TAMMY BALDWIN, Wisconsin  
ANTHONY D. WYDEN, New York  
ADAM B. SCHIFF, California  
LYNDA T. RYAN, California

December 16, 2003

The Honorable Clark Kent Ervin  
Acting Inspector General  
Department of Homeland Security  
Washington, D.C. 20528

The Honorable John D. Ashcroft  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Mr. Inspector General and Mr. Attorney General,

I am writing to request that the Inspector General's and Attorney General's office investigate your departments' rendition of Maher Arar to Syria in October of 2002. Recent reports indicate that the Immigration and Naturalization Service, the Central Intelligence Agency and the Attorney General arranged for Mr. Arar to be delivered into the hands of Syrian intelligence officials who are renowned for their use of torture against prisoners.

Mr. Arar is a citizen of both Syria and Canada, and has lived in the latter for the past 15 years. On September 26, 2002, the INS detained Mr. Arar while he was changing planes at John F. Kennedy airport. He was subsequently interrogated, and when he did not divulge any terror-related information, he was shipped to Syria. While then-acting Attorney General Larry D. Thompson could have returned Mr. Arar to his home in Canada, or in fact any other country that does not practice torture, Mr. Thompson chose to deport him to a country notorious for its abuse of human rights. Because Mr. Arar no longer has any ties to Syria, the only reason for doing so could have been the hope of extracting information through methods disallowed by the United States and international law.

(U) The Removal of a Canadian Citizen to Syria

(U) Appendix C  
(U) Representative John Conyers' Letter

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The Honorable Clark Kent Ervin  
The Honorable John D. Ashcroft  
Page 2  
December 16, 2003

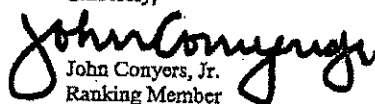
Putting aside the moral and ethical bankruptcy of such an act, it violates international law. The United States is a party to the International Convention Against Torture which prohibits the removal of a person to another state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."<sup>1</sup> It is unfathomable that we would accept assurances that Mr. Arar would not be tortured from a country the State Department has long recognized as using torture tactics such as electrical shocks, pulling out of fingernails, and forcing objects into the rectum.<sup>2</sup> With this information, one can only conclude that Syria was chosen precisely for the likelihood that torture would be employed.

I am sure that you both agree that intentionally rendering a human being to be tortured has no place in our anti-terror efforts. To that end, I ask that your respective agencies immediately investigate the circumstances around Mr. Arar's removal to ensure that such a rendition never happens again. Specifically, I would like your offices to explain:

1. What standard does the Attorney General's office use in determining that removal to the country of the detainee's designation is "prejudicial to the United States?"
2. Specifically, what about returning Mr. Arar to his home in Canada would have been prejudicial to the United States?
3. Even if there was reason to believe that Canada was not the proper country for removal, why was Syria chosen over some other country?
4. What reason did we have to believe that Syria would abandon its long standing tradition of torturing prisoners?
5. How often in the last two years has DHS and/or the DOJ rendered aliens to third countries? What standards and procedures have you set for doing so?

Thank you for your time and attention to this request. Because of this human rights implications of such rendition activities, I am sure your offices will give this matter your immediate attention. If you have any questions, please contact Perry Apelbaum or Ted Kalo of the House Judiciary Committee staff at 202-225-6906.

Sincerely,

  
John Conyers, Jr.  
Ranking Member

cc: F. James Sensenbrenner, Chairman

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<sup>1</sup>International Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 3.

<sup>2</sup>Country Reports on Human Rights Practices, 2002, available at: <http://www.state.gov>.

~~SECRET//NOFORN~~

(U) Appendix D

(U) DHS OIG Letter to Congress Concerning the Interim Status of the Review

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Office of Inspector General

U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

July 14, 2004

The Honorable John Conyers, Jr.  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515-6216

Dear Congressman Conyers:

I am writing you to provide a status report on your request that we conduct a review into the circumstances under which the Immigration and Naturalization Service removed Maher Arar, a naturalized Canadian citizen, to Syria. You wrote me on December 16, 2003, requesting that my office conduct an investigation because of your concerns about the legal and human rights implications of Mr. Arar's removal to Syria and your desire "to ensure that such a rendition never happens again."

We have strived to be diligent in our review of this matter. Indeed, I would have preferred, and thought it reasonable to have expected, that you would have had a completed report by now. However, I write to inform you that our work has been delayed and may not be completed in a timely matter. Here is a brief history and explanation of our effort.

After receiving your request, I assigned the matter to our Office of Inspections, Evaluations, and Special Reviews. On January 8, 2004, the project officially started when I sent a formal initiation letter to the Immigration and Customs Enforcement office. By mid-January, we learned that there were restrictions on parts of the material we sought to review. We were informed that some of the information that we sought was classified. With respect to other information, we were informed by department attorneys that we could not have access on grounds of privilege related to the civil litigation that Mr. Arar has brought against the federal government.

By mid-May, we were able to review the classified documents that we had sought and that initially we had been told might not be made available to us. In the main, I am satisfied that there were sound reasons for the documents to have been classified, that they were not classified as a means of shielding them from scrutiny by an office such as mine, and that some consideration of our request prior to disclosure was appropriate, although the process was unduly protracted and frustrating.

(U) The Removal of a Canadian Citizen to Syria

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~~SECRET//NOFORN~~

(U) Appendix D

(U) DHS OIG Letter to Congress Concerning the Interim Status of the Review

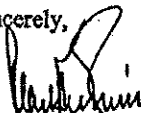
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During this same period, my office sought to interview present and former government employees relating to their role in the Arar matter. Concurrently, we have discussed with government attorneys the privilege issues that have been cited to block our access to additional documents that we believe exist and to impede our requests to interview potential witnesses. In regard to these efforts, we have had no success, although we continue to press our arguments. Government counsel continue to assert the privilege or to decline to seek a waiver, which we understand could be done, and as a result have stymied this aspect of our work.

I do not believe that the assertion of a legal privilege, such as the attorney-client privilege (when in the context of advice given by government counsel to a government official regarding government work) or the attorney work product or pre-decisional privileges can be asserted to block the clear statutory access to the agency's business conferred upon Inspectors General by section 6(a)(1) of the Inspector General Act. Further, I understand that there exists a strong legal proposition that providing information to an agency Inspector General does not constitute a waiver of privileges available to an agency in litigation with a third party.

Therefore, I believe my office should have been given these materials earlier, and that they are still owed to my office. I shall continue to seek access to them. In the meantime, I write with this explanation because of the unanticipated delay in responding to your request. I am pleased to meet with you or to answer any further questions you may have.

Sincerely,



Clark Kent Eryin  
Inspector General

(U) The Removal of a Canadian Citizen to Syria

(U) Appendix E  
(U) Joint Memorandum Regarding Treatment of Privileged Information in Arar v. Ashcroft

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U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

December 10, 2004

JOINT MEMORANDUM REGARDING  
TREATMENT OF PRIVILEGED INFORMATION IN  
ARAR V. ASHCROFT, et al.

Arar v. Ashcroft, et al., C.A. No. 04-CV-249-DGT-VVP, arises from the detention and expedited removal of Maher Arar, a Syrian-born Canadian citizen. This litigation is ongoing, and, according to the Office of General Counsel (OGC), will implicate a number of privileges against disclosure in the litigation, including information protected by attorney-client, attorney work product and deliberative process privileges.

The Office of the Inspector General (OIG) is simultaneously conducting an inquiry into the handling of Arar's application to enter the United States and his expedited removal. As part of this inquiry, the OIG is seeking various documents from Department components, primarily U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services, that OGC contends are covered by multiple privileges, including but not limited to, attorney-client, attorney work product and/or deliberative process privileges.

In order to preserve the privileges that have attached to these materials while also providing the OIG access to the information necessary for its investigation, OGC and the OIG have agreed as follows:

- 1) both DHS and OIG agree that the Department's sharing of the information with the OIG does not constitute a waiver of any privilege for any purpose;
- 2) the OIG will not disclose materials designated as privileged by OGC to parties outside the Department, except Congress, unless specifically authorized to do so in writing by the Department's General Counsel;
- 3) if the OIG discloses privileged information to Congress, it will do so in the form of a confidential report only, and will obtain assurances from Congress prior to such disclosure that the material will be treated as confidential and privileged;<sup>1</sup>

<sup>1</sup> See Rockwell Int'l Corp. v. United States, 235 F.3d 598 (D.C. Cir. 2001) (disclosure of information to a Congressional oversight committee, conditional upon the committee's promise not to disclose the information to the public, does not waive attorney-client and attorney work product privileges asserted to prevent disclosure under FOIA). See also Murphy v. Dept. of the Army, 613 F.2d 1151 (D.C. Cir. 1979) (disclosure of a legal memorandum to a member of Congress did not waive the deliberative process privilege, even absent an understanding that the document was not to be disclosed further).

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4) the OIG agrees that should any third party, other than Congress, seek the materials, the OIG will alert OGC so that OGC may assert the Department's legal position - that the disclosure of the materials by the Department to the OIG and by the OIG to Congress does not waive any privileges that have attached to the information sought. OIG will refer any requests for designated privileged information to OGC and will not release such information to such third parties without OGC's approval absent court order; and

5) OGC agrees that all Department employees and former federal employees with knowledge of the Arar matter that the OIG seeks to interview in connection with its inquiry will be informed, upon OIG request, that OGC does not view cooperating with the OIG as waiving any Department privileges and shall encourage all such individuals or entities to cooperate fully with the OIG.

  
Joe D. Whitley  
General Counsel

  
Richard Skinner  
Acting Inspector General

Dated: Dec. 10, 2004

Dated: Dec. 10, 2004

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(U) Appendix F  
(U) Major Contributors to Report

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Per OIG  
5 USC § 552 (b)(6),  
(b)(7)(C)

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Withheld in Full

5 U.S.C. § 552 (b)(1)

and

5 U.S.C. § 552 (b)(2)

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Washington, DC 20528,

The OIG seeks to protect the identity of each writer and caller.

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