April 24, 2008

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Richard L. Skinner
Office of the Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Dear Sirs:

We write to urge you to release, immediately and in its entirety, the Department of Homeland Security (DHS) Office of Inspector General (OIG) report OIG-08-18 entitled "The Removal of a Canadian Citizen to Syria." The one page unclassified summary of the report released last month is uninformative and clearly an inadequate representation of the investigation results. Moreover, it fails to address any of the concerns we expressed previously to the Department regarding the legality of the procedures by which the U.S. government removed Maher Arar to Syria and general U.S. government practices for handling similar cases.

Our organizations sent the attached joint letter in support of the OIG investigation of the Arar matter shortly after the inquiry began in 2004. We had expected that the investigation would shed light on how Mr. Arar came to be detained by U.S. authorities and removed to Syria, and on general U.S. practices with respect to the removal of alleged terrorist suspects to a country where they risk being subjected to torture.

It is an immense disappointment that — after more than four years of inquiry and field work — the OIG has failed to detail publicly any findings regarding the process by which the U.S. government approved and executed Mr. Arar's removal. The unclassified summary, the only product released by the OIG, is a brief recitation of basic facts generally known to the public before the investigation was initiated.

The one-page OIG summary report stands in stark contrast to the extensive September 2006 report resulting from the Canadian government's inquiry into the Arar matter. This report, produced by the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, consists of three volumes totaling over 1,600 pages of unclassified factual background, analysis and recommendations and has been made available to the public over the internet. The report concluded that there was no evidence that Mr. Arar committed any offense or constituted a security risk, that the information which led to his detention and deportation was inaccurate and misleading, and that he was in fact tortured and ill-treated in Syria. The Canadian government also publicly apologized to Mr. Arar and awarded him $8.9 million USD as compensation for its involvement in his ordeal.

The Canadian government provided erroneous information to the United States that contributed to Mr. Arar's wrongful removal, but U.S. officials made and executed the decision to remove him to Syria. In October 2007, Secretary of State Condoleezza Rice admitted that the U.S. government mishandled the Arar matter. But the U.S. government has yet to apologize to Mr. Arar and

refuses to publicly address the practices and procedures that led to his wrongful detention and removal.

The results of the DHS OIG investigation into the Arar matter are essential to assessing the adequacy of U.S. procedures for upholding its legal obligation not to return or transfer any persons to countries where there are substantial grounds for believing they would be at risk of torture. This obligation is absolute and arises under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention") and under the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). The Arar matter suggests that the procedures for enforcing this obligation are either not being followed, or that they are insufficient.

As we noted in our 2004 letter, we are particularly concerned with the U.S. government's purported reliance on "diplomatic assurances"—written or oral guarantees from the receiving state that a person would not be subject to torture or other prohibited treatment upon return— as a justification for sending someone back to a country that is known to regularly engage in torture. These promises are unreliable and unenforceable and circumvent the non-refoulement obligations of the sending country. The U.S. government reportedly relied upon such "assurances" from the Syrian government in the Arar matter, and continues to proclaim that assurances provide sufficient protection against torture, despite overwhelming evidence to the contrary. In fact, the Canadian Commission of Inquiry concluded that Mr. Arar's case is a clear example of the problems inherent in relying on diplomatic assurances against torture from a state that routinely practices such abuse.

Over the past six years, injustices such as the Arar incident have significantly undermined the United States' moral authority. If the United States is to restore its reputation as a world leader on human rights, it must confront such incidents publicly, acknowledge its past mistakes, provide effective remedies to victims of abuse, and take the necessary corrective measures to uphold the absolute ban on torture, including the prohibition against sending persons to countries where they risk being tortured.

For these reasons, we urge you to declassify OIG-08-18. At a minimum, we urge you to release a redacted version of the report that transparently evaluates whether U.S. practices concerning the removal of Mr. Arar and other terrorist suspects are consistent with U.S. obligations under the Torture Convention.

Sincerely,

Alexandra Arriaga
Director Government Relations
Amnesty International USA

Peter Rosenblum
Clinical Professor in Human Rights
Human Rights Clinic, Columbia Law School

Elisa Massimino
Washington Director
Human Rights First

Jennifer Daskal
Senior Counterterrorism Counsel
Human Rights Watch

Caroline Frederickson
Director Washington Legislative Office
American Civil Liberties Union

(Enclosure)

July 16, 2004

Clark Kent Ervin
U.S. Department of Homeland Security
Office of the Inspector General
Washington, DC 20528

Re: Maher Arar

Dear Mr. Ervin:

Thank you for the opportunity to meet with you on April 26 to discuss the inspection your office is conducting into the case of Maher Arar and the policies and procedures that led to his detention and removal to Syria. We believe this is a timely and important inquiry that can help shed light on an obscure area of current U.S. practice.

We were pleased to learn that your inspection will focus not only on the specific case of Mr. Arar, but more generally on cases involving the removal of alleged terrorist suspects to a country where they may risk being subjected to torture. This focus will enable you to examine how Mr. Arar's case fits into the handling of so-called "extra-ordinary renditions," a category that has no legal definition known to us. We hope you will clarify what the U.S. government means by this term and the official purpose of such renditions. Further, we hope your inspection will shed light on U.S. practice with respect to these transfers and what procedural safeguards, if any, apply. Although U.S. authorities have admitted that a number of renditions have occurred in past years, there is no public record of the vast majority and thus no way to evaluate if the procedures governing the renditions comply with U.S. legal obligations.

During our meeting, your staff suggested that your office would not interview Mr. Arar unless there were factual disagreements about what had occurred in his case. From the public record clear contradictions have already emerged, and we would strongly urge you meet with Mr. Arar at an early phase of the inspection. Meeting with Mr. Arar is essential to a thorough and accurate review of the way the government handled his case.

We would like to take this opportunity to underscore some of the issues that we discussed at our meeting and share with you information and materials that may prove useful to the inspection. In particular, we would like to draw your attention to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention") and the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"). The United States ratified the Torture Convention in 1994. Article 3 of the Convention prohibits the return or transfer of any person to a country where there are substantial grounds for believing he or she would be at risk of being subjected to torture. In 1998, Congress directed federal agencies to promulgate and enforce regulations in order to implement effectively this provision of the Torture Convention. In the FARRA, Congress stated that "it shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." This is referred to as the 'non-refoulement' obligation under Article 3 of the Torture Convention. Only the Departments of Justice and State issued regulations. See 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18 and 22 C.F.R. § 95.2. The Justice Department regulations became Department of Homeland Security regulations in 2003. See 8 C.F.R. §§ 208.16(c), 208.17, 208.18. A recent study by the Congressional

Research Service (Appendix A) provides a good guide to U.S. obligations under the law and the Convention.

From our research and experience, it appears that the safeguards for insuring compliance with legal prohibition on refoulement are vague, and the oversight minimal. Mr. Arar's case is one of the few that has emerged publicly, but the potential for similar problems is significant. (Information about specific cases tracked by Amnesty International is enclosed as Appendix B.) The threat is particularly great where, in cases like Arar, the non-citizen detainee is deemed a security threat or a terrorist suspect. In such cases, streamlined removal procedures allow substantial discretion on the part of administrative officials and the final decision leaves no publicly available record for review. The problem is further complicated by the variety of legal procedures and agencies involved. We urge you to review the full range of procedures for removal of non-citizens from the United States, including all forms of expedited removal, and to include other agencies as well.

We believe it is particularly important for you to inquire about the use of "diplomatic assurances" – that is, written guarantees from the receiving state that a person would not be subject to torture or other prohibited treatment upon return. This would necessarily require a review of practice in other agencies with respect to securing such guarantees. In the Arar matter, the U.S. government reportedly relied on "assurances" given by the government of Syria. A Washington Post article states that such assurances were obtained by the CIA. (Appendix C). Correspondence between the Human Rights Executive Directors Working Group and the Department of State suggest that the Department of Justice may have been involved as well. (Appendix D & E). This is a hazy area where law and practice appear to be out of sync. We are very concerned about the use of diplomatic assurances to circumvent the non-refoulement obligation of the Torture Convention and Congress's directive to implement that obligation under FARRA. The legal obligation not to send people back to torture is absolute. Just as the U.S. government cannot engage in torture directly, it cannot send people to other countries where they risk being tortured. The use of diplomatic assurances must be evaluated in terms of this clear obligation, and with an eye toward protecting those facing removal from the United States from a risk of torture. (See Human Rights Watch Report, "Empty Promises: Diplomatic Assurances No Safeguard Against Torture," Ex. F).

In sum, we hope you will have the opportunity to consider the following questions in the course of your inspection:

* What are the considerations, procedures and protocols for removing an individual suspected of terrorist activities? Do they vary with respect to extradition, removal, expedited removal, and so-called "extraordinary renditions?"

* How is the country of removal determined? What is the process for assessing the threat of torture in a country to which someone is to be deported? What procedural safeguards exist for the non-citizen facing removal?

* What is the definition of "extraordinary rendition"?

* Under what circumstances is custody transferred subject to "diplomatic assurances" (8 C.F.R. § 208.18(c)). Are there other forms of "assurances" that are deemed sufficient to overcome the prohibition on "non-refoulement?" Does the process require the evaluation of widespread or systematic use of torture or inhuman treatment or other human rights violations in the receiving country when determining whether diplomatic assurances from that country can properly be relied upon? What ability does the non-citizen facing removal have to challenge the reliability of diplomatic assurances in his or her case?

* What follow-up mechanisms are used to verify that diplomatic assurances are effective? How does this comport with U.S. obligations under the Torture Convention not to return any person to a country where he or she may risk torture?

* What process is in place to inform consulates when their citizens are being detained and to update consulates on detainees' status?

* At what point are detainees allowed to consult with an attorney, and what is the process by which an attorney is informed of developments in his / her client's case?

* What rights are afforded to detainees at each stage in the detention and deportation process? What procedural safeguards?

* What process is in place to keep the families of detainees informed as to the whereabouts and deportation of their loved one?

* What is the protocol for working with other U.S. government agencies with regard to requests for detentions and deportations, as well as monitoring treatment of deportees once they have arrived in the designated country?

* What is the protocol for sharing information attained by host counties interrogating the deportee? How does this comport with U.S. obligations under the FARRA and CAT?

* In what ways does the transition to DHS affect the above questions? What new regulations or policies should DHS adopt to ensure compliance with FARRA?

As we discussed at our meeting, a Canadian Commission of Inquiry has launched an investigation into the role of Canadian authorities in this is matter. Formal proceedings began on June 21. We encourage your office to consider full co-operation and the exchange of information with the Canadian Commission.

We have enclosed appendices, which provide background on U.S. obligations under the Torture Convention and the FARRA, diplomatic assurances, Mr. Arar's case and other cases tracked by Amnesty International. We would be pleased to provide additional information or to facilitate meetings with attorneys and family members who have gone through the detention and deportation of their clients and loved ones. We thank you again for the opportunity to meet and discuss the scope of your inspection and look forward to continuing this dialogue.

Sincerely,

Alexandra Arriaga
Director Government Relations
Amnesty International USA

Peter Rosenblum
Clinical Professor in Human Rights
Human Rights Clinic, Columbia Law School

Elisa Massimino
Director of the Washington, D.C. Office
Human Rights First

Wendy Patten
U.S. Advocacy Director
Human Rights Watch

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

(Enclosures)

cc: Richard Reback, Esq.
Robert Ashbaugh, Esq.

Appendix

A. Congressional Research Service, "The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens", CRS Report for Congress, The Library of Congress, March 11, 2004. Also available online at http://fpc.state.gov/documents/organization/31351.pdf.

B. Summary of Cases Tracked by Amnesty International USA.

C. Dana Priest, "Man Was Deported After Syrian Assurances," Washington Post, Nov. 20, 2003, A24. Also available on LEXIS.

D. Human Rights Executive Directors Working Group Letter to the Hon. Colin Powell, Secretary of State, November 17, 2003.

E. Department of State Letter to Stephan Rickard, Human Rights Executive Directors Working Group.

F. Human Rights Watch, "Empty Promises: Diplomatic Assurances No Safeguard Against Torture," April 2004, Vol. 16 No.4 (D). Also available online at http://www.hrw.org/reports/2004/un0404/diplomatic0404.pdf

G. Written Declaration on U.S. practices on diplomatic assurances by Samuel M. Witten, Deputy Legal Adviser for Law Enforcement and Intelligence in the Office of the Legal Adviser of the U.S. Department of State, Cornejo-Barreto v. Seifert, United States District Court for the Central District of California Southern Division, Case No. 01-cv-662-AHS, October 2001. Also available online at http://www.state.gov/documents/organization/16513.pdf.

H. Karen Musalo, Jennifer Moore & Richard Boswell, Refugee Law and Policy, pp. 324-331.

I. 150 Cong. Rec. S781-S785 (February 10, 2004)(statement of Senator Leahy). Also available online at http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=730347507+0+0+0&WAISaction=retrieve

J. Amnesty International Letter to John Ashcroft, November 14, 2003.