

Congress of the United States
Washington, DC 20515

May 24, 2007

President George Bush
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear President Bush:

We are writing to express our deep concern about the origin of certain claims made by yourself and members of your Administration before the March 2003 invasion of Iraq, specifically that Iraq had provided training in the use of chemical and biological weapons to al-Qaeda. It now appears that this claim rested entirely upon the interrogation by a foreign intelligence service, possibly under torture or threat of torture, of the detainee Ibn al-Shaykh al-Libi. This raises serious questions about the decision making process which concluded with custody of al-Libi being transferred by the United States to a foreign government, and about the U.S. Government's decision to subsequently utilize statements made under torture to inform national policy.

The false information provided by al-Libi, potentially under torture by a foreign intelligence service, was cited repeatedly by your Administration as a *casus belli* prior to the invasion of Iraq. In an October 7, 2002 speech in Cincinnati, you said, "We've learned that Iraq has trained al-Qaeda members in bomb making and poisons and deadly gases." In his February 5, 2003, presentation before the United Nations Security Council, then-Secretary of State Colin Powell referenced the interrogation of al-Libi, stating: "I can trace the story of a senior terrorist operative telling how Iraq provided training in these [chemical and biological] weapons to al-Qaeda. Fortunately, this operative is now detained, and he has told his story."

It now appears that the interrogation of al-Libi constituted a totality of the evidence suggesting that Iraq had provided training in the use of chemical and biological weapons to al-Qaeda. According to a September 2006 report by the Senate Select Committee on Intelligence, "the CIA relied heavily on the information obtained from the debriefing of detainee Ibn al-Shaykh al-Libi, a senior al-Qa'ida operational planner, to assess Iraq's potential CBW training of al-Qa'ida."¹ The same report stated that, "the other reports of possible al-Qa'ida CBW training from Iraq were never considered credible by the Intelligence Community. No other information has been uncovered in Iraq or from detainees that confirms this reporting."²

According to the September 2006 Senate Select Committee on Intelligence report, in January 2004 al-Libi recanted the information that he had provided under the foreign intelligence

¹ Senate Select Committee on Intelligence, "Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments," September 8, 2006, pg. 76.

² Senate Select Committee on Intelligence, "Postwar Findings," pg. 82.

service's interrogation, claiming to the CIA that he had lied so that he would not be tortured. The report states:

After his transfer to a foreign government [redacted], al-Libi claimed that during his initial debriefings "he lied to the [foreign government service] [redacted] about future operations to avoid torture." Al-Libi told the CIA that the foreign government service [redacted] explained to him that a "long list of methods could be used against him which were extreme" and that "he would confess because three thousand individuals had been in the chair before him and that each had confessed."³

When al-Libi first claimed to the foreign intelligence service that Iraq had provided chemical and biological weapons training to al-Qaeda, the U.S. Defense Intelligence Agency issued a report cautioning that al-Libi was most likely fabricating the information. That report stated that, "...he lacks specific details on the Iraqi's involvement, the CBRN materials associated with the assistance, and the location where the training occurred. It is possible he does not know any further details; it is more likely this individual is intentionally misleading the debriefers. Ibn al-Shaykh has been undergoing debriefs for several weeks and may be describing scenarios to the debriefers that he knows will retain their interest."⁴ Such behavior would be expected if a detainee were subject to torture. Your Administration never mentioned this important Defense Intelligence Agency dissent to al-Libi's claims under interrogation when speaking to the American people.

Unfortunately, our intelligence operatives could not conduct an independent verification to allay the concerns of the Defense Intelligence Agency because the United States had relinquished custody of al-Libi to a foreign government. A July 9, 2004 report by the Senate Select Committee on Intelligence concluded that, "Due to the lack of unilateral sources on Iraq's links to terrorist groups like al-Qaida [redacted], the Intelligence Community (IC) relied too heavily on foreign government service reporting and sources to whom it did not have direct access to determine the relationship between Iraq and [redacted] terrorist groups."⁵

We are deeply concerned that an important facet of your Administration's case that Saddam Hussein posed an imminent threat to the United States, which has been demonstrated as false, rested upon information extracted through torture by a foreign intelligence service. As a rule, custody of high-value detainees should not be transferred to foreign governments, as to do so will result in the loss of United States control over the detainee and his interrogation, and a concomitant loss of confidence in any intelligence obtained through the interrogation. Furthermore, under U.S. and international law, it is forbidden to transfer anyone to "a country where there are substantial grounds for believing the person would be in danger of being subjected to torture."

³ Senate Select Committee on Intelligence, "Postwar Findings," pgs. 80-81, quoting CIA operational cable, February 5, 2004.

⁴ Defense Intelligence Agency, Defense Intelligence Terrorism Summary, February 22, 2002.

⁵ Senate Select Committee on Intelligence, "Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq," July 9, 2004, pg. 34.

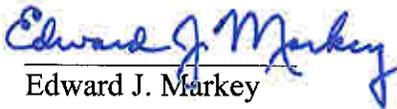
We request that you provide us with answers to the following questions:

1. Please describe in detail the decision making process which concluded with al-Libi being transferred to a foreign government. Who made the decision to transfer custody of al-Libi to a foreign government? On what basis was this decision made? Was there consideration of the consequences of interrupting the ongoing and successful interrogation of al-Libi by agents of the Federal Bureau of Investigation? Did the Federal Bureau of Investigation express a view on transferring custody of al-Libi? Please provide any information, including physical and electronic documents, relating to this decision making process.
2. Does the United States have a uniform policy regarding the transfer of an individual into the custody of a state that appears on the list of states that engage in torture in the Country Reports on Human Rights Practices submitted to the Congress by the Department of State pursuant to sections 116(d) and 502(b) of the Foreign Assistance Act of 1961, as amended, and section 504 of the Trade Act of 1974, as amended? If so, what is that policy, and how was it applied in the case of al-Libi?
3. Was there thought given to the possibility that under the custody of a foreign government al-Libi might be tortured, especially if the foreign government which received custody of al-Libi had been cited by the Department of State's annual Country Reports on Human Rights Practices for torture or abuse of prisoners and detainees? If so, did the United States seek, and did the United States receive, assurances that al-Libi would be treated humanely and in accordance with international law? Were such assurances verbal or written? What steps were taken to ensure that any such assurances were met, and to ensure strict compliance with our obligations under domestic and international law with respect to the transfer of persons?
4. Central Intelligence Agency operational cables from February 2004, as quoted by the Senate Select Committee on Intelligence, contain many references to allegations by al-Libi that he was tortured by the foreign intelligence service. When did the United States first become aware that al-Libi alleged he had been tortured by the foreign intelligence service? What actions did your Administration take once it knew of these allegations? What actions were taken to assess the validity of al-Libi's claims of torture? Were his claims judged to be accurate?
5. After transferring custody of al-Libi to a foreign government, were United States personnel involved in the interrogation of al-Libi, or was his interrogation performed purely by a foreign intelligence service? If United States personnel were involved in al-Libi's interrogation after his transfer to a foreign government, please describe their role in his interrogation.
6. Please describe in detail the judgments your Administration made as to the veracity of the information obtained from al-Libi under interrogation by the foreign intelligence service. What steps were taken to confirm this information? Did anyone in your Administration have concerns about the veracity of information obtained under torture or threat of torture? Did anyone assess the concerns raised by the Defense Intelligence Agency about the veracity of the information? To whom, and in what form, were these concerns raised? Who was aware of these concerns? What action, if any, was taken in response to these concerns?

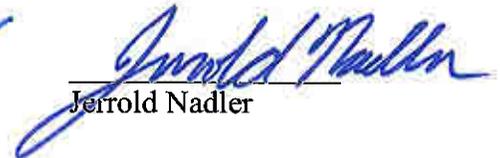
7. According to the September 2006 Senate Select Committee on Intelligence report, al-Libi spoke directly to CIA debriefers in January 2004, in contrast to earlier debriefs which were apparently conducted by foreign intelligence service personnel. This suggests that by January 2004, al-Libi had been returned to United States custody or that he remained in foreign government custody but United States personnel had gained access to him. Which is true? Where is al-Libi today? Please provide a detailed account of al-Libi's whereabouts since he was first detained by Pakistani authorities in December 2001, including every instance in which custody of al-Libi was transferred between governments. This account should include every instance in which custody of al-Libi shifted between different United States Government agencies, and every location in which al-Libi was held while in United States custody, including CIA prisons.

We appreciate your prompt response to this request.

Sincerely,


Edward J. Markey


William D. Delahunt


Jerrold Nadler

CC:

Secretary of State Condoleezza Rice

Secretary of Defense Robert Gates

Director of National Intelligence Mike McConnell

Director, Central Intelligence Agency Gen. Michael V. Hayden

Director, Federal Bureau of Investigations Robert S. Mueller, III