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*A private university in the public service*

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February 17, 2005

Representative Edward J. Markey  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Markey:

I write on behalf of the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law. In October 2004, CHRGJ issued a report entitled *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions,"* which presented an in-depth analysis of rendition under international and domestic law. The report, which was issued jointly with the Association of the Bar of the City of New York, concluded that extraordinary renditions are clearly contrary to both U.S. and international law. A full copy of the report is available online at <http://www.nyuhr.org/torturepanel.html>.

The Center for Human Rights and Global Justice strongly supports your proposed legislation, introduced on February 17, 2005, to end the extra-judicial transfer or return of persons by the United States to countries where torture or other inhuman treatment of persons occurs. As you are aware, your bill comes at a critical time. Recent reports indicate that the practice of extraordinary rendition is being employed by various agents of the U.S. intelligence community and appears to be on the rise. Your proposed legislation would change current practices by unequivocally requiring that transfers of individuals to other countries occur with full due process guarantees and in conformity with United States' international obligations.

The proposed legislation would reinforce prohibitions on extraordinary rendition that are already binding on the United States under international law. Legal standards barring the return or transfer of individuals to countries where they are likely to be tortured are central to a number of treaties to which the United States is a party. These include, most prominently, the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights, which have both been ratified by the United States. By enacting the Foreign Affairs Reform and Restructuring Act

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of 1998 (8 U.S.C. 1231 note) (“FARRA”), the United States reaffirmed its policy not to 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.

Your proposed bill would clarify that extraordinary renditions are unequivocally prohibited – no matter where they take place, and no matter whether they are conducted by a government agency or by a contractor of such an agency. Importantly, the bill would also foreclose the ability of U.S. officials to circumvent the prohibitions against extraordinary rendition by obtaining an “assurance” from a government that it will not torture or ill-treat a specific person who is being transferred to its custody.

Publicly available evidence indicates that assurances obtained from governments of states where torture is known to occur systematically are patently unreliable. Your bill thus rightfully stipulates that a transfer to countries where there are substantial grounds for believing that torture or cruel, inhuman, or degrading treatment is commonly used *cannot* occur unless the Secretary of State makes certain findings. To allow such transfers, the Secretary of State must certify to specified Congressional committees that the receiving government has *ended* all acts of torture or cruel, inhuman, or degrading treatment, and that there is a verifiable mechanism that assures the United States that a person transferred to the requesting government will not be tortured or subjected to cruel, inhuman, or degrading treatment.

Moreover, we are encouraged by your bill’s proposed amendments to Section 2242 of FARRA. In our report on extraordinary rendition, we outlined gaps in the implementation of FARRA that undermine the realization of the United States’ legal obligations under international law and under FARRA to prevent the occurrence of extraordinary renditions. Your proposed amendments to FARRA aim to close such gaps.

We thank you for your work to end the practice of extraordinary rendition, and hope that this important bill will be approved as soon as possible.

Yours sincerely,

/s/ Smita Narula  
Executive Director