United States Department of State

Washington, D.C. 20520

MAY 20 2005

Dear Mr. Markey:

Thank you for your letter of April 19 on the issue of assurances obtained from foreign countries that they would refrain from torturing people returned to them from the United States. Your letter highlights a complex and sensitive issue about when assurances should be employed.

While your letter contains assertions with which we disagree, we do agree with you on the importance of ensuring that the United States does not return persons to countries where the United States believes it is more likely than not that they will be tortured. This policy has been repeatedly articulated at the highest levels of the United States Government. Additionally, the President has stated unequivocally that torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere. (President's Statement on the United Nations International Day in Support of Victims of Torture, June 26, 2004).

Depending on the circumstances of a particular case, the Department of State ("Department"), together with other agencies, may play a role in implementing the standard of whether it is more likely than not that an individual would face torture upon return to another country. For example, regulations in the immigration removal (8 C.F.R. § 208.18 (c)) and extradition (22 C.F.R. Part 95) contexts describe the role the Department may play in such cases. In these cases, the United States reserves the use of assurances for a very small number of cases where it can reasonably rely on such assurances that the individuals would not be tortured. In the context of decisions relating to the transfer or repatriation of individuals detained by the U.S. Armed Forces at the U.S. Naval Base in Guantanamo Bay, Cuba, the Department also works closely with the Department of Defense and relevant agencies to advise on the likelihood of torture or other treatment concerns in a given country and the adequacy and credibility of assurances obtained from a particular foreign government prior to any transfer. The

The Honorable
Edward J. Markey,
House of Representatives.

Department's role in each of these different contexts is described in greater detail in the *Second Periodic Report of the United States of America to the Committee Against Torture* available at www.state.gov/g/drl/hr.

In each of these contexts, as appropriate, the United States obtains assurances in order to be satisfied that it is not more likely than not that the individual in question will be tortured upon return. If, taking into account all relevant information, including any assurances received, the United States believes that a person more likely than not will be tortured if returned to a foreign country, the United States would not approve the return of the person to that country.

We agree that assurances are not a means to circumvent our obligations relating to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). Indeed, assurances are not appropriate in every case, and assurances standing alone may not provide a clear answer to the careful, case-by-case determination of whether it is more likely than not that the individual will be tortured upon return to another country. In appropriate cases, however, reliable and credible assurances may enable the United States to remove, extradite, or otherwise return persons to another country consistent with U.S. obligations and policy relating to the CAT.

With respect to the Arar case, as it is a subject of litigation, we request that you direct your questions to the Department of Justice and the Department of Homeland Security.

We hope this information is helpful to you. Please do not hesitate to contact us further on this or any matter of concern to you.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary
Legislative Affairs