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April 28, 2008

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

Dear Mr. Skinner:

I am one of the attorneys representing Maher Arar in a case against United States officials for interfering with his access to counsel and the courts and for removing him to Syria to be tortured and arbitrarily detained (*Arar v. Ashcroft, et al.*, No. 06-4216-cv), which is currently pending before the Second Circuit Court of Appeals. I write with regard to the Office of Inspector General's (OIG) March 2008 release of the Unclassified Summary of Report OIG-08-18, "The Removal of a Canadian Citizen to Syria." More than four years since the OIG inspection began, the release of the one-page Unclassified Summary is wholly inadequate, especially as compared to the public inquiry conducted by the Canadian Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, which resulted in two lengthy public reports.

We reiterate the April 24, 2008 request by other human rights organizations urging you to immediately release OIG-08-18 in its entirety. The Unclassified Summary fails to provide any information regarding the three issues the OIG examined, namely the process applied by Immigration and Naturalization Service (INS) in determining Mr. Arar was inadmissible to the United States, the process to designate Syria as Mr. Arar's country of removal, and how the INS assessed Mr. Arar's eligibility for protection under the United Nations Convention Against Torture. Mr. Arar, as well as the American people, is entitled to know the findings regarding the processes that were applied in deeming him inadmissible and removing him to Syria. Release of the full Report is crucial not only to expose the injustice done to Mr. Arar, but to prevent others from being delivered to torture by our Government.

We also seek clarification regarding the delay of the Report's release. More than two years ago I was informed by the OIG that the Report was essentially finished, and that the release of information would depend on whatever U.S. Department originated the data at issue. It has been reported that the delay in finalizing and circulating the Report has been due to efforts by very senior Department of Justice (DOJ) officials to suppress it, under the pretext that it would harm defending against Mr. Arar's case, but more pointedly because it would expose "serious misconduct". See Scott Horton, *The Missing IG Report on Maher Arar*, November 16, 2007, [Harper's Magazine on-line](http://www.harper.org/archive/2007/11/hbc-90001676), available at <http://www.harper.org/archive/2007/11/hbc-90001676> (last checked April 25, 2008) (enclosed herewith). It was also reported that OIG investigators found that very senior officials, mostly in DOJ, were responsible for the failure to follow regular procedures and



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for steps that “were taken to circumvent Arar’s rights, and particularly to guard against the prospect that a lawyer for Arar would challenge his highly dubious treatment through a *habeas corpus* proceeding.” *Id.*

The continued delay in releasing Report OIG-08-18 calls into serious question the independence of the DHS OIG. Please identify the reasons for such delay, as well as the legal privileges that are being invoked to conceal the “documents and discussion that outline the process INS used to make” the determination that Mr. Arar’s removal to Syria would be consistent with the Convention Against Torture, as noted in the Unclassified Summary. The function of an IG is to ensure integrity and efficiency in government. The failure to release Report OIG-08-18 ensures just the opposite.

Please do not hesitate to contact me at 212-614-6464 to discuss.

Sincerely,



Maria C. LaHood
Counsel for Maher Arar

Encl.

cc:

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TITLE

The Missing IG Report on Maher Arar

DEPARTMENT [No Comment](#)

BY [Scott Horton](#)

PUBLISHED [November 16, 2007](#)

Of all the Bush Administration's many perversions of the justice system, there is something particularly distressing about the case of Maher Arar. A Canadian software engineer, he was changing planes in JFK on his way home to Canada after a Mediterranean vacation when American law enforcement snatched him up. Arar had been fingered as a terrorism suspect by Canadian authorities. Within a brief period of time, he was interrogated, locked-up and then bundled off to Jordan with directions for transshipment to Syria, a nation known to use torture. Indeed, it was plain from the outset that he was shipped to Syria for purposes of being tortured, with a list of questions to be put to him passed along. Never mind that Syria is constantly reviled as a brutal dictatorship by some Bush Administration figures who openly dream of bombing or invading it... the Syrians, it seems,

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have a redeeming feature—their willingness to torture the occasional Canadian engineer as a gesture of friendship to the Americans.

In time, the Canadians launched a comprehensive inquiry into the matter, concluded that they were mistaken about Arar. He was cleared, the findings of the commission of inquiry were published, and Arar was given a roughly \$10 million award in compensation for the role Canada played in his mistreatment.

Canada, in sum, behaved the way a democratic state is supposed to behave.

But what about the United States? Of course, the governing axiom of the Bush Administration is that it makes no mistakes. So, while intelligence community officials confirm, off the record, that the whole episode involving Arar was a gross mistake involving errors in judgment at every stage and a part-infantile rage, part-Savanarola zeal in the oversight, the official posture continues to be that Arar is a terrorist, so what happened was justified. Arar remains on the no-fly list and is denied entry to the United States.

Congress has had an interest in the Arar case since late 2003. As one Judiciary Committee member told me, “It’s rare that you come across a case in which even the spokesmen for the Administration signal to you that they know the official answers they’re conveying aren’t quite true. This is such a case, and that makes it even more worrisome.” Congress pressed for an internal investigation, and the lot fell to the newly created Inspector General for Homeland Security.

That was four years ago. In the meantime,

Congressional sources note that issues rose and were worked out. The issues were predictable. There were questions of IG access to classified information. And there was the fact that the critical junctures in the case involved attorneys dispensing legal advice, usually to other attorneys. All of that was arguably subjected to attorney-client privilege.

Nevertheless, I have learned, these problems were overcome, the IG got access to the classified data it needed. And it was able to delve into the attorney-client materials and incorporate analysis of it into its draft report, to be shared with Congressional oversight committees under a special agreement limiting its use.

IG investigators were astonished particularly by what transpired in the first ten days of Arar's detention. Well-defined procedures were not followed. The State Department was consciously kept out of the loop. Steps were taken to circumvent Arar's rights, and particularly to guard against the prospect that a lawyer for Arar would challenge his highly dubious treatment through a *habeas corpus* proceeding. Who was at fault in this process? A group of very senior figures, mostly in the U.S. Department of Justice.

Justice Department figures, and particularly those who are fingered and criticized in the early drafts of the IG Report, have been frantic in their efforts to quash it. And they're succeeding. That, I am told, is why the IG Report has not been finalized and transmitted to Congress.

One pretext has been used to block the Report. It is the fact that civil litigation brought by Maher Arar is now pending in the U.S. Courts. Justice Department lawyers involved in managing the

defense of this suit have expressed strong concern that the IG Report would, if delivered to Congress, deliver a potential death blow to their efforts. They also caution that it might result in the leakage of attorney-client privileged information which would greatly harm the litigating position of the United States.

Persons close to the investigation point to another concern. The position adopted by the Justice Department in this litigation, they say, rests on a painfully constructed house of cards which won't stand once the IG Report is issued, exposing some of the serious misconduct which occurred in the Arar case.

In fact, the Arar case is now before the Court of Appeals, which heard oral argument only a few days ago. The conduct of the oral argument suggests the accuracy of information I have received. Attorneys for the government played extremely fast and loose with the facts using the latitude they gain through withholding the IG Report. They present arguments about *what the Justice Department believed at the time of Arar's initial detention*. And according to my sources, the IG Report will provide very substantial grounds to question the candor and accuracy of these claims. Here's an exchange, [reported in the *Globe and Mail*](#) that demonstrates the points in play:

Judge Robert D. Sack interrupted Mr. Barghaan during his characterization of Mr. Arar, asking if he was suggesting a current assessment. The lawyer replied that he was not at liberty to discuss the government's view. "So we will make believe he's a member of al-Qaeda?" asked Judge Sack, as the audience chuckled.

At another point, the same judge asked why officials sent Mr. Arar, a Canadian citizen, back to a country he had long since left, as he passed through U.S. airspace on the way to Canada. "He was going to Canada!" Judge Sack said. "The question is not whether he was going to be conspiring with al-Qaeda on the bus between the Air Canada terminal and the airport building."

Mr. Barghaan quickly backpedaled, saying he was only trying to outline the government's beliefs when Mr. Arar was seized while changing planes.

The Justice Department continues to dance in the shadows because it can only prevail in this case under cover of darkness. But the interests of justice demand that the facts come out, and that those who misbehaved be held to account. And in the end, justice for Mr. Arar is not an irrelevant consideration either.

Senators Leahy and Specter wrote asking about this report in February. They got a run around in response. Nine more months have passed, and it is painfully obvious that the Arar report is being suppressed at the behest of the Justice Department for reasons that have nothing to do with justice and a lot to do with politics. It's time for Congress to press aggressively to free-up the Inspector General's report and generally to get to the bottom of this matter which constitutes an on-going embarrassment to the United States and to our relationship with our neighbor to the north.

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