

THE ASSOCIATION OF THE BAR  
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COMMITTEE ON IMMIGRATION AND NATIONALITY LAW

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October 11, 2001

Senator Hillary Clinton  
476 Russell Building  
Washington, D.C. 20510

Dear Senator Clinton:

I write on behalf of The Association of the Bar of the City of New York ("Association") as Chair of the Committee on Immigration and Nationality Law. The Association is an independent, professional organization with membership comprised of more than 21,000 judges, lawyers and law students. Founded in 1870, the Association has a long-standing commitment to advancing fair and humane immigration laws and policies as well as improving the administration of justice in the U.S. and abroad.

The Association is deeply concerned that the counter-terrorist bill introduced in the Senate could pass without consideration in committee. The bill, called "Uniting and Strengthening America Act of 2001" (S. 1510), would permit indefinite detention of non-US citizens without a clear provision for judicial review. The new Senate bill, like its House counterpart (H.R. 2975), would make it legal to detain non-US citizens without charge for up to seven days – a longer period that US law has ever permitted. The Association is deeply concerned that this bill contains provisions that could lead to the extended detention of innocent people: a severe and unnecessary infringement of the right to liberty.

**Indefinite Detention**

Section 412 of the Senate bill would allow for indefinite detention without charge in the following two cases. First, if a lawful permanent

resident is 'certified' as a suspected terrorist, detained, and charged with being deportable but granted relief from removal, the lawful permanent resident could still be detained indefinitely. This bill states explicitly that such a person must be imprisoned "irrespective of any relief from" deportation, even if such relief is duly granted by a US immigration judge.

Second, non-US citizens could be held indefinitely under this bill if they are ordered deported but their country of origin will not take them back. This could be the case even if the United States' reason for deporting the person has nothing to do with suspicion of terrorism.

### **Judicial Review of Detention Greatly Limited**

Both the Senate and House bills would also severely limit detainees' access to the courts. Only the US District Court for the District of Columbia could review the grounds for detention, regardless of where the detainee was being held. In many cases, this would be a major obstacle for detainees seeking judicial review, especially since the bills do not entitle them to court-appointed counsel.

Even if a detainee managed to find counsel to challenge his or her detention in the US District Court for the District of Columbia, it is not clear that the court would be able to conduct meaningful review, since the Senate bill simply empowers the Attorney General to detain non-US citizens if he has "reasonable grounds to believe" they are involved in terrorist activity. The bill does not explain what evidence, if any, would be available to the court for review, or what would constitute "reasonable grounds."

### **House and Senate Bills Compared**

In some respects, the Senate bill grants even more sweeping detention powers to the executive branch than the counter-terrorism bill (the PATRIOT Act of 2001) that passed the House Judiciary Committee last week. For example, the Senate bill would permit the Attorney General to delegate the power to certify someone as a suspected terrorist to the Commissioner of the Immigration and Naturalization Service, a power that leads to mandatory, immediate detention. The House bill reserves the power to certify to the Attorney General and the Deputy Attorney General. Given the grave consequences of such certification, the Association believes that the new power should be restricted to higher-ranking officials, in order to promote accountability.

We urge you to take action on the following:

S. 1510 should explicitly rule out the possibility of indefinite detention of non-citizens who cannot be deported. The House version of the bill permits the Attorney General to extend detention for additional periods of six months after an order of deportation upon showing that a detainee's release "will not protect the national security of the United States or adequately ensure the safety of the community or any person." Although this standard is unreasonably overinclusive, the Senate bill fails even to include this safeguard. Prolonged detention of non-US citizens under these provisions shall be permitted only if the Attorney General shows that a detainee's release would "threaten the security of the United States or the safety of the community."

S. 1510 must allow detainees access to federal courts nationwide. Both the House and the Senate bills limit meaningful access to the federal courts to challenge the Attorney General's certification of non-US citizens as suspected terrorists, and detention orders. Those detained have very limited recourse to challenge their detention and may appeal their case only to the US District Court in Washington, D.C. While the Senate bill permits judicial review of the certification of an individual as a suspected terrorist, the review does not mean much if the individual cannot gain access to the court. Indigent detainees who are being held in other parts of the country, in effect, will be denied access to the courts.

Finally, the new legislation also creates new dangers that law abiding legal residents will be placed into detention and removal proceedings simply as a result of a trip abroad. By increasing data sharing with the FBI, the legislation increases the likelihood that an INS inspector will be required to place legal residents in removal proceedings because the inspector will be unable to "admit" a returning legal resident with an old conviction. The expanded inadmissibility grounds also mean that some legal residents will become subject to removal simply because they have gone on a vacation or visited family abroad. In light of the expanded group of people who will face inadmissibility, and the unfairness to law abiding legal permanent residents, we urge the Congress to revise the 1996 amendments to the inadmissibility grounds, which make returning legal permanent residents subject to inadmissibility if they have ever been convicted of an offense that is a ground of inadmissibility. It makes far more sense to evaluate the rights of these legal residents through established deportability grounds.

Thank you for your commitment to upholding democratic values.

Sincerely,

ASSOCIATION OF THE BAR OF THE  
CITY OF NEW YORK

By: 

Cyrus D. Mehta

Chair,

Committee on Immigration and  
Nationality Law



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- October 10, 2001

Jerrold Nadler  
2334, Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Nadler:

I write on behalf of The Association of the Bar of the City of New York ("Association") as Chair of the Committee on Immigration and Nationality Law. The Association is an independent, professional organization with membership comprised of more than 21,000 judges, lawyers and law students. Founded in 1870, the Association has a long-standing commitment to advancing fair and humane immigration laws and policies as well as improving the administration of justice in the U.S. and abroad.

We welcome the progress you have made on HR 2975, the bill to protect our nation from attacks like those of September 11<sup>th</sup>. We are glad to see that one particular provision - the section that would have allowed the US government to disclose confidential information about asylum-seekers to their repressive home governments - has been eliminated from the bill. We also welcome the inclusion of a section that would preserve immigration benefits for the families of victims of the terrorist attack and others impacted by the attack.

However, we continue to be especially concerned about two provisions in the current House version of the bill and urge you take action on two issues.

First, the bill should explicitly rule out the possibility of indefinite detention of non-citizens who are not deportable. As currently drafted the bill would permit the Attorney General to extend the detention of non-citizens for an extra six months after they have been charged with a

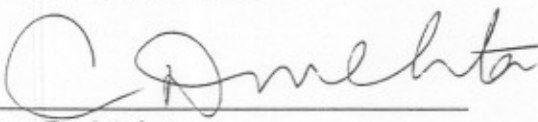
the community or any person." This standard is over inclusive. Instead the bill should require the Attorney General to demonstrate that the detainee's release would "threaten the security of the United States or the safety of the community."

Second, the current version of the bill limits meaningful access to the federal courts to challenge the Attorney General's action. The current language provides that those detained may initiate their case only to the US District court in Washington D.C. Indigent detainees who are being held in other parts of the country, in effect, will be denied access to the courts. The bill should be amended to allow detainees access to federal courts nationwide.

Thank you for your commitment to upholding democratic values.

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