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The Honorable Orrin Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The American Bar Association has a long-standing and strong interest in issues raised by immigration detention and the related matters to be examined in the hearing before the Committee today. We welcome the report released by the Department of Justice Inspector General on the treatment of September 11 detainees and urge that the issues raised and recommendations made in the report be carefully considered by Congress and the Administration.

The report echoes a major concern raised by the ABA last year -- that in the wake of September 11, immigration laws were stretched, if not violated, to detain without bond and for prolonged periods of time hundreds of individuals who had nothing whatsoever to do with terrorism. As troubling as the report's findings are, they are but one piece of a larger pattern of erosion of traditional due process rights of immigrants. In the past 21 months, those rights have been subject to sweeping changes that have chipped away at some of our most cherished principles: the right to a full, fair and open hearing, the right to have charges filed in a timely manner, the right to legal representation and to confidential conversations with counsel.

The requirements of due process have long been applied by our courts to individuals in immigration proceedings. In recent years the Supreme Court has reaffirmed that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678 (2001). For both citizens and noncitizens, freedom from physical detention lies at the core of the liberty interest protected by the Due Process Clause." Foucha v. Louisiana, 504 U.S. 71 (1992). Detention practices need to be carefully calibrated to ensure that they respect fundamental principles, a practice that the report indicates was not followed in the case of these detainees.

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The ABA is deeply committed to ensuring that foreign nationals in the U.S. receive fair treatment under the nation's immigration laws in accordance with the Constitution. To that end, last year the ABA recommended that the Department of Justice and the Department of Homeland Security take certain steps to ensure that the constitutional and statutory rights of immigration detainees are upheld. These steps include:

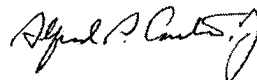
1. Disclosing the names, detention facilities and charges against detainees;
2. Ensuring detainees immediate access to attorneys and family members;
3. Promptly charging detainees and releasing detainees when charges are not brought or removal orders are not effectuated within a constitutionally permissible time period;
4. Providing prompt custody hearings before immigration judges with meaningful judicial review and administrative oversight;
5. Holding public removal hearings except when required to protect the individual's safety or welfare or when a judge finds closure necessary to protect national security; and
6. Publishing standards relating to access to counsel and legal information, and permitting independent organizations to monitor compliance.

We encourage the Departments of Justice and Homeland Security to implement these practices and uphold standards that will prevent similar problems in the future.

The ABA joins the rest of the nation in condemning acts of terrorism. We also recognize that our nation faces many challenges in preventing future acts of violence. At the same time, we believe that the U.S. government can and should meet these challenges without depriving any segment of the population of their basic civil liberties. Our long held principles of fundamental fairness and equal protection under the law require no less.

The ABA appreciates the Committee's consideration of these important issues and this opportunity to express our views.

Sincerely,



Alfred P. Carlton, Jr.