

Testimony of

# **The Honorable Asa Hutchinson**

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STATEMENT OF THE HONORABLE ASA HUTCHINSON  
UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY

BEFORE THE SENATE JUDICIARY COMMITTEE  
JULY 23, 2003

Mr.Chairman, Senator Leahy, and distinguished members of the Committee, thank you for inviting me to testify before you today. It is also a privilege to appear along with my friend and colleague, Bob Mueller.

I welcome the opportunity to appear before you at this important hearing on the Department of Justice Inspector General Report, The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks." I want to assure the Committee that the Department of Homeland Security is appreciative of the report and takes the findings and recommendations very seriously. In addition to our internal discussions, I have met with a coalition of civil rights and civil liberties advocacy groups to get their thoughts on the report and on how DHS should implement it. I want to also assure the Committee that we will be working closely with FBI Director Muller and the entire Department of Justice to coordinate our work on this matter.

Before I go into more specifics about the Inspector General's report, I would like to lay the foundation for my subsequent discussion by providing you with the perspective of the Department of Homeland Security on the topic for today's hearing. This Committee has for many years provided oversight to the Department of Justice with regard to civil rights and civil liberties issues. The Department of Homeland Security does not have a long history with this Committee, and therefore I would like to outline our general perspective on the protections of civil rights and civil liberties. Then I will specifically address the Inspector General's report.

When mass terrorism struck our nation on September 11, 2001, our country's priorities changed. We all became determined to bring the terrorists to justice and work harder than ever to protect our country from future attacks. Nearly two years after the terrorist attacks, the Department of Homeland Security is coordinating a comprehensive national strategy to strengthen the security of our country. We are working to strengthen security at airports; to realign our intelligence-gathering functions; to improve the enforcement of our nation's immigration laws; to better protect our critical infrastructure; and a host of other important security measures.

From the very beginning of the homeland security effort, President Bush has emphasized the need to protect and cherish our civil rights and civil liberties. In November 2001, just weeks after

the terrorist attacks, President Bush reminded a conference of federal prosecutors that, "[W]e have a huge responsibility, and that's to defend America while protecting our great liberties." In a Presidential proclamation on December 9, 2001, President Bush wrote, "Americans stand united with those who love democracy, justice and individual liberty. We are committed to upholding these principles, embodied in our Constitution's Bill of Rights, that have safeguarded us throughout our history and continue to provide the foundation of our strength and prosperity."

Our core mission at the Department of Homeland Security is not just to protect America's assets - our buildings and airports and power plants - but to protect America and our way of life. We must protect those things that make us a "shining city on a hill," like freedom of speech, freedom of worship, the right to dissent, and our personal privacy. Secretary Ridge has pledged that "our strategy and our actions [will be] consistent with the individual rights and civil liberties protected by the Constitution."

The measures we put in place as part of our strategy to improve security must be effective. But, we will also keep clearly in our minds that we must implement those measures in ways that respect and enhance our civil rights and civil liberties. Through open communication with the American people, and in particular with communities that have been most directly affected by the post-September 11 detentions, we will strive to protect America by taking the steps that will be effective in diminishing the security threats we face without sacrificing core American principles.

With regard to the Inspector General's report, a starting point is obvious: the Department of Homeland Security took responsibility for 21 agencies in March of this year; we did not exist in September 2001. Nevertheless, the Department of Justice Inspector General's report is relevant to our work. As you know, the Department of Homeland Security assumed many of the immigration functions that were, during that critical time period, part of the Justice Department. As Under Secretary for Border and Transportation Security, I have responsibility for the operations of several agencies, including two that are most applicable to the subject at hand today - the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement (BICE). Within BICE, the focus is on criminal investigations and enforcement of the nation's immigration and customs laws. The Bureau of Customs and Border Protection focuses on securing our borders and facilitating the movement of legitimate trade and travelers. These two organizations now perform many of the functions that were once the responsibility of the Immigration and Naturalization Service (INS). It is our intention that this reorganization will help streamline communications between the agencies and the senior leadership, which will help address one of the Inspector General's main recommendations.

The IG Report examines the immediate actions of the FBI and INS and the arrest and detention of 762 individuals. Noting the tremendous challenges the agencies faced as they responded to the September 11 attacks during this chaotic period, the Inspector General urges us to learn from the experience and take specific steps that will prepare us for another national emergency. At the Department of Homeland Security, we are prepared to do this.

Let me give you some specific comments on the recommendations made in the Inspector

General's report.

The IG recommends that new steps be taken to ensure that if another emergency such as September 11 happens again, a clear and effective process be in place to guide DHS and DOJ through the crisis. We completely concur with this recommendation. We agree, for example, that there should be clear post-arrest communication between the FBI and DHS regarding: an immigrant's likely association with terror; regarding whether an alien detainee be labeled as a person "of interest" to an investigation; and, regarding when an alien can be removed from the list of those that are "of interest." We will establish with the Justice Department an effective crisis management process.

I want to assure this Committee and the country that should we ever find ourselves in another national emergency involving terrorism, we will have mechanisms in place to work cooperatively with the FBI and to ensure that individuals detained pursuant to our laws are treated fairly. Although we will work cooperatively, it is imperative that the Department of Homeland Security independently review the underlying facts and make assessments to both the necessity for detention and the appropriate detention facility in every case. This will also ensure that DHS can make the proper recommendations to the Court on bond, detention and removal. This independent assessment is essential because DHS lawyers are officers of the court and must have confidence in the representations made to the court.

The IG asserts in its report that many detainees were held for a lengthy period of time without having charges filed against them. We agree that we need to put in place comprehensive instructions to clarify and streamline the process for serving charges - what are called "notices to appear" in the immigration context - on alien detainees.

The IG concluded that the conditions some alien detainees faced were unsatisfactory. The IG therefore recommended that DHS amend its detention standards to mandate that detention and removal personnel regularly visit alien detainees held at facilities not owned by DHS. The IG also recommended that issues raised regarding conditions of confinement at Bureau of Prison facilities be addressed. I am pleased to report that last week BICE issued a new detention standard that addresses the issue of BICE visitation of aliens in detention at DHS controlled facilities as well as facilities controlled by other entities. The new standard covers communications between BICE staff and detention facility staff and detainees. This standard requires that Detention and Removal personnel within the Bureau visit on a weekly basis each detainee housed at a Service Processing Center, contract facility, or Bureau of Prisons facility. Officers must also review the facility's special management units to interview BICE detainees and monitor housing conditions. The central goal of this new standard is to ensure that detainees have access to BICE personnel. Finally, the standards include specific timeframes during which officers must respond to certain enumerated detainee requests. All detainees in DHS controlled facilities are required to have access to counsel, telephone calls, and visitation privileges consistent with their classification. The Bureau has issued an operational order emphasizing the need for its employees to follow all applicable policies, procedures and regulations governing the detention of aliens. This order particularly noted the importance of detainees' access to legal representation and consular officials.

I also want to assure the Committee that BICE's Detention and Removal Office has in place a set of standards that set a high standard with regard to immigration detention facilities. These standards apply to facilities owned and operated by DHS or operated under contract to DHS. Moreover, it has instituted a vigorous program "jail inspections program." For these facilities to ensure that the standards are adhered to. In the past two years, BICE's Detention and Removal Office has trained over 350 agents to serve as "reviewers" of immigration detention facilities. I am going to revisit that program to ensure that it is sufficiently strong to meet our objectives.

Finally, the IG concluded that DHS needs to ensure that immigration officials in the field consistently conduct "post-order custody reviews" for all detainees who remain in custody after the typical 90-day removal period. As the BICE organization has been created, we have established a new BICE field structure. Under the new structure, BICE has established a clear chain of command and new field office structure that will enable the field offices to consistently conduct post-order custody reviews for all detainees who remain in custody after the 90-day removal period. This coupled with improved coordination between the Department of Justice and DHS and current ongoing training for our field personnel should ensure that post order custody reviews are completed in a timely manner in the future.

Although we have taken some steps to address the concerns raised by the Inspector General, we clearly need to accomplish much more. With Director Mueller, we will establish mechanisms to appropriately process aliens who may have a connection to terrorism in the event of another national emergency that involves alien detainees. I would be pleased to present further testimony on this issue to this Committee as DHS fully implements all of its policy and procedural changes.

Thank you. I am happy to answer your questions at this time.