

Opening Statement of Chairman Delahunt  
Hearing on “‘Diplomatic Assurances’ on Torture: A Case Study of Why Some Are  
Accepted and Others Rejected”

Subcommittee on International Organizations, Human Rights, and Oversight  
November 15, 2007

\*Remarks Prepared For Delivery\*

Protecting America’s borders is a matter of great concern to the American people. Both Republicans and Democrats have expressed alarm about the possibility that terrorists could penetrate our borders – as they did on 9/11.

It turns out this concern is not unwarranted. Because in April 2005 an individual illegally entered the United States. He has a reputation as a notorious terrorist. Known to law enforcement – not only in this country, but throughout the hemisphere. He has a well-documented history of violence. Many believe that he was the mastermind – the intellectual author – of the destruction of a civilian airliner with 73 innocent people on board.

Curiously, this infamous terrorist did not immediately go underground to become part of some sleeper cell or otherwise hide his identity. No. It was widely reported that he had entered the US illegally and his lawyer announced he was requesting political asylum. I sent a letter to the Department of Justice requesting that media reports of his presence be investigated. That turned out to be unnecessary, because he called a press conference! But it would appear that this display of arrogance was too much even for this Administration. They were forced to arrest him. His name is Luis Posada Carriles.

Compelling evidence exists implicating Posada in the worst single acts of international terrorism in this hemisphere prior to 9/11 – the bombing of Cubana Airline Flight 455 on October 6, 1976. After two explosions, that flight sank into the sea with the loss of 73 civilians, including Cuban teenagers celebrating their success in an international athletic competition and high school graduates from Guyana who had won full scholarships to medical schools in Cuba. And today, we will hear from Diane Nenninger, whose brother was one of those victims. We will hear about the nightmare that she has lived with for the past 31 years.

The evidence of Posada’s guilt is substantial. It includes declassified FBI and CIA documents that link him to the bombing. One of our other witnesses, Peter Kornbluh, will present some of those declassified documents as part of his testimony. Not surprisingly, the FBI has determined that Posada is a threat to our national security. The Justice Department’s own filings in federal court describe him as “an unrepentant criminal and admitted mastermind of terrorist plots and attacks.”

But when the Bush administration finally detained Posada – incredibly – they simply brought a charge against him that would have resulted in a maximum sentence of six to twelve months under the US sentencing guidelines. A case that has proved to be an embarrassment and earned a stinging rebuke from a federal judge, who dismissed the case noting that he had already been detained for over a year.

It's important to understand that pursuant to a provision in the Patriot Act, the Attorney General could have – and should have – designated Posada as a terrorist, and detained him, based on the government's own abundant evidence. I found this lack of action so egregious that I sent a letter to Attorney General Gonzales asking why the Patriot Act was not invoked. The response was a resounding silence.

I am bewildered by the reaction of the Bush administration. After all, this is the Administration that has repeatedly vowed to give no quarter to terrorists and has condemned those nations that do. It was President Bush himself who proclaimed that, "if you harbor terrorists, then you are a terrorist." This administration claims to be unrelenting in its pursuit of terrorists. Except, perhaps, in the case of Luis Posada Carriles.

The fact that they did not pursue their authority under the Patriot Act is not the end of the story. The Administration has not even responded to a request for Posada's extradition by the Venezuelan Government, with whom we have a legally binding extradition treaty. When Posada's lawyers argued that he might face torture if sent to Venezuela, the Administration failed to seek so-called "diplomatic assurances" that he would not be tortured. And yet, when Venezuelan officials publicly provided assurances that he would be treated humanely and not rendered to Cuba, the administration's response was – once again – silence.

However, this administration has repeatedly accepted "diplomatic assurances" from countries that are known to practice torture. Last month this subcommittee heard that the Bush administration accepted such assurances from the government of Syria, whom its own State Department routinely identifies as practicing torture. They did this in the case of a Canadian national by the name of Maher Arar who was rendered to Syria from JFK airport over his objections and without notifying the Canadian government. It should be noted that an independent inquiry in Canada established his innocence and the Prime Minister personally issued an apology.

And yet, for that hearing, we had to have Mr. Arar testify by videoconference because he still not allowed to enter this country. Because the US government refuses to admit that it made a mistake. Meanwhile, Luis Posada lives quite comfortably and openly in Miami. Just a few days ago he was lionized as an artist whose paintings were proudly displayed at the chic Fontainebleu in Miami. The affair was covered in detail by the local press.

It's clear that Luis Posada has not hidden himself in obscurity. Because Posada has not been a terrorist needle in the haystack, whom the US government had to hunt down. Posada has been the haystack, flaunting his presence in America. And we wonder why our prestige and credibility have fallen to historic lows.

When testifying before the 9-11 Commission, then- National Security Advisor Condoleezza Rice said: "Terrorism is terrorism is terrorism...we don't make a distinction between different kinds of terrorism...Terrorism is never an appropriate, justified response just because of political difficulties." Those are noble words, ones that I think everyone here would agree with. But the presence of Luis Posada Carriles in this country casts such noble words into question.

If we wish to claim the mantle of moral authority that sets us apart among the family of nations, America cannot have two rules for terrorists. There are no good terrorists or bad terrorists. There are only terrorists.

The case of Luis Posada Carriles offers an opportunity for self-reflection. We must insist on answers about the disparity of treatment provided him on the one hand and to Maher Arar on the other, in order to restore our credibility and improve our security. That is my intention. This will be the first of a number of hearings to achieve that goal. We must demonstrate that we apply our laws fully and equally without regard to political ideology if we want to ensure international cooperation on terrorism.