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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 7, 2001

The Honorable John Ashcroft
Attorney General
10th and Constitution Ave. NW
Washington, D.C. 20530

Dear Attorney General:

I have yet not received a response from you to the October 31, 2001 letter sent by seven Members of Congress regarding the number of people who have been arrested and detained as part of the Department's investigation into the September 11 attacks and efforts to prevent other terrorist incidents. Recent reports have prompted additional questions about the Justice Department's handling of the ongoing investigation.

First, I am concerned by press reports I have read concerning Muhammad Rafiq Butt, a Pakistani national who died in the custody of the Immigration and Naturalization Service on October 23, after being held in custody for 33 days. According to a report that appeared in the New York Times, the Federal Bureau of Investigation did not suspect Mr. Butt of any involvement in the terrorist attacks of September 11 or any other link to terrorist activity. Rather, he simply overstayed his visa and was thus subject to being removed from the United States. On October 15, he accepted a voluntary departure order. As a result, he should have been sent back to Pakistan. Instead he was apparently returned to detention at the Hudson County Correctional Center in New Jersey, where he remained for eight days, until his death from a heart attack. Although no one has suggested foul play in Mr. Butt's death, the medical director at the correctional center apparently told the New York Times that his heart attack could have been "precipitated by stress."

Please advise why Mr. Butt remained in custody for eight days after he agreed to be returned to Pakistan. I understand that the INS has said that it requested travel documents from the Pakistani Consulate. Please provide me with copies of any such requests and any related documents that would be helpful in understanding the Justice Department's actions in this matter and the timing of events. Also, please advise me about what steps the Justice Department and the INS are taking to ensure that appropriate medical care is administered to those in detention so that similar events do not occur again.

Second, please provide me with the number of people who have been and are currently being detained by the Justice Department as part of the ongoing investigation, including the

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number being detained specifically for immigration violations, on criminal charges, as material witnesses, and for any other reasons. As you know, in the absence of definitive guidance from the Department, there have been conflicting reports, including from the White House spokesman, concerning how many people are being detained and the grounds for detention.

Third, 18 U.S.C. § 3144 provides that material witnesses may not be detained when it is possible to preserve their testimony, for instance through the use of a deposition, and when detention is not "necessary to prevent a failure of justice." What steps is the Department making to comply with this law and take swift depositions of material witnesses? Has the Department requested the detention of any material witness under the "failure of justice" prong of § 3144 since September 11, 2001, and if so, how many such requests have been made and how long has each person been detained?

Finally, has the Department developed or circulated any form or standard affidavits or motions, which with alterations or additions, is being used to seek detention under 18 U.S.C. § 3144 of potential witnesses in connection with the ongoing investigation? If not, please provide sample copies of several of the affidavits or motions which have been used for this purpose in the investigation. If so, please provide me with (a) a copy of any such affidavit(s) or motion(s); (b) the number of times that any standard affidavit or motion, or a variation upon it, has been used since September 11, 2001; (c) the specific judicial districts in which the affidavit or motion has been filed; (d) the number of times any court has denied a government request made under 18 U.S.C. § 3144 in connection with the ongoing investigation; and (e) information on whether the Department is informing judges as to the total number of witnesses already being detained as it requests new material witness warrants?

Obtaining this basic information from the Justice Department is essential for the Judiciary Committee to fulfill its oversight role over the Department and its components, including the INS and the FBI.

Sincerely,


PATRICK LEAHY
Chairman

cc: The Honorable James Ziglar
Commissioner, Immigration and Naturalization Service

The Honorable Michael Chertoff
Assistant Attorney General for the Criminal Division

*General - Many people
are concerned about
this and I do need
the question answered.
PL*