

**CIVIL LIBERTIES UPDATE
NEWSLETTER OF THE ACLU OF MASSACHUSETTS'
CIVIL LIBERTIES TASK FORCE**

March 10, 2005

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I. TAKE ACTION

• SUPPORT REP. MARKEY'S BILL OPPOSING THE "OUTSOURCING OF TORTURE"

On February 17, 2005 Massachusetts Representative Edward Markey introduced a bill called the "Torture Outsourcing Prevention Act." In a speech launching the bill, he said that "torture is morally repugnant whether we do it or whether we ask another country to do it for us." His bill bars the practice of "extraordinary rendition" (see *Executive Actions* below). It directs the State Department to compile a list of countries that practice torture, or cruel, inhuman or degrading treatment and prohibits the transfer of prisoners to any country on the list. Please call your Member of Congress and ask him to support Rep. Markey's bill. If Rep. Markey is your Member, thank him for his stand against torture. Call Reps. Capuano (617)621-6208, Delahunt (617)770-3700, Frank (617)332-3920, Lynch (617)428-2000, Markey (781)396-2900, McGovern (508)831-7356, Meehan (978)459-0101, Neal (413)785-0325, Olver (413)442-0946, Tierney (978)531-1699.

• ASK SENATORS TO BLOCK COMPANION BILL TO REAL ID

Rep. James Sensenbrenner's Real ID bill has passed the House and is headed for the Senate. This anti-immigrant, anti-civil liberties measure must be stopped in its tracks (see *In the Congress below*). Please take this message to Senator Kennedy, (617)565-3170 and Senator Kerry, (617)565-8519.

II. RIGHTSWATCH

A. EXECUTIVE ACTIONS

• "EXTRAORDINARY RENDITION": US SENDS DETAINEES TO FOREIGN TORTURE CELLS

The Bush Administration maintains that it does not hand over people to their home countries to face torture in a practice termed "extraordinary rendition." But the March 6 *New York Times* reported that the White House provided the CIA with a directive giving it broad authority to transfer prisoners to countries like Syria, Egypt, and Afghanistan for the purpose of detention and interrogation. The Administration says that receiving countries provide assurances that prisoners will be treated humanely, and that the transfers are "an alternative" to the "costly, manpower-intensive process of housing them in the US or in American-run facilities in other countries." Among those "rendered" by the US to torture in Syria is Maher Arar, a Canadian citizen who lived for many years in Framingham while working for a Natick software firm. While attempting to change planes at Kennedy airport on the way back from a family holiday, he was seized by US officials, flown out of the US to Jordan, then driven to Syria where he was tortured over a 6 months period. The Canadian government says he was never the target of a terror investigation in Canada, but "accidents will happen." In the words of *New York Times* columnist, Bob Herbert (February 18), "The Administration is trying to have it both ways in its so-called war on terror. It claims to be fighting for freedom, democracy, and the rule of law and it condemns barbaric behavior whenever it is committed by someone else. At the same time, it is engaged in its own barbaric behavior. . . . Extraordinary rendition

is antithetical to everything Americans are supposed to believe in. It violates American law. It violates international law. And it is a profound violation of our own most fundamental moral imperative – that there are limits to the way we treat other human beings, even in a time of war and great fear."

- **STATE DEPARTMENT REPORT ON HUMAN RIGHTS VIOLATIONS UNDERSCORES US CREDIBILITY PROBLEM**

The 2004 State Department "Country Reports on Human Rights Practices", released on February 28, criticizes Afghanistan, Egypt, Jordan, Saudi Arabia, and Pakistan, as well as the US-supported Iraqi government, for arbitrary arrest, detention and torture. Many of the practices cited as "torture" have been approved by the Bush Administration for use on detainees in US custody, and the US has transferred prisoners to the aforementioned countries where they have been tortured under interrogation. The report does not document US rights abuses.

- **CIA WONDERS HOW TO RID ITSELF OF "GHOST DETAINEES"**

According to the February 16 *New York Times*, the CIA, under its new director Porter Goss, is worried about how it can extricate itself from indefinitely holding in secret jails "high value" detainees, who no longer have worthwhile intelligence to give. The Agency is worried about the erosion of legal pretexts for its secret prison system and harsh interrogation methods, and fears its agents may some day face prosecution. The Associated Press on February 18 reported that "ghost detainee" Manadel al-Jamadi died in November 2003 under CIA interrogation at Abu Ghraib. He had been suspended by his wrists, which were handcuffed behind his back in a position called "Palestinian hanging."

- **HIGH-RANKING OFFICIALS CONTINUE TO EVADE ACCOUNTABILITY**

While thousands of government documents detailing the use of torture continue to be released to the ACLU as part of its FOIA lawsuit, the Pentagon says it takes revelations of torture at US detention facilities "very seriously." At the same time, it makes sure that senior officers do not face charges. A 368-page report by Navy Vice-Admiral Albert Church is the latest Pentagon inquiry into prison abuses, which finds no official policy sanctioning them. Documents released to the ACLU show that the military investigations into the brutal mistreatment and even killing of detainees in Afghanistan and Iraq are perfunctory at best. In one case the file was closed after a detainee signed a statement recanting his testimony. It transpired later that he had been threatened with indefinite detention if he did not sign the statement. At Guantanamo, an army investigation into FBI allegations of abuse skirted the role played by Army Major General Geoffrey Miller, who was commander at the camp from the fall of 2002 until the spring of 2004, when he took over operations at Abu Ghraib. Miller had trained US commanders in Iraq in Guantanamo interrogation techniques during a 10-day visit in September 2003. The sexual humiliation and physical abuse that became public in May 2004 reportedly began soon after his visit.

- **GUANTANAMO: HORROR STORIES MULTIPLY**

According to a February 15 *New York Times* editorial, "Report after report shows that a vast majority of those swept up in American anti-terrorism campaigns were innocent. Those who may have been guilty produced little if any useful information and now cannot be put on trial and punished because they were illegally detained and tortured. Others simply lied under duress, providing an ample supply of disinformation purchased at the cost of American self-respect." British intelligence officers have provided evidence proving that three Guantanamo detainees were in fact in the UK during the time they were supposed to have been in Al Qaeda training camps. Newly-released Guantanamo detainees have described the torture to which they were subjected, including the use of electric shock, sexual humiliation and abuse. One British detainee, Omar Deghayes, was reportedly blinded after US soldiers pepper sprayed his eyes and then gouged the eye socket. Martin Mubanga, with dual British and Zambian citizenship, was repeatedly beaten and smeared with his own urine. Moazzam Begg, who was interrogated more than 250 times, says he was tortured, nearly suffocated, and repeatedly assaulted at Bagram Airbase in Afghanistan and at Guantanamo (*Sunday Independent*, January 30). The Australian detainee, Mamdouh Habib, claims to have been interrogated by a woman in thong underwear and had what appeared to be menstrual blood smeared on him (*Sidney Morning Herald*, January 28). Omar Khadr, a Canadian detainee, who was sent from Afghanistan to Guantanamo when he was 15 years old, was regularly shackled and sometimes forced to urinate on himself. He spent 3 years in a small cell. Some of this abuse has been captured on videotapes, which are among the items released to the ACLU as part of the FOIA lawsuit. Archbishop Desmond Tutu has called for the release of the remaining detainees at Guantanamo and the closure of the prison.

- **TRIBUNALS ORDER TWELVE DETAINEES TO BE RELEASED**

The Combatant Status Review Tribunals, which were hastily assembled after the US Supreme Court ruled last June that detainees had the right to appear before a "neutral tribunal," have ruled that 410 Guantanamo prisoners are in fact "enemy combatants," while twelve "no longer meet the criteria" of being classified as enemy combatants and should be released (Reuters, February 15, 2005). Three other detainees have been ordered to be freed after hearings before Administrative Review Boards, which decide whether they remain a danger to the US. Detainees are not permitted lawyers when they appear before these bodies. According to the March 8 *New York Times*, the Pentagon "has never liked the idea of letting Guantanamo inmates meet lawyers and had tried mightily to prevent that, only to be ordered by a Federal court to allow the meetings." Since that ruling, the military has been using a variety of methods to undermine inmates' confidence in their lawyers. Military personnel have reportedly impersonated lawyers and removed inmates' papers, and told detainees that the lawyers cannot be trusted because they are Jewish.

- **"PRIVACY CONCERNS" PREVENT FBI FROM INVESTIGATING GUN PURCHASES BY TERROR SUSPECTS**

The Justice Department may think, as deputy associate attorney general Brian Boyle expressed it in federal court last December, that Guantanamo is a fitting destination for "a little old lady from Switzerland" if she donated to a charity not knowing that her money was eventually used to finance the activity of terrorists. But the Department refuses to

bar terror suspects from buying assault rifles or other kinds of weapons in the US, according to a Government Accountability Office (GAO) study requested by Senator Frank Lautenberg (*New York Times*, March 8). The FBI says that laws protecting the privacy rights of gun owners have kicked in when, on 44 occasions between February 2004 and June 2004, people suspected of terrorist ties have sought to buy or carry a gun. According to the report, the FBI or state authorities approved 47 of 58 gun applications from terror suspects over a 9-month period last year. The GAO was not given access to the identities of the gun buyers. Currently, records of gun purchases must be destroyed within 24 hours and purchases by suspects on the government's terrorism watch lists can only be blocked if they are convicted felons, "mentally defective," or illegal immigrants.

• **GOVERNMENT BLOCKS RELEASE OF PRE-9/11 WARNINGS**

The government is refusing to release the classified version of a report by the 9/11 Commission into the failure of the Federal Aviation Administration (FAA) to increase security measures following repeated warnings of hijackings and the possibility of "suicide in a spectacular explosion" (*New York Times*, February 10). Fifty-two of 105 daily intelligence summaries between April and September 10, 2001 mentioned Bin Laden and Al Qaeda. Although the FAA conducted classified briefings about the threats at 19 airports in the country, it did not take steps to strengthen cockpit doors, improve passenger screening, or put more air marshals on planes, and did not familiarize itself with government terrorism watch lists.

• **CHERTOFF TAKES OVER DYSFUNCTIONAL DEPARTMENT**

Michael Chertoff, who as head of the Justice Department's criminal division, had advised the CIA on the legality of using coercive interrogation methods on terrorist suspects, won Senate confirmation by 98-0 and now presides over the 180,000-employee Department of Homeland Security (DHS). The Department has been described as riddled with turf battles and institutional inadequacies (*Boston Globe* editorial, "Security at Risk" February 7; *New York Times* editorial, "Our Unnecessary Insecurity," February 20). According to outgoing DHS Inspector General Clark Kent Ervin, the Department "is still a compilation of 22 agencies that aren't integrated into a cohesive whole . . . I don't know where to start . . . I've never seen anything like it" (*Boston Globe*, February 3). Lack of political will and funds, as well as pressure from interest groups have produced a situation where 123 chemical plants that could endanger one million or more people have not been adequately safeguarded; more than 100 nuclear reactors have not been adequately secured; lethal pathogens are stored in insecure labs; and a tanker car carrying chlorine could kill 100,000 people if it crashed near a Fourth of July celebration on the National Mall (*New York Times*, February 20). "While the Administration does too little on one hand, it overreacts on the other, and seems oblivious as to how its excesses are actually making America less safe. The abuse of prisoners at Guantanamo Bay and the refusal to abide by either international law or basic constitutional principles do little to protect the nation, but make it harder for us to enlist much needed allies and provide powerful talking points for terrorist recruiting drives . . . There is now a wide array of government reports, private studies, and even best-selling books alerting us to remaining vulnerabilities. If the US is hit by another attack at one of those points, we will only have ourselves to blame" (*New York Times*, February 20).

- **NEW ATTORNEY GENERAL ANNOUNCES PRIORITIES**

Attorney General Alberto Gonzales, who was confirmed by a Senate vote of 60-36, laid out his priorities in a February 28 speech before the Hoover Institution. He called on Congress to extend Patriot Act anti-terrorism powers, to speed up the process of deporting illegal immigrants, and to vote on the Administration's judicial nominees (*New York Times*, March 1). At Gonzales' February 14th swearing-in ceremony, President Bush called for a renewal of provisions of the Patriot Act that are due to sunset in December 2005.

- **FBI GETS BIG FUNDING INCREASE**

Despite its \$170 million failure to fix its computer system, the FBI has had its budget boosted 11 percent to \$5.6 billion in discretionary funds, up from \$3.3 billion in 2001. The funds will be used to hire 500 new intelligence analysts and outfit the \$75 million Terrorist Screening Center that will house the as-yet-unconsolidated terrorism watch lists. Federal spending for local law enforcement programs has meanwhile been sharply curtailed. According to the February 11 *New York Times*, FBI efforts to recruit foreigners in the US to spy overseas have sparked resentment in the CIA, which wants to keep its primary role in foreign intelligence gathering.

- **FOIA SEARCH TO COST \$373,000**

The Justice Department has told People for the American Way that the organization will have to pay an estimated \$373,000 for documents related to post-9/11 detentions, and that the search for the documents could take as long as a year. People for the American Way says it intends to seek a waiver for the fees and will go to court if the waiver is refused.

- **ASYLUM SEEKERS TREATED LIKE CRIMINALS**

A report issued in early February by the bipartisan US Commission on International Religious Freedom maintains that thousands of people who come to the US each year seeking asylum from persecution often spend months or even years in terrible conditions at 19 detention centers. They are routinely shackled, strip searched, and sometimes thrown into solitary confinement with the light on 24 hours a day. One former detainee told the Commission "The whole detention system is there to break you down further. You are not even allowed to cry. If you do, they take you to isolation" (*New York Times*, February 8). The rate at which asylum seekers are freed to await decisions on their applications has dropped sharply since September 2001. Detainees with lawyers were 30 times more likely to gain asylum than those without lawyers, who were the majority at some detention centers. In addition, airport officials can now send people immediately back to their countries of origin on the grounds that their asylum claims are not "credible."

- **SOME SCIENTISTS AND STUDENTS HAVE VISA RULES RELAXED**

The State Department has extended from one year to four years the time that some scientists and foreign students working in "sensitive fields" can stay in the country before having to renew their "Visas Mantis" security clearance. According to the outgoing DHS official Asa Hutchinson, "This change sends a clear message that the US highly

encourages those with great scientific minds to explore studying and working in our country." In 2003-2004, the number of foreign students enrolled in US universities decreased by 2.4 percent.

•MUSLIMS DETAINED AFTER ATTENDING ISLAMIC CONFERENCE

Forty Buffalo area Muslims, most of them American citizens with valid passports, were detained for up to 6 hours at the US-Canada border while returning to the US from an Islamic conference in Toronto. They were fingerprinted, patted down, and interrogated by Department of Homeland Security border agents, who were apparently consulting the FBI's "Violent Gang and Terrorist Organization File." The File has recently been expanded to include "associates" of suspected terrorists and gang leaders, and many people have been given increased scrutiny because their names are similar to those on the list.

B. IN THE US CONGRESS

• HOUSE PASSES ANTI-IMMIGRANT, ANTI-CIVIL LIBERTIES BILL

On February 11 by a vote of 261-161 – with the entire Massachusetts delegation in opposition - the House of Representatives passed Rep. James Sensenbrenner's "Real ID Act" (HR 418). The bill lays the groundwork for a national ID card by requiring states to include certain identification requirements in their drivers' licenses and by establishing a centrally-coordinated national database of personal information on Americans which will be shared with Mexico and Canada. Claiming that the bill will "prevent another 9/11 type attack by disrupting terrorist travel," Sensenbrenner in introducing the bill scapegoated as potential terrorists undocumented immigrants who before its passage could obtain the drivers' licenses in 11 states. Under the bill, states must demand proof of legal residency before issuing a drivers' license. The bill tightens standards for asylum seekers by requiring them to present corroborating evidence that the face persecution on ethnic, religious or political grounds if returned to their home countries. Their asylum claims can be rejected by immigration officials on wholly subjective grounds. The USA PATRIOT Act is expanded by a provision of the bill that permits the deportation of non citizens who have given even humanitarian support to an organization which was not on any "terrorism" list when the support was given. Terrorism is defined to encompass more than acts of violence: immigrants who "endorse or espouse" policies that induce others to "support a terrorist organization" can be labeled terrorists and deported with their family members. The bill also gives the secretary of Homeland Security the authority to waive environmental and other laws to build new barriers at the borders. The bill which was on a fast track in the House may move quickly in the Senate by being attached to the Iraq Supplemental Appropriations legislation.

• JOINT INTELLIGENCE COMMITTEE UNCLEAR ON OVERSIGHT ROLE

How much oversight should the joint House and Senate Intelligence Committee exert over Pentagon intelligence operations? The 1947 National Security Act requires that Congress be notified in advance of significant intelligence activity, but its focus was

mainly the CIA. In hearings conducted in February the Committee hoped to assert a similar role over the actions of the Pentagon's Special Operations and its Defense Intelligence Agency. The Pentagon says it should not come under the National Security Act because it is engaged in military activities and not covert actions as such. When asked whether the government should revive the Vietnam-era Operation Phoenix program of assassinating adversaries, Lt. General William Boykin told the Committee that we are "doing a pretty good job of that right now" (*New York Times*, Feb, 5). Senator Pat Robertson (R-KS), the chair of the Senate Intelligence Committee, is meanwhile blocking efforts to investigate the CIA's treatment of terrorism suspects.

C. IN THE COURTS

• **ACLU SEEKS TO HOLD RUMSFELD RESPONSIBLE FOR TORTURE**

On March 1st in a federal court in Secretary of Defense Donald Rumsfeld's home state of Illinois, the ACLU and Human Rights First filed a lawsuit on behalf of four Iraqi and four Afghan victims of torture in US-run facilities. ACLU lead counsel Lucas Guttentag stated that "Secretary Rumsfeld bears direct and ultimate responsibility for this descent into horror by personally authorizing unlawful interrogation techniques and by abdicating his legal duty to stop torture." Attorneys working with Guttentag on the suit include Rear Admiral John Hutson, former Judge Advocate General of the Navy, and Brigadier General James Cullen, former Chief Judge of the US Army Court of Criminal Appeals.

• **JUDGE ORDERS PADILLA TO BE CHARGED OR FREED**

South Carolina federal district court judge Henry Floyd, a 2003 Bush appointee, has given the Justice Department 45 days to either bring charges against Jose Padilla, or to free him from the naval brig on which he has been held incommunicado since June 2002. In his February 28th ruling Judge Floyd wrote, "The court finds that the president has no power, neither express nor implied, neither constitutional nor statutory, to hold petitioner as an enemy combatant." Padilla, an American citizen, was arrested at Chicago's O'Hare Airport and held first on a material support warrant before termed an "enemy combatant" by John Ashcroft at a press conference in Moscow, and deprived of legal counsel. The government is appealing the ruling.

• **JUDGE SAYS GUANTANAMO DETAINEES HAVE RIGHT TO FEDERAL COURT HEARING**

In a decision in sharp conflict with a ruling by a colleague on the same federal bench, Judge Joyce Hens Green ruled on January 31 that 54 Guantanamo detainees do have a right to bring cases to federal court because they are being denied minimum due process - including the right to a lawyer - by the Combatant Status Review Tribunals established at the prison in response to a Supreme Court ruling last June. Judge Richard Leon had ruled the opposite way in a case involving 7 detainees on January 19, making it likely that the issue will be determined by the Appeals Court for the DC Circuit or possibly the Supreme Court.

• **LYNNE STEWART FOUND GUILTY; FACES DECADES IN PRISON**

On February 12 New York defense attorney Lynne Stewart was found guilty of "conspiring to provide material support to terrorists" and four other charges and now faces being disbarred and spending up to 30 years in prison. She will be sentenced in July. Her two co-defendants were also found guilty of all charges against them after the 7-month trial and month-long deliberation by the anonymous jury. Former New Jersey Superior Court judge Andrew Napolitano wrote in a February 17 *New York Times* op ed, "In truth, the federal government prosecuted Lynne Stewart because it wants to intimidate defense lawyers into either refusing to represent accused terrorists or into providing less than zealous representation...Since 9/11 the federal government's message has been clear: if you defend someone we say is a terrorist, we may declare you to be one of them, and you will lose everything."

• **US CITIZEN HELD IN SAUDI JAIL NOW FACES TERROR CHARGES IN US**

After being held for 20 months without charges in a jail in Saudi Arabia at the behest of US authorities, Ahmed Omar Abu Ali, a 23-year-old American citizen, has been returned to Virginia and imprisoned while awaiting trial on charges of providing support to terrorists "in preparation for, and carrying out, the assassination of the president" (*New York Times*, Feb, 25). Abu Ali's family claims he was physically abused in Saudi Arabia and has scars on his back to prove it, and has protested the restrictions placed on their visits with him. They say they will only be able to see him if an FBI agent is present at the meeting, they only speak in English, and they agree not to discuss anything he tells them with the media. According to a February 24th *New York Times* editorial, "If the Justice Department believed that Mr. Abu Ali was a serious terrorist, he should have been brought back here a long time ago for trial. Instead, he became part of an unknown number of prisoners who were swept up by American officials or foreign governments working with Americans and questioned in the wake of Sept. 11. Many were then held indefinitely, and in some cases, tortured in hopes that they would provide information. The civil liberties issues have always been evident, but now the practical consequences are becoming clearer as well."

D. IN THE COMMONWEALTH

• **TEACHER GIVEN REPRIEVE FROM DEPORTATION**

After his Fenway High School students, community groups, elected officials, and the ACLU of Massachusetts rallied to prevent his deportation, math teacher Obain Attouoman has been permitted to stay in the country for two more years. Senator John Kerry introduced a private bill on March 3rd to stop his deportation pending a review of his asylum claim. Mr. Attouoman had missed an asylum hearing in 2001 because he misread the date and was subsequently ordered to be deported to the Ivory Coast without being given the opportunity to appear before a judge.

• **MONTSERRAT REFUGEES MAY SOON BE SENT HOME**

The Department of Homeland Security has threatened to deport 292 people who left the Caribbean island of Montserrat after a volcano erupted there in 1995, destroying half the island. They were granted temporary permission to live in the United States, a status

which expired on February 27, 2005. At least two dozen live in the Boston area, and fear being sent back to a largely uninhabitable island with a still-active volcano.

- **RIDGE: BOGUS THREAT SHOULD NOT HAVE BEEN MADE PUBLIC**

Outgoing DHS head Tom Ridge said the unsubstantiated tip in January that terrorists had crossed the Mexican border and were headed to Boston to stage a nuclear attack should never have been leaked to the news media. The tip turned out to be a hoax. According to the January 30th *Boston Globe*, hoaxes alleging terrorism are becoming an increasingly common – and costly – way of getting revenge, and a time-consuming distraction for law-enforcement.

III. GET INVOLVED

- **KEEP THE FILM ROLLING**

On March 1-3, 22 Massachusetts communities marked the 66th anniversary of the ratification of the Bill of Rights by the Massachusetts legislature (March 2, 1939) by screening the Robert Greenwald film "Unconstitutional: the War On Our Civil Liberties." Help build support for our state-wide civil liberties resolution by holding a screening in your college or town – call (617) 482-3170 x 314 for a copy of the film.

- **ATTEND NEXT MEETING OF CIVIL LIBERTIES TASK FORCE**

Wednesday, March 23, 6-8 PM at the ACLU of Massachusetts office.