

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

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RIGHTSWATCH

A. EXECUTIVE ACTIONS

• PURELY DOMESTIC CALLS COULD BE SUBJECT TO WARRANTLESS SURVEILLANCE

With breathtaking disregard for the Fourth Amendment, Attorney General Alberto Gonzales on April 6 told the House Judiciary Committee he would not "rule out" the authority of the President to order warrantless wiretapping on communications carried out by Americans entirely within the US. Previously he had maintained that the warrantless NSA surveillance ordered by the President had to involve communications in which one party was outside the United States. A Justice Department spokeswoman later said that "the attorney general's comments today should not be interpreted to suggest the existence or nonexistence of a domestic program or whether any such program would be lawful under the existing legal analysis" (*New York Times*, April 7).

• PRIVILEGED CONVERSATIONS COULD BE SUBJECT TO NSA SURVEILLANCE

According to human rights attorney Michael Ratner, a letter written by Attorney General Gonzales to the Senate Judiciary Committee states that "although the Program does not specifically target the communications of attorneys or physicians, calls from

such sources would not be categorically excluded from interception" (salon.com, March 31). As Ratner writes, "now it turns out that Bush's eavesdropping program is not only in criminal violation of FISA, but an end-run around one of the basic pillars of our system of law: the constitutional right to counsel and the confidentiality of attorney-client conversations necessary to protect that right." Ratner's organization, the Center for Constitutional Rights, represents many Guantanamo detainees. "By spying on me, my colleagues, and other attorneys who challenge them, the administration can learn our legal strategies, end our relationship of trust with our clients, and in essence make us into agents of the government. We ask questions of clients, and the government, listening in secretly, gets the answers."

- **FORMER FISA COURT JUDGES URGE MEANINGFUL COURT OVERSIGHT OF PROGRAM**

Five former judges on the secret FISA court – including Judge James Robertson who resigned from the court soon after the *New York Times* published its revelations about NSA warrantless spying – have expressed skepticism about the extent of the President's constitutional power to order spying without warrants since, as Judge Harold Baker told a Senate Judiciary Committee hearing, the President was bound by the law "like everyone else" (*New York Times*, March 29). The judges all sit on the federal bench.

- **NSA HAS BACKROOM AT AT&T SITES**

Mark Klein, a former technician at AT&T, has made public documents indicating that the phone company is providing the National Security Agency with a room and wholesale access to the data of its customers at the San Francisco Internet and telephone hub and elsewhere. In 2003 AT & T reportedly installed equipment that was able to select messages by keywords, email addresses or country of origin, and divert copies for further analysis in a process known as data mining. The documents are part of a lawsuit brought against AT & T by the Electronic Frontier Foundation. Klein said he came forward because he thought the government monitoring was violating the civil liberties of Americans (*New York Times*, April 13).

- **PRESIDENT BUSH SAYS HE CAN IGNORE PATRIOT ACT REQUIREMENT**

In a signing statement he included as an addendum to the reauthorized USA PATRIOT Act, the President stated he did not have to obey new PATRIOT Act reporting requirements that enable Congress to know how and how often the FBI is using its new powers. The statement, added to the Act at a White House signing ceremony on March 9, was reported by Charlie Savage in the March 24 *Boston Globe*. The President declared he could withhold information requested by Congress if its disclosure would "impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties." According to Senator Patrick Leahy, the President's position represented "nothing short of a radical effort to manipulate the constitutional separation of powers and evade accountability and responsibility for following the law...The president's constitutional duty is to faithfully

execute the laws as written by the Congress, not cherry-pick the laws he decides he wants to follow. It is our duty to ensure, by means of congressional oversight, that he does so."

• **WHEN LEAKING IS LEGITIMATE: WHEN THE PRESIDENT DOES IT**

News that President Bush may have authorized the leak of a classified CIA intelligence report to *New York Times* reporter Judith Miller in July 2003 produced a new wrinkle in the saga of the outing of a CIA agent, Valerie Plame Wilson, after her husband, former US ambassador Joseph Wilson, wrote an op-ed in the *New York Times* (July 6, 2003) that debunked the Administration's assertion that Saddam Hussein sought uranium in Niger. I. Lewis Libby, Vice President Cheney's former chief of staff, had testified that the President authorized the disclosure of the National Intelligence Estimate (NIE), which was until then a classified intelligence document about Iraq. Libby testified that he was supposed to tell Judith Miller that "a key judgment" of the NIE was that Iraq was "vigorously trying to procure uranium" (*New York Times*, April 7). After initially being silent on the matter, the White House said that the President had declassified the document in the public interest, but denied that he had authorized it being given to reporters. In his court filings, special prosecutor Patrick Fitzgerald asserted that there was "a strong desire by many, including multiple people in the White House" to undermine Ambassador Wilson, and that the Office of the Vice President in particular viewed Wilson's article about Niger "as a direct attack on the credibility of the vice president (and the president) on a matter of signal importance: the rationale for the war in Iraq" (*New York Times*, April 11).

• **WHEN LEAKING IS CRIMINAL: WHEN A CIA OFFICIAL DOES IT**

On April 22, the press reported that CIA head Porter Goss had dismissed a "senior officer" for leaking information. She was soon identified as Mary McCarthy, a member of the CIA since 1984. The media reported that she was being punished for leaking material about CIA's secret prisons or "black sites" in Eastern Europe to the *Washington Post*, which won a Pulitzer Prize for the November 2, 2005 article by Dana Priest using the information. However, McCarthy subsequently denied that she had ever provided classified material to the news media. A CIA spokesman reiterated on April 25 that she was fired for "unauthorized contacts with reporters and sharing classified information with reporters. There is no question whatsoever that the officer did both. The officer personally admitted doing both," which McCarthy through her lawyer again denied (*New York Times*, April 26). Her firing for a leak appears unprecedented for the CIA. McCarthy, who had been given a polygraph test after the article appeared, had served the Clinton Administration as senior director for intelligence programs at the National Security Council. Her critics say she acted on partisan motives, citing a donation she made to the Kerry campaign in 2004. But to supporters, such as former CIA officer Robert Steele, "There is absolutely no question that Mary acted in the finest traditions of the republic, helping reveal and reduce terrible violations of international law and human rights by the CIA" (*New York Times*, April 23). Many CIA employees are

reportedly worried that they can one day be prosecuted for war crimes and other human rights abuses. It is unclear whether Ms. McCarthy, aged 61, who has a doctorate in history and recently started to train as a lawyer, will be prosecuted and lose her CIA pension.

- **REPORT ESTIMATES 1000 SECRET CIA RENDITION FLIGHTS IN EUROPE**

On April 26, European Parliament investigators issued a draft report estimating that there have been one thousand flights in Europe conducted by the CIA as part of its rendition operations. The undeclared stopovers in Europe violate a treaty requiring airlines to declare routes for police missions, according to Giovanni Fava, a member of the European Parliament who led the investigation committee. He stated that many European authorities must have known what was going on, and criticized Sweden for handing over two Egyptian suspects to American agents. Earlier, Gijs de Vries, head of antiterrorism for the European Union, told the European Parliament that allegations of secret CIA prisons in Eastern Europe to which kidnapped suspects have been sent have not been proven "beyond a reasonable doubt" (*New York Times*, April 21). De Vries was criticized by some legislators for not taking seriously the testimony of a German and a Canadian about their experience being kidnapped and held by foreign agents. Craig Murray, the former British ambassador to Uzbekistan, said: "I can attest to the willingness of the US and the UK to obtain intelligence that was got under torture in Uzbekistan. If they were not willing, then rendition prisons could not have existed." He was recalled from his job in 2004 after criticizing the US and UK.

- **KIDNAPPED DETAINEES FREE AFTER MORE THAN A YEAR IN SECRET PRISON**

Three Yemenis, who were arrested in Jordan and Tanzania and handed over to American officials, were held in secret facilities in at least three different countries (including possibly in Eastern Europe) before being flown to Yemen in May 2005, according to Amnesty International. "The US authorities effectively instructed the Yemeni officials to detain the men, apparently promising to transfer their case files" but the files never came (*New York Times*, April 5). After being charged by Yemen with forging travel documents they were released on time served. The April 4 Amnesty report details CIA rendition practices, including the use of private planes that can land without having to inform local authorities. The Amnesty branch in the Czech Republic branch found that three planes made a total of 20 landings in Prague and then took off as part of the rendition program.

- **ITALY WON'T SEEK EXTRADITION OF CIA AGENTS**

On April 12, Italy's Justice Minister under the outgoing Silvio Berlusconi government said he would not seek the extradition of the 22 Americans involved in the kidnapping from the streets of Milan of the cleric Hassan Mustafa Osama Nasr. Nasr is believed to have been a victim of "extraordinary rendition" who was tortured in Egypt. It is not clear whether Romano Prodi will reverse this decision after he forms his new government.

- **SPECIAL OPERATIONS UNIT USES SADDAM TORTURE CHAMBER TO ABUSE DETAINEES**

A March 19 report in the *New York Times* ("In Secret Unit's 'Black Room,' a Grim Portrait of US Abuse") reveals that a super secret military unit known as Task Force 6-26, which had been formed in 2003, had used a former torture cell under Saddam Hussein's regime at Camp Nama at Baghdad International Airport to extract information in the hunt for Abu Musab al-Zarqawi. Drawing on documents released to the ACLU and interviews with a dozen Defense Department personnel, the piece "reveals the extent to which the unit members mistreated prisoners months before and after the photographs of abuse from Abu Ghraib were made public in April 2004" and "believes the original Pentagon assertions that abuse was confined to a small number of rogue reservists at Abu Ghraib." Unmarked helicopters flew goggled detainees into the camp on an almost daily basis. Many were housed in "crudely built plywood shacks that reeked of urine and excrement" which were so small that they were forced to squat or crouch. A placard read: "NO BLOOD, NO FOUL" – a Task Force 6-26 adage meaning "If you don't make them bleed, they can't prosecute for it." One Pentagon official stated, "The reality is there were no rules there" and another "recalled seeing pink blotches on detainees' clothing as well as red welts on their bodies, marks he learned later were inflicted by soldiers who used detainees as targets and called themselves the High Five Paintball Club." Another detainee had "suspicious burn marks on his body" and some were subjected to severe beatings, electric shocks and mock drownings. The unit drew on elite troops from Joint Special Operations Commands and worked closely with the CIA and FBI, some of whose members complained about the harsh treatment that "extended beyond Camp Nama to small field outposts in Baghdad, Fallujah, Balad, Ramadi and Kirkuk." At least 34 of its members have faced punishment for detainee abuse but "task force members used battlefield pseudonyms that made it impossible to identify and locate the soldiers involved" and most of its computer files had been "lost". Camp Nama was closed in the summer of 2004 and Task Force 6-26 moved to Balad, north of Baghdad where its operations "are now shrouded in even tighter secrecy." Defense Department personnel say "its raids were often dry holes, yielding little if any intelligence and alienating ordinary Iraqis." A report into allegations of prisoner abuse by Special Operations forces was completed in 2005 by Brig. Gen. Richard Formica. According to the March 22 *Boston Globe*, "the Pentagon has refused to release even an unclassified version."

- **SPECIAL OPERATIONS TO BE EXPANDED FOR THE 'LONG WAR' ON TERRORISM**

According to secret plans devised by the Department of Defense and signed off on by Secretary of Defense Rumsfeld, beefed up "special mission units" involving up to 20,000 special operation forces will operate in more than a dozen countries in the Middle East, Asia and Latin America where they will conduct not just intelligence gathering, but clandestine military operations – man hunting, attacks on terrorist havens and state

sponsors, and "countering extremist ideology" (*Boston Globe*, April 23). The Defense Department now can simply inform – rather than gain approval – of the US ambassador before conducting operations in a foreign country. As for Congress, Commander Greg Hicks, a Defense Department spokesman, told the Senate: "We do not discuss contingency plans or future operations."

• **RUMSFELD LINKED TO INTERROGATION OF DETAINEE**

Documents that were included in a December 2005 report by the Army inspector general reveal that Secretary of Defense Rumsfeld had been "personally involved" and talked on a weekly basis with Major Geoffrey Miller about the interrogation of a Saudi detainee at Guantanamo, Mohamed al-Qahtani, whose treatment was later termed "degrading and abusive" by a military investigator (*Boston Globe*, April 15). Human Rights Watch, which said the techniques used on Qahtani "were so abusive that they amounted to torture," called for a special prosecutor to investigate Rumsfeld. A spokeswoman for the Defense Department said it "did not have a policy that encouraged or condoned abuse" and any suggestion to the contrary was "fiction."

• **INTERROGATION OF QAHTANI DOCUMENTED BY TIME MAGAZINE**

In its March 13th issue, *Time* prints interrogation logs revealing that Mohammed al-Qahtani – whose treatment Rumsfeld took a personal interest in -- was subjected to sleep deprivation for 20 hours a day for seven straight weeks, with one single day's exception. He was often kept standing for long periods to avoid going to sleep. He was also subjected to forced nakedness, denial of bathroom breaks, extreme cold, intimidation by a military dog and to "intense isolation over three months" that, according to his attorney Gitanjali Gutierrez, led to his hearing voices and talking to non-existent people. He told his attorney he made false statements under duress and had informed interrogators of his false declarations, "a contention supported in part by his interrogation log."

• **DOG HANDLERS ON TRIAL, BUT NOT CHAIN OF COMMAND**

General Miller invoked his right against self-incrimination to avoid testifying at the trial of Sgt. Michael Smith, an Army dog handler at Abu Ghraib prison who was found guilty on March of tormenting detainees at Abu Ghraib with a snarling Belgian shepherd. Sgt. Smith said he was following approved interrogation procedures and Col. Thomas Pappas (who testified under immunity) claimed that his discussions with General Miller – who was sent by Rumsfeld to oversee interrogations at Abu Ghraib after his stint at Guantanamo – made clear that interrogators should "exploit the Arab fear of dogs." Facing eight and a half years in prison, Sgt. Smith received a sentence of six months. The chain of command remains impervious to blame and accountability, but at least one military judge seems determined to hear from higher ups. On April 18 Lt. Col. Paul McConnell ordered Maj. General Miller to testify at the May 17 court martial of another dog handler, Sgt. Santos Cardona, who is also accused of using his dog to abuse detainees. The judge refused to order Defense Secretary Rumsfeld to give testimony at

the trial.

- **OFFICER MAY BE CHARGED IN CONNECTION WITH ABU GHRAIB ABUSE**

Lt. Col. Steven Jordan, a reservist who had headed the interrogation unit at Abu Ghraib from September to December 2003 despite having no training in interrogations operations, may soon face criminal charges, including dereliction of duty, lying to investigations and conduct unbecoming an officer. If criminal charges are brought against him, he will be the highest ranking officer at Abu Ghraib to face trial and punishment. His superior officer, Col. Thomas Pappas, received an \$8,000 fine and written reprimand but did not face criminal charges.

- **WHAT RECOURSE FOR THE TORTURED IN US COURTS?**

The government is claiming that the McCain Amendment barring torture cannot be used to sue the government as lawyers for Guantanamo detainee Mohammad Bawazir are attempting to do in a US district court in Washington DC. The Justice Department maintains the McCain Amendment contains "no private right of action" which could permit the government to be sued, and was only intended to be used against an interrogator who abuses a detainee. However, the Detainee Treatment Act sponsored by Senators Lindsey Graham and Carl Levin – to which the McCain Amendment was attached -- bars Guantanamo detainees from invoking habeas corpus to bring complaints about their treatment in federal court, which means that Guantanamo can soon be the "legal black hole" it was before a 2004 Supreme Court ruling gave some detainees access to lawyers and the courts.

- **WILL EVIDENCE OBTAINED UNDER TORTURE BE USED AGAINST GUANTANAMO DETAINEES?**

Testimony from at least three detainees that they had been tortured after being sent to Jordan, Morocco and Egypt for interrogation has surfaced in documents compiled by Combatant Status Review panels to determine whether they were "enemy combatants," and recently made public as part of a Freedom of Information Act lawsuit. According to the April 26 *Boston Globe*, at least one detainee was released after his allegations of being tortured in an Egyptian prison became public during a hearing in a US court. His lawyer says "they released him because they didn't want the particulars of his rendition to become the subject of inquiry by a federal district court." Whether evidence obtained through torture will be used against detainees during their trials before military commissions remains unclear. On March 24, four days before a case on the legality of military commissions was being heard by the US Supreme Court, the Department of Defense issued Military Instruction #10, stating that statements obtained through torture would not be admitted as evidence. But according to Amnesty International (April 5), "due to the US government's limited definition of what constitutes torture, the ban falls far short of the requirements of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment." And there was no clear indication how the rule would be implemented, leaving the door wide open for

including information obtained through torture into hearsay evidence that is acceptable to the commission.

- **MILITARY COMMISSIONS HEAR ALLEGATIONS OF TORTURE**

Binyam Mohamed, an Ethiopian electrical engineer and long-time resident of Britain, had been accused by US authorities of being involved with American "enemy combatant" Jose Padilla to set off a dirty bomb in the US. During his first appearance before a military commission in Guantanamo, he denounced it as a "con mission. This is a mission to con the world." His lawyers say he never met Mr. Padilla and that he was arrested in Pakistan, handed over to the CIA and sent to Morocco where he was jailed for 18 months, tortured with a scalpel that was used to slice his chest and genitals, and given mind-altering drugs. The rules for the commission were repeatedly challenged by 19-year-old detainee Omar Ahmed Khadr, who has been at Guantanamo since he was 16. He threatened to boycott the proceedings. Ali Hamza al Bahlul, who refused to cooperate with any lawyer appointed by the US military, did boycott the hearing when he was not permitted to represent himself. Another problem arose when an Afghan detainee Abdul Zahir failed to be given a copy of the charges against him in his preferred language of Farsi and no Farsi interpreter was available in the court – despite the fact that he has been identified as eligible for trial for two years. "We can't help it that the secretary of defense and his [aides] have messed this thing up, but they have," one military lawyer, Army Major Tom Fleener, told a presiding officer at a hearing (*Boston Globe*, April 8).

- **US FINALLY RELEASES LIST OF GUANTANAMO DETAINEES**

In response to a Freedom of Information Act lawsuit brought by the Associated Press, the government on April 19 released a list of the names of 558 people classified by the Combatant Status Review Tribunals (CSRTs) at Guantanamo. The nationals of 41 countries are represented on the list, with the largest number (132) from Saudi Arabia, 125 from Afghanistan, and 107 from Yemen. Thirty-eight detainees were deemed by the CSRTs to be "no longer enemy combatants," and 29 of them have been released. The government has never made public the full list of the approximately 750 detainees who have passed through Guantanamo.

- **REPORT ON GUANTANAMO DETAINEES FINDS ONLY 8 PERCENT LINKED TO AL QAEDA; MOST EXCHANGED FOR BOUNTIES**

A revealing report by Seton Hall Law Professor Mark Denbeaux and attorney Joshua Denbeaux examining information on Guantanamo detainees from Combatant Status Review Tribunals (CSRTs) reveals that only 8 percent were cited as having links to Al Qaeda and 86 percent were arrested either by Pakistan or the Northern Alliance and turned over to the US, often in exchange for large cash bounties. (The report includes a copy of a flyer distributed in Afghanistan proclaiming "Get wealth and power beyond your dreams...You can receive millions of dollars helping the anti-Taliban forces catch al-Qaida and Taliban murderers. This is enough money to take care of your family, your

village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people." Another flyer offering an award equal to \$4,285 says: "The al-Qaida terrorist are our enemy. They are the enemy of your independence and freedom. Come on. Let us find their most secret hiding places. Search them out and inform the intelligence service of the province and get the big prize.") Only 5 percent of the detainees were directly captured by US forces. Over half of those in Guantanamo – 55 percent – were not determined to have committed any hostile acts against either the US or its coalition allies. 60 percent are detained merely because they are "associated with" (not members of or fighters for) a group the government asserts is a terrorist organization. Proof that someone was an "enemy combatant" included the possession of a rifle, use of a guest house, wearing of olive drab clothing, association with unnamed and unidentified individuals and association with a number of organizations whose members WOULD CURRENTLY BE ALLOWED INTO THE US. Of the 72 organizations identified by the CSRTs to show why someone is rightly classified as an "enemy combatant," 52 do not appear on EITHER the State Department Designated and Other Foreign Terrorist Organizations List, or the PATRIOT Act Terrorist Exclusion List. These are the lists compiled to keep terrorists from entering the US.

- **NATIONAL ARCHIVES HAD MADE DEAL WITH AIR FORCE AND CIA TO RECLASSIFY DOCUMENTS**

What is there to hide? Secret agreements between the National Archives and Records Administration and the Air Force, the CIA, and other unnamed intelligence agencies to remove records from its open shelves and re-classify them came to light when Alan Weinstein, Archivist of the US, was questioned at a Congressional hearing. The agreements had been signed by assistant archivist Michael Kurtz. So far 25,315 pages of declassified documents dating back to World War II have been reclassified. Raytheon got the contract to conduct the reclassification review. On April 17, Archivist Weinstein announced a policy change. He said the Archives would no longer enter into secret agreements with federal agencies and will disclose to the public when documents are removed for national security reasons (*Washington Post*, April 18). A National Archives audit of the reclassification process revealed that a third of the 25,000 reclassified documents contained no sensitive information, and that CIA reviewers deliberately classified "purely unclassified" documents "to obscure the removal of other documents they judged to be genuinely sensitive" (*New York Times*, April 27).

- **PENTAGON SAYS TALON DATABASE HAD IMPROPER ENTRIES**

According to the April 6 *Boston Globe*, a Pentagon spokesman said that about 2 percent of the 13,000 entries in its Talon (Threat and Local Observation Notice) database of "suspicious incidents" were "wrongly added or were not purged when they were determined not to be real threats." He said that the Pentagon is requiring those who compile the database to go "through a refresher course on what should be included" before submitting information to the secret Pentagon agency CIFA (Counterintelligence

Field Activity).

- **GAO REPORT SAYS AGENCIES STILL DO NOT SHARE INFORMATION**

A report by the Government Accountability Office issued on April 17 indicates that there are still major problems with the sharing of counterterrorism intelligence among government agencies and nonfederal partners. The appointment of John D. Negroponte to the new post of Director of National Intelligence (DNI) was supposed to aid the development of an "Information Sharing Environment". But neither his new office nor the new National Counterterrorism Center have provided a common set of standards and definitions for individuals and agencies that could have access to "sensitive but unclassified homeland security information." Federal appeals court judge Richard Posner meanwhile told CIA lawyers that DNI, with a budget approaching \$1 billion, has become "a new bureaucracy layered on top of the intelligence community, a new agency on top of the fifteen or more previously existing agencies" (*Washington Post*, April 21). A secretive blue-ribbon panel called the President's Foreign Intelligence Advisory Board is now looking into how to "fix the intelligence mess." Denying that intelligence reforms had been an "exercise in bureaucratic bloat," DI chief Negroponte reported on April 20 that 100,000 people are involved in spying and analyzing information to protect national security. His deputy revealed that last year's intelligence budget was \$44 billion (*New York Times*, April 21).

- **GAO REPORT SAYS UNDERCOVER TESTERS SMUGGLED IN RADIOACTIVE MATERIAL**

Small amounts of cesium-137 that had been put by testers in trucks carrying cargo across the borders of Mexico and Canada made it into the US despite the presence of big radiation detectors at both sites. (About 670 of planned 3,034 radiation detection monitors are now in place). The detectors signaled the presence of radiation and the Customs and Border Protection agents then questioned the testers and subjected the vehicles to further inspection – and then allowed them into the country. They were apparently fooled by forged import licenses purporting to be from the Nuclear Regulatory Commission. According to the Government Accountability Office report, the cesium was enough to make two "dirty bombs" (*New York Times*, March 29).

- **SAFETY STANDARDS WEAK FOR CHEMICAL COMPANIES**

Calling Michael Chertoff the "Secretary of Homeland Insecurity," the *New York Times* in a March 24 op ed questioned how he could "defer on key security matters to an industry that contributes heavily to Republican campaigns but has proved to be dangerously unwilling to take public safety seriously." Chertoff declined to issue security rules for chemical plants, even though many of them lack perimeter fencing or security guards, use extremely dangerous chemicals when safer substances are available, and an attack on a plant could threaten hundreds of thousands of lives.

- **AFTER MILLIONS MARCH IN STREETS, CHERTOFF LAUNCHES**

IMMIGRATION CRACKDOWN

In the wake of marches around the nation which brought huge numbers of immigrants and their supporters into the streets in the effort to influence the legislative debate (see "In the Congress", below), Homeland Security Secretary Michael Chertoff ordered raids at plants operated by IFCO Systems North America, which makes wooden pallets and crates. Seven former or current managers of the firm were arrested and nearly 1,200 out-of-status workers. One of the plants was located in Westborough, Massachusetts. According to the April 21 *New York Times*, the Bureau of ICE (which is under the DHS), is expanding its staff to search for 590,000 immigrants in the country who may have ignored orders to leave and to identify and deport an estimated 630,000 non citizens who have been arrested on criminal charges. The April 14 *New York Times* documented reports of local authorities flagging for deportation illegal immigrants who get caught up in the criminal justice system, often for very minor reasons, and of local and state police pursuing local immigrants. For instance, in Springfield, Missouri a high school soccer star was stopped by police for having excessively tinted windows and then jailed awaiting deportation when he admitted to an officer that he was an illegal immigrant. An April 26 *New York Times* piece told the story of Amadou Ly, a young Senagalese student from an East Harlem high school, who helped his school win a nationwide robot-building contest and faces deportation. A state trooper had questioned his legal status when he was a passenger in a car accident. "A person with a job and a family can end up sitting in jail for months, and then being deported," according to a New York immigration attorney. Between the years 1994 to 2002, the immigration detention and removal budget has increased from \$239 million to \$1.1 billion. Removing the millions of undocumented people in the country could cost more than \$230 billion. Some cities – including in Massachusetts (see "*In the Commonwealth*," below) are exploring ways of offering sanctuary to immigrant families.

• NEW MEDICAID RULE MAY HAVE WIDE IMPACT

Beginning on July 1, people who are now eligible for Medicaid will have to produce birth certificates, passports and other documents to prove they are US citizens. Under the new Deficit Reduction Act, states must verify citizenship in order to receive federal Medicaid money. Many state officials are worried that the rule may bar poor US citizens who will be unable to come up with the necessary documentation.

• LAW BARRING MATERIAL SUPPORT FOR TERRORISM HURTS VICTIMS

People seeking to come to the United States under a refugee resettlement program are being barred under a Kafkaesque provision of the USA PATRIOT Act. According to the April 3 *New York Times* editorial, the law has placed on indefinite hold the applications of a woman in Sierra Leone who was raped and cut with a machete by guerrillas who kept her prisoner in her home. She provided "material support" by giving them (coerced) shelter. A Liberian woman who was kidnapped and forced to be a sexual slave had given "material support" in the form of cooking for her captors. Another woman was denied entry to the US for giving a glass of water to an armed guerilla in

Colombia. A young man who was kidnapped and forced to dig graves was similarly barred since "the law makes no exception for duress. It also treats any group of two or more people fighting a government as terrorists, no matter how justified the cause or how long ago the struggle....Clearly, Congress needs to add an exception for duress, allow the secretary of state to designate armed movements as nonterrorist, and allow supporters of legitimate groups to gain refuge."

- **FROM MIAMI TO DILLINGHAM (ALASKA) SURVEILLANCE CAMERAS PROLIFERATE**

Federal anti-terror funds from the Department of Homeland Security (DHS) are paying for 80 powerful digital surveillance cameras in the small fishing village of Dillingham, Alaska – that's one for every 30 residents, according to former mayor Freeman Roberts. Living up to his first name, Roberts calls the cameras an invasion of privacy and "just plain creepy" (*Boston Globe*, April 2). Miami is planning to install a citywide closed-circuit video surveillance system, probably with DHS funds. Miami Police Chief John Timoney had been opposed to such systems until he attended a training seminar in Belfast, Northern Ireland, and watched how the system "helped police combat violent protesters" (*Miami Herald*, March 27). In the 1980s, Miami had a camera surveillance system which was dismantled "because the equipment often failed, not enough volunteers could be found to monitor screens and cameras never actually captured any crimes." New York City, Dallas, Chicago, Boston, Philadelphia and Baltimore are among the other cities that are either using or considering the use of surveillance cameras. Meanwhile, in Britain, there are reportedly 4 million public and private surveillance cameras in use, and the average citizen in London shows up on video screens about 300 times a day (*Boston Globe*, April 5).

- **AMERICANS NOT HAPPY WITH EXTENT OF SURVEILLANCE**

Computerworld (April 25) conducted a survey about public attitudes to different forms of surveillance which revealed that 90% of those polled are concerned or "unsure" about government monitoring of telephones and 85% are unhappy or unsure about software on their computers monitoring Internet browsing. In general, government-initiated surveillance was more disliked than surveillance conducted by businesses. 80 percent said it was important or very important to have controls over those charged with watching the public and 70% thought there should be legal recourse against entities that abuse surveillance.

B. IN THE US CONGRESS

- **SENATE TO CONSIDER TWO BILLS TO "LEGALIZE" WARRANTLESS NSA SPYING**

The "Terrorist Surveillance Act of 2006" (S.2455), with Senator Mark DeWine (R-OH) as chief sponsor, and Senator Arlen Specter's (R-PA) "National Security Surveillance Act of 2006" (S.2453) both represent the kind of "legislating in the dark" that would prevent

Americans from getting facts about the scope of the existing program. Both bills would both make individualized warrants optional, undermine the Fourth Amendment and Congressional oversight of intelligence activities, and reward the President for failing to follow existing law by giving him expanded powers. The Specter bill would allow for routine approval of the spying operation by the Foreign Intelligence Surveillance Court at a secret hearing every 45 days, while the DeWine bill would permit the warrantless wiretapping of Americans for more than 45 days if a small new Congressional subcommittee is informed. That subcommittee would not have the power to deny permission to wiretap and could only disclose specific information to other elected officials if the majority agrees. A particularly pernicious feature of the DeWine bill – which also makes judicial oversight optional – is its provision punishing whistleblowers who make unauthorized disclosures about the program with prison sentences for up to 15 years and \$1 million fines. Senator Kennedy has announced his opposition to both bills and should be thanked for doing so. To contact your senators on line, and to read more about this dangerous legislation, see www.aclum.org.

• **SCHUMER BILL WOULD MAKE IT EASIER TO CHALLENGE NSA SPYING IN COURT**

Senator Charles Schumer (D-NY) introduced a bill (S.2468) that would give people who have reason to think they might be under warrantless surveillance by the NSA standing to sue in federal court. The lawsuits would be heard by a special three-judge court and then fast tracked to the Supreme Court. The bill is unlikely to garner much support.

• **FEINGOLD'S CENSURE MOTION GETS COLD SHOULDER**

At a time when a *Newsweek* poll showed that half of all Americans wanted to censure President Bush for his warrantless surveillance program, only two Democratic senators came forward as co-sponsors of Senator Feingold's (D-WI) censure resolution – Tom Harkin of Iowa and Barbara Boxer of California. On March 31, the Senate Judiciary Committee held a sparsely attended hearing on the matter. Senator Feingold told the hearing, "If the President's legal theory...is correct, then FISA is a dead letter...and any future legislation we might pass regarding surveillance or national security is a waste of time and a charade. Under this theory, we no longer have a constitutional system consisting of three co-equal branches of government, we have a monarchy. We can fight terrorism without breaking the law. The rule of law is central to who we are as a people, and the President must return to the law...If we in Congress don't stand up for ourselves and for the American people, we become complicit in his law breaking."

• **HIDDEN TRAPS PRESENT IN SENATE IMMIGRATION BILL**

While the streets were full of marchers demanding real immigration reform, the Senate attempted to craft a compromise "reform" bill that, according to some press reports, could lead to legalization for as many as 11 million people. The "kinder gentler" Senate bill (in comparison to the draconian Sensenbrenner bill enacted by the House late last year) dealt with border security, a "guest worker" program and a way for people who

have been here a long time to apply for citizenship. The bipartisan compromise announced on April 6 had foundered by the end of the day, as Republican senators tried to tag on amendments designed to derail the legislation. As Congress adjourned for spring recess, matters were at an impasse. Advocates for immigrant rights had scrambled to keep abreast with a fluid situation in which literally hundreds of amendments were being proposed for the compromise bill. Most agreed that the bill that stalled in the Senate contained so many provisions harmful to liberty and due process that its passage would intensify the problems faced by immigrants. Chief concerns: 1. The path to legalization is riddled with so many landmines and legal hurdles that few people could take advantage of it. 2. It would speed up the deportation process, creating systems that allow people to be deported without a hearing. 3. It would expand detentions and legalize indefinite detention, making room at military bases for the detention of 10,000 people. 4. State and local police would be encouraged to enforce immigration laws. 5. The proposed Employment Verification System would for the first time require that ALL workers obtain a federal agency's permission to work, regardless of citizenship or immigration status. It would probably use an internet-based system to check names and Social Security numbers of all employees against two massive government data bases that would hold the most sensitive information on every lawful resident. Every worker would be registered in the two systems, with data files tracking every job they ever sought or held. That information, and other personally identifiable information, would be keyed to a person's Social Security number and would create a de facto national ID.

C. IN THE COURTS

• MOUSSAOUI CASE IN JURY'S HANDS

The long and bizarre saga that has been the prosecution of Zacarias Moussaoui is nearing a milestone as a jury in late April decides whether or not to order the death penalty. The government has argued that Moussaoui should be executed because he knew about the 9/11 plot when he was arrested three weeks before it happened, and could have given the government the information needed to prevent it. Moussaoui pleaded guilty to conspiracy charges in a case in which jurors were treated to wrenching testimony from 9/11 families and images of people jumping to their deaths from the burning towers, and to testimony that Moussaoui had endured an abusive childhood and was ill with paranoid schizophrenia. They also heard plentiful testimony about the way the FBI bungled opportunities to put two future hijackers under surveillance and to search Moussaoui's computer after his arrest, and about how the government had coached witnesses, who were not permitted to testify. They learned that there was no evidence of a link between the Moussaoui and "shoe bomber" Richard Reid as Moussaoui had claimed, and that 9/11 plot organizer Khalid Sheikh Mohammed viewed him as too unreliable to be part of the mission. But in his own testimony, the French citizen insisted he was part of a plot to fly a fifth hijacked plane into the White House – and that he would soon be released by President Bush. One family member, Marilyn

Rosenthal, whose son died in the World Trade Center, said outside the courthouse that "Mr. Moussaoui is the wrong man to be on trial" (*New York Times*, April 20). She criticized the government for failing to prosecute those who were really responsible for the attacks. Men like Khalid Sheikh Mohammed and Ramzi bin al-Sheib cannot be brought into court because their testimony, obtained under torture, would not be admissible.

- **SUPREME COURT HEARS ARGUMENTS IN CRUCIAL DETAINEE CASE**

On March 28 the Supreme Court heard oral arguments in the case of *Hamdan v. Rumsfeld*, which challenges the legality of military commissions at Guantanamo Bay and also the constitutionality of the Detainee Treatment Act, which strips Guantanamo detainees of most of their habeas corpus rights. The case involves Osama bin Laden's former driver, Salim Ahmed Hamdan. A lower court judge had ruled that the military commissions violate Hamdan's rights under the Third Geneva Convention. This decision was appealed by the Administration to the Appeals Court for the DC Circuit which ruled that US courts lack jurisdiction to hear claims under the Geneva Convention. The government had initially hoped that the US Supreme Court would agree, and refuse to take the case on these grounds. After the Court agreed to hear oral arguments, the Administration wanted the subsequently-passed Detainee Treatment Act to be invoked to deprive the Court of jurisdiction. The justices heard Georgetown University law professor Neal Katyal argue that his client, Salim Hamdan, faced procedures outside the laws and Constitution of the US, and a war-crime charge of conspiracy which is not recognized by international law because it is so vague. He argued that the Bush administration could not at one and the same time claim it has the power to convict someone for violating the laws of war and committing a war crime, while also denying them procedural protections provided by those same laws of war enshrined in the Geneva Conventions. Solicitor General Paul Clement presented the government's arguments, stating that the Geneva Conventions don't apply to the "war on terror." The Solicitor General also maintained that Congress was not in fact suspending habeas corpus with the Detainee Treatment Act – but could, given "the exigencies of 9/11," which meant that the Supreme Court had no right to hear this or any other Guantanamo case (*New York Times*, March 29). An alternative reading of the Detainee Treatment Act is that it strips federal courts of hearing future cases, but would not affect cases already in the federal pipeline. The new chief justice, John Roberts, has recused himself from the case because he ruled on it when it came before the DC Circuit.

- **SUPREME COURT REFUSES TO HEAR PADILLA CASE**

On April 3, the US Supreme Court turned away Jose Padilla's appeal. However, the justices did not agree with the Administration request that the case should be made moot because the long-term "enemy combatant" was now before a criminal court in Miami where he faces conspiracy charges that are far removed from government claims that he was on a mission to detonate a "dirty bomb" in the US. Instead, three justices who voted not to hear the case stated they would intervene "were the government to

seek to change the status or conditions of Padilla's custody" (*New York Times*, April 4). The Supreme Court refusal to hear Padilla's appeal means that the ruling by the Fourth Circuit Court of Appeals permitting the government to seize a citizen on US soil and confine him indefinitely without access to the courts still stands. Meanwhile in Miami, US District Court Judge Marcia Cooke, who is overseeing Padilla's criminal case, has imposed tight restrictions on the disclosure of national security secrets when the defense gets access to classified evidence.

- **AMERICAN MUSLIM WHO CLAIMS HE WAS TORTURED GETS 30 YEARS**

Ahmed Omar Abu Ali, a 25-year-old Virginian who was found guilty last November of joining al Qaeda and plotting to assassinate President Bush, was sentenced to 30 years in jail. He had maintained that the videotaped confession he gave to the Saudis was the result of torture. His lawyers are appealing the conviction, and asking whether NSA surveillance evidence was used against him.

- **TERROR CASE MIGHT SHED LIGHT ON NSA SPYING PROGRAM**

The Fourth Circuit Court of Appeals has sent the case of the convicted Muslim spiritual leader Ali al-Tamimi back to district court judge Leonie Brinkema (who is also the judge in the Moussaoui case) after concerns were raised that al-Tamimi might have been wiretapped by the NSA without a warrant. His lawyer Jonathan Turley maintains that if such evidence was used against him, it should void his conviction. Al-Tamimi faces life in prison after being found guilty of inciting his followers to take up jihad against the US.

- **JURIES RULE AGAINST SON, DEADLOCK ON FATHER IN TERROR CASE**

Two separate California juries convicted a 23-year-old Lodi, California farm worker, Hamid Hayat, of giving support to terrorism by attending an al Qaeda training camp in California. A jury deadlocked on whether his father had lied to the FBI about his son's involvement with the camp and the judge declared a mistrial. Prosecutors never presented any evidence that Hamid Hayat was at the camp, relying on disputed statements he made to agents. Key to the case was a government informant, Muhammad Adil Khan, who secretly recorded hundreds of hours of conversations, but whose credibility was challenged by Hayat's lawyer. Khan testified that Hayat never told him he had attended a camp. Hayat's lawyer said his client had shaky English and a sixth grade education and was prone to boasting and making outrageous statements to please Mr. Khan and investigators.

- **SAMI AL-ARIAN TO BE DEPORTED**

The man at the center of one of the government's most publicized terrorism cases, former Florida professor Sami al-Arian, will finally get out of prison when he is deported from the US. Indicted in 2003, the jury refused to convict al-Arian last December on charges that he supported the Palestinian group Islamic Jihad. Al-Arian, who had urged Arab-American voters to support George Bush in the 2000 election, had

visited the White House on four occasions and maintained contacts with a range of political leaders. He had been under FBI surveillance for nearly a decade, and hundreds of hours of taped conversations were introduced at his trial. His lawyer put up no defense, other than to say that evidence presented by the government was entirely First Amendment activity protected by the Constitution. The jury agreed.

D. IN THE COMMONWEALTH

• RESTORE THE RULE OF LAW EMERGENCY TOWN MEETINGS ATTRACT THOUSANDS

There has been a tremendous public response to the emergency town meetings which the ACLU of Massachusetts has organized with members of the Massachusetts Congressional delegation and experts on the issues to highlight illegal warrantless spying by the NSA and the government's unlawful practices of kidnapping, rendition, prisoner abuse and secret detention. After the Campaign to Restore the Rule of Law was launched at Faneuil Hall with Rep. Ed Markey in January, well-attended meetings were held with Rep. Meehan in Wayland (March 4), Rep. Frank in Newton (March 5), Rep. Neal and former Republican Congressman Bob Barr in Chicopee (March 23), Rep. Capuano in Cambridge (March 27), Rep. McGovern in Worcester (April 11) and Rep. Delahunt and former Rep. Bob Barr in Woods Hole (April 20). On June 1 Rep. John Olver will appear at an Emergency Town Meeting organized by ACLUM in Pittsfield. To get involved in the Campaign to Restore the Rule of Law, visit www.aclum.org.

• CAMBRIDGE MAY REAFFIRM STATUS AS SANCTUARY CITY

As immigrants feel increasingly vulnerable around the country, the Cambridge City Council may vote on May 8 to reaffirm the resolution it passed in 1985 declaring itself a sanctuary city for undocumented immigrants seeking refuge from Central American wars. At least four cities in California have declared they will not enforce proposed federal legislation criminalizing out-of-status residents, and the Cambridge City Council may decide to take a similar stand. Under the 1985 resolution no non citizen can be denied education or health care based on their immigration status, and Cambridge police officers cannot arrest people for immigration violations.

• BANK ACTS TO IMPROVE RELATIONS WITH ARAB-AMERICAN COMMUNITY

After Fleet Bank in 2002 and 2003 closed some 15 bank accounts of people in Massachusetts with Arabic names on suspicion of terrorism, the Boston chapter of the American-Arab Anti-Discrimination Committee and other community groups protested the discriminatory practice and launched a Fleet boycott. On April 12, 2006 Massachusetts Attorney General Tom Reilly announced that the Bank of America, which had taken over Fleet Bank, was inviting some of the complainants to re-open their accounts and would provide the AG's office with \$50,000 to create an awareness-raising brochure and video geared toward the Arab-American and Muslim communities. The

AG's office is also going to organize training sessions for Bank of America Massachusetts employees.

- **"JAILHOUSE CROCK: MITT IGNORES MASS. PRISONS, BUT WILL VISIT GUANTANAMO"**

This was the front page headline in the April 21 *Boston Herald*. The Massachusetts Governor toured the prison with Massachusetts Correction Commissioner Kathleen Dennehy and a potential rival for his presidential bid, Governor Mike Huckabee of Arkansas. Why Guantanamo? Eric Fehrstrom, the Governor's communications director, said the Defense Department had reached out to governors because they "run correction facilities and probably know more than most people about the challenges posed by detention and incarceration" (*Boston Globe*, April 21). That's why. On his return from his carefully tailored tour, Romney said he had "no concerns" about possible mistreatment since prisoners were being treated in a "very responsible and humanitarian way."

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