

CIVIL LIBERTIES UPDATE
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RIGHTSWATCH

A. EXECUTIVE ACTIONS

• **JUSTICE DEPARTMENT BACKS DOWN ON NSA SPYING**

On January 17, a day before a Congressional hearing into NSA spying was due to begin and two weeks before the start of an ACLU lawsuit in the Sixth Circuit Court of Appeals challenging the legality of warrantless spying on Americans by the National Security Agency, the Justice Department announced on January 17th that it has made an "innovative" arrangement with the FISA Court to obtain warrants for the spying program. Attorney General Alberto Gonzales, who again insisted that warrantless NSA spying was legal, claimed before the Senate Judiciary Committee that the FISA Court had come up with a "creative" way to allow for the program to be monitored without sacrificing "speed and agility," but refused to say exactly what the new arrangement involved (*New York Times*, January 19). He did say that the Justice Department had obtained multiple warrants from the FISA Court and "as a result of these orders any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court" (*New York Times*, January 18). Senators demanded to know why it took two years for the Justice Department to reach an arrangement that was acceptable to the FISA court to which Gonzales replied, "This is a very complicated application. It's not something you just pull off the shelf" (*Washington Post*, January 19, 2007). There was a two week standoff after Gonzales refused to give Congress any more information about the secret orders, leading Senator Leahy to ask, "Are you saying that you might object to the court giving us decisions that you've publicly announced? Aren't we a little Alice in Wonderland here?" Finally Gonzales agreed to turn over records to Senator Leahy and lawmakers on the Joint Intelligence Committee (*Boston Globe*, February 1).

• **ATTORNEY GENERAL SAYS CONSTITUTION DOES NOT GRANT HABEAS**

An exchange with Senator Arlen Specter in a Judiciary Committee hearing went like this:

Gonzales: "The fact that the Constitution – again, there is no expressed grant of habeas in the Constitution. There's a prohibition against taking it away. But it's never been the case. I'm not aware of a Supreme...

Specter: Wait a minute. Wait a minute. The Constitution says you can't take it away except in case of rebellion or invasion. Doesn't that mean you have the right of habeas corpus unless there's an invasion or rebellion?

Gonzales: I meant by that comment, the Constitution doesn't say every individual in the United States or every citizen is hereby granted or assured the right to habeas. Doesn't say that. It simply says the right of habeas corpus shall not be suspended except...

Specter: You may be treading on your interdiction and violating common sense, Mr. Attorney General." (*Washington Post*, January 23).

- **ATTORNEY GENERAL SAYS JUDGES SHOULD NOT RULE IN NATIONAL SECURITY CASES**

In a speech before the American Enterprise Institute, Attorney General Alberto Gonzales stated that federal judges are not qualified to decide terrorism issues, which should be left to the other two branches. "A judge will never be in the best position to know what is in the national security interests of our country" (*New York Times*, January 17).

- **BUSH ASSERTS RIGHT TO OPEN MAIL WITHOUT A WARRANT**

President Bush appended a signing statement to the Postal Accountability and Enhancement Act on December 20, 2006 that qualifies the requirement that government agents get warrants to open first-class letters. The statement says it would construe this provision "in a manner consistent, to the maximum extent permissible, with the need to conduct searches in exigent circumstances...and the need for physical searches specifically authorized by law for foreign intelligence collection" (*Los Angeles Times*, January 8). A White House spokesman stated that "in certain circumstances – such as with the proverbial 'ticking bomb' – the Constitution does not require warrants for reasonable searches" (*New York Daily News*, January 4).

- **PENTAGON AND CIA ARE SNOOPING ON BANKING AND CREDIT RECORDS**

Counterintelligence investigators in both the Defense Department and the CIA have been using National Security letters to seize the financial records of Americans "suspected of terrorism or espionage within the United States" (Associated Press, January 13). It had been assumed that National Security Letters (NSLs) – which are issued without any court supervision – were a tool used by the FBI, not the Pentagon or CIA. A Pentagon spokesman told AP that it uses NSL statutes "but does not use the specific term National Security Letter in its investigatory practice." According to Eric Lichtblau in the January 14 *New York Times*, "government lawyers say the legal authority for the Pentagon and the CIA to use national security letters in gathering domestic records dates back nearly three decades and, by their reading, was strengthened by the antiterrorism law known as the USA PATRIOT Act. Pentagon officials said they used the letters to follow up on a variety of intelligence tips or leads. While they would not provide details about specific cases, military intelligence officials with knowledge of them said the military had issued the letters to collect financial records regarding a government contractor with unexplained wealth, for example, and a chaplain at Guantanamo Bay erroneously suspected of aiding prisoners at the facility....even when the initial suspicions are unproven, the documents have intelligence value, military officials say. In the next year they plan to incorporate the records into a database at the Counterintelligence Field Activity office at the Pentagon to track possible threats against the military." (The Counterintelligence Field Activity – CIFA - office, created in 2002, has also monitored anti-war protestors, according to documents released to the ACLU – see below.) The number of Pentagon-issued letters is likely to be in the thousands. The FBI serves about 30,000 NSLs a year (*Washington Post*, January 16). On Fox News Sunday

Vice President Dick Cheney called the use of NSLs by the Pentagon and CIA "perfectly legitimate activity...It doesn't violate people's civil rights" (*New York Times*, January 15).

- **DEFENSE DEPARTMENT IS MONITORING ANTI-WAR GROUPS**

The ACLU has obtained a 4-page Pentagon memo entitled "Review of the TALON Reporting System" that says at least 186 entries dealing with "anti-military protests or demonstrations in the US" have been deleted from the database. (TALON, which stands for Threat and Local Observation Notice, was set up in the Counterintelligence Field Activity Agency by Paul Wolfowitz when he was deputy secretary of defense). Among them was a "Stop the War NOW!" protest which featured a rally and reading the names of the war dead. The memo says that 1,131 reports relating to Americans have been deleted from the database. There are over 7,700 reports in the system, according to the January 17 *Washington Post*.

- **IRS RECORDS MINED FOR LEADS IN TERRORISM INVESTIGATIONS**

A data-mining system called Reveal enables the IRS to share sensitive financial information with the FBI and other federal officials so they can build cases against suspected terrorists and money launderers, according to the January 15 *Washington Times*. Reveal searches IRS databases of individual and corporate tax returns, records of financial institutions, charities and non profit organizations, and personal information bought from ChoicePoint and LexisNexis. Reveal's founding project manager Kevin Hohn says the program "can detect and visually depict connections buried in mountains of tax documents, linking employees with employers and charities with donors, by cutting and grouping data using defined models...organizing it in a diagram that shows links established among individuals, addresses, Social Security numbers and other personal and financial information."

- **TERRORIST FUNDING DATABASE DELAYED**

The Treasury Department Financial Crimes Enforcement Network (FinCEN) reported to Congress that the Cross-Border Electronic Funds Transfer Program will be delayed until 2010, according to the January 17 *Washington Post*. This data-collection program, which would submit 500 million cross-border financial transactions each year to counterterrorism analysis, is opposed by bankers "who view it as burdensome and invasive." Every financial transfer of \$3,000 or more would be reported to FinCEN under the program, which would then analyze it for "terrorist connections." Currently, the Treasury receives more than 16 million currency transaction records and suspicious activity reports from banks every year. Richard Riese of the American Bankers Association Center for Regulatory Compliance said it represented a huge reporting burden and had serious privacy concerns: "All this information will now end up in the hands of the US government for them to sift through at their leisure without any apparent process to assure that it is being used for the most significant national security investigations."

- **FBI ADOPTS 'VACUUM-CLEANER APPROACH' IN INTERNET MONITORING**

According to Declan McCullagh (ZDNet News, January 30), the FBI is moving well beyond its Carnivore surveillance system (which was abandoned in 2004) and is creating vast databases of internet users, which can be queried for names, email addresses or keywords. This kind of "full-pipe surveillance can record all Internet traffic, including Web browsing - or, optionally, only certain subsets such as all email messages flowing through the network. Interception typically takes place inside an Internet provider's network at the junction point of a router or network switch."

- **FUSION CENTERS FORM AN ANTI-TERROR 'NETWORK OF NETWORKS'**

Some 37 states and Washington DC now have new "fusion centers" where information and tips are pooled and shared by local and state police, private security guards and other agencies. Former Attorney General John Ashcroft's once-discredited Operation Tips seems alive and well in Maryland. "You need to educate cops, firefighters, health officials, transportation officials, sanitation workers, to understand the nature of the threat...they see something, they can report it," says Harvey Eisenberg, an assistant US attorney who helps oversee the fusion center outside Baltimore (*Washington Post*, December 31, 2006). According to the *Post* piece by Mary Beth Sheridan and Spencer Hsu, "the emerging model of 'intelligence-led policing' faces risks on all sides. The centers are popping up with little federal leadership and training, raising fears of overzealousness associated with police and 'red squads' that spied on civil rights and peace activists decades ago...Civil liberties advocates worry that the fledgling fusion centers could stray into monitoring people engaged in lawful activities, as some members of new police homeland security units have done." Charles Allen, chief intelligence officer for the Department of Homeland Security, says they will soon deal with "'all hazards, all crime, all threats,' targeted not just at terrorism but also at transnational gangs, immigrant smuggling and other threats." Rep. Bennie Thompson (D-MS), the new chair of the House Homeland Security Committee, wants to make 'intelligence-led policing' the 21st century version of community policing.

- **MALL SECURITY GUARDS TO RECEIVE ANTI-TERRORIST TRAINING**

A standardized "anti-terrorism curriculum" developed at a cost of \$2 million by the International Council of Shopping Centers and the Homeland Security Policy Institute at George Washington University is being rolled out for the nation's 20,000 mall security guards, according to the January 3 *Washington Post*. "One lesson shows a man dressed as a janitor with a hose who seems to be watering plants in the food court. But there is no badge on his uniform and his eyes are scanning the crowd rather than looking at plants. Actually, he is spraying dangerous chemicals into the air...the DVD also has live footage of terrorist attacks from New York to Russia, including the carnage following a suicide bombing in Israel."

- **NO-FLY LIST BEING CHECKED FOR ACCURACY**

Senator Kennedy is not the only US senator who knows what it is like to be tripped up

by a no-fly list. Senator Ted Stevens (R-Alaska) says wife Catherine was frequently flagged because her name was being mixed up with that of Cat Stevens, who had been denied entry in 2004. Kiernan O'Dwyer, a veteran pilot for American Airlines, has been stopped 80 times since 2003, apparently because he was born in the same year as an IRA leader of the same name. Carrying an official letter from the Customs and Border Protection Office did him no good, because, he was told, it could have been forged (*Washington Post*, January 20). Now the list is being checked and may be cut by half, according to the Transportation Security Administration. It has been estimated at containing anywhere from 50,000 names to 350,000 names. The Department of Homeland Security will launch the Traveler Redress Inquiry Program (TRIP) on February 20 for people to report problems with the database. About 15,000 people per week complain that they have been mistakenly placed in the database and by last April, 33,000 had applied to have their names removed.

- **TINY CAMERA TO WATCH AIRLINE PASSENGERS**

It was reported in the February 10th (UK) *Daily Mail* that cameras the size of a fingernail are being developed to fit on the backs of airline seats in order to monitor the facial expressions and movements of passengers. The cameras will pick up "rapid eye movements, blinking excessively, licking lips or ways of stroking hair or ears" that "are classic symptoms of somebody trying to conceal something. A separate microphone will hear and record even whispered remarks. Islamic suicide bombers are known to whisper texts from the Koran in the moments before they explode bombs."

- **"DECLASSIFIED IN NAME ONLY"**

This was the headline of the January 4 *Los Angeles Times* article by John Wiener, a professor of history at University of California at Irvine, who detailed the giant obstacles facing researchers who hoped to get access to the hundred of millions of pages of secret government documents that were "automatically declassified" on December 31, 2006. "The policy known as 'automatic declassification' does not in fact mean that 25-year-old security information will be automatically declassified. It means that the material must be, in the words of the Justice Department, 'reviewed for declassification, exemption, and/or referral to other government agencies.'" The *Washington Post* headline: "How to Bury a Secret: Turn it into Paperwork" (January 16).

- **US IMAGE ABROAD DECLINES IN POLLS**

In a GlobeScan poll of 25 countries, half of all questioned said the US played a negative role in the world. In 18 of the countries which had been polled previously, people who viewed the US in a positive light declined from 36 percent last year to 29 percent this year (*New York Times*, January 27).

- **US REFUSES TO JOIN ACCORD ON SECRET DETENTIONS**

The US and its key European allies (Britain, Germany, Spain and Italy) have refused to sign onto a United Nations treaty preventing people from being held in secret detention.

Some 57 countries endorsed the treaty, which has been pushed for nearly twenty-five years by human rights groups (*Washington Post*, February 7).

- **CIA AGENTS FACE ARREST IN GERMANY**

A German court has issued an arrest warrant for 13 members of the CIA "abduction team" that kidnapped Khaled el-Masri, a German citizen. El-Masri was taken to Afghanistan where he was imprisoned for 5 months and tortured, before being released as a case of mistaken identity. The CIA denies any knowledge of this case of "extraordinary rendition." In the US, the ACLU has petitioned for a reinstatement of the case against the CIA it had filed on El-Masri's behalf. The case was thrown out of federal court last May on the grounds that allowing it to proceed would reveal state secrets. According to the January 31 *New York Times*, the case moved forward in Germany after a Spanish reporter gave German prosecutors the names of people involved in the abduction which were found in the logs of a hotel in Majorca, a Spanish island used as a logistic center for the CIA flights.

- **KIDNAPPED IMAM FREED BY EGYPT**

Montasser al-Zayat, a Muslim cleric who was kidnapped off a street in Milan in 2003 by suspected CIA agents and sent to Egypt where he was reportedly tortured, has been freed after a court ordered his release. He had initially been charged with membership of an illegal organization, but the charges were dropped and he was briefly freed, only to be arrested again for ignoring warnings not to speak to anyone about the kidnapping and rendition to Egypt. An Italian judge is currently considering whether to indict Italy's former head of intelligence and American CIA agents in connection with his kidnapping (*Boston Globe*, February 12).

- **DESPITE BEING CLEARED, CANADIAN KIDNAP VICTIM STILL ON US TERRORIST WATCH LIST**

Maher Arar, a Canadian citizen who was detained in New York in 2002 while in transit at JFK airport and then imprisoned in Syria for more than a year where he was severely tortured, was cleared by Canadian officials of any terrorist ties after a 2-year investigation, given a formal apology by the Canadian government and paid \$8.9 million in compensation. Arar accepted the Canadian prime minister's apology at an emotional press conference and said, "The struggle to clear my name has been long and hard...This struggle has taught me how important it is to stand up for human rights" (*Los Angeles Times*, January 27). But the US government has refused to remove him from its terrorist watch list. The US ambassador to Canada told the Canadian government it should stop asking the US to clear his name, saying it was "presumptuous" for Canada to tell the US who can be allowed into the country (*New York Times*, January 25). Canadian prime minister Stephen Harper stated that "we simply have a US government that won't admit it's wrong" (*New York Times*, January 23).

- **POLAND HOME TO SECRET CIA FLIGHTS, INTERROGATION FACILITY**

The February 6 *Chicago Tribune* reported that in 2002 and 2003 American Gulfstream planes from Afghanistan frequently landed at a runway at the Mazury-Szczytno International Airport, a former military facility in Poland, where they would be met by government vehicles before taking off for Morocco, Uzbekistan and Guantanamo Bay. After information about the flights was provided by the airport's manager, the Council of Europe set up an investigatory commission. It has concluded that "based on a careful balance of probabilities" there may have "a spiders' web" of secret CIA rendition flights and secret detention centers in Poland and Romania. The CIA declined to comment.

• **CIA REFUSES TO DISCLOSE 'ALTERNATIVE INTERROGATION METHODS' AND BUSH MEMO ON DETENTION**

The CIA is arguing that it should not be compelled to release to the ACLU as part of a FOIA lawsuit two memos discussing interrogation methods and a presidential order concerning the CIA's authorization to set up detention facilities outside the US. It claims the Bush memo is so "Top Secret" that National Security Council officials created a "special access program" governing access to the documents and that even the disclosure of the program's name "could be expected to result in serious danger to the nation's security." The interrogation methods are a "preliminary version" of the notorious Bybee memo that states that abuse does not rise to the level of torture under US law unless it inflicts pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death" (ACLU Press Release, January 10).

• **WORLDWIDE PROTESTS MARK GUANTANAMO'S FIFTH ANNIVERSARY**

From the United States, to Europe, to the Middle East, to Australia there were protests against Guantanamo on January 11, 2007, five years after the detention camp was opened to house "war on terror" suspects. Cindy Sheehan participated in a protest outside the prison camp, which included former Guantanamo detainee Asif Iqbal and the mother of a British detainee, Omar Deghayes, who was blinded in one eye shortly after being detained at Guantanamo and is still not charged with any crime (*Metro*, January 12). In Washington, 80 protestors were arrested for doing civil disobedience. United Nations Secretary-General Ban Ki-moon was among the world leaders who urged the prison's closure (*Boston Globe*, January 12). A military spokesperson stated, "I can tell you that we are detaining the right people in Guantanamo, we are detaining them legally, ethically, and humanely." More than 770 prisoners have been held there and some 395 remain, only 10 of whom have been charged with crimes and face trials before the revamped Military Commissions.

• **OFFICIAL DENOUNCES GUANTANAMO LAWYERS; RESIGNS**

Cully Stimson, the deputy assistant secretary of defense for detainee affairs, gave an interview with Federal News Radio in which he attacked major US law firms that were providing detainees with representation. Calling this fact "shocking," he listed the names of the firms and then said, "I think, quite honestly, when corporate CEOs see that

those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms, and I think that is going to have major play in the next few weeks. And we want to watch that play out." He then hinted that they were "receiving monies from who knows where" and called Guantanamo "certainly, probably, the most transparent and open location in the world" (*Washington Post*, January 12). Indeed, it did play out, with law firms, bar associations and Senator Patrick Leahy denouncing Stimson's remarks. A few days later Stimson apologized, saying he did not mean to give the impression that he questioned "the integrity" of those who defended detainees and that he supported pro bono work and the zealous representation of unpopular clients. On February 2 he resigned. Meanwhile, a US District Court judge in Washington has put the habeas proceedings for 16 Guantanamo detainees on hold, saying the Military Commissions Act has left him unable to make a ruling.

- **NAVY LAWYER AT GUANTANAMO FACES 36 YEARS**

Navy lawyer Lt. Cmdr. Matthew Diaz, who was stationed at Guantanamo from July 2004 to January 2005, is being court-martialed on the charge that he passed secret information about detainees to an unauthorized person, who notified the authorities. A Navy spokeswoman described it "as a document containing names and other identifying information." He could be sentenced to 36 years in prison (*New York Times*, January 9).

- **LAWYERS QUESTION MILITARY COMMISSION RULES**

Lawyers for three Guantanamo detainees who are facing military commissions told the Associated Press that the new tribunal rules have put them at a big disadvantage. Salim Hamdan's attorney Navy Lt. Cmdr. Charles Swift says he has not been able to interview any of the 70 or so government agents whose statements are expected to be used against Hamdan. Since hearsay evidence can be presented before the commissions the attorneys may have no chance to question actual people: in Swift's words, "You can't cross-examine a piece of paper....Also, because statements can be obtained by coercion, they don't want to say how they got them" (Associated Press, February 8).

- **GUANTANAMO REVIEW PANELS DEEPLY FLAWED**

As the Guantanamo detention camp approached its fifth anniversary, the December 31, 2006 *New York Times* published a long feature on the Combatant Status Review Tribunals which were established in 2004 in response to international pressure to provide some kind of due process at Guantanamo, and which decide on an annual basis whether detainees are in fact "enemy combatants." Due to the worry that detainees found "not to be enemy combatants" might sue the government for wrongful imprisonment, the tribunals were instructed to use the phrase "no longer enemy combatants." When they appear before these panels, detainees have no lawyers and cannot see the evidence against them, which includes statements obtained under coercion. The panels make little effort to get testimony from detainee witnesses – requests for this kind of information have been turned down 74 percent of the time even

when it has been gathered as part of a federal habeas case and handed over to the military. The article makes it abundantly clear why Barbara Olshansky of the Center for Constitutional Rights has referred to the tribunals as "kangaroo courts."

- **PRIVATE CONTRACTORS ABUSE DETAINEES AT GUANTANAMO**

According to the January 4 *Washington Post*, private sector contractors have been in charge of interrogations at Guantanamo. FBI documents released to the ACLU detail 26 cases of abuse, including one instance in which a civilian contractor ordered the head of a bearded detainee to be covered with duct tape because he "had been chanting the Koran and would not stop." Chenega Federal Systems won a \$152 million contract in 2006 to provide "interrogators/strategic briefers" to Guantanamo. It took over from a Lockheed Martin subsidiary, Affiliated Computer Systems, which denies that its interrogators were ever in charge. A Pentagon spokesman said Guantanamo contained "the world's most vicious terrorist operatives" but "Department of Defense Policy is clear. We treat detainees humanely. The United States operates safe, humane and professional detention operations for enemy combatants who are providing valuable information in the war on terror" (*New York Times*, January 3).

- **US INTERROGATOR IN FALLUJAH FACES NIGHTMARES**

Eric Fair, one of two contract civilian interrogators assigned to a 82 Airborne Division DIF interrogation center in Fallujah, wrote in the February 9th *Washington Post* about his complicity in the mistreatment of detainees. "The lead interrogator at the DIF had given me specific instructions: I was to deprive the detainee of sleep during my 12-hour shift by opening his cell every hour, forcing him to stand in a corner and stripping him of his clothes. Three years later the tables have turned. It is rare that I sleep through the night without a visit from this man...I cannot ignore the mistakes I made at the interrogation facility...I failed to protect a prisoner in my custody, and I failed to uphold the standards of human decency. Instead, I intimidated, degraded and humiliated a man who could not defend himself. I compromised my values. I will never forgive myself." Fair goes on to describe the other "aggressive, and in many ways abusive" techniques that were used daily in Iraq. "The citizens and the leadership of this country have an obligation to revisit what took place in the interrogation booths of Iraq, unpleasant as it may be. The story of Abu Ghraib isn't over. In many ways, we have yet to open the book."

- **REPORT SAYS THERE IS NO EVIDENCE THAT HARSH TECHNIQUES 'WORK'**

A 374-page report by the Intelligence Science Board states that there is no evidence that harsh interrogation practices produce good information but they do undermine government legitimacy. The study was sponsored by the Defense Intelligence Agency and the Pentagon's Counterintelligence Field Activity, and posted on the website of the Federation of American Scientists at www.fas.org/irp/dni/educing.pdf.

- **AIRLINE APOLOGIZES TO 40 AMERICAN MUSLIMS KEPT OFF PLANE**

A group of Americans returning from their Hajj pilgrimage were prevented from getting

on a Northwest Airlines flight from Germany to Detroit in mid January. The airline said they had arrived too late to make a connecting flight, but the travelers denied arriving late and said they were mistreated by the airline staff. Northwest has said it will give them compensation for their extra flight and hotel costs.

- **BUS DRIVER ORDERS WOMAN WEARING HIJAB TO LEAVE THE BUS**

A bus driver in Grand Rapids, Michigan said he was just following policy when he ordered a woman in an Islamic headscarf to get off the bus. He said he didn't recognize it as religious garb and head coverings were banned so riders could be identified in case of disturbance. Since the incident the bus company has apologized and modified its policy (*Washington Post*, January 20, 2007).

- **CHERTOFF GIVES 8 GROUPS "MATERIAL SUPPORT" EXEMPTION**

On January 12, the head of the Department of Homeland Security announced that he was using his discretionary authority to permit certain people who provided material support for terrorism when "under duress" to still apply for refugee, asylum or adjustment of their status. He also gave an exemption to people who gave "material support" to members of eight groups: the Karen National Union and Karen National Liberation Army, Chin National Front and Chin National Army, Chin National League for Democracy, Kayan New Land Party, Arakan Liberation Party, Tibetan Mustangs, Cuban Alzados, and the Karenni National Progressive Party. Conservative groups had joined refugee advocacy groups in pushing for change, saying the material support provision "is causing heroes who fought for the US to be afraid of being deported" (*Washington Post*, January 8). Before 2001 72,000 individuals were granted refugee or asylum status; 53,700 were allowed in last year.

- **ASYLUM SEEKERS IMPRISONED IN TEXAS DETENTION CAMP**

The T. Don Hutto Family Detention Center, a private jail in Tyler, Texas operated by the Corrections Corporation of America (CCA) which was reportedly due to be shut down for lack of use, is now crammed with more than 400 asylum seekers and undocumented immigrants, half of them children. Detainees wear green and blue prison garb and are housed in rooms containing a bunk bed, a sink and a toilet. Attorneys who toured the facility were shocked at how juveniles were being treated and at the general conditions. ACLU lawyer Linda Graybill said, "I can't describe how depressed people are in there" (*New York Times*, February 10). The CCA now runs 64 facilities in 19 states.

- **IMMIGRANTS WITH ASYLUM-BASED GREEN CARDS THREATENED**

At the end of 2006, the U.S. Citizenship and Immigration Services posted on its website a warning that the estimated 110,000 immigrants who have won asylum since 1990 and now have green cards could lose them if they visited their home countries. Such a visit could be taken as evidence that their stated "fear of persecution" is not genuine. There was no exemption specified for family emergencies or changed political conditions in home countries. According to Randolph McGrorty of Catholic Charities Legal Services,

"This new interpretation would...undercut our entire asylum process which encourages individuals to adjust their status from that of asylee to permanent resident, putting them on the path to citizenship and assimilation" (*The Miami Herald*, January 18). Green-card holders generally have had freedom to travel before this posting.

- **US IMPROPERLY PROCESSING ASYLUM SEEKERS FOR DEPORTATION**

This is the conclusion of the bipartisan United States Commission on International Religious Freedom, which warned Congress that in its zeal to secure borders the Bush Administration is leaving asylum seekers vulnerable to harsh treatment and speedy deportations known as expedited removal. People with asylum claims have been shackled and held in jails for months and years, and then often given no way to challenge the expedited removal process. The Commission had issued its first report two years ago and has been "quite disappointed and dismayed by the lack of a response" (*New York Times*, February 9). The Administration has argued that it would be too "burdensome to create a separate detention program for asylum seekers and that such a system might create incentives for people to claim they were fleeing persecution."

- **US CHANGES RULES TO KEEP OUT IRAQIS WITH VALID US VISAS**

In January, the US government refused to accept all but the latest electronically readable Iraqi passport, stranding thousands of Iraqis with valid entry visas but older passports which the government said were too easy to forge. Among those who could not get back into the US although they had valid visas were Boston-area graduate students (*Boston Globe*, February 7, 2007).

- **US BLOCKS IRAQI REFUGEES**

At a time when an estimated 1.8 million Iraqis have fled their country, only hundreds have been permitted to live in the US. The Administration had planned to settle 500 this year, according to the January 2 *New York Times*. There are 100,000 Iraqi Christians in exile who have relatives in the US whom they would hope to join if given a chance. Iraqis who worked with Americans have been applying for asylum on a daily basis.

- **IMMIGRATION SERVICE IN DIRE SHAPE**

The Washington Post on January 4 reported that the \$2-billion-a-year US Citizenship and Immigration Services is unable to keep up with existing applications for legal residency and does not have the funds to replace its antiquated computer network. At least 100,000 names submitted to the FBI for background checks have been on hold for more than a year and "Congressional auditors lost track of 111,000 files as of July." It would be unable to handle the flood of applications that would follow the passage of immigration reform legislation.

- **IMMIGRATION FEES SUBSTANTIALLY HIKED**

On January 31, the Bush Administration announced it was increasing immigration application fees by more than 80 percent. The cost to apply to be naturalized has

increased from \$330 to \$595, and the required fingerprint check will go up from \$70 to \$80.

- **700-MILE-LONG FENCE ON MEXICAN BORDER COULD COST \$49 BILLION**

This is the estimate of the Congressional Research Service, which does not include the expense of acquiring private land along the border or the cost of labor if the job is done by private contractors. The report questioned its effectiveness. Congress has voted \$1.5 billion for upgrading the infrastructure at the border and no money has been allocated specifically for the fence which the Congressional Budget Office thought might cost \$2.1 billion, considerably less than the Congressional Research Service estimate. Meanwhile, Boeing is constructing a "virtual fence" of high tech sensors and cameras along the US border in the north and south, which is estimated to cost \$2.5 billion (*San Francisco Chronicle*, January 8). Immigrants rights groups in Arizona have cited the growing violence along the border and armed attacks on two groups of migrants in early February resulting in at least three deaths as evidence that the militarization of the border does not make communities safer.

- **'OPERATION RETURN TO SENDER' SPREADS FEAR ACROSS COUNTRY**

At least 13,000 immigrants have been arrested since last June in an operation that the Bureau of Immigration and Customs Enforcement (ICE) says is aimed at people who have skipped their deportation proceedings or re-entered the country after being previously deported. In Los Angeles 750 people were arrested in a single week in late January. There were also arrests of undocumented workers doing construction work at military installations in Georgia, Virginia and Nevada.

- **RAID ON SMITHFIELDS PLANT DRAWS LABOR PROTEST**

Two dozen undocumented workers were arrested by ICE officials at the world's biggest hog slaughterhouse near Raleigh, North Carolina a few months after a walkout by the mostly Hispanic labor force to protest the company's decision to gather names, Social Security numbers and other personal information from the workers at the plant. The United Food and Commercial Workers union, which had been trying to unionize the workers, called the arrests an intimidation tactic (*Associated Press*, January 24).

- **BUSINESSES ASKED TO VOLUNTARILY HAND OVER EMPLOYEE INFORMATION**

The Washington Post reported on January 29 that the Department of Homeland Security was telling companies they would not be raided if they joined the ICE Mutual Agreement Between Government and Employers (IMAGE) program. IMAGE covers all members of a company's workforce and, unlike the Basic Pilot program, does a broad search of records to determine if a worker is using fraudulent documents. Among the companies participating in the program was Smithfield Packing Company, which was raided anyway after ICE alerted Smithfield by email of discrepancies in employees' records. According to the company, 541 of the workforce of 5,000 face termination

because of problems with their records. Among those on the list are people who led a walkout last November. Last December, ICE arrested 1,297 undocumented workers in six states in raids on Swift meatpacking plants. The February 9th *Washington Post* reported that the little town of Cactus, Texas had been virtually empty since a December 12 raid on its Swift plant by ICE agents "clad in riot gear and armed with assault rifles." Swift had been using the Basic Pilot program since 1997 and says it has no intention of changing to IMAGE.

- **DOZENS ARRESTED FOR 'DRIVING WHILE MEXICAN'**

The February 4 *Boston Globe* reports that a Louisiana statute passed in 2002 that makes it a felony for "alien students" and "nonresident aliens" to drive without having documentation proving they are in the country legally has resulted in numerous arrests after traffic stops. Among those arrested are some of the 100,000 Hispanics who came to the Gulf Coast region for post-Katrina construction jobs. The way the "anti-terrorism" law has been enforced has been widely denounced as racial profiling.

B. IN THE US CONGRESS

- **SENATE BILLS WOULD MODIFY MILITARY COMMISSIONS ACT**

Call on Senators Kennedy (202 224-4543) and Kerry (202 224-2742) to co-sponsor the Leahy-Specter **Habeas Corpus Restoration Act** (introduced on January 4, 2007 as S. 185) and Senator Christopher Dodd's **Effective Terrorists Prosecution Act** (introduced on November 17, 2006 as S. 4060 and currently being revised before being resubmitted). Christopher Dodd's bill goes considerably further to address the many problems of the Military Commissions Act.

The Leahy-Specter bill:

- strikes down the limitations on federal habeas corpus in the Military Commissions Act;
- gives detainees held by the US within its territorial jurisdiction – including at Guantanamo Bay – the right to challenge their detention and military commission trial procedures in federal court.

The Dodd bill as introduced in November 2006 (co-sponsored by Senator Leahy):

- restores habeas corpus protections;
- narrows the definition of "unlawful enemy combatant" to individuals who are not lawful combatants and directly participate in hostilities against the US;
- bars information obtained through torture or coercion from being introduced as evidence in trials;
- allows military judges to exclude hearsay evidence;
- authorizes the US Court of Appeals for the Armed Forces to review decisions by Military Commissions;

- limits the authority of the President to interpret the meaning and application of the Geneva Conventions;
- provides for expedited judicial review of the Military Commissions Act to determine its constitutionality.

- **DEMOCRATS WANT TO BEEF UP HOMELAND SECURITY**

As part of its first 100 hours push, the Democratic majority in the House of Representatives succeeded in passing by a vote of 299-128 legislation that would require the screening of all cargo loaded onto passenger aircraft in the US (which the Congressional Research Service estimates would cost \$3.6 billion over a decade) and ensure that cargo destined for US ports is checked overseas. The bill also would help the former Soviet Union secure nuclear weapons materials, change the way homeland security funding is allocated to cities and towns to ensure it goes to where the risk is greatest, and provide greater oversight to ensure that antiterrorism efforts do not infringe on civil liberties. The bill also called on the US to develop an agreement with other nations on how to handle Iraqi and "war on terror" detainees.

- **SENATOR LEAHY PUTS SPOTLIGHT ON GOVERNMENT DATA MINING**

On January 10, the Senate Judiciary Committee under its new chair, Senator Patrick Leahy (D-VT), convened a hearing on the privacy implications of government data mining programs. In his opening remarks, Senator Leahy reported that at least 52 different federal agencies are currently using data mining technology, and there are at least 199 different government data mining programs operating or planned in the federal government. There are at least 14 different government data mining programs – excluding those run by the NSA – in the Departments of Defense, Justice, Homeland Security and Health. "Although billed as counterterrorism tools, the overwhelming majority of these data mining programs use, collect, and analyze personal information about ordinary American citizens" and lack civil liberties and privacy protections. "We need look no further than the government's own terrorist watch list, which now contains the names of more than 300,000 individuals – including infants, nuns, and even members of Congress – to understand the inefficiencies that can result from data mining and government dragnets...We also need to understand that a mistake in a government data base could cost a person his or her job, sacrifice their liberty, and wreak havoc on their life and reputation." The senator announced he would introduce the Federal Agency Data Mining Reporting Act of 2007 to protect privacy rights by providing an oversight mechanism to check federal agencies "while fighting smarter and more effectively against security threats."

- **HOUSE JUDICIARY COMMITTEE TO EXAMINE SIGNING STATEMENTS**

Representative John Conyers, Jr. (D-MI), the new chair of the House Judiciary Committee, will be investigating President Bush's use of signing statements appended to 1,149 laws. He wants to see if the Administration has enforced those laws, including those touching on national security matters (*Boston Globe*, February 1).

- **SPECTER TELLS BUSH HE IS NOT THE SOLE DECIDER**

During a hearing on Congress' war powers, Senator Arlen Specter (R-PA) said Congress and the President had "shared and joint responsibility" on issues of war. In the words of Senator Russell Feingold (D-WI), "The Constitution makes Congress a coequal branch of government. It's time we started acting like it" (*New York Times*, January 30). The last time Congress issued an official declaration of war was at the start of World War II.

- **REAL ID ACT ATTACKED IN THE STATES, MAY BE RECONSIDERED IN CONGRESS**

The REAL ID Act, which Congress passed in 2005 as an "anti-terrorism" measure, has not yet been implemented since the regulations have yet to be released. But states are gearing up in opposition – to see why, visit www.realnightmare.org. The Maine legislature has opted out, and legislatures in Georgia, Montana, New Mexico, Washington and Wyoming have voted against it in committees or one house. This Act would require that all documents submitted for driver's licenses are genuine and would create a linked database of state licensing data which could be one-stop shopping for identity theft. Congress is expected to hold hearings on the REAL ID Act in March (when the regulations are expected to come out of the Department of Homeland Security) or April.

C. IN THE COURTS

- **GOVERNMENT PUSHES COURT TO DROP NSA SPYING CASE**

The Justice Department is arguing before the Sixth US Circuit Court of Appeals in Cincinnati in the case *ACLU v. NSA* that its own appeal should be dropped since it was made moot when the Attorney General disclosed that it is now involving the FISA court in warrants for NSA spying (See "In the Executive," above). The government contends that it has not changed its practices (which would expose it to charges of allegedly unlawful activity) but "the facts and legal authorities have changed" (*Washington Post* January 26). It says that the case should also be dismissed on "state secret" grounds. The plaintiffs are arguing that the case is not moot because the president is free to violate FISA again tomorrow, and only an order from the court saying he cannot violate the law would prevent that from happening. They say that the existence of the NSA spying program has been admitted and defended publicly, so this is not a "state secrets" issue. Last August federal District Court Judge Anna Diggs Taylor had declared the warrantless NSA spying program to be unconstitutional. So convoluted have been the government arguments that one of the lawyers said he had ordered a copy of Kafka's *The Trial* "because I needed a refresher course in bizarre legal procedures" (*New York Times*, January 26).

- **CASE OF 'ENEMY COMBATANT' BEFORE US CIRCUIT COURT**

Ali al-Marri, a citizen of Qatar, was living in the US legally and studying at Bradley

University when he was arrested on December 12, 2001 and held on a material witness warrant and then charged with credit card fraud and lying to federal agents. For over a year he was subjected to ordinary criminal proceedings. In June 2003, the government switched course, dismissed the criminal charges against him and declared him an enemy combatant. It placed him on the same naval brig off the coast of South Carolina where Jose Padilla and Yasser Hamdi were once confined. After a habeas corpus petition filed for him was denied by a federal judge in South Carolina, lawyers appealed to the Fourth Circuit Court of Appeals which began hearing his case in early February. They argue that even though he is not a US citizen, he was living legally in the US and the government has to give some kind of evidence to show why he is being indefinitely detained. The government is arguing that the Military Commissions Act strips al-Marri of habeas corpus and the courts have no jurisdiction to hear his case. According to the January 5 *New York Times*, "Mr Marri shared a fantasy with one of his lawyers not long ago. 'I'd love to be taken back to Saudi Arabia and they would beat the '—here, he swore — 'out of me for six months...It would be brutal, but it would be finite.'"

• **FEDERAL JURY ACQUITS TWO OF TERRORISM SUPPORT CHARGES**

When former Howard University professor Abdelhaleem Ashqar and Muhammad Salah, a US citizen and former grocer from suburban Chicago, were arrested in 2004, then-Attorney General John Ashcroft held a press conference in Chicago declaring that the men "played a substantial role in financing and supporting international terrorism" and "took advantage of the freedoms of an open society to foster and finance acts of terror." Among key evidence that they had financed the activities of Hamas was an alleged confession that Muhammad Salah gave to Israeli authorities after being interrogated for 80 days in an Israeli prison in 1993. During their trial, the courtroom was closed to the public, its windows were covered with black crepe paper, federal agents barricaded the doors and disguised Israeli agents were permitted to testify under code names. The defendants admitted they had sent money to Hamas for its material relief programs, but not to promote terrorism, and Salah claimed his confession – which the judge admitted as evidence - was a result of torture (*Chicago Tribune*, February 8). On February 1, the jury acquitted them of the most serious "terrorism" charges. They were found guilty of considerably lesser charges – the obstruction of justice and refusal to testify in front of a grand jury.

• **CLEVELAND IMAM IS STRIPPED OF US CITIZENSHIP; JAILED IN ISRAEL & THEN RELEASED**

Fawaz Dumra, a Palestinian who became a naturalized US citizen and imam of Cleveland's largest mosque, was accused of lying on his citizenship application in 1993 for not revealing a connection with Islamic Jihad (which was designated as a terrorist group in 1997) and an affiliation with groups that supported the Afghan resistance against the Soviet occupation. On January 3, after more than a year in detention, he was stripped of his citizenship and delivered by US immigration authorities to Israeli authorities at a West Bank crossing from Jordan. After being held for 20 days in an

Israeli prison he was released when a military court ruled he was not a security threat (Cleveland *Plain Dealer*, January 27).

• **TWENTY-YEAR-OLD DEPORTATION CASE DISMISSED**

On January 31, a federal immigration judge in Los Angeles dismissed the government's decades-long effort to deport two Palestinian activists, Michel Shehadeh and Khader Hamide, calling the case "an embarrassment to the rule of law" (*Washington Post*, January 31). They were arrested in 1987 for distributing magazines identified with the Popular Front for the Liberation of Palestine. Their lawyers argued they were engaging in protected First Amendment activity, while the government said they were supporting a terrorist organization. In Michel Shehadeh's words, "Federal officials accused me of supporting terrorism, not because I committed violence or even because I planned to (they continually acknowledged that I did not), but simply because our opinions and political activities (such as writing for newspapers, marching in demonstrations and raising money for hospitals) were not popular in Washington. No prosecutor ever filed criminal charges against us, but the government tried to deport us anyway....For 20 years, the Justice Department tried every tactic up its sleeve to get the courts to deport us. It persuaded Congress to change laws, charging us retroactively under immigration laws enacted since 1987, including the anti-terrorism provisions of the Patriot Act. It failed. It could not produce a shred of evidence of any wrongdoing on our part, simply because we had never done anything against the law" (*Los Angeles Times*, February 6). The government has refused to rule out an appeal of Judge Bruce Einhorn's decision.

• **TERRORIST CHARGE REINSTATED AGAINST PADILLA**

The 11th Circuit Court of Appeals in Atlanta has reversed a ruling by a US District Court judge in Miami, and reinstated the charge that former "enemy combatant" Jose Padilla had participated in an alleged terrorist support cell providing money and weapons for extremist Islamic causes. He has not been charged with direct ties to Al Qaeda. An article in the January 4 *New York Times* stated that the core of the government's case against Padilla and his two co-defendants, Adham Hassoun, a computer programmer, and Kifah Jayyousi, a former school system administrator, are tens of thousands of recorded telephone conversations, 21 of which make reference to him and seven of which feature his voice. The *Times* obtained recordings those seven calls and reported that there is no discussion of violent plots. The indictment against Padilla does not feature charges made by Guantanamo detainee Binyam Mohamed, who was reportedly the source of the "dirty bomb" information. Mohamed's lawyer Clive Stafford Smith says that information was a result of torture, and his client "has no conscious knowledge that he ever met" Padilla. Padilla's fitness to stand trial will be evaluated before his case goes to court.

• **FEDERAL COURT RULES US CITIZENS CAN NOT BE DETAINED WITHOUT JUDICIAL REVIEW**

Shawqi Omar is a US citizen who was arrested by US forces in Baghdad in October 2004

and then, according to his lawyers, subjected to electric shocks during interrogation. Lawyers from the Brennan Center for Justice and Northwestern Law School filed a habeas corpus petition on his behalf in December 2005. In February they learned that he was being transferred to Iraqi authorities for criminal trial. Fearing he would again be tortured, they sought an emergency injunction to block the transfer. The government argued that US courts had no power to hear the cases of US citizens if there is an "international" authority for their detention. The DC Circuit Court disagreed, ruling that, in the words of Judge David Tatel, the writ of habeas corpus "continues to protect fundamental rights as the United States confronts the challenge of international terrorism" (Brennan Center for Justice, New York School of Law press release, February 9).

D. IN THE COMMONWEALTH

• GOVERNOR PATRICK REVOKES MEMORANDUM OF UNDERSTANDING

On January 12, Governor Deval Patrick announced that he had rescinded the Memorandum of Understanding that Mitt Romney had signed with the federal government that would allow Massachusetts State Police to act as immigration agents. At the same press conference he said he would negotiate with the immigration service to allow specially-trained corrections officers to perform limited immigration law enforcement functions, such as initiating deportation proceedings against immigrants who were undocumented and had been convicted of crimes.

• MBTA SEARCHES "TURN UP ONLY FALSE ALARMS"

The Boston Globe on January 31 analyzed documents obtained from the MBTA about its search policy and reported that over a two and one-half month period, 2,449 inspections resulted in the bags of 27 riders testing positive initially for explosives. In all cases, nothing was found after a further search. The searches have turned up no weapons, but MBTA officials claim they "have been effective at thwarting potential terrorists." Six riders who refused to be searched were ordered to leave the station. "All complied, but not without some harsh words, according to inspection reports." In mid January London law enforcement officials toured the MBTA to "emulate the way officials here pinpoint suspicious individuals" (*Metro*, January 13-14).

• MBTA HAS INSTALLED 450 'ANTI TERRORIST' CAMERAS

The cameras, funded in part by a \$23 million in federal homeland security grants, are in place at every subway station and some bus stations, and are monitored at various security hubs, according to the January 29 *Boston Globe*. Police report that a dozen crimes have been solved with the help of cameras. It is not clear how the digitalized surveillance images will be used and how long they will be stored.

• ELECTRONIC CARTOON SCARE PARALYZES BOSTON

Vigilance or over-reaction? The January 31 terror scare that led Boston law enforcement

officials to close a highway, bridges and subway stations for hours after finding the first of 38 electronic advertisements for the show "Aqua Teen Hunger Force" brought the city both applause for the robust nature of its public safety response as well as a measure of ridicule. The Turner Broadcasting System and a Manhattan marketing agency announced it will pay the city \$2 million in recompense while Attorney General Martha Coakley decides what to do about the charges facing two men who placed the devices around the city. The "guerrilla marketing campaign" had also been conducted in New York, Chicago, Los Angeles and several other cities, where the objects remained in place for weeks without causing a similar reaction.

• **OVERLAND CAPITAL GROUP DENIES TERRORIST CONNECTION**

According to the February 1 *Boston Globe*, a Boston private equity firm is reportedly under federal investigation for terrorist ties. Its two primary investment clients are Islamic Investment Company of the Gulf and Shamil Bank of Bahrain, according to its chief executive James Godec, who denied the company had done anything wrong. The probe grew out of a wrongful termination lawsuit filed by a former Overland employee.

• **JURY AWARDS \$400,000 IN LOGAN RACIAL PROFILING CASE**

After American Airlines staff forced a Fall River resident off a plane before take-off at Logan airport, and refused to allow him back on even though he had been cleared by state police during a two-hour investigation and was an American Airlines frequent flyer, he brought suit against the Airlines. In January he was awarded \$400,000 by a federal jury which decided the native of Portugal was a victim of illegal racial profiling (*Boston Herald*, January 17).

• **IMMIGRANTS ARRESTED ON THE CAPE**

On January 29, at least 15 undocumented immigrants, several of whom had young children, were detained by the Bureau of Immigration and Customs Enforcement (ICE), possibly as part of its national "Operation Return to Sender." There were mounting concerns about the impact of the sweeps, which tear apart families and have in some instances left young children unattended. In some cases people have been deported without the opportunity to exercise their rights to call family members or a lawyer. Although ICE states it has valid warrants, it has also arrested other people in the vicinity of an operation, based on their appearance.

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