CIVIL LIBERTIES UPDATE
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RIGHTSWATCH

A. EXECUTIVE ACTIONS

• INSPECTOR GENERAL'S REPORT REVEALS FBI MISUSE OF NATIONAL SECURITY LETTERS

The USA PATRIOT Act's section 505 made it easier for the FBI to issue National Security Letters (instant subpoenas which do not require a judge's approval) to get information from telephone companies, Internet service providers, libraries, banks, credit bureaus and all types of businesses as long as the records were "sought for" or "relevant to" a terrorism or espionage investigation. In early March, Justice Department Inspector General Glenn Fine issued *A Review of the Federal Bureau of Investigation's Use National Security Letters*. The 126-page report found serious flaws in how the FBI kept track of how many NSLs were issued, with 22% more NSL requests in case files than were recorded in the database; underreporting of the number of requests in classified reports to Congress, with at least 8,850 requests missing for the years 2003, 2004 and 2005; instances where NSLs were not approved by appropriate officers or wrong information about the wrong people was given to NSL recipients; information from NSLs wrongly being used in criminal proceedings because it was not marked or tagged when entered into the FBI databases and shared with other agencies; and too much information being handed over by third parties. For instance, the report cites over 700 occasions when the FBI got telephone billing records from 3 telephone companies without first issuing NSLs or grand jury subpoenas. The companies were responding to FBI "exigent letters" which claimed an urgent need for the records and said and other authorizations would follow – but follow-up subpoenas showing the link between the exigent letters and ongoing investigations were never sent. It reveals that a total of 143,074 NSL requests were made in the period 2003-2005 – an average of 130 per day – with more than half of the requests during 2005 related to "US persons." In response to the Inspector General's revelation of

FBI illegalities, sloppiness and "serious misuses of national security letter authorities," FBI Director Robert Muller apologized to Congress and assured Members that "we strive to exercise our authorities consistent with the privacy protections and civil liberties that we are sworn to uphold. Anything less will not be tolerated" (*Washington Post*, March 9). In a follow-up story, the March 18 *The Boston Globe* reported that "FBI counterterrorism officials continued to use flawed procedures to obtain thousands of US telephone records during a two-year-period when bureau lawyers and managers were raising escalating concerns" about their use of exigent letters to circumvent the law.

• INSPECTOR GENERAL'S AUDIT SHOWS JUSTICE DEPARTMENT INFLATED TERROR STATISTICS

Another audit from the Inspector General's office shows that federal prosecutors counted immigration violations, marriage fraud and drug trafficking as "antiterror cases" even though there was no evidence to link them to terrorist activity. The numbers, which are reported to Congress and the public, are influential in the decision about the Justice Department budget. According to the Associated Press (February 20), "Nearly all of the terrorism-related statistics on investigations, referrals and cases...were either diminished or inflated. Only two of 26 sets of department data reported between 2001 and 2005 were accurate, the audit found." The most severely flawed data came from the Executive Office of US Attorneys, which compiled statistics from federal prosecutors' districts nationwide.

• ATTORNEY GENERAL ADMITS "MISTAKES WERE MADE" – BUT WILL HE RESIGN?

The politicization of the Justice Department, and the prevarication of Attorney General Gonzales who initially claimed that eight US attorneys had been fired for poor performance, were underscored by the publication of emails between Gonzales' chief of staff Kyle Sampson (who resigned on March 12) and the former White House Counsel Harriet Miers, who had suggested in February 2005 firing all 93 US attorneys to make way for a new crop of Bush loyalists (an idea rejected by Gonzales as being too "disruptive"). Emails that came to light subsequently show that Karl Rove and Gonzales were in the loop of the discussion about a mass firing of prosecutors at least a month earlier. Of particular concern to the White House was the failure of certain US attorneys to prosecute cases of alleged Democratic Party voter fraud. By March 16, two Republican Senators had joined Democrats in calling for Gonzales' resignation, and on that date the *Boston Globe* ran an editorial detailing why "Alberto Gonzales should go." Senator Patrick Leahy is planning to subpoena Karl Rove, Harriet Miers and deputy White House counsel William Kelley to testify under oath if they refused to appear voluntarily before the Senate Judiciary Committee. Gonzales had told the Judiciary Committee during his 2005 confirmation hearing that he knew as attorney general that he would no longer represent the White House, but "will represent the United States of America and its people. I understand the difference between the two roles" (*New York Times*, March 15). On March 13, he acknowledged at a Press conference that "mistakes

were made" and that he was prepared to "find out what went wrong here" and had no intention to resign (*New York Times*, March 14). An obscure provision of the reauthorized PATRIOT Act permits the White House to appoint new US attorneys without Senate hearings when a vacancy arises. On March 8, the attorney general agreed to drop his opposition to changing that provision. A bill is being filed to restore the previous rule permitting the attorney general to make an interim appointment for 120 days when there was a vacancy and to permit a federal district judge to confirm the appointment if the Senate did not do it after 120 days.

• WHITE HOUSE PRIVACY BOARD GIVES THUMBS UP TO NSA SPYING
Created by the White House in late 2004 as a response to a 9/11 Commission recommendation, the 5-member Privacy and Civil Liberties Board found in its first report that there were sufficient privacy protections in the NSA warrantless eavesdropping program and in the monitoring of international banking transactions. But some members were worried by the error-ridden "no fly" lists and the assigning of risk assessments to millions of Americans who go abroad *(Metro*, March 6).

• NEW TOTAL INFORMATION AWARENESS PROGRAM BEING TESTED
A cutting edge data-mining program called (no kidding) Analysis, Dissemination, Visualization, Insight and Semantic Enhancement (ADVISE) would "troll a vast sea of information, including audio and visual, and identify suspicious people, places, and other elements based on their links and behavioral patterns," according to Ellen Nakashima and Alec Klein in the February 28th *Washington Post*. The Government Accountability Office is preparing a report into ADVISE that raises serious privacy concerns. An official of the Department of Homeland Security said the program was tested in four pilot programs, but only used "synthetic" data which can't be traced to real people. It is further along than DARPA's Total Information Awareness program was when it had its funding withdrawn by Congress. A similar program, developed by the highly secret Disruptive Technology Office, sifts through massive amounts of data to detect hidden patterns, but focuses only on foreigners. According to a former DARPA deputy office director, Robert Popp, founder of the Boston-based National Security Innovations that works on technologies for intelligence agencies, "pattern analysis" is a useful tool which in 2003 "helped interrogators at the US prison at Guantanamo Bay, Cuba, assess which detainees posed the biggest threats."

• SPY AGENCIES SHOULD RECRUIT PEOPLE WHO CAN SPEAK FOREIGN LANGUAGES, SAYS BUSH
The president made the remark on February 20 as he swore in retired Vice Admiral Mike McConnell as the second director of national intelligence, following John Negroponte's resignation. McConnell agreed that remarkably little had been done over the past five years to get more Arabic and Farsi language speakers involved in the national security effort: "The old policies have hampered some common-sense reforms, such as hiring first- and second-generation Americans who possess native language

skills, cultural insights, and a keen understanding of the threats we face" (*Boston Globe*, February 21).

• ANOTHER BIG DELAY IN FIXING "NO-FLY" PROGRAM
The Transportation Security Administration (TSA) has invested $140 million in trying to make sure, among other things, that the watch lists used to flag airplane passengers do not continue to confuse the name of Senator Ted Stevens' wife Catherine with Cat Stevens, who was put on the "no-fly" list. But it admitted on February 20 that it is five years behind schedule, needs more funding, and a more sophisticated terror watch list might not be ready until 2010.

• BODY-SCANNING X-RAY MACHINES INSTALLED IN PHOENIX AIRPORT
Will "Smart-Check" - which shows what is under your clothes - soon be coming to an airport near you? The ACLU denounced the machines, which are produced by American Science and Engineering, Inc. of Billerica, Massachusetts, as a "virtual strip-search" and asked Congress to ban them. There are conflicting views about whether they could damage health (*New York Times*, February 24).

• REVOLT AGAINST REAL ID GATHERS STEAM AS REGULATIONS RELEASED
On March 1, the Department of Homeland Security released draft regulations for the implementation of the Real ID Act that delay its implementation for two years, while failing to address its fundamental problems. The regulations, which have a 60-day public comment period before going into effect, were denounced by the ACLU as a "real nightmare" that would lead to a national identity card system violating personal privacy, create a big bureaucratic mess by requiring all documents be authenticated, lead to longer lines, higher fees and increased identity theft. The total cost of implementing REAL ID could be as much as $23 billion. After legislatures in Maine and Idaho decided to reject participation in the Real ID Act, other states appeared poised to follow suit. Bills have also been filed in Congress to fix the Real ID mess (see "In the Congress," below).

• CITIZENS WHO LACK THE RIGHT PAPERS ARE DROPPED FROM MEDICAID
Tens of thousands of people who have not been able to produce original birth certificates or other documents proving their citizenship have been denied access to Medicaid, according to the March 12 *New York Times*. The 2006 Deficit Reduction Act required people who want to qualify for Medicaid to provide "satisfactory documentary evidence of citizenship" in the form of original documents or copies certified by the issuing agency.

• CREDIT DATA STOLEN FROM STOP & SHOP
Bugs were planted in checkout-line card readers which enabled identity thieves to steal credit and debit card data in at least six Stop & Shop stores in Rhode Island. The

company then bolted down card readers in all its New England stores so they could not be tampered with.

• TJX DATA THEFT COULD HAVE STARTED IN 2005

The February 22 *Boston Globe* reported that the theft of credit and debit card information from computers in stores run by the TJX company (TJ Maxx and Marshalls) could be far more extensive that originally reported, going back to 2005 and affecting millions more people.

• VERMONT TOWNS VOTE TO IMPEACH BUSH

Residents in 32 Vermont towns came out in support of a measure calling on Congress to file articles of impeachment against the president for misleading the nation on weapons of mass destruction and for illegal wiretapping and other abuses. Sixteen towns passed a separate "soldiers home now" resolution.

• "ENDGAME" SETS OUT 10-YEAR PLAN TO REMOVE *ALL* UNDOCUMENTED IMMIGRANTS

With the immigrant community in Massachusetts reeling from the raid which seized more than 350 workers, mostly women, from a New Bedford factory (see *In the Commonwealth* below), a strategic plan by the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (Office of Detention and Removal) to deport "all removable aliens" by 2012 has come to light. "ENDGAME: Detention and Removal Strategy for a Secure Homeland" was released to the Deputy Assistant Director of Field Operations on June 27, 2003 by Anthony Tangeman, Director of the Office of Detention and Removal, who expressed his pride at developing a strategic work plan to guide operations for the next 10 years. In its introduction, ENDGAME states: "In response to national policy, DRO [Office of Detention and Removal] provides the necessary public service of removing unauthorized aliens from the United States. DRO is committed to providing this service in a professional, effective and efficient manner." In cooperation with other "enforcement arms," both internal to DHS and external (here the list is quite extensive), DRO will, the report says, "work diligently to identify, locate, apprehend, process, and remove aliens who violate this nation's immigration laws....Illegal aliens, unaccompanied juveniles, asylum seekers, refugees, and countless other apprehended aliens cannot all be immediately removed from the country, nor can they all be released into the American community. For that reason, DRO resources and expertise are required to transport these aliens from point to point, to manage them in custody while their cases are being processed and, finally, to remove them from the country when ordered to do so....While the alien will not necessarily perceive any 'benefit' from DRO services, he will be provided with safe and secure confinement in detention facilities, as well as transportation from ports and points along the border to other detention facilities or his country of origin. These services will be provided in a professional manner....The special nature of the DRO detained population requires unique detention procedures and the manpower to process, house, and transport aliens

almost continually." The report, in chilling bureaucratic language, goes on to lay out "both short- and long-term strategies that, when implemented, will facilitate realization of its vision."

• CHURCHES PLAN "NEW SANCTUARY MOVEMENT"
Calling immigration a "human rights issue," churches in Los Angeles, Chicago and New York are planning to launch a "sanctuary" movement to help immigrants avoid deportation and unite faith-based groups in a push for immigration reform. Planning is underway with local and national religious leaders from a dozen faiths participating (Associated Press, March 16).

• IMMIGRATION DETENTION CENTERS RESEMBLE PRISONS
A detention facility for immigrant families in Texas, the Don Hutto Residential Center, and the Berks Family Shelter Care Facility in Pennsylvania have been described as prison-like in a report issued by refugee advocacy groups, while a Department of Homeland Security spokesman insisted that "they adhere to the highest standards" (*New York Times*, February 22). The report faulted the facilities for providing inadequate medical care, food and educational opportunities and separating children as young as 6 from their families.

• CURRENT GUESTWORKER PROGRAM IS "CLOSE TO SLAVERY"
This is the conclusion of a report released on March 12 by the Southern Poverty Law Center. It documents the plight of 120,000 foreign workers who enter the US each year on the guest worker program, paying up to $10,000 to participate in what is a kind of indentured servitude. Once in the US, employers over take away their identity documents, leaving them vulnerable to being arrested as "illegals"; cheat them out of their wages, ruthlessly exploit them and lodge them in sub human conditions. According to Mary Bauer of the Southern Poverty Law Center, "This is not a situation where there are just a few bad-apple employers. Our experience is that it's the very structure of the program that lends itself to abuse" (*New York Times*, March 12).

• CANADA DEMONSTRATES THE PENDULUM CAN SWING BACK
In late February Canada took two major steps to reverse its "national security" trajectory: its Supreme Court struck down a law used to detain foreign-born terrorism suspects indefinitely using secret evidence and upheld everyone's right to fair treatment, while Parliament voted not to extend two "anti-terror" measures that undermined civil liberties. On February 27, the *New York Times* editorialized, "Now we see that a nation can regain its senses after calm reflection and begin to rein back such excesses....The contrast with the United States could not be more disturbing."

• STATE DEPARTMENT INFERS US COULD DO BETTER IN HUMAN RIGHTS FIELD
In early March, the US State Department released its annual, Congress-mandated

examination of the human rights situation in other countries with the admission – made by Assistant Secretary of State Barry Lowenkron - that it was being issued "at a time when our own record, and actions we have taken to respond to terrorist attacks against us, have been questioned" (*New York Times*, March 7). Secretary of State Rice then stated that "our democratic system of governance is accountable, but it is not infallible" without citing any US violations of human rights.

• "GHOSTS OF ABU GHRAIB" INDICTS CHAIN OF COMMAND

The documentary, directed and produced by Robert Kennedy's daughter, Rory, was aired on HBO on February 22. It shows how rapidly men and women assigned to serve as prison guards adopted "Lord of the Flies" behavior when told to "use your imagination" about how to "soften up" prisoners. "The administration, convinced that intelligence gathering was one of the most important weapons against terrorism, kept pressuring military commanders to produce information about the insurgency, but paid almost no attention to how it was done" (*New York Times*, February 22).

• STUDY FINDS LITTLE DIFFERENCE BETWEEN IMPACT OF PHYSICAL TORTURE AND "CRUEL AND DEGRADING TREATMENT"

A study published in the Archives of General Pyschiatry (lead author Dr. Metin Basoglu) repudiates the Justice Department position that using methods like forced standing, hooding, subjection to loud noises, and sleep deprivation did not constitute torture unless it resulted in "prolonged mental harm". Data obtained from survivors of both torture and "cruel, degrading and inhumane treatment" indicates that there is little distinction between them in terms of the impact on the victim. Both frequently lead to post-traumatic stress disorder and other long-term psychological suffering. Dr. Basoglu maintains, "They distinguish low levels of physical pain and high levels, as if that's what makes the experience traumatic. But it's not dependent on the amount of pain. It's the issue of control and the extent of distress one experiences" (*New York Times*, March 6). *Educing Information: Interrogations: Science and Art*, a lengthy report released last December by the government's Intelligence Science Board, concludes that there was *no* scientific evidence that coercive techniques produced good intelligence.

• ITALY INDICTS CIA OPERATIVES IN RENDITION CASE

In mid February an Italian judge in Milan issued an indictment against 26 Americans, most of them CIA officers, and 5 Italian agents for carrying out the kidnapping of an Egyptian cleric, Hassan Mustafa Osama Nasr, who disappeared near his mosque in February 2003. Naser says he was severely tortured in Egypt and showed scars to journalists (*Boston Globe*, February 23). He had been suspected of fighting in Afghanistan and Bosnia, but his Egyptian lawyer said he had never visited those countries. The Italian indictment follows the action of a German court, which in January indicted 13 CIA agents and others in another rendition case. The US has said it will not extradite CIA agents to Italy, so they will probably stand trial in absentia in June.

• EU COMMITTEE FINDS "AT LEAST" 1,245 SECRET CIA FLIGHTS IN EUROPE
A Parliamentary committee of the European Union has detailed more than a thousand secret CIA rendition flights involving European destinations. European governments either actively colluded with the flights or turned a blind eye to them (*New York Times*, February 17).

• HUMAN RIGHTS WATCH LISTS 39 SECRET CIA DETAINEES
The list, made public on February 28, includes Aafia Siddiqui, a Boston resident and MIT graduate. It got information about the capture of some "ghost detainees" because "in many cases, local authorities bragged about it," according to researcher John Sifton.

• FORMER "GHOST DETAINEE" TELLS HIS STORY
The February 28 *Washington Post* described the experience of a Palestinian, Marwan Jabour, who was released from a secret facility in Afghanistan on June 30, 2006 after two years in various "black sites" where he said he was beaten, abused, burned, spent weeks chained to a wall, and was often chained in painful positions for long hours and deprived of sleep. He was eventually sent to Jordan, interrogated, and handed over to Israel which found no reason to hold him and sent him home to the Gaza Strip.

• SECRET PANELS HELD FOR 14 "HIGH VALUE" DETAINEES
On March 9, secret Combatant Status Review Tribunal hearings began for the 14 detainees who were transferred to Guantanamo late last year after being held in CIA facilities. The purpose of the hearings is to determine if they are "enemy combatants." On March 14, the government released an edited transcript of Khalid Shaikh Mohammed's testimony, in which he confesses to being the mastermind behind 9/11 and fully or partially responsible for up 31 other terrorist plots and attacks (including the beheading of the American journalist Daniel Pearl). He reportedly said, "I'm not happy that 3,000 been killed in America. I feel sorry even. I don't like to kill children and kids" and maintained that some of his statements to CIA interrogators were a result of torture but now he was telling the truth (*New York Times*, March 15). Mohammed, who graduated from North Carolina Agricultural and Technical State University in the 1980s, invoked George Washington fighting to free his people from the tyranny of an oppressive foreign government and the American Constitution during his statement. He told the panel that some detainees in Guantanamo were unjustly arrested and wrongly held as enemy combatants.

• AUSTRALIAN DETAINEE TO BE TRIED BEFORE MILITARY COMMISSION
At the beginning of March, the Defense Department brought the charge of "providing material support for terrorism" against Guantanamo detainee David Hicks. Hicks, an Australian who has been in US custody for more than 5 years, is reportedly no longer a Muslim and mentally unstable. He is not being charged in connection with the 9/11 attacks, and all but one of the original charges against him have been dropped. His lawyers, including Major Mori whom the American Embassy sought in vain to bar from

visiting Australia on his client's behalf, are filing a petition for an expedited Supreme Court hearing which will be a test of the Military Commissions Act. There is a groundswell of support for Hicks in Australia – not "because Australians believe that he is innocent, but rather because many here believe he has been denied justice by having been held so long without a regular trial" (*New York Times*, March 3).

• MILITARY COMMISSION COURT WILL NOT HAVE A FANCY FACILITY
Defense Secretary Robert Gates has decided not to spend $100 million for a compound at which Guantanamo detainees will be tried. Instead, he proposes to use temporary facilities for the commissions (*Boston Globe*, March 1).

• GARDENING AT GUANTANAMO
A small group of the "most compliant" Guantanamo detainees are being provided with plastic gardening tools, watering cans and seeds in order to give them some intellectual stimulation, according to Navy Commander Robert Durand (*Boston Globe*, March 12).

B. IN THE US CONGRESS

• NEW YORK TIMES PRESENTS ITS LEGISLATIVE "MUST-DO LIST"
In an important editorial on March 4 that filled 2 entire columns, the *New York Times* laid out its agenda for the 110th Congress. It starts with "three fundamental tasks": "Restore Habeas Corpus...Stop Illegal Spying...Ban Torture, Really". It goes on to lay out the reasons why each of the following is included on the list: "Close the CIA Prisons...Account for 'Ghost Prisoners'...Ban Extraordinary Rendition...Tighten the Definition of Combatant...Screen Prisoners Fairly and Effectively...Ban Tainted Evidence...Ban Secret Evidence...Better Define 'Classified' Evidence...Respect the Right to Counsel." Its final section: "Beyond all these huge tasks, Congress should halt the federal government's race to classify documents to avoid public scrutiny – 15.6 million in 2005, nearly double the 2001 number. It should also reverse the grievous harm this administration has done to the Freedom of Information Act by encouraging agencies to reject requests for documents whenever possible. Congress should curtain FBI spying on nonviolent antiwar groups and revisit parts of the Patriot Act that allow this practice. The United States should apologize to a Canadian citizen and a German citizen, both innocent, who were kidnapped and tortured by American agents. Oh yes, and it is time to close the Guantanamo camp. It is a despicable symbol of the abuses committed by this administration (with Congress's complicity) in the name of fighting terrorism."

• BILLS TO ROLL BACK MILITARY COMMISSIONS ACT NOW IN BOTH CONGRESSIONAL HOUSES
In the Senate:
Call on Senators Kennedy (202 224-4543) and Kerry (202 224-2742) to co-sponsor the Leahy-Specter **Habeas Corpus Restoration Act** (S. 185) and Senator Christopher Dodd's **Restoring the Constitution Act of 2007** (S.576). Christopher Dodd's bill goes

considerably further than the Leahy-Specter bill to address the abuses of the Military Commissions Act.

In the House:
The House version of Restoring the Constitution Act of 2007 is **H.R. 1415**, which was introduced by Jerrold Nadler (D-NY) and Jane Harman (D-CA). Massachusetts Representatives should be asked to support it. The **Military Commissions Habeas Corpus Restoration Act (HR 267**), filed by Rep. Sheila Jackson-Lee (D-TX), restores habeas corpus to those designated as "enemy combatants". Rep. David Wu (D-OR), has filed **H.R. 1189**, a two-sentence bill that guarantees all US residents the right to habeas corpus. Massachusetts Representatives should also be asked to sign onto Edward Markey's **Torture Outsourcing Prevention Act (H.R. 1352),** which would bar the practice of "extraordinary rendition.

• CONGRESSIONAL BILLS ADDRESS REAL ID
In the Senate:
Ask Massachusetts Senators Kennedy and Kerry to support the **Identification Security Enhancement Act of 2007 (S. 717**), filed by Senators Akaka and Sununu (and co-sponsored by Senators Leahy and Tester). It would repeal the driver's license section of the Real ID Act and replace it with the negotiated rulemaking process established by the Intelligence Reform and Terrorism Prevention Act of 2004. Tell Senators Kennedy and Kerry they should NOT support the two-year delay in implementing Real ID, offered by Senator Susan Collins**,** a Maine Republican, as an amendment to S.4, the 9/11 Commission Act of 2007. Say you want Congress to act against Real ID, not delay it.

In the House:
Ask your Member of Congress to co-sponsor **H.R. 1117,** filed in the House by Rep. Tom Allen, a Democrat from Maine**.** This is a companion bill to the Akaka-Sununu bill.

CALL:

Senator Kennedy	(202) 224-4543	Senator Kerry	(202) 224-2742 Rep.
Capuano	(202) 225 5111	Rep. McGovern	(202) 225 6101
Rep. Delahunt	(202) 225 3111	Rep. Meehan	(202) 225 3411
Rep. Frank	(202) 225 5931	Rep. Neal	(202) 225 5601
Rep. Lynch	(202) 225 8273	Rep. Olver	(202) 225 5335
Rep. Markey	(202) 225 2836	Rep. Tierney	(202) 225 8020

C. IN THE COURTS

• APPEALS COURT UPHOLDS MILITARY COMMISSIONS ACT
On February 20, a 3-judge panel of the US Court of Appeals for the District of Columbia Circuit ruled 2-1 in the combined cases *Al Odah v. USA* and *Boumediene v. Bush* that

Guantanamo detainees could be deprived of their habeas corpus rights. In strong dissent, Judge Judith Rogers declared that the Supreme Court in *Rasul v. Bush* had already rejected the argument embraced by the two other judges that detainees do not have habeas corpus rights because Guantanamo is not part of the US, and pointed out that Article 1 of the Constitution limits the circumstances under which habeas can be suspended to "cases of Rebellion or invasion." The decision is being appealed to the Supreme Court. Cases involving other detainees have also been appealed to the Supreme Court on a fast track, in hopes that the Court will hear them before the end of the current term.

• APPEALS COURT THROWS OUT RENDITION CASE ON "STATE SECRETS" GROUNDS

On March 2, the Fourth Circuit Court of Appeals upheld a lower court ruling and invoked "state secrets privilege" to deny Khaled El-Masri – an innocent victim of "extraordinary rendition" and torture – his day in court. The ACLU had argued that because his case had been described in literally hundreds of newspaper articles and government reports, with a German court handing down indictments against 13 CIA agents and contractors for their role in his kidnapping, abuse and detention, it could go forward without national security and "state secrets" being jeopardized. ACLU executive director Anthony Romero said of the decision, "the state secrets doctrine has become a shield that covers even the most blatant abuses of power." On March 3, the *Los Angeles Times* published an article by Khaled El-Masri under the headline, "I am not a state secret." He wrote, "It seems that the only place in the world where my case cannot be discussed is in a US courtroom. I did not bring this lawsuit to harm America. I brought the lawsuit because I want to know why America harmed me. I don't understand why the strongest nation on Earth believes that acknowledging a mistake will threaten its security. Isn't it more likely that showing the world that American cannot give justice to an innocent victim of its anti-terror policies will cause harm to America's image and security around the world?"

• PADILLA TRIAL: KEY VIDEOTAPE MISSING

A classified tape of Jose Padilla's last interrogation session cannot be located by prosecutors and the Pentagon, causing US District Judge Marcia Cooke to ask, "Do you understand how it might be difficult for me to understand that a tape related to this particular individual just got mislaid?" (*Boston Globe*, March 10). Padilla's defense team believes it would shed light on why their client doesn't trust them and believes they are government agents. The defense had called Padilla incompetent to stand trial but Judge Cooker ruled him competent on February 28. According to a *New York Times* editorial on March 1, "That still leaves the far bigger question of whether Mr. Padilla was tortured, as he has claimed. For there to be a trial, Judge Cooke will have to rule that Mr. Padilla was not tortured....The government's arguments at the hearing sounded ridiculous and shameful. Prosecutors said Mr. Padilla always seemed fine to his jailers, but it was his jailers who did things like standing on his bare feet with boots so they

could shackle him. The brig psychologist testified that he had spoken to Mr. Padilla only twice, once when he was first detained, and two years later - through a slit in his cell door." The case is scheduled to go forward in mid April.

• EVIDENCE AGAINST MUSLIM CHARITY APPEARS FABRICATED

In a case involving the Dallas-based Holy Land Foundation for Relief and Development, once the largest Muslim charity in the US which was shut down five years ago for alleged links to terrorism, the defense has shown from the government's own documents that many of the accusations were fabricated. According to the February 25 *Los Angeles Times*, a summary document attributes inflammatory anti-Semitic comments to Holy Land officials, but such comments were not found in the recently-disclosed transcript of the entire 1996 recorded conversation. The charity's attorneys said, "Not only are the summaries so inaccurate and misleading as to be useless" but the "author of the attached summary has cynically and maliciously attributed to the defendants racist invective and inculpatory remarks the defendants never uttered. It is appalling that such summaries even exist, much less that the government represented that this is all our clients need to know in order to defend themselves." Because the court records are heavily redacted, it could not be determined who provided the summaries of the FBI wiretaps. The Holy Land Foundation has been charged with being a fundraising front for Hamas. Its lawyers maintain that the FBI memo which quotes a foundation officer manager as saying that charitable funds were "channeled to Hamas" was mistranslated from Arabic to Hebrew to English. The proper translation reads, "We have no connection to Hamas."

D. IN THE COMMONWEATH

• IMMIGRATION SWEEP LEAVES TERROR, TRAUMA AND ABANDONED CHILDREN IN ITS WAKE

Massachusetts got a first hand look at what the Bureau of ICE means by its "professional, effective and efficient manner" [*see "ENDGAME" in "Executive Actions" above]* when, on March 7, between 300-500 armed agents swooped down on Michael Bianco Inc., a leather goods factory in New Bedford where workers, mostly women from Guatemala and El Salvador, were producing safety vests and backpacks for the US army to fulfill an $82 million contract. Some 361 of the workers who could not "prove" they were in the country legally – including 8 minors - were hauled off in shackles and put on buses to the Fort Devens army base, where lawyers were denied access to them. Over 200 were immediately put on airplanes and sent to the Port Isabel Service Processing Center in Harlington and the El Paso Service Processing Center, both in Texas. Among those sent to Texas were parents whose children were left unclaimed, including a nursing mother whose baby had to be hospitalized for dehydration. On March 9, federal judge Richard Stearns ordered immigration officials not to send more of the detainees out of state and told ICE to work with the Department of Social Services (DSS) to sort out the problem of detainees who were separated from their children, some

60 of whom were subsequently released on humanitarian grounds. While politicians scrambled to mitigate the fallout of the raid and disputes multiplied about who knew what when, DSS head Harry Spence denounced ICE, saying its "rhetoric has been completely different from the truth" (*Boston Globe*, March 13). Meanwhile, factory owner Francesco Insolia and three of his managers were charged with conspiring to induce illegal immigrants to live in the US and released on bond. US Attorney Michael Sullivan attacked Insolia, who had been given a 5-year tax break by New Bedford, for exploiting his workforce and the horrible work conditions – but the factory was immediately up and running again. On the positive side, the raid elicited an outpouring of solidarity for the workers, with rallies held in Boston, New Bedford and elsewhere. If this raid is a model of what ICE intends to do around the country to fulfill its Endgame strategic plan, it had better heed the words of *Boston Globe* columnist Jeff Jacoby, who can hardly be dismissed as a 'bleeding heart liberal': "No one this side of the fever swamps really believes that 12 million people – the population of Pennsylvania – can be rounded up and expelled. The raid in New Bedford involved just 361, and look what a botch was made of that. To deport 33,000 times that number would require the iron fist of a Stalin. No sane American would tolerate it" ("Illegal immigrants are here to stay," March 14). Jacoby did a follow-up column on March 19 ("What if we deport them all?") in which he quoted the results of a recent Gallup poll showing only one in four Americans wants to deport all the undocumented, while 59 percent want permanent legalization.

• MBTA CHARLIECARDS ARE USED TO FIGHT CRIME

According to the March 1 *Metro*, the MBTA Transit Police have been using Charlie Card kiosks and closed-circuit cameras to help credit card companies track down the perpetrators of identity fraud. The police say they have helped catch dozens of people who used stolen credit cards to buy CharlieCards from kiosks. They identified suspects by cross referencing the computerized information from the kiosk with video surveillance. There are currently 450 video cameras in the T system.

• MASSACHUSETTS FIGHTS CRIME WITH DRIVER'S LICENSE DATABASE

The February 11 *New York Times* reported that since last April the nine million digital photographs stored in the Massachusetts driver's license database have been subjected to facial recognition technology to find matches with criminals who might have licenses in Massachusetts under a different name. According to the article, "the databases may become a radical innovation in law enforcement" as most adults have a driver's license but have not provided DNA or fingerprint samples. It quotes Anne Collins, the Massachusetts registrar of motor vehicles, as saying that "people seeking a driver's license at least implicitly consent to allowing their images to be used for other purposes." In the words of Lee Tien, a lawyer with the Electronic Frontier Foundation, "the combination of facial recognition and other information – from financial records, mobile phones, automobile positioning devices and other sources – may do away with the ability to move anonymously through the world."

• **ANTI-TERROR WORKSHOPS BEING PLANNED FOR BOSTON**
Warren T. Bamford, the new head of the FBI's Boston office, intends to invite a representative from every police department in the 4-state region covered by the office to one or two day workshops. Although there is no indication that any terrorist cells are operating in New England, "I believe there are people in the United States that are thinking, planning or plotting to conduct a terrorist attack. This country is just too big, and there are too many people here to think otherwise" (*Boston Globe*, March 8).

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