

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

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A. EXECUTIVE ACTIONS

Torture, Military Commissions, Guantanamo

Supreme Court: "The laws and Constitution are designed to survive, and remain in force, in extraordinary times." By a vote of 5-4, with Justice Anthony Kennedy writing for the majority, the US Supreme Court on June 12th ruled that Guantanamo detainees have the Constitutional right to challenge their detention in US civilian courts [see *In the Courts, below*]. The Court struck down a provision of the Military Commissions Act of 2006 that denied Guantanamo detainees the right to habeas corpus and found inadequate the system that the Administration had put in place to classify and hold detainees as "enemy combatants." At the time of writing, it is unclear what impact the ruling may have on the Military Commissions just getting underway in the Guantanamo prison camp. The ruling opens the way for the outcomes of these trials to be appealed to US federal courts, for a barrage of new habeas petitions and for habeas suits already filed by detainees to be revived, putting the Administration's Guantanamo strategy in total disarray.

• "HIGH VALUE" DETAINEES APPEAR BEFORE MILITARY COMMISSION

On June 5, Khalid Sheikh Mohammed and four alleged collaborators in the attacks of September 11 appeared in Guantanamo's Expeditionary Legal Complex Courtroom to face arraignment before the Military Commission's presiding judge, Marine Col. Ralph Kohlmann, on 2,973 counts of murder and many other charges that carry the death penalty. On trial with Mohammed, the self-proclaimed mastermind of 9/11, are Ramzi Bin al Shibh, Ammar al Baluchi (Mohammed's nephew), Walid bin Attash and Mustapha Ahmed al-Hawsawi. Charges against a sixth "high value" detainee, Mohammed al-Qahtani, whom the government had called the "20th hijacker," were mysteriously

dropped last month. In his first appearance, Khalid Sheikh Mohammed, who graduated from North Carolina A & T State University and later fought the Soviet army in Afghanistan, declared that he would represent himself. He rejected a legal team consisting of military lawyers and death penalty attorneys David Nevin and Scott McKay provided by the ACLU and the National Association of Criminal Defense Lawyers, and expressed his desire to win martyrdom through execution. During the proceedings, Mohammed was permitted to talk to his co-defendants and soon all agreed to forego legal representation. Judge Kohlmann ruled that Mohammed, al-Baluchi and bin Attash could represent themselves did not immediately agree to let Bin al Shibh and al-Hawsawi do so. Many members of the defense legal team said they barely had time to meet their clients and others complained they had never met them because they never received the necessary background security clearance. Observers, including ACLU executive director Anthony Romero, watched proceedings in special viewing sites with a 20 second delay in the audio feed, which was on occasion entirely muted. Romero stated, "It was one of the saddest days in American jurisprudence. The word 'torture' was used so abundantly and the legal process continued" (MiamiHerald.com, June 6). The trial of the five accused is due to begin on September 15, which critics say politicizes the process in an effort to influence the outcome of the November election.

• **MILITARY COMMISSIONS VIEWED AS OVERLY POLITICIZED, DEEPLY FLAWED**

While Attorney General Michael Mukasey on June 4 claimed that Military Commissions for terrorist suspects were "in the best traditions of the American legal system" (*New York Times*, June 4), the integrity of the process continued to come under heavy fire from critics ranging from the ACLU to Col. Morris Davis, who once served as the chief prosecutor in the Military Commission system before running afoul of Air Force Brig. General Thomas Hartmann. When Col. Davis spoke out about its shortcomings and the way it was being politically manipulated to ensure the results desired by the Administration at the politically opportune time of the presidential election campaign, he was reportedly "driven into early retirement and blacklisted for private-sector jobs" (*Los Angeles Times*, June 5). Hartmann, the legal adviser to Susan Crawford who has the military title of Convening Authority of the Guantanamo war crimes cases, was barred from participation in the first Military Commission trial (that of Salim Hamdan, Osama bin Laden's alleged driver) by military judge Capt. Keith Allred on the grounds that he did not find that the general "retains the required independence from the prosecution" (*New York Times*, May 10). Hamdan is boycotting his Military Commission hearing, calling it a sham. Col. Davis and other critics condemn the reliance of Military Commissions on evidence obtained through coercion or torture, and the fact that the trials are likely to be conducted behind closed doors since the evidence against the men has not been declassified. They fear that the defendants might be too psychologically impaired after years of harsh imprisonment to participate in their own defense. Furthermore, it is still not clear what the rules of the trials will be, with Col. Steven David, the chief military defense lawyer for Guantanamo, calling the process

"fundamentally flawed" (*New York Times*, June 5). In the words of John Hutson, a former Navy judge advocate and once an "ardent" supporter of Military Commissions who is now the dean at the Franklin Pierce Law Center, "It's dishonest to go through the charade and pretend we're doing something legitimate" (*USA Today*, June 2).

• **FORMER GUANTANAMO CHIEF PROSECUTOR TESTIFIES FOR DEFENSE IN GUANTANAMO HEARING**

On April 28, Air Force Col. Morris Davis testified under oath in the pre-trial hearing of Salim Ahmed Hamdan, arguing that the Military Commissions process was tainted by political considerations. He told the presiding judge that top Pentagon officials, including Deputy Defense Secretary Gordon England, made it clear to him that charging the highest-profile detainees could have "strategic political value" in an election year and that there could be no acquittals. He quoted Defense Department general counsel William Haynes II as stating, "We've been holding these guys for years. How can we explain acquittals? We have to have convictions" (*Washington Post*, April 29).

• **MILITARY JUDGE HEARING DETAINEE CASE SUMMARILY DISMISSED**

Army Col. Peter Brownback III was fired by Marine Col. Ralph Kohlmann, the chief judge at Guantanamo, after he threatened to suspend proceedings against the Canadian detainee Omar Khadr unless prosecutors handed over Khadr's medical and interrogation records. Kohlmann sent an email to the court clerk stating that a new judge, Col. Patrick Parrish, would be taking over without offering any explanation. In June 2007, Brownback had dismissed the Khadr case for lack of jurisdiction, but his ruling was overturned by a Court of Military Commission Review in its first ever decision. But Brownback also sided with prosecutors on occasion. He ruled at the end of April against classifying Khadr as a child soldier who should be rehabilitated rather than prosecuted as the international Child Soldier Protocol required. Khadr was a 15-year-old when he was captured in Afghanistan in July 2002 (*Los Angeles*, May 31). On April 29, Lt. Commander William Kuebler, Khadr's American lawyer, told the House of Commons in Ottawa that Canada should push for the repatriation of the Toronto-born Khadr and give him proper due process in its own courts (*New York Times*, April 30). He stated that "there's no real evidence to support the theory Omar threw a hand grenade" before he was shot in the back and captured during a battle in Afghanistan. On May 23, the Canadian Supreme Court ruled that Canadian officials violated the Canadian Charter of Rights by turning over Khadr's interrogation records to the United States, and ordered the Canadian government to turn over information in Khadr's case resulting from interrogations by Canadian agents. Attorney Kuebler later told reporters that interrogators at Guantanamo were told to destroy their notes so they could not be used to demonstrate the abusive treatment of detainees, and that this meant he could not challenge the supposed confession given by Khadr (*UK Guardian*, June 9). He maintained the officially sanctioned destruction of notes was contained in an operations manual for interrogators shown to him during a pre-trial review of possible evidence.

- **UN COMMITTEE CONDEMNS US FOR FILING WAR CRIMES CHARGES AGAINST JUVENILES**

A report issued by the UN Committee on the Rights of the Child in early June states that the United States was wrong to charge two Guantanamo detainees, Omar Khadr and Mohammed Jawad, with war crimes since they were juveniles when they were first arrested. The committee has been unable to get accurate information from US authorities about the number of juveniles still being held at the prison. The US says it has detained 2,500 juveniles since 2002, nearly all in Iraq, and many "for their own safety" (*International Herald Tribune*, June 6) and that it currently holds 500 juveniles in Iraq and 10 juvenile unlawful enemy combatants in Afghanistan (*New York Times*, May 19). At least 8 juveniles have been held at Guantanamo, 3 of whom may have been under the age of 16.

- **ALLEGED "20th HIJACKER" ATTEMPTED SUICIDE**

According to the May 20th *New York Times*, Mohammed al-Qahtani, who had been expected to stand trial with the other "high value detainees" before charges against him were dropped on May 13 without explanation, tried to commit suicide in April and had to be hospitalized. His lawyer, Gitanjali Guitierrez of the Center for Constitutional Rights, only learned of the suicide attempt when she noticed the new scars on his hand and wrist during a meeting several weeks later. Al-Qahtani had confessed to being part of the 9/11 attacks but recanted in October 2006, saying that he told interrogators what they wanted to hear after he had been tortured at Guantanamo. According to a report released on May 20 by the US Justice Department's Inspector General, the harsh treatment of al-Qahtani caused a "major disagreement" between military and FBI interrogators. Army Lt. Col. Bryan Broyles, who represented Qahtani with Guitierrez, stated that "their case was only based on evidence derived from torture. In six-plus years, the evidence comes down to what they beat out of him. The prosecution evidence was entirely unreliable and inadmissible" (*Washington Post*, May 14).

- **GUANTANAMO DETAINEE ACCUSED OF 'DIRTY BOMB' PLOT**

Former British resident Binyam Mohamed has been charged with the war crime of plotting a "dirty bomb" attack with Brooklyn-born Jose Padilla. Padilla, who spent years on a naval brig as an "enemy combatant" and alleged "dirty bomber," was convicted by a federal jury in Miami of providing material support for terrorism in a trial in which any mention of "dirty bombs" was conspicuously absent. According to the June 3 *Miami Herald*, they plotted in April 2002 to set off a "dirty bomb" in the US in the hopes that it would "help free the prisoners in Cuba." Mohamed's lawyer, Clive Stafford Smith, maintains that the 29-year-old confessed to a range of imagined crimes after being tortured by having his genitals sliced with a scalpel. On June 5, a British judge ordered a hearing into whether the British government should turn over evidence, including photographs which Stafford Smith maintained had been taken by an American soldier of his injuries (*New York Times*, June 6). The attorney has also asked Rep. Bill Delahunt to

make an official request to the Pentagon for the photographs. The British government is arguing that it has not been complicit in "wrongdoing" by the Americans.

- **"CAPTIVE 220" BECOMES SUICIDE BOMBER AFTER RELEASE FROM GUANTANAMO**

Abdullah Salih Al Ajmi, a native of Kuwait who was held for 3 ½ years in Guantanamo before being turned over to Kuwaiti authorities and then released, helped carry out a suicide car bombing in Mosul on April 26, according to US military authorities (*Boston Globe*, May 8). While the Defense Intelligence Agency estimates that as many as 37 former detainees have been suspected of returning to terrorist activities, "critics of Guantanamo said they believe that the anger the prison has stoked in the Muslim world and beyond – including indefinite detention, alleged desecration of the Koran, allegations of inhumane treatment, and even torture there – has probably inspired more violent militants than it has released." More than 500 detainees have been released from Guantanamo since it opened in January 2002. 270 remain confined in the prison, 65 of whom have been cleared for release.

- **UIGHURS, OTHER DETAINEES, ABUSED BY INTERROGATORS FROM HOME COUNTRIES WITH US CONSENT**

Massachusetts Representative Bill Delahunt and Dana Rohrabacher, a Republican Representative from California, told a House Foreign Affairs hearing on interrogation methods that the 17 Uighurs (Chinese Muslims), who remain in Guantanamo even though a federal judge has called their imprisonment unlawful, should be released into the United States, and given an apology and compensation if an investigation reveals that they have indeed been treated unjustly. At the hearing, Justice Department Glenn Fine stated that according to FBI officials, US military personnel woke up the Uighurs every 15 minutes in the sleep-deprivation "frequent flyer program" to soften them up for questioning by Chinese interrogators. A Center for Constitutional Rights report indicates that 17 other countries have been allowed to interrogate their citizens being held at Guantanamo and that interrogators from 6 nations (China, Uzbekistan, Libya, Jordan, Tajikistan and Tunisia) abused them with the consent of US military officials (*Associated Press*, June 4).

- **AL JAZEERA CAMERAMAN FINALLY RELEASED FROM GUANTANAMO**

Sami al-Hajj, who was held without charges for more than six years, claims that he was beaten and punished for a hunger strike by having feeding tubes roughly inserted up his nose without a lubricant being used, according to the May 4 *New York Times*. By the time of his release, he was so frail that he had to be carried off the plane in his native Sudan and taken immediately to an ambulance. According to Joel Simon, executive director of the Committee to Protect Journalists, the al-Hajj case was part of a "disturbing trend of the American military to hold journalists for long periods without charges before eventually releasing them" (*New York Times*, May 2). His group has documented 11 such cases.

- **GUANTANAMO PRAISED BY REAR ADMIRAL BUZBY**

In an op ed in the June 4 *Wall Street Journal*, Buzby, the commander of the Joint Task Force Guantanamo from May 2007 until the end of May 2008, termed Guantanamo a "model prison" that "would make any American proud." He also praised "the more than 2,200 soldiers, sailors, airmen, Marines, Coast Guardsmen and civilians who provide for the safe and humane care and custody of very dangerous men." [This works out at nearly 10 per current detainee...ed. note]. On June 10, Human Rights Watch appealed to the Pentagon to improve detention conditions for the remaining Guantanamo detainees, estimated at 270. About 70 have been cleared for release but their home countries either won't take them or won't guarantee they will not be abused, according to the June 11 *Los Angeles Times*. Only 19 have to date been identified for prosecution.

- **US HAS FLEET OF "FLOATING PRISONS" WHERE GHOST DETAINEES ARE HELD**

According to a report by the British human rights organization Reprieve, the United States may have used as many as 17 ships as "floating prisons" for the interrogation of terrorism suspects since 2001. "Detainees are interrogated aboard the vessels and then rendered to other, often undisclosed, locations" – in Kenya, Somalia, Ethiopia, Djibouti and Guantanamo Bay (UK *Guardian*, June 2). The ships, including the USS Bataan and USS Peleliu, are believed to have operated out of the Indian Ocean island Diego Garcia, which is British territory. Reprieve's legal director Clive Stafford Smith states, "They choose ships to try to keep their misconduct as far as possible from the prying eyes of the media and lawyers....By its own admission, the US government is currently detaining at least 26,000 people without trial in secret prisons, and information suggests up to 80,000 have been 'through the system' since 2001." Reprieve also says there have been more than 200 new cases of "extraordinary rendition" since 2006.

- **MAHER ARAR'S RENDITION CASE TO BE RE-OPENED**

Richard Skinner, the Inspector General of the Department of Homeland Security, is re-examining the government's treatment of the Canadian citizen Maher Arar, who was seized from JFK Airport in September 2002 and sent to Syria where he was imprisoned for a year and tortured. Then-Deputy Attorney General Larry Thompson and then-INS chief James Ziglar decided to send Arar to Syria despite fears that he would face torture after Canadian counterparts said they would not be able to detain him if he was sent back to Canada. Rep. Bill Delahunt has asked the Justice Department to appoint a special prosecutor to see if US laws were violated in the Arar case (*Washington Post*, June 6). Arar has received an apology from the Canadian government and \$9 million in compensation after finding that its agents wrongly labeled him an Islamic fundamentalist and conveyed that information to the US.

- **WIFE GIVES DETAILS OF TORTURE IN RENDITION TRIAL IN MILAN**

In a packed courtroom in Milan, Nabila Ghali, the wife of the radical Egyptian cleric Hassan Mustafa Osama Nasr (known as Abu Omar), described the brutal torture he endured in an Egyptian prison after he was kidnapped from Milan's streets in February 2003 by CIA agents and Italian officials. She was the first witness to testify in the trial of 25 CIA operatives, a US Air Force colonel, and seven Italian intelligence agents, including the former head of its military intelligence service (*International Herald Tribune*, May 14). The US government refused to extradite the CIA agents, and the Italian government has attempted to keep information about the kidnapping from being divulged in court. But Judge Oscar Maji ruled that Prime Minister Silvio Berlusconi could be forced to testify (*Los Angeles Times*, May 15). Abu Omar has not been given permission by Egyptian officials to travel to Italy for the trial.

• **LAWYERS DEMAND GERMANY PURSUE EXTRADITION OF CIA AGENTS INVOLVED IN RENDITION CASE**

On June 9, a group of ACLU and German civil rights attorneys brought a lawsuit against the German government demanding that it seek the extradition of 13 suspected CIA agents involved in the alleged kidnapping of Khaled el-Masri, a German citizen. El-Masri was seized in December 2003 in Macedonia, physically abused in detention and released six months later as a case of mistaken identity (*USA Today*, June 9). In January 2007, prosecutors in Munich had issued warrants for the arrest of the CIA agents, but nothing was done after the US Justice Department told the German government that seeking the extradition of the agents would jeopardize "American national interests."

• **PENTAGON DOCUMENTS REVEAL ABUSE OF AFGHAN DETAINEES**

Documents turned over to the ACLU that relate to the 2003 death in custody of an Afghan detainee, Jamal Nasser, reveal that techniques used during survival training in the Army's SERE (Survive, Evade, Resist and Escape) school were routinely used on detainees in the Gardez Detention Facility in Afghanistan (*New York Times*, April 17). The techniques include punches, kicks and pouring cold water over detainees and making them kneel outside in frigid weather.

• **CIA FIGHTS RELEASE OF DOCUMENTS JUSTIFYING USE OF TORTURE**

In response to a court order, the CIA identified more than 7,000 pages of classified records relating to its secret prison and interrogation program but said they could not be released because they are covered by "presidential communications privilege" (*Washington Post*, April 24). In its court filings the CIA stated that the extraordinary rendition program "will continue." On May 8, federal Judge Alvin Hellerstein of the southern district of New York ordered the CIA to turn over the 2002 memo written by the Department of Justice's Office of Legal Council that is said to specify harsh interrogation methods, including waterboarding, which the Agency was permitted to use on suspected terrorists. After weeks of stonewalling, the White House announced it would make available to certain Members of Congress the correspondence that legally justified the CIA's interrogation program (*Washington Post*, May 5). The *New*

York Times was not impressed. It editorialized on May 2, "This week the Justice Department finally agreed to show some papers to members of the House and Senate. Sounds like good news? Not so much. For starters, it is not yet clear whether the White House will turn over the complete and unredacted opinions of the government lawyers that claimed the president could ignore the law and the Geneva Conventions. Even if the documents are not censored, the Bush Administration has agreed to give them only to the House and Senate Intelligence Committees," not to the Senate Judiciary Committee which "is charged with assessing the legality of government policies. Finally, Mr. Bush continues to use a bogus claim of secrecy to keep the documents on torture from those who most need and deserve to see them – the public." On May 27, as the result of its FOIA lawsuit, the ACLU obtained several heavily redacted documents concerning the CIA's use of waterboarding as well as a heavily redacted version of a report by the CIA Office of the Inspector General on its review of the CIA's interrogation and detention program. Judge Hellerstein is still considering an ACLU motion to hold the CIA in contempt of court for destroying hundreds of hours of videotape depicting abusive interrogations.

- **OUTSOURCING OF INTERROGATION TO PRIVATE CONTRACTORS UNDER SCRUTINY**

In the current military budget, Congress is considering banning the use of private contractors in the interrogation of detainees. The White House is threatening a veto, arguing that such a ban would hurt the nation's "ability to obtain intelligence needed to protect Americans from attack" (*New York Times*, June 12).

- **JUSTICE DEPARTMENT SAYS TORTURE CAN BE USED TO THWART TERRORIST ATTACKS**

Documents from the Justice Department to the Intelligence Committee appear to outline a legal rationale for the CIA's use of interrogation methods that would otherwise be banned under the Geneva Conventions. Senator Ron Wyden made public a letter from deputy assistant attorney general Brian Benczkowski stating that the prospect of thwarting a terror attack could be used to justify interrogation methods that would otherwise be banned (*New York Times*, April 27).

- **INSPECTOR GENERAL'S REPORT REVEALS FBI CREATED A "WAR CRIMES FILE"**

Evidence of prisoner abuse and use of "torture techniques" at Guantanamo led FBI agents to document the abuse by American military personnel, according to a harrowing 437-page report by the Justice Department's inspector general Glenn Fine. The agents took their concerns to higher-ups, including the National Security Council, but they were ignored, and the Justice Department eventually ordered them to stop collecting the evidence of abuse (*New York Times*, May 21). One agent wrote to FBI headquarters, "Beyond any doubt, what they are doing (and I don't know the extent of it) would be unlawful were these enemy prisoners of war" (*Boston Globe*, May 21). Although the

report largely clears the FBI from participating in harsh interrogations, critics say the FBI's leadership did not act aggressively enough to stop the physical pressure used by the military and CIA. The report was limited to the FBI because the inspector general does not have jurisdiction over the CIA and Department of Defense.

- **US CONDEMNED BY AMNESTY INTERNATIONAL**

In its annual human rights report, Amnesty International has found that people are "still tortured or ill-treated in at least 81 countries, face unfair trials in at least 54 countries and are not allowed to speak freely in at least 77 countries" (*New York Times*, May 29). It accused the United States of abandoning moral leadership and defying International law.

- **SECRET DEAL WOULD PERPETUATE MILITARY OCCUPATION OF IRAQ**

On June 5, the *UK Independent* broke the story that the office of Vice-President Cheney is negotiating a secret "strategic alliance" with the Iraq government which would make the US military occupation indefinite regardless of who wins the White House in November. It would give US forces the permanent use of 58 military bases, and bestow on them the authority to arrest anyone they want, to launch military campaigns without consultation, and to control Iraqi airspace below 29,000 feet. It would also extend immunity from prosecution to US troops and contractors. Cheney is reportedly pressuring the Iraq government not to put the deal to a vote in a national referendum, and the Administration will not to permit it to be voted on by Congress. After the negotiations became public, the Administration said any deal would not involve permanent military bases and would respect the sovereignty of Iraq. The Administration is pushing to complete the agreement before the current UN mandate under which Coalition forces are operating in Iraq expires at the end of July.

- **ANTI-AMERICANISM AT RECORD LEVELS**

A Congressional report compiled by Rep. Bill Delahunt's subcommittee on international organizations, human rights and oversight reveals that US approval ratings are at record lows around the world because of the war in Iraq, ongoing support for repressive regimes, perceived bias in the Israeli-Palestinian conflict, the abuse of prisoners in violation of treaty obligations and international law, treatment of immigrants and "a growing belief in the Islamic world that the United States is using the 'war on terror' as a cover for its attempts to destroy Islam" (*Agence France-Presse*, June 11). The report was ignored by the US mainstream media but picked up by the foreign press and blogs.

Building the National Security Surveillance State

- **ADMINISTRATION RELENTS SLIGHTLY ON SECRET MEMOS WHILE ASSERTING IT CAN RUN SECRET PROGRAMS**

After adamantly refusing to make public the secret Justice Department legal opinions justifying harsh interrogation techniques, the Administration has said it would provide

the House and Senate Intelligence Committees with some (but not all) of the legal opinions – but not show them to members of the Judiciary Committee which is supposed to exercise oversight over the Justice Department. The partial concession was announced at a Senate Judiciary Committee hearing during which Senator Russ Feingold (D-WI) accused the Administration of a "sinister trend" of promoting "secret law" (*New York Times*, May 1). John Elwood, a Justice Department official, told the hearing that the president could ignore or modify existing executive orders that he or other presidents have issued without disclosing the new interpretation. In the view of Senator Sheldon Whitehouse (D-RI), this "turns The Federal Register into a screen of falsehoods behind whose phony regulations lawless programs can operate in secret."

• **MCCAIN CAMPAIGN NOW BACKS NSA WARRANTLESS WIRETAPPING**

In late May, Chuck Fish, one of presidential candidate John McCain's top advisors, seemed to agree with the Democrats on NSA warrantless wiretapping when he called for "hearings, real hearings, to find out what actually happened, what harms actually occurred, rather than some sort of sweeping of things under the rug" (*Washington Post*, May 29). But a week later, Douglas Holtz-Eakin, another adviser to McCain, wrote in the *National Review* that McCain believes "neither the administration nor the telecoms need apologize for actions that most people, except for the ACLU and trial lawyers, understand were constitutional and appropriate in the wake of the attacks on Sept. 11, 2001" (*New York Times*, June 6). He added that if elected president, McCain would continue the policy. This seems to conflict with statements McCain made six months ago when in an interview with the *Boston Globe*, he said, "I don't think the president has the right to disobey any law."

• **FISA COURT ISSUED RECORD NUMBER OF WARRANTS LAST YEAR**

During 2007m the secret Foreign Intelligence Surveillance Court approved 2,370 warrants targeting people within the US who were believed to be linked to international terror organizations, a 9 percent increase over the number of warrants issued in 2006. Three requests for warrants were denied, one was partially denied and 86 warrants were sent back to the government for changes before approval was granted, according to the April 30 *New York Times*.

• **FBI FORCED TO WITHDRAW NATIONAL SECURITY LETTER**

After Brewster Kahle, founder and director of the Internet Archive, a San Francisco-based digital library, went to court in secret to challenge a National Security Letter issued last November by the FBI, the Bureau decided to settle the case with the ACLU and Electronic Frontier Foundation and withdraw the NSL (*New York Times*, May 7). Not only was Kahle prevented by a government gag order from discussing the NSL with Internet Archive directors, but a gag order prevented the lawyers in the case from discussing the NSL with members of Congress, even though the same ACLU lawyer had recently testified before Congress about the FBI's misuse of NSLs. Between 2003 and 2006 the FBI has, without any court oversight, issued nearly 200,000 NSLs complete with

gag orders demanding that records be turned over. It has only been challenged in court 3 times. Each time it has lost.

• **DOMESTIC SURVEILLANCE INCREASES WHILE TERRORISM PROSECUTIONS DECLINE**

According to the May 12 *Los Angeles Times*, "The number of Americans being secretly wiretapped or having their financial and other records reviewed by the government has continued to increase as officials aggressively use powers approved after the Sept. 11 attacks. But the number of terrorism prosecutions ending up in court – one measure of the effectiveness of such sleuthing – has continued to decline, in some cases precipitously." The number of terrorism and national security cases initiated in 2007 was more than 50 percent below 2002 levels, with a 19 percent decline in the last year alone. And yet the number of warrant requests by the Justice Department increased by more than 9 percent in 2007 over the previous year, while there was also a steep rise in the use of National Security Letters. Attorney Michael Woods, former head of the FBI national security law unit, stated, "Most of these threats ultimately turn out to be wrong, or maybe just the investigating makes them go away. A lot more information is going to pass through government hands, and most of that is going to be about people who turn out to be innocent or irrelevant."

• **DEFENSE ATTORNEYS FEAR MONITORING BY GOVERNMENT**

Criminal defense attorneys involved in terrorism-related cases say their ability to do their jobs is being hindered by suspicion that the government is listening to their calls with their clients and monitoring their email exchanges. As a result, they are forced to fly long distances for face-to-face meetings with their clients (*New York Times*, April 28). Evidence of the monitoring surfaced when the government mistakenly provided defense lawyers in a terrorism-financing case with a logbook of intercepted phone calls marked "top secret". The calls were between the lawyers for the Oregon-based al-Haramain Islamic Foundation and charity officials in Saudi Arabia. After the government realized its mistake, the lawyers were ordered to return all copies of the log book to the FBI and warned they would face prosecution if they revealed its contents. Two of the lawyers for the charity whose calls were monitored are suing the government for illegally spying on them. According to Sean Maher, co-chair of the national security committee of the National Association of Criminal Defense Lawyers, many talented private lawyers are refusing to get involved in terrorism cases because of potential violations of their privacy.

• **TO RECEIVE FULL DHS FUNDING, STATES MUST GUARD AGAINST IMPROVISED EXPLOSIVE DEVICES**

The war in Iraq is coming home in the minds of DHS officials who are tying national security grants to state plans to guard against improvised explosive devices or I.E.D.'s. According to Juliette Kayyem, the Massachusetts homeland security adviser, "There was no new intelligence about this. It just came out of nowhere" (*New York Times*, May 26).

DHS officials say that this year's emphasis on I.E.D.'s stems from a classified strategy approved by President Bush last year. Kayyem said she was reluctant to pass up a potential grant of \$20 million in federal homeland security money this year even though a quarter of it had to be spent on I.E.D.'s in order to qualify for the money. "So, Massachusetts officials wrote a creative proposal, pledging to upgrade bomb squads in many of the state's 351 cities and towns."

• **MILITARY AND LAW ENFORCEMENT STEAL SECRET FILES REVEALING MOSQUES UNDER FEDERAL SURVEILLANCE**

Files that were stolen from a secure office used by military and civilian law enforcement officers in Camp Pendleton reveal that mosques in Los Angeles and San Diego have been under federal surveillance, according to sketchy reports in the May 29 *Los Angeles Times*, the *Union-Tribune* of San Diego and other publications. A Marine reservist, Col. Larry Richards, who was the chief of the Strategic Technical Operations Center at Camp Pendleton and top specialist for the Los Angeles County Terrorist Early Warning Group, had allegedly formed a theft ring of military reservists and police, whose lynchpin was intelligence analyst Sgt. Gary Maziarz until his arrest late in 2006. He pleaded guilty during a court-martial in the summer of 2007 and named Richards as the ringleader of a group that reportedly stole top secret information from the Strategic Technical Operations Center database and passed it on to local law enforcement agencies and defense contractors, possibly in exchange for favors such as future employment. Muslims were alarmed to learn from documents turned over in response to an ACLU FOIA lawsuit that the stolen files included information about the federal surveillance of Muslim communities in southern California. Details remain vague because of the secrecy surrounding the case. The FBI refused to confirm whether an investigation was still ongoing, but said the agency "regularly reaches out to Muslims through town meetings" (*Los Angeles Times*, May 29). On May 28, the ACLU, the California Chapter of the Council on American-Islamic Relations and the Islamic Shura Council of Southern California sent a letter to the Congressional Committees on the Judiciary and Oversight and Government Reform calling for a hearing and expressing concerns about possible unconstitutional religious profiling of the community.

• **FEDS LAUNCH "NATIONAL SUSPICIOUS ACTIVITIES REPORT INITIATIVE"**

Building on a two-month old program of the Los Angeles police department which trains police officers to identify and report about 65 behaviors that could relate to terrorism while doing their jobs of criminal law enforcement, the federal government has unveiled a new program in which nine cities (including Boston, Los Angeles, Miami, Seattle) and Florida, New York and Virginia will collect and link their terrorist tips, deposit them in state fusion centers, and make them available to the DHS, FBI and security officials around the country (*Wall Street Journal*, June 13). The Major Cities Chiefs Association, representing police chiefs of 60 large cities, has endorsed the initiative. Rep. Jane Harman said the program is not "racial profiling," but "behavioral profiling." Former FBI agent Michael German, who now works with the ACLU, stated,

"This seems to be just another opportunity to collect data about private citizens who aren't suspected to be actually involved in anything criminal."

- **TERRORIST WATCH LIST CONTAINS NAMES OF NELSON MANDELA AND OTHER PROMINENT SOUTH AFRICANS**

Nelson Mandela and other South Africans who are members of the African National Congress (ANC), which was declared a terrorist organization by the apartheid South African government, are on the US Terrorist Screening Center Watch List and must obtain a special waiver from the State Department in order to enter the US. Barbara Masekela, the South African Ambassador to the US from 2002 to 2006, was recently denied a visa to visit her ailing cousin in the US and couldn't get a waiver until after the cousin had died (*USA Today*, May 29). On April 30, Rep. Howard Berman (D-CA) introduced legislation (HR 5690) to exempt the ANC from treatment as a terrorist organization. Its supporters hope to pass it by Mandela's 90th birthday on July 18. Meanwhile, in April a US magistrate judge ruled that the Department of Homeland Security must inform 8 US citizens who have been repeatedly stopped when returning home from travel abroad whether their names are on the terrorist list. The government, which argues that the information is a "state secret," is appealing the decision.

- **NUCLEAR PHYSICIST LOSES SECURITY CLEARANCE, ENTERS KAFKA-LAND**

Dr. Moniem El-Ganayni had worked for 18 years at Pittsburgh's Bettis Laboratory (an advanced naval nuclear propulsion technology lab) and also served as a Muslim prison chaplain. He recently lost his Department of Energy security clearance because of anonymous and unspecified "national security" allegations. When he tried to appeal, Deputy Secretary of Energy Jeffrey Kupfer certified that the appeals process could not be made available to him "without damaging the interests of national security by revealing classified information" (*Pittsburg Post-Gazette*, June 1). Last year, following disagreements he had with prison authorities over the observance of Ramadan, Dr. El-Ganayni was questioned by the FBI and the Department of Energy about whether he advocated Islamic jihad against the US. The agents brought up a passage from a book on ant behavior he had distributed to inmates at a prison near Pittsburgh while serving as their chaplain. The passage, written by Harvard University's Pulitzer Prize-winning biologist E.O. Wilson, concerned an ant species that blows itself up in defense of the colony. He was also questioned about the prayers he led and his criticism of the FBI's intrusion into local mosques. As happened with four previous Muslim imams in Pittsburgh, his prison contracts were terminated. (One of those imams was subsequently arrested on a visa technicality and now faces deportation to Turkey). Denied due process and the opportunity to work in his field, Dr. El-Ganayni, a naturalized US citizen, has decided to move back to his native Egypt, which he left in 1978.

- **REVERED IMAM ONE OF MANY FACING DEPORTATION**

Dr. Mohammad Qatani, a Palestinian who has been the imam of the Islamic Center of Passaic County, New Jersey for a dozen years and is known for building ties to other communities, faces deportation with his wife and three of their six children. He has been accused by immigration authorities of lying on his application for permanent residency by not revealing that he had been detained in Israel decades ago during the first Intifada. He was released after 3 months in police custody, without being charged with any crime. According to the April 24 *New York Times*, Imam Qatani has broad inter-faith support in his battle to stay in the country, and a petition on his behalf bearing 15,000 signatures has been sent to the Department of Homeland Security. Rabbi David Senter called him "the most moderate individual you could imagine" and praised his work for inter-faith understanding. In the view of Dr. Aref Assaf, president of the American Arab Forum, "If you want to deport him, what sort of person do you want to keep in this country? The years of friendship and openness we've had with law enforcement will be reversed." Imams are also facing deportation in Pittsburgh, Miami, Dallas, Los Angeles, Dearborn, Michigan and Boston (see *In the Commonwealth*, below).

- **FOREIGNERS RELUCTANT TO VISIT UNITED STATES**

Both tourists and many international students and scholars are increasingly choosing destinations that do not subject them to US visa and entry policies, according to the journal *Tourism Economics*, and "more respondents were worried about US immigration officials (70 percent) than about crime or terrorism (54 percent) when considering a trip to the country" (*Washington Post*, May 4). The Commerce Department reported a 17 percent decline in overseas travel to the US between Sept. 11, 2001 and 2006 and there are significantly fewer students and scholars entering the country from Japan, Germany, Canada, Great Britain, Israel, Australia and Holland, while more students are coming from China, India and South Korea. In the words of Josef Joffe, the publisher-editor of the German newspaper *Die Zeit*, "which face does the United States want to show to the world? One distorted by fear and suspicion, or the face that it used to present: that of a boisterous, easy-going and welcoming society?...Just imagine how the US Army would have fared in liberating my home continent, Europe, if the blinkered commissars of DHS had been calling the shots in 1944...To present a friendly face to the world is not a matter of saccharine niceness but of well-considered interests, especially for a fearsome giant like the United States."

- **DETENTION OF ITALIAN VISITOR SHOWS WHY MANY TOURISTS ARE SHUNNING THE US**

The May 14 *New York Times* described what happened when Domenico Salerno, an Italian who paid frequent visits to Alexandria, Virginia to meet his girlfriend, tried to enter the country on April 29. The Customs and Border Protection agents at Washington Dulles International Airport questioned him for hours, refused to allow him to travel back to Rome, and instead sent him in shackles to a rural Virginia jail, where he was locked up for more than 10 days without charges while the family and friends of his girlfriend tried to get him out. The agents apparently suspected that Mr. Salerno

intended to work in the country. When his girlfriend, who was at the airport, begged to know what was happening to him, she was told by an agent, "You know, he should try spending a little more time in his own country." She was later told he was being detained as an asylum-seeker. Mr. Salerno denied ever saying anything about asylum and thought he was being punished for asking to speak with his embassy. Even after officials agreed that the claim of asylum was a mistake, he was not released. But 24 hours after his girlfriend wrote to the *New York Times* that "an innocent European, who has never broken any laws, committed any crimes, or overstayed his visa is being held in a county jail" and the paper began an investigation, Mr. Salerno was taken to the airport and deported to Rome. According to Customs and Border Protection, in the last seven months 3,300 people from the 27 "visa waiver" countries (including Italy) have been rejected when they arrive at airports, while more than 8 million have been admitted. Visitors can be rejected because a border agent thinks they are planning to work or stay in the country, or had briefly overstayed the permitted 90 day period on a previous visit. Starting in January 2009, residents of the "visa waiver" countries will have to register online with the US government using the Electronic System for Travel Authorization at least 72 hours before their departure if they want to enter the United States. It is not clear what arrangements would be made for last-minute or uninformed travelers (*Washington Post*, June 4).

- **MIT STUDENTS TERMED SECURITY THREATS**

At least four foreign oceanography students at the Massachusetts Institute of Technology who applied for the required new Transportation Worker Identification Credential to enable them to work around ships and docks received letters from the Transportation Security Administration denying them clearance and containing this statement from a security administration official: "I have determined that you pose a security threat" (*New York Times*, May 13). A German student, Wilken-Jon von Appen, whose research was supported by the National Science Foundation, reported being "quite intimidated." while a British student, Sophie Clayton, was worried that "the two words 'security threat' are now in the files next to my name, my photograph and my fingerprints."

- **FOREIGN EXCHANGE STUDENTS TO COME UNDER EXTRA SCRUTINY**

The nearly 700,000 foreign exchange students in schools across the country – 11,000 of whom are in Greater Boston – will face tougher visa enforcement as part of a homeland security effort, according to the April 26 *Boston Globe*. The Bureau of ICE is increasing the number of investigators who track foreign students nationwide and ensure that the 9,248 schools and colleges authorized to accept students (including high schools, beauty academies, flight schools and elite universities) comply with the Student and Exchange Visitor Program. To pay for the increased scrutiny, the fees paid by schools and foreign students to participate in the exchange program will sharply increase. According to the director of the Student and Exchange Visitor Program, investigators screen schools for suspicious cases everyday. "There is a concern, yes, that there could be a security risk. If

we didn't get the fees, we would not be able to address the vulnerabilities as thoroughly as we would with the new systems and the additional people." About 635 students have been arrested and deported every year under the Program, about 25 a year in New England.

- **COMPANIES THAT MOVE CARGO TO AIRPORTS ASKED TO SCREEN IT**

Beginning next year, companies that pack cargo and move it to airports are being asked by the Transportation Security Administration to take on the additional job of screening it for explosives. To comply, four thousand "airforwarder" companies will have to buy and operate bomb-detection machines, and screen and train their own employees. A 2007 law requires all cargo aboard passenger planes to be screened by 2010.

- **BODY SCANS INSTALLED AT 10 AIRPORTS**

Expensive body scan machines that bounce "millimeter waves" off selected passengers enabling screeners to see through their clothes are being installed at airports in Los Angeles, Baltimore, Denver, Albuquerque, JFK in New York, Dallas, Detroit, Las Vegas, Miami and Reagan National Airport in Washington DC. Such whole body imaging is supposed to enable screeners to spot concealed weapons and explosives (*USA Today*, June 5). The TSA says it protects passengers' privacy by blurring their faces during the scanning process and deleting images immediately after viewing them. The ACLU says the scans are the technological equivalent of making passengers parade naked through a separate room with a bag over their heads and are open to abuse.

- **MILITARIZED POLICING: DC POLICE RESPOND TO SHOOTINGS BY ERECTING CHECKPOINTS**

On June 7, police in Washington DC put up checkpoints around the Trinidad neighborhood northeast of the city, demanding the IDs of motorists, turning away those who could not give a "legitimate purpose" for being in the area, and searching many cars for guns and drugs. Drivers were turned away who said they were going to visit a relative, but could not provide a phone number so police could verify their claim, according to the June 10th *Washington Post*. The Trinidad neighborhood includes Gallaudet University. After 6 days, the police reported making 1 arrest and checking 700 vehicles. The ACLU and other groups monitoring the checkpoints estimated that as many as 90 percent of the cars were not allowed to pass. Demonstrators at the checkpoints said they violated rights: "Trinidad, yes; Baghdad no! Don't turn Trinidad into Baghdad!" they chanted (*Washington Post*, June 8). The checkpoints were a police response to a spate of homicides in the largely African-American neighborhood. The *Post* quoted residents as saying a police state was being created, and that instead of checkpoints, they needed a steady community police presence, and better education and job-training programs. The DC police had earlier followed the Boston police in announcing a program of warrantless searches of homes aimed at neighborhoods which were largely African American and Latino. The DC Council has also launched a system of 4,500 video cameras trained on schools, public housing, traffic and government

buildings which will feed into a central office at the DC Homeland Security and Emergency Management Agency for round-the-clock monitoring (*Washington Post*, May 1). More cameras will be added later in the year. DC officials seem unaware of the fact that the network of 4.2 million closed circuit television cameras meant to detect and prevent crime had been deemed "an utter fiasco" in London, according to the Chief Inspector of the London police (*Boston Metro*, May 7).

Targeting Immigrants

• LOCAL POLICE ENLISTING IN IMMIGRATION ENFORCEMENT AS RAIDS, ANTI-IMMIGRANT LAWS MULTIPLY

The line between federal and state law enforcement is increasingly being blurred, as sheriffs and local police departments join in the crack down on undocumented immigrants. Around the country police have been rounding up immigrants for such "crimes" as fishing without a license, with the end result being deportation (*New York Times*, June 9). At least 95 police departments are waiting to join 47 departments that have been trained in immigration enforcement and given some jurisdiction by the Bureau of ICE, while in Arkansas, Florida, Georgia, Iowa, New Mexico, Oklahoma and Texas, police departments "are choosing to tackle the issue on their own." In 2007, 240 bills relating to immigration enforcement were enacted in 46 states. In Mississippi it is now a felony for an undocumented immigrant to hold a job, while sheltering or transporting the undocumented is a felony in Oklahoma. Police have conducted raids to detain immigrants for the crime of identity theft (using false Social Security numbers), with Spanish-speaking workers targeted regardless of their citizenship. In many communities in Santa Rosa County, Florida, "hundreds of Hispanic families, both legal and illegal, seem to have disappeared...In the immigrant community, fears now cloud the most basic routines. Many Hispanics said they avoided being seen or heard speaking Spanish in Wal-Mart, even if they live here legally."

• "THE GREAT IMMIGRATION PANIC": NEW YORK TIMES

On June 3, the *New York Times* ran a stinging editorial about the wave of xenophobia sweeping the country. "A nation of immigrants is holding another nation of immigrants in bondage, exploiting its labor while ignoring its suffering, condemning its lawlessness while sealing off a path to living legally. The evidence is all around that something pragmatic and welcoming at the American core has been eclipsed, or is slipping away. An escalating campaign of raids in homes and workplaces has spread indiscriminate terror among millions of people who pose no threat...Immigrants in detention languish without lawyers and decent medical care even when they are mortally ill... Counties and towns with spare jail cells are lining up for federal contracts as prosecutions fill the system to bursting...Police all over are checking papers, empowered by politicians itching to enlist in the federal crusade...Every time this country has singled out a group of newly arrived immigrants for unjust punishment, the shame has echoed through history. Think of the Chinese and Irish, Catholics and Americans of Japanese ancestry.

Children someday will study the Great Immigration Panic of the early 2000s, which harmed countless lives, wasted billions of dollars and mocked the nation's most deeply held values."

- **POST SERIES ON CONDITIONS IN DETENTION ANGERS ICE**

Between May 11-14, the *Washington Post* ran a series about the health care given to the 33,000 immigrant detainees who are in custody on any given day. The investigatory reporting detailed mistakes that led to deaths of some of the 83 detainees who have died over the past 5 years. It focused on suicides that could have been prevented, inadequate medical treatment and the drugging with powerful psychotropic drugs of at least 250 deportees over the past 5 years for trips back home. The series was termed "unethical, adversarial...misleading and highly editorial in nature" by ICE press secretary Kelly Nantel (*Washington Post*, June 8).

- **ICE MAY REVEAL DATA OF DEATHS IN DETENTION**

According to the June 5 *Washington Post*, the Bureau of ICE may be more transparent about detainee deaths in the future. For the past year, Congressional Democrats have asked ICE to reveal the names and circumstances of foreigners who died in US custody while awaiting deportation. Finally, after articles in the May 5 *New York Times* and the May 11-14 *Washington Post* gave details about immigrants dying in detention, ICE head Julie Myers said her agency would report statistics about fatalities, but not the identities of the victims, to the Justice Department. The *New York Times* article by Nina Bernstein focused on the death in the Elizabeth Detention Center of Boubacar Bah, a 52-year-old tailor from Guinea who overstayed a tourist visa. After Bah fell and injured his head, guards in the private detention center run by the Corrections Corporation of America took him to a medical unit where he became incoherent. They then put restraints and shackles on him after medical staff decided "the screaming and resisting is behaviour problems." When he began to vomit, they put him in solitary confinement, where he was shackled and pinned to the floor as he moaned and vomited. Later that night, he went into a coma and was taken to the hospital where he died 4 months after emergency surgery for a skull fracture and brain hemorrhage. For 5 days, no one notified the family of his whereabouts. The article cites other instances where a wife went to a scheduled immigration court hearing only to learn that her husband had been dead for many weeks and his body was unclaimed in the morgue. Another death in Corrections Corporation of America custody involved an architectural draftsman who was sick when he was taken into custody after his application for citizenship was denied because of a conviction for a domestic violence misdemeanor. No one took his chest pains and breathing problems seriously and he died, shackled, of a heart attack.

- **HUNDREDS OF WORKERS SENTENCED TO PRISON AS WORK IS CRIMINALIZED**

A group of 270 undocumented workers, who were among the 390 people seized by federal authorities in a May 12 raid on a meatpacking plant in Postville, were swiftly

sentenced to five months in prison for working with false documents. The raid, the largest ever conducted, has devastated the town. The workers at Agriprocessors Inc., the nation's largest processor of glatt kosher beef which has a history of labor problems, were mostly from Guatemala. They were denied meetings with immigration lawyers in "unusual and speedy plea agreements," according to the May 24 *New York Times*. They agreed to immediate deportation after serving their 5 months. If they had not agreed to the plea bargain, they would have been tried on felony identity theft charges that carry a mandatory two-year minimum jail sentence. Most had no criminal record. Previously, workers found with false documents had been detained for civil – not criminal – violations and deported. Mississippi recently joined the federal government in deeming work a crime for the undocumented. According to a new law, anyone caught working without the proper papers can receive 1-5 years in jail and a fine of \$1,000 to \$10,000.

• **OPERATION STREAMLINE RAISES CRIMINAL PROSECUTIONS OF MIGRANTS TO NEW LEVELS**

According to the June 2 *Washington Post*, immigration officials are filing minor charges against virtually everyone caught crossing the US-Mexico border along a 500-mile stretch, jailing them and bringing them to court, leading to a shortage of jail beds and straining the capacity of the law enforcement system. If convicted, the border crossers have a permanent criminal record and their ability to enter the US in the future will be jeopardized. Some federal officials say that the focus on immigration has meant that US prosecutors in Arizona are so short of resources they are not prosecuting other crimes, including major drug busts and murder. The number of criminal immigration cases filed by US prosecutors nearly doubled early in the year, and accounted for the majority of new Justice prosecutions nation-wide in February (7,250 out of 13,500). Attorney General Mukasey called "Operation Streamline" a "great success" which sent a "major message" to border crossers, whose numbers have sharply diminished.

• **IMMIGRANTS BEING ARRESTED ON WAY OUT OF THE COUNTRY**

US Customs and Border Protection officers have set up checkpoints near the San Diego-Tijuana border and are arresting departing immigrants who might not have the proper documentation. They say "the checkpoints are a productive way to stop dangerous criminals, drug shipments and money launderers" and will help deter illegal immigration (*Los Angeles Times*, May 7).

• **ICE PLANS NEW FAMILY DETENTION CENTERS**

At least three new detention facilities to house men, women and children facing deportation are in the bidding process, to supplement the two current family facilities – one a former nursing home in Pennsylvania and the other a former medium security prison in Texas, the T. Don Hutto detention center, run by the Corrections Corporation of America (*Los Angeles Times*, May 18). The Hutto detention center was recently successfully sued by the ACLU for the abysmal prison conditions in which it holding young children.

- **LOCAL ORDINANCE STRUCK DOWN BY FEDERAL JUDGE**

Judge Sam Lindsay ruled in late May that a local ordinance in Farmers Branch, Texas which prohibited the rental of apartments to undocumented immigrants was unconstitutional (*New York Times*, May 29). By 2-1 residents supported the measure in May 2007.

- **CHALLENGES GROW TO BORDER FENCE**

The Texas Border Coalition, a group of mayors, economists, environmentalists and county commissioners opposed to the fence being built by the Department of Homeland Security along 670 miles of the border with Mexico, has filed a federal lawsuit to stop it (*New York Times*, May 21). The suit contends that DHS chief Michael Chertoff did not conduct the required negotiations with property owners and local authorities when he ordered the fence to be built in Texas. Critics question whether the estimated \$2.1 billion for the 18-foot high barrier is the best use of border security money. Supporters cite drops in the numbers of apprehensions along areas of the border where the fence has been built.

- **BUSH ORDERS EMPLOYERS WITH DHS CONTRACTS TO PARTICIPATE IN E-VERIFY SYSTEM**

On June 6, President Bush signed an executive order requiring all federal contractors to check the immigration status of their workforce through the E-Verify (employment verification) system when they start to work under government contracts or make new hires (*New York Times*, June 10). Currently, some 69,000 employers use E-Verify on a voluntary basis to check the immigration status of their employees. As many as 200,000 contractors would be covered by the new rule. If the SAVE Act (HR 4008) is passed by Congress, as many as 6 million employers would be required to vet their employees. The use of E-Verify - which relies on flawed Social Security Administration and DHS databases - could result in thousands of US citizens and legal residents being fired because they cannot resolve bureaucratic data discrepancies.

- **FBI NAME CHECK SYSTEM SERIOUSLY FLAWED**

There is a backlog of 327,000 requests of applicants who hope to receive citizenship, or enter the US to work and study because of deficiencies in the FBI's process of background checks, which can take years to complete (*Washington Post*, June 9). The FBI gets more than 4 million requests for name checks a year, according to a report by the Justice Department's Inspector General.

- **NATIVE AMERICAN WHO COULD NOT PROVE CITIZENSHIP LOSES MEDICAID ELIGIBILITY**

Bernice Todd, a Choctaw from Oklahoma, has cancer and just received a bill for \$11,000 for treatment. Although she is eligible for Medicaid, she was dropped from the rolls

because she could not produce a passport, birth certificate or driver's license to prove her citizenship (*AARP Bulletin Today*, March 2008).

B. IN THE US CONGRESS

• DEAL LIKELY ON NSA SPYING; IMMUNITY FOR TELECOMS

On Friday the 13th it appeared that the White House and Congressional negotiators had reached a tentative agreement on a bill concerning NSA domestic warrantless surveillance. It would permit the dismissal of the 40 or so civil lawsuits that have been filed against telecommunications companies for handing over customer information to the government in the absence of a warrant (Reuters, June 13). According to initial reports, all the phone companies have to do for a suit to be dismissed is to demonstrate in a federal district court that they had been given written assurances that their participation in the warrantless wiretapping of Americans was legal and authorized by the President. The bill is similar to one offered on May 22 by Senator Kit Bond (R-Missouri), in cooperation with "Blue Dog Democrats." The ACLU called the Bond proposal "an unconstitutional wolf in sheep's clothing" because it allows the attorney general to dismiss cases against the telecoms if the Administration had certified that the wiretapping request was lawful. In addition, the Bond bill permits court review to be short-circuited for "exigent circumstances," including situations when the Administration maintained information would be lost if it took the time to apply for a warrant from the FISA court. The Protect America Act had provided for a series of secret one-year wiretapping orders approved last August which expire in the summer of 2008, leading Senator Bond to declare "we'll start losing intelligence capabilities" if the Congressional impasse is not resolved. According to the June 10 *New York Times*, "In some instances, the broad orders given to the companies starting last August cover tens of thousands of overseas phone numbers and e-mail addresses at one time," and starting them again under new orders would be both time-consuming and difficult, since the government would not always be able to establish before the FISA court why a suspect was connected to terrorism. Critics say reverting to the FISA Act would be a positive move, and that Congress should not legislate without knowing exactly what was done under the government's program of warrantless NSA wiretapping. They had urged the House members who had for months refused to vote for immunity for the telecoms in a rare show of standing up to the Administration's "war on terror" scaremongering to continue to toe that line.

• DEMOCRATS CALL FOR SPECIAL COUNSEL AS HEARINGS TAKE PLACE INTO "WAR ON TERROR" PRACTICES

On June 8, 56 House Democrats, including House Judiciary Committee chair John Conyers Jr. (D-Mich.) and House Intelligence Committee members Jan Schakowsky (D-Ill) and Jerrold Nadler (D-NY), signed a letter to Attorney General Michael Mukasey asserting the need for an independent investigation to determine whether senior officials personally sanctioned waterboarding and other harsh interrogation techniques in

violation of US or international law (*Washington Post*, June 8). They called for an outside special prosecutor to be appointed. Meanwhile, hearings have been held by various Congressional committees into the justification and authorization for various interrogation techniques, the ongoing imprisonment of Guantanamo detainees who have been cleared for release and "war on terror" practices such as extraordinary rendition. After months of stonewalling, attorney John Yoo and former Attorney General John Ashcroft have agreed to testify about harsh interrogations before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, and Vice-President Cheney's chief of staff David Addington has been issued a subpoena to appear before the Committee. Rep. Bill Delahunt (D-MA) has played a prominent role in the hearings.

• **BUSH SUPPORTERS SEEKING QUICK FIX IN CONGRESS TO SUPREME COURT GUANTANAMO RULING**

Senator Lindsey Graham (R-S.C.) and other Bush Congressional allies are "looking at all options" in an attempt to deal with the Supreme Court's ruling in the Guantanamo case striking down part of the Military Commissions Act (*Washington Post*, June 14). But Republican lawmaker Senator Arlen Specter of Pennsylvania, the ranking Republican on the Judiciary Committee, commented that "I think that while there are still tremendous concerns about a terrorist threat, the administration has not made its case that the people in Guantanamo really are threats" (*Washington Post*, June 13). According to the Heritage Foundation's Charles Stimson, who oversaw detainee affairs for the Department of Defense until 2007, the Administration's options are limited. "The legal rationale underlying the establishment of Guantanamo has been eviscerated by this decision. The question is not if Guantanamo will close; it's when" (*Washington Post*, June 14).

• **SEN. LIEBERMAN PUSHES FOR "TERROR" CENSORSHIP OF INTERNET**

After HR 1955, "The Violent Radicalization and Homegrown Terrorism Prevention Act of 2007," stalled in the Senate after being passed in the House with nearly unanimous support, Senator Joe Lieberman (D-CT), who chairs the Senate Homeland Security and Government Affairs Committee, has made the case for the censorship of the Internet in a report titled "Violent Islamist Extremism, the Internet, and the Homegrown Terrorist Threat." The report, which focuses solely on terrorism associated with radical Islam, says the Internet is responsible for "radicalization" and enables terrorists to do global recruiting. On May 19, Lieberman sent a letter to CEO Eric Schmidt of Google Inc. requesting that it "immediately remove content produced by Islamist terrorist organizations from YouTube" (*Truthout*, May 30). Google agreed to remove about 80 videos it said violated YouTube community guidelines, but the Senator declared it had to do more. The ACLU and 30 civil liberties and religious freedom groups meanwhile sent Lieberman's committee a letter condemning the call for censorship and calling the report both "statistically and methodologically flawed."

• **REP. KUCINICH INTRODUCES IMPEACHMENT RESOLUTION**

On June 9, Denis Kucinich (D-OH) read a 35-count impeachment resolution against President Bush in the House of Representatives. The changes range from "tampering with free and fair elections" (in the case of Ohio in 2004), to lying in order to embark on the war Iraq, to a range of Constitutional violations. On June 11, the House voted 251-166 (with 24 Republicans joining the majority) to send the resolution to the House Judiciary Committee. In 2007, a similar Kucinich-sponsored impeachment resolution against Vice-President Cheney was sent to the Judiciary Committee where it has languished ever since. House Speaker Nancy Pelosi has declared that impeachment is "off the table."

C. IN THE COURTS

• LANDMARK SUPREME COURT RULING UPHOLDS HABEAS CORPUS FOR GUANTANAMO DETAINEES

The Supreme Court ruling in the case *Boumediene v. Bush* represents the third time since February 2002 that the justices have struck down arguments made by the Administration for holding detainees in a legal black hole in Guantanamo. On June 12, by a vote of 5-4, the Court ruled that the part of the Military Commissions Act that denied Guantanamo detainees from filing habeas petitions in federal court (Section 7) is unconstitutional. Instead, the Court maintained that the constitutional right to habeas corpus protected by the Suspension Clause applies to Guantanamo too, and that detainees cannot be barred from seeking habeas relief because they have been labeled "enemy combatants." The procedures established by Congress – a Combatant Status Review Tribunal (CSRT) with a severely limited right of appeal to the DC Circuit – is not, the majority declared, an adequate substitute for habeas corpus since detainees are unrepresented by counsel at CSRT hearings and have no meaningful opportunity to present witnesses and evidence on their own behalf. The decision is limited to detainees at Guantanamo, and the ruling did not address the Military Commissions in their entirety. Justice Anthony Kennedy wrote as follows for the majority: "The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law." In their dissents, Justice Scalia wrote that the majority opinion "will almost certainly cause more Americans to be killed," while Chief Justice John Roberts asserted that today "the Court strikes down as inadequate the most generous set of procedural protections ever afforded aliens detained by this country as enemy combatants." The other two dissenters were Justices Thomas and Alito.

• SUPREME COURT TO DECIDE WHETHER DETAINEE IN POST 9/11 ROUND UP CAN SUE TOP BUSH OFFICIALS

The US Supreme Court has agreed to hear *Ashcroft v. Iqbal*, and decide whether Muslim men who were rounded up as "special interest" detainees and held incommunicado in

harsh conditions after 9/11 can sue former Attorney General John Ashcroft and FBI head Robert Mueller for damages (*New York Times*, June 17). Before his arrest, the plaintiff, Javaid Iqbal, lived with his wife, a US citizen, on Long Island and had a pending green card application. Charged with document fraud, he was deported to Pakistan after being held for many months in a maximum special housing unit in a Brooklyn prison. In the prison he was beaten, subjected to extremes of hot and cold, and daily body-cavity searches, and kept in solitary confinement with the lights always on. His lawsuit claims that he was treated in this way solely because of his religion and national origin and that the conditions of his confinement violated minimal constitutional standards. Whatever the Supreme Court decides will affect the outcome of another case involving seven detainees who were held under similar circumstances, *Turkmen v. Ashcroft*, which had been argued before the Second Circuit Court of Appeals in February.

- **GUANTANAMO PROTESTERS HAVE DAY IN COURT**

On January 11, the sixth anniversary of the opening of the Guantanamo prison camp, 35 Americans who belonged to "Witness Against Torture" were arrested outside the US Supreme Court for protesting against Guantanamo and the use of torture. Demonstrations at the plaza of the Supreme Court are barred by law. Charged with misdemeanors punishable by less than six months in jail, they went on trial in late May in the DC Superior Court. As their names were called, they stood, gave their own names and then spoke names of Guantanamo detainees and told their stories (*Washington Post*, May 28, May 30). The judge rejected arguments that they were practicing free speech and found 34 of the 35 guilty.

- **FEDERAL JUDGE DISMISSES CHARGES AGAINST ART PROFESSOR**

On April 21, Judge Richard Arcara threw out the indictment for mail fraud and wire fraud that the government had leveled against the Critical Art Ensemble co-founder Steve Kurtz after it was forced to drop terrorism charges under the USA PATRIOT Act. In 2004 Steve Kurtz, a professor at the University of Buffalo, woke up to find his wife dead in bed along side him. When he dialed 911 in a panic, paramedics who arrived on the scene notified the FBI about the presence of lab equipment in the apartment. He was detained for 22 hours on suspicion of "bioterrorism," even after he told them the equipment was part of an art installation critical of genetically modified food he was creating for the Massachusetts Museum of Contemporary Art. Kurtz and a colleague in Pennsylvania were being charged with mail and wire fraud for the purchase and mailing of harmless bacteria for the exhibit. His case is the subject of an award-winning documentary, "Strange Culture."

- **PROSECUTOR RE-INSTATES TERRORISM CHARGES – FOR THIRD TIME**

Undeterred by the fact that the government had twice failed to win a single conviction in the trials of the so-called "Liberty Seven," Miami men indicted in 2006 for conspiring to blow up the Sears Building in Chicago, a Miami federal prosecutor took the unprecedented step in a terrorism-related case of trying the men again. One of the men

had been acquitted during the first trial and the juries had deadlocked on whether to acquit the other six, who now face another trial later in the year.

D. IN THE COMMONWEALTH

• IMAM FACES DEPORTATION AS GOVERNMENT TRIES HIM ON CRIMINAL CHARGES FOR IMMIGRATION VIOLATIONS

Imam Muhammad Masood, the widely-respected cleric from Pakistan who had headed the Islamic Center of New England before being charged with immigration visa violations, awaits sentencing on a criminal visa-fraud plea bargain and faces deportation with his wife and five of his eight children. His remaining three children are American citizens. In late May, US District Court Judge Douglas Woodlock was prepared to sentence Imam Masood to three years' probation on the visa-fraud conviction agreed to in the plea deal, when he was told that ICE officials were prepared to take the Imam, who was out on bond, to jail as soon as the sentence was pronounced. With that, he delayed sentencing, stating, "We're going to slow the ball down. I'm not sure everyone has thought this through" (*Patriot Ledger*, May 22). Masood's lawyer, Norman Zalkind, called the surprise attempt to take his client back into custody "vicious, outrageous."

• FEDERAL JUDGE THROWS OUT CONVICTIONS IN CASE INVOLVING BOSTON-BASED CHARITY

US District Court Judge Dennis Saylor IV set aside a January 11 jury ruling and acquitted Samir Al-Monla of Brookline, a US citizen of Lebanese descent, of charges that he conspired to defraud the US and conceal the origins of a now-defunct charity, Massachusetts Care International, Inc. (*Boston Globe*, June 4). He also acquitted Emadeddin Muntasser, a Libyan national and long-time US resident who owns Logan Furniture and founded Care International, of the same charges, but sustained his conviction for making a false statement to the FBI, which carries a maximum of six months in jail. Since Muntasser had already spent almost that long in a detention facility, he was expected to be released in days. A third man, Muhamed Mubayyid, an Australian citizen of Lebanese descent who served as Care's treasurer, was cleared of conspiracy charges, but his conviction of filing false tax returns was allowed to stand. The judge ruled that the federal government failed to prove its case that Care International had abused tax laws to support extremist groups, and that much of the government's evidence was flimsy or flawed. US Attorney Michael Sullivan is considering an appeal to the Court of Appeals for the First Circuit.

• MAN ARRESTED FOR SENDING THREATENING LETTERS TO MUSLIM RESTAURANT OWNER

The Iranian-born owner of two Beacon Hill restaurants in Boston, who has lived in the US for decades and is a US citizen, received a series of threatening letters during 2006 and 2007. After months of investigation, the FBI arrested a 65-year-old real estate broker, Earl McBride, Jr., who lives a few blocks from the restaurants. The victim, who has not

been named, did not know McBride who faces potential hate crimes charges. He was released on \$20,000 bail (*Boston Globe*, May 1).

- **POPULAR BOSTON TEACHER DEPORTED**

On May 22, Obain Attouoman was summarily deported to his native Ivory Coast. Attouoman was a beloved math teacher at Fenway High School whose students rallied behind him when he faced deportation for missing a date in immigration court. Senators Kennedy and Kerry filed legislation that would have made him a resident, but the Congress never acted on it.

- **SEASONAL LABOR FORCE DENIED VISAS TO WORK ON CAPE**

The June 8 *Boston Globe* featured a lengthy article about the labor shortage facing Cape Cod businesses since the Jamaican workers they had come to depend on had been blocked from obtaining seasonal work visas due to a visa shortage. "In recent years, an estimated 5,000 to 7,000 foreign workers have traveled to the Cape and islands each year on seasonal H2B visas, including more than 1,000 Jamaicans. Almost none will make it this year." The article focused on the ties between Cape employers and their Jamaican employees, and the impact on both communities.

- **STATE STREET CORPORATION LOSES DATA**

A data drive containing personal information on 5,500 employees and 40,000 customer accounts was stolen from the office of a firm it hired to do data analysis, according to the May 30 *Boston Globe*. The theft occurred last December and was reported to State Street in January. State Street did not inform affected individuals or the public until May 29, claiming it took months to find out what information was on the disk.

- **CAMERAS, CAMERAS EVERYWHERE**

According to the April 24 *Boston Globe*, communities around Massachusetts are turning to surveillance cameras to help maintain law and order and deter vandalism. From a city like Lawrence – where the new high school has 300 cameras inside and outside, to a medium-sized town like Lexington, which has cameras in the library, on the streets, and in schools and public buildings, to the small town of Tyngsborough, which has security systems with cameras in all its schools -- surveillance cameras are becoming a standard part of security systems. Arlington, Bedford and Winchester also have security cameras in their public libraries. In the words of ACLUM staff attorney Sarah Wunsch, "I think it teaches kids a terrible lesson – that it's OK to be spying on everybody."

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