

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

December 17, 2008

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A. EXECUTIVE ACTIONS

Military Commissions, Torture, Guantanamo

• WHAT WILL PRESIDENT OBAMA DO ABOUT TORTURE, RENDITION, ENEMY COMBATANTS, GUANTANAMO AND SECRET CIA PRISONS?

On November 16, during his first post-election interview, President-elect Barack Obama told *60 Minutes*, “I have said repeatedly that I intend to close Guantanamo, and I will follow through on that. I have said repeatedly that America doesn’t torture, and I’m going to make sure that we don’t torture. Those are part and parcel of an effort to regain America’s moral standard in the world.” But according to an outpouring of articles, editorials and op eds, it won’t be easy. “Some experts on detention policy, including

close Obama allies, are convinced that problems posed by many of the detainees are insoluble. They may be too dangerous to release but will never be able to stand trial in US courts because of tainted evidence or allegations of mistreatment" (*Los Angeles Times*, November 24). The ACLU and human rights groups maintain that it is possible to try detainees in federal civilian courts or military courts governed by the Uniform Code of Military Justice, and a new indefinite detention law or an alternative legal system does not have to be devised by Congress. They urge the President-elect to issue executive orders to close Guantanamo and change the US policy on detainees. Some Obama advisers have said that there is little chance of the new President agreeing to launch criminal probes or a bipartisan investigation of the alleged use of torture and other wrongdoing by his predecessor's Administration (*Newsweek*, December 1). In the view of Jonathan Maher, writing in the November 30 *New York Times*, what is crucial is how President Obama chooses to define the battle against terrorism – "Is it a war or a criminal action?... If you treat the fight against terrorism as a war, it's hard to get around the argument that it's a war without boundaries: a terrorist could be hiding anywhere. Yet by asserting the right to scoop up suspected terrorists in other nations and indefinitely detain and interrogate them without hearings or trials, the administration complicated its efforts to build an international coalition against terrorism...But ceding the military paradigm altogether would severely limit his ability to fight terrorism...going forward, the fight against terrorism will have to be something of a hybrid. This is a novel idea, as the Constitution lays out only two distinct options: the country is at war, or it is not. Such a strategy may require building new legal systems and institutions for detaining, interrogating and trying detainees" – which, of course, is exactly what the Bush Administration has done over the last seven years. Two leading British antiterror experts – Stella Rimington and Ken Macdonald – were critical of the US for its "overly militaristic approach to fighting terrorism." Rimington, the former head of Britain's domestic intelligence agency MI5, called the response to September 11 "a huge overreaction" which "got us off on the wrong foot because it made people think terrorism was something you deal with by force of arms primarily. According to Macdonald, the top prosecutor for England and Wales, "You can have the Guantanamo model. You can have the model which says that we cannot afford to give people their rights, that rights are too expensive because of the nature of the threats. Or you can say, as I prefer to, that our rights are priceless. That the best way to face down those threats is to strengthen our institutions rather than to degrade them" (*New York Times*, October 22).

- **CHENEY DEFENDS GUANTANAMO, TORTURE**

On December 15, Vice-President Cheney told ABC News that it was appropriate to use waterboarding and that the US could not responsibly close Guantanamo Bay until "the end of the war on terror" whenever that might be (*Boston Globe*, December 16).

- **"HIGH VALUE" DETAINEES TELL JUDGE THEY WANT TO PLEAD GUILTY**

On November 4, Election Day, Khalid Sheik Mohammed, the alleged mastermind of the 9/11 attacks, and four other "high value" detainees wrote a note from their secret Camp 7 prison informing Judge Army Col. Stephen Henley that they want to make a "confession" and plead guilty to murder and war-crimes charges (*Washington Post*, December 8). But nothing is straightforward about their military commission pre-trial hearing. The judge said various issues about how the military commission would deal with capital cases had to be resolved before he could accept their pleas, and that they wouldn't necessarily be sentenced to death (*Washington Post*, December 9). It was not clear whether the detainees would withdraw their guilty pleas if it was not certain they would lead to a death sentence. Mohammed, who had been subjected to waterboarding, said he wanted a quick end to the death-penalty case so he could die a martyr.

According to legal analysts, “The ability to obtain a capital conviction may have been undermined by the use of practices that have been criticized as torture. Others who said they would plead guilty are Ramzi Binalshibh, Mustafa Ahmed al-Hawsawi, Tawfiq bin Attash and Mohammed’s nephew, Ali Abdul Azia Ali. All waived their right to legal representation, but the court has yet to decide whether Binalshibh (who is taking psychotropic drugs) and Hawsawi are mentally competent to represent themselves. It appears that the case could linger for months, presenting President Obama with a new complication when he decides what to do about Guantanamo.

- **9/11 FAMILIES SPLIT IN VIEWS OF GUANTANAMO HEARINGS**

After some 9/11 families brought by the Pentagon to observe the pre-trial hearing of the “high value” detainees praised the proceedings, 24 other people who lost loved ones in the 9/11 attacks signed a letter asserting: “These prosecutions have been politically motivated from the start, are designed to ensure quick convictions at the expense of due process and transparency, and are structured to prevent the revelation of abusive interrogations and torture engaged in by the US government...No comfort or closure can come from military commissions that ignore the rule of law and stain America’s reputation at home and abroad” (Reuters, December 11).

- **MILITARY COMMISSION CONVICTS BIN LADEN PROPAGANDIST**

In early November, Ali Hamza al Bahlul of Yemen became the second detainee to be found guilty of war crimes by a military commission. There was no evidence given that he ever fired a shot at Americans, but the Pentagon argued that his creation of a two-hour video of Bin Laden speeches and other stock news footage constituted three war crimes - conspiracy, providing material support for terror and solicitation to murder (*Miami Herald*, November 3). Bahlul requested his military lawyer not to put on any defense or question witnesses. He was sentenced to life in prison.

- **ACLU CHALLENGES SUPPRESSION OF TORTURE TESTIMONY**

On December 5, the ACLU filed a legal challenge to prohibit the government from cutting the audio feed during Guantanamo military commissions whenever a prisoner testifies about the torture and abuse to which he has been subjected.

- **ACCOUNTABILITY FOR INTERROGATIONS TO REST WITH PENTAGON**

On October 17, the Department of Defense made public a revision to its 2005 directive on interrogations stating that trained interrogators from military intelligence must provide mandatory oversight for all interrogations, including those performed by other US agencies, personnel from foreign governments and civilian contractors. According to the October 20 *Jurist* (University of Pittsburgh School of Law), “Secretary England’s directive issues a direct order to all hands, that SERE techniques are removed from the American military mainstream.”

- **CHARGES DROPPED AGAINST “DIRTY BOMBER” AND OTHER DETAINEES**

The Pentagon dismissed charges against British resident Binyam Mohamed, who was accused of being involved in the same “dirty bomb” case as Jose Padilla and was reportedly subjected to two years of torture (*New York Times*, October 22). Charges against ten other Guantanamo detainees were also dropped, including against the Lathdar Boumediene and five other Algerian detainees who were accused of planning to bomb the US embassy in Sarajevo although they were cleared by a Bosnia court. The US Supreme Court in June had ruled they did have the right to a federal habeas corpus hearing, and federal district court judge Richard Leon later ordered them to be immediately released (see *In the Courts*, below). In early December, US District Court Judge Emmet Sullivan ruled in Binyam Mohamed’s habeas hearing that the US

government must turn over any exculpatory evidence it had uncovered relating to his case despite the fact that it had dropped war-crimes charges against him (*Christian Science Monitor*, December 3). His lawyers are arguing that admissions he made were coerced under torture and are false.

- **NEW CHARGES TO BE BROUGHT AGAINST ALLEGED “20TH HIJACKER”**

After the US government dropped charges against Mohammed al-Qahtani last May without explanation, it is filing new war-crimes charges against him, despite military records showing that he had been subjected to torture and that the evidence against him would not be admissible in court. Prosecutors maintain there is “independent and reliable evidence” that can be used against him (*New York Times*, November 19).

- **EIGHTEEN GUANTANAMO DETAINEES FACE WAR CRIMES TRIALS**

According to the November 3 *New York Times*, “about 255” detainees remain at Guantanamo, of whom 18 have been charged with war crimes. Thirteen of the original 23 detainees brought to Guantanamo on January 11, 2002 are still there. 60 detainees have been cleared for release but are still there because of problems negotiating transfer agreements. Fifteen were accused of significant terrorist acts, including the attack on the Cole and American Embassies in Kenya and Tanzania, and 20 others are termed Bin Laden’s bodyguards.

- **US NOW SAYS IT HELD AT LEAST 12 JUVENILES AT GUANTANAMO**

After claiming that it had imprisoned six child detainees at Guantanamo, the US government recently told the UN Committee on Child Rights that it had taken at least 12 detainees to Guantanamo who had not yet turned 18 (Associated Press, November 16).

- **JUDGE THROWS OUT COERCED CONFESSION OF TEEN DETAINEE**

In October, Army Col. Stephen Hadley became the first judge at a military commission to exclude evidence on the grounds that it was obtained through torture. In the case of Afghan detainee Mohammed Jawad who was 16 or 17 at the time when he allegedly wounded an American soldier with a grenade, the judge ruled that “torture” includes statements obtained by use of death threats to a person or his family (*Miami Herald*, October 28). Jawad’s case has been fraught with difficulties, including the resignation of the prosecutor and the refusal of a military psychologist to testify about his treatment, which allegedly included stress positions, being hit, kicked and beaten, prolonged isolation and sleep deprivation. US Army Col. Diane Zierhoffer instead invoked her right under the Fifth Amendment privilege not to incriminate herself.

- **QUESTIONS RAISED ABOUT GUILT OF ANOTHER TEEN DETAINEE**

A US soldier told the military court trying the Canadian Omar Khadr that he accidentally stepped on an unconscious seeming Khadr who was under the rubble of a collapsed building, casting doubt on the possibility that Khadr threw a grenade after the building collapsed. Khadr was 15 years old when he was captured on July 27, 2002 after being shot twice in the back.

- **DEFENSE LAWYERS SEE TOP SECRET GUANTANAMO PRISON**

In response to an October ruling from the chief judge for military commissions, Marine Col. Ralph Kohlmann, two military defense attorneys were taken to view Camp 7, the top secret site where the “high value” detainees have been kept at Guantanamo. They were not permitted to reveal what they saw (Associated Press, November 19). Judge Kohlmann announced his retirement in November (*Washington Post*, November 18). He was immediately replaced by Army Col. Stephen Henley, who announced he would move ahead with war-crimes trials rather than await a new US administration.

- **OVERSEER OF GUANTANAMO TRIALS UNDER INVESTIGATION**

The behavior of Brig. Gen. Thomas Hartmann is being investigated by the Air Force and the Department of Defense's Office of the Inspector General. Hartmann, who supervises the prosecution of enemy combatants and was also responsible for giving legal advice to the war crimes convening authority, has been accused of deeply politicizing the process, of making misleading statements and bullying other officials, and of insisting on the use of coerced evidence, despite prosecutors' objections (*Los Angeles Times*, October 25).

- **REPORT FINDS US ENGAGED IN TORTURE**

Physicians for Human Rights released a report titled "Broken Laws, Broken Lives" in mid October based on interviews and medical examinations conducted with former detainees in Afghanistan, Iraq and Guantanamo. The report details the rise of the "US torture regime" through the reverse-engineering by the CIA and DPD of the "Survival, Evasion, Resistance and Escape" (SERE) program that had been created by the Army to prepare troops to withstand torture. The report found that health professionals were involved in the abuse and that after their release, many detainees find it difficult to get medical treatment for PTSD and other symptoms because doctors think "they are terrorists and they will lose other patients."

- **FORMER GUANTANAMO DETAINEES SHUNNED AT HOME**

According to "Guantanamo and its Aftermath," a report produced by the University of California at Berkeley Human Rights Center, former detainees face emotional problems and social stigma when they return to their home countries, and find they have lost their homes and their businesses (*New York Times*, November 13). Of the 55 who agreed to discuss their interrogations, 33 said they were abusive. Many said they held negative views of the US, but "this was directed at the US government, not the American people."

- **PORTUGAL OFFERS TO TAKE GUANTANAMO DETAINEES**

Urging other EU countries to grant asylum to Guantanamo detainees who cannot return to their home countries, Portugal's Foreign Minister, Luis Arnado, stated in a letter that Portugal would be willing to resettle such detainees (*Miami Herald*, December 11). An estimated 60 detainees have been cleared for release but cannot be sent home. If they were resettled, there would be approximately 100 detainees left in Guantanamo.

- **IS FBI ASKING OTHER COUNTRIES TO SECRETLY DETAIN AMERICANS?**

The ACLU has filed a lawsuit seeking information about whether the FBI has asked other countries to hold American citizens in secret detention because it lacked the evidence to bring charges against them in US court. Naji Hamdan, a California resident, was interrogated by the FBI when being held by the United Arab Emirates, and a New Yorker, Amir Mohammad Meshal, was questioned by the FBI in Nairobi before being secretly flown into Somalia and turned over to Ethiopian intelligence agents and then imprisoned for three months before being released without charges (*Miami Herald*, November 17).

- **SPAIN TO INVESTIGATE ITS ROLE IN RENDITION FLIGHTS**

At the end of November, the role of the previous Spanish administration headed by Jose Maria Aznar in facilitating "extraordinary rendition" was made public with the publication of a "top secret" document in the newspaper *El Pais* (*Time Magazine*, December 2). Evidence suggests that the CIA used both US military airports in Spain and civilian airports more than 80 times for the transport of terrorist suspects.

Building the National Security Surveillance State

- **WILL SECRETS BE REVEALED WHEN OBAMA IS SWORN IN?**

There are indications that when the new Administration is installed, an army of would-be whistleblowers will emerge and “open the spigot on the truth” about the extent of George Bush’s warrantless domestic wiretapping (*Wired*, November 10). According to Seymour Hersh, “You cannot believe how many people have told me to call them on January 20... ‘You wanna know about abuses and violations? Call me then.’” The ACLU is hoping that revelations will spur Congress to form a new version of the Church Committee of the 1970s to investigate government spying, the role of the telecoms and internet carriers, and the legal rationale for warrantless surveillance.

- **NSA WARRANTLESS WIRETAPPING WHISTLEBLOWER REVEALS HIMSELF**

Thomas Tamm, a former prosecutor with the Justice Department whose family includes several high ranking FBI officials, was motivated to let the *New York Times* know about the NSA warrantless wiretapping program because of his “passion for justice” (*Wired*, December 15). In a *Newsweek* interview, Tamm said he was “stunned” that no one higher up in the government had spoken out about the program, which began in October 2001, and so he did it himself from a phone booth in Washington DC in 2004. After that, he lived in fear of arrest. *The New York Times* sat on the story for 18 months after he leaked it, before finally publishing it in December 2005. Tamm left the Justice Department in 2006, and has been struggling to make a living in private practice.

- **POSSE COMITATUS ERODED BY SPACE-BASED SPYING ON AMERICANS AND POTENTIAL USE OF TROOPS FOR “CIVIL UNREST”**

The 1878 Posse Comitatus Act constraining the military from having a role in domestic law enforcement under most circumstances is being undermined by the Pentagon’s decision to assign a full-time Army unit (the 3rd Infantry Division 1st Brigade Combat Team) to be on call with the Northern Command “to help with civil unrest and crowd control” (Rawstory, October 21). Other reports suggest as many as 20,000 troops will be stationed inside the US to respond to a domestic catastrophe (*Washington Times*, December 2). The ACLU has filed a FOIA request for more information about how the army will be deployed within the United States. According to the November 30 *Houston Chronicle*, the Pentagon is also readying three rapid-reaction forces for “emergency response” within the US. “The US military expects to have 20,000 uniformed troops inside the United States by 2011 trained to help state and local officials respond to a nuclear terrorist attack or other domestic catastrophe,” leading critics to warn of “creeping militarization” of homeland security. The Department of Homeland Security has also started deploying the space-based Predator B aerial vehicles or drones above the country for “disaster management.” These are the same drones that carry out “targeted assassinations” in Afghanistan, Iraq and Pakistan (Tom Burghardt writing in *Global Research*, November 9). The Predator program, controlled by DHS’s National Applications Office (NAO) and coordinated with the “ultra-spooky” National Reconnaissance Office (NRO) which manages the nation’s military satellites, has gone ahead despite some calls within Congress and the Government Accountability Office to delay its implementation until privacy issues were resolved and controls on its use were put in place. According to investigative journalist Tom Sharrock, the NAO Predator system “will rely heavily on private contractors including Boeing, BAE Systems, L-3 Communications and Science Applications International Corporation” which provide technology and personnel to US agencies involved in foreign intelligence and have been looking to expand their markets into domestic surveillance.

- **BUSH ISSUES MORE SIGNING STATEMENTS**

In the October 15 *New York Times*, Charlie Savage detailed signing statements which President Bush appended to a military authorization act (he struck down the provision preventing money from being used to extend US control over Iraq's oil resources and three other sections) and to provisions of a bill giving inspector generals greater independence from White House control. Bush has issued signing statements "to assert a right to bypass more than 1,100 sections of laws. By comparison, all previous presidents combined challenged about 600 sections of bills." A week later, the Bush Administration told Congress it was ignoring an August 2007 law requiring the chief privacy officer of the DHS to report each year about activities of the DHS that affect privacy (*New York Times*, October 25).

• **ATTORNEY GENERAL SEES NO REASON FOR BUSH TO PARDON OFFICIALS**

Maintaining that there is no evidence that officials carrying out Bush's "war on terror" did anything wrong, Attorney General Mukasey says he sees no need for the President to issue pre-emptive pardons to protect them from criminal investigations by the new Democratic administration. He also rejected calls for the appointment of a special prosecutor to investigate whether there have been violations of the law (*New York Times*, December 4).

• **NEW FBI GUIDELINES NOW OPERATIONAL**

On December 2, Valerie Caproni, the FBI's General Counsel, defended the revised FBI guidelines before the Harvard Law School Forum. She claimed that the policy, which combines guidelines for investigating "general crimes" and "national security crimes," was "signed after unprecedented consultation" with civil liberties advocates like the ACLU (*Harvard Law Record*, December 4). "The civil libertarians say...how are you to persuade us that you are not immediately profiling Muslims or visitors from Middle East? The problem is, as a factual matter, there is a type-tie between ethnicity and religion and the terrorist groups we are concerned about...You go from an undifferentiated group...to five people who have a lot of earmarks that they may be up to no good. It is not ethnic profiling because we have specific reasons for looking at them." Under the new policy, the FBI can conduct "threat assessments" without "any particular factual predication" or individualized suspicion of wrongdoing. When conducting "threat assessments" the FBI can infiltrate an organization with an informant. If a "First Amendment group" – she cited the ACLU and churches or mosques - is going to be infiltrated, the Special Agent in Charge must pre-approve it, and a newly created "Sensitive Operations Review Committee" must approve the effort of an informant to obtain such information as membership lists and donor lists from an organization like the ACLU (which she again referenced). Much "threat assessment" information can be shared with other agencies, thanks to the USA PATRIOT Act, and the FBI may investigate the possibility of threats relating to civil disorders in order to help the president determine whether armed force is required. She said the new policy will be re-examined in a year.

• **MARYLAND STATE POLICE INFILTRATE ORGANIZATIONS AND SHARE LISTS OF "TERRORISTS"**

The new FBI guidelines may well lead to more instances of spying on anti-war activists, environmentalists and nuns, as occurred in Maryland where state troopers between 2005 and 2007 infiltrated more than two dozen meetings and rallies of non violent groups. An ACLU lawsuit has revealed that informers labeled as terrorists "two Catholic nuns, a former Democratic congressional candidate, a lifelong pacifist and a registered lobbyist. One suspect's file warned that she was 'involved in puppet making and allows anarchists to utilize her property for meetings'... Critics still question why police spent

hundreds of hours spying on Quakers and other peace groups in a state that reported more than 36,000 violent crimes last year." (*Los Angeles Times*, December 7).

- **NEW YORK POLICE WANT MORE LAX SURVEILLANCE STANDARDS**

According to the November 20 *New York Times*, the New York Police Department, with the biggest municipal counterterrorism unit in the country, is unhappy with the need to apply through the FBI to the secret Foreign Intelligence Surveillance court for a warrant to conduct domestic surveillance, and is pushing the Justice Department to change this requirement. Led by David Cohen, a former CIA officer who is a strong critic of the FBI, the NYPD's Intelligence Division, which has several hundred detectives "running a sweeping network of informants" wants to be able to "eavesdrop on 'numerous communications facilities' without providing an adequate basis for their requests." Attorney General Mukasey has refused to loosen the standards as the NYPD has demanded.

- **LAPD LOGGING "SUSPICIOUS BEHAVIOR" IN FEDERAL DATABASE; BOSTON TO FOLLOW**

In a federal pilot program which is expected soon to include Boston and 11 other cities and states, the Los Angeles Police Department has filed over a thousand "suspicious-activity reports" in a data base which will be shared with federal agencies, the states of Virginia, New York and Florida and Boston and other cities. LAPD officers have been trained in recognizing 65 specific behaviors and reporting them in a standardized form along with their regular police reports. The next stage is getting the public involved "in an education program, called iWATCH, which will instruct citizens on specific behaviors to report to authorities" (*Wall Street Journal*, November 25).

- **DHS, NOT AIRLINES, TO VET PASSENGER NAMES**

Beginning in January, the Department of Homeland Security will take over from airlines the task of vetting passengers against watch lists as the \$200 million "Secure Flight" program kicks in. Travelers will be required to provide their full name, birth date and gender as a condition before boarding commercial flights (*Washington Post*, October 23). The ACLU says the government still has not developed procedures so people mistakenly matched to the various secret government watch lists can get redress. According to the ACLU, those lists identify about 400,000 individuals and include roughly 1 million name records and aliases. Since February 2007, the DHS has received more than 43,500 requests for redress and says it has dealt with 24,000 of them. It maintains that its "no-fly list" has only 2,500 names and its list of "selectees" for further questioning numbers 16,000.

- **TSA "SECURITY THEATER" DESCRIBED IN ATLANTIC ARTICLE**

Jeffrey Goldberg in the November 2008 *Atlantic* describes how he tested airport security "with no ID, a fake boarding pass, and an Osama bin Laden t-shirt under my coat. I splashed water on my face to mimic sweat, put on a coat (it was a summer day), hid my driver's license, and approached security with a bogus boarding pass." He was waved on through.

- **PERSONAL INFORMATION TO BE SCANNED AS CARS APPROACH BORDERS**

New machines are being activated at five border crossings with Mexico and Canada which will "read" personal information in driver's licenses and passports before travelers get to checkpoints. "By the time a car stops at the Customs booth, the agent will have the photos and information of everyone in the car. If a name is on a watch list or database, the person will be taken in for questioning" (*USA Today*, November 23).

Targeting Immigrants

• IMMIGRANT DETAINEES MOVED FROM RHODE ISLAND FACILITY

Following the death in a Central Falls, Rhode Island detention facility last August of a 34-year-old computer engineer, Hiu Liu Ng, who was being held for overstaying his visa, ICE removed all 153 immigrant detainees from the facility in early December (*Washington Post*, December 9). Ng's death from late-stage cancer is being investigated by the ACLU after allegations that he was denied medical treatment in the facility.

• AMNESTY NOW A POSSIBILITY FOR THOUSANDS OF IMMIGRANTS

As a result of a successful class action lawsuit challenging the way the 1986 Amnesty law had been applied, the chance to apply for amnesty has been opened to tens of thousands of immigrants who entered the US on a valid visa but fell out of legal status between 1982 and 1986 (*Los Angeles Times*, December 15). Officials have announced that applications for amnesty can be made between the period February 1, 2009 and January 31, 2010.

• CHENEY AND GONZALES NAMED IN TEXAS INDICTMENTS

Both Vice President Dick Cheney and former US Attorney General Alberto Gonzales have been indicted as responsible for prisoner abuse in privately-run detention facilities in South Texas (AP, November 20). "The grand jury traced a sketchy line between Cheney's influence over the US Immigrations and Customs Enforcement agency, which oversees the county's federal immigration center, and his substantial holdings in the Vanguard Group, which invests in private prison companies." Gonzales was accused of stopping an investigation into abuse of prisoners at the private facilities.

• MILITARY CONTRACTOR TO COORDINATE IMMIGRATION DETENTION

The DHS has awarded a \$44.35 million contract to Northrop Grumman to provide "an integrated system that will locate and track detainees, reserve detainee bed space among various facilities, and manage detainee transportation" (GlobeNewswire, November 20).

• THOUSANDS OF MUSLIM VISITORS THE TARGET OF ICE FISHING EXPEDITION

Foreign-born Muslims, many of them in the United States on student visas, were the target of a 2004 ICE program called "Operation Front Line". Over 2,500 were sought as "priority leads" to see if they had designs on the Presidential election or inauguration (*New York Times*, October 31). Some were detained and 19 were deported for overstaying their visas, but more than 80 percent were released after being questioned about their "opinion of America" or whether they knew people who were anti-American. Not a single person was charged with a national security crime. A former immigration official stated that Operation Frontline analyzed data gathered by the CIA and other agencies to identify people that could be a risk to national security. The November 22 *New Haven Advocate* described how students at the Yale Law School found out about Operation Frontline when they filed a Freedom of Information lawsuit which took more than two years to bear fruit. They finally received thousands of heavily-redacted case files that the DHS had claimed could not possibly be shared. "The Yale team soon discovered what they suspect is the reason for the secrecy. Operation Front Line, conducted in two phases from May 2004 through February 2005, was a total bust. A sweeping immigration enforcement campaign justified on national security grounds didn't result in a single arrest for terror-related charges." They concluded that ICE was conducting a "massive fishing operation that hinged on racial profiling."

- **ICE CONDUCTS BRUTAL ROUND-UPS OF MEN IN FLORIDA**

According to the December 10 *New York Times*, many Guatemalan men were left bloody and bruised with ICE invaded the homes of people who “looked Hispanic” on November 19 and took away nearly 100 people. The raids led to allegations of excessive force, with ICE agents pulling guns in front of a 4-year-old girl, beating men, and forcing them onto the floor in handcuffs. No guns or drugs were found, and witnesses were deported without adequate investigation into the allegations.

- **NOTORIOUS ARIZONA SHERIFF AND POSSE RAID CITY HALL**

Searching for immigrants to arrest, Sheriff Joe Arpaio of Maricopa County raided the Mesa City Hall and Main Library with his posse of 60 heavily armed men at 2 AM on October 16. The raid netted a total of 16 suspects (*New York Times*, October 18). Arpaio was re-elected sheriff in the November 2008 election.

- **HIGH COURT TO DECIDE IF IDENTITY THEFT LAWS CAN BE USED AGAINST IMMIGRANTS**

Laws requiring a mandatory prison term for anyone who “knowingly transfers, possesses or uses...identification of another person” have been used to imprison for two years or more pending deportation immigrants who use fake identity cards. The Supreme Court has agreed to hear the case of Ignacio Flores-Figueroa – a Mexican worker who pleaded guilty to purchasing a fake identity card, but who said he didn’t realize the Social Security number on the card belonged to a real person. He was sentenced to more than six years for identity theft (*Los Angeles Times*, October 21).

- **DHS NARROWS SCOPE OF E-VERIFY**

The DHS is going ahead with plans to make its E-Verify system mandatory, but instead of requiring all 169,000 federal contractors to use the electronic system to check the documents of existing workers and new hires, the system will only be made mandatory in contracts worth \$100,000 or more, and employers will only have to check workers for those contractors, not their entire workforce (*Washington Post*, November 14).

- **DNA SAMPLES TO BE COLLECTED FROM ALL IMMIGRANT DETAINEES**

Under a new Justice Department rule effective January 9, 2009, the federal DNA database of genetic material from convicted criminals and arrestees from 13 states would be greatly expanded to collect DNA samples from all non citizens detained by the government and all people arrested for federal crimes (*Washington Post*, December 12). More than a million people could be added to the database each year, under the rule change.

- **CHERTOFF HOME CLEANED BY FIRM USING UNDOCUMENTED WORKERS**

James Reid, the owner of the cleaning firm that cleaned DHS head Michael Chertoff’s house, is being fined \$22,880 by ICE for failing to check all the work documents of his employees. He said it was “unreasonable to expect businesspeople to distinguish between fake and real driver’s licenses and Social Security cards” (*Washington Post*, December 11). His company has cleaned the Washington homes of many government officials, including the Clintons and former secretary of state Madeleine Albright.

B. IN THE US CONGRESS

- **ARMED SERVICES COMMITTEE FINDS TOP BUSH OFFICIALS RESPONSIBLE FOR ABUSE**

For years, official investigations into the abuse of detainees in US custody at Abu Ghraib and Guantanamo put the blame on the “bad apples.” The bipartisan report released by

the Senate Armed Services Committee's Sens. Carl Levin (D-MI) and John McCain (R-AZ) on December 11 states clearly that the abuse "was not simply the result of a few soldiers acting on their own" (*New York Times*, December 12). Instead, responsibility lay with former Secretary of Defense Rumsfeld and other top Bush Administration officials who "conveyed the message that physical pressures and degradation were appropriate treatment for detainees" (*Washington Post*, December 11). The memo signed by President Bush on February 7, 2002 stating that the Geneva Convention's standards did not apply to captured Taliban and al-Qaeda fighters, and the meetings attended by National Security Adviser Condoleezza Rice at which abusive interrogation methods known as SERE (Survival, Evasion, Resistance, Escape) techniques were discussed, lay behind the systematic abuse. Rumsfeld ultimately approved SERE for interrogation, and military interrogators used the techniques with little oversight. Rather than helping keep the country safe, the methods led to false confessions.

• **SOME LEADING DEMOCRATIC SENATORS HEDGE ON CIA METHODS**

While harsh methods can no longer be used by the Army, the CIA can still use them. In a Salon posting on December 4, Glenn Greenwald states that Senator Dianne Feinstein (D-CA), soon to replace Jay Rockefeller as Chair of the Senate Intelligence Committee, has recently backtracked on the issue of whether CIA interrogation methods should be required to comply with Army Field Manual guidelines. In an interview on December 2, she stated that "I think that you have to use the noncoercive standard to the greatest extent possible" with certain threats requiring "special measures." Another top Democrat on the Committee, Senator Ron Wyden (D-OR), also recently argued that the CIA should be given some flexibility. President-elect Obama has stated during the campaign that CIA methods should be in compliance with the Army Field Manual.

• **FEINGOLD CALLS ON OBAMA TO "RESTORE THE RULE OF LAW"**

On December 10, Senator Russ Feingold (D-WI) has urged the new president to "take concrete steps to restore the rule of law in this country – that is, to return to the White House respect for an appropriate separation and balance of powers among the branches" (*Washington Times*, December 10). Among the list of actions he asked President Obama to take are closing of Guantanamo, banning torture and establishing a single standard of humane treatment, revising legal opinions that "overstate executive authority," supporting significant changes in the PATRIOT Act and FISA Amendments Act, cooperating with full congressional oversight, and restoring open government.

• **LEGISLATION WOULD KEEP GUANTANAMO DETAINEES OUTSIDE US**

Senator David Vitter (R-LA) is proposing legislation that would prevent detainees from being brought into the US for trial or other legal proceedings (*Time-Picayune*, November 20). He pointed out that a sense-of-the-Senate resolution expressing opposition to bringing enemy combatants into the US passed 94-3 in July 2007 (Senator Obama was not present for the vote).

• **PANEL TO ASK NSA TO INVESTIGATE CASE OF ILLEGAL WIRETAPPING**

The Select Intelligence Oversight Panel plans to ask the NSA's inspector general to open a formal investigation into the warrantless wiretapping of an American Muslim scholar in Northern Virginia, Ali al-Timimi, who was convicted on terrorism charges in 2005. Al-Tamimi is serving a life sentence on charges that he incited his followers to give material support to Lashkar-e-Taiba in Kashmir. Neither the imam nor his followers were accused of taking part in a terrorist attack. His lawyers claim there is evidence that the government wiretapped him without a court-approved warrant and that the government has intentionally withheld from them intercepted phone conversations that could clear him (*New York Times*, December 8).

C. IN THE COURTS

• SUPREME COURT TO HEAR CASE INVOLVING “ENEMY COMBATANT” HELD IN US

The US Supreme Court has agreed to decide whether the government can indefinitely detain as “enemy combatants” suspects picked up in the United States without ever charging them with a crime (AP, December 5). The case is that of Ali al-Marri, a legal US resident who was studying at Bradley University when he was taken into custody as an alleged member of an Al Qaeda sleeper cell. For five and a half years he has been held in isolation on a naval brig off South Carolina. The ACLU had filed a separate lawsuit to force the federal government to preserve evidence in al-Marri’s case, stating that tapes of the interrogations would reveal he had been subjected to brutal interrogations and sensory deprivation (AP, October 23). The Fourth Circuit Court of Appeals had issued two different decisions in the case, with the decision of the full court stating that its ruling giving the power to the president to detain enemy combatants also applied to American citizens. A November 25 editorial in the *New York Times* declared, “If the ruling stands, presidents would be able to throw out due process, habeas corpus and other constitutional and statutory rights for anyone they declared to have terrorist ties. That is an intolerable reading of the law – and one that the Supreme Court should quickly reverse.”

• CASE OF DETAINEE ABUSE IN POST 9/11 ROUND UP HEARD BY SUPREME COURT

On December 10, the US Supreme Court heard arguments in a case involving Javid Iqbal, a Pakistan-born Muslim from Long Island, NY who was detained and physically and mentally abused after the 9/11 attacks. He was subsequently deported to Pakistan. His lawsuit charges former Attorney General John Ashcroft and FBI head Robert Mueller with complicity in his abuse, and contends that he was singled out for mistreatment based solely on his religion and national origin (*New York Times*, December 11). The government claims that Mueller and Ashcroft have immunity from such suits when carrying out their duties.

• SUPREME COURT REINSTATES DETAINEE TORTURE CASE

On December 15, the US Supreme Court asked the US Court of Appeals for the DC Circuit to have another look at the case of four former Guantanamo detainees who say they were tortured when in US custody. The appeals court had ruled in January that the British citizens were not entitled to sue in federal court (*Boston Globe* December 16). The Supreme Court has asked the lower court to consider the case again in light of its own *Boumediene* decision decided in June 2008.

• HABEAS HEARING HAS DRAMATIC RESULT

Judge Richard Leon, a conservative Bush appointee on the US District Court for the District of Columbia, ruled on November 20 that the Bush Administration had held five Algerians illegally at Guantanamo for almost seven years, and that its secret evidence against them – one assertion by from an unnamed source -- was both weak and of dubious quality (*New York Times*, November 21). He demanded that the government immediately release the men, who had been the successful plaintiffs in the *Boumediene* case decided by the Supreme Court decided in June. Judge Leon, who found one detainee, Bensayah Belkacem, to be lawfully held, urged the government not to appeal his ruling. The *New York Times* reported on December 16 that the government was about to transfer three of the detainees back to Bosnia and Herzegovina, where they had obtained citizenship. In late October, in the opening stages of the habeas hearing, Judge

Leon ruled that in order to be validly held as “enemy combatants,” Guantanamo detainees had to have directly supported hostilities against the US or its allies.

• **BUSH LOSES 22 OF FIRST 23 HABEAS CHALLENGES – BUT UIGHURS STILL DETAINED**

In the first habeas hearing involving Guantanamo detainees, Judge Ricardo Urbina on October 7 ordered the release of 17 Uighurs into the United States. In the second habeas hearing, that conducted before Judge Richard Leon, 5 detainees were ordered released. As Sabin Willet, an attorney for the Uighurs, wrote in the November 30th *Boston Globe*, “Twenty-three cases have now been heard. The president has lost 22 of them. This was a disaster, Attorney General Michael B. Mukasey wrote in the Wall Street Journal the next morning. It meant terrorists were being released...I had to scratch my head. Mukasey wasn’t in court with us that day, but his deputies were, and the point of the ruling – which was based on facts, not public relations – is that they aren’t terrorists. They aren’t the enemy...We always ‘know’ the captives on TV are terrorists, too. But television is not the real world, evidence is, and Americans can tell the difference. If the last eight years have taught us anything, it is that reality makes for better government policy than does fantasy. The rule of law has worked in 107 terrorist prosecutions conducted in our federal courts. And it worked in the courtrooms of Judges Urbina and Leon.” The Uighurs, however, remain in prison, as the government appealed Judge Urbina’s ruling to the federal appeals court in Washington – a process that could take years. On November 24, the Justice Department’s Solicitor General, Gregory Garre, told the US Court of Appeals for the DC Circuit that Judge Urbina’s order that the men be freed was “unprecedented” and should be overturned.

• **RENDITION VICTIM GETS ANOTHER HEARING**

A case brought by the Canadian Mahar Arar, who was seized by the US at JFK Airport in 2002 and sent to Syria for a year of torture, had been tossed out by a three-judge panel of the US Court of Appeals for the Second Circuit on “state secrets” grounds last June. In an unusual step, this case involving “mistaken identity” was re-heard by the entire appellate court bench on December 9 (*Jurist*, December 10).

• **FEDERAL COURT SAYS ETHNICITY NO JUSTIFICATION FOR DETENTION**

Judge Frederic Block of the federal district court in Brooklyn has ruled that ethnicity was not an acceptable factor in the decision to arrest two Egyptian-born men after a cross-country flight in 2004. Citing the internment of Japanese-Americans during World War II, he declared that the 9/11 attacks should not be used to justify detention based on race (*New York Times*, November 25). The men were regarded as suspicious because they switched seats to be closer to each other on the plane and talked loudly in Arabic. The plane was met “by at least 10 armed police officers in SWAT gear with shotguns and police dogs” and the men were ordered to raise their hands, frisked handcuffed and taken to jail.

• **IN SECOND TRIAL JURY FINDS FOUNDATION GUILTY ON ALL 108 COUNTS**

After a mistrial was declared in October in the first effort to convict the Texas-based Holy Land Foundation of supporting terrorism, the government decided to have another go. On November 24, with another jury, it won sweeping convictions against five officials of the charity who now face long terms in prison for funneling funds to the Palestinian group Hamas (*New York Times*, November 25). They are its chairman Ghassan Elashi, its president and CEO, Shukri Abu-Baker, volunteer Mufid Abdulqader, New Jersey office director Abdulrahman Odeh, and California office director Mohammed El-Mezain. The Holy Foundation, which was once the largest Muslim charity in America, was not accused of violence, but of financing schools, hospitals and

social welfare programs controlled by Hamas which the US designated as a terrorist organization in 1995. The defendants' attorneys are planning to appeal, citing the fact that the government relied on an anonymous witness who claimed to be a member of the Israeli secret service but whose identity could not be confirmed. Some 300 individuals and organizations have been named as "unindicted co-conspirators" without being told the evidence against them or being allowed to defend themselves in court. Two on the list, the Islamic Society of North America and the North American Islamic Trust, are being represented by the ACLU.

- **JUDGE BLOCKS GOVERNMENT FROM BLACKLISTING CHARITY**

A federal judge has ruled that the government could not put KindHearts for Charitable Humanitarian Development on the "specially designated global terrorist" list without giving the organization notice and a meaningful opportunity to challenge the designation (InterPressService, October 11). The ACLU had argued that the government's ability to shut down a charity based on secret evidence, without any notice of wrongdoing or ability to defend itself violated fundamental due process.

- **AAFIA SIDDIQUI FOUND UNFIT TO STAND TRIAL**

A federal judge has found MIT graduate Aafia Siddiqui mentally unfit to stand trial. Siddiqui, who had disappeared shortly after 9/11, was brought to a Manhattan court in August to face charges of grabbing a rifle and shooting at US soldiers in Afghanistan in July. Her lawyer, Elizabeth Fink, said: "There's every reason to believe that she was broken and that what happened to her that put her in this state was caused by her being held by the dark side, whether that's the Americans, or the Pakistanis or the Afghans" (*Boston Globe*, November 18).

- **COURT RULES PATRIOT ACT GAG VIOLATES FIRST AMENDMENT IF NO JUDICIAL REVIEW**

On December 15, the US Court of Appeals for the Second Circuit ruled that the government can only impose a gag on Internet Service providers who give it information on their clients under a USA PATRIOT Act National Security Letter if it initiates a court review of the process. The appeals court did not go as far as the federal district court, that threw out the gag altogether as unconstitutional (AP, December 16).

- **COURT GIVES GREEN LIGHT TO WARRANTLESS SEARCHES OF US CITIZENS ABROAD**

In a case arising from the 1998 bombing of US embassies in Nairobi and Dar es Salaam, a panel of the US Court of Appeals for the Second Circuit ruled on November 24 that authorities may lawfully conduct searches and electronic surveillance of Americans in foreign country without securing a warrant as long as the searches were "reasonable" (*New York Times*, November 25). The court did not rule on whether the government could conduct warrantless searches of international calls involving people within the US, as the FISA Amendments Act has provided.

- **COURT ASKED TO STRIKE DOWN SECTION OF THE FISA AMENDMENTS ACT**

The ACLU and the Electronic Frontier Foundation have asked US District Court Judge Vaughn Walker to strike down the grant of retroactive immunity for telecoms extended by the FISA Amendments Act (*Los Angeles Times*, December 3). The organizations argue that the Act is an unconstitutional violation of privacy rights, and that Congress does not have the authority to issue a retroactive immunity statute (Raw Story, October 17).

- **JUDGE WANTS MEMOS THAT JUSTIFY WARRANTLESS WIRETAPPING**

In response to FOIA lawsuits brought by the ACLU and other organizations, federal judge has asked the Justice Department to turn over White House memos that give a legal basis for the post 9/11 program of warrantless wiretapping (AP, November 2). The government argued that they are classified and protect attorney-client communications.

D. IN THE COMMONWEALTH

• IMMIGRANTS DETAINED IN HARSH CONDITIONS IN MASSACHUSETTS

After a 22-month-long investigation, the ACLU of Massachusetts has brought out a report on conditions in the seven county jails, one state facility and one federal medical center in which some 800 immigrants and asylum-seekers are being held, many of whom have not committed any crime. According to "Detention and Deportation in the Age of ICE," immigrants are detained for excessive periods of time, are moved from facility to facility around the country - sometimes after complaining about their treatment, are deprived of medical care, held in overcrowded jails in difficult and dangerous conditions, and face harsh treatment by corrections officers (see aclum.org).

• FEDERAL COURT IN BOSTON SAYS US MUST EXPLAIN DENIAL OF VISA

Judge George O'Toole ruled in an ACLU lawsuit that the government could not deny a visa to Adam Habib without giving a reason for the denial. Melissa Goodman, who argued the case for the ACLU, said the ruling "reaffirms that the Bush administration cannot manipulate immigration laws to silence critics of US government policy and then shield their actions from scrutiny by the courts." The ACLU had charged that the government's exclusion of the renowned South African political analyst amounted to censorship at the border since it prevented US residents from hearing speech protected by the First Amendment.

• EMPLOYEES SUCCESSFULLY SUE FACTORY THAT WAS SITE OF ICE RAID

The owners of Michael Bianco Inc., the New Bedford Factory raided by ICE in March 2007, agreed to pay current and former workers \$850,000 in overtime after a lawsuit revealed that the company had set up a fake corporation, Front Line Defense, to avoid having to pay overtime wages (*Boston Globe*, November 18). Many workers received no overtime for working 16 hours a day. In a plea deal with authorities, the owner of the factory, Francesco Insolia, has pleaded guilty to harboring and concealing immigrants and faces a year in prison and a \$30,000 fine. The company pleaded guilty to knowingly hiring the undocumented and agreed to a fine of \$1.5 million, and \$460,000 in restitution for overtime owed to the workers.

• TOP IMMIGRATION ENFORCEMENT OFFICIAL ARRESTED FOR HIRING UNDOCUMENTED WORKER

According to the December 6 *New York Times*, Lorraine Henderson, who was in charge of international points of entry in New England for the Customs and Border Protection Agency, advised her housekeeper, whom she knew was in the country illegally, on how to avoid deportation. Henderson faces up to 10 years in prison and a \$250,000 fine.

• FBI ALLEGEDLY ARRESTS MAN FOR REFUSING TO INFORM

Tarek Mehanna of Sudbury was arrested by the FBI at Logan airport on charges that he lied to them two years ago in a terrorism investigation. In a hearing, his lawyer said that Mehanna, an American citizen who was intending to work as a pharmacist in Saudi Arabia, was arrested because he refused to become a confidential informant about terrorism activities (*Boston Globe*, November 18).

• **BROOKLINE RESIDENTS ORGANIZE AGAINST SURVEILLANCE CAMERAS**

The December 15 *Boston Globe* reported that many residents in Brookline are resisting the push to install surveillance cameras purchased with a Department of Homeland Security grant. Cameras are also being installed in eight other communities - Cambridge, Everett, Chelsea, Revere, Quincy, Winthrop, Somerville and Boston. In Cambridge there will be a City Council hearing on the cameras on January 22.

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