CIVIL LIBERTIES UPDATE
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A. EXECUTIVE ACTIONS

Restoring the Rule of Law Scorecard

Beginning with the Update dated February 26, 2009, we are providing a scorecard reflecting key decisions taken by the Obama Administration that either help restore the Rule of Law or continue Bush Administration policies. Decisions favorable to the Rule of Law are assigned a PLUS 1; unfavorable decisions a MINUS 1; mixed decisions a PLUS or MINUS 0.5. The entire scorecard can be viewed at www.aclum.org/scorecard.

RULE OF LAW SCORECARD TALLY IN PREVIOUS UPDATE: O

• ADMINISTRATION INVOKES "STATE SECRETS" IN WARRANTLESS SPYING CASE

On February 20, the Justice Department filed an emergency motion in the Ninth Circuit Court of Appeals asking the court to block the release of documents relating to the Bush Administration's program of domestic warrantless wiretapping on the grounds that the program is a "state secret" and releasing information about it could endanger national security. On February 27, the Court denied the government's request, keeping alive the effort of the now defunct Al Haramain Islamic Foundation to demonstrate it was the target of illegal wiretapping. "I did not expect this from the Obama Justice Department," said Jon Eisenberg, a lawyer representing Al Haramain. "They're taking as hard a line as the Bush administration did on state secrets. If anything, they're being more aggressive about it" (Washington Independent, February 27). The Bush Administration invoked "state secrets privilege 20 times in its first 6 years. The Obama Administration has used it twice in its first 60 days.

MINUS 1

• ADMINSTRATION RELEASES LEGAL MEMOS

Declaring that "Americans deserve a government that operates with transparency and openness," Attorney General Eric Holder on March 2 declassified nine Justice Department legal memos penned by John Yoo when he was deputy attorney general in the Bush Administration's Office of Legal Council (Kansas City Star, March 2). They gave the Bush White House the power to override First Amendment freedoms (including the freedom of the press), allow the imposition for martial law, disregard a federal law banning torture, hand over prisoners to countries where they could be tortured, set up roadblocks, deploy high-tech surveillance against US citizens, and ignore the Fourth Amendment and Posse Comitatus Act and deploy the military within the US on "anti-terrorist operations," giving it the green light to attack apartment

buildings and office complexes where terrorists were suspected to be,. Five days before the end of the Bush Administration Stephen Bradbury, then the principal deputy assistant attorney general, wrote that the memos "should not be treated as authoritative for any purpose." The memos were released after being sought in a lawsuit filed by lawyers for Jose Padilla, a US citizen held for years within the US as an "enemy combatant." On the same day, the Attorney General revealed that the CIA had destroyed 92 videotapes of interrogations.
PLUS 1

• ADMINISTRATION BRINGS CRIMINAL CHARGES AGAINST AL-MARRI; REFUSES TO GIVE UP POWER TO HOLD PEOPLE INDEFINITELY
On February 27, the Obama Administration brought federal criminal charges against Ali Saleh al-Marri, who has been held for five years on a naval brig in South Carolina as an "enemy combatant." The US Supreme Court had agreed last December to hear al-Marri's appeal against the Fourth Circuit Court's ruling that the government has the right to hold a lawful US resident in prison without charges indefinitely as long as the president designates him an "enemy combatant." While the ACLU asked for the Supreme Court to continue to hear al-Marri's habeas corpus petition and rule on the constitutionality of his military detention, the Obama Administration requested that it drop the case. In its legal filing the Administration did not give up the power to designate American citizens and legal residents as enemy combatants and hold them indefinitely without charge (Christian Science Monitor, March 6). On March 6, the Supreme Court erased the Fourth Circuit Court ruling as the Obama Administration had urged and dropped the Al-Marri case from its docket, leaving the constitutional issue undecided (see "In the Courts" below).
PLUS 0.5

• PRESIDENT SAYS BUSH SIGNING STATEMENTS MUST BE SCRUTINIZED
On March 9, the President told executive officials to consult with the Attorney General before relying on any of the Bush Administration's signing statements to bypass a law. He promised to use such statements only if Congress sent him legislation with provisions he decided were unconstitutional (New York Times, March 10).
PLUS 1

• OBAMA APPENDS HIS FIRST SIGNING STATEMENT
On March 11, President Obama added a signing statement to a $410 billion spending bill saying he had the Constitutional authority to sidestep many of its oversight provisions. "At least some of those provisions which Obama declared invalid are, at worst, of arguable validity and, more accurately, grounded in strong judicial precedent regarding Congressional power" (Glenn Greenwald, Salon, March 15). Senator Charles Grassley (R-IA) sent the President a letter condemning the signing statement as "overly broad" and saying it would "undoubtedly chill whistle-blowers who might otherwise come forward to report waste, fraud or abuse to Congress" (New York Times, March 17).

MINUS 1

• JUSTICE DEPARTMENT REFUSES JUDGE'S REQUEST FOR INFORMATION ABOUT BAGRAM

On March 11, in response to a federal judge's request for information about how many people are being held at the US airbase at Bagram and what their countries of origin are, the Obama Justice Department submitted a heavily redacted document, very similar to the one its predecessor had submitted just two months before. Amnesty International declared, "This is not the transparency President Obama promised in the name of government accountability" (Amnesty Press Release, March 12).

MINUS 1

• ADMINISTRATION TELLS APPEALS COURT DETAINEES HAVE NO RIGHTS; FEDERAL JUDGE DISAGREES

On March 13, the Obama Administration filed documents before the US Court of Appeals for the District of Columbia arguing that four former Guantanamo detainees who are British residents had no right to bring suit in US court over their alleged torture and harassment while exercising their religion. The documents seek to protect from prosecution military officers who might have engaged in torture. On April 7, Judge John Bates for the US District Court for the District of Columbia took issue with the Administration's position, and ruled that detainees being held at Bagram who were seized outside of Afghanistan are constitutionally entitled to have their imprisonment reviewed by a court (Washington Post, April 7 – see "In the Courts," below).

MINUS 1

• ADMINISTRATION CHALLENGES BAGRAM RULING

The Obama Administration has filed an appeal with the US Court of Appeals for the DC Circuit challenging Judge Bates' ruling that some Bagram detainees do have the right to habeas corpus hearings (Jurist, April 11). In an April 13 editorial headlined "The Next Guantanamo," The New York Times condemned the Administration's position, stating: "In the absence of a fair review process that complies with international and military law, there is no reason to feel confident that everyone detained at Bagram deserves to be there. The administration should focus on putting such a process in place, instead of wasting its energies in an appeal that simply recycles extravagant claims of executive power and perpetuates the detention policies of the Bush administration."

MINUS 1

• ADMINISTRATION DROPS TERM ENEMY COMBATANT; RETAINS POWER TO DETAIN INDEFINITELY

Also on March 13, the Obama Administration dropped the term "enemy combatant" and stated it would use international law as its basis for holding terrorism suspects at Guantanamo. It also said the President would no longer rely on his authority as commander-in-chief to detain suspects. Under the new policy, only those who had

provided "substantial support" for al Qaeda or the Taliban would be detained. It did not specify whether they had to be picked up on the battlefield. Critics contend that this is at best a cosmetic change since the Obama Administration has not given up "the right to hold people indefinitely when we believe that they fit the category that we are defining…What does substantial assistance, for example, to the Taliban mean? They said, well, we can't define it at this time. We'll just do that case by case" (constitutional law professor Jonathan Turley, Rachel Madow Show, March 13).
PLUS 0.5

• RULES RELAXED ON RELEASE OF RECORDS
The Attorney General has issued new guidelines which instruct federal agencies to release records to the public under the Freedom of Information Act unless foreseeable harm could result. According to an attorney for the Electronic Frontier Foundation, "If there is really a new presumption in favor of disclosure, one would expect to see the outright reversal of many Bush-era decisions to withhold information" (Boston Globe, March 20).
PLUS 1

• ADMINISTRATION ASKS COURT TO BLOCK ENTRY OF LEADING MUSLIM SCHOLAR
On March 24, echoing the Bush Administration, Assistant US Attorney David Jones told a panel of the US Court of Appeals for the Second Circuit that the court should uphold the decision to bar the well-known Muslim scholar, Tariq Ramadan, from entering the US on grounds that he "endorsed or espoused" terrorism. The ACLU argued that Ramadan, a Swiss citizen who has frequently denounced terrorism and extremism, has been excluded because of his outspoken opposition to the Iraq War (Reuters, March 24).
MINUS 1

• ADMINISTRATION SEEKS TO BLOCK ACCOUNTABILITY FOR LAW-BREAKING; CLAIMS BROAD NEW POWERS
After a federal appeals court judge refused in late February to throw out the al-Haramain charity case involving allegations of illegal warrantless wiretapping on "state secrets" grounds, the Obama Administration on April 3 filed a brief that again sought to have the case dismissed because it would compromise national security. Seeking to block the Ninth Circuit Court of Appeals from viewing documents relating to the warrantless wiretapping program of the National Security Agency, the Obama Justice Department has also been protecting not just the telecoms but the named defendants: Dick Cheney, his former chief of staff David Addington and Alberto Gonzales (therawstory, April 6). The Obama Justice Department went even further than its predecessor and argued that under the doctrine of "sovereign immunity," the government could never be sued for spying that violates federal surveillance statues. In the words of Glenn Greenwald, "What's being asserted here by the Obama DOJ is the virtually absolute power of presidential secrecy, the right to break the law with no

consequences, and immunity from surveillance lawsuits so sweeping that one can hardly believe that it's being claimed with a straight face" (Salon, April 6). As a candidate, Barack Obama had promised to work for "full accountability" for "past offenses" in surveillance lawbreaking (Glenn Greenwald, Salon, April 7).
MINUS 1

• ADMINISTRATION OPPOSES TORTURE INVESTIGATION AND STALLS ON RELEASE OF LEGAL MEMOS
After the publication in April of a report dated February 14, 2007 by the International Committee of the Red Cross that details US treatment of 14 detainees "that amounted to torture and/or cruel, inhuman or degrading treatment," a CIA spokesman said that CIA Director Leon Panetta "has stated repeatedly that no one who took actions based on legal guidance from the Department of Justice at the time should be investigated, let alone punished" (New York Times, April 6). Panetta has reportedly been involved in blocking the release of three legal memos that Steven Bradbury wrote in May 2005 authorizing the use of torture. The ACLU has been seeking the memos through a Freedom of Information Act lawsuit and reluctantly agreed in court to give the government more time to produce them (Newsweek, April 3, 2009).
MINUS 1

• RULE OF LAW SCORCARD TALLY TO DATE (April 14, 2009): MINUS 3

Military Commissions, Torture, Guantanamo

• RED CROSS REPORT OUTLINES CIA USE OF TORTURE
A confidential ICRC Report "On the Treatment of Fourteen 'High-Value Detainees' in CIA Custody," dated February 2007, was partly disclosed in early March and published in full on the New York Review of Books website in early April. The ACLU and other human rights groups hope it may give new impetus to efforts to hold Bush Administration officials responsible for violating the international Convention Against Torture and the federal Anti-Torture Act and War Crimes Act. The 40-page report states that "the allegations of the fourteen include descriptions of treatment and interrogation techniques – singly or in combination – that amounted to torture and/or cruel, inhuman or degrading treatment." It expresses grave concern that "a significant number of other persons have passed through this detention program and may have been subjected to similar, if not the same, conditions and treatment." It condemns the role played by medical personnel in facilitating ill-treatment of detainees as "a gross breach of medical ethics." Among the techniques it describes are "continuous solitary confinement and incommunicado detention," "suffocation by water," "prolonged stress standing," "beating by use of a collar," "confinement in a box," "prolonged nudity," "exposure to cold temperature/cold water," "prolonged use of handcuffs and shackles," "threats," "forced shaving," "deprivation/restricted provision of solid food." One of those upon whom these techniques were used – Khaled Shaikh Mohammed – told the ICRC that

"during the harshest period of my interrogation I gave a lot of false information in order to satisfy what I believed the interrogators wished to hear in order to make the ill-treatment stop. I later told the interrogators that their methods were stupid and counterproductive. I'm sure that the false information I was forced to invent in order to make the ill-treatment stop wasted a lot of their time and led to several false red-alerts being placed in the US."

• TORTURE OF HIGH-VALUE DETAINEE "FOILED NO PLOTS"
According to the March 29 Washington Post, the harsh interrogation methods used against Abu Zubaida "sent CIA officers around the globe chasing leads. In the end, though, not a single significant plot was foiled as a result of Abu Zubaida's tortured confessions, according to former senior government officials who closely followed the interrogations." One of the people implicated by Abu Zubaida was a US citizen, Jose Padilla, who was identified as leading the effort to explode a "dirty bomb" in the US. The alleged bomb plot had vanished by the time Padilla was tried in court after being held for over 3 years incommunicado as an "enemy combatant." In the words of one former intelligence official, because of the Bush Administration's insistence that harsh methods be used on Abu Zubaida, "We spent millions of dollars chasing false alarms." The man whom George Bush called "al-Qaeda's chief of operations" turned out not even to be an official al-Qaeda member.

• ACLU CALLS FOR INDEPENDENT PROSECUTOR TO INVESTIGATE TORTURE
On March 17, the ACLU sent a letter to Attorney General Eric Holder asking him to appoint an independent prosecutor to investigate the authorization for the use of torture in CIA prisons: "The fact that such crimes have been committed can no longer be doubted or debated, nor can the need for an independent prosecutor be ignored by a new Justice Department committed to restoring the rule of law." The letter points out that there is only a little more than a year left under the federal statute of limitations of eight years for certain alleged crimes of torture, since allegations in the ICRC report go back to 2002. It states that Office of Legal Counsel opinions "could be part of a defense to certain criminal charges, but do not provide immunity against prosecution for torture or abuse… Ongoing investigations and previous inquiries conducted by the government have obfuscated the real search for truth, and despite government officials' best efforts, this issue has not gone away. Nor will it ever, General Holder, until a full criminal investigation is conducted." The US has signed and ratified the Convention Against Torture which requires that allegations of torture be investigated and persons responsible for it be prosecuted.

• CIA HEAD MOVES TO CLOSE SECRET PRISONS, REASSURE INTERROGATORS
The April 10th New York Times reports that Leon Panetta, the new CIA director, is taking steps to decommission the CIA "black sites," as outlined in the executive order issued by the President on his first day in office. He has also said that agency operatives who used harsh interrogation techniques should not be investigated or punished since they had

been told their actions were legal by the Justice Department. The secret prisons where about 100 detainees were harshly interrogated are believed to be located in Afghanistan, Thailand, Poland, Romania, Jordan and other countries. The CIA head said that torture was now off limits, that private contractors would no longer be hired to conduct interrogations, and that interrogators would now use "a dialogue style of questioning."

• SOME TORTURE TAPES MADE BEFORE LEGAL MEMOS ISSUED
The acting US attorney for the Southern District of New York has sent a letter to the federal judge hearing the ACLU FOIA case stating that some of the 92 tapes of interrogations made (and destroyed) by the CIA were filmed as early as April 2002. The first Justice Department legal opinion authorizing specific interrogation methods, including the use of waterboarding, were not issued until August 1, 2002. This calls into question CIA head Leon Panetta's assertion that agency operatives should not be investigated since they were acting on Justice Department instructions (publicrecord.org, April 9). According to CIA analyst Melvin Goodman, "In keeping Steven Kappes as the deputy director, Panetta signaled that there would be no change at the Agency and no punishment for corruption…Panetta has relied solely on the leadership he inherited, the very people who have a vested interest in making sure that nothing changes."

• CIA HAS 3,000 DOCUMENTS RELATING TO DESTROYED TORTURE TAPES
On March 20, the Justice Department revealed in an ACLU FOIA hearing before a New York federal district court judge that the CIA has some 3,000 cables, memoranda, notes and emails relating to the interrogation of 'high-value' detainees. The ACLU criticized the government for continuing to withhold documents that relate to 92 videotapes of interrogations which were destroyed by the CIA after a court had ordered them to be preserved (rawstory, March 20). According to the March 2 Washington Post, the tapes were destroyed on the orders of then directorate of operations chief Jose Rodriguez Jr. "to protect the identities of the government questioners at a time the Justice Department was debating whether the tactics used during the interrogations – which are believed to have included waterboarding – were illegal."

• GROUPS TAKE CALL FOR PROSECUTOR TO INTERNATIONAL COMMISSION
The ACLU, Human Rights USA, and the Center for Constitutional Rights are asking the Inter-American Commission for Human Rights – a body of the Organization of American States – to recommend that the US appoint a special prosecutor to investigate the alleged war crimes of the Bush administration, including the use of torture and abuse of detainees (Washington Independent, March 20).

• SPANISH COURT TO MOVE AGAINST AMERICANS RESPONSIBLE FOR TORTURE
Baltasar Garzon, the Spanish judge who ordered the arrest of former Chilean dictator Augusto Pinochet, has decided to move on the complaint filed by Spanish human rights

lawyers seeking an investigation into whether US officials violated international law by providing a legal justification for interrogation techniques that were illegal under the 1984 Torture Convention (Rachel Madow, MSNBC, March 30). Named in the complaint are former US Attorney General Gonzales, former Justice Department lawyer John Yoo, former Undersecretary of Defense Douglas Feith, former General Counsel for the Defense Department William Haynes II, the Defense Department's former general counsel Jay Bybee and David Addington, legal adviser and chief of staff to former Vice-President Cheney. If an investigation went ahead and arrest warrants were ordered, all 24 EU countries would be obligated to enforce them (Inter-Press Service, April 9). According to ACLU attorney Ben Wizner, "The idea of Spain investigating America's treatment of detainees is an embarrassment to us. Once we were the world's leading champion, not only of human rights, but of accountability. We shouldn't be depending on other countries to clean up our mess."

• CANADIAN LAWYER WANTS TO PUNISH BUSH FOR ROLE IN TORTURE
Arguing that former President Bush should be banned from Canada or prosecuted, Canadian lawyer Gail Davidson has written to Prime Minister Harper pointing out that the Canadian Immigration and Refugee Protection Act states that foreign nationals who are suspected of war crimes against humanity, including torture, are "inadmissible" (Think Progress, March 12). The former president successfully entered Canada and made a speech in Calgary on March 17.

• ITALIAN COURT THROWS OUT EVIDENCE ABOUT CIA ABDUCTION
On March 11, the Constitutional Court in Italy ruled that Italian prosecutors had violated state secrecy in bringing their case against 25 CIA agents, an American Air Force colonel, and Italian intelligence officials who abducted imam Abu Omar from the streets of Milan in 2003 and sent him to Egypt where he was tortured. Although the trial may continue, it appears to be seriously weakened.

• MILITARY COMMISSIONS JUDGE DEFIES PRESIDENT'S EXECUTIVE ORDER
Om March 10, Col. Stephen Henley, a judge on a Guantanamo military commission, ignored the president's executive order halting military commissions and released to the public a document entitled "The Islamic Response to the Government's Nine Accusations" in which Khalid Shaikh Mohammed and four other detainees took full responsibility for 9/11 (New York Times, March 10). The document declares: "Your intelligence apparatus, with all its abilities, human and logistical, had failed to discover our military attack plans before the blessed 11 September operation…We are terrorists to the bone."

• DETAINEE REFUSED PLEA BARGAIN; NOW HIS LAWYER FACES JAIL TIME
Evidence has emerged that British intelligence officials of MI5 colluded in the torture of Binyam Mohamed, an Ethiopian-born British resident who was taken to Bagram and then rendered to Morocco in 2002 where he was allegedly severely tortured before being

transfered to Guantanamo where he was detained until 2009 (Mailonliine, March 9). The March 24 New York Times reported that last October, the US proposed to Mohamed that he agree to 3 years in prison, a gag order, and an end to efforts to file lawsuits and obtain documents about his torture. He rejected the offer and eventually all charges against him were dropped and he was sent back to Britain and released. His attorney, Clive Stafford Smith, now faces charges that could lead to six months in prison based on a letter he wrote to President Obama urging him to release evidence relevant to Mohamed's torture. In that letter he presented facts proving his client had been tortured. He attached a totally redacted memo giving information detailing the torture. Under Guantanamo rules, information obtained from clients cannot be disclosed without getting prior approval from a "Privilege Review Team." The Team had totally blacked out the memo when Smith sought their approval. He sent it to the president with a cover letter stating "you, as commander in chief, are being denied access to material that would help prove that crimes have been committed by US personnel. This decision is being made by the very people who you command." On May 11 he will appear in court facing charges that that he violated Guantanamo's secrecy terms (Glenn Greenwald, Salon, April 7).

• FORMER BUSH OFFICIAL SAYS MANY AT GUANTANAMO ARE INNOCENT
Lawrence Wilkerson, who was chief of staff to then-Secretary of State Colin Power, told the Associated Press that only about two dozen of the 600 men held at Guantanamo over the years were terrorists. The rest were innocent. They were detained in case they knew something important (Associated Press, March 19).

• REPUBLICANS HOLDING UP CONFIRMATION OF ANTI-TORTURE ADVOCATE
President Obama's nomination to be head of the Office of Legal Counsel in the Justice Department is Dawn Johnsen, who ran the office in the Clinton Administration and has strongly condemned the Bush OLC memos justifying torture. Republican Senators are stalling on her confirmation (Rachel Madow, MSNBC, March 30).

• JUDGE ORDERS RELEASE OF DETAINEE WHO PROVIDED IINFORMATION
A federal judge ordered the government to release from Guantanamo a Yemeni detainee, Yasim Muhammed Basrdah, who had incriminated scores of other men detained at the prison (Washington Post, March 31). For years, his credibility has been called into question by military officials and attorneys for other detainees.

• JUDGE SAYS US CAN CONTINUE TO DETAIN GUANTANAMO PRISONER
After the habeas hearing for a Tunisian detainee, Hedi Hammamy, federal judge Richard Leon has ruled that there is evidence that he fought with Al Qaeda or the Taliban and that he can continue to be held by the government.

• UIGHURS GO TO COURT TO DEMAND RELEASE

Lawyers for five Uighur Guantanamo detainees whose transfer or release was ordered in June 2008 by the US Court of Appeals for the District Circuit have gone back to court seeking to hold Secretary of Defense Robert Gates for contempt for failing to act on the order (Jurist, March 22 – see "In the Courts," below). Attorney General Eric Holder has said that the US would consider taking in the 17 Uighurs who have been cleared for release. The Bush Administration had conceded that none of the men were "enemy combatants" but continues to maintain that there are too many doubts about them to release them into the US. There is a Uighur separatist movement in China and China claims Uighurs have committed more than 200 terrorist acts over 11 years (New York Times, April 1).

• EUROPE NOW BACKING OFF FROM OFFER TO TAKE DETAINEES
European countries which had initially offered to take detainees so that Guantanamo could be closed are now raising security concerns about accepting the 60 of the remaining 244 detainees who cannot be sent to their home countries (New York Times, March 16).

• GUANTANAMO GUARD CONVERTS TO ISLAM WHILE AT THE PRISON
Terry Holdbrooks, a former Army specialist and Guantanamo guard who engaged in late-night discussions with detainees about religion, converted to Islam while serving at the prison (Newsweek, March 30). He had been especially moved by conversations with a detainee from Morocco, Ahmed Errachidi, who spoke fluent English from his 18 years working as a chef in Britain. Errachidi's story of being in Afghanistan on a business venture when he was seized by the Northern Alliance and sold to American soldiers for a $5,000 bounty was corroborated by the London Times and he was eventually released. The former guard and former detainee are again in touch with each other.

• BOOK ABOUT GUANTANAMO WRITTEN FOR TEENS
A children's writer, Anna Perera, has written a book for teenagers about a child detainee called Guantanamo Boy. According to the group Reprieve, 22 detainees held at Guantanamo were under 16 years old. The youngest still in custody is Mohammed el Gharani, who was 14 when he was picked up during a raid on a mosque and sold to Americans for a $5,000 bounty (UK Guardian, March 3).

• BEAUTY QUEENS HAD A "LOT OF FUN" IN GUANTANAMO
From March 12-14, Miss USA and Miss Universe visited Guantanamo and gave gushing descriptions of how wonderful it was on their websites (Reuters, March 31). They were on a tour to boost the morale of the prison guards. Miss Universe (Dayana Mendoza of Venezuela) wrote in a blog entry that "it was a looot of fun! I didn't want to leave, it was such a relaxing place, so calm and beautiful…We also met the Military dogs, and they did a very nice demonstration of their skills. All the guys from the Army were amazing with us."

• LEAKED DOCUMENTS RAISE ALARMS ABOUT FUSION CENTERS

Documents leaked from some of the 70 secretive fusion centers across the country have raised alarms about the material being collected and shared in the name of fighting terrorism. The Missouri Information Analysis Center, housed within the Missouri State Highway Patrol, was keeping tabs on militia members and their support for "former Presidential candidate Ron Paul, Chuck Baldwin and Bob Barr" (Kansas City Pitch, March 24). The leaked memo from the North Central Texas Fusion Center (one of five in Texas) was one of a weekly series of "Prevention Awareness Bulletins" that flagged such groups as the Council on American Islamic Relations, ANSWER, and the International Action Center as well as former US Attorney General Ramsey Clark and former Georgia Congresswoman Cynthia McKinney as well as Muslim groups for fostering an "environment for terrorist groups to flourish" (Collin County Observer, March 20). A document leaked from the Virginia Fusion Center cited various historically black colleges and universities that were seen as potential "radicalization nodes" for terrorists and listed 35 groups regarded as potential terrorist threats, including the Nation of Islam, the New Black Panther Party and Earth First! (rawstory, April 6). Also leaked was a "Protective Intelligence Bulletin" from the Intelligence Branch, Threat Management Division of the DHS that lists "activities of various civil activists and extremist groups" including "protests, demonstrations, marches and special events of interest" for the month of March 2006. The cited groups include Code Pink, ANSWER, Iraq Pledge of Resistance, United for Peace and Justice, Troops Out Now, DAWN, Independent Media Center, Campus Antiwar Network, International Action Center. Boston did not appear as one of the ten "most dangerous cities." But featured in the report was an event organized on March 18, 2006 by "various anti-war groups" in Roxbury, MA on the topic "stop the violence, stop the war at home and abroad" (see "In the Congress," below).

• FUSION CENTERS COME OUT OF THE SHADOWS

In mid March some 2,000 state, local and federal representatives gathered in Kansas City for a national fusion center conference. According to the FBI website, the goal of the conference was "to continue the process of standardizing fusion center operations. The ultimate goal? To create a network of centers presenting a united front against terrorism and other national security and criminal threats that put Americans at risk." The FBI claims there are now 70 fusion centers in the country – 50 state and 20 regional, and there are 114 FBI employees working at 38 fusion centers. "Fusion center personnel 'fuse' intelligence from participating agencies to create a more comprehensive threat picture, locally and nationally. They don't just collect information – they integrate new data into existing information, evaluate it to determine its worth, analyze it for links and trends, and disseminate their findings to the appropriate agency in the best position to do something about it….With fusion centers, everybody wins." But according to Sacramento police officer Milton Nenneman, "there is, more often than not, insufficient purely 'terrorist activity to support a multi-jurisdictional and multi-governmental level

fusion center that exclusively processes terrorist activity" (Secrecy News, June 3, 2008). Hence many fusion centers are focusing on crime (see "In the Congress", below).

• TSA "CLEARED" LIST GROWS TO 80,000

There are now at least 80,000 people on a list of fliers who have been "cleared" for travel. Most have faced endless hassles because their names either appeared on or were a "close match" to names on terrorism watch lists (USA Today, March 25). Critics say that rather than create a separate list of people who are not deemed suspicious, an effort should be made to curb the size of watch lists which now include more than one million people who have been "nominated" to the list by intelligence and security agencies based on a "reasonable suspicion" standard. According to the FBI's Terrorist Screening Center, the million names actually represent about 400,000 people who also use aliases (USA Today, March 10). The FBI says about 95% of the names on the list are of foreign nationals – which means approximately 20,000 terrorist suspects are US citizens.

• TERRORISM WILL REMAIN TOP PRIORITY OF FBI

The Obama Administration has decided to reinforce the transformation of the Justice Department and FBI into agencies that have the fight against terrorism, and not conventional crime, as their main priority (New York Times, March 26). Critics, including Senator Dianne Feinstein, say the FBI has not been devoting enough resources to fighting bank, mortgage and securities fraud, and that "too many agents were chasing too few credible leads" (NPR, March 11). The Administration will also continue to go after terrorist funding by following the "money trail" and getting banks and other financial institutions to flag suspicious-looking financial transactions – the method which trapped former New York governor Eliot Spitzer.

• DANGEROUS PEOPLE MAY BE DETECTED THROUGH BODY ODOR

The Department of Homeland Security is funding a study to see "if human odor signatures can serve as an indicator of deception" and in the future be used as a biometric identifier (IGN.com, March 11).

• SURVEILLANCE TOWERS BEING ERECTED ALONG BORDER WITH CANADA

Boeing Corporation may have botched the technology in its "virtual fence" with Mexico, but it still got the contract to erect 16 more video surveillance cameras in Michigan and New York as part of the Secure Border Initiative. The Initiative's executive director Mark Borkowski "acknowledged that as cameras pan an area it might point at a private residence. He said that is not the cameras' intended targets and the resolution of the video won't be clear enough for residents to be concerned about privacy issues. In addition, only law enforcement officials will be operating the cameras" (Associated Press, March 31).

• MILITARY TO DEVELOP GIANT BLIMP FOR "CONSTANT SURVEILLANCE"

According to the March 13 Los Angeles Times, the Pentagon is spending nearly half a billion dollars on a 450-foot long dirigible that would float 65,000 feet above the earth and monitor all aircraft, vehicles and people below. The aircraft is being developed by DARPA, the designer of "Total Information Awareness."

• "GLOBAL WAR ON TERROR" TERMINOLOGY ABANDONED
The Obama Administration has dropped GWOT (Global War on Terror), and is instead using OCO ("Overseas Contingency Operations) to refer to US military actions (Washington Post, March 25). President Obama has also rejected the "clash of civilizations" theory and told the Turkish parliament that "the United States is not, and will never be, at war with Islam" (The National, April 7).

• MUSLIM GROUP DENOUNCES FBI INFILTRATION TACTICS
Revelations that the FBI has placed paid informants and agent provocateurs in US mosques have undermined relations between the law enforcement and Muslim community, according to the Muslim Public Affairs Council (publicrecord, March 8). The FBI tactics surfaced when Ahmadullah Niazi reported suspicious behavior by a new Muslim convert in his California mosque. The convert suggested planning a terrorist attack. The FBI later asked Niazi to become a paid informant and when he refused, threatened to make his life a "living hell." He was subsequently arrested on charges of lying in citizenship application about his alleged ties to terrorist groups. FBI Special Agent Thomas Ropel testified in Niazi's court hearing that the convert had been paid by the FBI to infiltrate several mosques in Orange County and that Niazi, allegedly the brother-in-law to a body guard of Osama bin Laden, had himself been under surveillance by the FBI.

• GROUP SAYS DHS TARGETING MUSLIMS
The American-Arab Anti-Discrimination Committee has filed a complaint with the Department of Homeland Security asking for an investigation into ICE's Operation Frontline which, it says, has targeted men from Muslim-majority countries who are not suspected of any activity harmful to national security. Operation Frontline was supposedly designed to prevent "terrorist activity" around the 2004 presidential election (publicrecord, March 8).

• SCIENTISTS SAY VISA PROBLEMS HURT RESEARCH
According to the March 3 New York Times, research is being harmed at MIT and other institutions since 9/11 because foreign students face so many visa problems and delays when they apply to study in the US or try to re-enter after traveling abroad. Researchers are also increasingly unwilling to schedule conferences and other scientific meetings in the US because of visa problems. Many students on whom US research universities have relied – especially in the fields of graduate and postdoctoral science and engineering – are now choosing to study elsewhere. A January report, " Beyond 'Fortress America': National Security Controls on Science and Technology in a

Globalized World" by the National Research Council of the National Academies, urges the government to streamline the visa process so foreign researchers and students have an easier time entering the US and to extend student visas so recent graduates have time to find work with US-based employers.

Targeting Immigrants

• CITIZENS CAUGHT IN IMMIGRATION SWEEPS
The April 9 Los Angeles Times reported that "mistaken detentions are drawing increased attention as immigration officials mount workplace roundups and jailhouse sweeps in search of undocumented immigrants" -- detaining for deportation many American citizens in the process. One was Rennison Vern Castillo, who was nearing the end of a jail term for harassing a girlfriend when immigration officials blocked his release and began a months' long process to get him deported on grounds that he was an illegal immigrant. It took seven months and the assistance of the Northwest Immigrant Rights Project for him to demonstrate that he was indeed a US citizen who had served in the military. His naturalization documents had been sent to the wrong address and his name was spelled wrong in immigration records.

• HUMAN RIGHTS GROUPS CONDEMN DETENTION FACILITIES
In a report released on March 25, Amnesty International says that facilities in which more than 400,000 immigrants are held each year are often deplorable, and detainees are routinely denied due process (SFGate, March 25). The report cited two California men who were held in detention during 2007, one for 11 months and the other for seven, despite the fact that they were naturalized US citizens. Amnesty's research reveals that as many as 322 people who were being detained in 2007 alone might have been able to prove they were US citizens. Many detainees languish for long periods in jail (at a cost of $90 per day) because they either cannot meet the high bonds posted by judges or judges refuse to set bonds. In mid March, Human Rights Watch issued a report critical of ICE for failing to provide detainees with adequate medical and mental health treatment. At least 90 people have died in immigration detention between October 7, 2003 and February 7, 2009.

• ONE DETAINEE DIES – UNNAMED AND UNCOUNTED
In her report "Immigrant Detainee Dies, and a Life is Buried, Too" (New York Times, April 3), Nina Bernstein details the difficulty confirming the very existence of Ahmad Tanveer, a 43-year-old Pakistani who allegedly died in the Monmouth County Correctional Institute in Freehold, New Jersey where he was reportedly being held in immigration detention. Inquiries by a local advocacy group that received reports that his pleas for medical attention were being ignored "were rebuffed by jail officials. Complaints forwarded to the Department of Homeland Security were logged, then forgotten. And when pressure from Congress and the news media compelled Immigration and Customs Enforcement to produce the first list of people who had died

in their custody, the Freehold case was not on it…The rescue of his death from oblivion took a rare mix of chance, vigilance by a few citizen activists, litigation by the civil liberties union and several months of inquiry by The Times. Even as the newspaper confirmed Mr. Tanveer's death with jail officials, and tracked his body's path from a Freehold morgue to the cargo hold of an airplane at Kennedy Airport, immigration authorities maintained that they could find no documents showing such a person was ever detained, or died in their custody. Not until March 20, in response to a new request by The Times under the Freedom of Information Act, did the agency release an internal e-mail message acknowledging that the death had been overlooked." He was subsequently included in the expanded list of those who have died in immigration custody with his alien registration number redacted -- "to protect his privacy, the government said."

• GAO REPORT QUESTIONS DEPUTIZING POLICE FOR IMMIGRATION WORK
A March 4 report by the Government Accountability Office calls into question the effectiveness of a federal program - known as 287(g) - deputizing local police to be immigration agents. Touted as a way of catching serious criminals, the report says the program has led to the deportation of immigrants "who have committed minor crimes, such as carrying an open container of alcohol" (New York Times, March 4). The program now has the participation of 67 agencies in 23 states, with 950 deputized police officers who took 34,000 immigrants into custody last year. It has 42 agencies on its waiting list. One of ICE's partners is Sherif Joe Arpaio of Maricopa County, Arizona who entered into a contract with the federal agency after his office had been ordered to pay $43 million in death and abuse law suits (New American Media, February 26). On March 10, the US Justice Department told Sherif Arpaio it was launching an investigation into allegations of discrimination and unconstitutional searches and seizures carried out by his office (Associated Press, March 10).

• THREE DAYS AFTER ACQUITTAL STUDENT IS ARRESTED BY ICE
Youssef Megahed, a legal permanent resident of the US and a student at the University of South Florida, was found not guilty in early April in a federal jury trial of illegally transporting explosives and possessing a destructive device. He had refused to accept a federal plea bargain. Three days later, he was arrested on the street by ICE agents and slapped with the vague charge of "civil violations of the Immigration and Nationality Act." According to the April 9 St. Petersburg Times, "Megahed's only crime appears to have once been a defendant in a criminal case in which he was found not guilty by a jury. Immigration and Customs Enforcement insists incarcerating this young man does not constitute double jeopardy because the deportation action is a civil matter.…What's the point of immigrants in a legal pickle challenging the charges against them if they are only going to be dragged off the streets by government agents who loathe the ability of a jury to reach an honest verdict?"

• ICE MISTAKENLY RAIDS HOME OF US CUSTOMS OFFICIAL

A Phoenix, Arizona couple have brought a lawsuit against the Department of Homeland Security for violating their Fourth Amendment rights after their home was entered by five armed ICE officers in bullet proof vests searching for an illegal immigrant. The ICE agents left after discovering that the home owner worked in border control for the same agency.

• JUDGE HALTS INVESTIGATION INTO USE OF TAX RECORDS TO PROVE "IDENTITY THEFT"

A Colorado judge has sided with the ACLU and halted the seizure of tax records from a tax preparer by the Weld County Sheriff's Office in an effort to identify immigrants who were in the country illegally and charge them with "identify theft" for using fraudulent Social Security numbers (New York Times, April 14). The IRS requires all US residents, whatever their status, to file tax returns. The seizure of the records had led to the arrest of more than 60 people, with warrants out for 61 others.

• MORE COMPANIES ENROLLING IN E-VERIFY SYSTEM

The March 6 Boston Globe reported that anxiety over workplace raids has led companies to agree to implement the E-Verify system to check the immigration status of their new hires at a rate of 1,000 per week – the total number has reached 113,000 businesses conducting checks on 6.6 million workers. In Massachusetts, 1,712 businesses now use the computerized system to check the identities and social security numbers of new employees. Those who are not confirmed have 8 days to appeal their rejection. Last year 0.4% of those who appealed were eventually authorized to work.

• OBAMA ADMINISTRATION MAY PURSUE IMMIGRATION REFORM

On April 9, The New York Times reported that the Obama Administration may later in the year pursue legislation that would toughen border security and include a path to legalization for undocumented immigrants. According to the April 14 New York Times, two large labor federations – the AFL-CIO and Change to Win – are coming together behind the Obama Administration to reject "the false claim that fixing the immigration system will somehow hurt American workers."

B. IN THE US CONGRESS

• SENATE INTELLIGENCE COMMITTEE TO INVESTIGATE CIA METHODS

It was reported in late February that the Senate Intelligence Committee will undertake an investigation of CIA detention and interrogation practices (Washington Post, February 27). The Obama Administration has been cool to the idea and it seems that public hearings are unlikely. While CIA Director Leon Panetta has said he would cooperate with the Senate probe, "I would not support, obviously, an investigation or a prosecution of these individuals" (Los Angeles Times, February 27).

• DEMOCRATS BACKTRACK ON INVESTIGATION AND PROSECUTION OF WRONGDOING

Democrats who had signed a letter to then Attorney General Mukasey demanding the appointment of a special prosecutor to investigate evidence that the Bush Administration had sanctioned torture are no longer pushing for anything that could lead to criminal prosecution. At most, they are behind Senator Leahy's call for a "truth and reconciliation commission," which had a hearing in early March. Senator Leahy has stressed that such a commission would not necessarily lead to prosecution of lawbreakers, but would instead invite "cooperation" and be "removed from partisan politics" (Washington Independent, March 5). Only five senators showed up for the hearing. The ACLU is advocating both the appointment of independent prosecutors to look at illegal policies and practices and a Church Commission-style Congressional select committee that would have broad jurisdiction and give Congress a meaningful oversight role.

• ROVE, MIERS WILL TESTIFY – BUT NOT IN PUBLIC

The House Judiciary Committee will hear in private from Karl Rove and Harriet Miers about the firing of nine US Attorneys in December 2006. They had both originally refused to answer a subpoena on the grounds that they were protected by the Bush Administration's assertion of "absolute immunity," but an agreement has been worked out with them to secure their testimony and avoid a lengthy court battle (Truthout, March 5).

• LEGISLATION INTRODUCED TO REFORM PATRIOT ACT PROVISION

On March 30, Congressmen Jerrold Nadler (D-NY) and Jeff Flake (R-AZ) introduced legislation to narrow the overbroad subpoena power in the National Security Letter provision of the PATRIOT Act. The NSLs are subpoenas to obtain personal information "relevant" to an investigation that are issued in secrecy without court review and include a gag order. Reports by the Justice Department's Inspector General have shown how the expanded NSL provisions have been abused over the years. About 190,000 National Security Letters have been issued since the PATRIOT Act was passed, with their recipients barred from disclosing their existence.

• FBI HEAD SAYS PATRIOT ACT POWERS MUST NOT SUNSET

On March 25. FBI head Robert Mueller told the Senate Judiciary Committee that the three major PATRIOT Act provisions due to sunset in 2009 are essential to the agency's work in keeping the country safe. The provisions are Section 215, which allows investigators to demand "any tangible thing" about a suspect from third parties without notifying the suspect (Mueller says it was used 223 times between 2004 and 2007); Section 206 authorizing secret "roving wiretaps" without identifying a particular communication device to be monitored (which had been used 147 times); and Section 6001, the "lone wolf" provision, allowing FISA surveillance of individuals who are not connected to either a terror group or foreign nation. While claiming this provision has

been "tremendously helpful," Mueller had no figures to share with the Committee (AlterNet, March 26). The ACLU has produced a report on the use of the PATRIOT Act called Reclaiming Patriotism: A Call to Reconsider the Patriot Act which is available at http://www.reformthepatriotact.org/.

• HEARING HELD ON FUSION CENTERS

On April 1, a subcommittee of the House Homeland Security Committee held a hearing into the future of fusion centers. Chaired by Rep. Jane Harman (D-CA), the hearing dealt with the so-called "myths" of fusion centers – such as the allegation that, in Rep. Harman's words, "fusion centers spy on Americans," and attempted to do damage control regarding the leaked documents from fusion centers that showed how widely the net of suspicion had been cast. Among the critics who testified was a constitutional scholar and former Reagan Administration official, Bruce Fein. In his view, "To an intelligence agent, informant or law enforcement officer, everything unconventional or unorthodox looks like at least a pre-embryonic terrorist danger….Fusion centers pivot on the idea that the best way to forestall a second edition of September 11, 2001, or a variation is to spy on American citizens in search of clues of an inclination toward future terrorism…everything is fair game for intelligence collection. But when everything is relevant, nothing is relevant. That may explain why there is no credible evidence that fusion centers have frustrated a single terrorist plot."

C. IN THE COURTS

• DISTRICT COURT JUDGE RULES BAGRAM IS SIMILAR TO GUANTANAMO

Judge John Bates, a federal district judge in Washington who was appointed to the bench by President Bush in 2001, has ruled that some detainees at Bagram Air Force base in Afghanistan could challenge their detentions in a US court. His ruling would apply to about 30 of 600 or so Bagram detainees who were picked up far from the field of battle and in some cases sold for a bounty to US forces by Afghan warlords (Washington Independent, April 3). The case Judge Bates ruled on was brought on behalf of four detainees by the International Justice Network with the help of legal clinics in Yale and Stanford law schools. Quoting Alexander Hamilton, Judge Bates declared that "Confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government." He also quoted the Supreme Court ruling in the Boumediene case, giving Guantanamo detainees the right to habeas corpus. The Obama Administration has appealed the judge's ruling.

• FORMER "ENEMY COMBATANT" APPEARS IN FEDERAL COURT

Ali al-Marri, an alleged Al Qaeda member who spent nearly six years in legal limbo and total isolation on a naval brig in South Carolina, appeared in a federal civilian court in Charleston, South Carolina on March 10. He is expected to face trial in a federal court in Peoria, Illinois.

• GUANTANAMO UIGHURS APPEAL TO US SUPREME COURT
Fourteen Uighurs who have been held in Guantanamo for seven years without charge have appealed for their release to the US Supreme Court. In October a federal judge ordered 17 Uighurs to be released into the US, but the ruling was overturned when an appeals court ruled that only the executive branch had the power to release them (AFP, April 6, 2009).

• PROSECUTOR SAYS SADDIQUI FAKING ILLNESS
A federal prosecutor has told a Manhattan court that Aafia Siddiqui, a Pakistani neuroscientist who had studied at MIT, was faking mental illness in the view of two psychiatrists (New York Times, March 27). She was detained in Afghanistan and allegedly shot at two FBI agents and soldiers who had come to question her. A competence hearing has been set for June 1.

• CHARITY CHALLENGES FEDERAL FREEZE OF ITS ASSETS
The ACLU has brought a lawsuit in federal court in Ohio on behalf of KindHearts, a charity whose operations were frozen indefinitely by the Treasury "pending investigation" in February 2006. The charity has not been listed as a terrorist organization but has been accused of giving support to Hamas. It is one of four US charities whose assets have been frozen "pending investigation" (USA Today, April 5).

D. IN THE COMMONWEALTH

• SOMALI COMMUNITY IN BOSTON WORRIED BY TERRORIST ALLEGATIONS
According to the March 13 Boston Globe, claims made to the Senate Committee on Homeland Security that a terrorist group called Al-Shabaab is recruiting US-based Somali youths to fight in Somalia have raised an alarm in Boston where Somali leaders have promised to be vigilant and work closely with the FBI.

• SOMERVILLE CAMERA HEARING SHOWS EXTENT OF PUBLIC CONCERN
At the March 31 City Hall hearing on DHS-funded surveillance cameras in Somerville, more than a dozen people testified in opposition to the cameras. No members of the public testified in their support.

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