

**CIVIL LIBERTIES UPDATE**  
**E-NEWSLETTER OF THE ACLU OF MASSACHUSETTS**  
July 1, 2009

**CONTENTS**

**A. EXECUTIVE ACTIONS**

**Restoring the Rule of Law Scorecard**

- Justice Department opposes Uighurs' appeal to Supreme Court
- Administration argues that CIA interrogation documents must be kept secret
- Guantanamo detainee brought before US court
- Administration asks full court to re-hear rendition case
- White House argues visitor logs are privileged presidential communications
- Government submits evidence obtained under torture in habeas case
- Justice Department justifies gag order

**Military Commissions, Torture, Guantanamo**

- Americans oppose "preventive detention" by big margin but also oppose closing Guantanamo
- Obama may issue executive order authorizing indefinite detention
- No easy fix to military commissions
- White House balks at demand for accountability
- UN human rights head criticizes Obama's detention plan; demands accountability for torture
- Detainees say they were abused at Bagram
- First Guantanamo detainee transferred to US
- Four Uighur detainees sent to Bermuda; others trapped in Guantanamo by Congress
- ACLU files suit for American tortured in UAE at US behest
- US waterboarded wrong man 83 times; another detainee repeatedly lied under torture
- Judge orders release of detainee tortured by al-Qaeda as suspected American spy
- Former detainee Boumediene describes treatment
- Questions raised about confessions and "suicide" of tortured "ghost detainee"
- CIA fired psychologist firm
- Mobile CIA-FBI interrogation teams proposed
- EU countries agree on former detainee information-sharing

**Building the National Security Surveillance State**

- "Overcollection" of email by NSA included Bill Clinton's
- NSA head recommended as commander of cyber command
- Top candidate for cyber security czar no fan of privacy
- Spy satellite program killed
- REAL ID to be scaled back but not eliminated
- Defense Department considers protests "low-level terrorism"
- Being on the terrorism list no bar to purchase of guns, explosives
- Terrorists on FBI 'Ten Most Wanted' list keep aviation licenses
- Lawsuit filed for man questioned by TSA for carrying cash
- ACLU seeks records about searches of laptops at borders
- Marine pleads guilty to stealing intelligence files
- Intelligence programs to be funded in higher ed
- High schools offering courses in "homeland security"

**Targeting Immigrants/Visitors**

- Obama to push for immigration reform next year
- Holder voids Mukasey opinion on ineffective counsel
- Immigration courts at breaking point
- ICE seeks to deport student cleared of terrorism charges
- High school students to be permitted to rejoin their parents
- Raids devastated communities: new report
- Names of ICE detainees kept secret
- New Utah law another abomination

#### **B. IN THE US CONGRESS**

- Appropriations act hems in Obama on Guantanamo
- Suppression of torture photos gets bipartisan support
- House hopes to expand intelligence oversight

#### **C. IN THE COURTS**

- Judge dismisses telecom lawsuits; al-Haramain case to proceed
- Supreme Court refuses to hear Plame case
- Federal judge allows Jose Padilla to sue John Yoo
- New ACLU FOIA lawsuit seeks to prove link between White House and interrogations
- Art professor detained for taking pictures wins settlement

#### **D. IN THE COMMONWEALTH**

- State decides not to distribute more military weapons to police
- Report shows immigrants play large role in state economy

#### **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](http://www.aclum.org).*

##### ***RULE OF LAW SCORECARD TALLY AS OF LAST UPDATE – MINUS 5.5***

• **JUSTICE DEPARTMENT OPPOSES UIGHURS' APPEAL TO SUPREME COURT**  
 On October 7, 2008, federal district court judge Ricardo Urbino ordered the release into the US of 17 Uighur Guantanamo detainees, who were no longer being classified by the government as "enemy combatants." In February 2009, the DC Circuit Court overturned that ruling, and agreed with the Obama Administration that no federal court has the authority to release a Guantanamo prisoner into the US. Attorneys for the Uighurs, who are Chinese Muslims, then appealed to the US Supreme Court. On May 29, the Obama Administration urged the Supreme Court not to hear the Uighurs' case. Solicitor General Elena Kagan's brief asserts that the detainees "have already obtained relief. They are no longer detained as enemy combatants, they are free to leave Guantanamo Bay to any country that is willing to receive them." At the time she submitted her brief, no country – including the US – was willing to receive them, and so they remained in detention at Guantanamo. The brief asserted that detainees cleared for release may be held for a "wind-up" period of indefinite duration (Scotus, May 29)

**MINUS 1**

- **ADMINISTRATION ARGUES THAT CIA INTERROGATION DOCUMENTS MUST BE KEPT SECRET**

On June 8, in an affidavit submitted to a New York federal judge, CIA head Leon Panetta urged the court to bar the disclosure to the ACLU of CIA documents describing the contents of 92 videotapes of interrogations that the CIA destroyed in 2005. He argued that the release of the documents “could be expected to result in exceptionally grave damage to the national security by informing our enemies of what we knew about them, and when, and in some instances, how we obtained the intelligence” and that these documents were “of a qualitatively different nature” than the Justice Department memos justifying harsh interrogation methods because they described the interrogation techniques “as applied in actual operations” – details which would give al-Qaeda “propaganda it could use to recruit and raise funds” (*Washington Post*, June 9).

**MINUS 1**

- **GUANTANAMO DETAINEE BROUGHT BEFORE US COURT**

Defying the fear mongers who argued that bringing Guantanamo detainees into the US to face trial was an unacceptable security risk, the Obama Administration transferred a Tanzanian, Ahmed Ghailani, from Guantanamo to the Metropolitan Correctional Center in Manhattan. On June 9, he appeared in federal court on charges related to the 1998 destruction of the US embassies in Kenya and Tanzania (*Boston Globe*, June 10).

**PLUS 1**

- **ADMINISTRATION ASKS FULL COURT TO RE-HEAR RENDITION CASE**

On June 13, the Obama Administration petitioned the US Court of Appeals for the 6<sup>th</sup> Circuit to reconsider the opinion of a 3-judge panel of the court permitting a lawsuit by 5 victims of “extraordinary rendition” to proceed. The panel had refused to stop the case, *Mohamed et al v. Jeppesen Dataplan*, on state secrets grounds. The ACLU attorney involved in the case, Ben Wizner, stated: “This is a watershed moment. There’s no mistake any longer...the Obama administration has now fully embraced the Bush administration’s shameful effort to immunize torturers and their enablers from any legal consequences for their actions” (*Washington Post*, June 13).

**MINUS 1**

- **WHITE HOUSE ARGUES VISITOR LOGS ARE PRIVILEGED PRESIDENTIAL COMMUNICATIONS**

Transparency in government took a hit when the Obama White House adopted the arguments of its predecessor to prevent lists of visitors from being turned over to MSNBC and the group Citizens for Responsibility and Ethics in Washington (MSNBC, June 16). Although US District Court Judge Royce Lamberth has twice ruled that visitor logs are under the authority of the Secret Service and subject to the Freedom of Information Act, the Administration has argued that they are Presidential records which are not subject to FOIA. The Citizens group had wanted to know which coal mining executives had visited the White House to discuss “clean coal” policies.

**MINUS 1**

- **GOVERNMENT SUBMITS EVIDENCE OBTAINED UNDER TORTURE IN HABEAS CASE**

In an effort to prove it can indefinitely imprison Mohammed Jawad, an Afghan detainee in Guantanamo who may have been as young as 12 when he was seized on the battlefield, the Administration on June 1 submitted evidence to Federal District Court Judge Ellen Huvelle that was obtained after the young man had been threatened with death, hooded, strip-searched, beaten, kicked and subjected to weeks of sleep

deprivation. Lt. Col. Darry Vanderveld, the former military prosecutor in Jawad's trial before a military commission, has submitted a 14-page sworn statement in support of his petition for release. In January, five human rights organizations sent the president-elect a letter urging him to stop the prosecution of Jawad and other child detainees (*Washington Independent*, June 23).

**MINUS 1**

**• JUSTICE DEPARTMENT JUSTIFIES GAG ORDER**

The Justice Department has submitted to the US District Court for the Southern District of New York a secret classified declaration justifying the use of the gag order that was imposed on an Internet Service Provider who turned to the ACLU after being the recipient of a National Security Letter. Last December, the US Court of Appeals for the Second Circuit ruled that the gag provisions of the NSLs violate the First Amendment and sent the case back to the district court. ACLU attorneys are not permitted to see the secret filing and the Justice Department declined to provide an unclassified summary of its affidavit (*PC World*, June 24).

**MINUS 1**

**RULE OF LAW SCORECARD TALLY AS OF JULY 1: MINUS 10.5**

**Military Commissions, Torture, Guantanamo**

**• AMERICANS OPPOSE "PREVENTIVE DETENTION" BY BIG MARGIN BUT ALSO OPPOSE CLOSING GUANTANAMO**

According to a NYT/CBS poll, as many as 68 percent of Americans are against the plan put forward by President Obama to hold some detainees indefinitely without charging them with any crime (*Salon*, June 18). Only 24 percent support the idea. A *USA Today*/Gallup Poll revealed that by a 2-1 margin, those surveyed oppose closing Guantanamo and by 3-1 say that detainees should not be brought to the US (*USA Today*, June 1). As Liliana Segura wrote in *AlterNet* (June 6), this result "is a testament to the ageless power of political fear mongering. In the months since Obama vowed to close Guantanamo in an executive order that was met with relief and praise by human rights advocates worldwide, the debate over how and when to do so has been hijacked and utterly skewed."

**• OBAMA MAY ISSUE EXECUTIVE ORDER AUTHORIZING INDEFINITE DETENTION**

In order to sidestep bipartisan Congressional opposition on the question of what to do about Guantanamo detainees, President Obama is considering issuing an executive order to provide for what he calls "prolonged detention" – indefinite imprisonment without charges or trial (*Washington Post*, June 26). Where would detainees be held under an indefinite detention system? Some Administration officials have suggested they would be detained in military facilities within the US, but others say they would be held in "battlefield facilities" in Iraq, Afghanistan, Pakistan and possibly the Horn of Africa. In the words of ACLU executive director Anthony Romero, "This is not change – this is more of the same. If President Obama issues an executive order authorizing indefinite detention, he'll be repeating the same mistakes of George Bush, and his policies will be destined to fail as were his predecessor's....Throwing people into prison without charge, conviction or providing them with a trial is about as un-American as you can get. While President Obama might be experiencing difficulty with Congress when it comes to implementing his decision to close Guantanamo, the answer is not to issue an executive order authorizing a system which is unconstitutional and counter to the most fundamental American values" (ACLU Press Release, June 26).

- **NO EASY FIX TO MILITARY COMMISSIONS**

According to the June 29 *New York Times*, the Justice Department has provided the Obama Administration with a legal guidance stating that federal courts could set aside convictions by military commissions if testimony based on coercion was used against detainees. President Obama has said that some detainees would be tried before military commissions that had been brought into line with the “rule of law.”

- **WHITE HOUSE BALKS AT DEMAND FOR ACCOUNTABILITY**

Writing in *Harper's* (June 17), Scott Horton has reported that although both Congress and the American public want an Accountability Commission to be set up to investigate the use of torture by the Bush Administration, and that such a Commission was at one time supported by CIA chief Leon Panetta, it has been blocked by Obama advisers David Axelrod and Rahm Emanuel on the grounds that it would create the sort of stink that could derail health reform and his economic agenda. Meanwhile, the CIA has sought a second delay from a federal judge for the release of a redacted 2004 report which is expected to show that the CIA was departing from the guidelines laid down by Bush Administration lawyers on what techniques were acceptable, and that the lawyers then revised their legal advice to approve what the CIA had already done. The report is expected to intensify the demand for accountability.

- **UN HUMAN RIGHTS HEAD CRITICIZES OBAMA'S DETENTION PLAN; DEMANDS ACCOUNTABILITY FOR TORTURE**

Navanethem Pillay, the UN High Commissioner for Human Rights, issued a statement on June 24 criticizing plans by the Obama Administration to hold some suspected terrorists indefinitely without charges or trial. She also demanded an investigation of officials responsible for torture and urged the US to provide the victims of abuse with the opportunity to rebuild their lives within the United States or elsewhere (*Washington Post*, June 24). Under the federal Anti-Torture Act the statute of limitations is only eight years. Since most of the evidence relating to torture dates from 2002 and 2003, the expiry date is fast approaching.

- **DETAINEES SAY THEY WERE ABUSED AT BAGRAM**

The BBC reported on June 24 that the majority of former detainees interviewed report being beaten, deprived of sleep, hung from the ceiling and threatened with dogs at the US Bagram military base in Afghanistan (Reuters, June 24). The Pentagon denied the charges. The more than 600 prisoners at Bagram are being held in legal limbo as the Obama Administration seems prepared to make it the new Guantanamo. A June 25 Truthout piece by Jason Leopold summarizes evidence contained in a Senate Armed Services Committee report about torture at Guantanamo and the murder of at least two Bagram detainees by interrogators.

- **FIRST GUANTANAMO DETAINEE TRANSFERRED TO US**

Ahmed Ghailani, a Tanzanian charged with participating in the bombing of US embassies in Tanzania and Kenya, was moved to the Metropolitan Correctional Center in Manhattan on June 9. He was captured in July 2004 in Pakistan and taken to a CIA secret prison before being moved to Guantanamo. According to the June 9 *Washington Post*, “Ghailani’s case will test the government’s ability to secure a conviction despite legal questions surrounding the harsh interrogation techniques employed by the CIA during the questioning of high-value detainees.”

- **FOUR UIGHUR DETAINEES SENT TO BERMUDA; OTHERS TRAPPED IN GUANTANAMO BY CONGRESS**

Four Chinese Muslims at Guantanamo who were ordered by a judge to be released into the US last fall are finally free in Bermuda, a British territory. China and Britain both criticized their release. Thirteen others were reportedly destined for the island nation of Palau, population 20,000, which has been promised \$200 million in aid (*New York Times*, June 10). Their release has been delayed by the passage on June 24 of a \$106 billion military supplemental appropriations bill which contains an elaborate system of stipulations about what the President must do before releasing any detainee from Guantanamo (see *In the Congress, below*). They have petitioned the Supreme Court to release them (*Kiyemba v. Obama*). If the Court refuses to hear their petition, they could be in legal limbo for a long time to come.

• **ACLU FILES SUIT FOR AMERICAN TORTURED IN UAE AT US BEHEST**

Naji Hamdan, an American citizen living in Dubai who was interrogated by the FBI and subsequently arrested by the security forces of the United Arab Emirates in August 2008, claims to have signed a self-incriminating document in prison after being tortured (ABC News, June 8). His ACLU lawyer Ahilan Arulanantham, who has filed a lawsuit on his behalf in a federal court in Washington DC, says “there is strong evidence that US officials not only sought Hamdan’s arrest by a foreign government, but apparently participated in his interrogation and torture in violation of federal criminal law.” The Department of Justice denies the US had anything to do with his arrest, and has asked for the case to be thrown out. US District Court Judge James Robertson has expressed doubts about his ability to hear the case, but said that the allegations are “extremely disturbing if they are true” (*Kansas City Star*, June 8).

• **US WATERBOARDED WRONG MAN 83 TIMES; ANOTHER DETAINEE REPEATEDLY LIED UNDER TORTURE**

According to newly declassified transcripts obtained by the ACLU through a FOIA lawsuit, Abu Zubaida - who was described by President Bush as “al-Qaeda’s chief of operations” – was not a member of al-Qaeda (*Washington Post*, June 16). He was subjected to waterboarding 83 times. Khalid Shaikh Mohammed, the self-proclaimed 9/11 mastermind who was waterboarded 183 times, claimed to have given false information under torture, including lying about people whom he said were members of al Qaeda when they were not. The ACLU had originally received the CIA documents in 2007 but they were almost entirely redacted. In this re-release, they are still heavily redacted but some statements by detainees about their torture are now visible. Also newly visible is what Khalid Shaikh Mohammed says he was told by an interrogator: “You are not American and you are not on American soil. So you cannot ask about the Constitution” (Rawstory, June 15).

• **JUDGE ORDERS RELEASE OF DETAINEE TORTURED BY AL-QAEDA AS SUSPECTED AMERICAN SPY**

Late in 2001, Abdul Rahim Abdul Razak al-Janko was picked up by Americans in Afghanistan and sent to Guantanamo as a suspected member of the Taliban and al-Qaeda. In fact, he had just been released from 18 months in a Taliban prison, and had been tortured by both al-Qaeda and the Taliban who suspected him of being an American spy (*Washington Post*, June 23). US District Court Judge Richard Leon said his continued detention at Guantanamo “defies common sense” and ordered him to be sent to a safe haven.

• **FORMER DETAINEE BOUMEDIENE DESCRIBES TREATMENT**

Lakhdar Boumediene, the Guantanamo detainee at the center of the landmark Supreme Court case *Boumediene v. Bush*, is now free in France. On June 8, he told ABC News about the regime of beatings and sleep deprivation to which he was subjected after

being seized from the streets of Sarajevo and sent to Guantanamo. “If I tell my interrogator, I am from Al Qaeda, I saw Osama bin Laden, he was my boss...they will tell me, ‘Oh you are a good man,’...‘But if I refuse? I tell them I’m innocent, never was I terrorist, never never, they tell me, ‘You are, you are not cooperating, I have to punch you.’” For 2 ½ years Boumediene was on a hunger strike and being force fed. His release had been ordered by Federal District Court Judge Leon, a Bush appointee, after his habeas hearing.

• **QUESTIONS RAISED ABOUT CONFESSIONS AND “SUICIDE” OF TORTURED “GHOST DETAINEE”**

Andy Worthington has written a chilling piece (pubrecord, June 19) about the rendition and torture of Ibn al-Shaykh al-Libi, whose false confession under torture linking al Qaeda and Saddam Hussein was used as a pretext for the invasion of Iraq. He was “rendered” to Egypt, Morocco, Jordan, Bagram and possibly Poland and may have been held in a secret prison within Guantanamo. For years al-Libi was a “ghost detainee” hidden by Americans from the Red Cross. In May, he was a suspicious “suicide” in a Libyan prison, with several signs indicating that he might have been murdered. Three days after his death, the US opened its embassy in Tripoli for the first time in 30 years. Worthington writes: “In the end, though, what is most significant about al-Libi’s torture tour through US proxy prisons and prisons run by the CIA is the realization that, throughout his long ordeal, US interrogators or their proxies were persistently using torture to secure information from him about other prisoners and other suspects – either in the presence of these men, or through the use of photographs – that was just as unreliable as his ‘confession’ about the connections between al-Qaeda and Saddam Hussein, and that these other ‘confessions’ must, in turn, have led to further arrests and further torture, with a cumulative effect that is truly mind-boggling in its scale. As if this were not disturbing enough, what no one wants to talk about is the fact that...al-Libi was not connected to al-Qaeda.”

• **CIA FIRED PSYCHOLOGIST FIRM**

Shortly after President Obama took office, Mitchell, Jessen & Associates, the firm of psychologists who gave the CIA advice on the use of waterboarding and other coercive methods in the SERE program, was fired by the agency. Other contractors who participated in the interrogations have also left the CIA (*Washington Post*, June 15).

• **MOBILE CIA-FBI INTERROGATION TEAMS PROPOSED**

To ensure that President Obama’s ban on torture is complied with, the Intelligence Science Board has recommended that joint CIA-FBI teams be set up which would have specialized training in educing information from terrorism suspects in keeping with Army Field Manual guidelines (*Washington Independent*, June 24).

• **EU COUNTRIES AGREE ON FORMER DETAINEE INFORMATION-SHARING**

In a move that clears the way for the European countries to accept Guantanamo detainees, they have agreed to share information provided by the US about the detainees they have agreed to re-settle. Such cooperation is seen as essential since there are open borders within the European Union (Reuters, June 4).

**Building the National Security Surveillance State**

• **“OVERCOLLECTION” OF EMAIL BY NSA INCLUDED BILL CLINTON’S**

According to a June 17 report in the *New York Times*, from 2005 until the present the NSA has used a secret data base code-named Pinwale to systematically archive millions of domestic and foreign email messages, regardless of whether they had anything to do

with an investigation. Former president Bill Clinton was among those people who had his personal email accessed by NSA analysts. Attorney General Eric Holder in his June 17 testimony before the Senate Judiciary Committee refused to call the Bush Administration's warrantless wiretapping program illegal, referring to it only as "unwise" and "inconsistent with the dictates of FISA" (DailyKos, June 18). An editorial in the June 18 *New York Times* condemns the FISA Amendments Act which enables the NSA to eavesdrop on Americans without getting individual warrants and urges its repeal. The Foreign Intelligence Surveillance Act (FISA) required that the government get warrants from the secret FISA court before eavesdropping on Americans and provided criminal penalties for those responsible for warrantless surveillance of Americans.

- **NSA HEAD RECOMMENDED AS COMMANDER OF CYBER COMMAND**

Defense Secretary Robert Gates is putting forward Lt. Gen. Keith Alexander, director of the NSA, to be the head of the new military command for cyber security. Defense officials say that it will focus only on military networks, while the Department of Homeland Security remains responsible for protecting civilian networks. Gates seems not to have heeded the words of Robert Beckstrom, who resigned in March as head of the National Cyber-Security Center that had coordinated cyber security for all government agencies. Beckstrom wrote in his resignation letter that the growing reliance on the NSA was a "bad strategy" which poses "threats to our democratic processes" (*Wall Street Journal*, June 24). According to the June 13 *New York Times*, "military officials say there may be a need to intercept and examine some e-mail messages sent from other countries to guard against computer viruses or potential terrorist action. Advocates say the process could ultimately be accepted as the digital equivalent of customs inspections, in which passengers arriving from overseas consent to have their luggage opened for security, tax and health reasons."

- **TOP CANDIDATE FOR CYBER SECURITY CZAR NO FAN OF PRIVACY**

Former Republican Congressman Tom Davis is reportedly the front runner for the new position of head of the government's cyber security program. Davis had co-authored the REAL ID Act and repeatedly voted to expand the government's powers to wiretap the internet and collect Americans' communications in the NSA's Pinwale database (*Wired*, June 22).

- **SPY SATELLITE PROGRAM KILLED**

The secretive National Applications Office will not after all be providing state and local law enforcement with high-resolution images from military spy satellites to help in disaster relief, border patrols and to prevent terrorist attacks. The Department of Homeland Security has decided to kill the program proposed by the Bush Administration two years ago before it becomes operational. It had been called a potential "Big Brother" in the sky by Rep. Jane Harman (*Politico*, June 12).

- **REAL ID TO BE SCALED BACK BUT NOT ELIMINATED**

The Department of Homeland Security head Janet Napolitano is planning to substitute "Pass ID" for "REAL ID," the drivers' license program that has ignited a revolt of the states. Pass ID will also require licenses to have digital information and a bar code, and states will still need to verify applicants' identities by checking databases. But linked databases will not be created under the plan and the new IDs will not be required to board planes. Privacy advocates are calling the proposal "REAL ID lite" (*Washington Post*, June 14).

- **DEFENSE DEPARTMENT CONSIDERS PROTESTS "LOW-LEVEL TERRORISM"**

A whistleblower revealed to the ACLU that a multiple-choice question on the 2009 Department of Defense Anti-Terrorism Awareness training exam included these responses to the question "which was an example of low-level terrorism?":

1. Attacking the Pentagon; 2. Improvised explosive devices; 3. Hate crimes against racial groups; 4. Protests. The right answer is "protests." After the ACLU complained to the Pentagon, it was told the question would be removed from the test and an email would be sent to trainees explaining that there was a distinction between lawful protests and unlawful violent protests (ACLU, June 19).

- **BEING ON THE TERRORISM LIST NO BAR TO PURCHASE OF GUNS, EXPLOSIVES**

According to the Government Accountability Office (GAO), people who are named on the government terrorism watch list have purchased weapons at least 865 times since 2004 and in one case got a license to obtain explosives (*Washington Post*, June 23). Those who were not permitted to purchase weapons were disqualified for other reasons, such as a drug violation, felony conviction, or being in the country illegally.

- **TERRORISTS ON FBI 'TEN MOST WANTED' LIST KEEP AVIATION LICENSES**

The Transportation Security Administration and the Federal Aviation Administration failed to remove US-certified aviation licenses from two men on the FBI's most wanted list and four others who were convicted of terrorist offences (*New York Times*, June 26).

- **LAWSUIT FILED FOR MAN QUESTIONED BY TSA FOR CARRYING CASH**

Steve Bierfeldt, director of the Campaign for Liberty, used his I-Phone to tape record TSA officials who detained and questioned him in a windowless room in Lambert-St. Louis International Airport about the \$4,700 he was carrying in a metal box. On the tape the officials are heard swearing at him, threatening to get the FBI and DEA involved and threatening to take him to a local police station if he does not tell them where the cash comes from, and Bierfeldt responds by asking if he is legally required to answer their questions. Bierfeldt was permitted to leave when he told them the cash came from the sale of merchandise for the Ron Paul campaign. The ACLU lawsuit, filed against Homeland Security Secretary Janet Napolitano, alleges that the TSA had conducted an illegal search (UPI, June 20).

- **ACLU SEEKS RECORDS ABOUT SEARCHES OF LAPTOPS AT BORDERS**

The ACLU has filed a FOIA request to obtain records about the suspicionless searches of laptops by US Customs and Border Protection officials. The policy of seizing laptops, downloading and retaining files and disseminating information to other government agencies began in July 2008, and the ACLU wants to know how widely it is being implemented.

- **MARINE PLEADS GUILTY TO STEALING INTELLIGENCE FILES**

A Marine reservist, Gunnery Sgt. Eric Froboese, will reportedly plead guilty to removing secret intelligence files from Camp Pendleton and giving them to another Marine reservist who was a detective with the Los Angeles Sheriff's Department and a co-founder of the Terrorism Early Warning Group that brought together local, state and federal agencies. The ACLU has filed a FOIA request to see if the leaked files contain intelligence on Muslims and mosques (*Los Angeles Times*, June 12).

- **INTELLIGENCE PROGRAMS TO BE FUNDED IN HIGHER ED**

The Obama Administration wants to set up intelligence officer training programs in colleges and universities that would be similar to ROTC to prepare students for careers in the intelligence services. Recruits, who will receive a stipend, will study languages,

analysis and specialized technical information and will have their participation in the program kept secret. Support for the program is included in the 2010 intelligence authorization bill (*Washington Post*, June 20).

- **HIGH SCHOOLS OFFERING COURSES IN “HOMELAND SECURITY”**

According to the June 10 *Los Angeles Times*, courses in terrorism and how to keep the homeland safe are being offered in high schools in Maryland with other states preparing to do the same. Students intern at the Pentagon and NSA, and speakers from the FBI are frequent visitors. The magazine *Mother Jones* has termed one of the high schools a “black ops jungle” that is “dedicated to churning out would-be Jack Bauers.”

### Targeting Immigrants/Visitors

- **OBAMA TO PUSH FOR IMMIGRATION REFORM NEXT YEAR**

On June 25, President Obama told Congress he would be pushing for a sweeping immigration reform bill next year with Homeland Security Secretary Janet Napolitano spearheading the effort. At the heart of the debate is expected to be a proposal for a national worker identification card for all Americans, with biometric data such as fingerprints. “Once Americans are convinced that we will permanently staunch the flow of illegal immigration, they will be more willing to accept constructing a path toward earned citizenship for those already here,” said Senator Charles Schumer, chair of the immigration subcommittee (*Los Angeles Times*, June 16).

- **HOLDER VOIDS MUKASEY OPINION ON INEFFECTIVE COUNSEL**

Attorney General Holder has tossed out former Attorney General Mukasey’s rule that immigrants in deportation proceedings have no right to effective legal assistance and that therefore immigrants could not reopen their hearings based on errors made by their lawyers. Now the Board of Immigration Appeals can again consider ineffective counsel claims. But not all immigrants can afford lawyers, good or bad. Because the Sixth Amendment providing for the right to a lawyer only applies in criminal cases and immigration is a civil matter, the government does not have to provide indigent immigrants with lawyers. An editorial in the June 14 *New York Times* argued that this “denial of counsel regularly results in unfairness, and should be changed.”

- **IMMIGRATION COURTS AT BREAKING POINT**

Raids conducted around the country have flooded immigration courts with 351,477 cases just last year, and led to a serious backlog given the shortage of judges (234 around the country). Immigration courts are run by the Executive Office for Immigration Review, which is part of the Justice Department, with judges appointed by the Attorney General (*New York Times*, June 18).

- **ICE SEEKS TO DEPORT STUDENT CLEARED OF TERRORISM CHARGES**

After a federal jury in Florida cleared Youssef Samir Megahed of charges of transporting explosives during a road trip with a friend, ICE officials arrested the Egyptian University of Florida student and placed him in deportation proceedings (*New York Times*, June 4). Some members of the jury expressed their outrage at ICE’s action in double guessing their verdict, while ICE maintains that bringing new civil – not criminal – charges against Megahed does not amount to “double jeopardy.”

- **HIGH SCHOOL STUDENTS TO BE PERMITTED TO REJOIN THEIR PARENTS**

Three teenagers on their way to school who were apprehended by immigration officials during a raid at trolley stations in San Diego and deported to Mexico are being granted

humanitarian visas to be able to return to their families in the US and go before an immigration court (American Friends Service Committee Press Release, June 17).

• **RAIDS DEVASTATED COMMUNITIES: NEW REPORT**

“Raids on Workers: Destroying our Rights,” a report by the United Food and Commercial Workers International Union, finds that not only were communities turned into ghost towns by commando-style ICE raids on workplaces and homes, but the “vast majority of workers caught up in the raids were US citizens or legal immigrants” (New America Media, June 20). The raids on Swift meatpacking plants alone captured 12,000 workers.

• **NAMES OF ICE DETAINEES KEPT SECRET**

There is no public record of people arrested for federal immigration violations because the Department of Homeland Security is protecting the “privacy” of people who have not been charged with crimes (RCJ.com, June 20). Civil liberties advocates call this policy “an abomination.”

• **NEW UTAH LAW ANOTHER ABOMINATION**

After July 1, it will be illegal in Utah to “harbor” an undocumented immigrant, and employers with government contracts who do not use “E-Verify may be prosecuted. The law, SB81, also requires proof of US citizenship to get a drivers’ license or state identification card. It law is being challenged in court before it takes effect (*Salt Lake Tribune*, June 22).

**B. IN THE US CONGRESS**

• **APPROPRIATIONS ACT HEMS IN OBAMA ON GUANTANAMO**

Buried deep in the \$106 billion Supplemental Appropriations Act of 2009 funding the wars in Iraq, Afghanistan and Pakistan is Section 14103, which bars the President from using any funds provided by this or previous acts to release an individual from Guantanamo and transfer him to the US for detention. The Act says a detainee can only be brought to the US if he is to be prosecuted, and funds can only be used to send a detainee to his home country or a third country (other than the US) if the President submits to Congress 15 days prior to such a release a classified document giving terms of the transfer agreement and a risk assessment (Scotus, June 25).

• **SUPPRESSION OF TORTURE PHOTOS GETS BIPARTISAN SUPPORT**

Stripped from the Supplemental Appropriations Act was a section requiring the President to keep secret the torture photos that the government had agreed would be handed over to the ACLU as part of a FOIA lawsuit before Obama reversed course. The section narrowing FOIA, opposed by Rep. Barney Frank and those Democrats who saw it as an assault on open government - but supported by Obama - was removed after the President promised to do everything in his power including going back to court and issuing an executive order to keep the photos from coming to light. The votes of liberal Democrats were needed because Republicans who generally are in the forefront of funding wars had bailed out on this bill, complaining that it gave too much money to the International Monetary Fund. The “Detainee Records Photo Protection Act of 2009” (S. 1285), sponsored by Senators Lindsey Graham and Joseph Lieberman in histrionic mode, passed *unanimously* through the Senate on June 17 and was referred to the House Armed Services Committee and Committee on Oversight and Government Reform. It might be attached to a Defense Department authorization bill (HR 2647).

• **HOUSE HOPES TO EXPAND INTELLIGENCE OVERSIGHT**

On June 18, the House Intelligence Committee voted for provisions that would make the jobs of the NSA director and general counsel subject to Senate confirmation, and establish independent inspectors general at the NSA and the Office of the Director of National Intelligence. The committee's bill would also end the authority of the executive branch to limit classified briefings to the "Gang of Eight" in Congress - instead all 15 Senate Intelligence Committee members and 22 House Intelligence Committee members would be briefed - and would provide for the videotaping of detainee interrogations by the CIA (*Washington Post*, June 20).

### **C. IN THE COURTS**

#### **• JUDGE DISMISSES TELECOM LAWSUITS; AL-HARAMAIN CASE TO PROCEED**

On June 3, 46 civil lawsuits brought against telecoms for participating in the Bush Administration's warrantless wiretapping program were thrown out by Northern California Federal District Court Judge Vaughn Walker. The judge said he was acting in accordance with the will of Congress, which had given the telecoms retroactive immunity in the FISA Amendments Act. The suits will be appealed to the Ninth Circuit Court of Appeals on the grounds that the FISA Amendments Act is unconstitutional (ChannelWeb, June 4). On the same day, Judge Walker ordered both sides to prepare their arguments in the case *al-Haramain v. Obama* (previously *al-Haramain v. Bush*). He refused to accept the Bush-Obama claim that the case should be dismissed on "state secrets" grounds. On September 1, when the case will resume, the Obama Administration will have to explain where it stands on its predecessor's secret warrantless wiretapping program (NPR News, June 4).

#### **• SUPREME COURT REFUSES TO HEAR PLAME CASE**

On June 22, the US Supreme Court refused to hear the case brought by Valerie Palme Wilson and her husband Joseph Wilson against Bush Administration officials who allegedly leaked her identity as a CIA operative to the media in order to discredit her husband for stating that the Administrated manipulated prewar Iraq intelligence. The refusal brings to an end the three-year-old lawsuit against Dick Cheney, Karl Rove, Lewis "Scooter" Libby and Richard Armitage. The Obama Administration opposed the civil lawsuit (Truthout, June 23).

#### **• FEDERAL JUDGE ALLOWS JOSE PADILLA TO SUE JOHN YOO**

Federal District Court Judge Jeffrey White of San Francisco, a Bush appointee, has permitted a civil lawsuit to proceed in which former "enemy combatant" Jose Padilla's lawyers accuse former White House attorney John Yoo of being responsible for "a systematic program of abusive interrogation intended to break down Mr. Padilla's humanity and his will to live" (*New York Times*, June 14). Yoo, as a former government attorney, is being represented in the case by the Justice Department.

#### **• NEW ACLU FOIA LAWSUIT SEEKS TO PROVE LINK BETWEEN WHITE HOUSE AND INTERROGATIONS**

On June 11, the ACLU filed a Freedom of Information Act lawsuit in the US District Court in Manhattan demanding the release of all records on interrogation techniques issued by former Bush Administration officials, including the president and vice-president. Defendants named in the suit are the CIA, Department of Defense, Department of Justice and Department of State (Associated Press, June 11).

#### **• ART PROFESSOR DETAINED FOR TAKING PICTURES WINS SETTLEMENT**

Shirley Scheier, an art professor at the University of Washington who had been handcuffed and detained by Snohomish police after taking pictures of power lines for an academic project, has received \$8,000 in compensation after bringing a lawsuit with the help of the ACLU (*Seattle Times*, June 8).

#### **D. IN THE COMMONWEALTH**

##### **• STATE DECIDES NOT TO DISTRIBUTE MORE MILITARY WEAPONS TO POLICE**

After the *Boston Globe* revealed that 82 local police departments in Massachusetts had received more than a thousand military grade weapons over the last 15 years, the state Department of Public Safety suspended a program under which high-powered weapons, including fully automatic M-16s, were made available to law enforcement agencies (*Boston Globe*, June 16). No police department was supposed to receive more than two rifles for every 10 full-time officers, but many received far more – Marblehead, for example, had eight M-16s and 30 full-time officers. Grenade launchers were among the weapons being distributed – these were intended for crowd control. Mayor Menino had opposed giving the weapons to police who patrolled neighborhoods and the Mass Bay Transit Authority has had second thoughts about police armed with semi-automatic rifles in bus and train stations.

##### **• REPORT SHOWS IMMIGRANTS PLAY LARGE ROLE IN STATE ECONOMY**

A study for the Immigrant Learning Center by UMass Boston economist Alan Clayton-Matthews documents the impact on the economy of immigrants, including their use of public schools, welfare services, their incarceration rates and payment of taxes. The report, which does not distinguish between legal residents and the undocumented, shows that overall, immigrants contribute to the system and take out of system at about the same rate as the non-immigrant population (WBUR, June 24).

Nancy Murray  
ACLU of Massachusetts  
(617) 482-3170 x 314  
nancy@aclum.org