

## Memorandum To Interested Persons

From: The Center for National Security Studies

Re: Secret Arrests and Closed Immigration Hearings.

Date: July 19, 2002

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The Department of Justice has secretly arrested hundreds of individuals, virtually all of whom are Arab or Muslim. While it admits that it has no evidence of terrorist activity by virtually all of these individuals, it has jailed them before trial on unrelated charges or without charges at all, detained them in conditions previously reserved for convicted violent offenders, and closed their immigration hearings in more than 600 cases. Congress needs to act to end this abuse.

Secret arrests are unprecedented in American history and are “odious to a democratic society.”<sup>1</sup> Open judicial hearings serve as the foundation of our legal system for, “[o]penness is necessary for the public to maintain confidence in the value and soundness of the government's actions, as secrecy only breeds suspicion.”<sup>2</sup>

### Secret Detentions

Since September 11<sup>th</sup>, the Department of Justice has announced that it has arrested more than 1100 individuals as part of its investigation. The Attorney General has repeatedly implied that the hundreds of individuals secretly arrested for unrelated criminal or immigration violations were involved in terrorism.<sup>3</sup> While trumpeting the ever-increasing number of arrests in an apparent effort to reassure the public, the Department steadfastly refused to provide the most basic information about who had been arrested and on what basis.

As of June 14, 2002, the Department of Justice has disclosed that it has arrested 129 individuals on criminal charges, 117 of whom have been identified, and 751 individuals on immigration violations, none of whom have been identified. It has not provided any accounting of the more than 300 individuals not charged with federal crimes or immigration violations or those held as material witnesses.

However, when pressed, the government appears to have no evidence linking the overwhelming majority of the detainees with terrorism. The government has charged two individuals with terrorist crimes, Zacarias Moussaoui and Richard Reid, and the

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<sup>1</sup> *Morrow v. District of Columbia*, 417 F.2d 728, 741-42 (D.C. Cir. 1969).

<sup>2</sup> *The Detroit Free Press, et al v. John Ashcroft, et al* 195 F. Supp. 2d 948; (2002 U.S. Dist.).

<sup>3</sup> “We have waged a deliberate campaign of arrest and detention to remove suspected terrorists who violate the law from our streets. Currently we have brought criminal charges against about -- well --against, pardon me, 110 individuals, of whom 60 are in federal custody. The INS has detained 563 individuals on immigration violations.” Attorney General Ashcroft, Testimony before the Senate Judiciary Committee, December 6, 2001.

government has brought immigration charges related to terrorism against fewer than five immigration detainees. The remaining individuals who have been indicted for federal crimes are charged with minor violations unrelated to terrorism. Many of them, upon conviction, have been sentenced to time served and released. The Department has listed the charges that have been brought against the detainees for either criminal or immigration violations. Of the 835 charges that have been listed, only *two* individuals have been charged federally with terrorist related crimes, Zacarias Moussaoui and Richard Reid,

The government has admitted in court that it has secretly jailed an unknown number of individuals *without charges* as material witnesses. According to numerous press reports, the material witnesses have been detained in extremely harsh conditions under circumstances that raise serious questions regarding whether the government is abusing the material witness statute.

### **Requests for Information on Detainees has been Denied**

Several organizations have challenged the government's policy of secret arrests and hearings in court.<sup>4</sup> Members of Congress also requested information on the detainees in a letter on October 31, 2001, and in a follow up to that letter on June 21, 2002. The Senators and Representatives urged Attorney General Ashcroft to release the identities of the individuals the government had detained in the September 11 investigation. The Department of Justice has so far refused to provide the requested information. On July 3, the Department of Justice admitted it had held over 600 closed hearings in response to another Member's inquiry.

### **Government Actions Contradict its Rationales for Secrecy**

The government has made two arguments to justify its policy of secret arrests. First, the identification of individuals it has arrested on immigration violations in the course of its terrorism investigation could provide a "roadmap" of its investigation to al Qaeda.<sup>5</sup> Second, it claims concern for the privacy interests of the detainees.

The government's policy of secret arrests and secret hearings fails in its objective to deny al Qaeda information about its operatives because the detainees are freely allowed to self-identify. The Attorney General has said, "they (al-Qaeda operatives in prison) are directed to take advantage of any contact with the outside world."<sup>6</sup> By his own logic then, if there are any al Qaeda operatives in INS detention, and there is no evidence to suggest that there are, those detainees would have been able to inform their handlers of their arrest.

Government officials have also provided a roadmap to the investigation and selectively disclosed the identities of detainees when it has suited them, discrediting their own justifications for keeping the identities of the detainees' secret. FBI Director Mueller outlined the path of the investigation to reporters and editors of *The Washington Post* in

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<sup>4</sup> See *attached memo*: Pending Legal Challenges to Secret Arrests and Hearings

<sup>5</sup> To read government's declarations, go to [www.cnss.gwu.edu/~cnss/cnssvdoj.htm](http://www.cnss.gwu.edu/~cnss/cnssvdoj.htm)

<sup>6</sup> Attorney General Ashcroft, Testimony before the Senate Judiciary Committee, December 6, 2001.

early June. When the government has detained individuals it actually does suspect of involvement in terrorism, it readily releases that information to the public. For example, in a press conference from Moscow, the Attorney General provided the identity, place and date of arrest, and outlined the evidence against alleged “dirty bomber” Jose Padilla. Other top officials identified where Mr. Padilla was being held, how much they know about him and his associates, and how they had come by that information.

In this investigation, which has often been described as the most important in the history of the Department of Justice, the public interest far outweighs the privacy interests of the detainees. Additionally, there is significant evidence that secrecy is being used to shield serious violations of the rights of those detained. The Department of Justice Inspector General has opened an investigation into allegations of abuse and other violations of rights of September 11 detainees and the report is scheduled to be released in October 2002.