

Memorandum

To: Interested Persons
From: The Center for National Security Studies
Re: Talking Points on Secret Detentions
Date: July 19, 2002

I. Context

During the course of the investigation of the September 11th terrorist attacks, the Department of Justice has secretly arrested individuals it admits have no connection to terrorism, 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 without any showing of potential harm.

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 harm national security. Second, it contends that the detainees have a significant privacy interest in not being identified with the September 11 attacks.

II. Talking Points

- The government has sought to reassure the public by linking the large number of secret arrests for unrelated criminal or immigration violations or for no charge at all to terrorism.
 - “We believe that when we have arrested violators of the law that we think have been associated with terrorists, that that is a valuable component of defending the United States of America.” Attorney General Ashcroft, November 26, 2001.
 - “With arrests and detentions, we have avoided further major terrorist attacks.” Attorney General Ashcroft, November 27, 2001.
 - “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, has in detention today.” Attorney General Ashcroft, Testimony before the Senate Judiciary Committee, December 6, 2001.
- However, not even one individual detained by the Department of Justice since September 11 has been charged with a terrorist crime.
 - The only person charged with terrorism is Zacarias Moussaoui, who was already in custody on September 11th.
 - Of the 129 individuals it has linked with its investigation and charged with federal crimes, 86 have been convicted, many of whom have been sentenced to time already served and released.

- Of the 751 (718 charges have been revealed) individuals the government has linked with its investigation and charged with immigration violations, only *two* are *related* to terrorism.
- 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. The following are only a few of the many examples.
 - 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, an individual the government *actually does* think is a terrorist.
 - On June 26th, DoJ spokeswoman Susan Dryden announced that Ramsi Al-Shannaq had been arrested for visa violations at his home in Baltimore on June 24th. (*See FBI Detains Man with Hijackers Link*, New York Times on the web, June 26, 2002.)
 - On October 31st, the Attorney General announced the arrest of three named individuals "suspected of having knowledge of the September 11th attacks," and outlined evidence that supported that suspicion, even though the next day the DOJ retracted the Attorney General's statement that the men had any knowledge of the attacks.
- Judicial opinions rejecting the government's policy of secret arrests.
 - New Jersey Superior Court Judge Arthur D'Italia quoted the U.S. District Court for the District of Columbia in a ruling, "The requirement that arrest books be open to the public is to prevent any 'secret arrests,' a concept odious to a democratic society." *Morrow v. District of Columbia*, 417 F.2d 728, 741-42 (D.C. Cir. 1969).
 - U.S. District Judge Nancy Edmunds ruled that, "[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."
 - U.S. District Judge Shira A. Scheindlin ruled that the government had unlawfully jailed Osama Awadallah as a material witness, "without any claim that there was probable cause to believe that he had violated any law – Awadallah bore the full weight of a prison system designed to punish convicted criminals."
- The policy fails in its stated objective of keeping information from al Qaeda because the detainees are allowed to self-identify
 - Attorney General Ashcroft has said, "They (al-Qaeda operatives in prison) are directed to take advantage of any contact with the outside world. This manual instructs them, and I quote, 'Communicate with brothers outside prison and exchange information that may be helpful to them in their work. The importance of mastering the art of hiding messages is self-evident here.'" Attorney General Ashcroft, Testimony before the Senate Judiciary Committee, December 6, 2001.

- By that logic, if there are any al Qaeda operatives in custody, though the government has presented no evidence that there are, they would have been able to inform al Qaeda of their incarceration.
- The magnitude of the investigation far outweighs the privacy interests of the detainees in keeping their names secret.
 - “In the war on terror, it has been the policy of this Department of Justice to be equally aggressive. We have conducted the largest criminal investigation in history.” Attorney General Ashcroft, Testimony before the House Select Committee on Homeland Security, July 11, 2002.
 - The public’s right to know the most basic facts about the progress of the “largest criminal investigation in history” far outweighs the privacy interests of the detainees, especially when the evidence suggests that the government has not been successful in apprehending terrorists.
- The DOJ Inspector General has opened an investigation into allegations of abuse and other violations of rights of September 11 detainees – secrecy shielding violations of rights.
 - The Inspector General has reviewed more than 200 cases pertaining to September 11 detainees and a report is scheduled to be made public in October 2002.
 - It is sadly ironic that the government has invoked the privacy interests of the detainees to shield itself from examination of the conditions of their detention.
- Secret detention of alleged visa violators is only part of a sustained campaign to link immigrants, and particularly Arabs and Muslims, with terrorism.
 - Absconder Apprehension Initiative: DOJ has asked Joint Terrorism Task Forces (JTTF) around the country to locate and detain over 314,000 individuals who face deportation orders starting with Arabs and Muslims.
 - The Interview Project: DOJ asked the JTTFs to locate and interview first 5,000 and then a further 3,000 Arab and Muslim recent immigrant men without any suspicion that they are involved in any criminal activity.
 - National Security Entry-Exit Registration System: Defines all foreigners as “national security concerns.” Fingerprint and register all foreigners by 2005, but will start with all citizens of state sponsors of terrorism.
- Former Secretary of State Warren Christopher’s statement linking secret arrests to the disappeared of Argentina in the 1970’s.
 - “When I was in the Carter administration, I was in Argentina and I saw mothers in the streets protesting, asking for the names of those being held, those who had disappeared. We must be very careful in this country of not holding people without revealing their names. It leads to the ‘disappeared.’”