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Since September 11th

A Chronology of the Government's Restrictions on Civil Liberties

November 2002

November 26, 2002

- In response to an August 21 Freedom of Information Act request by the American Civil Liberties Union, the Electronic Privacy Information Center, and the American Booksellers Foundation for Free Expression the government agrees to reveal by January 15 which documents they will release regarding increased surveillance powers under the USA PATRIOT Act .

Source: U.S., ACLU Agree on Surveillance Papers, November 26, 2002, Associated Press, available at:

http://story.news.yahoo.com/news?tmpl=story&u=ap/20021126/ap_on_go_ca_st_pe/patriot_act_lawsuit_1

November 25, 2002

- President Bush signs the Homeland Security Act of 2002 (H.R. 5005) into law establishing the Department of Homeland Security. President Bush also announces the nominations of Tom Ridge as secretary of homeland security, Navy Secretary Gordon England as deputy secretary, and Asa Hutchinson head of the DEA and former Republican congressman from Arkansas as undersecretary of border and transportation security.

Source: Various Media Reports

- The FBI releases final hate crime data for 2001 in its annual publication, Hate Crime Statistics. The report mandated by the Hate Crimes Statistics Act

shows that incidents targeting Muslims through religious bias increased from 28 in 2000 to 481 in 2001, an increase of 1,600 percent. Hate crimes because of national origin or ethnicity, not involving Hispanics or African Americans, more than quadrupled from 354 in 2000 to 1,501 in 2001. The incidents against Muslims included assaults, intimidation, vandalism, and arson.

Source: FBI Reports Jump in Violence Against Muslims, November 25, 2002, Associated Press, available at http://www.nandotimes.com/special_reports/terrorism/story/645169p-4867767c.html

Hate Crime Statistics, available at <http://www.fbi.gov/ucr/01hate.pdf>

November 18, 2002

- The U.S. Foreign Intelligence Surveillance Court of Review, a special three-judge panel, rules that the Department of Justice has broad discretion in the use of wiretaps and the surveillance of suspected terrorists and foreign agents. This ruling overturns the May 17, 2002 unprecedented public opinion by the Foreign Intelligence Surveillance Court which found that the FBI had misled the Court in 75 cases when applying for FISA warrants.

Source: Various Media reports

October 2002

October 28, 2002

- One day after releasing four detainees, the U.S. Military adds 30 new detainees to Guantanamo Bay, the first arrival of prisoners since August 5th, raising the grand total of detainees to 625.

Source: Various media reports

October 27, 2002

- The U.S. releases four detainees - three Afghans and a Pakistani - from Guantanamo Bay. These are the first detainees released since the repatriation of a mentally ill Afghan prisoner last April.

Source: Various media reports

October 24, 2002

- Concerned that the USA PATRIOT Act threatens First Amendment liberties, the American Civil Liberties Union, the Electronic Privacy Information Center, the American Booksellers Foundation for Free Expression, and the Freedom to Read Foundation file a FOIA suit against the U.S. Department of Justice. The suit asks the US District Court for the District of Columbia to require the

Justice Department to account for its use of expanded surveillance powers under the USA PATRIOT Act.

Source: ACLU Press Release, available at <http://www.aclu.org/Privacy/Privacy.cfm?ID=11040&c=130>

August 2002

August 26, 2002

- On appeal of the Eastern District of Michigan's decision in *Detroit Free Press v. Ashcroft*, the government argues that closing deportation hearings in cases with "special circumstances" (terrorist-related) is not an unconstitutional violation of the First Amendment

Source: *Detroit Free Press v. Ashcroft*, ----F.3d ----, 2002 WL 1972919 (6th Cir. 2002)

- Judge Damon Keith, in upholding the Michigan district court's decision, takes a cynical view of the government's position, arguing that:

"The Executive Branch seeks to uproot people's lives, outside the public eye, and behind a closed door. Democracies die behind closed doors. The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately. When [the] government begins closing doors, it selectively controls information rightfully belonging to the people."

Source: *Id.*

August 6, 2002

- Refusing to abide by an earlier ruling from the Eastern District of Virginia in the Yasser Esam Hamdi case, the Justice Department ignores a judicial order requiring them to turn over documents supporting the government's classification of Hamdi as an enemy combatant.
- The Department, in a memo, justifies the refusal to abide with the judicial order by arguing that:

"An inspection of the requested materials would all but amount to a [new] review of the military's enemy combatant determination, and thus exceed the limited standard of review governing the Executive determination at issue."

Source: Tom Jackman, *U.S. Defies Judge on Enemy Combatant*, Wash. Post, Aug. 7, 2002, at A1

August 2, 2002

- In another round of the ongoing battle over the identity of post-September 11 detainees, a federal judge in Washington rules that the government must turn over the *names* of the detainees and their lawyers, but not the specifics concerning the date and location of their arrests, or the grounds under which they are being held.

Source: *Center for Nat'l Security Studies v. U.S. Dep't of Justice*, --- F. Supp. 2d ---, 2002 WL 1773067 (D.D.C. Aug. 2, 2002)

July 2002

July 12, 2002

- After a federal judge in the Eastern District of Virginia rules that Hamdi has a right to access to counsel, the Fourth Circuit reverses, arguing that the President should be afforded substantial deference in such sensitive matters of foreign policy and national security, and that Hamdi thus can be held without access to a lawyer.

Source: *Hamdi v. Rumsfeld*, --- F.3d ---, 2002 WL ,1483908 (4th Cir. 2002)

June 2002

June 18, 2002

- Calling it the biggest shakeup in the federal government in 50 years, President Bush sends proposed legislation to Congress that would create a new cabinet-level Department of Homeland Security. The Department would consolidate existing agencies such as the Customs Service, the Immigration and Naturalization Service, the Coast Guard, the Border Patrol, the Transportation Security Administration, and the Federal Emergency Management Agency, consolidating more than 170,000 federal employees.
- Within a month, the bill is approved by an ad hoc House Select Committee on Homeland Security and later passes on the House floor by a 295-132 vote.
- The proposal runs into controversy in the Senate, where Administration demands for exemption from certain civil service laws and federal worker rights protections are resisted by Democrats, who argue that the exemptions would deprive the 170,000 employees of the Department of Homeland Security of essential rights and would undermine core labor standards.

June 11, 2002

- On the same day that Jose Padilla, the so called "dirty bomber," files his habeas petition, Yasser Esam Hamdi, a U.S. citizen detained on the battlefield in Afghanistan, files a petition for a writ of habeas corpus in the U.S. District Court for the Eastern District of Virginia to demand that the government, which is holding him at the Norfolk, Va. Navy brig, charge him or release him.
- The government, in return, argues that President Bush has authority beyond judicial review as part of his war powers to declare Hamdi an enemy combatant, to detain him indefinitely, and to deny him access to counsel and the courts.

Source: Petition for Writ of Habeas Corpus, *Hamdi v. Rumsfeld* (E.D. Va. June 11, 2002), available at <http://news.findlaw.com/hdocs/docs/terrorism/hamdirums61102pet.pdf>

June 9, 2002

- Two days before he is scheduled to appear before Chief Judge Mukasey in New York federal court, Padilla is declared to be an "enemy combatant" by the Administration, and is transferred from the Southern District of New York to military custody, where he is incarcerated at the Goose Creek, South Carolina Navy brig.

Source: Petition for Writ of Habeas Corpus, *Padilla v. Bush* (S.D.N.Y. June 11, 2002), available at <http://news.findlaw.com/hdocs/docs/terrorism/padillaus61102pet.pdf>

May 2002

May 28, 2002

- Endorsing the precedent from the *Detroit Free Press* decision, a federal court in New Jersey issues a similar injunction barring INS officials within the state from enforcing the new directive for closed removal hearings when there are "special" circumstances.
- The government appeals, and receives an unusual stay from the Supreme Court preventing the order from taking force.

Source: *North Jersey Media Group, Inc. v. Ashcroft*, 205 F. Supp. 2d 288 (D.N.J. May 28, 2002); See also *Ashcroft v. North Jersey Media Group*, ---- S. Ct. ---- (Mem), 2002 WL 1393595 (2002)

May 8, 2002

- Jose Padilla, the so-called "dirty bomber," is detained by the FBI outside Chicago's O'Hare International Airport under a material witness warrant

issued by the Southern District of New York. Padilla is transferred to New York.

Source: Petition for Writ of Habeas Corpus, *Padilla v. Bush* (S.D.N.Y. June 11, 2002), available at <http://news.findlaw.com/hdocs/docs/terrorism/padillaus61102pet.pdf>

April 2002

April 28, 2002

- Concluding the *United States v. Awadallah* case, a federal judge in Manhattan rules that the material witness statute, 18 U.S.C. § 3144, does not allow the FBI to detain material witnesses solely in connection with a grand jury investigation. Instead, the detention has to be related to testimony in a pending criminal trial. Thus, the Court suppresses Awadallah's grand jury testimony, the basis for the charges against him, and orders him released.

Source: *United States v. Awadallah*, --- F. Supp. 2d ----, 2002 WL 755793 (S.D.N.Y. 2002)

April 18, 2002

- In response to FOIA lawsuits brought by the ACLU, Attorney General Ashcroft releases new Department of Justice regulation forbidding non-federal authorities from releasing information about immigration detainees held in state and local facilities.
- The order, signed by INS Commissioner James W. Ziglar, seeks to undermine a March 27 decision by a New Jersey state court.

Source: ACLU Press Release, available at <http://www.aclu.org/news/2002/n041802e.html>

April 3, 2002

- A federal judge in Michigan rules that new INS directives closing certain immigrant removal hearings to the public in "special" (terrorist-related) circumstances are unconstitutionally broad.

Source: *Detroit Free Press v. Ashcroft*, 195 F. Supp. 2d 937 (E.D. Mich. 2002)

March 2002

March 21, 2002

- Secretary of Defense Donald Rumsfeld issues guidelines and rules for the military tribunals initially authorized by President Bush's military order of November 13. The rules address some initial criticisms, for example, by requiring unanimous verdict for punishment by death.
- But the rules fail to meet basic fair trial requirements. They permit use of secret evidence and hearsay, allow for closed hearings, and deny appeal to an independent judicial authority outside the chain of command.

Source: *DoD Presents Procedural Guidelines For Military Commissions*, Department of Defense Press Release, Mar. 21, 2002, available at http://www.defenselink.mil/news/Mar2002/n03212002_200203213.html

February 2002

February 19, 2002

- The Attorney General publishes new regulations proposing to restructure the Board of Immigration Appeals (BIA) to institute one-judge review, streamlined procedures, and a board half the size of the previous body.
- The net effect of the restructuring would be to dramatically reduce the role of judicial review in deportation and removal proceedings.

Source: 67 Fed. Reg. 7309 (Feb. 19, 2002)

January 2002

January 11, 2002

- Approximately twenty suspected al Qaeda and/or Taliban prisoners previously detained at Kandahar Air Force Base in Afghanistan are transferred to a temporary detention facility at the United States Naval Station at Guantanamo Bay, Cuba.
- In the weeks and months that follow, fifteen subsequent airlifts will bring an additional six-hundred detainees to Guantanamo, where they would later be housed at "Camp Delta," a permanent facility designed specifically for that purpose.

Source: Various media reports

December 2001

December 6, 2001

- Testifying before the Senate Judiciary Committee, which is questioning him about the names and status of post-September 11 detainees, Attorney General Ashcroft responds:

“To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.”

Source: *Department of Justice Oversight: Preserving Our Freedoms While Defending Against Terrorism: Hearing before the Senate Comm. on the Judiciary, 107th Cong. (2001)* (statement of John Ashcroft, Attorney General of the United States)

November 2001

November 27, 2001

- In the first round of one of the more litigious post-September 11 court cases to date, the government argues in Manhattan federal court that, under the Material Witness statute, they could hold potential suspects indefinitely and without bail if they suspected that the suspect lied in statements he made to the police and the grand jury.
- The Manhattan court allows the defendant to apply for bail, pending disposition of the case.

Source: *United States v. Awadallah*, 173 F. Supp. 2d 186 (S.D.N.Y. 2001)

November 13, 2001

- Without advance notice to Congress, President Bush issues “Military Order” authorizing the creation of military tribunals and allowing the Secretary of Defense to take into custody anyone the President identifies as being subject to that order.
- Specifically, the tribunals are intended to remove from civil courts the potential trials of non-citizen individuals suspected of being, aiding, or harboring a terrorist.
- For precedent, the Administration invokes the so-called “Nazi Saboteurs” case from World War II (*Ex Parte Quirin*, 317, U.S. 1 (1942)).

Source: *Detention, Treatment, and Trial of Certain Non Citizens in the War Against Terrorism*, 66 Fed. Reg. 57,833 Nov. 13, 2001)

November 9, 2001

- The Attorney General issues a memo directing interviews of a list of 5,000 men, ages 18-33, who entered the U.S. since January 2000 and who came from countries where al Qaeda has a "terrorist presence or activity." The interviews are to be "voluntary" but immigration status questions may be asked.

Source: Brian Donohue, *Feds' Inquiry Turns to Foreign Nationals in Jersey*, The Star Ledger (Newark, N.J.), Nov. 20, 2001, at 4

November 8, 2001

- In the first such case to be publicly reported, a federal district judge in Arizona upholds the continued (and potentially indefinite) detention by the FBI of a foreign national who is being questioned about the September 11 attacks (without any charges pending), on the sole basis that the alien is a significant flight risk.

Source: *United States v. Seif*, 2001 WL 1415034 (D. Ariz. 2001)

October 2001

October 31, 2001

- Department of Justice issues a regulation providing for an automatic stay of *all* IJ bond decisions wherever an INS District Director has ordered no bond or a bond of \$10,000 or more. The rule is made effective October 29, *two days prior to publication*.

Source: 66 Fed. Reg. 54,909 (Oct. 31, 2001)

- The Justice Department issues a separate new regulation authorizing prison officials to monitor communications between lawyers and September 11 detainees without first obtaining a court order.

Source: 28 C.F.R. Parts 500 and 501, 66 Fed. Reg. 55,062 (Oct. 31, 2001)

October 26, 2001

- President Bush signs into law the "Uniting And Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" (USA PATRIOT) Act, a comprehensive and controversial anti-terrorism bill moved through Congress quickly in the aftermath of September 11. The Act, passed over the vociferous opposition of a number of public-interest groups, includes provisions that would:

- Permit the Attorney General to indefinitely incarcerate or detain non-citizens based on mere suspicion, and to deny re-admission to the United States of non-citizens (including lawful permanent residents) for engaging in speech protected by the First Amendment
- Minimize judicial supervision of telephone and Internet surveillance by law enforcement authorities in anti-terrorism investigations and in routine criminal investigations unrelated to terrorism
- Expand the ability of the government to conduct secret searches – again in anti-terrorism investigations and in routine criminal terrorism investigations unrelated to terrorism
- Give the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organizations and block any non-citizen who belongs to them from entering the country; under this provision the payment of membership dues is a deportable offense
- Grant the FBI broad access to sensitive medical, financial, mental health, and educational records about individuals without having to show evidence of a crime and without a court order
- Lead to large-scale investigations of American citizens for "intelligence" purposes and use of intelligence authorities to by-pass probable cause requirements in criminal cases
- Once more allow the CIA and other intelligence agencies to spy on Americans by giving the Director of Central Intelligence the authority to identify priority targets for intelligence surveillance in the United States
- Allow searches of highly personal financial records without notice and without judicial review based on a very low standard that does not require probable cause of a crime or even relevancy to an ongoing terrorism investigation
- Allow student records to be searched based on a very low standard of relevancy to an investigation
- Create a broad new definition of "domestic terrorism" that could sweep in people who engage in acts of political protest and subject them to wiretapping and enhanced penalties

Source: The USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001)

October 4, 2001

- The FBI begins to use a template memorandum to oppose the availability of bail in all post-9/11 cases, arguing that:

"The FBI is gathering and culling information that may corroborate or diminish our current suspicions of the individuals who have been detained...the FBI has been unable to rule out the possibility that respondent is somehow linked to, or possesses knowledge of, the terrorist attacks..."

Source: Memo submitted to Department of Justice, Executive Office for Immigration Review, Immigration Court, "In Bond Proceedings," "Exhibit A," signed by Michael E. Rolince, Section Chief, International Terrorism Operations Section, Counterterrorism Division, FBI

September 2001

September 24, 2001

- President Bush declares a national emergency with respect to "grave acts of terrorism and threats of terrorism committed by foreign terrorists ... and the immediate threat of further attacks on United States nationals or the United States."
- The Order, among other items, mandates that the executive agencies utilize all legal means to stem the flow of money supporting terrorist organizations throughout the world.

Source: Exec. Order No. 13,224, 66 Fed. Reg. 49074 (Sep. 24, 2001)

September 21, 2001

- Chief Immigration Judge Michael Creppy mails a memorandum to all immigration judges advising them of new procedures to close removal proceedings to the public and the media under "special" (specifically terrorist-related) circumstances.

Source: George Lardner, Jr., *Democrats Blast Order on Tribunals; Senators Told Military Trials Fall Under President's Power*, Wash. Post, Nov. 29, 2001, at A22

September 20, 2001

- President Bush delivers joint address before Congress, outlining his plans for the "war on terror."

Source: White House news release, available at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>

- The Department of Justice publishes a regulation allowing detention without charges for 48 hours or “an additional reasonable period of time” in the event of an “emergency or other extraordinary circumstance.”
- The rule is made effective 9-17-02, *three days prior to publication*.

Source: 66 Fed. Reg. 48,334 (Sept. 20, 2001)

September 19, 2001

- The Bush Administration unveils a draft of the “Anti -Terrorism Act of 2001,” an early version of what would eventually become the USA PATRIOT Act.
- The draft bill would give the Attorney General the power to detain immigrants indefinitely, the ability to force universities to turn over personal information about foreign students, and the authority to secretly search people's homes.

Sources: Jess Bravin & Ted Bridis, *U.S. Legislators Race to Reconcile Differences Over Antiterrorism Law*, Wall St. J., Oct. 8, 2001, at A8; Patty Reinert, *Experts Fear Net Ensnarls Liberties*, Houston Chronicle, Oct. 7, 2001, at 1

- At a meeting with lawmakers to introduce the Act, Attorney General Ashcroft is invited by Senator Patrick Leahy (D-VT), Chairman of the Senate Judiciary Committee, to appear before a hearing on September 25 in support of the bill.
- In a response indicative of the coming weeks, Ashcroft says, “I’d rather it be a signing ceremony.”

Source: Bravin & Bridis, *U.S. Legislators Race to Reconcile Differences Over Antiterrorism Law*, Wall St. J., Oct. 8, 2001, at A8

September 18, 2001

- Congress passes “Use of Force” authorization, granting President Bush power to use force against those “nations, organizations, or persons he determines” were responsible for the attacks of September 11.

Source: Pub. L. No. 107-40, Sept. 18, 2001, 115 Stat. 224 (2001)

September 17, 2001

- The FBI announces that it has detained somewhere between 50 and 75 individuals for questioning relating to the attacks of September 11, the first time the Bureau would give a concrete figure on the number of those arrested within the United States.

- By early November, over 1,100 people are being held in connection with the investigation.

Sources: *What's News: World-wide*, Wall St. J., Sept. 18, 2001, at A1;
Richard A. Serrano, *Isolation, Secrecy Veil Most Jailed in Roundup*, L.A. Times, Nov. 4, 2001, at A1

September 13, 2001

- Senator Orrin Hatch (R-UT) and other influential members of the Senate judiciary committee propose a floor amendment to a routine spending bill that would greatly expand the government's power to intercept oral and electronic communications.
- The amendment passes without significant debate.

Source: 147 Cong. Rec. S9362-02 (daily ed., Sept. 13, 2001)