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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION**

**Letter dated 2 April 2003 from the Permanent Mission of the
United States of America to the United Nations Office at
Geneva addressed to the secretariat of the Commission on
Human Rights**

The enclosed document is the response of the United States of America to a communication from the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Louis Joinet, dated 6 January 2003, regarding an opinion adopted by the Working Group on 3 December 2002, Opinion No. 21/2002.

Please publish this response* as a United Nations document to be available for all delegates when considering items under agenda item 11 (a).

(Signed): Jeffrey De Laurentis
Counsellor for Political Affairs

* Reproduced in the annex as received, in the language of submission only.

Annex

Response of the Government of the United States of America to the December 3, 2002 Opinion No. 21/2002 (E/CN.4/2003/8/Add.1) of the Working Group on Arbitrary Detention

The Government of the United States takes the opportunity to respond to the above-mentioned opinion relating to the detention of Ayub Ali Khan (alias Syed Gul Mohammed Shah) and Azmath Jaweed (alias Mohammed Azmath). The opinion concludes that Messrs. Khan and Jaweed were "detained for more than 14 months, apparently in solitary confinement, without having been officially informed of any charge, without being able to communicate with their families and without a court being asked to rule on the lawfulness of their detention."

The Government of the United States respectfully submits that these two individuals have not been subject to arbitrary detention. Messrs. Khan and Jaweed were lawfully detained on immigration violations on September 12, 2001 in Texas after law enforcement officials found box cutters, hair dye, a knife and several thousand dollars among their belongings. They were detained on charges of overstaying their immigration visas, were charged with conspiracy to commit credit card fraud on December 13, 2001, and were indicted on January 14, 2002. Represented by counsel, both Messrs. Khan and Jaweed pled guilty to these charges in June 2002 before a United States district court judge.

On August 15, 2002, the district court, in accordance with federal statutes and sentencing guidelines, sentenced Mr. Khan to serve one year and one day of incarceration, and ordered him to pay restitution in the amount of \$414,639, the amount of the loss resulting from the conspiracy. Upon completing his criminal sentence on October 25, 2002, Mr. Khan was transferred to immigration custody and was subsequently removed from the United States.

On September 18, 2002, the district court, in accordance with federal statutes and sentencing guidelines, sentenced Mr. Jaweed to time served and ordered him to pay restitution in the amount of \$76,785, the amount of the loss resulting from the conspiracy. Upon completing his criminal sentence on September 19, 2002, Mr. Jaweed was transferred to immigration custody and was subsequently removed from the United States.

The above facts support the United States Government's position that Messrs. Khan and Jaweed, like other individuals in custody, have been given due process consistent with the United States Constitution and laws. The United States respectfully takes issue with the findings of the Working Group, which are not supported by any concrete facts and appear to have rested entirely on information provided by an undisclosed source. Indeed, there is no factual support for the Working Group's finding that Messrs. Khan and Jaweed were subjected to arbitrary confinement in violation of international law. There is no factual support for the Working Group's assertion that Messrs. Khan and Jaweed were deprived of a fair trial. There is no factual support for the Working Group's assertion that Messrs. Khan and Jaweed were detained without being

officially informed of the charges that were pending against them. There is no factual support for the Working Group's assertion that Messrs. Khan and Jaweed were denied access to a court to challenge the lawfulness of their detention and to contest the charges that had been lodged against them. Furthermore, with regard to the Working Group's finding that Messrs. Khan and Jaweed were unable to communicate with their families, we note that the criminal indictments filed against Messrs. Khan and Jaweed were part of the public record and that they were represented by counsel during the length of their criminal proceedings. Therefore, it would be logical to conclude that their families were in the position to ascertain Messrs. Khan and Jaweed's whereabouts and to communicate with them through counsel.

For the foregoing reasons, the Government of the United States respectfully submits that Messrs. Khan and Jaweed have not been subject to arbitrary detention.

To the extent that the Working Group's findings represent a general expression of concern for the treatment of detainees in our custody, we take this opportunity to reiterate the full panoply of substantive and procedural rights that are given to every person who is a respondent in an immigration proceeding, a defendant in a criminal proceeding, or a material witness in a grand jury proceeding. These due process rights were discussed in our initial submission to the Working Group. A summary of these rights follows.

Individuals undergoing a removal proceeding are notified of the charges of removal and are given the right to contest those charges in a removal hearing before an immigration judge. They are given a list of pro bono counsel and advised of their right to retain a lawyer of their own at no expense to the government. If they are detained, they may request to be released on bond or on their own recognizance. They are also given the opportunity to request continuances to prepare their cases, to examine the evidence against them, to present evidence on their own behalf, to apply for discretionary relief from removal. Additionally, they have a right of appeal to the Board of Immigration Appeals and typically judicial review in the federal courts.

Individuals undergoing criminal proceedings are notified of the charges pending against them and are given a fair trial. They have a right to be represented by court-appointed counsel if they cannot afford their own lawyer. They also have the right to request continuances to prepare their defense, to examine the evidence against them, to present evidence on their own behalf, and to appeal any adverse decisions. Detention during the pendency of a criminal proceeding may only occur on the basis of an authorized arrest warrant and subsequent order justifying continued detention. The detainee is entitled to a judicial hearing to determine the lawfulness of such detention.

The laws of the United States permit use of the material witness statute to secure the attendance of witnesses before the grand jury. All persons held as material witnesses are informed of their right to counsel and are provided with counsel at the government's expense if they could not afford their own counsel, for the duration of their detention. Their detention is reviewed by federal judges in the districts in which they are held. By law, the United States Government is prohibited from disclosing to the public

information regarding individuals detained on material witness warrants because such information concerns matters occurring before federal grand juries. See Federal Rule of Criminal Procedure 6(e).

For the aforementioned reasons, the Government of the United States respectfully submits that the findings of the Working Group are based on unsubstantiated and false facts, and a fundamental misunderstanding of our laws. These are laws that guarantee fundamental due process rights to all individuals detained on criminal and immigration charges and which require the United States Government to protect the privacy and security of persons in its custody, even while the Government pursues their conviction, removal, or testimony in grand jury proceedings.
