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COMMISSION DES DROITS DE L'HOMME
Cinquante-neuvième session
Point 11 de l'ordre du jour

DROITS CIVILS ET POLITIQUES

Lettre datée du 2 avril 2003, adressée au secrétariat de la Commission des droits de l'homme par la Mission permanente des États-Unis d'Amérique auprès de l'Office des Nations Unies à Genève

Le document ci-joint est présenté en tant que réponse des États-Unis d'Amérique à une lettre du Rapporteur spécial sur les droits de l'homme des migrants, du Rapporteur spécial sur l'indépendance des juges et des avocats, et du Rapporteur spécial sur la torture, datée du 18 septembre 2002, et aux rapports à la Commission de ces rapporteurs spéciaux, qui contiennent des allégations concernant la détention de nationaux autres que des nationaux des États-Unis par le Service de l'immigration et des naturalisations depuis le 11 septembre 2001.

Je vous saurais gré de publier la présente réponse* en tant que document de l'ONU et de la mettre à la disposition de tous les représentants à l'occasion de l'examen du point 11 de l'ordre du jour.

Le Conseiller aux affaires politiques
(*Signé*) Jeffrey **De Laurentis**

* Reproduite telle quelle en annexe, uniquement dans la langue dans laquelle elle a été reçue.

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Annex

Response of the United States of America to the letter from the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on Torture dated September 18, 2002 and the reports from these Special Rapporteurs to the Commission which contain allegations regarding the detention of non-US nationals in custody of the Immigration and Naturalization Service (INS) since 11 September 2001.

The Government of the United States welcomes the opportunity to respond to the above-mentioned letter and reports, which contain allegations regarding the detention of non-U.S. nationals in custody of the former U.S. Immigration and Naturalization Service ("INS").[1] These allegations include a broad range of assertions, including that individuals in INS custody have been detained without any charges having been brought against them, that they have been deprived of procedural protections, and that the United States has failed to disclose information relating to the detainees. In addition, the letter and reports expressed concern about the detentions of a number of named individuals who were subject to detention in INS custody.

Since 11 September 2001, the United States has mobilized unprecedented resources to prevent further attacks against the United States, while at the same time ensuring respect for civil liberties. The United States has taken every step, used every tool at its disposal, and employed every authority under the law to prevent further acts of terrorism and to protect innocent American lives, while preserving the constitutional liberties that all Americans cherish. Toward this end, the U.S. Department of Justice ("Justice Department") has used the full weight of the federal justice system, as a method of neutralizing potential terrorist threats by prosecuting those who violate the law and thereby pose a national security risk. In some cases, the Justice Department has prosecuted individuals for crimes not directly related to terrorism, including enforcement of its immigration laws, just as prosecutors from earlier generations used income tax violations and similar offenses to convict dangerous, organized crime figures. In this regard, the September 11 investigation has led to the arrest and detention of many aliens found in the United States in violation of the Immigration and Nationality Act (INA). Their treatment while in INS custody is consistent with the protections afforded aliens under U.S. law.

The United States will respond to the underlying concerns raised in the summary of allegations contained in the letter and the reports, but will refrain from disclosing any information the release of which might jeopardize the conduct of ongoing investigations, the safety and privacy of the aliens, and the public safety and interest. Accordingly, we will not comment on the individual cases raised in the letter and the reports. This position is consistent with the arguments the United States has made in ongoing domestic litigation.

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[1] On March 1, 2003 the Immigration and Naturalization Service (INS) was merged with the Department of Homeland Security. For the purpose of this response, we will refer to the INS when discussing actions taken before March 1, 2003.

Concerns have been raised that the United States has not disclosed a list of the identities of individuals who have been detained on immigration law violations or were deemed by the government to have associations or information relating to the September 11 investigation and related terrorist investigations. This policy is based on the professional judgment of senior law enforcement officials, including those from the Criminal Division of the Justice Department and the Federal Bureau of Investigation with leading roles in the September 11 investigation. In their view, disclosure of the identities of the detainees would endanger the ongoing investigation and the detainees themselves. The disclosure of such information (and the information that would be disclosed in the removal hearings for the detainees) may reveal sources and methods of the investigation to terrorist organizations. It may reveal the locations and whereabouts of the detainees, particularly those cooperating with the United States Government in the investigation. This in turn could allow terrorists to evade detection and lead them to alter their future plans, thereby creating greater danger to public safety.

The United States therefore deemed several actions essential to the nation's continued security and the integrity of the September 11 investigation, including withholding public disclosures of some information regarding the detainees and closing their immigration court hearings to the public for as long as these aliens remained of interest to the investigation. Making public this information could give our enemies the roadmap of our investigations and could allow terrorist organizations to alter future attack plans, intimidate witnesses, and fabricate evidence. Thus, protecting such information is one of the actions deemed essential to our ongoing efforts to investigate the September 11 attacks and to prevent future attacks.

Nevertheless, in the interest in responding to concerns about the resulting detentions of non-U.S. nationals, the United States is in a position to provide some details regarding the numbers of individuals who have been detained in INS custody as a result of the September 11 investigation. As of March 28, 2003, the INS has detained 766 aliens on immigration violations at some time since the attacks of September 11, 2001, in connection with the investigation into the terrorist attacks. Of these 766 individuals, 505 have been deported or have left the country voluntarily. Only 1 of these aliens remains in custody as part of our active September 11 investigation.

The debate about our non-disclosure policy should not cast doubts on the commitment of the United States to respect the civil liberties of individuals held in U.S. custody. Individuals held on immigration charges in custody of the Department of Homeland Security ("DHS") are entitled to due process protections, in accordance with United States law. All detainees have been notified of the removal charges against them and are given the right to contest those charges in some type of an immigration proceeding. They are given lists of pro bono counsel and advised of their right to retain a lawyer at no expense to the government. They are also given the opportunity to seek release on bond, continuances to prepare their cases, an opportunity to examine the evidence against them, the opportunity to apply for discretionary relief from removal, a right of appeal to the Board of Immigration Appeals, and typically judicial review in the federal courts. Additionally, the United States adheres to its obligations pursuant to the

Vienna Convention on Consular Relations to notify aliens of their rights to consular notification, communication and access.

Once an alien receives a final order of removal, that order is effected as soon as circumstances permit. There are some aliens with final orders of removal who are awaiting removal. The DHS is making every effort to remove them from the United States as soon as practicable.

While detained in DHS custody, aliens are provided treatment and care. Detainees may be placed in administrative segregation[2] when their continued presence in the general population poses a threat to life, property, staff or other detainees. Furthermore, all DHS detention centers and contract facilities are required by DHS detention standards to provide medical care and appropriate treatment to DHS detainees. The U.S. Public Health Service (USPHS) or a local provider provides the treatment.

For the foregoing reasons, the United States respectfully submits that the allegations contained in the letter and reports of the Special Rapporteurs do not accurately reflect the conditions of detention of aliens who have been detained as a result of the September 11th investigation, and the rights to which they are afforded under the U.S. Constitution.

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[2] Administrative segregation is understood as detention in which restricted conditions of confinement are required to ensure the safety of detainees or others, the protection of property, or the security or orderly operation of the facility.