

New US decree expands power to detain immigrants

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In the face of growing criticism, the Bush administration continues to defend its authorization of military tribunals to try terrorist suspects and other domestic measures attacking basic democratic rights in the wake of the September 11 events. In a speech before a group of federal prosecutors in Washington on Thursday, George W. Bush commented: “We’re an open society, but we’re at war.”

Bush continued: “Non-US citizens who plan and/or commit mass murder are more than criminal suspects. They are unlawful combatants who seek to destroy our country and our way of life. And if I determine that it is in the national security interests of our great land to try by military commission those who make war on America, then we will do so.”

By this reasoning, the fundamental judicial principle that a defendant is innocent until proven guilty is turned on its head. Once an individual is identified by the government as a terrorist suspect, he is considered guilty, denied his basic civil liberties and subject to the rash of anti-democratic measures that have been put into effect—for the most part by executive fiat—since September 11.

The latest affront to basic rights is the move by Attorney General John Ashcroft to expand the power of the Immigration and Naturalization Service (INS) to detain immigrants rounded up in the government’s anti-terror dragnet since the terror attacks. Authorities can now keep detainees behind bars even after a federal immigration judge has ordered the individual released for lack of evidence.

The new rule was signed by Ashcroft on October 26 and went into effect on October 29. Like numerous other “anti-terror” regulations, the ruling was made with no public notice or consultation with Congress, and was enacted by executive decree.

Other measures, in addition to the authorization of military tribunals, have included:

- * a ruling allowing the Justice Department to monitor conversations between immigrant detainees and their lawyers;

- * a directive to the Federal Bureau of Investigation to carry

out “voluntary” interviews of more than 5,000 mostly Middle Eastern men living in the US, ages 18 to 33, ostensibly to gather information concerning future terrorist attacks;

- * a new policy on visa applications affecting men, ages 16 to 45, from 25 Middle Eastern and African countries, who will face intense investigation and delays in processing their visa requests;

- * closing hearings to the public in “certain cases” when the attorney general considers secrecy to be in the national interest;

- * a memo from the Justice Department to government agencies amending provisions of the Freedom of Information Act (FOIA). Whereas in the past agencies were obliged to release requested information unless it posed “foreseeable harm,” the government may now withhold information if it claims to have a “sound legal basis” for doing so.

The new ruling on detaining immigrants allows the INS to set aside any release order issued by an immigration judge in cases where the agency claims the detainee is a danger to the community or a flight risk. In order to overrule the judge, the INS only has to file a form indicating it plans to appeal the decision to the Board of Immigration Appeals. If this board orders the immigrant released, the INS can still appeal directly to the attorney general, who can halt the detainee’s release.

Thus, the appearance of a detainee before an immigration judge is effectively a formality and a release order can be nullified on the personal instructions of the attorney general. David W. Leopold, an immigration lawyer from Cleveland, commented: “With this rule change, the government can lock someone up on very little or even no evidence and throw away the key until they decide to let them go.”

INS officials reportedly objected to the rulings of several immigration judges who have ordered the release of detainees due to lack of evidence against them. The 220 immigration judges are Civil Service employees of the Justice Department, and were separated from the INS in

1993. Studies show that while these judges generally side with the INS on deportation cases, they often impose lower bail than the service requests in detention cases.

In those cases where the government's evidence against a detainee consists entirely of classified information that it chooses not to reveal at a hearing, an immigration judge might order the detainee released. Under the new regulation the INS is under no obligation to prove its case that an immigrant should continue to be detained, as the agency can simply appeal to the attorney general if it fails to get the ruling it seeks.

According to the latest figures released by the Justice Department, more than 1,100 people have been rounded up by law enforcement agencies since September 11 as part of its anti-terror probe. Earlier this month the government announced that it would no longer release a running tally of the number of detainees. Having come under criticism for refusing to release the identities of the detainees, where they were being held, and what charges, if any, had been brought against them, Ashcroft announced that the government would simply suspend giving out any figures.

On the eve of Congressional hearings on the Bush administration's authorization of military tribunals—and failing to diffuse criticism of the government's detention policy—Ashcroft last Tuesday released the names of 93 individuals who face criminal charges. About 60 of these suspects remain in custody. He also released a list of 548 others charged with immigration violations, identifying them only by their countries of origin and the date they were arrested, but not their names.

In addition, there are 10 to 15 defendants who are still being held as material witnesses, most at a federal detention center in Manhattan. Among them is Zacarias Moussaoul, 33, a French citizen of Moroccan descent, who was arrested on August 17 in Minnesota. According to the *New York Times*, Bush administration officials are reportedly debating whether to designate Moussaoul the first defendant to be tried on terrorism charges in a military tribunal.

Attorney General Ashcroft has defended the nationwide dragnet, declaring, "Those associated with terrorists, and who are involved with terrorists, should not escape incarceration." But according to documents released to Congress over the last week, none of those facing criminal charges have been accused of direct complicity in the September 11 hijackings.

An examination of the limited information released by the government on the 93 named detainees in fact shows the tenuous nature of the charges being levied against most of them. These include allegations of credit card fraud, making false statements when applying for passports, and obtaining fraudulent licenses to drive commercial trucks, among other

relatively minor charges.

One of those arrested, Osama Awadallah, a 21-year-old Jordanian college student, has been charged with lying before a grand jury when he denied knowing Khalid al-Midhar, one of the men suspected of hijacking the plane that crashed into the Pentagon. His name was reportedly found in a car of one of the suspected hijackers at Dulles Airport.

Mr. Awadallah has acknowledged knowing a second suspected hijacker, Nawaf Alhazmi, saying he saw him 35 to 40 times last year in San Diego, California. A prosecutor in his case claimed that Awadallah's alleged perjury "promoted terrorism," and urged he be held without bond.

But Federal District Court Judge Shira A. Scheindlin disagreed, noting that Mr. Awadallah "casually knew two of the terrorists involved in the September 11 attacks," and that prosecutors had not argued that he "was involved with [the terrorists'] illegal activities or had any part in the planning or preparation of their attacks or any advance knowledge of those attacks. She ruled Awadallah could be released on \$500,000 bond, commenting, "This defendant is charged with making false declarations—not with terrorism, or aiding and abetting terrorism, or conspiring with terrorists."

Also included in the government's list are 21 Iraqis charged with falsely obtaining trucking and hazardous materials licenses in Pennsylvania, despite the fact that authorities have publicly cleared them of any links to the September 11 events.

The names of three other men—Nasser Abuali, Hussein Abuali and Rabi Ahmed—are also included in Ashcroft's list. The men are charged with embezzlement in connection with the theft of \$45,000 worth of stolen cereal products in Newark, New Jersey in May 2000. No charges were brought against the men until September 19, eight days after the terror attacks. While court documents in their case make no mention of suspected terrorism or the hijack/bombings, they were included among the 93 criminal defendants named by the attorney general as part of the September 11 investigation.



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