

towards political dissidents and others they wish to silence. As the world stares in horror at pictures of grinning American soldiers engaging in war crimes, it is becoming increasingly deaf to the President's proclamation that "America will always stand firm for the non-negotiable demands of human dignity."¹² Last summer, the President issued a clear and forceful statement reaffirming the "inalienable human right" to be free from torture. "The United States is committed to the world-wide elimination of torture and we are leading this fight by example," President Bush said in a statement commemorating the U.N. International Day in Support of Victims of Torture.¹³ Now, nearly a year later, the world has good reason to doubt the integrity of the President's pledge.

■ Notes

1. Seymour M. Hersh, "Torture at Abu Ghraib," *New Yorker* (May 10, 2004) <http://www.newyorker.com/fact/content/?040510fa_fact>.
2. Brigadier General Janis Karpinski, as reported in Philip Shenon, "Officer Suggests Iraq Jail Abuse Was Encouraged," *New York Times* (May 2, 2004) <<http://www.nytimes.com/2004/05/02/international/middleeast/02ABUS.html?pagewanted=print&position=>>>.
3. *Hope v. Pelzer*, 122 S. Ct. 2508 (2002).
4. Letter of June 25, 2003, to Senator Patrick J. Leahy, Ranking Member, U.S. Senate Committee on the Judiciary. Archived at <http://www.fas.org/irp/congress/2004_cr/s021004.html>.
5. Alan M. Dershowitz, "Commentary," *L.A. Times* (November 8, 2001) <<http://www.latimes.com/news/opinion/la000089139nov08.story?coll=la%2Dheadlines%2Doped%2Dmanual>>.
6. Richard Posner, "The Best Offense," *New Republic* (September 2, 2002): 30 [Review of: *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*, by Alan M. Dershowitz].
7. Foreign Affairs Reform and Restructuring Act (October 19, 1998), Section 2242(a).
8. Quoted in Editorial, "Torture Is Not an Option," *Washington Post* (December 27, 2002): A24 <<http://www.washingtonpost.com/ac2/wp-dyn/A42024-2002Dec26?language=printer>>.
9. Instruction in the guideline to drafters for the Department of State's 2002 Country Reports on Human Rights Practices.
10. Letter of June 25, 2003.
11. Patrick J. Leahy, Congressional Record (February 10, 2004) (Senate), S784 <http://www.fas.org/irp/congress/2004_cr/s021004.html>.
12. State of the Union Address, January 29, 2002 <<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>>.
13. Statement by the President, June 26, 2003 <<http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>>.

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Human Rights Post-September 11

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In an effort to promote "American freedom and security," US foreign policy post-September 11 has had draconian implications for the struggle for human rights, both at home and abroad. Not only do many of the counterterrorism steps enacted by the United States directly abridge human rights, but the United State's myopic focus on countering terrorism at all costs has had tremendous indirect costs for human rights advocates as well. Secure in their belief that the United States will look the other way when a "friend in the war on terror" commits human rights violations, states claiming a place on the "US side" in the terror have become increasingly assured that they can violate human rights with impunity. In particular, many countries since 9/11 have taken advantage of this opportune moment to intensify their own crackdowns on political opponents, separatists, and religious groups. In addition, in several countries, leaders have exploited the situation to advance punitive policies against refugees, asylum-seekers, and other foreigners. The infringement of the mechanics of the war on terror, in the guise of emergency measures, is fast ensuring that the human rights protections for political and social minorities that do exist are being quickly rolled back.

Although the number of functioning international and domestic human rights mechanisms has reached an all-time high, and the promotion of human rights throughout the world has never been more critical, the realization of human rights has never been in greater danger. The fight for human rights and the protection of human dignity is now faced by an indomitable challenge in a distorted world defined narrowly in terms of "national" security. As a self-proclaimed leader of human rights and democracy, the United States plays a central position in this rollback on rights. This essay identifies three areas where the United States is a particularly bad role model for the rest of the world: (1) human rights in incarceration and detention; (2) government secrecy vs. citizens' privacy; and (3) nondiscrimination and, in particular, the rights of noncitizens. These specific examples demonstrate that the price being paid for security is excruciatingly high, and the human rights movement is indisputably a victim of this new emphasis on "national security" over human rights.

■ Human Rights in Incarceration

The treatment of prisoners captured by the US government in the "war on terror" raises several critical human rights concerns. The use of torture against

accused terrorists held in US custody in Iraq, Afghanistan, and Guantanamo Bay has been widely reported.¹ Significant evidence exists that the abuses have been widespread and that the United States has taken only limited steps to investigate and punish implicated personnel.² For example, a study by the Detainee Abuse and Accountability Project (DAA), a nongovernmental watchdog group initiated in March 2005 for the purpose of analyzing credible allegations of abuse of detainees, concluded:

- Detainee abuse has been widespread. The DAA Project has documented more than 330 cases in which US military and civilian personnel are credibly alleged to have abused, tortured, or killed detainees. These cases implicate more than 600 US personnel and involve more than 460 detainees.
- Only a fraction of the more than 600 US personnel implicated in these cases—40 people—have been sentenced to prison time.
- Of the hundreds of allegations of abuse collected by the DAA Project, only about half appear to have been adequately investigated.
- In cases where courts-martial—the military’s equivalent of criminal trials—have convened, the majority of prison sentences have been for less than a year, even in cases involving serious abuse. Only 10 US personnel have been sentenced to a year or more in prison.
- No US military officer has been held accountable for criminal acts committed by subordinates under the doctrine of command responsibility. Only three officers have been convicted by court-martial for detainee abuse.
- Although approximately 20 civilians, including CIA agents, have been referred to the Department of Justice for criminal prosecution for detainee abuse, the Department of Justice has shown minimal initiative in moving forward in abuse cases. The Department of Justice has not indicted a single CIA agent for abusing detainees; it has indicted only one civilian contractor.³

Of additional concern is the fact that many prisoners often have been held in secret prisons and without notification to the accused’s family or to any officials in the country of origin. The CIA’s involvement in these detention centers is notable. Investigative journalists have uncovered persuasive evidence of CIA involvement in secret detention facilities at sites in eight countries, including Thailand, Afghanistan, and several democracies in Eastern Europe, as well as in Guantanamo. The existence and locations of the facilities—referred to as “black sites” in classified White House, CIA, Justice Department, and congressional documents—are known to only a handful of officials in the United States and, usually, only to the president and a few top intelligence officers in each host country. Virtually nothing is known about who is kept in the facilities,

what interrogation methods are employed with them, or how decisions are made about whether they should be detained or for how long.⁴

While the International Committee of the Red Cross/Crescent (ICRC) has visited some of the more open facilities, their visits have been undermined in ways contrary to the letter and spirit of binding law.⁵ In other cases, the existence of the detention facility is acknowledged by the United States—as in the case of more than a dozen detention facilities in Iraq—but very little else is known, particularly of the nature of the detainees’ legal rights and status. There are cases in which the existence of the detention facility itself is not officially acknowledged but has been reported by multiple sources—for example, Kohat and Alizai in Pakistan; Jalalabad, Asadabad, and Kabul in Afghanistan;⁶ the US Naval Base on Diego Garcia; and US military ships, particularly the USS *Batan* and the USS *Peleliu*.⁷ Furthermore, the United States has “been covertly transferring terrorism suspects to other countries for interrogation—notably Jordan, Egypt, and Syria—which are known for employing coercive methods.”⁸ US involvement in these transfers—known as extraordinary renditions—serves as a poor example to other states and comprises an additional violation of international law and human rights protections.

The classification of these prisoners has created roadblocks to human rights enforcement.⁹ By classifying US prisoners in the war on terror as “detainees,” a term unrecognized by international law, the Bush administration maintained that they were not entitled to protections of the Geneva Conventions, including the rights of due process and limited judicial oversight. Every international human rights body has rejected the Bush administration’s attempt to classify these detainees as “unlawful combatants.”¹⁰ In May 2006, the Committee Against Torture (CAT), the international body of experts that monitors state compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, flatly rejected the Bush administration’s claim that the Torture Convention is not applicable in times of armed conflict, stating unequivocally that “the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction. . . .”¹¹ CAT called on the United States to close all secret prisons; hold accountable senior military and civilian officials who authorized, acquiesced, or consented to acts of torture committed by their subordinates; and end its practice of transferring detainees to countries with known torture records. It also specifically criticized the indefinite detention of prisoners in Guantanamo Bay and called for its closure.

■ Government Secrecy vs. Citizens’ Privacy

Since 9/11 the Bush administration has moved more quickly than any administration since World War II to make government activities, documents, and other information secret.¹² At the heart of this trend toward expanding the secrecy of

government conduct has been a series of executive branch initiatives impinging on public access to information. These efforts combine to restrict access to information through a simultaneous increase in the classification of documents and a decrease in the declassification of documents.¹³ As a result, information upon which human rights organizations rely for their watchdog roles is more difficult to obtain and, once obtained, is incomplete or distorted.

Newly enacted legislation has steadily limited the public's access to government information in all fifty states. Hundreds of thousands of public documents have been removed from government websites. Other public information has been edited, and access to some materials has been made more difficult. Some government materials yanked from the Internet, such as Environmental Protection Agency reports on the consequences of industrial accidents at chemical plants, may be viewed only in government reading rooms. Visitors must have an appointment and have to be accompanied by a government escort. Attorney General John Ashcroft's Justice Department set the tone for the focus on secrecy in October, telling US agencies to be more cautious about releasing records and other materials. In addition, legislatures have passed more than 1,000 laws changing access to information, approving more than twice as many measures that restrict information as laws that open government books.¹⁴

The ability of US citizens to enjoy lives free from unwarranted government interference has declined rapidly, even as the ability of their governments to act secretly has been enhanced. The US "Patriot Act," one of the first pieces of domestic legislation enacted in the "war on terror," greatly expanded the ability of federal officials to carry out searches and seizures on private homes without prior notice.¹⁵ Among other measures, this legislation, which set the standard for similar copycat laws in other countries, permitted state authorities to "scrutinize people's reading habits by monitoring public library and bookstore records, . . . [while also] allow[ing] for 'sneak and peak' tactics such as physical search of property and computers, . . . monitoring of email, and access to financial and educational records," all without the notification of the suspect.¹⁶ Specifically, under Section 213 of the Patriot Act, the government can delay notice of a search if it can show "reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result."¹⁷

As long as the low standard of "reasonable cause" or "reasonable necessity" is met, police officers can secretly enter a person's home or office while he or she is away and search through and seize private belongings.¹⁸ These new powers are not limited to antiterrorism investigations, but rather apply to all federal investigations, including routine criminal cases. Furthermore, Congress did not create a sunset provision for this section.¹⁹ This means that, unlike some other powers granted in the Act, the Section 213 powers are perma-

nent. Also under new regulations issued by the Attorney General, the FBI can now carry out surveillance on any religious, civic, or political organization in the United States, without even the slightest suspicion of wrongdoing.²⁰ A key component of the new surveillance has been a crackdown on the work of domestic and international human rights organizations.

■ Nondiscrimination and the Rights of Noncitizens

The restrictive measures taken by the Bush administration against US citizens pale in comparison with the new policies against noncitizens. As Athena Roberts has noted, "By applying different standards to citizens and non-citizens, the United States appears to be endorsing the idea that certain fundamental rights are tied to one's status as a citizen rather than one's status as a human being."²¹ This serves to undermine the notions of equality and universality that lie at the heart of human rights.

Many of the abuses already discussed in this essay were restricted largely to noncitizens. One of the most prominent examples of this is the transport of "detainees" from Afghanistan and other countries to the US Naval Base in Guantanamo Bay, restricted to noncitizens.²² But the daily discriminatory treatment of noncitizens is in fact more staggering and creates at times insurmountable challenges for those trying to enter the country. For all noncitizens who travel into the United States, fingerprints and photographs are now standard procedures upon entry into the country. "[T]hrough a series of nationality-specific information and detention sweeps—from special registration requirements to "voluntary" interviews to the detention of all those seeking asylum from a list of predominantly Muslim countries—the administration has acted on an assumption that all such individuals are of concern."²³ Further, foreigners already inside US borders are now subject to deportation without an administratively accountable process. Judicial reviews are no longer necessary for such cases, and suspected illegal immigrants may be held in detention, without notification of their families, for unspecified amounts of time, while their cases are pending.

In the dragnet of institutionalizing extensive security measures and making America "safe and free," no other communities have been as badly affected as the Arabs and Muslims, both citizens and noncitizens, since 9/11. The fact that the hijackers were all Arab and Muslim has greatly fortified the US position identifying these two groups from a particular range of countries to be treated with increased suspicion and hostility. The groups that have been subject to the worst discrimination are those that fit within overlapping bases of discrimination, such as noncitizens from Arab and Muslim countries. These mistreatments have included mass arrests, secret and indefinite detentions,