

AMERICA'S DISAPPEARED:

**Seeking International Justice for
Immigrants Detained After September 11**



January 2004

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THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

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Foreword

More than 65 years ago, using its might and its moral authority in the aftermath of World War II, the United States led a global effort to pass the Universal Declaration of Human Rights.

Today, in the aftermath of the terrorist attacks of September 11, 2001, the government is dangerously eroding civil liberties in America, especially those of immigrants. The roundup and detention of Arab and Muslim men – carried out with unprecedented secrecy – violated both the civil rights guaranteed by our Constitution and the human rights enshrined in the Universal Declaration that the United States helped to create.

To augment the work we have done domestically to protect civil liberties, the ACLU is bringing the case of these immigrants to an international forum: the United Nations Working Group on Arbitrary Detention in Geneva.

Our complaint, filed on January 27, 2004, alleges that the United States government arbitrarily and indiscriminately arrested immigrants unconnected to terrorism or crime. Many languished in jail for weeks and sometimes months, and the government refused to release them *even after* it knew they were innocent. For extended periods that must have seemed endless to those detained, many of these men were not told of the charges against them, were denied access to lawyers and were refused a hearing before a judge.

In other words, these men simply disappeared.

This report and our complaint are efforts to make their stories known and to achieve some measure of justice for the detained men and their families. The full impact of the recent crackdown against Muslim and Arab communities is yet to be told.

By filing this complaint, the ACLU is taking a step to help ensure that our national policies and practices reflect not just U.S. constitutional standards but also accepted international norms regarding liberty and its deprivations.

ANTHONY D. ROMERO
Executive Director
American Civil Liberties Union

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"No one shall be subjected to arbitrary arrest, detention or exile."

— Article 9, Universal Declaration of Human Rights

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

— Article 10, International Covenant on Civil and Political Rights

Some were startled awake by an early morning knock at the door. For others, it began with an ominous visit at work, a rough interrogation after a routine traffic violation or an order barked from a van to pull over to the side of the road.

In the days, weeks and months following the tragic events of September 11, 2001, hundreds of American immigrants were rounded up and detained, often under harsh or abusive conditions, in the name of keeping America safe. Not because of evidence (or even sound hunches) that they were involved in the terrorist attacks that brutally ended the lives of more than 3,100 people. Not because they were found to have ties to – or even knowledge of – terrorist groups who might threaten American security in the future.

Instead, hundreds of immigrants were *arbitrarily* snared in this dragnet, marked for arrest and thrown (literally, at times) in jail. The exact number is unknown, because the government refuses to release that information. They had one thing in common: Almost all were Arab or South Asian men, and almost all were Muslim.

The agents picked them up on the flimsiest of "tips" or as a result of chance encounters. One immigrant interviewed by the ACLU said a hospital co-worker gave the FBI his name because she thought he wore his surgical mask "more than necessary" at work. Another said he was arrested when agents came to his apartment looking for the previous tenant. They settled for him instead.

These sweeps and arrests were accomplished through the arbitrary and haphazard enforcement of minor immigration laws. Indeed, on October 25, 2001, Attorney General John Ashcroft brandished this tactic as a weapon, in a statement that effectively equated immigrants with terrorism: "Let the terrorists among us be warned," he said. "If you overstay your visa – even by one day – we will arrest you..."¹

Once arrested, many immigrants were labeled "of interest" to the September 11 investigation and thrown into legal limbo – detained for weeks or months in connection with a criminal investigation, but denied the due process rights that they would have been entitled to had they actually been charged with crimes.

¹ Speech given at the U.S. Conference of Mayors. Recounted in the April 2003 report of the Inspector General of the Justice Department, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks," p. 12.

The Office of the Inspector General Reports

In June 2003, the Office of the Inspector General (OIG) of the Department of Justice issued a 200-page report, titled "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks." The report was prompted by complaints made by individuals and advocacy groups about the September 11 detentions and about the secrecy surrounding them.

Because the OIG is part of the Department of Justice, it had access to high-level Justice Department officials who had been responsible for the government's immigration and investigative policies after September 11. The OIG report is the most comprehensive report so far issued about the treatment of September 11 detainees.

The June 2003 OIG report confirmed the allegations that the ACLU and other civil rights organizations had been raising since the government first began rounding up Muslim immigrants after September 11. It found that the arrests were "indiscriminate" and "haphazard" and that the INS routinely arrested people who had no connection to criminal activity, let alone terrorism. The report stated:

Even in the hectic aftermath of the September 11 attacks, we believe the FBI should have taken more

care to distinguish between aliens who it actually suspected of having a connection to terrorism as opposed to aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism. (June 2003 OIG Report, 70)

The report also addressed the treatment that immigrants received after arrest. According to the report, immigrants were refused release on bond, denied access to counsel and to consular officials, interrogated about their religious and political views, and held in degrading conditions. In some cases, immigrants were verbally and physically abused. The report stated:

The evidence indicates a pattern of abuse by some correctional officers against some September 11 detainees, particularly during the first months after the attacks. Most detainees we interviewed at the [Metropolitan Detention Center] alleged that MDC staff physically abused them. Many also told us that MDC staff verbally abused them with such taunts as "Bin Laden Junior" or with threats such as "you will be here for the next 20-25 years like the Cuban people." Although most correctional officers denied such physical or verbal abuse, the OIG's ongoing investigation of complaints of physical abuse

developed significant evidence that it had occurred, particularly during intake and movement of prisoners. (June 2003 OIG Report, 162)

In December 2003, the OIG issued a second report, titled "Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York." The report was based in part on videotapes that MDC officials previously claimed had been destroyed. According to the December 2003 OIG Report, "the tapes substantiated many of the detainees' allegations." (Dec. 2003 OIG Report, 7) In particular, the December 2003 OIG report found:

[There is] evidence that some officers slammed detainees against the wall, twisted their arms and hands in painful ways, stepped on their leg restraint chains, and punished them by keeping them restrained for long periods of time. We determined that the way these MDC officers handled some of the detainees was in many respects unprofessional, inappropriate, and violation of ... policy. (Dec. 2003 OIG Report, 46)

Clearly, these abuses should never have occurred. That the OIG has issued such a comprehensive and well-researched report will help us ensure that they don't occur again.

Those housed at the Metropolitan Detention Center (MDC) in Brooklyn, for example, were put in high-security cells in "lockdown." For weeks they were denied phone calls or visits. Some were in solitary confinement 23 hours a day. Many were assaulted, harassed and humiliated by corrections officers who considered them "terrorists."

At the same time, a series of post-9/11 policies issued by the Justice Department effectively denied immigrants held on these minor charges access to lawyers, as well as information about the charges they faced, the chance to post bond or the opportunity to appear before a judge in open court.

Prolonged detentions were common, in part because of the FBI's byzantine "hold until cleared" policy. The policy – a "guilty until proven innocent" model of justice never put down in writing – ensured that an immigrant otherwise ready for release by the INS had to stay put until the FBI affirmatively determined he had no connection with terrorism.

A June 2003 report issued by the Inspector General of the Justice Department – the first of two scathing OIG reports revealing the arbitrary and harsh treatment of immigrant detainees – put the average number of days from arrest to FBI clearance at 80.² For many detainees, it was much longer.

FBI clearance did not open the jail door for immigrants. Benamar Benatta, for example, was arrested in September 2001 on the basis of an overstayed visa. Although the FBI cleared him two months later, he remained in solitary confinement for five more months. He remains in detention to this day.

² OIG Report, 46.

It is now apparent that the overwhelming majority of the men who were detained had simply overstayed their visas or committed similar civil immigration infractions that, ordinarily, would not have led to detention at all.

"Two years ago, I had hopes. I was okay," Benatta said in an interview given in his 26th month of detention. "Now I lie in my cell and think: 'What has become of me?'"³

A Fight for Rights on Two Fronts

Since the early days of the government dragnet, the ACLU has relied on the United States Constitution to fight for the rights of immigrants unfairly detained. (Our efforts – and the disturbing circumstances that prompted them – are detailed later in this report.)

Now we are complementing that domestic work with an international effort: On behalf of more than a dozen immigrants from several countries, we are asking the United Nations Working Group on Arbitrary Detention to rule that the United States government violated international human rights standards by arbitrarily targeting these men and hundreds of others.

The personal stories of many of the people we represent are recounted in detail in profiles throughout this report. The information in these profiles was drawn from ACLU interviews conducted over the past three years.

Today, nations are linked more tightly than ever – through immigration and commerce. They should also, we believe, be encouraged to measure their democratic institutions against an internationally accepted standard of human rights.

Our complaint argues that the roundup of Arab and Muslim immigrants and their prolonged detention violates human rights principles found in two important international instruments:

- The Universal Declaration of Human Rights (which the U.S. helped create after World War II)
- The International Covenant on Civil and Political Rights (whose provisions are similar to our Bill of Rights)

The United States is a signatory to both these documents.

"We want to bring to the United Nations the stories of these individuals and the larger story of what happened to these immigrants in the wake of 9/11," said Jameel Jaffer, an attorney at the ACLU's National Office. "And given the scale of what happened and its impact across borders, there is a need for international institutions to look at this through a human rights lens."

Here's why:

By asking the United Nations to shine a global spotlight on the U.S. government's indiscriminate roundup of immigrants, the ACLU warns the government that it cannot escape justice through secrecy. The United States government has done everything in its power to hide its actions from public view. The government refused to disclose the names of the men it secretly held, and then deported them before they could tell their stories. The government clearly hoped that these immigrants had disappeared forever. But just as the United States is crossing borders abroad in the name of security, we will cross borders in the name of justice to vindicate human rights abuses.

³ Michael Powell, "A Prisoner of Panic After 9/11," *The Washington Post*, Nov. 29, 2003.

The United Nations Working Group on Arbitrary Detention

The United Nations Working Group on Arbitrary Detention (UNWGAD) was established by the United Nations Commission on Human Rights in 1991, and is based in Geneva. It is comprised of five independent experts – judges and other legal professionals – who meet three times a year, each time for five to eight days. The members of the panel are appointed by the UN Commissioner of Human Rights; they reflect the geographic distribution rules generally followed at the United Nations. (For current members, see Office of the High Commission for Human Rights, Working Group on Arbitrary Detention, www.unhchr.ch/html/menu2/7/b/arb_det/ardintro.htm.)

The Working Group exists in order to investigate allegations of arbitrary detention. It is the only non-treaty based body whose mandate expressly provides for consideration of complaints from individuals. Thus, the Working Group's actions are "based on the right of petition of individuals anywhere in the world." (See Working Group on Arbitrary Detention, Fact Sheet No. 26, Section III.)

In order to determine whether detention is arbitrary, the Working Group looks principally to two documents:

- **Universal Declaration of Human Rights** – In the aftermath of the Second World War,

the United States was one of the strongest advocates for the adoption of the Universal Declaration. (Eleanor Roosevelt was the Chair of the Human Rights Commission in the commission's first years.) Thanks in no small part to that advocacy, the General Assembly adopted the Universal Declaration in 1948.

- **International Covenant on Civil and Political Rights** – The covenant recognizes basic civil and political rights, including the right to equality before the law, the right to a presumption of innocence, and the right not to be detained arbitrarily. The covenant entered into force in 1976; the United States ratified it in 1992.

When the Working Group receives a complaint, it forwards it to the government concerned and provides that government with an opportunity to respond. Ordinarily, the government is asked to respond within 90 days. If the government responds, the person or organization that submitted the complaint is given an opportunity to reply.

Ultimately, the Working Group issues an opinion declaring that the detention in question is – or is not, as the case may be – arbitrary.

Khaled Albitar

Khaled Albitar came to the United States from Jordan in April 2001. With few opportunities open to him at home, "I came to work," he said. And he did, landing a job at a gas station in the small town of Stony Point, New York. His life consisted only of going "from my work to my home," he recalled, but he wanted to make money. "I want to get married, have a family. And I was helping my father – he is an old man – sending him \$200 every month."

On October 1, 2001 the FBI came to Mr. Albitar's home, which he shared with a roommate, and asked him questions about a Jordanian man the agency had arrested. (Agents had found Mr. Albitar's phone number among the man's belongings.) "They asked, 'Do you know him? Is he a terrorist?'" recalled Mr. Albitar, who told the agents what he knew about his fellow Jordanian. They then asked him about his family, he said. "And about my religion." He showed the agents his tourist visa, which was just days away from expiration. The agents thanked Mr. Albitar for his cooperation and left.

About two weeks later, the FBI returned, accompanied by INS agents, and arrested Mr. Albitar on the basis of his now-expired visa. (Mr. Albitar said that by then he was too frightened to call the INS to try to extend his visa). He was then taken to Federal Plaza in New York City.

The next day, he was taken to Passaic County Jail in Paterson, New Jersey. Within a week or so, the FBI came to interrogate him. "They came with my stuff – without permission from me. From my home. My telephone numbers, my family pictures, my financial papers," Mr. Albitar said. These possessions were never returned. An agent told him the FBI believed he

had lived with a terrorist in California in 2000. He denied this, explaining that he was living in Hebron in the year 2000. The agent then told him that he had spoken to Mr. Albitar's lawyer, who said she "didn't mind" if Mr. Albitar took a polygraph test.

"They asked me the same questions like 100 times," he said. "They showed me the photos of the people who did Sept. 11 and asked me a million questions. 'Do you know this one? Do you know him?' And I said, 'no, of course not.'"

He was told he failed the test, and he took another one a few days later – and he was told he failed again. "I told him, I swear to God I didn't hide anything." This time, when the agent returned him to Passaic, Mr. Albitar said, "he spoke to one of the people in the jail and they put me in the hole."

He remained in solitary confinement for 24 days. Each day he would ask to call his lawyer. "They would say 'Okay, tomorrow.' For 24 days, they don't let me talk to my lawyer," Mr. Albitar said. "I was praying and thinking, What did I do to be here?"

After he was removed from solitary confinement, he remained in jail, awaiting FBI clearance. At an immigration hearing, a judge set bail at \$1 million, he says, a sum that so shocked him that the judge repeated the amount. "He said, 'One and six zeros,'" Mr. Albitar said, adding that the government appealed the determination anyway.

He was deported on July 10, 2002. In Amman, "it's very hard to find work," he said. He is also suffering, because his everyday experiences trigger fears arising from his nine-month detention. "When I hear the call to prayer, I get scared," he said. "Because of what they did. I didn't do anything. The only thing was because I was Muslim."

Naeem Sheikh

For Naeem Sheikh, it began with a knock at the door at 6:00 a.m. in early March, 2002.

"I was sleeping," recalled the 32-year-old former New York City taxi driver, who had finished work just a few hours earlier. Rousing himself, Mr. Naeem, a Pakistani national, heard the people outside identify themselves as FBI agents.

The agents – "like eight, nine people" – searched the apartment he shared with his wife, brother and brother-in-law. "They check my door and clothes, bathroom and kitchen, my fridge and my bed. They touch my mattress," Mr. Naeem said. An agent then told Mr. Naeem to get dressed and come with them.

"I said, 'For what?' and he said, 'No questioning. Come on, do it fast.'"

"I said, 'What happened, officer? Come on, tell me, it's my right.'"

Handcuffed, he was eventually taken to Bergen County Jail on immigration violations. Mr. Naeem had failed to renew his work permit in the mistaken belief that he didn't need this permit to drive a cab. His arrest came amid his efforts to legalize his immigration status.

When he arrived at the jail, an immigration officer told him he would be deported to Pakistan within a week. Mr. Naeem, whose wife was pregnant, protested that he hadn't received a notice of a deportation order.

"I said, 'Ma'am, the United States immigration comes by law. Someone have a deportation – you must send them a letter.'" He added: "I have no criminal record, no parking tickets, no red-light tickets."

A week into his detention, he was interrogated by an FBI agent, who asked if he'd been to Afghanistan and if knew anyone who was "happy" about the terrorist attacks. His answers: No. (Mr. Naeem was driving near the World Trade Center when the attack occurred and remembers the horror of the explosions and of leaving his cab and fleeing on foot to safety.)

"He ask me, 'You know Osama bin Laden? You know any terrorist people?'" The agent also asked him if he knew how to pilot a plane – "I said, 'I just know how to drive a taxi.'" – and



Naeem Sheikh in Lahore, Pakistan.

questioned him about his religion. "He said, 'So, you are Muslim?' I said, 'Yes, of course, I'm Muslim.'"

He was in jail for a month, initially prohibited from praying and denied the special diet required by his religion. Later, he was provided with those meals, though he had to pay for them.

At the airport as he was deported, he was called a "terrorist" by the officials escorting him to the plane.

Khurram Altaf

Khurram Altaf came from Pakistan to the U.S. on a tourist visa in 1985. He was 18 years old. He was a "happy camper," he said, until he was arrested and detained in 2002.

At the time of his arrest, he was a family man with an excellent job at a national trucking company. "I was general manager for one of the locations," he said. "I have 60 people under me, four managers. I was in charge of the whole complex." He was, he later proudly told *The New York Times*, in an interview after his deportation, "the only Pakistani Muslim in the company."

Mr. Altaf settled in South Amboy, New Jersey, with his wife (Alia), two daughters (Fiza and Anza) and a son (Hamza), "all born in America." Anza, the middle child, was born deaf and has a cochlear implant, for which she requires special services.

On the morning of April 30, 2002, Mr. Altaf's wife heard a knock at the door. "I was sleeping," he recalled. "My wife said two people are standing there. When I opened the door they said, 'We are from U.S. immigration, and we want to see Mr. Khurram.' I say 'okay, that's me,' and they say, 'You have your I.D.?' " He showed them his driver's license and a recent Green Card application. The agents said they wanted to interview him for just an hour at the INS's Newark office.

"They took me to Newark and asked me about, you know, if you have any connection to Al Qaeda members or if you have any relatives from Afghanistan or you know anything about 9/11 or anything. I said no. I have no connection." The agents also asked about his religion.

About seven hours later, Mr. Altaf – his hands and legs shackled – was taken to Bergen County Jail in Hackensack, New Jersey. He



Khurram Altaf (left) is displaying pictures of his family. Syed Wasim Abbas, who was also detained, is on the right.

was kept there for two months. He was never told why. For 24 hours after he was taken from his house, his wife frantically tried to learn of his whereabouts.

Mr. Altaf was deported to Pakistan in the summer of 2002, without appearing before a judge. For a year, he did not see his family, who had remained behind to ensure that his daughter would get the treatment she needed. "They cry all the time whenever I talk to them and say, 'Papa Daddy when you coming back home? I miss you. I love you,'" he told *The New York Times* in 2002. "And I do the same thing. Without family, life is nothing. I'm like a dead person."

After a year, his wife and two of his children joined him in Rawalpindi, where he has opened a small grocery store with his in-laws. His daughter Anza lives in New Jersey with his brother and mother. "I talked to a lot of doctors, a lot of surgeons, a lot of specialists, a lot of psychologists and audiologists," he said. "They said they don't have services right now in Pakistan for cochlear implant and special education."

He hopes to bring his daughter to Pakistan "once a year to visit," he said. "Right now this is my plan." His family misses her terribly, he says. "Anytime, we talk to her – with the implant, she hears and speaks – they cry. And she does, too."

Mr. Altaf sorely misses the job he had in the United States. "Sometimes I call, and they say they miss working with me. Especially they miss the food. I would cook at home and take it to work – for Christmas or Thanksgiving."

For many of the immigrants represented, the complaint to the United Nations also represents their first opportunity to tell their stories to the public. They were uprooted from their homes, taken from their families and deprived of their livelihoods. Their lives were irrevocably disrupted by the government's policies.

Many still live under a cloud of suspicion in their home countries. A United Nations ruling will help clear their names of any involvement with terrorism or crime. It will provide some closure to the prolonged nightmare of their arbitrary detention and its aftermath. Noor Hussain Raza, 61, says that since returning to Pakistan he has been unable to work because of his age and heart condition. He is reduced to living in the streets, unwanted by his family and society.

Advocacy before the U.N. also sends a strong message of solidarity to human rights advocates in other countries who have decried the impact of United States policies on the human rights of their citizens. Americans concerned about constitutional rights at home will continue to engage with groups and institutions around the globe to ensure that the United States respects the human rights of all persons, regardless of their nationality, race or religion.

The complaint to the United Nations Working Group on Arbitrary Detention has its roots in earlier advocacy we did at home and abroad on behalf of these immigrants. It draws on interviews conducted in 2001 and 2002 by ACLU lawyers at New York and New Jersey detention centers where the majority of immigrants were held after September 11.

The complaint is also grounded in interviews the ACLU conducted when it traveled to Pakistan in 2002 to meet with detainees who had been deported.

Khaled K. Abu-Shabayek

Khaled K. Abu-Shabayek, a Jordanian national, had lived here for about twelve years prior to his arrest in April, 2002. He and his wife last resided in Cary, North Carolina with their seven children, five of whom were born in the United States and are United States citizens. While living in North Carolina, Mr. Abu-Shabayek owned a car, had a driver's license, paid taxes and rented a home for his family. Mr. Abu-Shabayek supported his family by working in construction and running a side business selling grocery items.

Sometime in 1994, Mr. Abu-Shabayek applied for political asylum in the United States, based on his status as a Palestinian living in Jordan. His asylum request was ultimately denied, but he decided to remain in the United States with his family. He subsequently applied for permanent resident status but no final decision had been made on his application by April 2002.

The police stopped Mr. Abu-Shabayek while he was traveling in the state of Tennessee on business on April 18, 2002. The officer asked for his name and other information, then placed him in handcuffs and took him to the local police station. Upon his arrest, the officer told him that he was "illegally present in the United States."

From the time he was first arrested until he was finally deported to Jordan five months later, he was moved frequently, spending time in facilities located in Tennessee, Louisiana, Oklahoma, Georgia, New York

and New Jersey. He was often transported between locations in windowless vans that lacked climate control.

Throughout Mr. Abu-Shabayek's five months in detention, he was never brought before a judge. At his initial arrest, he was shown a piece of paper notifying him that he had a right to a hearing. He requested a hearing numerous times but was repeatedly denied by the officers guarding him. He was also aware of his right to post bond, and requested a bond hearing. This request was also denied without explanation. Finally, he was denied access to speak with a representative of his consulate.

No criminal charges were ever brought against Mr. Abu-Shabayek, but the FBI told him that he was considered a "terrorist" and interrogated him on six or seven separate occasions. At one point during these interrogations, Mr. Abu-Shabayek requested permission to use a bathroom. The FBI refused, telling him "to piss on himself." He says that "Arabs and Muslims were treated more harshly than other prisoners," and that FBI agents frequently "tried to provoke Arab and Muslim detainees."

Mr. Abu-Shabayek was finally deported to Jordan on September 12, 2002. He and his family are now living in Amman. Mr. Abu-Shabayek was unable to find work for fifteen months after arriving in Jordan, and supported his family on savings he had earned in the United States. His children, most of whom were raised exclusively in the United States, have had a very difficult time fitting into their new lives in Jordan.

Noor Husain Raza

Noor Husain Raza, a 63-year-old engineer, left Pakistan in 1979. He first emigrated to the United Arab Emirates, where he worked as an engineer in the Dubai police department for more than a decade. In 1992, he came to the United States on a visitor's visa.

When he arrived, Mr. Raza applied for political asylum based on his trade union activism in Pakistan. His asylum request was denied, and he filed a motion to reopen his asylum case. He worked at many jobs, sending money home to a large number of relatives in Pakistan. "Three families, I support," he said. In 1993, he got a job as a baggage handler for Continental Airlines at Newark International Airport in New Jersey. He worked with customers, too, from time to time. "I used to translate for people who don't know the English, especially the Arab people," he said.

His motion to reopen his asylum case was pending when he was arrested at work on Dec. 19, 2001. He showed the agents his airport ID, his company ID and his driver's license. "They said, 'No, we need immigration ID,'" he said. "They just put me in handcuffs."

Mr. Raza was taken to the INS center in Newark, where agents questioned him. "They said, 'Do you know something for this 11th September?'" I said, 'Man, I am a normal guy. Just a worker.'" He was allowed to make collect calls and tried to get legal help. But his lawyer was not available, and a second lawyer (recommended by the secretary of a public official he managed to reach) was on vacation.

Mr. Raza was then taken to Passaic County Jail, in Paterson, New Jersey. When he arrived, his clothes were forcibly removed and a guard performed a body-cavity search. "I said, 'This is against the humanity.'" He said, 'Sir, don't

talk. Silence. You have no right to talk.'"

He was placed in a dormitory-style room on the first floor with other new inmates and was present, he said, when guards brought dogs into the dormitory each morning as the detainees were waking up. After a few days of this, Mr. Raza was moved upstairs with the general population of inmates. The jailhouse doctor would not let him see a specialist so he could discuss the medication he needed for his heart condition. The guards refused his repeated requests for halal meals. (He was given a Koran.)

"I'm a 61-years-old guy – they throw me in the bag of steel," Mr. Raza said. "This is not human rights. This is not justice."

After one month in jail, Mr. Raza was handed over to immigration agents who handcuffed him, searched him and brought him a paper to sign. "I said, 'Let me read it.' She said no. She said, 'Sir you have to sign. You have to.'" Then I signed."

He was put on a plane that landed in Karachi, where, penniless, he made his way to Lahore, many miles away.

Mr. Raza remains in Lahore. His arrest and deportation have been a "tragedy" for him, he said. "I'm not a terrorist. My record is neat and clean. I protect their security and integrity of the United States for 10 years in the Newark airport."

Asked if he would return to the United States if he could, he says yes. "The guy who doesn't like dictatorship," he said, "he will always ask for freedom."

Still, he asks how this could have happened to him "when the United States – President Bush – says there is justice, peace and human rights protection, and we are just fighting against the terror ... not against the religion of Islam."

Summarizing the case, the complaint argues that "the arrests were often arbitrary and indiscriminate and not connected to criminal activity. Notwithstanding the dearth of evidence, the government jailed these individuals for weeks and in many cases months. While detained, individuals were refused release on bond, denied access to counsel,

interrogated about their religious and political views, held in degrading conditions and in some cases physically assaulted by guards."

Specifically, the complaint to the United Nations Working Group on Arbitrary Detention alleges that:

Sadek Awaed

Sadek Awaed, a 31-year-old Egyptian national held on an immigration violation, is still detained after more than 20 months in jail. Mr. Awaed arrived in New York in 1991 on a tourist visa and applied for political asylum in 1993.

His asylum petition was based on his belief that in Egypt he faced danger because of his former affiliation, as an 18-year-old, with the Muslim Brotherhood, a large opposition group whose stated aim is the peaceful creation of an Islamic state. Mr. Awaed says he was recruited to attend Brotherhood meetings but found the group's extremism disturbing. When he left the organization, which has a history of violence and is banned in Egypt, he was tortured. He fears persecution from two sources – the Egyptian government and the Brotherhood.

In the United States, he has worked as a doughnut maker, a used-car salesman and a taxi driver – the job he had at the time of his arrest, in May 2002.

On May 2, 2002, shortly after his last FBI interview, Mr. Awaed was arrested for a traffic violation in Jersey City, New Jersey, where he was living. While at the police station, he was asked by an officer if he was

Middle Eastern. When he replied that he was, the officer responded in a hostile fashion ("Got you, motherfucker!"), after the Jersey City Police contacted the INS.

He has been detained ever since, primarily in the Hudson County Correctional Facility in Kearny, New Jersey. For most of his first 15 months there, he was housed with the criminal population. For a full year, he was not aware of the grounds for his detention. He had received a legal document but did not understand that it described an immigration violation – a failure to leave the United States after being ordered deported in absentia in 1998.

Only after attorneys from the Asian American Legal Defense and Education Fund (AALDEF) began to represent him in the spring of 2003 did he learn that five years earlier, he had been charged with overstaying his visa. The notice of that charge had been sent to the wrong address.

At no time during his long detention has Mr. Awaed been brought before a judge. The judge who ordered the deportation has denied a motion to reopen his case. An appeal of that decision was also denied.

If he is deported to Egypt, Mr. Awaed told the Associated Press in a telephone interview from jail, "I may not see the sun again."

- The government arrested many immigrants by virtue of chance encounters rather than any indication of a possible connection to terrorism or crime.
- The government refused to release many immigrants *even after* it knew that they had no connection to terrorism.
- The government's arbitrary detention policies disproportionately impacted Muslim men from Middle Eastern and South Asian countries.
- Government officials intentionally discriminated against some immigrants based on race and religion through physical and verbal abuse.
- The government routinely failed to provide immigrants with notice of the charges against them.
- The government denied many immigrants a prompt hearing; many were not brought before a judge for weeks or even months after their arrest.
- The government categorically denied many immigrants release on bond, with no showing of an individual need for prolonged detention.
- The government denied many immigrants access to counsel for extended periods.
- The government held many immigrants in degrading and inhumane conditions; though detained on immigration rather than criminal charges, many were held in cells for 23 hours a day and required to wear hand and leg shackles when leaving their cells; others were denied visits or even calls with family members.

The complaint asks the Working Group to declare that the detention by the United States of each of the named individuals was arbitrary and thus a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Because the United States has still refused to disclose a complete list of immigrants detained after September 11, the complaint also asks the Working Group to declare – on behalf of all those wrongly detained – that the United States' arbitrary detention

policies violate international human rights principles.

Responding to the Roundup

The ACLU's early efforts to respond to the swift and secretive roundup and arrests of immigrants after September 11 involved a frustrating pursuit of basic information.

Like other advocacy organizations, journalists and of course, the frantic families of the men who seemed to vanish into nowhere, we first tried to learn the identities and whereabouts of those detained.

On September 25, 2001, we met with FBI Director Robert Mueller and asked, in vain, for information about the detainees. (Another meeting on October 25 produced the same result.) In October 2001, we wrote a letter to Attorney General Ashcroft asking for information about the identities of those being arrested. He did not respond.

We also joined several other organizations in filing a Freedom of Information Act (FOIA) request to learn the names and whereabouts of detainees. Again, we learned nothing. The attorney general, meanwhile, issued a directive to federal agencies, encouraging them to withhold requested information wherever legally possible.

As news accounts and reports from ACLU affiliates and other advocates started to yield a clearer picture of what was happening, we began to address the other civil liberties issues.

On December 4, 2001, Nadine Strossen, president of the ACLU, submitted testimony to the Senate Judiciary Committee about the "massive, secretive detention and dragnet questioning of people based on national origin in the wake of September 11."

Sarwar Yamen

In April 1989, Sarwar Yamen arrived in the U.S. after escaping with his wife and two young children from an army camp in Zabul, Afghanistan. He had been forced into the Afghan army to fight the Mujahadin, and tortured in prison. He arrived alone in New York, where he sought political asylum.

Mr. Yamen feared that he might be killed if he was forced to return to his native Afghanistan. His father had been taken from his home and was never seen again. Mr. Yamen's asylum application was denied in October 1989, but he was given a short-term visitor's visa. (His wife and children sought refugee status in England and lived there while he was in the United States. His wife was recently granted British citizenship, but his children still have Afghani citizenship.)

For several years, Mr. Yamen lived in Queens, New York where he worked at a fast-food restaurant and as a limousine driver. On October 10, 2001, he arrived home from work to find that FBI and INS agents had entered without permission and searched his home. The officers told him that he was under arrest because he did not have valid immigration papers and because someone opposed to the U.S. had made phone calls from his telephone. Mr. Yamen told the FBI agents that he had not made these calls and knew of no one else who could have made them. He was placed in handcuffs and leg shack-

les and taken to a detention center in New York City.

The next day he was transferred to Passaic County Jail, in Paterson, New Jersey. At one point he was pulled out of line by a guard, asked what he thought about September 11. Mr. Yamen replied, "I know you're mad, but I'm doubly mad. I'm scared too. Now this country is bad for me too." The guard told Mr. Yamen he couldn't be trusted and kicked him until his legs bled. He was then placed in solitary confinement for 19 days. After spending three months at Passaic County Jail, he was transferred to Middlesex Correctional Center in New Jersey.

On February 11, 2002, after he had spent four months in detention, Mr. Yamen and 75 other detainees at the Middlesex Correctional Center went on a hunger strike. Mr. Yamen did not eat for 13 days. He resumed eating only after officials told him that he could go home in two weeks. When he began to eat again, though, the government did not send him home.

During these months of detention, both the FBI and the INS interviewed Mr. Yamen. Following his hunger strike, in late February 2002, the FBI officially cleared him. Despite FBI clearance, and several requests for hearings about his case, he was not released or deported. He was transferred to Sussex County Jail, New Jersey on May 9, 2002.

Frustrated by the non-responsive-ness of the INS officials and his eight months of continued detention, Mr. Yamen, along with others at Sussex County Jail, staged a hunger strike on June 3, 2002. The other detainees broke their strike on June 5, 2002, after INS officers visited. Once again, the INS officers promised Mr. Yamen that he would be deported to Pakistan very soon if he would "just start to eat." Mr. Yamen continued his hunger strike, and was sent to solitary confinement on June 5, 2002. Five days later, he collapsed and was sent to the hospital for a cut on his head, and to see a psychiatrist. After his fall, he was kept at the intake center and monitored every 15 minutes throughout the day and night.

Three days later, on June 13, 2002, Mr. Yamen was transferred to an Immigration Detention Facility in Elizabeth, New Jersey. He had a thorough medical exam, and met with two government officers, who he describes as a "warden" and a "secretary of immigration" who told him that they were familiar with his case and had sent a special report on his behalf to Washington, D.C. They told him, "If you start eating again, you will be released within three weeks."

On June 24, 2002, Mr. Yamen finally ended his hunger strike. On July 14, 2002, he was finally released and sent to Pakistan, where he was reunited with his wife and children.

Her testimony, barely eight weeks into the Justice Department's investigation, has now been virtually echoed by the department's own inspector general in his April 2003 report about the failures of the post-9/11 immigration roundups and arrests.

"The ACLU recognizes the right – indeed the responsibility – of federal law enforcement to gather relevant information in the course of its investigation into the September 11 terrorist attacks," she said. "But discriminatory, dragnet profiling is neither an effective investigative technique nor a permissible substitute for the constitutional requirement of individualized suspicion of wrongdoing."

Still unable to learn enough about individual identities, on Dec. 5, 2001, Anthony Romero, executive director of the ACLU, wrote letters to the Consulates of Pakistan, Egypt and almost two dozen other countries.⁴ He offered the consulates the ACLU's "Know Your Rights" brochure for immigrants and asked if they had been contacted by individuals arrested or detained.

"We are quite concerned that current efforts to combat terrorism may undermine the basic freedoms and liberties that are the foundation of our democracy," he wrote.

Also in December 2001, the ACLU joined with other organizations to file a FOIA lawsuit in federal court to learn the names of and locations of people being detained. The lawsuit, *Center for National Security Studies v. United States Department of Justice*, was successful at the District Court level, with Judge Gladys Kessler ordering the disclosure of the desired information.

⁴ "A Frustrated ACLU Tries to Guide Consulates Through a Thicket," *The New York Times*.

Benamar Benatta

Benamar Benatta arrived from Algeria in December 2000. He was part of a group of Algerian Air Force technicians being trained by Northrop Grumman in Baltimore. When the course ended, Mr. Benatta stayed: He did not want to return to Algeria. He worked as a busboy in New York City, overstaying his six-month visa. Then, on Sept. 5, 2001, he tried to enter Canada to request political asylum. He was detained at the border for having a fake ID.

His fears about returning to Algeria center on the country's violent Islamic fundamentalist movement as well as its military. "I had a problem with the terrorists who wanted to kill me and the military, which was beating and torturing people," he told *The Washington Post* in an interview conducted not long ago.

Six days after Mr. Benatta arrived at Canada's border, the terrorists struck, and Canadian officials handed over Mr. Benatta to United States immigration authorities. He was taken to Niagara Falls, New York, for questioning and detained at the Buffalo Federal Detention Center in Batavia, New York, for four days. He was then taken by plane – shackled at the ankles, waist and arms – to the Metropolitan Detention Center (MDC) in Brooklyn, where he was placed in a solitary confinement cell.

The FBI determined, in November of 2001, that Mr. Benatta had no ties whatsoever to terrorist activity. Yet he still remains in custody today.

"Two years ago, I had hopes. I was okay," Mr. Benatta told *The Washington Post* during his interview at the Buffalo Federal Detention Facility in Batavia, New York "Now I lie in my cell and think: 'What has become of me?'"

Behind the unconscionable delay in releasing him is a trail of trampled rights. Mr. Benatta was denied access to lawyers when he arrived at the MDC, where, he said, guards scrawled "WTC" on the door of his cell and harassed him by banging on the door to interrupt his sleep. For weeks, he could not leave the cell (except for FBI interrogations). He was forced to strip as guards mocked him, he said. He was told not to speak. And he was physically abused while shackled – his head banged against the wall, his waist-chain pulled so tight it was difficult to breathe.

During his stay at MDC, he had several hearings before an immigration judge – these were closed hearings, and Mr. Benatta was not represented. The judge issued a deportation order in December 2001.

Mr. Benatta remained in solitary confinement until April 2002, when he was transferred to the Buffalo facility. There, he finally got legal representation from a court-appointed lawyer, who fought the criminal charge related to the fake ID.

In September 2003, the judge in the case, Federal Magistrate Judge H. Kenneth Schroeder Jr., wrote in a decision that Mr. Benatta's imprisonment was a "charade" and that "the defendant in this case undeniably was deprived of his liberty," and "held in harsh conditions which can be said to be oppressive." The next month, the criminal charges were dropped.

Mr. Benatta, however, remains in the Batavia facility – unable to post a \$25,000 bond imposed to keep him detained pending deportation. The original deportation order has now been nullified by the Department of Justice, and Mr. Benatta is being permitted to pursue his asylum claim at an upcoming bond re-determination hearing.

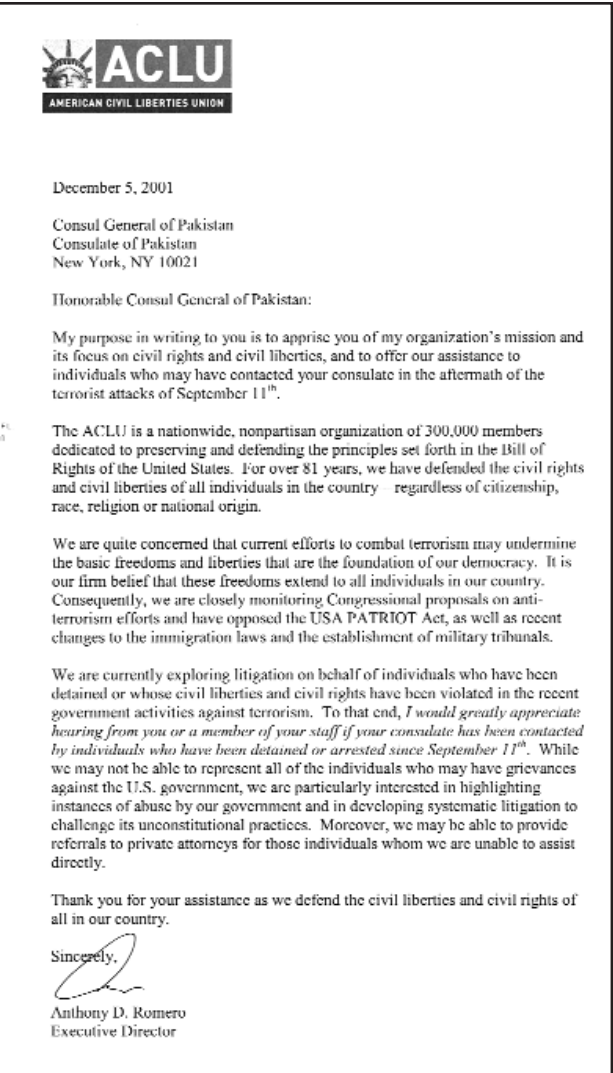
"Secret arrests are a 'concept odious to a democratic society,'" she said in her decision. An appeals court overruled her decision, writing that the disclosure of all the names "would give terrorist organizations a composite picture of the government investigation." The Supreme Court recently declined to review the case, and so many of the men who were arbitrarily detained after 9/11 will never be known to the press and the public.

Also in fall 2001, the ACLU and its affiliates began to visit detention facilities in New York and New Jersey to help immigrants get legal counsel or expedite their deportations so they could get out of jail.

Ahilan Arulanantham, a former staff attorney at the ACLU's Immigrants Rights Project, recalls what he saw and heard at the Brooklyn detention center:

"I remember being very struck that the men's wrists were shackled, their legs were shackled at the ankle, their arms were shackled to their waist. There was a guard on each arm and another guard behind and a guard in front."

"The detainees described physical abuse, that they were thrown up against the wall, that lights were on constantly, that it was freezing. They tried to put blankets on themselves, but guards would get angry about that when they had 'counts.' They also said that the pro bono lawyer list was out of date, that they could only have one phone call a week and that busy signals counted. They were frightened and confused and didn't



ACLU executive director Anthony Romero's letter to the Consul General of Pakistan.

understand why they were in maximum security."

Chris Dunn, the associate legal director of the New York Civil Liberties Union, also noted the many problems the men had contacting lawyers. The facility had a list of lawyers' phone numbers, and "the principal resource on that list was Legal Aid," Dunn said. "But the Legal Aid office was near the World Trade Center and it was closed after the attacks. So when a detainee called the number for Legal Aid, no one answered. And that counted as a call." Revising the list was a major bureau-

Anser Mehmood

Anser Mehmood came to the United States in 1994 with his wife, Uzma, and three sons. A fourth son was born in America in 2000. "I never get arrested for any reason," said the 44-year-old Mr. Mehmood, who operated a trucking company in New Jersey. "I always pay my taxes on time. In other words, I am a very law-abiding person in this country except an overstayed visa."

On the morning of October 3, 2001, Mr. Mehmood was resting in his Bayonne, New Jersey, home when "somebody knocked very hard on my door." Looking out the window, he saw FBI people "with their full uniform." He was "amazed," he said, and wondered "Why they come to my house?" The FBI later claimed that it had received a "tip" from someone at a company that contracted with Mr. Mehmood for trucking services. The tipster reported that Mr. Mehmood had refused to deliver packages to Washington, D.C., on September 11, 2001. However, that tip mischaracterized the events of that day. Mr. Mehmood had been in Philadelphia on the morning of September 11, picking up a load of furniture bound for Washington, D.C. However, at around 10:00, the delivery run was canceled because of the terrorist attacks. Mr. Mehmood went home. Acting on this erroneous tip, the FBI went to his home to question him.

The agents did not have a search warrant. "They just told me, 'We are from FBI and we want to search the house.'" He told them to go ahead. "I don't have any type of fear," he recalled. After searching the premises and questioning the couple for hours, the agents said they wanted to arrest Mr. Mehmood's wife because they suspected

her two brothers of credit-card fraud. But because the baby, who was ill, cried when being separated from his mother, an agent agreed to take Mr. Mehmood instead. (The other children were at school). "He says that 'yes, we don't have to take the mother, but we have to take somebody from the house.'"

After a night at a holding facility, Mr. Mehmood was taken – in full-body shackles – to the Metropolitan Detention Center (MDC) in Brooklyn. Upon arrival, he was assaulted by guards while shackled. "They throw me on the wall. My hand was broken at that day. My lip was bleeding. And they terrified me because I was not a criminal. Why they are doing this thing to me? So they repeat the same thing about six or seven times on different walls."

Mr. Mehmood was then taken to a cell, where a guard told him he was a World Trade Center suspect. "When I heard this thing, I was relaxed," he said. "I said, yeah, they got the wrong guy and they are going to come to know in a couple of hours." He said he knew the country was "going through a very difficult situation – those innocent people who burn in those World Trade Center buildings. I feel a lot for those people."

He was detained for six months at the MDC. For about four months, he was (like many immigrant detainees at the facility) kept in a solitary confinement cell for 23 hours a day. "I don't have any idea where I am. Only I can see the Statue of Liberty from my cell."

For about two weeks, Mr. Mehmood was denied phone contact with lawyers and



Anser Mehmood with his wife and one of his sons in Karachi, Pakistan.

others. When he did call his home, he found the line was disconnected. Because of his arrest, his family – especially his three school-aged children – had received threats and taunts about his being a "terrorist." He was not allowed to meet with his wife for three months. While he was in "the grave" of solitary confinement, Mr. Mehmood said, officials "never served me any paper. They never visit me any time – for four months and six days."

When he was finally allowed to join the prison's general population, he was, for the first time, given halal meals in accordance with his Muslim religion. He was detained for about two months in MDC's general population. Mr. Mehmood said that when he was moved into the general population, he felt he had gone "from hell to heaven," despite his initial fears about being housed

with inmates convicted of serious drug and murder charges.

"They feel I am innocent people put in a wrong place," he said, remembering various acts of kindness on the part of these criminal inmates – ordering groceries for him, for example, because he had no money for his prison account. "I tell them that I was in solitary confinement for four months and six days, they cannot believe that."

On March 20, 2002, Mr. Mehmood was charged with – and pled guilty to – working on an invalid Social Security card. He was transferred to Passaic County Jail in Paterson, New Jersey, to await deportation. In May 2002 he was deported to Pakistan. He now lives in Karachi with his family and cannot return to the United States for 10 years.

cratic wrangle, Dunn recalls, because the list could only be revised – quarterly – by Bureau of Prison officials in Washington.

In New Jersey, said Lee Gelernt, a lawyer with the Immigrants Rights Project, the first step to providing help was to meet with the regional director of the INS in Newark to negotiate better access to men detained at Passaic County Jail, Bergen County Jail and other detention facilities under contract with the INS.

Earlier, the ACLU had learned, lawyers had shown up at some facilities – after sending fax requests to see detainees 48 hours in advance, as instructed – only to be denied access to the men on the faxed list because the fax couldn't be found.

"That happened more than once," said Gelernt. "So we tried to attack on two fronts: We used whatever information we had from organizations, news reports or from families trying to see people directly."

Lawyers would also ask to make a "Know Your Rights" presentation and offer detained immigrants free assistance as a way to learn names. "Initially, we had no luck with that," Gelernt said. "The officials said we needed specific names." Eventually, after a few months, ACLU attorneys and others were allowed to conduct "Know Your Rights" presentations.

ACLU attorneys continued to provide assistance to immigrants still in detention throughout 2002. By the end of the year, most of the immigrants detained after September 11 had been deported. But the ACLU continued its advocacy.

Following Anthony Romero's contact with the Pakistani Consulate, the ACLU forged an inter-

national tie with Pakistan's Human Rights Commission, a nongovernmental organization. With the help of the commission, the ACLU tracked down many of the Pakistani men who had been deported. In late 2002, the ACLU traveled to Pakistan to interview these men and publicize their plight.⁵

Unable to obtain justice for many while they were in the United States, and armed with information from the deported men and the advocates who had aided them, the ACLU turned to the international legal arena.

Of "Civil Liberties" and "Human Rights"

In our efforts to strengthen and expand the body of U.S. laws protecting civil rights and civil liberties, the ACLU has long recognized international human rights law as an important yet sadly underutilized tool. We have been part of a growing movement to hold the United States accountable to international human rights norms, and to introduce the international human rights framework to domestic rights advocacy.

Today, thanks to globalization and a growing body of law from international tribunals, the movement is gaining new momentum. As Justice O'Connor has said, "No government institution can afford now to ignore the rest of the world." In the past year the ACLU served as a catalyst for the movement by training our lawyers and others in international human rights law and increasing our work in this area.

In October of 2003, the ACLU convened a landmark conference on "Human Rights at Home: International Law in U.S. Courts." Held in Atlanta at the Carter Center, this was the first national conference ever held on using interna-

⁵ David Rohde, "U.S.-Deported Pakistanis: Outcasts in 2 Lands," *The New York Times*, Jan. 20, 2003.

tional human rights law in the American justice system. The gathering drew an overflow crowd of lawyers and community activists from 30 states. Workshops featured practicing lawyers, judges and organizers from the U.S., Britain and South Africa.

"Our goal," announced Ann Beeson, associate legal director of the national ACLU and the conference organizer, "is nothing less than to forge a new era of social justice where the principles of the United Nation's Universal Declaration of Human Rights are recognized and enforced in the United States."

Expanding this movement is crucial now to stem the backlash against rights in the name of national security. A global human rights framework holds the U.S. government accountable for its actions abroad as well as at home. For example, in October 2003, the ACLU and other groups filed a Freedom of Information Act request demanding government documents in response to reports that it is intentionally sending detainees to countries known to engage in torture and other illegal interrogation techniques. If successful, this action will help us determine whether the U.S. has violated the Convention Against Torture, one of the few human rights treaties that the U.S. has actually signed and ratified.

A global lens can also illuminate the ripple effect that rights violations in the U.S. have in other countries. The USA PATRIOT Act, now being challenged from across the political spectrum, has already spawned copycat

"PATRIOT Acts" throughout the free and not-so-free world that in many cases are even less respectful of human rights than the homegrown law.

In addition, a human rights framework is motivating a new generation of activists because it integrates a wide range of related rights issues – such as poverty, discrimination, immigration and workers' rights – and fosters closer collaboration between lawyers, grassroots organizers and educators.

Finally, putting the "human" back into "human rights" extends protections to every human being. The concept sounds simple but is increasingly ignored by our own government. In the name of "national security," the U.S. has begun to detain a growing number of people in legal limbo in Guantanamo and elsewhere, arguing that they have no rights under our Constitution and no enforceable rights under international humanitarian or human rights laws. Framing rights in terms of human rights stops this legal shell game.

After leading efforts to internationalize protections for human rights, the United States has spent the last several decades exempting itself from a growing body of international human rights conventions. Especially given the current climate for rights protections within the United States, it is vital that civil rights and human rights activists in the U.S. come together to fight this growing exceptionalism. As the nation's premier civil liberties organization, the ACLU is perfectly positioned to take a leading role in this movement.

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