

January 27, 2004

Working Group on Arbitrary Detention  
c/o Office of the UN High Commissioner for Human Rights  
United Nations Office at Geneva  
CH-1211, Geneva 10  
Switzerland

Dear Members of the Working Group,

Enclosed for your attention is a Petition concerning the detention of certain immigrants held by the United States in connection with its investigation into the events of September 11, 2001.

Please feel free to contact me if you have questions.

Sincerely,

Jameel Jaffer  
Staff Attorney

**PETITION TO THE  
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION  
JANUARY 27, 2004**

Submitted on behalf of certain immigrants detained by the United States  
in connection with its investigation into the events of September 11, 2001

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## **PRELIMINARY STATEMENT**

In the months following the terrorist attacks of September 11, 2001, the United States Immigration and Naturalization Service (INS) arrested and detained hundreds of Muslim immigrants, most from South Asian or Middle Eastern countries. The arrests were often arbitrary and haphazard and not based on evidence of criminal activity. Yet the government deemed these immigrants “of interest” to the September 11 investigation and jailed them for weeks and in many cases months.

Once in detention, individuals were denied fundamental procedural rights recognized under international law. In many cases, the government failed to notify detainees of the charges they faced. It refused them access to counsel. Further, the government denied them meaningful judicial review of their confinement: it failed to bring detainees promptly before judicial officers; it categorically opposed detainees’ release on bond; and, under a policy known as “hold until cleared,” it prolonged individuals’ immigration detention until the Federal Bureau of Investigation (FBI) affirmatively cleared them of connections to terrorism.

Most of the men detained were not charged with a criminal offense of any kind. In fact, it is now apparent that the overwhelming majority of the detainees were simply non-citizens who had overstayed their visas or committed similar civil immigration infractions that, in the ordinary case, would not have led to detention at all.

Petitioners are thirteen individuals who were arrested and detained under the policies described above. Three of the Petitioners remain in custody. Each of the Petitioners submits that his detention was arbitrary within the meaning of the Working Group’s mandate.

Petitioners respectfully request that the Working Group not confine its ruling to the cases of those Petitioners who remain in custody. Petitioners who are no longer in the custody of the United States continue to suffer adverse consequences because they were targeted under the policies complained of. Many of these policies remain in effect, and there is a substantial danger that they will be applied again in the future. In addition, the United States has repeatedly refused to disclose the names of those immigrants whom it detained in connection with the September 11 investigation; individuals other than Petitioners likely remain in custody as a result of the policies described in this Petition. Given the extraordinary nature of the issues presented here, Petitioners respectfully submit that the Working Group should exercise its authority to rule on the arbitrary character of each of the Petitioners’ detentions and to address the legality of the policies described herein.

## PETITIONERS

Ahmed H. Abualeinen, a 58 year old Jordanian national, was detained by the United States for a period of over 5 months from December 21, 2001, until May 5, 2002. Mr. Abualeinen currently resides in Jordan.

Khaled K. Abu-Shabayek, a 44 year old Jordanian national, was detained by the United States for a period of five months from April 18, 2002, until September 12, 2002. Mr. Abu-Shabayek currently resides in Jordan.

Khaled Raji Said Albitar, a 34 year old Jordanian national, was detained by the United States for a period of nearly nine months from October 14, 2001, until July 8, 2002. Mr. Albitar currently resides in Jordan.

Zulfigar Ali, a 34 year old Pakistani national, was detained by the United States for a period of over seven months from November 6, 2001, until June 24, 2002. Mr. Ali currently resides in Pakistan.

Khurram Altaf, a 36 year old Pakistani national, was detained by the United States for a period of approximately two months from April 30, 2002, until June 27, 2002. Mr. Altaf currently resides in Pakistan.

Sadek Awaed, a 32 year old Egyptian national, has been detained by the United States since May 2, 2002, a period of over twenty months. Mr. Awaed is currently detained in Kearny, New Jersey.

Benamar Benatta, a 28 year old Algerian national, has been detained by the United States since September 12, 2001, a period of more than twenty-eight months. He is currently detained in Batavia, New York.

Mohamed M. Elzaher, a 31 year old Egyptian national, was detained by the United States for a period of eleven months from October 25, 2001, until September 24, 2002. Mr. Elzaher is currently seeking asylum in Europe.

Ansar Mahmood, a 26 year old Pakistani national, has been detained by the United States since January 2002, a period of over 23 months. Mr. Mahmood is currently detained in Batavia, New York.

Anser Mehmood, a 44 year old Pakistani national, was detained by the United States for a period of seven and one-half months from October 3, 2001 until May 19, 2002. Mr. Mehmood currently resides in Pakistan.

Noor Hussain Raza, a 63 year old Pakistani national, was detained by the United States for a period of thirty-eight days from December 19, 2001, to January 26, 2002. Mr. Raza currently resides in Pakistan.

Naeem Sheikh, a Pakistani national, was detained by the United States for a period of one month, from March 1, 2002, to March 31, 2002. Mr. Sheikh currently resides in Pakistan.

Sarwar Yamen, a 35 year old Afghan national, was detained in the United States for a period nine months, from October 10, 2001, until July 14, 2002. Mr. Yamen currently resides in Pakistan.

Detailed descriptions of each Petitioner's arrest and detention can be found in Appendix A hereto.

## ARGUMENT

I. Category II – The September 11 immigration detentions were arbitrary because arrests were indiscriminate and haphazard and disproportionately affected Muslims from South Asian and Middle Eastern countries

Petitioners were arrested by the United States government in the weeks and months following the September 11 attacks. They were classified “of interest” to the September 11 investigation and detained by the INS until the FBI affirmatively cleared them of connections to terrorism. Some of the Petitioners, together with an unknown number of others who were classified “of interest” to the September 11 investigation, are still in detention today. Virtually all of the individuals who were deemed “of interest” are Muslim, and virtually all are from South Asian or Middle Eastern countries.

The United States routinely arrested, detained, and classified immigrants “of interest” to the investigation although it lacked any evidence that the immigrants were connected to terrorism or had committed any criminal offense. The process was indiscriminate and haphazard and had a disproportionate impact on Muslims from particular nations. Petitioners submit that the detentions were arbitrary within the meaning of the Working Group’s mandate because they were inconsistent with Article 7 of the Universal Declaration of Human Rights<sup>1</sup> and Article 26 of the International Covenant on Civil and Political Rights.<sup>2</sup> The Human Rights Committee has made clear that Article 26 proscribes “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>3</sup> Thus, a state may violate Article 26 even by actions that are not discriminatory in intent, if the actions have a disparate impact on individuals of a particular race, religion, or national origin and the differential treatment is not objective and reasonable.<sup>4</sup>

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<sup>1</sup> Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., art. 7, U.N. Doc. A/810 (1948) [hereinafter, “UDHR”].

<sup>2</sup> International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, art. 26, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter, “ICCPR”].

<sup>3</sup> United Nations Human Rights Committee, General Comment 18, ¶ 7 (emphasis added).

<sup>4</sup> See *Vries v. The Netherlands*, Human Rights Committee, Communication No. 182/1984 (Apr. 9, 1997), ¶ 12.3 (1987) (“[Article 26] prohibits discrimination in law or in practice in any field regulated and protected by public authorities” (emphasis added)); Human Rights Committee,

The United States government's own internal investigation, and the facts that Petitioners allege here, firmly establish both the indiscriminate nature of the detentions and their discriminatory impact. In June 2003, the U.S. Department of Justice's Office of the Inspector General (OIG) issued a comprehensive 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."<sup>5</sup> According to the June 2003 OIG report, many detainees were "arrested more by virtue of chance encounters or tenuous connections to a [possible terrorism] lead rather than by any genuine indications of a possible connection with or possession of information about terrorist activity."<sup>6</sup> The United States government "made little attempt to distinguish between aliens arrested as subjects of a . . . lead and those encountered coincidentally."<sup>7</sup> The report found that the classification of detainees as "of interest" to the terrorism investigation was "indiscriminate and haphazard" and "in many cases weak."<sup>8</sup>

The end result was the arrest and detention of hundreds of individuals who had no connection whatsoever to terrorism. According to the June 2003 OIG Report, the government detained 762 individuals as "of interest" to the investigation in the first 11 months after the September 11 attacks.<sup>9</sup> The government detained many more Muslim men in the subsequent months. Individuals were labeled "of interest" even where "there was no affirmative evidence of a connection to terrorism."<sup>10</sup> As the June 2003 OIG

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Comments on Peru, UN Doc. CCPR/C/79/Add.67 (1996), ¶ 13 (differential treatment must be objective and reasonable).

<sup>5</sup> United States Department of Justice, Office of the Inspector General, *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* (April 2003) [hereinafter, "June 2003 OIG Report"]. (The report was apparently completed in April but was not released until June.) A copy of the report is appended as an Appendix hereto.

<sup>6</sup> *Id.* at 41–42; *see also id.* at 186 ("Many leads that resulted in an alien's arrest on immigration charges were quite general in nature, such as a landlord reporting suspicious activity by an Arab tenant... [T]he FBI and INS in New York City did little to distinguish the aliens arrested as the subjects of [terrorism investigation] leads or where there was evidence of ties to terrorism from those encountered coincidentally to such leads with no indication of any ties to terrorism."); *id.* at 64 (cataloguing examples of indiscriminate arrests).

<sup>7</sup> *Id.* at 69.

<sup>8</sup> *Id.* at 70.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 70.



Report rightly acknowledges, “[t]his disconnect should have been discovered earlier and should have caused a review of the manner in which detainees were being categorized.”<sup>11</sup>

In most cases, the government’s stated justification for arresting a detainee was not that the detainee was connected to terrorism but rather that he had violated a civil immigration law – for example, by remaining in the country after the expiration of a valid visa. However, these immigration violations would not ordinarily have led to an individual’s detention. As the June 2003 OIG Report noted, “It is unlikely that most if not all of the individuals arrested would have been pursued by law enforcement authorities for these immigration violations but for the [September 11] investigation.”<sup>12</sup> It was only the indiscriminate classification of these individuals as “of interest” that served to distinguish the September 11 detainees from the millions of other individuals who reside in the United States without valid immigration papers.

Petitioners’ experiences illustrate the arbitrariness of the arrests. Petitioner Sadek Awaed met voluntarily with the FBI approximately five times in an effort to assist them in their investigation. He was subsequently stopped by local police for a traffic violation and turned over by them to the INS, which detained him. Petitioner Sarwar Yamen was arrested and detained in the course of what appeared to be a general raid of Afghan homes. Petitioner Khaled Albitar was detained after the FBI came to his home looking for someone else. Petitioner Ansar Mahmood was initially arrested because he asked a security guard to take a photograph of him in a scenic area that happened to overlook a water treatment facility.

The government’s policies disproportionately affected Muslim men from Middle Eastern and South Asian countries. Indeed, virtually *all* of the men arrested, detained, and classified as “of interest” to the investigation were from these countries. Of the 762 detainees that were the subject of the June 2003 OIG report, 254 were from Pakistan, 111 from Egypt, and approximately 50 from Turkey.<sup>13</sup> Many of the other detainees were nationals of Jordan, Yemen, India, Saudi Arabia, and Morocco.<sup>14</sup> While a handful of the detainees were nationals of the United Kingdom, France, and other Western countries, most or all of these detainees were naturalized citizens of those countries and were

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<sup>11</sup> *Id.* at 70.

<sup>12</sup> *Id.* at 41.

<sup>13</sup> *Id.* at 21.

<sup>14</sup> *Id.*

originally from South Asia or the Middle East.<sup>15</sup> All or almost all of the detainees were Muslim. Few if any non-Muslims were classified “of interest” to the investigation.<sup>16</sup>

Indeed, there is evidence that the disproportionate impact of the government’s policies on Muslim men from the Middle East and South Asia was in part a consequence of *intentional* discrimination. A Human Rights Watch report issued in August 2002 concluded on the basis of interviews with detainees and with government officials that “where Muslim men from certain countries were involved, law enforcement agents presumed some sort of a connection with or knowledge of terrorism until investigations could subsequently prove otherwise.”<sup>17</sup> Petitioners’ experiences were consistent with that description. For example, Sadek Awaed was asked by a police officer whether he was Middle Eastern. When he answered in the affirmative, the officer responded: “Got you, motherfucker.” It was only at this point that the officer contacted the INS and Mr. Awaed was taken into federal custody. Other Petitioners had similar experiences. When Mohamed Elzaher asked his arresting officer why his treatment as an immigrant would differ after September 11 since he had nothing to do with the terrorist attacks, the arresting officer responded, “because you’re a fucking Muslim.”

Petitioners recognize that the U.S. government has a legitimate and important interest in protecting the country against further terrorist attacks. That interest, however, cannot justify a derogation from the rights reflected in Article 7 of the UDHR and Article 26 of the ICCPR. While Article 4 of the ICCPR permits states to derogate from certain provisions of the Covenant in times of public emergency, “one of the conditions for the justifiability of any derogation from the Covenant is that the measures do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.”<sup>18</sup> As the June 2003 OIG Report concluded, “[e]ven in the hectic aftermath of the September 11 attacks, . . . 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 but simply were encountered in connection with a . . . lead.”<sup>19</sup> Petitioners submit that the U.S. government should also have ensured that the INS and FBI did not use race, religion, or nationality as a proxy for terrorist threat.

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<sup>15</sup> Human Rights Watch, *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees* (Aug. 2002) [hereinafter, “Aug. 2002 HRW Report”], at 10.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> Human Rights Committee, General Comment 29, ¶ 8.

<sup>19</sup> June 2003 OIG Report, at 70.

II. Category III – The September 11 immigration detentions were arbitrary because they were inconsistent with due process

a. Petitioners were not promptly informed of the charges against them

Article 9(2) of the ICCPR provides that “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly notified of any charges against him.”<sup>20</sup> The Human Rights Committee has held that “[A]rticle 9(2) . . . requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded.”<sup>21</sup> The Working Group has similarly recognized “the right of every defendant to be promptly informed of the charges against him in order to be able to prepare his defence.”<sup>22</sup> While the Working Group has held that a state may in some limited circumstances permissibly detain an individual for as long as 48 hours without notifying him of the charges against him,<sup>23</sup> Petitioners are not aware of any opinion in which the Working Group has suggested that a longer delay would be consistent with Article 9.

The United States government routinely failed to afford September 11 detainees prompt notice of the charges against them. As many as 40% of the detainees addressed by the June 2003 OIG Report were held for longer than 3 days before being served with a Notice to Appear (NTA) – the document used by the INS to inform a detainee of the charges against him.<sup>24</sup> According to the report, numerous detainees did not receive an NTA for weeks, and some for more than a month after arrest.<sup>25</sup> Petitioner Zulfigar Ali was one of the individuals subjected to these delays: he was not served with an NTA until

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<sup>20</sup> See also Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment [hereinafter, “Principles”], Principle 10 (“Anyone who is arrested . . . shall be promptly informed of any charges against him.”); Principle 11 (“A detained person . . . shall receive prompt and full communication of any order of detention, together with reasons therefore.”); Principle 12 (requiring that the reasons for arrest be recorded and communicated to the detainee).

<sup>21</sup> *Adolfo Drescher Caldas v. Uruguay*, Human Rights Committee, Communication No. 43/1979, U.N. Doc. CCPR/C/19/D/43/1979 (1983).

<sup>22</sup> Working Group Opinion No. 28/1998 (Mexico), ¶ 14. The Working Group has made clear that prolonged detention without charges can be considered unlawful by international standards even if supported by domestic legislation.

<sup>23</sup> Working Group Opinion No. 15/2000 (Bahrain), ¶ 14(a).

<sup>24</sup> June 2003 OIG Report, at 30.

<sup>25</sup> *Id.* at 35.

12 days after his arrest. Such delays are clearly inconsistent with the rights guaranteed by Article 9.<sup>26</sup>

As the June 2003 OIG Report observed, detainees suffered serious hardships as a result of the government's failure promptly to notify detainees of immigration charges:

First, [the delay] postponed detainees' knowledge of the specific immigration charges they faced. Second, it affected the detainees' ability to obtain effective legal counsel given the lack of specific charges. Third, a delay in serving NTAs and accompanying documents postponed the detainees' opportunity to request bond re-determination hearings and seek release.<sup>27</sup>

Where formal notices *were* promptly issued, in some cases they were not sufficient to apprise detainees of the charges they faced. Petitioner Sadek Awaed, for example, had been issued a deportation order *in absentia* in 1998. When he was arrested in May 2002, he was issued a Notice of Reinstatement of Removal. He did not understand the notice or its ramifications, however, because he was unaware of the earlier deportation order. It was not until 12 months later, when Mr. Awaed's attorney was able to obtain a copy of the underlying order, that Mr. Awaed learned the charges on which that order was based.

Even those September 11 detainees who received timely notice of the immigration charges against them received no notice related to the FBI's criminal investigation. Petitioners were not told why the FBI was investigating them; what

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<sup>26</sup> It appears that, in delaying the service of NTAs upon individuals detained after September 11, the INS may have relied on a new agency regulation that permits the government, in emergencies and other "extraordinary circumstance[s]," to delay "for a reasonable time" the determination of which charges to file against a detainee. See 8 C.F.R. § 287.3. Petitioners note, however, that a state's failure promptly to notify detainees of the charges against them may contravene international standards even if consistent with domestic legislation. See, e.g., Working Group Opinion No. 8/1998 (Israel), ¶ 15 ("[E]ven though this form of deprivation of liberty may appear to comply with domestic legislation, the provisions of that legislation seriously contravene international rules governing the right to a fair trial . . ."); Working Group Opinion 29/1998 (Mexico), ¶ 14. The new INS regulation clearly runs afoul of Article 9(2) in several respects, because it fails to define "emergency," fails to define "extraordinary circumstance," fails to define "reasonable time," and fails to require the government to justify any delay. See 8 C.F.R. § 287.3; see also Working Group Opinion No. 15/2000 (Bahrain), ¶ 14(a) (declining to find detention arbitrary where legislation allowed detention without charge for 48 hours, but noting that any additional investigative detention was subject to judicial approval and limited to a further 48 hours).

<sup>27</sup> June 2003 OIG Report, at 35-36.

evidence (if any) the FBI possessed; or what (if anything) they could do to clear their names. Yet, as discussed below, it was ultimately the FBI investigation that determined their continued confinement.

The government's failure to inform individuals of the reasons for their detention clearly violates Article 9(2).

b. Petitioners were denied prompt and effective judicial review

Petitioners and others who were arrested and classified “of interest” to the September 11 investigation were detained for extended periods of time without prompt access to effective judicial review, in violation of Article 9 of the ICCPR.

i. Petitioners were not promptly brought before a judicial authority

Article 9(3) of the ICCPR provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.” The Human Rights Committee has held that Article 9(3) applies to individuals who have been arrested but not charged with a crime.<sup>28</sup>

The Working Group has held that a period of 14 days is “far in excess of what can be considered consistent with the term ‘promptly’” within the meaning of ICCPR article 9(3) – even when the legal basis of detention is suspicion of a serious crime such as terrorism.<sup>29</sup> On the other hand, “[a] 72-hour time limit is, in the Group’s opinion, within the bounds of what can be considered to be ‘prompt.’”<sup>30</sup> A 48-hour extension may be reasonable “in a case involving extremely serious offences and a difficult and complex investigation” where judicial control is in place to guarantee the protection of the accused.<sup>31</sup> Notably, however, the Working Group has expressed specific concern about

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<sup>28</sup> Report of the Human Rights Committee, U.N. GAOR, 35th Sess., Supp. No. 40 (1980), Annex VI. *See also* Principle 11 (“A judicial or other authority shall be empowered to review as appropriate the continuance of detention.”); Principle 32 (“A detained person . . . shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.”).

<sup>29</sup> Working Group Opinion No. 24/2001 (Sri Lanka), ¶ 12.

<sup>30</sup> Working Group Opinion No. 26/1999 (Spain), ¶ 9.

<sup>31</sup> *Id.*

“consistent pattern[s] of conduct directed at ensuring [] continued detention without recourse to an effective legal remedy.”<sup>32</sup>

Many of the Petitioners and other September 11 detainees were not brought before a judge for weeks or even months after their arrest. For example, Petitioner Sadek Awaed, who was ordered deported *in absentia* prior to his arrest and subsequent detention, has been detained since May 2, 2002, without once having been brought before a judicial authority. Petitioner Mohamed Elzaher was detained for approximately three months before being brought before a judge. Petitioner Anser Mehmood was detained for approximately three weeks before being brought before a judge. Petitioner Noor Hussain Raza was detained for 38 days but never brought before a judge. Petitioner Khaled Abu-shabayek was detained for approximately five months but never brought before a judge. Petitioner Sarwar Yamen was detained for approximately 9 months but never brought before a judge.

ii. Petitioners were categorically denied release on bond

Petitioners and other September 11 immigration detainees were also denied meaningful judicial review because of policies that the United States government adopted with respect to release on bond.

Article 9(3) of the ICCPR specifically provides for the right to a bond hearing promptly after arrest and states that “It shall not be the general rule that persons awaiting trial shall be detained in custody.” The Working Group has found that Articles 9 and 14 of the ICCPR apply with equal force to administrative detentions where there is a consistent pattern of governmental conduct directed at ensuring continued detention without remedy.<sup>33</sup>

After September 11, the United States developed a strategy to keep certain immigration detainees in custody until the FBI cleared them of connections to terrorism.<sup>34</sup> To this end, the INS adopted several policies after September 11 that effectively made it the “general rule” that Petitioners and other September 11 detainees would be detained in custody pending trial.

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<sup>32</sup> Working Group Opinion No. 9/1998 (Israel), ¶ 13; *see also* Working Group Opinion No. 15/2000 (Bahrain) ¶ 14(6).

<sup>33</sup> Working Group Opinion No. 9/1998 (Israel), ¶ 13 (“Prolonged periods of administrative detention, without remedy, would render the detention illegal.”); Working Group Opinion No. 10/1998 (Israel), ¶ 11; Working Group Opinion No. 11/1998 (Israel), ¶ 11; *see also* Principles 10, 11, 12 and 23.

<sup>34</sup> June 2003 OIG Report, at 76.

First, the INS made an initial custody determination of “no bond” for all September 11 detainees.<sup>35</sup> As a result, *every* detainee classified as “of interest” to the investigation was initially denied release on bond – whether or not the INS had any evidence indicating that the detainee’s release would pose a danger to the community or a flight risk. The “no bond” policy was categorical, and by design did not take into account the facts of any particular detainee’s case.

Second, the INS sought to delay bond hearings to which individuals were entitled. Generally, a detainee dissatisfied with the bond amount initially set by the INS can request a bond re-determination hearing before an immigration judge. After inquiring into the detainee’s dangerousness and risk of flight, the immigration judge may determine a new bond amount and order that the detainee be released once the bond is posted. In cases involving September 11 immigration detainees, the INS sought repeatedly to delay these bond hearings. According to the June 2003 OIG Report, “INS attorneys requested multiple continuances in bond hearings for September 11 detainees in an effort to keep detainees in custody as long as possible.”<sup>36</sup>

Third, the INS instituted a policy of categorically opposing release at bond hearings in order to allow the FBI more time to investigate the detainees. The INS opposed bond in every “of interest” case even though the INS rarely had any specific information on which to base its opposition.<sup>37</sup> Indeed, the June 2003 OIG Report found that INS attorneys were routinely required to oppose bond in immigration court even where “from the INS’s perspective it had no evidence to support a ‘no bond’ position.”<sup>38</sup>

As early as October 2001, certain officials at the INS became concerned about the defensibility of the INS’s policy of opposing bond in every case, even where the FBI had not provided any information suggesting that the detainee was linked to terrorism or criminal activity of any sort.<sup>39</sup> The policy remained in place, however, at least until early

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 78.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 78, 89. In response to its own discomfort with the lack of information being offered by the FBI to sustain prolonged detentions, in October 2001 the INS requested that the Department of Justice amend its “no bond” policy. *Id.* at 81. Over FBI opposition to this proposal, the Department agreed to soften the general policy in some respects. *Id.* But the revised policy was only slightly less austere and still resulted in prolonged arbitrary detentions for many detainees. Critically, the amended policy “did not allow the INS to treat a September 11 detainee as a ‘normal’ detainee if the FBI failed to provide information to support the ‘no bond’ position.” *Id.* at 81-82; 89.

2002. As a result, hundreds of detainees who otherwise would have been released were detained without specific justification.

Fourth, in the few cases in which a detainee could persuade an immigration judge to allow release on bond, the INS would immediately appeal the decision and file to stay the decision in the interim.<sup>40</sup>

Several of the Petitioners were denied bond as a result of these policies. Petitioner Khaled Albitar was initially granted bond of \$1 million but the government filed an automatic stay, effectively overturning the immigration judge's decision. Petitioner Zulfigar Ali was denied bond by an immigration judge in December 2001 because he had not yet been cleared by the FBI. Petitioner Anser Mehmood was denied bond after the government argued that he was a flight risk and a danger to the community despite no evidence of criminal activity or flight risk.

Petitioners submit that the government's policy of denying, delaying, opposing, and circumventing bond in the case of every detainee classified as "of interest" to the investigation amounted to a "general rule [requiring] that persons awaiting trial . . . be detained in custody," in contravention of Article 9(3) of the ICCPR.

iii. Petitioners were subjected to investigative detention without judicial oversight

As noted above, the government adopted a policy under which Petitioners and others were detained under the authority of the immigration laws until the FBI affirmatively cleared them of connections to terrorism. The government applied this "hold until cleared" policy categorically, even against the hundreds of detainees whom the government had no reason to suspect of terrorism or criminal activity.<sup>41</sup> Petitioners have demonstrated that this policy denied them meaningful judicial review by depriving them of notice of the reasons for their detention and categorically preventing their release on bond.

Petitioners further submit that the "hold until cleared" policy severely impaired judicial review because the primary determinant of an individual's continued confinement was whether he had been "cleared" by the FBI for release or removal. The FBI's decision to "clear" a detainee was not subject to review by any court and was not connected to the immigration charges that ostensibly justified an individual's detention. In other words, it was executive officers who were responsible for arresting an individual

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<sup>40</sup> *Id.* at 76.

<sup>41</sup> Indeed, government officials have acknowledged that the principal intent of the policy was to provide a means of detaining individuals for investigative detention "when there was insufficient information for criminal cases." *Id.* at 39 (internal quotation marks omitted).



in the first place, and it was executive officers who were ultimately responsible for determining whether the individual's detention should continue. In practice, the "hold until cleared" policy ensured the continued detention of Petitioners without allowing them recourse to an effective legal remedy.<sup>42</sup>

In many instances, the FBI's clearance process took months. According to the June 2003 OIG Report (which focused on two detention facilities that together housed the majority of September 11 detainees) the FBI cleared only a handful of the 762 detainees considered by the report within three weeks of their arrest.<sup>43</sup> The average length of detention until clearance was over eleven weeks. More than a quarter of the clearance procedures took longer than three months, and in one case a detainee waited 244 days for clearance.<sup>44</sup> Petitioner Benamar Benatta was cleared by the FBI on November 2001, approximately two months after his arrest. Petitioner Sarwar Yamen was cleared in February 2002, approximately four months after his arrest. Petitioner Mohammed Elzaher was cleared in April 2002, approximately six months after his arrest.

Under the "hold until cleared" policy, the government continued to detain some individuals for months even after their immigration cases were final and their deportation was feasible.<sup>45</sup> Several Petitioners' detentions appear to have been extended as a result of this practice. Petitioner Anser Mehmood was held for four months following the entry of a final removal order against him. Petitioner Ahmed Abualeinen agreed to voluntary departure in January 2002 but was held until May 2002.<sup>46</sup> Petitioner Khaled Albitar received a final order of removal in April 2002 but was not removed until July 2002.

In sum, the government denied the September 11 detainees any meaningful opportunity to challenge their continued detention by failing to bring them promptly before judicial officers, adopting a "no bond" policy, and detaining individuals until the FBI affirmatively cleared them of connections to terrorism. This denial violates

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<sup>42</sup> Working Group Opinion No. 9/1998 (Israel), ¶ 13; Working Group Opinion No. 10/1998 (Israel), ¶ 11; Working Group Opinion No. 11/1998 (Israel), ¶ 11; *see also* Principles 10, 11, 12 and 23

<sup>43</sup> June 2003 OIG Report, at 46.

<sup>44</sup> *Id.* at 51-52.

<sup>45</sup> *Id.* at 91; Aug. 2002 HRW Report, at 58 (finding that "[s]ome detainees who were granted voluntary departure . . . waited in jail, ticket in hand, past the deadline set by the judge for departure until the FBI decided that they were on no use to the terrorism investigation.").

<sup>46</sup> Under United States law, an alien is sometimes entitled offered the chance to depart the country voluntarily rather than face the possibility of a formal removal order. Aliens who agree to voluntary departure do so to avoid the legal costs associated with contesting immigration charges, the possibility of detention while the charges are pending, or the stigma and legal consequences that accompany a formal removal order.

fundamental principles of due process and renders Petitioners' detentions arbitrary under international law.<sup>47</sup>

c. Petitioners were denied access to counsel

International law clearly establishes that all persons deprived of their liberty – citizens and non-citizens alike – have the right to be represented by legal counsel. That right is reflected in Article 9 of the ICCPR and in the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which were adopted by the General Assembly in 1988 through Resolution 43/173.<sup>48</sup> The right to assistance of counsel applies both to criminal and immigration detainees.<sup>49</sup> The Working Group's decisions, which have focused on the detention of criminal defendants, consistently uphold detainees' rights to counsel. Specifically, the Group has emphasized the detainee's right to speak confidentially<sup>50</sup> with a qualified attorney of the defendant's choice, and to access the information necessary to prepare his case.<sup>51</sup>

Petitioners and other September 11 detainees were denied these rights. For example, they were not provided court-appointed counsel, though as “of interest” detainees they were essentially detained and interrogated in connection with a criminal investigation and, accordingly, entitled to court-appointed counsel even under domestic

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<sup>47</sup> It is doubtful that the “hold until cleared” policy was legally supportable even under domestic law. According to the June 2003 OIG Report, even FBI and INS lawyers expressed doubts about the legality of the INS's authority to detain individuals after they could be removed. *See* June 2003 OIG Report, at 101.

<sup>48</sup> *See, e.g.*, Principle 17(1) (“A detained person shall be entitled to have the assistance of legal counsel.”); Principle 17(2) (“If a detained person does not have a legal counsel of his own choice, he shall be entitled to have legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.”); Principle 18(1) (“A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.”).

<sup>49</sup> United Nations Human Rights Instruments, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.4, Feb. 7, 2000, p. 88, ¶ 1 (applying article 9 to “all deprivations of liberty, whether in criminal cases or in other cases such as . . . immigration control”).

<sup>50</sup> *See, e.g.*, Working Group Opinion No. 37/2000 (Mexico), ¶ 12 (citing lack of ability to speak to counsel in private in finding a deprivation of liberty.)

<sup>51</sup> *See, e.g.*, Working Group Opinion No. 8/2001 (People's Republic of China), ¶ 8 (denial of access to official arrest notice delayed involvement of defendant's attorney, hindering the attorney's ability to prepare his case and thus restricting the defendant's right to counsel).

law.<sup>52</sup> Petitioners and other September 11 detainees were routinely interrogated about criminal matters outside the presence of an attorney. Petitioners Khaled Abushabayak, Sadek Awaed, Ahmed Abuleinen, Benamar Benatta, Khaled Albitar, and Sarwar Yamen were all interrogated about criminal matters without counsel present.

Petitioners and other September 11 detainees were also prevented from retaining counsel on their own. At the Metropolitan Detention Center in New York (which housed a large number of September 11 detainees), officials “decided to adopt a practice of permitting detainees one legal telephone call per week.”<sup>53</sup> In fact, detainees were sometimes not permitted even that one call; there were several extended periods – including one period of 20 days and another of 28 – during the course of which detainees were not permitted any legal calls at all.<sup>54</sup> Petitioners Benamar Benatta, Anser Mehmood, and Zulfigar Ali were all held at the Metropolitan Detention Center for at least some period of time and were all denied contact with counsel.

In many instances, Petitioners and other September 11 detainees were not even notified of their right to obtain counsel, though the INS is required under domestic law to provide that notification.<sup>55</sup> Where the INS did provide detainees with lists of *pro bono* counsel, the lists were often outdated and inaccurate.<sup>56</sup> The June 2003 OIG Report confirms that detainees who tried to use such lists were often stymied: “detainees often used their sole legal call during a week to try to contact one of the legal representatives on the *pro bono* list, only to find that the attorneys either had changed their telephone number or did not handle the particular type of immigration situation faced by the detainees.”<sup>57</sup>

Detainees held at the Metropolitan Detention Center had additional difficulties contacting or meeting with counsel because of a communications blackout imposed from September 17, 2001.<sup>58</sup> During the blackout, detainees were prohibited from placing or receiving telephone calls, sending or receiving mail, or receiving visitors. As a result, detainees were unable to contact counsel.<sup>59</sup> While the communications blackout

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<sup>52</sup> Under United States law, any person interrogated in custody regarding a criminal matter has the right to have counsel present and has the right to a court-appointed lawyer if he cannot otherwise afford one. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>53</sup> *Id.* at 131.

<sup>54</sup> *Id.* at 132.

<sup>55</sup> 8 U.S.C. § 1229(a)(E) & (b)(2).

<sup>56</sup> Aug. 2002 HRW Report, at 44; June 2003 OIG Report, at 137, 175-76.

<sup>57</sup> June 2003 OIG Report, at 161.

<sup>58</sup> *Id.* at 112.

<sup>59</sup> *Id.* at 114.

apparently came to an end after several weeks,<sup>60</sup> individual detainees were isolated for significantly longer. Petitioner Anser Mehmood was prevented from contacting counsel for three months after his arrest. Petitioner Benamar Benatta was held in solitary confinement for 6 months and was prevented from making or receiving calls during that time. He was allowed out of his cell only for interrogations with the INS and FBI.<sup>61</sup>

The right to counsel was further impaired because in many cases detainees were not informed of their right to contact consular officials.<sup>62</sup> Such officials could have helped detainees obtain counsel and, more generally, helped them to understand their legal rights. The June 2003 OIG Report notes that, at least at the Metropolitan Detention Center, the government considered detainees' calls to consular officials to be "social calls" and permitted no more than one such call a month.<sup>63</sup>

### **RELIEF SOUGHT**

For the reasons stated above, Petitioners respectfully request that the Working Group declare that the detention of Petitioners and other September 11 detainees was arbitrary because

- Petitioners and other September 11 detainees were arrested pursuant to a policy that was indiscriminate and haphazard and that had a disproportionate effect on Muslim men from South Asian and Middle Eastern countries;
- Petitioners and other September 11 detainees were not promptly informed of the specific charges against them;
- Petitioners and other September 11 detainees were not promptly brought before a judicial authority;

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<sup>60</sup> *Id.* at 158.

<sup>61</sup> During the communications blackout, Petitioners and others were also denied contact with family members. *Id.* at 114. The right to contact with family members is specifically guaranteed by the Principles. *See, e.g.*, Principle 19 ("A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.").

<sup>62</sup> *See, e.g. Vienna Convention on Consular Relations and Optional Protocols*, (1963), Art. 36(1) ("consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation."); Standard Minimum Rules for the Treatment of Prisoners, Rule 38(1) ("Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the States to which they belong."); Working Group Opinion No. 25/2000 (Myanmar), ¶ 10.

<sup>63</sup> June 2003 OIG Report, at 161.

- Petitioners and other September 11 detainees were categorically denied release on bond;
- Petitioners and other September 11 detainees were subjected to investigative detention without meaningful judicial oversight; and
- Petitioners were denied access to counsel.

Petitioners also request that the Working Group recommend that the United States take all necessary steps to remedy the ongoing arbitrary detention of those Petitioners who remain detained and to bring its policies into conformity with international law.

Respectfully submitted,

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**APPENDIX A:  
FACTS CONCERNING THE PETITIONERS**

Ahmad H. Abualeinen

Ahmed H. Abualeinen, a 58 year old Jordanian national, was detained by the United States for a period of over 5 months from December 21, 2001, until May 5, 2002. Mr. Abualeinen currently resides in Jordan.

Mr. Abualeinen lived in the United States for almost six years, last residing in Yonkers, New York. His wife and nine children all lived in Jordan while he was in the United States. Mr. Abualeinen entered the United States on July 21, 1996, on a tourist visa that allowed him a six-month stay.

On December 19, 2001, Mr. Abualeinen was detained by the INS after at least six officers came to his home at approximately 8:00 a.m. looking for his Egyptian roommate. When the INS officers examined Mr. Abualeinen's documents, they determined that he had overstayed his visa and arrested him.

Mr. Abualeinen was held for one night at Federal Plaza in New York City and then transferred to Passaic County Jail, where he was held throughout his five months of detention. While at Federal Plaza he was told that he could hire a lawyer. He was also told that he could call the Jordanian embassy. However, Mr. Abualeinen, who does not speak English and is unable to read or write in any language, was unable to call the embassy on his own and officials did not assist him in doing so.

The FBI interviewed Mr. Abualeinen at Passaic County Jail approximately 45 days after his arrest. He was asked, among other things, why he came to the United States, whether he had ever been to Afghanistan, whether he was a Muslim and where and when he prayed. The FBI agents told Mr. Abualeinen before the interview that they would conduct a polygraph test after the interview, but they never did.

At his first hearing before an immigration judge, which was held on January 4, 2002, the judge adjourned the hearing to give Mr. Abualeinen time to retain counsel. At the next hearing, held on January 16, 2002, Mr. Abualeinen still did not have counsel, but the judge granted him voluntary departure. Mr. Abualeinen agreed to depart voluntarily because he wanted to end his detention as soon as possible. Relatives sent the INS a flight ticket for Mr. Abualeinen after voluntary departure was granted in hopes of expediting his departure. Despite the grant of voluntary departure in January 2002, and despite the flight ticket provided by his relatives, Mr. Abualeinen remained in detention until May 5, 2002. He was told by the INS that his departure was delayed because his Jordanian passport had expired and needed to be renewed.

Petitioner Ahmed H. Abualeinen submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel and was denied the means of communicating with counsel.



Khaled K. Abu-Shabayek

Khaled K. Abu-Shabayek, a 40 year old Jordanian national, was detained by the United States for a period of five months from April 18, 2002, until September 12, 2002. Mr. Abu-Shabayek currently resides in Jordan.

Mr. Abu-Shabayek lived in the United States for twelve years, last residing in Cary, North Carolina, with his wife and his seven children, five of whom were born in the United States and are United States citizens. His other children were one and two years old when they arrived in the United States. In North Carolina, Mr. Abu-Shabayek had a driver's license, paid taxes, owned a car, and rented a home for his family.

In or around 1994, Mr. Abu-Shabayek applied for political asylum in the United States based on his status as a Jordanian Palestinian. Although his request was denied, he remained in the United States. At the time of his arrest, Mr. Abu-Shabayek was working in construction and had a side business selling grocery items. He had applied for permanent resident status. That application was pending in April, 2002.

On April 18, 2002, Mr. Abu-Shabayek was traveling in the state of Tennessee on business when he was stopped by the police. After asking for Mr. Abu-Shabayek's name and information, the officer placed Mr. Abu-Shabayek in handcuffs and took him to the local police station. The officer told Mr. Abu-Shabayek that he was illegally present in the United States.

After his arrest, Mr. Abu-Shabayek spent almost five months in detention before being deported to Jordan. During those five months he was moved frequently, spending time in facilities in Tennessee; Louisiana; Oklahoma; Georgia; New York; and New Jersey. He was often transported between locations in windowless vans.

In July 2002, Mr. Abu-Shabayek was transferred to a federal detention facility in New York and was held there for two months. Mr. Abu-Shabayek spent three weeks of this period in a separate, high-security part of the facility. Although criminal charges were never brought against him, the FBI told Mr. Abu-Shabayek that he was considered a "terrorist," and interrogated him over the course of six or seven sessions, in part about some prior sales of goods to persons who were actively involved in Islamic organizations.

Throughout Mr. Abu-Shabayek's five months in detention, including the period during which he was subjected to interrogation by the FBI, he was never brought before a judge. Mr. Abu-Shabayek was shown a piece of paper at his initial arrest notifying him that he had a right to a hearing; he repeatedly requested that hearing during the first ninety days of his confinement. The officers guarding him, however, denied his request. Mr. Abu-Shabayek was also aware of his right to post a bond and he requested a bond hearing. The officers denied this request as well, without explanation. Mr. Abu-

Shabayek was unable to speak to a representative of his consulate. In addition, there was a twenty-one day period over which Mr. Abu-Shabayek did not have access to a telephone.

Mr. Abu-Shabayek was deported to Jordan on September 12, 2002. His wife and children also left the United States, and the family currently lives in Amman. Mr. Abu-Shabayek was unable to find work for fifteen months after arriving in Jordan. During this time, he supported his family with money that he had earned while in the United States. His children, who grew up in the United States, have had extreme difficulty fitting into their new lives in Jordan.

Petitioner Khaled K. Abu-Shabayek submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel and was denied the means of communicating with counsel.

Khaled Raji Said Albitar

Khaled Raji Said Albitar, a 34 year old Jordanian national, was detained by the United States for a period of nearly nine months from October 14, 2001, until July 8, 2002. Mr. Albitar currently resides in Jordan.

Mr. Albitar entered the United States on April 3, 2001, on a six-month non-immigrant visa. On October 1, 2001, the FBI came to Mr. Albitar's home to question him about a former neighbor of his in Jordan who was in possession of Mr. Albitar's name and phone number. During the questioning, Mr. Albitar told the FBI everything that he knew about the neighbor, and the agents eventually thanked him for his cooperation and left.

On October 13, 2001, just days after Mr. Albitar's visa expired, FBI agents returned with INS agents to arrest Mr. Albitar at his home. Mr. Albitar was told that the basis for his arrest was that his visa had expired. He was taken to Federal Plaza in New York City where he was told that he could hire a lawyer and that INS agents would contact the Jordanian embassy for him.

The next day, on October 14, 2001, Mr. Albitar was taken to Passaic County Jail, where he remained for nine months. On October 22, 2001, four FBI agents questioned him, at the correctional facility, without an attorney present. They asked him questions regarding his travel, family, and work. The agents also showed him pictures of the September 11 hijackers and asked whether he knew them.

Approximately 6 weeks later, Mr. Albitar was connected to a polygraph machine and interrogated further, again without an attorney present. He stated that he needed an interpreter because he did not understand English. A second interrogation was conducted, with a polygraph and interpreter but without an attorney. The second interrogation lasted approximately eight hours. Mr. Albitar was told that he had failed the polygraph examination. He was returned to Passaic County Jail and placed in solitary confinement for 24 days, during which he was unable to communicate with an attorney.

While Mr. Albitar was detained, he was brought before an immigration judge more than ten times. All of these hearings were secret and closed to the public and press. His first hearing was held on October 30, 2001. Proceedings were adjourned until November 14, 2001, so that he could retain an attorney. Mr. Albitar then appeared with a private attorney, but the case was adjourned until November 21, 2001. At Mr. Albitar's third hearing, the government presented secret evidence to the judge and the hearing was adjourned until December 19, 2001. The next few closed hearings occurred on January 16, 2002; January 27, 2002; February 20, 2002; and March 6, 2002. Mr. Albitar's attorney failed to appear at the last hearing.

Mr. Albitar retained new attorneys from the Asian American Legal Defense and Education Fund for the hearing held on March 6, 2002. The new attorneys requested a bond hearing, which was held on March 27, 2002. At the closed bond hearing, the immigration judge heard oral argument and granted a bond of \$1 million contingent on a hearing to determine the source of the money. The INS filed for an automatic stay of the immigration judge's bond decision on March 29, 2002, at least temporarily nullifying the judge's bond determination.

A closed hearing to determine whether Mr. Albitar would be granted voluntary departure was scheduled for April 17, 2002. Mr. Albitar's attorneys filed evidence challenging the allegations by the FBI and INS, but the immigration judge denied Mr. Albitar's application for voluntary departure and ordered him deported, finding that he had lied to the American Embassy when obtaining his tourist visa because his intent was to seek employment in the United States. Mr. Albitar was never charged with any terrorism or criminal offense of any kind.

Because of Mr. Albitar's wish to return home as fast as possible, Mr. Albitar's attorneys withdrew his appeal on May 1, 2002. He was deported on July 8, 2002.

Petitioner Khaled Raji Said Albitar submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, was categorically denied release on bond, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel.

## Zulfigar Ali

Zulfigar Ali, a 34 year old Pakistani national, was detained by the United States for a period of over seven months from November 6, 2001, until June 24, 2002. Mr. Ali currently resides in Pakistan.

In December 1998, Mr. Ali entered Canada on a valid tourist visa. A few weeks after arriving in Canada, he crossed the border into the United States without being “inspected” by an immigration officer. He soon arrived in New York and began working for a construction company and later for a gas station. In April, 2001, Mr. Ali married a United States citizen. He applied for adjustment of his immigration status and paid the \$1000 fee associated with that application. He had not heard back from the INS about the status of his adjustment of status application when he was arrested.

On November 6, 2001, while Mr. Ali was at work, he was approached by two INS officers and one FBI agent who requested his identification. Although he showed them a valid work authorization card, he was arrested and taken to Federal Plaza in New York City. He was given no reason for his arrest. Mr. Ali was held at Federal Plaza for twenty-four hours while he was photographed, fingerprinted, and given papers to sign. He signed a document that stated that he had entered the United States illegally, gotten married, and filed an adjustment petition.

The next day, November 7, 2001, he was taken to Passaic County Jail, the first of three facilities in which he was detained. Eleven days later, on November 18, 2001, INS and FBI officials presented him with a Notice to Appear, charging him with illegal entry, and a warrant of custody.

At his first court appearance, held on December 5, 2001, the presiding immigration judge requested that Mr. Ali present proof that he had paid the adjustment of status fee and that he bring his wife to the next hearing. At the next scheduled hearing, on December 14, 2001, Mr. Ali presented all the proof required by the judge. Although his lawyer requested his release, the judge determined that he could not be eligible for bail or bond without FBI clearance and could not be released on parole because of his status. A final hearing date was set for February 5, 2002, in order to provide time for the FBI to clear Mr. Ali for release.

On January 2, 2002, prior to his final hearing date, Mr. Ali was criminally charged in federal court with making a false statement on his work authorization application and with marriage fraud. That same day, he was taken to the MDC, where he was held with the general criminal population.

After two months, his lawyer informed him that the government would drop the false marriage charges if he would agree to plead guilty to the false statement charge and return to Pakistan. On March 19, 2002, Mr. Ali pled guilty to the false statement charge.

On April 30, 2002, he was sentenced to time served and was transferred to Middlesex County Jail in New Jersey. At a May 21, 2002 hearing, he accepted deportation voluntarily and agreed to return to Pakistan. During his seven month detention, he was held in solitary confinement twice, once at the Metropolitan Detention Center for three days and once for a week at the Middlesex County Jail, both times as a result of fights that broke out among the prison population. On both occasions, Mr. Ali was not directly involved in the fight but was punished along with other prisoners. On June 24, 2002, Mr. Ali was put on a government chartered plane to Pakistan.

Petitioner Zulfigar Ali submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, was categorically denied release on bond, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel.

Khurram Altaf

Khurram Altaf, a 36 year old Pakistani national, was detained by the United States for a period of approximately two months from April 30, 2002, until June 27, 2002. Mr. Altaf currently resides in Pakistan.

In May 1985, Mr. Altaf left Pakistan and arrived in the United States on a six-month tourist visa. He eventually received temporary authorization to work in the United States, but he was later denied resident status and was issued a deportation order, which was still outstanding at the time of his arrest in April 2002. In April 2001, however, he applied for permanent residence based on the sponsorship of his sister, who is a United States citizen. This application was pending in April 2002.

At the time of his arrest, Mr. Altaf, his wife, and their three children lived in South Amboy, New Jersey, and Mr. Altaf worked as a general manager at a trucking company where he supervised over sixty employees. On April 30, 2002, two federal officers knocked on Mr. Altaf's front door at approximately 7:00 a.m. They asked to see identification. Mr. Altaf showed them his driver's license and the letter from the INS documenting his pending application for permanent residence. The officers told Mr. Altaf that they had an outstanding deportation order against him and that they wanted to question him for about thirty minutes to one hour. Mr. Altaf was taken to the INS building in Newark, New Jersey, where he was interrogated about his relatives in Afghanistan, his religious beliefs, and his knowledge of the events of September 11 and of Al Qaeda.

Following his interrogation, Mr. Altaf was held at the INS building for seven hours and then told that he would be taken to the Bergen County Jail in Hackensack, New Jersey.

Mr. Altaf did not see an immigration judge or any judicial authority during his two months in detention despite the efforts of his lawyer to request a hearing. On June 27, 2002, he was deported by chartered plane to Pakistan.

Petitioner Khurram Altaf submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Mr. Altaf submits that he was interrogated about criminal matters in the absence of counsel.

### Sadek Awaed

Sadek Awaed, a 32 year old Egyptian national, has been detained by the United States since May 2, 2002, a period of over twenty months. Mr. Awaed is currently detained in Kearny, New Jersey.

Mr. Awaed entered the United States from Egypt on or about September 20, 1991, as a non-immigrant visitor. On July 1, 1993, Mr. Awaed filed for asylum on the basis that he feared persecution if returned to Egypt, and with the assistance of a New York attorney he obtained a work permit. After filing for asylum, he was employed in various low-paying jobs, as a cab driver, doughnut maker, and used-car salesman. Immediately prior to his arrest, Mr. Awaed lived in Jersey City, New Jersey, where he worked as a taxi driver.

Beginning about two weeks after the September 11 attacks, Mr. Awaed was visited approximately five times by federal authorities who showed him pictures of the September 11 hijackers and those responsible for the 1993 bombing of the World Trade Center. He was promised immigration status and benefits from the FBI if he cooperated. Mr. Awaed attempted to assist the FBI, although it was ultimately determined by the FBI that he possessed no relevant information.

On May 2, 2002, shortly after his last FBI interview, Mr. Awaed was arrested for an automobile traffic violation by the Jersey City Police Department. While at the police station, he was asked by an officer if he was Middle Eastern. When he replied that he was, the police officer responded: "Got you, motherfucker!" The police then contacted the INS and Mr. Awaed was transferred into INS custody that same day.

Mr. Awaed was never orally informed of the reasons for his transfer to INS custody or for his detention, and remained in detention for a year before becoming aware of the grounds on which he has been detained. While he was given a written Notice of Reinstatement of Removal soon after his arrest, this document merely stated that he had been ordered deported in absentia on September 30, 1998, and provided an excerpt of a statute warning of consequences for willfully failing to depart the United States. Because the Notice of Reinstatement of Removal is a complicated legal document, and because he had been unaware of the earlier deportation order against him, Mr. Awaed did not understand the Notice or its ramifications.

Mr. Awaed thus remained unaware of the reasons for his protracted detention until some twelve months after his arrest, when he was visited by attorneys with the Asian American Legal Defense and Education Fund, a non-profit Asian American civil rights organization. These lawyers volunteered to provide him with legal representation. It was only after Mr. Awaed's attorney made a formal request for information to the



United States government that Mr. Awaed was made aware of the basis for the charges against him. Specifically, Mr. Awaed learned for the first time that over four years ago, on July 10, 1998, a Notice to Appear had been issued by the INS, charging him with overstaying his visa. Mr. Awaed never received notice of this charge because the Notice to Appear was sent to an address that did not belong to Mr. Awaed. His attorney further discovered that, again unbeknownst to Mr. Awaed, an interview had been scheduled with an asylum officer and that Mr. Awaed was ordered deported in absentia on September 30, 1998 without his knowledge or an opportunity to be heard.

Mr. Awaed has been detained primarily at the Hudson County Correctional Facility in Kearny, New Jersey. For most of the first fifteen months of his detention he was housed with the criminal population. In August 2003, he was taken to Buffalo, New York, without his lawyer's knowledge, to be placed on a charter flight of immigrants ordered deported to Jordan and Egypt – despite his credible fear that he would be persecuted if returned to Egypt. He was only in Buffalo for approximately ten days, as it turned out that the United States government had erroneously brought him to be placed on the flight. He was eventually returned to the Hudson County Correctional Facility, where he was placed in the immigration section of the prison.

Despite the fact that he was without a lawyer for approximately the first year of his detention, the FBI continued to question him. Prison guards warned him to behave; he was told that if he did not, they would “beat [him] up,” and that if he complained, no one would believe him because he is a Muslim.

Mr. Awaed has never been brought before any judge or official with judicial oversight in his more than twenty months of detention. On August 19, 2003, fifteen months after his arrest, Mr. Awaed's attorney filed a motion with Immigration Judge Teofilo Chapa in Miami, Florida, to rescind the in absentia deportation order and reopen his case. On September 17, 2003, Judge Chapa denied the motion to reopen Mr. Awaed's case and on October 17, 2003, Mr. Awaed's attorney appealed that decision to the Board of Immigration Appeals. That appeal was rejected on December 16, 2003.

Petitioner Sadek Awaed submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis, and was motivated in part by intentional discrimination. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, he submits that he was never informed of his right to counsel and that he was interrogated about criminal matters in the absence of counsel.

### Benamar Benatta

Benamar Benatta, a 28 year old Algerian national, has been detained by the United States since September 12, 2001, a period of more than twenty-eight months. He is currently detained in Batavia, New York.

Mr. Benatta, an avionics technician with the Algerian Air Force, entered the United States on a nonimmigrant visitor's visa on December 31, 2000, with authorization to remain until June 30, 2001. He came to the United States on official business with other Algerian Air Force technicians to take part in a training program at the Northrop Grumman Corporation facility. After the training ended, Mr. Benatta overstayed his visa, and on September 5, 2001, as he attempted to enter Canada to request political asylum, Canadian authorities detained him. One week later, on September 12, 2001, Canadian authorities handed him over to United States immigration authorities.

Mr. Benatta was initially detained by the INS at Niagara Falls, New York, where he was interviewed by the FBI. He was charged as a removable alien by the INS, served with a Notice to Appear, and detained at the Buffalo Federal Detention Facility (BFDF), in Batavia, New York. On September 13, 2001, the INS commenced removal proceedings against him in Immigration Court at the BFDF.

Although the initial Notice to Appear required him to appear in immigration court on September 25, 2001, in Batavia, New York, Mr. Benatta was taken by the U.S. Marshal Service to the Metropolitan Detention Center (MDC) in Brooklyn, New York, over 350 miles from Batavia, on September 16, 2001. This transfer apparently took place without the government's filing a motion to change venue, and without explanation to Mr. Benatta. It was only on September 21, 2001, five days after the transfer, that the INS filed a motion to change the venue of the removal hearing to the INS location in New York City. At this time, Mr. Benatta still had not retained counsel nor did he have access to counsel.

Once at the MDC, Mr. Benatta was placed in a "special housing unit" and assigned high security status. While in the special housing unit he was isolated in a solitary, illuminated cell for twenty-four hours a day, was denied access to counsel, and was woken up every half-hour by the guards' loud knocking on his door. He could not leave his cell except when FBI agents arrived to interrogate him. Although the FBI officially cleared him of suspected terrorist activity on November 15, 2001, he was never told that he was cleared and never offered a lawyer. He remained in the special housing unit until he was transferred out of the MDC in April 2002.

During the months that he was detained at the MDC, Mr. Benatta appeared in front of an immigration judge at the facility on four separate occasions: October 17, 2001; November 1, 2001; November 14, 2001; and December 12, 2001. Mr. Benatta appeared at these hearings without counsel and without having been provided access to a law library. He was brought to these hearings shackled and handcuffed, depriving him of the ability to take notes or participate fully. At his last immigration hearing, on December 12, 2001, Mr. Benatta's removal proceedings were completed and he received an order of removal. On the same day, December 12, 2001, he was criminally indicted for possession of a false social security card and possession of a false and fraudulently procured US Alien Registration Receipt Card, and the government issued a warrant for his arrest.

Until his arraignment in federal court on April 9, 2002, nearly four months after criminal charges were filed against him, Mr. Benatta was not brought before any federal judicial authority. On April 30, 2002, he was transferred from the MDC back to the Buffalo Federal Detention Facility in Batavia, New York and assigned a lawyer for the first time – federal defender Joseph B. Mistrett. On September 25, 2003, more than twenty-one months after he was criminally charged, Federal Magistrate Judge Schroeder recommended that Mr. Benatta's motion to dismiss the indictment be granted based on the government's failure to observe domestic law relating to timely trials. Judge Schroeder's opinion sharply criticized government officials for keeping Mr. Benatta in the MDC's special housing unit even after the FBI had cleared him of involvement with terrorist activities.

In October 2003 the criminal charges against Mr. Benatta were dropped, but he nonetheless remained in immigration detention, unable to post a \$25,000 bond. Later that month, the Department of Justice agreed to vacatur of Mr. Benatta's previous removal order in its entirety by Order of the Court of Appeals for the Second Circuit. Pursuant to this Order, on November 25, 2003, the Board of Immigration Appeals remanded Mr. Benatta's proceedings to Immigration Court for a de novo hearing on his claims for asylum, withholding of removal, and Convention Against Torture relief. Mr. Benatta remains in detention at the Buffalo Federal Detention Facility actively pursuing these claims as well as seeking a reduction of bond.

Petitioner Benamar Benatta submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel.

Mohamed M. Elzaher

Mohamed M. Elzaher, a 31 year old Egyptian national, was detained by the United States for a period of eleven months from October 25, 2001, until September 24, 2002. Mr. Elzaher is currently seeking asylum in Europe.

Prior to his arrival in the United States, Mr. Elzaher was a sailor with an Egyptian cargo ship. On May 5, 1999, while his ship was docked at Portland, Oregon, he jumped ship and swam to shore. Upon arriving in the United States, Mr. Elzaher traveled to New York City by bus and found an immigration lawyer, who filed an asylum application on his behalf. Mr. Elzaher married an American citizen on April 12, 2001. He worked at a restaurant and at a laundromat.

On October 25, 2001, Mr. Elzaher attended a hearing before an immigration judge at Federal Plaza in New York City on the subject of his asylum application.

Mr. Elzaher was arrested by INS officers as he was exiting the Federal Plaza building after the hearing.

When he asked the officers why he was being arrested, he was told that he was “illegal.” When he protested that he had a good claim for remaining in the United States, one of the officers told him that with respect to his immigration status, he was in a good situation before September 11, but in a bad situation after September 11. Mr. Elzaher then stated that he was not connected to the terrorist attacks and asked why things changed for him after September 11. The officer replied, “because you’re a fucking Muslim.”

Mr. Elzaher was taken to Passaic County Jail, where he was initially held with the criminal population. He was informed of his right to a lawyer, but when he tried to contact his lawyer he could not get through because his lawyer would not take collect calls. However, he was able to contact his lawyer about a month before his first hearing, which took place on or about January 18, 2002. At this hearing, Mr. Elzaher’s lawyer apparently withdrew all claims for asylum or relief from deportation.

Mr. Elzaher believes that he received FBI clearance sometime in April 2002 because an INS officer asked him at that time to sign deportation and travel document papers and told him that he was cleared for deportation to Egypt.

In or around May 2002, Mr. Elzaher found a new lawyer who filed for a stay of deportation and for reopening of his asylum case. The stay of deportation was granted, and Mr. Elzaher spent the next four months waiting to learn whether his motion to reopen would be granted. In August 2002, Mr. Elzaher, acting *pro se*, filed a request to be released on bond. The bond hearing was rescheduled several times and ultimately took

place on September 20, 2002, together with the hearing on his motion to reopen his asylum case.

On September 20, 2002, the immigration judge told Mr. Elzaher that he was not eligible for bond and denied his motion to reopen his asylum case. On September 24, 2002, Mr. Elzaher was deported to Egypt. Someone at the Cairo airport called his family and told them he was back in Egypt. However, his family heard nothing from him following that phone call and it took them three weeks with the help of the Egyptian Organization for Human Rights to find him at Tora Detention Center. He has since been released from that facility and is seeking asylum in a European country.

Petitioner Mohamed M. Elzahar submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis, and was motivated in part by intentional discrimination. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel.

### Ansar Mahmood

Ansar Mahmood, a 26 year old Pakistani national, has been detained by the United States since January 2002, a period of over 23 months. Mr. Mahmood is currently detained in Batavia, New York.

In 1999, while in Pakistan, Mr. Mahmood received news that he had won a visa through an immigration lottery. He entered the United States on April 22, 2000, as a legal permanent resident.

He first worked at a pizza restaurant in Salisbury, Maryland. He worked in the kitchen and after raising enough money to buy a car, began delivering pizzas. In early 2001, he moved to Greenport, New York to work for the local Domino's Pizza franchise. He would regularly work up to 90 hours a week delivering pizzas in order to send money home to his family – his parents and his eight brothers and sisters - in Pakistan.

In October 2001, Mr. Mahmood visited and photographed many local sites in his new hometown in the United States to send to his family in Pakistan. On October 9, 2001, at the suggestion of one of his regular customers, Mr. Mahmood decided to drive to the highest point in Hudson County to take a picture of the sun setting behind the Catskill Mountains. He approached one of two security guards and asked the guard to take a picture of him with the scenic background. The site happened to overlook the area's main water treatment facility.

One of the guards became suspicious and called the local police while the other took the picture of Mr. Mahmood with the Catskill mountains in the background. When Mr. Mahmood later arrived back at work that day, police were waiting for him. They asked, "Why were you taking pictures of the water treatment plant?" He was arrested and spent the night at police headquarters. Federal Agents were there and asked him over and over about the World Trade Center, the Pentagon, and anthrax-laden letters mailed to Florida, New York, and Washington, DC. They also showed him pictures of the September 11 hijackers.

After a search of Mr. Mahmood's car and apartment, Immigration and Naturalization Service ("INS") agents discovered that he had co-signed an apartment lease, and perhaps paid for the first month's rent and car insurance premiums, for a Pakistani couple living in the area on expired visitors visas. Based on this evidence, Mr. Mahmood was charged with harboring illegal aliens, a federal felony immigration violation which imposes criminal penalties. He served six days in the Albany County Jail. On October 16, 2001, he pleaded guilty in federal court upon the advice of his lawyer, a public defender. The judge released him on bond, and Mahmood returned to work at Domino's.

On January 25, 2002, he was sentenced to the six days he had already served and given probation for this violation by the criminal court. However, later that day, Mr. Mahmood was served with a Notice to Appear from the INS which charged him as being removable (deportable) from the United States by virtue of his conviction being classified as an 'aggravated felony' for immigration purposes. INS agents handcuffed him and took him into their custody for hearings before an Immigration Judge. He was taken to the Albany County Jail in Albany, New York for the first week and then transferred to the Buffalo Federal Detention Center in Batavia, New York, where he remains in immigration custody. On July 17, 2002, the Immigration Judge ordered Mr. Mahmood deported from the US because of his conviction. He was considered ineligible for release on bail throughout the hearings and administrative appeal.

His new criminal lawyer tried unsuccessfully to overturn his felony convictions, arguing that Mr. Mahmood did not fully understand the implications of a felony conviction when he pleaded guilty. In addition, on August 15, 2002, his immigration attorney filed an administrative appeal against the deportation order with the Board of Immigration Appeals (BIA). This appeal was denied on January 8, 2003. On February 3, 2003, his immigration attorney then filed an appeal to the 2nd Circuit Court of Appeals for a review of the BIA decision. However, in December 2003, notice was sent to the 2nd Circuit withdrawing the petition for review. Instead, on January 6, 2004, his lawyer submitted a letter request to the Department of Homeland Security (DHS) asking them to exercise their discretion and grant deferred action status for Mr. Mahmood. Such a grant would permit Mr. Mahmood to be released and remain in this country under supervision. At the present time, Mr. Mahmood is awaiting a decision from DHS.

Petitioner Mahmood submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was subjected to investigative detention without judicial oversight and was interrogated about criminal matters in the absence of counsel.

### Anser Mehmood

Anser Mehmood, a 44 year old Pakistani national, was detained by the United States for a period of seven and one-half months from October 3, 2001 until May 19, 2002. Mr. Mehmood currently resides in Pakistan.

Mr. Mehmood moved to the United States in July 1994 together with his wife, Uzma Naheed Abbasi, and their three children, Umair, Uzair and Haris. His fourth son, Hasan, was born on October 4, 2000, in the United States and is a United States citizen. The family left Karachi, Pakistan, because of an ethnic conflict in the region between the Muhajir Quami Movement (MQM) and ethnic Punjabis. Mr. Mehmood feared political and racial persecution because his family is Punjabi.

Mr. Mehmood had traveled to the United States on a number of occasions before 1994, each time on a non-immigrant visa and for business purposes. He had been given a social security number with a "Not Valid for Work" restriction in November 1989. When he moved to the United States in July 1994, Mr. Mehmood and his family possessed visitor's visas that were valid for five years and that allowed them to stay in the U.S. for six months at a time. On the advice of an attorney, Mr. Mehmood decided not to file for permanent resident status.

Sometime in 1994, after an unsuccessful attempt at starting his own business in New York, Mr. Mehmood obtained an altered Social Security card that did not contain a work restriction. He began to earn money by driving a livery cab. In July 1999, Mr. Mehmood bought a truck so he could work as an independent contractor for a delivery company. After his youngest son was born in October 2002, Mr. Mehmood bought a house in Bayonne, New Jersey.

On October 3, 2001, while he was sleeping at home with his wife and baby, approximately twenty to twenty-five FBI agents came to his house and told Mr. Mehmood that they wanted to search his premises. Mr. Mehmood agreed to let them in, although he asked for a search warrant and was not provided with one. Subsequently, the agents searched the entire house and questioned Mr. Mehmood and his wife in separate rooms.

Although the FBI agents did not tell Mr. Mehmood why they came to search his home, he was later informed that they had received a tip from Panther 2 Transportation, a company Mr. Mehmood worked with in his delivery business. The tipster said that Mr. Mehmood had refused to deliver packages to Washington, DC, on September 11, 2001. This tip mischaracterized the actual events of that day. On September 11, 2001, Mr. Mehmood had been in Philadelphia picking up a load of furniture intended for



Washington, D.C. At around 10:00 that morning, Panther 2 Transportation cancelled the load due to the terrorist attacks in Washington, DC, and Mr. Mehmood returned home, in his truck, by around 9:00 that night.

Despite the tip, when the FBI arrived at the Mehmood home they questioned Mr. Mehmood primarily about his wife's two brothers, who were apparently wanted on credit card fraud charges. During the course of the questioning, Mr. Mehmood admitted to overstaying his visa.

After interrogating Mr. Mehmood and his wife, the FBI threatened to take his wife into custody because of their interest in her brothers. In response to repeated protests, and because their baby was ill and needed care, the FBI agreed to take Mr. Mehmood instead. The FBI agents told Mr. Mehmood that they had no reason to suspect him of wrongdoing but that they would contact the INS regarding his immigration violation. He was also told that if he provided the FBI with information on his brothers-in-law, the FBI would help him with his INS case. Ultimately, the FBI agents turned Mr. Mehmood over to two INS agents who took him into custody. The FBI agents promised Mr. Mehmood and his wife that he would be put in front of an immigration judge promptly and would probably be home on \$300-400 bail within the next day or two.

Initially, the INS brought Mr. Mehmood to the Varick Street Detention Center in New York City, where he was kept overnight. Upon arriving he was notified that the reason for his detention was that he had overstayed his visa, and he was told that he would see an immigration judge on the morning of October 5, 2001, at which point he could call his wife.

At around 5 PM on October 4, 2001, Mr. Mehmood was transported by Border Patrol agents, along with seven or eight other Arab men, to the MDC in leg, arm, and wrist shackles. Upon his arrival, he was threatened and assaulted by a number of federal corrections officers. They threw him against a wall so hard that his mouth was bleeding and a bone in his hand was broken. During this process, the officers repeatedly told him, "Don't ask any questions otherwise you'll be dead." When Mr. Mehmood saw a doctor the next day, he was not given any X-rays or medical treatment, even though the doctor noticed that his hand was broken. The federal corrections officers told him he was being held as a "World Trade Center suspect," even though he had been arrested on immigration violations.

For the first four months and six days of his detention at the MDC, Mr. Mehmood was held in solitary confinement. He was isolated in a solitary, illuminated cell for twenty-four hours a day and was constantly insulted by guards for being a Muslim. During this period he had enormous difficulty contacting his family members and his attorney, and was essentially held incommunicado for much of the time. Mr. Mehmood's wife tried to reach him via the INS for two to three days after his arrest, but the INS

refused to tell her where her husband was. She then hired a lawyer who found out his whereabouts, and after a week her lawyer reported that Mr. Mehmood was detained at the MDC. Mr. Mehmood was not able to contact his wife until he sent her a letter twenty-three days after his arrest, and he was not able to meet with his wife or anyone else for the first three months of his detention, despite the fact that his wife made repeated visits to the detention center. Furthermore, Mr. Mehmood was essentially denied permission to make phone calls to his wife or to his lawyer for the first two months of his detention since his fifteen minutes of phone calls per month were deemed “used up” when the guards dialed the number for him and no one answered.

Mr. Mehmood was brought before an immigration judge about three weeks after his arrest, on October 25 or 26, 2001. His request for bail was refused on November 6, 2001, on the grounds that he was a flight risk and a danger to the community. On December 5, 2001, he applied for asylum, but his application was denied the same day, and on January 4 or 5, 2002, while he was still being held in solitary confinement at the MDC, his deportation order was signed.

On February 6, 2002, Mr. Mehmood was moved to the general population at the MDC from solitary confinement. On March 20, 2002, five and one-half months after his arrest and two and one-half months after he was ordered deported, Mr. Mehmood was criminally charged with using a fraudulent social security card. He pled guilty on March 28, 2002. On April 2, 2002, he was sentenced to time already served. He was transferred from the MDC to Passaic County Jail in Paterson, New Jersey on April 4, 2002, to await deportation. While at Passaic County Jail, he was housed with the criminal inmates, some of whom had been charged with murder and other very serious crimes.

Mr. Mehmood was deported on May 19, 2002. His wife and children had already left the United States and he rejoined them in Pakistan. As a result of his deportation, he has lost possession of all his property – his home, his truck and van, savings, and household goods – all left behind in Bayonne, New Jersey.

Petitioner Anser Mehmood submits that his detention is arbitrary within the meaning of the Working Group’s mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, was categorically denied release on bond, and has been subjected to investigative detention without judicial oversight. Finally, he submits that he was never informed of his right to counsel and that he was denied access to the attorney his wife had hired.

## Noor Hussain Raza

Noor Hussain Raza, a 63 year old Pakistani national, was detained by the United States for a period of thirty-eight days from December 19, 2001, to January 26, 2002. Mr. Raza currently resides in Pakistan.

While living in Pakistan, Mr. Raza was an engineer and also a member of a trade union and the People's Party. When the country was under martial law, unions and People's Party members were denied jobs and put into jail. Mr. Raza's political activism and association with the trade union made him fear for his safety. As a result, Mr. Raza left Pakistan in 1979 and moved to the United Arab Emirates where he worked for the Dubai police for more than ten years. In 1992, Mr. Raza came to the United States on a visitor's visa.

Upon his arrival in New York, Mr. Raza applied for political asylum based on his political activism. He also applied for and received temporary work authorization. Subsequently, after his lawyer failed to file the proper papers for his asylum application, the immigration judge ordered his deportation. Mr. Raza obtained a new attorney in March, 1994, who filed both a motion to extend his work authorization and a motion to reopen his asylum case. His work authorization request was denied, but the motion to reopen was still pending at the time he was arrested. Mr. Raza was working at Newark International Airport as a baggage handler at the time of his arrest.

On December 19, 2001, Mr. Raza was arrested on immigration charges at his place of work and taken to the INS offices in Newark, New Jersey. At the time of his arrest, Mr. Raza believed that he was living in the United States legally because his motion to reopen asylum proceedings was still pending. Mr. Raza was briefly interviewed by the INS, and asked whether he had any links to terrorist organizations. He answered that he did not and he asked to speak to his attorney. The INS officer questioning him agreed to let him make collect calls. Mr. Raza made three collect calls. First, he called his lawyer, who would not accept the call. Second, he called a public official, whose secretary gave him the number of another lawyer. Third, he called this lawyer, but the lawyer was not available and away on vacation. Mr. Raza was then transported to Passaic County Jail, where he was detained for thirty-eight days.

When Mr. Raza arrived at the jail, his clothes were forcibly removed and he was subjected to a humiliating cavity search. He was then placed in a dormitory on the first floor where the new inmates were kept. During his first few days, the guards would bring search dogs into the dorms and would harass the detainees by slapping them or taunting them, for example by calling them "sons of bitches." On one occasion, a guard pulled his beard and told him that "most Muslims with beards are terrorists." After a few days, Mr. Raza was moved upstairs with the rest of the inmates. At least two or three times a

week, FBI officers and U.S. Marshals would question everyone on the floor, throw them against the wall and search pockets and bags.

Throughout his detention, Mr. Raza was never told the reason why he was detained. Despite his repeated requests, Mr. Raza was denied halal meals. Mr. Raza had been suffering from a heart condition and was taking special medicine for his heart before he was arrested. While detained, Mr. Raza made three requests for medication and to see a heart specialist. The doctor at the jail refused his requests.

On or about January 16, 2002, Mr. Raza was interviewed by an INS deportation officer. After his meeting with the INS, Mr. Raza decided to call a lawyer and reapply for asylum. That same day, a representative from the Pakistani consulate visited Mr. Raza but told him that there was nothing the consulate could do for him. Nevertheless, on January 26, 2002, before his asylum petition could be submitted, Mr. Raza was deported to Karachi, Pakistan. Prior to his actual departure, Mr. Raza explained to the INS officers that his home in Lahore, Pakistan, was very far from Karachi and that he had no way to get back to his home without money. He also told the officers that he still had money deposited in his U.S. bank accounts. The officers placed him on a plane to Karachi without allowing him to collect his money or belongings.

Mr. Raza currently lives in Lahore, Pakistan, where he is unable to work because of his age and heart condition. He has not been able to reach his savings in the United States.

Petitioner Noor Hussain Raza submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Mr. Raza submits that he was interrogated about criminal matters in the absence of counsel.

### Naeem Sheikh

Naeem Sheikh, a Pakistani national, was detained by the United States for a period of one month, from March 1, 2002, to March 31, 2002. Mr. Sheikh currently resides in Pakistan.

Prior to his arrest, Mr. Sheikh lived in the United States for almost eight years. He entered the United States from Pakistan in May 1994, and moved to Queens, New York. Mr. Sheikh subsequently obtained a work permit and was employed as a cab driver in New York. His work permit expired after one year and Mr. Sheikh did not renew it because he was under the mistaken impression that he did not need a work permit to continue working for the cab company.

Mr. Sheikh was arrested on March 1, 2002, for immigration violations and taken to Bergen County Jail, in Hackensack, New Jersey, where he was detained for twenty-nine days. While he was detained, his wife gave birth to his son, Aneek, but his requests to see his son were denied.

While at Bergen County Jail, Mr. Sheikh was interrogated by the FBI and asked questions about Osama Bin Laden, although Mr. Sheikh has no connection whatsoever to terrorist organizations.

While detained, Mr. Sheikh was housed in a small cell with another inmate. He initially was denied access to halal food. He was later provided with halal meals but was required to pay for them. Inmates who did not request halal food did not have to pay for their meals. During his first week of detention, Mr. Sheikh was prohibited from praying.

Mr. Sheikh hoped to correct his immigration status while he was detained, but he was deported to Pakistan on March 31, 2002. At no time during his detention was he brought before a judicial official. While at the airport awaiting his departure, Mr. Sheikh was called a terrorist by the immigration officers who accompanied him to the plane. His wife subsequently left the United States and moved to Montreal, Canada, where she currently resides with their son. Mr. Sheikh currently lives with his parents in Lahore, Pakistan, and is working in his father's business.

Petitioner Naeem Sheikh submits that his detention is arbitrary within the meaning of the Working Group's mandate. He submits that his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight.

Finally, Mr. Sheikh submits that he was interrogated about criminal matters in the absence of counsel.

### Sarwar Yamen

Sarwar Yamen, a 35 year old Afghan national, was detained in the United States for a period of nine months, from October 10, 2001, until July 14, 2002. Mr. Yamen currently resides in Pakistan.

In 1988, Mr. Yamen escaped from an army camp in Zabul, Afghanistan, and fled with his wife to Pakistan. Scared that he might be killed if forced to return to his native Afghanistan (his father had been taken from his home and was never seen again), Mr. Yamen flew to the United States on April 29, 1989. His wife and children sought refugee status in England and lived there while he was in the United States. His wife was granted British citizenship recently but his children still have Afghan citizenship.

Upon his arrival in New York, he applied for political asylum and was detained by the INS for approximately six months. In his asylum application, Mr. Yamen explained that he had been forced into the Afghan army to fight the Mujahadin but had escaped. In October 1989, an immigration judge denied his asylum application. Mr. Yamen was paroled into the country pending determination of his appeal to the Board of Immigration Appeals and given a short-term visitor's visa and a Social Security number. The Board of Immigration Appeals upheld the denial of his asylum petition on July 2, 1990.

Until his arrest in 2001, Mr. Yamen lived in Queens, New York, and worked at a restaurant and as a limousine driver. On October 10, 2001, Mr. Yamen arrived at his apartment to find FBI and INS agents waiting for him inside. They had entered his home without permission and had already searched his entire home. Mr. Yamen believes the agents came to his home as part of a search of all Afghan homes in his neighborhood. The FBI agents told Mr. Yamen that he was under arrest because he did not have valid papers and because somebody opposed to the U.S. had made calls from his telephone. Mr. Yamen told the officers that he did not make these alleged phone calls nor did he know of anyone else who could have made them. Mr. Yamen was placed in handcuffs and leg shackles and taken to a detention center in New York City.

The following day, Mr. Yamen was transferred to Passaic County Jail in Patterson, New Jersey where he was detained for three months. Upon his arrival, one of the guards pulled him out of line and asked him what he thought about September 11, and then kicked him until his legs bled. He was then placed in solitary confinement for at least eighteen days, after which he was placed in a cell with two criminal inmates who harassed him because of his nationality. The jail was infested with cockroaches and there was limited access to telephones (there were only two telephones for fifty people). On

January 9, 2002, Mr. Yamen was transferred to Middlesex Correctional Center in New Jersey.

While at these two facilities, Mr. Yamen was interviewed by both the FBI and the INS. In his initial FBI interview, Mr. Yamen was asked several questions about the Taliban and his relationship to the regime. Mr. Yamen explained that when he left Afghanistan the Taliban was not in power and that he had no connection whatsoever to the regime. They also showed him photographs of people he could not identify. The second time the FBI came to see him, they told him that they no longer had any interest in his case and that it was up to the INS to release or deport him. Mr. Yamen received a letter in February, 2002, more than four months after his arrest, confirming that the FBI had no further interest in his case.

Prior to receiving FBI clearance in February, 2002, Mr. Yamen and seventy-five other detainees went on a hunger strike on February 11, 2002. Mr. Yamen did not eat for thirteen days. He resumed eating after INS agents told him that he would go home in two weeks if he started eating. When he began to eat again, the INS did not send him home.

In addition, Mr. Yamen made repeated requests to the INS regarding the status of his case. While he was held at Middlesex Jail, Mr. Yamen submitted "Request/Concern" form to Middlesex officers approximately twice weekly. The Middlesex officers conveyed the forms to INS officers who visited the facility every two weeks. Until March 19, 2002, Mr. Yamen received no written response to any of his requests.

In February, 2002, officers at Middlesex Jail invited detainees to sign a list if they wanted to see their deportation officers. Mr. Yamen signed the list. On March 7, 2002, Deportation Officer Mike Anderson visited Mr. Yamen at Middlesex and told Mr. Yamen that he would be sent home within two weeks.

On March 18, 2002, Mr. Yamen submitted a Request/Concern form inquiring about the status of his case and whether his passport would have to be renewed before he could be sent home. On March 19, 2002, Mr. Yamen received a written response from Officer Mike Anderson, which stated that the INS was "waiting for final arrangements to be made concerning [Mr. Yamen's] deportation," that Mr. Yamen's passport had been renewed, and that "a request for travel arrangements" was "being considered."

Between March 19, 2002 and April 23, 2002, Mr. Yamen submitted approximately seven additional Request/Concern forms. On April 23, 2002 he received a "Notice to Alien of File Custody Review," which advised him that his status would be reviewed on April 30, 2002 and that he should submit evidence of family ties, employment opportunities, living arrangements and community ties in the United States. According to the INS, the Custody Review was "ongoing" on May 13, 2002.



Mr. Yamen was eventually transferred to Sussex County Jail, New Jersey on May 9, 2002. INS officers made a non-scheduled visit when detainees at Sussex County Jail, including Mr. Yamen, staged a hunger strike that began on June 3, 2002. On June 5, 2002, four officers, came to see the detainees. The other detainees broke their strike that day, but Mr. Yamen continued with the hunger strike and was sent to solitary confinement on June 5, 2002. On June 10, 2002, Mr. Yamen collapsed and was sent to the hospital where he was given stitches for a cut on his head and where he saw a psychiatrist. He agreed to have an IV and blood work done and the psychiatrist found Mr. Yamen competent to decide whether to continue to refuse food and medicine. After his fall he was kept at the intake center and monitored every 15 minutes throughout the day and night.

Ten days into his hunger strike, on June 13, 2002, Mr. Yamen was transferred to an Immigration Detention Facility in Elizabeth, NJ. When he first arrived at the Detention Facility in Elizabeth he underwent a medical exam and was asked questions about his hunger strike. Following the medical exam, Mr. Yamen met with two government officers who told him that if he started eating again, he would be released within three weeks.

On June 24, 2002, Mr. Yamen ended his hunger strike. Over the course of the day, he was examined two to three times by a doctor as he began eating again. Later that day, the same government officer visited him and reiterated that he would be released within three weeks. Throughout his nine months of detention, Mr. Yamen was never brought before any judge or official with judicial oversight. Mr. Yamen was finally released on July 14, 2002 and sent to Pakistan where he was reunited with his wife and children.

Petitioner Sarwar Yamen submits that his detention is arbitrary within the meaning of the Working Group's mandate. He his arrest resulted from policies that disproportionately affected individuals of his race, religion, and nationality without reasonable and objective basis. He further submits that he was not promptly informed of the reasons for his arrest and detention, was not promptly brought before a judge, and has been subjected to investigative detention without judicial oversight. Finally, Petitioner submits that he was interrogated about criminal matters in the absence of counsel.

**APPENDIX B:**  
**JUNE 2003 OIG REPORT**