



The ACLU in the Courts Since 9/11 Updated October 12, 2006

The judiciary was established as a check on the other two branches of government. It is the first line of defense for individuals whose civil liberties have been violated and, for many, it is the last resort.

Since September 11, 2001 the American Civil Liberties Union has received many complaints about detention and torture; discrimination and the No-Fly List; illegal surveillance, searches, and seizures; government attempts to stifle dissent and punish First Amendment protected activity; and government secrecy. Because actions taken by the Bush administration and Congress on the pretext of fighting terror threatened fundamental constitutional protections, the ACLU and its clients took their concerns to the courts.

In some cases, the ACLU filed direct challenges to unconstitutional policies; in others, it filed friend-of-the-court briefs supporting lawsuits filed by others. Here is a summary of the ACLU's recent litigation to safeguard democracy in a time of crisis:

CURRENT CASES

For a list of past cases, visit: <http://www.aclu.org/safefree/resources/26091res20060707.html>.

Detention and Torture

Habeeb v. Castloo (U.S. District Court for the District of Montana; 9th Circuit Court of Appeals)
The ACLU Immigrants' Rights Project (IRP), ACLU of Montana, and ACLU of Washington are co-counsel in a lawsuit against two Customs and Border Protection officers and their supervisors. The plaintiff, an Iraqi refugee, was unlawfully arrested and detained for failing to undergo special registration (fingerprinting and photographing). As a refugee, he was not subject to special registration, but he was nonetheless detained for over a week. On June 2, 2006, the district court ruled in favor of the officers based on qualified immunity. The ACLU has appealed the decision to the Ninth Circuit. The ACLU of Washington and IRP are also representing Mr. Habeeb in a related case before the U.S. District Court for the Western District of Washington which involves damages claims against the federal government and individual officers.

Al-Kidd v. Gonzales (U.S. District Court for the District of Idaho)
Abdullah al-Kidd is a US-born citizen who was unlawfully arrested and detained as a material witness in March 2003. After release from a fifteen-day detention, al-Kidd faced extensive restrictions on his movement. Ultimately, the government did not call him as a witness. Al-Kidd filed a complaint seeking damages and an admission of wrongdoing by the government. The ACLU National Office and

ACLU of Idaho joined al-Kidd's local counsel in representing him. The government's motions to dismiss were denied and the judge ruled that former U.S. Attorney General John Ashcroft may be subject to personal liability for charges brought against him.

ACLU v. Department of Defense (U.S. District Court for the Southern District of New York)
In October 2003, the ACLU National Office filed FOIA requests with ten different federal agencies for records concerning the treatment of post 9/11 detainees held in US custody abroad. Since the ACLU filed a lawsuit seeking immediate processing and release of records, the defendants have released more than 100,000 pages. See www.aclu.org/torturefoia.

Ali v. Rumsfeld; Ali v. Karpinski; Ali v. Sanchez; Ali v. Pappas (U.S. District Court for the District of Columbia)
The ACLU National Office and Human Rights First represent nine men who were subject to abuse and torture while in U.S. custody in Iraq and Afghanistan. Our lawsuit charges that Defense Secretary Donald Rumsfeld bears direct responsibility for the torture and abuse of detainees. The government is attempting to have the case dismissed. Retired military officers and international law experts have filed friend-of-the-court briefs on our behalf. See www.aclu.org/rumsfeld.

El-Masri v. Tenet (U.S. District Court for the Eastern District of Virginia; 4th Circuit Court of Appeals)
The ACLU National Office and the ACLU of Virginia filed a lawsuit against former CIA director George Tenet challenging the CIA's abduction of an innocent German citizen, Khaled El-Masri, for detention and interrogation in a secret overseas prison. The lawsuit also charges that the three corporations that owned and operated the airplane used to transport Mr. El-Masri to detention in Afghanistan are legally responsible for assisting in the violation of his civil and human rights. Mr. El-Masri is seeking damages and an apology. The case was dismissed in federal district court after the government asserted the state secrets privilege, but we have appealed the decision to the Fourth Circuit Court of Appeals. See www.aclu.org/rendition.

Haditha FOIA

The ACLU has filed a FOIA request for all records relating to the killing of **civilians by U.S. forces in Iraq and Afghanistan since Jan. 1, 2005**. **The FOIA was prompted by recent news reports** alleging that Marines intentionally killed civilians in Haditha, Iraq, in violation of both domestic and international law. News reports also allege that senior officers attempted to suppress information about these killings. The Defense Department has released a handful of documents, which we are reviewing.

Khorrami v. Rolince (U.S. District Court for the Northern District of Illinois)
Ahmad Farid Khorrami, a lawful U.S. immigrant who had applied for legal permanent residency, was detained without justification by the FBI and INS for several months after the Sept. 11 attacks. He suffered a heart attack caused by his treatment in detention. In Sept. 2003, Mr. Khorrami filed a pro se complaint alleging that the FBI and INS disregarded his Fourth and Fifth Amendment rights. The ACLU filed an appearance on Khorrami's behalf in Jan. 2004. While not part of a formal settlement, Khorrami has been given permanent residence status and had his flight training license reinstated by the FBI. The judge ordered discovery, but the government has asked for reconsideration of that decision.

Diplomatic Assurances FOIAs

The ACLU National office is seeking information through the Freedom of Information Act on the government's use of "diplomatic assurances" to justify the deportation of individuals to countries known to use torture. The FOIA requests were filed on July 11, 2006. The ACLU is administratively appealing denials of fee waivers and expedited processing.

Discrimination/No-Fly List

Dasrath v. Continental Airlines (U.S. District Court for the District of New Jersey)

This lawsuit accused Continental of discrimination against Michael Dasrath, who was ejected from a flight after a passenger claimed, without foundation, that the "brown-skinned men were behaving suspiciously." The ACLU National Office and the ACLU of New Jersey represent Mr. Dasrath and the case is set to go to trial.

Chowdhury v. Northwest Airlines Corporation (U.S. District Court for the Northern District of California)

The ACLU of Northern California filed a discrimination suit on behalf Arshad Chowdhury against Northwest after they refused to let him board the plane in October 2001.

Downing v. Massachusetts Port Authority (Superior Court of Suffolk County, Massachusetts)

The ACLU of Massachusetts filed a behavioral profiling suit on behalf of King Downing after he was detained and questioned by security as he was leaving the airport.

Gray v. Transportation Security Administration (District Court of Massachusetts; 1st Circuit Court of Appeals)

Robert Gray is a permanent resident of the U.S. and a commercial pilot who applied for permission to receive training to fly bigger planes. The Transportation Security Administration denied the application, claiming he was "a threat to aviation or national security," but refused to state why. When the ACLU of Massachusetts sued on Grey's behalf, the government also placed Gray's name on a "No Fly" list, forcing his employer to ground him. In settlement, TSA removed Grey from the "No Fly" list and agreed to state that Grey was not a threat.

Tabbaa v. Chertoff (U.S. District Court for the Western District of New York; 2d Circuit Court of Appeals)

The ACLU National Office and NYCLU filed a lawsuit on behalf of American citizens who were detained at the Niagara Falls border to the U.S. after attending an Islamic conference in Toronto. We have appealed court's decision grant the government's summary judgment motion.

Rahman v. Chertoff (U.S. District Court for the Northern District of Illinois)

U.S. Citizen Akif Rahman was improperly detained at the U.S.- Canada border four times. He was subjected to excessive force during a body search and shackled to a chair because of what the Immigration and Custom Enforcement called an "unfortunate misidentification scenario." The ACLU of Illinois has filed a class action suit against the Department of Homeland Security on behalf of Rahman and his family to force DHS to adopt policies that ensure expeditious reentry into the U.S. for U.S. citizens whose names are similar to those on watch lists, and to institute training to stop harassment and improper detention at the border.

Mu-Ammar Ali v. Mumme (U.S. District Court for the District of New Mexico)

The ACLU filed a lawsuit against New Mexico State football coach Hal Mumme for discriminatory dismissal of Muslim players Mu-Ammar Ali, Anthony Thompson, and Vincent Thompson in 2005. Ali alleges Mumme harassed him with questions about al-Qaida and that the three were dismissed from the team for their religious beliefs.

Aziz, et al., v. Gonzales, et al., (U.S. District Court for the Central District of California)

The ACLU filed a class action complaint against DHS and DOJ officials, seeking reform of systemic delays in the naturalization process. Immigrants are waiting for years for naturalization because of post-Sept. 11 policy changes regarding background checks. Since the ACLU filed the lawsuit, the government has agreed to naturalize seven of the ten named plaintiffs and prospective class members.

Domestic Spying/Surveillance/Illegal Search and Seizure

ACLU v. FBI (U.S. District Court for the District of Columbia)

The ACLU and affiliates represent over 150 political and religious groups in filing FOIAs to obtain their FBI files. The ACLU National Office also filed a FOIA to obtain information about the role of Joint Terrorism Task Forces in surveillance of political and religious groups. In May 2005, the National office filed a lawsuit to enforce its FOIA request. The ACLU later challenged withholdings and redactions of certain documents relating to organizations. Following in camera review, the judge ordered two withheld or redacted documents to be disclosed in full. Many documents are now available at www.aclu.org/spyfiles.

American Friends Service Committee v. Dep't of Justice (U.S. District Court for the Eastern District of Pennsylvania)

The ACLU National office and several affiliates have filed FOIA requests to obtain information about domestic surveillance by the Pentagon. News reports have revealed that the Pentagon is collecting information in a secret database on peace groups and law-abiding Americans attending anti-war protests. After being denied expedited processing and fee waivers, the National office and the affiliates began litigating the request. The government has now agreed to release all relevant documents by the end of Oct. 2006.

Childs v. DeKalb County (U.S. District Court for the Northern District of Georgia)

The ACLU of Georgia filed a complaint on behalf of Caitlin Childs and Christopher Freeman for false imprisonment, false arrest, and harassment by a local policeman and a DHS official. They were arrested following a lawful protest outside of the Honey Baked Ham store.

MacWade v. Kelly (U.S. District Court for the Southern District of New York; 2d Circuit Court of Appeals)

The NYCLU filed a challenge to the New York City subway bag search policy charging that it violates the Fourth and Fourteenth Amendments. The district court ruled that the searches were constitutional. NYCLU appealed the decision to the Second Circuit, which affirmed the lower court's decision.

Cassidy v. Ridge (U.S. District Court for the District of Vermont)

The ACLU of Vermont filed a lawsuit in Vermont to stop random security “screenings” on Lake Champlain ferries, charging that they violate the Fourth Amendment. The case was dismissed at the district level, but the ACLU of Vermont has appealed the decision to the Second Circuit.

Sheehan v. Commissioners’ Court of McLellan County (U.S. District Court for the Western District of Texas)

The ACLU-TX asked a district judge to block McLellan County officials from enforcing orders aimed at restricting anti-war protesters outside President Bush’s ranch in Crawford, saying the orders violate free speech rights and exceed the officials’ authority. Plaintiffs include Cindy Sheehan, Mary Ann Wright, Daniel Ellsberg, Charlie Anderson, and Tammara Rosenleaf. The case is proceeding to trial in March 2007.

Doe v. Ashcroft (now *Gonzales v. Doe*) (U.S. District Court for the Southern District of New York, 2d Circuit Court of Appeals)

The ACLU National Office and NYCLU filed a lawsuit on behalf of an anonymous Internet Service Provider (ISP) challenging the FBI’s authority to issue National Security Letters (NSL) under the Patriot Act. The ISP was gagged from telling anyone about its NSL. On September 29, 2004, the court struck down the NSL provision on the grounds that it violated the First and Fourth Amendments. While the case was in the Second Circuit Court of Appeals, Congress passed a law reauthorizing and amending portions of the Patriot Act. The Second Circuit issued an order vacating and remanding the case to the district court, where litigation continues.

Muslim Community Association of Ann Arbor v. Ashcroft (U.S. District Court for the Eastern District of Michigan)

The ACLU National Office and the ACLU of Michigan filed a lawsuit challenging Section 215 of the Patriot Act, which expands the FBI’s ability to secretly obtain records. The court denied the government’s motion to dismiss on Sept. 29, 2006.

ACLU v. NSA (U.S. District Court for the Eastern District of Michigan, 6th Circuit Court of Appeals)

The ACLU National Office and the ACLU of Michigan filed a lawsuit against the NSA seeking a court order declaring that the NSA warrantless wiretapping program is illegal and ordering its immediate and permanent halt. In August, the district court granted the ACLU’s summary judgment claims relating to warrantless wiretapping. The government was granted a stay pending appeal by the Sixth Circuit.

Hepting v. AT&T (U.S. District Court for the Northern District of California)

In April 2006, the ACLU and the Center for Constitutional Rights filed an amicus brief in a case brought by the Electronic Frontier Foundation against AT&T. The case challenges the legality of AT&T cooperation with NSA domestic surveillance. This case has been transferred by the Multidistrict Litigation Panel, along with other cases relating to the NSA spying program.

Terkel v. AT&T (U.S. District Court for the Northern District of Illinois)

The ACLU of Illinois filed a lawsuit against AT&T on behalf of six prominent clients, including author Studs Terkel, for divulging the personal phone records of millions of customers to the National Security Agency. This case has been transferred by the Multidistrict Litigation Panel, along with other cases relating to the NSA spying program.

EPIC v. DOJ; ACLU v. DOJ (U.S. District Court for the District of Columbia)

The ACLU filed a lawsuit against DOJ seeking records related to NSA's secret surveillance program to intercept, without prior judicial authorization, the telephone and Internet communications of people inside the United States. On Feb. 9, the ACLU case was consolidated with EPIC's. The FOIA was also filed with the NSA and the CIA.

United States v. Aref (U.S. District Court for the Northern District of New York; 2d Circuit Court of Appeals)

After the New York Times reported that Yassin Aref's terror prosecution was based on an NSA wiretap, the defendant sought to have the case dismissed. The district court allowed the government to file secret papers opposing the dismissal, and the court rejected the defendant's request. The defendant appealed to the Court of Appeals to challenge the secrecy of the filings, and NYCLU sought to intervene in that appeal. The Court of Appeals directed NYCLU to file their motion to unseal court documents in the district court.

Stifling Dissent and Other First Amendment Protected Activities

Rank v. Jenkins (U.S. District Court for the Southern District of West Virginia)

Plaintiffs Nicole and Jeff Rank were arrested at a public event involving the President of the United States for wearing anti-Bush shirts. The ACLU National Office along with several affiliates filed a complaint on behalf of the Ranks against the White House Advance Team and the Secret Service seeking damages for violation of the Ranks' First Amendment rights.

Weise v. Casper (U.S. District Court for the District of Colorado)

Leslie Wiese and Alex Young were expelled from an event where President Bush was speaking. They were told by security that it was because their car had a bumper sticker that read "No more blood for oil." The ACLU National Office and the ACLU of Colorado filed a first amendment challenge to the expulsion on behalf of Wiese and Young.

ACLU v. Department of State (U.S. District Court for the Southern District of New York)

The ACLU National Office and NYCLU are litigating a FOIA request for records concerning the government's practice of denying visas to individuals critical of U.S. foreign policy. The request focuses on Section 411 of the Patriot Act, known as the "ideological exclusion" provision, and a lawsuit filed to enforce the request names the Department of State, Department of Homeland Security, Department of Justice, FBI, and CIA as defendants. The American Association of University Professors and PEN American Center are co-plaintiffs. We have received some informative documents about the government's use of the ideological exclusion provision which are available on the ACLU website at www.aclu.org/exclusion.

AAR v. Chertoff (U.S. District Court for the Southern District of New York)

The ACLU National Office and the NYCLU filed a lawsuit on behalf of the American Academy of Religion, the American Association of University Professors, and PEN American Center charging that the "ideological exclusion" provision of the Patriot Act prevents US citizens and residents from hearing speech that is protected by the First Amendment. Prof. Ramadan, a plaintiff, is a Swiss intellectual whose visa was revoked in 2004, preventing him from assuming a tenured teaching position at the University of Notre Dame. In June 2006, a federal judge ordered the government to

issue a formal decision regarding Ramadan's visa application. The State Department denied Ramadan's visa on Sept. 19, citing small contributions he made to European charities that provide humanitarian aid to Palestinians. See www.aclu.org/exclusion.

Citizens for Peace in Space v. City of Colorado Springs (U.S. District Court for the District of Colorado; 10th Circuit Court of Appeals)

On March 15, 2004, the ACLU of Colorado sued the City of Colorado Springs, saying that city officials violated the First Amendment when they denied a permit request from six peace and justice activists to hold a protest on a public sidewalk across from a hotel hosting a North Atlantic Treaty Organization (NATO) conference last October. The ACLU lawsuit was filed in federal district court in Denver on behalf of Citizens for Peace in Space (CPIS), a Colorado Springs-based peace organization. The district court ruled in favor of the City of Colorado Springs, which the ACLU appealed. The case is now fully briefed in the Tenth Circuit Court of Appeals.

In re Michel Shehadeh and Khader Hamide (Immigration Court in Los Angeles)

The ACLU of Southern California joined in the representation of two members of the "L.A. 8." The two men are under threat of deportation based on first-amendment protected activities (distributing Palestinian magazines and raising humanitarian aid) that occurred over twenty years ago. The government claimed that these activities provided "material support" to the Popular Front for the Liberation of Palestine, which the government now claims is a terrorist organization.

Humanitarian Law Project v. Dep't of Justice (U.S. District Court for the Central District of California; 9th Circuit Court of Appeals)

This case challenges the constitutional defects in the "material support" statute. In 2005, the case was remanded from the Ninth Circuit to the district court, which ruled that certain terms in the statute are impermissibly vague under the Fifth Amendment. Plaintiffs' remaining claims in the Summary Judgment motion were denied. Both parties appealed portions of the district court opinion and the case is once again before the Ninth Circuit. On May 19, 2006, the ACLU filed an amicus brief in the case on behalf of relief organizations who work in regions embedded with designated with terrorist organizations.

American Friends Service Committee v. Dep't of Justice (U.S. District Court for the Eastern District of Pennsylvania)

The ACLU National office and several affiliates have filed FOIA requests to uncover the targets of Pentagon spying. News reports have revealed that the Pentagon is collecting information in a secret database on peace groups and law-abiding Americans attending anti-war protests. After being denied expedited processing and fee waivers, the National office and the affiliates began litigating the request. The ACLU of Northern California received a fee waiver for its partnership with *San Francisco Bay Guardian*. On July 14, we filed a complaint seeking expedited processing. The government filed its answer on Sept. 1, 2006.

Matter of Hamdan (Immigration Court-San Pedro, CA)

Hamdan v. Gonzales (U.S. District Court for the Central District of California)

The ACLU first appeared on behalf of Abdul-Jabbar Hamdan, a fundraiser for the Holy Land Foundation, in the bond portion of his removal proceedings in immigration court in San Pedro, CA. In Oct. 2004, the court held that Hamdan was removable, but barred his deportation to Jordan under the

Convention Against Torture (CAT). The Board of Immigration Appeals reversed the part of the decision granting the application under CAT; that decision is now on appeal to the Ninth Circuit. ACLU-S. Cal. filed a habeas petition in federal district court to free Hamdan from detention pending the appeal of his removal case. The hearing in the habeas petition was in Dec. 2005. The district court granted the petition in July 2006. Hamdan was released from federal custody on July 31, 2006. The government appealed that decision to the Ninth Circuit.