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United States of America

Amnesty International's concerns regarding post September 11 detentions in the USA

1. INTRODUCTION: SUMMARY OF AMNESTY INTERNATIONAL'S CONCERNS

In the two months following the September 11 attacks on the World Trade Center and Pentagon, more than 1,200 non-US nationals were taken into custody in the USA, in nationwide sweeps for possible suspects. Partial data released by the government last November revealed that most were men of Arab or South Asian origin detained for immigration violations. Another 100 or so were charged with criminal offences, none directly relating to the events of 11 September.

Six months on, some 300 people arrested in the post September 11 (post 9.11) sweeps are believed to remain in the custody of the Immigration and Naturalization Service (INS);¹ an unknown number of others have been deported or released on bail, sometimes after months in custody. This report examines the circumstances of these detentions, following an earlier Memorandum Amnesty International (AI) submitted to the US Government in November 2001 in which AI raised concern about reports of incommunicado detention, harsh custody conditions and a lack of public information on those held.²

There continues to be a disturbing level of secrecy surrounding the detentions, which has made it difficult to monitor the situation. To date, the government has provided only limited data, which includes neither the names nor the places of detention of those held in post 9.11 INS custody, and immigration proceedings in many such cases have been ordered closed to public scrutiny. However, AI has gathered information from various sources, including a recent visit to two jails identified as housing detainees and extensive interviews with attorneys, detainees, relatives and former detainees.

Amnesty International's findings confirm many of the organization's earlier concerns and suggest that a significant number of detainees continue to be deprived of certain basic rights guaranteed under international law. These include the right to humane treatment, as well as rights which are essential to protection from arbitrary detention, such as the right of anyone deprived of their liberty to be informed of the reasons for the detention; to be able to challenge the lawfulness of the detention; to have prompt access to and assistance from a lawyer; and to the presumption of innocence.

¹ 327 of the original 1,200 arrested were reported to remain in detention as of 18 February 2002.

² Memorandum to the US Attorney General - Amnesty International concerns relating to the post 11 September investigations, AMR 51/170/2001, November 2001.

According to immigration attorneys, many post 9.11 detainees have been charged with routine visa violations for which they would not normally be detained. While technically in INS custody, some have been held for weeks or months pending security "clearance" by the Federal Bureau of Investigation (FBI), a process shrouded in secrecy. Lack of information given to detainees or their attorneys as to why they are being held has made it difficult for them effectively to challenge their detention.

Amnesty International recognizes that governments need to be vigilant in investigating potential "terrorist" links. However, the secrecy surrounding the current proceedings creates the potential for abuse. There is also concern that the immigration system is being used to hold non-nationals on flimsy evidence pending broad criminal probes, without the safeguards which are present in the criminal justice system.

For example, unlike people detained in the context of criminal procedures, INS detainees have no right to court-appointed attorneys. Contrary to assertions made by Attorney General Ashcroft in November 2001 that all INS detainees had the opportunity to seek legal assistance through pro-bono legal service providers if necessary, AI has learned that many detainees have been without access to lawyers for far longer than was initially reported. This is of particular concern given that some are being simultaneously investigated by the FBI and subjected to lengthy -- and possibly indefinite -- detention.

The INS has broad powers to arrest and detain people for suspected immigration violations and has been given further powers since September 11. This includes the power to detain people without charge for up to 48 hours or for a further undefined period in "an emergency, or in other extraordinary circumstances". This latter power is broader than the provision under anti-terrorist legislation passed by Congress, which allows the Attorney General to hold certified "terrorist" suspects for up to seven days without charge. Data examined by AI reveals that scores of people picked up in the post 9.11 sweeps were held for more than 48 hours, and several for more than 50 days, before being charged with a violation. Another regulation allows the INS to override Immigration Judges' decisions to grant bail in certain cases, thus reducing the power of the courts to oversee and rule on continued detentions. This regulation also undermines the principle of the separation of powers between the executive and the judiciary.

Amnesty International also remains deeply concerned that, although they are not charged with crimes, many post 9.11 detainees are held in punitive conditions in jails, sometimes alongside people charged or convicted of criminal offences. AI has received reports of cruel treatment, including prolonged solitary confinement, heavy shackling of detainees (including use of chains and leg shackles) during visits or court appearances and lack of adequate outdoor exercise. There have also been allegations physical and verbal abuse.

There have been complaints for years about poor conditions under which INS detainees generally -- including an unknown number of asylum seekers -- are held in local jails and INS detention centres. The Justice Department promulgated new detailed INS standards in late 2000, covering better attorney access and improved conditions, which were due to be introduced over time to all facilities housing INS detainees. However, these standards are still not being fully applied or adequately monitored, and many of the conditions under which 9.11 detainees are detained appear especially punitive. This report describes how the treatment reported violates international as well as INS standards.

Other issues addressed in the report include deportations and asylum cases. Although little information is available on those deported or removed following the 9.11 sweeps, there are concerns that some detainees risk being deported to countries where they would be subjected to serious human rights abuses. The manner in which some detainees have been removed -- one man, for example, was put on a plane without proper clothing or any of his possessions, and two people were deported without their families being informed -- is also of concern.

1.1 Concern about possible selective enforcement of immigration laws

Concern has also been expressed that the authorities may be applying immigration laws in some cases selectively on racial or religious grounds. While many thousands of people who overstay their visas or commit similar violations are not detained for prolonged periods, those picked up in the 9.11 sweeps are almost exclusively males from Muslim or Middle Eastern countries. While the authorities need to act on information or "tip-offs" about potential security threats, it is hard to escape the conclusion that, in some cases, race or origin may have been a prime factor in continued detention. There is also concern that statements made by the government purporting to link routine immigration cases with potential terrorism may fuel anti-immigrant sentiments and contribute to a wider backlash.

Protection from racial discrimination is a fundamental right under both US and international law. The International Convention on the Elimination of all Forms of Racial Discrimination (CERD), to which the USA is a state party, defines racial discrimination as conduct that has the "purpose or effect" of restricting rights on the basis of race.³ Amnesty International urges the government to ensure that any measures taken are not discriminatory,

³ CERD, Paragraph 1, Article 1,3. Article 5 of CERD calls on all states to "...guarantee the right of everyone without distinction as to race, colour, or nationality or ethnic origin, to equality before the law", including "equal treatment before the tribunal and all other organs administering justice". Article 26 of the International Covenant on Civil and Political Rights, ratified by the USA, prohibits discrimination "on any ground such as a race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Amnesty International's Memorandum to the Attorney General in November 2001 (op cit) contains further comments on racial discrimination, pp 12-13.

de jure or *de facto*, and that the rights of all those questioned, arrested or detained in connection with the events of 9.11 or its aftermath are scrupulously observed.

2. SCOPE AND SOURCES OF RESEARCH

The level of secrecy surrounding 9.11 detainees has made fact finding and analysis difficult. However, AI has obtained information from a wide range of sources, including contacts with more than 30 immigration attorneys and interviews with detainees, former detainees and relatives of those detained. Amnesty International has also obtained information from organizations working to assist and monitor the situation of detainees, including the American Civil Liberties Union (ACLU), the American Friends Service Committee, The Center for Constitutional Rights, the Center for National Security Studies, the Islamic Circle of North America, the Legal Aid Society of New York and the National Lawyers Guild. The organization has also looked at such official information as has been made available through a pending Freedom of Information Act (FOIA) lawsuit filed by human rights groups, including AI, and other official data such as administrative orders issued by the Department of Justice.

As there is no comprehensive information on those detained since September 11, the case examples given in this report are necessarily anecdotal. AI has information on many more cases than those cited in the report, among which there is a large degree of consistency. Many of the concerns raised are also corroborated by such official data as has been made available.

In February AI was also granted permission, along with two other organizations,⁴ to tour two jails in New Jersey housing post 9.11 detainees (Hudson County Correctional Center and Passaic County Jail). During these tours AI obtained first hand information on conditions in those facilities; interviewed detainees and spoke to officials, including the INS District Director in New Jersey. While this visit marked a welcome step towards more openness by the INS in that jurisdiction, some basic data - such as the number of 9.11 detainees held in each facility - was still not given, however, and the tour of Passaic jail, where there had been concerns about living conditions, was very brief and not all areas of the facility were viewed.⁵ Nevertheless, AI appreciates the assistance it received from INS and jail staff in facilitating the visits, and hopes that further access will be provided to non-governmental organizations (NGOs).

Although INS detention standards expressly permit access of outside groups, including NGOs, to facilities housing INS detainees, a request by Amnesty International to visit the federal Metropolitan Detention Center (MDC) in New York -- where more than 40 detainees are

⁴ Human Rights Watch and the New Jersey Immigration Policy Network.

⁵ The INS allowed much more time for the Hudson tour in contrast to Passaic jail, where little time was allowed for the tour and questions.

reported to be confined to cells for 23-24 hours a day in sealed⁶, high security cells -- was denied. AI is particularly concerned that the MDC remains closed to outside scrutiny, given serious complaints of cruel conditions which persist in the Security Housing Unit (SHU). The organization is currently renewing its request for access.

2.1 Geographical distribution of detainees

During the course of its research, AI obtained information about detainees across a wide geographical area. While it is believed that the majority of post 9.11 detainees are concentrated in New Jersey and New York City, Amnesty International has received reports of cases in 26 states including Arkansas, California, Connecticut, Florida, Illinois, Indiana, Michigan, Missouri, Ohio, Texas and Virginia.

2.2 Withholding names of detainees

Amnesty International has not included the names of many of the detainees or former detainees who are mentioned in this report. This is because many fear repercussions from other inmates or the authorities or fear that their or their families' safety could be jeopardized through public hostility to anyone cited in connection with the 11 September attacks. In some cases lawyers have advised against making their clients' names public. AI has the names of these sources in its possession.

3. CONCERNS ABOUT THE DETENTION PROCESS

Amnesty International is concerned that some post 9.11 detainees have been held under such secrecy that their families and lawyers had great difficulty in locating their whereabouts and in taking the necessary steps in order to provide them with the assistance and support they are entitled to under national and international law. Some have experienced weeks and months of delay before being notified of what charges they are being held under – and whether the charges are criminal or INS related.

Further, Amnesty International has received reports that some detainees are being kept in prolonged detention for minor immigration infractions, which would not usually result in deprivation of liberty. Many report that they have not been able to post bail, or are being required to post much higher bail payments than usual for similar offences.

⁶ The cells have solid doors (without windows), and narrow windows which cannot be opened.

Disturbingly, Amnesty International has also found that detainees are held beyond the dates posted for voluntary departure, deportation to their home countries, or after bail has been set and is ready to be met by friends or family. Detainees and their attorneys report a great frustration at not being able to gather information about the status of a case, and the lack of transparency of the procedures, which the INS seems to be following in determining whether a detainee can be released. Often they have been given conflicting information from the FBI and the INS or from different agents in the same organization.

This lack of transparency, and the overruling of judges' decisions to grant bail or voluntary departure, is considered deeply disturbing by Amnesty International. Keeping detainees for periods of prolonged detention in these circumstances may amount to arbitrary detention in contravention of international law and standards.

3.1 International standards

International law and standards provide that all persons who are arrested or detained should be informed immediately of the reasons for the detention and notified of their rights, including the right of prompt access to and assistance of a lawyer; the right to communicate and receive visits; the right to inform family members of the detention and place of confinement; and the right of foreign nationals to contact their embassy or an international organization. These rights are contained, *inter alia*, under article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in 1992; and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by consensus by the United Nations General Assembly in 1988.

These rights are important safeguards against arbitrary deprivation of liberty which is a fundamental human right. Freedom from arbitrary arrest or unlawful detention includes the right to be brought promptly before a judicial authority; the right to review of detention within a reasonable time or to release; and the right to challenge detention before a competent authority:

Article 9(1) of the ICCPR stipulates that "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention." To ensure freedom from arbitrary detention, Article 9(4) further provides that anyone "who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Human Rights Committee has stated that Article 9(1) is applicable to all deprivations of liberty, including "immigration control."

3.2 Secrecy

Amnesty International has heard reports from family members that for weeks they have been unable to establish if and where their loved ones were being held.⁷ Lawyers have also had difficulty trying to establish where their clients are held or when they have a hearing before the immigration court. One lawyer recounted how he would call with a detainee's name and date of birth and was told that they were "not in the system" even though they were in detention. A 1-800 number for immigration cases, which allows attorneys to punch in the A# (identification number that INS detainees are assigned) gave the message "case not found" for post September 11 detainees. When the lawyer turned up at the immigration court, there was also no listing of cases or clients, as there usually would be at the courthouse. When he asked at the court office he was told that he had to speak to the judge.⁸

The secrecy surrounding such cases is highlighted in an internal memorandum to Immigration Judges and Court Administrators, issued on the instructions of the Justice Department on 21 September 2001. This provides for closed hearings in "special cases" (see below) and states, in addition: "This restriction on information includes confirming or denying whether such a case is on the docket or scheduled for a hearing" and that the case number "is to be coded to ensure that information about the case is not provided on the 1-800 number and the case is not listed on the court calendars posted outside the courtroom".⁹

3.3 Information requested under the Freedom of Information Act (FOIA)

In an effort to gain information about the identity and location of detainees, Amnesty International and several other human rights organizations made a joint formal request to the Department of Justice on 29 October 2001 for the release of records under the Freedom of Information Act (FOIA). When the government failed to respond, the organizations filed a joint civil action in December 2001 against the Department of Justice, the INS and the FBI. The lawsuit alleges violations of FOIA and states that "One of the core purposes of the FOIA is to assure that the government cannot shield its actions from scrutiny by withholding information that

⁷ In one of the most serious cases reported to AI, the wife of a Pakistani man spent weeks seeking information on the whereabouts of her husband and brother. She went to MDC in New York on a number of occasions and was told they were not there, even though she was getting letters from them which came from the facility. It was only when she went with a representative from the Islamic Circle of North America (an organization which assists families) in December 2001 (more than two months after their arrest) and waited at the facility all day that she was told they were there. She was told to come back for a visit another day.

⁸ Conversation between Amnesty International and Sohail Mohamed, immigration attorney in New Jersey, 24 January 2002.

⁹ Memorandum from Michael Creppy, Chief Immigration Judge, dated 21 September 2001 and marked "Please Do Not Disclose".

is traditionally available to the public. Yet, that is precisely what has occurred here.” Specifically, it requests information on the identities and nationalities of those detained; their current status and location; whether or not they have legal representation; and the identities of courts and orders sealing (closing to public view) proceedings in connection with the detainees. The lawsuit also requests information on policy directives issued to officials regarding public statements about the individuals or the sealing of proceedings. In a further motion submitted in January 2002, the petitioning NGOs sought additional information, including confirmation that some of the INS detainees have been released, deported or granted voluntary departure.

The Department of Justice requested dismissal of the complaint in January 2002 on grounds that the complaint was too broad in scope and that the government had already released significant amounts of information on those detained (see below). It also argued that information may be withheld pursuant to FOIA exemptions providing protection of records compiled for law enforcement purposes and information that may interfere with enforcement proceedings, invade personal privacy, or endanger the life or physical safety of an individual.

The proceedings were still pending at the time of writing.

3.4 Data released by the government on detainees to date

On 27 November 2001 the Attorney General released the first official data on people detained in the post 9.11 sweeps, revealing that the vast majority of those still in custody -- 548 -- were being held for alleged immigration violations. A further 93 named individuals had been charged with federal criminal offences, some of whom had been released. None of the charges showed any direct links with September attacks. A further 11 people were being held as “material witnesses”, with the records on their cases sealed (see below). Neither the names nor the places of detention were given in the case of the INS detainees.

The list of INS detainees provided the country of origin of those detained. This showed that the largest group (207) were Pakistanis, followed by Egyptians (74); Turks (46); Yemenis (38), Tunisians (22), Saudi Arabians (16) and Moroccans and Jordanians (15 each).¹⁰ However, missing from this data was the fact that some of the detainees were nationals of other countries. Canada learned only later that the US was holding a number of Pakistanis who were Canadian citizens in the post-9.11 sweeps. Given the general concerns about secrecy, and the possibility that some detainees may not have had an adequate opportunity to seek assistance from their embassy, this was a disturbing omission.

Further information was provided by the government on 11 January 2002 pursuant to the FOIA request cited above. This data listed approximately 718 people as having been

¹⁰ 35 other countries were listed.

detained on immigration violations since September 11, of whom some 460 remained in detention. A list entitled "INS Special Interest List: Joint Terrorism Task Force Working Group" provided some detail on the 725 individual cases and revealed that 380 of the 718 were "active cases" and 338 were "inactive cases". The second category seems to suggest that these people had been totally cleared of any link to alleged "terrorism", but it was not known how many were still in detention. According to attorneys, many people held on routine violations have been listed as "special interest" cases pending "clearance by the FBI" and are therefore likely to be included among the 380 given under the "active" category.

The government has since clarified the status of the detainees on the INS custody list classified as "inactive cases" in a Supplemental Declaration issued on 5 February 2002. This stated that "persons believed not to be of current interest regarding the investigations emanating from the September 11th attacks are placed in an 'inactive' status and *may have been released from custody or deported* (AI emphasis)".¹¹ The government's statement goes on to say that "Disclosing the identities of detainees who have been placed in inactive status, *whether released from custody or not*, could still harm the investigation" (AI emphasis).¹² This implies that some persons whose cases are "inactive" are still being detained, on the chance that they may become of interest to the government later.

The FOIA lawsuit had also requested information on persons detained under material witness warrants in the post 9.11 investigations, including their names, citizenship status, location of arrest and/of detention, the date any charges were filed, and dates of if and when they were released. However, the Justice Department said it was unable to provide information on such cases, as the US District Courts before which the material witnesses had appeared had issued sealing orders prohibiting release of any information about these proceedings (even after the witness had been released). The secrecy surrounding such cases is also of concern.¹³

¹¹ Supplemental Declaration of James S. Reynolds, Paragraph 3, filed 5 February 2002. The Government also provided an amended list of federal criminal defendants that included 16 individuals charged with federal crimes that had been inadvertently omitted from its previous release. The statement also clarified that there are currently 10 sealed criminal cases (all charged with federal crimes).

¹² Paragraph 5 of Mr Reynold's statement, *ibid*.

¹³ A material witness is defined as someone with unique information about a crime, who may be held only if there is good reason to believe he or she will try to avoid testifying. Under federal law material witnesses are entitled to counsel and a bond hearing. Civil rights groups have expressed concern that the government may be using the material witness statute in post 9.11 cases not to secure testimony but to authorize preventive detention (see testimony of Kate Martin, of the Center for National Security Studies, before the House Committee on the Judiciary Forum on National Security and the Constitution, 24 January 2002).

By mid-February, 327 people picked up in the post 9.11 sweeps were reported to be still in INS custody.¹⁴ To date, the government has still refused to provide either the names or the places of detention of those held for immigration violations. Nor has it provided information on the numbers released or deported.¹⁵

Amnesty International and other human rights organizations are still seeking further information regarding how many detainees have been released from custody or are cleared for voluntary departure. The groups have stated that “there are credible indications that the government itself has determined that most of the detainees are not connected to terrorism” and that the Attorney General no longer has any national security rationale for withholding information about these individuals.

Amnesty International calls on the Department of Justice to provide the information requested without delay.

3.5 Holding without charges

Amnesty International is concerned that many of those detained in the post 9.11 sweeps have been held for prolonged periods without being charged or brought before a judge, contrary to international standards. Scores of people have been held for weeks or months before being charged (see below).

On 17 September 2001 the Department of Justice issued an “interim” administrative rule, which extended the time a non-national can be held in INS custody without being formally charged with a crime or INS violation from 24 hours to 48 hours “except in the event of an emergency or other extraordinary circumstance in which case the service must make such determinations within an additional reasonable period of time”.¹⁶ This latter provision is broader than under the “anti-terrorism” legislation passed by Congress in October 2001 (The Patriot Act), which allows the Attorney General to authorize the detention of non-nationals if they are “certified” as “terrorist suspects” for up to seven days before being charged or brought

¹⁴ New York Times, 18 February 2002.

¹⁵ An article in the Washington Post on 8 March 2002 reported on information from a Pakistani consular official that about 130 Pakistani “captives” had been deported, released on bond or had agreed to return voluntarily to Pakistan “in recent weeks”. The official reported that around “140 or 150” Pakistanis remained in detention and would be freed over the next month now that the US authorities had concluded that “absolutely none had links to 9-11” (article by Steve Fainaru and Amy Goldstein). These figures, which have not been publicly confirmed by the government, suggest that more Pakistanis were in detention than given in the original list of 548 detainees released by the government in November 2001 (where 207 Pakistanis were listed as in INS detention).

¹⁶ 8 CFR 287.3 (d) - amended by interim rule, effective 17 September 2001.

before a court. There is no definition of what constitutes a “reasonable” period of time under the INS interim rule, nor does any link with alleged “terrorism” need to be made.

Civil rights advocates have told Amnesty International that they are unaware of the seven-day provisions of the Patriot Act having been invoked in any case thus far, possibly because the broader INS interim-rule is being used instead to hold non-nationals for investigation before being charged.

Amnesty International has examined the documents released by the government under the FOIA in January 2002 (see 3.4 above) which includes information on 718 INS cases listing date of arrest and the date on which charges were brought. This reveals that 401 individuals were charged within 48 hours of arrest and 317 were charged **after** 48 hours. **In 36 out of the 718 cases, the individuals were charged 28 days or more after their arrest.** Thirteen people were held for more than 40 days and nine for more than 50 days. The longest period of detention without charge was the case of a Saudi Arabian listed under the “active cases” (see 3.4 above) who was held for 119 days before being charged. The “inactive cases” list include an Iranian held for 57 days and six Pakistanis held for 52 days without charge. All the charges eventually filed are listed as immigration violations, some of them routine. For example, two Pakistani men were held for 49 days in custody and another man for 30 days before being charged with overstaying their visas.

3.6 Prolonged detention – minor visa violations

Many of those detained in the post September 11 sweeps have been charged by the INS for minor visa violations. According to attorneys, cases typically include those where detainees have overstayed their visa, worked illegally on a tourist visa or had not completed enough courses to fulfill the requirements of a student visa. In some cases, detainees were reportedly in the process of having their visas renewed, a procedure which allows them to stay in the country while their application is being processed. Still, they were detained, and in some cases opted for voluntary departure, fearing prolonged detention (see below).

Attorneys have reported to Amnesty International that normally it is a matter of two to three days before they can get a bond hearing for their clients in this type of case. For the post September 11 detainees, however, getting anyone granted bail has been extremely difficult, at times taking weeks if any hearing was accepted at all. Amnesty International was also told that unusually high bonds were set by both the INS and Immigration Judges, particularly in the first three months after 11 September.¹⁷

¹⁷ An article in the New Jersey Law Journal described how bond was being increased by Immigration Judges by five times or more from pre-September 11 levels. Bonds for minor visa violations which were about

For some detainees, regardless of the merits of their case, continued detention has seemed so undesirable, that they have been willing to accept Voluntary Departure from an Immigration Judge – meaning that they will be able to leave the USA without the added stigma in their home countries of having been deported from the USA.

3.7 Release delayed pending FBI “clearance”

Lawyers report being unable to find out why their clients continue to be detained, other than being informed by the INS that they are waiting for “clearance” from the FBI in Washington and/or that they are “still under investigation”. In most cases, it appears that no further details are given and the nature of the investigation remains a mystery. AI has been told that many detainees were questioned by the FBI after being initially taken into custody but remained in INS detention pending FBI “clearance” without being questioned further. Those detained may include both “active” or “inactive” cases, according to the Justice Department information released in February 2002 (see 3.4 above).

3.8 Closed immigration hearings

Shortly after the 11 September attacks, the Department of Justice implemented security procedures which required hearings in immigration courts (including bond and deportation proceedings) to be closed to the public in “special cases”. The policy was set out in a Memorandum from Chief Immigration Judge Michael J. Creppy (known as the Creppy Memo) on 21 September 2001. This stated that cases designated by the Justice Department would be heard separately from all other cases on the docket in a court-room closed to all but officials, the detainee and the detainee’s attorney. Family members, visitors and the press are excluded from the proceedings. The policy also required the record of proceedings to be sealed and released only to the detainee’s attorney.¹⁸

Amnesty International has been told that many post 9.11 cases have been held before closed immigration courts, even where detainees are being held for minor visa violations. The blanket secrecy imposed on such proceedings has been criticized by civil rights advocates, sections of the media and others as preventing legitimate public scrutiny of the process, a concern shared by AI.

\$2,500, were now in the \$9,000 to \$15,000 range. (“Attorneys Face Hidden Hurdles”, Jim Edwards, NJLN, 3 December 2001).

¹⁸ The memo states that the record will be released to the attorney “assuming the file does not contain classified information”. Amnesty International is not aware of cases in which classified evidence has been presented in such proceedings.

In January 2002, the American Civil Liberties Union (ACLU) filed a lawsuit challenging this procedure in the case of Rabih Haddad, a Muslim pastor and community leader who had been living in Ann Arbor, Michigan. Rabih Haddad was arrested on 14 December 2001 for overstaying his immigration visa and he was denied bail, even though an application for permanent residency had been pending since April 2001. According to the lawsuit, it is generally the practice of the INS to refrain from initiating deportation proceedings in such cases pending determination of the residency application. Although Rabih Haddad had been prominent in condemning the 11 September attacks, his arrest was believed to stem from his alleged connection with a charity which the government suspected may have provided aid to "terrorist" organizations. Rabih Haddad has been held in solitary confinement in the Metropolitan Correctional Center, Chicago since his arrest. All proceedings in the case, including bail hearings, have been closed to the public. The lawsuit was filed by the ACLU on behalf of two Detroit newspapers and Michigan Congressman John Conyers, Jr. The outcome was still pending at the time of writing.¹⁹

3.9 Continued detention after bond has been set

Amnesty International has received reports that people have been kept in detention for weeks after a judge has set bail (bond). In some cases the INS has refused to accept the bond even when relatives have presented the bond payment, because "special clearance" had not yet been secured from the FBI.

An "interim" rule, issued by the Department of Justice on 29 October 2001, has made it easier for the INS to delay release after judges' bond rulings. The rule allows the INS to stay a release order by an Immigration Judge in any case pending a final decision by the Board of Immigration Appeals (BIA). No grounds need be given other than a simple form stating that the INS considers the person in question to be a security or a flight risk. The procedure also provides for an automatic stay of judges' decisions to grant bond in cases where bond of \$10,000 or more is set. The interim rule further provides an automatic five-day stay of a BIA decision to grant bond, pending a further appeal by the INS to the Attorney General.

The interim rule was reportedly introduced after several immigration judges had ordered the release of detainees after holding a hearing and finding no evidence of a flight risk or security threat. Immigration attorneys are concerned that this proceeding - analogous to bond hearings in the criminal justice system - can now be overridden at the discretion of the

¹⁹ A second lawsuit was filed on 6 March 2002 by the New Jersey chapter of the ACLU challenging closed immigration hearings for 9.11 detainees in New Jersey. The lawsuit was brought on behalf of The New Jersey Law Journal and The Herald News, the latter based in West Paterson, NJ, which were seeking to attend the hearings. A hearing on the lawsuit is scheduled for 5 April 2002.

prosecuting agencies, without any further evidence being presented. Amnesty International is concerned that this practice violates the principle of the separation of powers between the executive and the judiciary, which is enshrined in the international guarantee of the independence of tribunals.

- ! Amnesty International interviewed an Egyptian national detained on 12 October 2001 for overstaying his visa. He was questioned briefly by the FBI after his arrest then handed over to the INS for deportation proceedings. At his first bail hearing on October 23, bail was set at \$10 000. However, the government lawyer said they didn't have his file and he was given another bail hearing a week later. At this hearing, the judge granted bail of \$ 7500. However every time the lawyer called the bond officer he was told the INS didn't want to accept bail yet. The next hearing was on November 26. When his lawyer told the immigration judge that the INS would not take the bail, the judge called the INS for an explanation. The detainee was released by 5pm on the same day. He had waited a total of 26 days to be released, from the day a judge had granted him bail.

3.10 Continued detention after deportation ordered or “voluntary departure” granted

Amnesty International is concerned that many post 9.11 detainees have been kept in custody (often in harsh conditions) for weeks or even months after agreeing to voluntary departure from the USA or after a judge has issued them with a Deportation Order. Under US immigration law, the INS has up to 90 days to deport someone after a final order of deportation has been issued. voluntary departure must be effected within 60 or 120 days depending on the circumstance. While in most cases it appears that these legal limits have not yet expired, in many cases neither the detainees nor their attorneys have been able to establish why their cases are being delayed and they are still in US custody. The common reason given in such cases is that the INS is still waiting for “clearance” from the FBI.

In several cases people have been held beyond the legal limit under the law. In one case an attempt was made to bring a *habeas corpus* action seeking the detainee's release. This resulted in the INS immediately filing a routine immigration charge against the plaintiff, thus voiding the action.

- ! Shakir Baloch, a Canadian citizen of Pakistani origin, waited over 100 days for a deportation order to be processed. He was arrested in New York on 22 September, where he was taking courses to improve his doctor's degree from Pakistan. He admitted having illegally entered the US after being denied entry on a previous occasion. He was ordered deported, refused bail and placed in isolation in the High Security Unit of MDC. His lawyer filed a petition for *habeas corpus*, after the 90 day period had

passed, to which the Government responded by filing a criminal charge against him: entering the US after being excluded. He was still detained at the time of writing.²⁰

- ! A Mauritanian national was still detained more than four months after his date for voluntary departure, when AI interviewed him in February 2002. He had reportedly applied for an extension of his B1/B2 visa and got a receipt for that filing. On October 11, while his extension was still pending, he was arrested, and held on a visa overstay violation. He was granted a “safeguarded voluntary departure”²¹, with a two-month departure date; his attorney’s office supplied the plane ticket home. He was still waiting to leave, even though the voluntary departure date has long passed.

According to a report in the New York Times on 18 February 2002, 87 foreign nationals who had final orders of deportation were still being detained at that time, pending checks by the Justice Department. Many had spent more than 100 days in jail with no end in sight. The article quoted unnamed officials as saying that the available evidence suggested they had played no role in the 11 September attacks or the *al-Qa’ida* network.

In some of the cases reported to Amnesty International, detainees and their attorneys were told by the FBI that they were cleared – but were informed by the INS that they were still held pending “clearance”. Amnesty International is concerned at how difficult it allegedly is to get straight answers from the two agencies which do not conflict with each other.

4. ACCESS TO ASSISTANCE AND SUPPORT: SAFEGUARDS RELATING TO ARREST AND DETENTION

“There is a list of lawyers but I’ve tried to call all the numbers and they don’t work - it’s not worth trying again because none of them accept collect calls. Can you help?”

(An immigration detainee housed at Passaic County Jail for two months conveys to Amnesty International his desperate attempt to secure legal representation)

As outlined in AI’s Memorandum to the Attorney General in November 2001, there were many reports of detainees picked up in the post-9.11 sweeps being held effectively “incommunicado” in the initial stages after arrest, as relatives and attorneys searched for their whereabouts. Information received since then indicates that detainees’ ability to maintain contact with the outside world has been a persistent problem, extending far beyond the initial period of detention,

²⁰ The *habeas corpus* petition was filed on 21 December 2001 and the government charged Shakir Baloch on 3 January 2002.

²¹ This is a procedure whereby he is required to leave straight from the detention centre.

as indicated below. Some detainees have reported problems in understanding their rights and how to exercise them due to language difficulties.

4.1 Initial access to attorneys during FBI or INS questioning

Every arrested or detained person, whether or not on a criminal charge, has the right to the assistance of legal counsel. The UN Human Rights Committee has stressed that “all persons arrested must have immediate access to counsel”.²² Principle 7 of the UN Basic Principles on the Role of Lawyers states that access to a lawyer must be granted “promptly”. The Inter-American Commission has concluded that the right to counsel set out in Article 8(2) of the American Convention on Human Rights applied on the first interrogation.²³

Amnesty International is concerned that some post 9.11 detainees may not have been advised of their right to an attorney during their initial period in custody, when many were questioned by the FBI before being handed over to the INS. AI has also learned of cases where detainees’ requests to contact an attorney were denied during initial questioning, contrary to both US law and international standards. Although some detainees have reported waiving their rights to an attorney, others have said that they were not advised of their Miranda rights.²⁴ There is concern among lawyers that some detainees did not fully understand their rights at the time they were taken into custody. Several detainees have alleged they were subjected to threats or other ill-treatment during questioning, raising further concern that their rights were violated. Reported examples of cases include:

- ! A Pakistani man arrested in Florida said he asked repeatedly for a lawyer while being interrogated by the INS in Miami for several hours handcuffed to a chair. His request was denied, and his attorney spent a day trying to find out where he was detained, before locating him the next day at the INS detention centre in Krome.²⁵

²² UN Doc. CCPR/C/79/Add, 9 April 1997.

²³ OEASer.L/V/11.62,doc 10, rev.3, 1983.

²⁴ Reports given by detainees to the New York Legal Aid Society, based upon services provided through a specially funded initiative. *Miranda v Arizona* states among other things that the person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent and that anything he says may be used against him in court, and that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.

²⁵ AI interview with a Florida immigration attorney, October 2001.

- ! Five Israelis were reportedly held incommunicado for about a week after their arrest on 11 September, and were allegedly interrogated while blindfolded and in their underwear.²⁶
- ! One detainee held in jail in New York on a visa overstay charge, reported that when he was seized, he asked twice if he could call his attorney and was refused.²⁷
- ! A Jordanian, aged 33, was held for three days before being given access to a telephone to call an attorney or his family.²⁸
- ! A man was detained for two weeks before allowed to make his first call to an attorney.²⁹

4.2 Access to attorneys in INS detention facilities

Individuals held for immigration violations in the USA have a right to counsel but not to court-appointed or state-funded attorneys. The only hope for many of them lies with pro-bono or low cost legal assistance from non-governmental organizations (NGOs). Over the years, attorneys and NGOs have faced problems in trying to gain access to detention facilities to discover who is in need of assistance. These problems have been exacerbated by the secrecy surrounding the post 9.11 detentions, leaving many detainees with no assistance in dealing with complex immigration proceedings.

In the absence of official data on the location of INS detainees, NGOs and NGO legal service providers across the country spent several months after 11 September trying to track down the whereabouts of those held, building up a picture through individual contacts with private attorneys, families or detainees. Eventually it was established that many post 9.11 detainees were held in Hudson County Correctional Center and Passaic County Jail in New Jersey and the Metropolitan Detention Center in New York City. However, requests from NGOs and other legal service providers for general access to these facilities, in order to screen for who may be in need of legal assistance, has been denied. Lawyers told Amnesty International that they were allowed to visit detainees only if they already had the name or been retained by the detainee's family - a catch-22 situation. This lack of general access to NGOs is particularly disturbing in view of the fact that the INS has had guidelines since 1997 which allow NGOs and legal representatives to give group "Know Your Rights" presentations to INS

²⁶ Source: various press articles and AI telephone interviews with a lawyer and a room-mate of one of the detainees.

²⁷ Reported by Legal Aid Society, New York.

²⁸ Ali Mounnes Yaghi - reported in The Times Union, Albany, NY 4 February 2002.

²⁹ Newsday (New York), 22 October 2001.

detainees. None of the detainees in Hudson or Passaic county jails had received a "Know Your Rights" presentation at the time of AI's visit. In February 2002, the New Jersey INS authorities indicated that they would permit such presentations to be held in detention facilities in New Jersey. This was after the ACLU of New Jersey had filed a lawsuit requesting access.

Restrictions on access has also come from within the facilities where detainees are housed. Many post 9.11 detainees report being obstructed in their ability to make phone calls or being given wrong information about legal services providers - despite INS guidelines designed to facilitate these services (see below).

Amnesty International is concerned that, due to factors such as those described above, many detainees have been without access to attorneys for weeks or even months after being taken into custody:

- ! Out of 30 detainees in MDC, Brooklyn, who were interviewed by Legal Aid Society attorneys in late 2001, 19 had no legal representation. The time they had spent in detention before seeing anyone other than a government official included the following periods: 30 days, 55 days, 64 days, 93 days and 112 days. Some detainees reported they had made several attempts to get a lawyer, then had given up.
- ! During its visit to Passaic County Jail, New Jersey, AI met with a Pakistani national who had been in the jail for three months without a lawyer. AI also requested a visit with a Yemeni national who had been held for four months without a lawyer; he was reportedly no longer in the facility at the time of Amnesty's visit and may have been transferred.

A significant number of detainees were believed to be still without legal counsel as late as February 2002. Attorneys in Florida expressed concern to Amnesty International in mid-February that 50 post 911 detainees were held in facilities in that state, most of them without legal counsel. One organization working to assist detainees in New Jersey reported that it knew of at least 15 detainees who were not represented by counsel, and Amnesty International has received the following additional reports of individuals detained in New Jersey without counsel:

- ! A Jordanian national arrested for overstaying his tourist visa (while in process of applying for a work permit) had been in Passaic County Jail without representation for two months as of mid-February 2002.
- ! A Moroccan national detained in Passaic Jail for two months was still not represented when AI interviewed him on 6 February 2002.

4.3 Access to telephones

INS detention standards provide that detainees should be given a list of organizations able to provide *pro-bono* or other representation, and that they should be allowed to make telephone calls to legal service providers and other key contacts. The Standards further provide:

“Even if telephone service is generally limited to collect calls, the facility shall permit the detainee to make direct calls to:

- *Legal service providers in pursuit of legal representation;*
- *Consular officials; or in*
- *A personal or family emergency, or when the detainee can otherwise demonstrate a compelling need (to be interpreted liberally)*

If the limitations of its existing phone system will initially preclude the facility from meeting these requirements, the Officer in Charge must report this to the INS. INS will respond by providing some means of access ... the detainee will always be granted access within 24 hours of his/her request. Incidents of delays extending beyond eight (waking) hours must be documented and reported to the INS.

The facility shall enable all detainees to make calls to the INS-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party.”

Despite these standards, detainees have consistently reported being denied adequate telephone access by detention facilities. The problem has been made worse in some facilities because of inadequate information contained in the list of attorneys given to detainees. A common complaint was that legal service providers on the list did not take general immigration cases, only asylum cases, or had other limitations on the assistance they could provide. Some detainees complained the information on the list was inaccurate. In MDC, for example, an out-of-date number of the Legal Aid Society was included on the list for several weeks before being corrected.³⁰

In MDC a number of detainees alleged being denied any access to phones during the early part of their detention. They reported the following time periods before they were able to make their first call: nine days, eight days, 13 days and 24 days.³¹

³⁰ The Legal Aid Society's downtown New York office was damaged in the September 11 attacks and they were forced to relocate. They communicated their change in number to the authorities but their new number was not put on the list for several weeks.

³¹ Information from the Legal Aid Society, New York.

Detainees in MDC also reported being allowed just one phone call a week. They had to choose a number from the list of legal service providers - if no-one answered when they called, they had to wait another week before being allowed to try again or seek assistance from another number on the list. There were also reports that detainees were only allowed to make calls after 5.30pm when many offices were closed. One detainee reported that once he had selected one number he was not able to change his "designated" number. Some detainees reported that they had made two or three attempts to get a lawyer, then had given up.³² Four of the 32 detainees interviewed at MDC reported that they had been on hunger strike at least once - one hunger strike was to protest the lack of access to counsel.

MDC is not the only facility where detainees report restrictive access to telephones. A detainee held for nearly two months in a Tennessee jail told a Senate subcommittee in December 2001 that he was permitted only one 15-minute phone call a week, either to his attorney or a family member.³³

Contrary to the INS standards cited above, detainees in Hudson County and Passaic County jails in New Jersey are only allowed to make collect calls, including to attorneys. This has reportedly served to further hamper contact with attorneys, as many legal services providers - who have scant resources - are unable to accept collect calls. Some attorneys also confirmed that their offices do not accept collect calls.

- A Moroccan national, detained for two months, told Amnesty International that he desperately needed a lawyer. He had called all of the numbers on the INS-provided list, but it was not worth trying again because none of them accepted collect calls. He asked the Amnesty International representative to help him find a lawyer who would accept collect calls.

Concern about lack of access to 1-800 (free calls) was raised by AI during its visit to Hudson County jail in February 2002. Officials indicated to the delegation that they would in future enable 1-800 calls to be made to detainees' consulates and to their legal lists -- this would be a welcome measure towards ensuring better access to necessary legal assistance.

4.4 Access to relatives

"I have made numerous pleas to the warden and others to let me speak with my family once a week, but my pleas have fallen on deaf ears."

³² These were repeated complaints received by attorneys from the Legal Aid Society, when interviewing detainees at MDC. While most said they were allowed one legal call a week, several claimed they were only allowed one such call a month.

³³ Testimony of Ali Al-Maqtari before the Senate Judiciary Committee 4 December 2001.

Extract from letter from a detainee held on immigration charges in Chicago, and allowed only one 15 minute call to his family every 30 days.

Rule 37 of the UN Standard Minimum Rules for the Treatment of Prisoners states: "Prisoners shall be allowed under necessary supervision to communicate with the family and reputable friends at regular intervals, both by correspondence and by receiving visits." INS Detention Standards provide: "You have the right to have family members and friends visit you in keeping with the facility rules and schedules"

Family members have not only had problems locating where their relatives are detained, but have also been denied access to detention facilities for prolonged periods in some cases. In some cases visits with relatives have been restricted on what appear to be unjustified security grounds, or as a disciplinary measure for apparently minor rule violations.

- The wife and sister of two Pakistani men picked up in the 9.11 sweeps contacted Amnesty International in mid-December 2001 because she could not locate her brother (detained September 27th) and husband (detained October 3rd). Even after she started to receive letters from the Metropolitan Detention Center, New York, she was still not allowed to visit her relatives and was told they were not being held there. She was finally able to visit her husband in January 2002, three months after his arrest, but she still had no access to her brother in late February 2002. Her four children were finally able to visit their father, in February 2002, four months after his arrest.
- The wife of another detainee held at MDC since September 2001 was able to visit him for the first time on 19 December 2001 and, as of late February 2002 had only been able to visit him twice. He has been held for more than five months in solitary confinement in MDC. In February, Amnesty International received reports that his visiting rights were suspended for 60 days as punishment for failing to stand up when a guard came into his cell during prayer.
- Mazen Al-Najjar, a Muslim cleric and academic, was arrested and placed in a high security prison in November 2001, after he was issued with a final order of deportation. He was denied all visits with his family for 30 days after his arrest.

Restrictions on phone access (as well as frequent transfer in some cases) has also prevented regular contact with families. Some detainees report only being allowed to make one phone call every 30 days:

- A US citizen married to an Iraqi national waited for 3 weeks for a phone call while he was in detention. He was detained in three different facilities in three states (in Seattle, Oklahoma and Pennsylvania). He has now been released and cleared by the FBI.

- An Iranian businessman was arrested for a visa violation; his girlfriend reported that he was not able to make a phone call for two weeks while held in a detention facility in Rhode Island.

Detainees who can only make collect calls also reported difficulties in maintaining regular contact with their relatives due to the expense; one minute of a collect call in Passaic reportedly costs \$6 and some people have run up bills of \$1-2,000.³⁴

At Hudson detainees can make international calls by arrangement through a counsellor and by purchasing a phone card. An Egyptian detainee, arrested on a visa violation, reported submitting numerous requests (at least 15) to call his mother who is in ill health in Egypt; he has been granted permission to call only once. He reports being arrested on 31 October 2001 but was only able to speak to his wife on 3 January 2002.

4.5 Transfers of detainees

Frequent transfers of detainees to different places of detention has served to perpetuate the secrecy surrounding detention and undermined detainees' ability to receive the assistance of legal counsel and relatives. International standards provide that detained persons have the right not only to notify their family promptly of their arrest but also of any transfer and the place to which they have been transferred.³⁵ AI is concerned that detainees may become lost in the system, in part because the authorities continually move them without notification of family members or counsel.

During the tour of Hudson County Correctional Center an INS official told AI that attorneys cannot be notified before the transfer of detainees because of security reasons, but that they were notified after transfer. AI spoke to attorneys who reported that their clients had been transferred without notification. One attorney described arriving at Hudson County jail to meet with six of his clients and found only three were still there; no one at the jail could tell him the whereabouts or fate of his other clients. He was only able to locate his clients after finding out that another facility in the area (Middlesex County Jail) had started taking INS detainees, and that his clients were among them.

³⁴ Telephone conversation with immigration attorney, February 2002. This was confirmed by direct testimony to Amnesty International from detainees, some of whom reported to AI that they had run up telephone costs in the region of \$600 and \$800.

³⁵ Principle 16 (1) of the UN Body of Principles states: "Promptly after arrest and on each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

4.6 Interpreters/Translation

Amnesty International is concerned that the isolation and confusion many detainees experience is compounded in some cases because of language difficulties. Contrary to international standards, detainees have not always been given information in a language they understand.

- An elderly Pakistani national, detained for three months for a minor immigration violation, could not communicate in English. He told an Amnesty International representative that she was the first person he has been able to talk to in his native language, Urdu. He told her that he did not understand what was happening to him and that he did not have a lawyer.

Principle 14 of the UN Body of Principles stipulates that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language he understands information about the reason for his arrest and the charges against him; communication of any order of detention and the reason for it; an explanation of his rights and how to avail himself of such rights. The standard also states that anyone in detention is entitled to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Amnesty International spoke to a detainee at Passaic County Jail who reported that he had not been given any materials to read in Urdu or Arabic; the only languages he understood. An organization that works to assist families of detainees reported that most detainees do not know why they are being detained and that language is an issue.³⁶

According to the INS Detention Standards a copy of the "Detainee Handbook" should be given to detainees upon admission. The Handbook lists the detainee's rights and responsibilities and provides an overview of detention policies, rules and procedures. The Handbook should be available in English and Spanish, and if appropriate, should be translated into the next most prevalent language among the facility's detainees. The Officer in Charge will provide translation assistance to detainees exhibiting literacy or language problems and those who request it.³⁷

During the tours of Hudson and Passaic, Amnesty International was told that the Detainee Handbook was only available in English and Spanish. One detainee reported that he

³⁶Islamic Circle of North America (ICNA).

³⁷ INS Detention Standards, Detainee Handbook III (E) Standards and Procedures.

had not been given a copy of a handbook but had seen a copy in English that a criminal detainee had shown him. He also said that many of the detainees had language problems. INS officials stated that there were four of five guards at Hudson who can speak Arabic but no Urdu speakers, and that Passaic County Jail had both Urdu and Arabic speakers on staff. They also said they can call an interpreter if needed although the service was not used very often. However, detainees at both Hudson and Passaic told Amnesty International that they had not been able to find any guards who could speak their native language.

4.7 Consulates

"We sign so many forms; I don't know what I signed."

Report from a detainee when asked whether he had waived his right to contact his Consulate.

Amnesty International is concerned that foreign nationals may not have been given an opportunity in all cases to seek assistance of their embassy or a country representative on arrest, as provided in the Vienna Convention on Consular Relations, which the USA ratified without reservation in 1969.³⁸ Although they may choose not to exercise this right, all foreign nationals must be informed of their right to contact their consulate immediately upon arrest. It is the responsibility of the Department of Justice to ensure this right is protected whether or not the detainee is in federal or local custody and, where requested, to arrange without delay for contacting their consulates.

INS Detention Standards, Visitation, III (K) Standards and Procedures, Consular Protection reaffirm this obligation: "According to international agreements, detainees must be advised of their right to consular access and the INS must facilitate this access."

Detainees may not wish to contact their Consulates because they fear that they may be subjected to human rights abuses if forced to return to their home country. However, Amnesty International has received reports indicating that some detainees may not have been given an adequate opportunity to make this choice. Some detainees have told attorneys that they were given a pile of papers to sign when first in detention, but that they did not always know what they were signing.

According to one source, at least one detainee at MDC claimed he wanted to speak to his consulate but was denied access. An Indian national, arrested in Oklahoma reportedly told a judge that he wished to meet with consular officials but had not been given access to his

³⁸ See also Rule 38(1) UN Standard Minimum Rules for the Treatment of Prisoners: "Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong". Principle 16(2) of the Body of Principles contains a similar provision.

consulate. The INS reportedly denied that a request for consular access had been made in the case; the detainee finally met with consular officials at MDC three months after his arrest.

5. DEPORTATION AND ASYLUM CONCERNS

No official data has been provided on how many people arrested in the post 9.11 sweeps have been subsequently deported, or where they were returned to.³⁹ However, AI is concerned that some people may be returned to countries where they are at risk of human rights abuses. International standards provide that no-one should be returned to a country where they would be at risk of serious human rights abuses. This principle of *non-refoulement* is recognized under US law.⁴⁰ All asylum-seekers should have an opportunity to have their claims for protection assessed in a fair and satisfactory procedure, and international standards provide that, as a general rule, asylum seekers should not be detained.⁴¹

Under the 1951 UN refugee convention, “acts of terrorism” may be recognized grounds for exclusion from refugee status when they constitute crimes against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, or acts contrary to the purposes and principles of the UN.⁴² However, a preliminary consideration that someone may fall under the provisions of the exclusion clauses should not hinder the full examination of the claim for asylum. No-one should be forcibly removed without having had their individual need for protection assessed, with all the safeguards provided under human rights standards (including the right to be informed of the evidence, to rebut the evidence and to appeal against a decision to exclude).

Although it is not known how many asylum seekers are among those detained in the post 9.11 arrests, AI met with two detainees in Hudson County Correctional Center who were claiming asylum and has learned of several other cases where detainees had asylum claims

³⁹ See note 15 under 3.4 above, referring to reports that about 130 Pakistanis have been deported, released on bond or agreed to return to Pakistan in recent weeks.

⁴⁰ The USA has acceded to the 1967 Protocol to the 1951 UN Convention relating to the Status of Refugees and has enacted further legislation, in keeping with its obligations under the Convention against Torture, by which it undertakes not to expel, extradite or otherwise effect the involuntary return of any person to a country where there are substantial grounds for believing the person would be in danger of being subjected to torture.

⁴¹ See the Executive Committee for the UNHCR's programme (EXCOM) Conclusion No. 44.

⁴² Article 1(F) of the 1951 Convention relating to the Status of Refugees.

pending at the time of their arrest.⁴³ In two cases (both involving men of Middle Eastern origin), the detainees had been released on parole pending adjudication of their claims but were taken back into custody after the September 11 attacks. While the cases of which AI is aware involve people who have legal representation, there is concern that some detainees may be in the system without adequate access to counsel and other facilities for having their claims assessed in a fair and satisfactory procedure.

A lawyer representing a number of asylum seekers in Florida has reported that, in her experience, it has become harder since September 11 for asylum seekers from certain countries to have their claims accepted. One of her clients, a young Iraqi, had his claim for asylum denied by an immigration judge in November 2001, despite a previous finding that he had a "credible fear" of persecution. There was no finding that he fell under the exclusion clauses referred to above and his parents, brother and sister had earlier been granted asylum in the USA. The case is currently under appeal. The lawyer told AI that she believed a number of asylum seekers, including several stateless Palestinians, could be detained indefinitely if their claims for asylum are rejected and they have no country to return to.

There is also concern that some detainees may be at risk of serious human rights abuses on return to their home countries through having been picked up and detained in connection with the post 11 September investigations. Any claims for protection arising post-arrest must also be assessed in a fair and satisfactory procedure. No one should be forcibly removed without having had their individual need for protection assessed and a full hearing of their claim. AI has learned of two cases in which people were detained after being sent back to countries under voluntary departure agreements (see below); one reportedly agreed to voluntary departure after spending two months in solitary confinement. Another detainee reportedly agreed to voluntary departure to Yemen after spending 45 days in solitary confinement in a high security unit in the USA, despite fearing he could be at risk on his return. Several other deportees are reported to have been detained on arrival in their home countries.

Amnesty International is further concerned by the manner in which some detainees have been deported. In two cases, two detainees were allegedly deported without their families being informed by the authorities. In two cases detainees were reportedly put on planes without any of their possessions.

The following are some reported case examples.

- A Palestinian-Jordanian was deported to Jordan after being held for two months in solitary confinement in a Texas jail. He had reportedly agreed to Voluntary Departure

⁴³ Amnesty International's general concerns about the detention of asylum seekers in the USA are outlined in USA: Lost in the Labyrinth: detention of asylum seekers, AI Index: AMR 51/51/99, July 1999.

as he was afraid he would be held indefinitely in the USA and would be unable to support his wife and his children who were born in the USA. He was reportedly accompanied to Jordan by two INS officials and was taken into custody by the Jordanian authorities on arrival. His wife, who had gone on to Jordan before him, waited in vain for him at the airport. Amnesty International subsequently learned that he was detained for 12 days before being released.⁴⁴

- An Egyptian national, detained for overstaying his visa, was sent back to Egypt under guard. He was reportedly handed over to the Egyptian authorities and held for seven days before being cleared of any offence and allowed to go free.
- A Pakistani, detained for overstaying his visa, was granted Voluntary Departure from the USA. He was reportedly detained on arrival in Karachi and held for two days. He had no chance to contact his family prior to his departure and only managed to let them know he was on a plane to Pakistan by asking another passenger to phone his relatives in Pakistan from London.
- A Pakistani man who had spent 11 years in the USA and had claimed asylum was deported in January 2002, without the authorities notifying his family in the USA. His wife learned of his deportation only after receiving a phone-call from him from Istanbul airport en route to Pakistan.
- A young Iraqi arrived in the USA in August 2001. He requested asylum and was released on bond after the INS determined he had a “credible fear” claim. He was picked up by the INS on 21 September 2001 and in early November 2001 his claim for asylum was turned down by a judge. He remained in detention until February 2002 when he was released on bail pending an appeal.
- A Palestinian with a Jordanian passport claimed asylum and was free on bond until 26 September when he was taken into detention and his bond cancelled. Immigration officials requested that bond be revoked, pending an “FBI investigation”. His attorney had no further information as to why they were holding him.

⁴⁴Amnesty International wrote to the INS in Texas seeking more information about the circumstances under which he was returned to Jordan and what happened to him on his arrival. The INS replied stating that it could not provide information on an individual’s case without their express authorization in writing. They further stated that, as in any case of repatriation “the appropriate notification through Washington was accomplished and the country affected was notified. Once the individual is repatriated, we have no jurisdiction or control over their whereabouts” (letter from INS District Director in Texas, dated 14 December 2001).

- A detainee was deported to Nepal in January 2002. He was put on a plane in the middle of the night in an orange prison jump suit with none of his clothes or other belongings including his identity card and bank card -- despite the prison (Metropolitan Detention Center, New York) having been asked to have his belongings returned to him before departure.

6. CONDITIONS OF CONFINEMENT

Amnesty International is concerned that many of those detained in the 11 September sweeps are held in harsh conditions, some of which violate international standards for humane treatment. Amnesty International has received reports that post 9.11 detainees are routinely shackled with belly chains and leg shackles, with no regard as to whether they have a record of violent behaviour or flight risk. Some have been held in prolonged solitary confinement. Other complaints include lack of exercise, poor medical care and failure to adhere to religious dietary requirements. Despite being held on non-criminal charges, INS detainees have not always been separated from criminal detainees, contrary to international standards.

There have also been allegations of physical and verbal abuse of some detainees by guards, as well as failure to protect detainees from abuses by other inmates.

There has been concern for years about the poor conditions under which immigration detainees are held in INS detention facilities or local jails. Although the INS promulgated new standards for the treatment of INS detainees in 2001, these standards are not universally applied. While Amnesty International urges the Department of Justice to uphold international standards for all INS detainees, the organization is particularly concerned by reports suggesting that detainees arrested after 11 September are being subjected to more punitive conditions than before in some facilities.

Torture and other cruel, inhuman or degrading treatment is absolutely prohibited under international law. The prohibition of such treatment is contained *inter alia* under Article 7 of the ICCPR and under the Convention against Torture, treaties which the USA has ratified. In addition, article 10 of the ICCPR states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Other relevant standards include those set out under the UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles.

6.1 Solitary confinement

“I have now been in solitary confinement for three and a half months and by the time of the next hearing I will have been here for four months. If it hadn't been for the Koran and prayer, I would have lost my mind or had a nervous breakdown Why am I imprisoned? Why in solitary confinement? And why under maximum security measures? I have many questions and no answers. What are they accusing me of? Nobody knows.”

Letter from a detainee held at the Metropolitan Detention Centre (MDC), Brooklyn, New York for an immigration violation.

Amnesty International is concerned that a number of detainees have been subjected to prolonged or indefinite solitary confinement. This has often been imposed together with other deprivations, such as lack of exercise and restrictions on visits. Although they are not criminal detainees, some are held in high security units designed to house prisoners considered to be dangerous or disruptive to the orderly operation of the facility.

- Rabid Haddad, a Lebanese man, charged with overstaying his tourist visa, has been held in solitary confinement since 14 December in the Metropolitan Correctional Center, Chicago. According to his letters from prison, his cell windows are whited out so he has no view; he is put in handcuffs while being escorted to secure showers some 10 paces from his cell; and he is allowed only one 15-minute call to his family every 30 days.
- A Palestinian man arrested on 22 September 2001 for a visa violation was detained in Denton County Jail, Texas, in solitary confinement with only one hour of exercise a week in an enclosed yard. He was shackled during non-contact visits with his wife, denied personal property and, unlike other inmates, denied access to TV. After more than two months in such conditions, he accepted voluntary departure from the USA to Jordan, where he was detained on arrival and held for two weeks by the Jordanian authorities.
- Dr Mazen Al-Najjar, a Muslim cleric and academic, was arrested in November 2001 after being issued with a final order of deportation. Despite having no violent or criminal record, he is held in solitary confinement in a high security federal prison in Florida, locked in a cell 23 hours a day. He was denied any visits at all with his family for the first 30 days of his confinement. As a stateless Palestinian with no country to return to, he could remain indefinitely in such conditions.

Amnesty International believes that prolonged solitary confinement, particularly when imposed with other deprivations, can constitute torture or other cruel, inhuman or degrading treatment, in violation of the international standards cited above. The UN Human Rights Committee has recognized that “prolonged solitary confinement can amount to breaches of

Article 7 of the ICCPR.⁴⁵ Some of the restrictions imposed in the cases reported, such as lack of exercise and unnecessary use of restraints, breach specific articles of the UN Standard Minimum Rules for the Treatment of Prisoners (see below).

6.2 Conditions in the MDC Security Housing Unit (SHU)

Amnesty International is particularly disturbed by conditions in the federal Metropolitan Detention Center (MDC) in Brooklyn, New York City, where more than 40 INS detainees picked up in the post 9.11 sweeps are believed to be confined in the MDC SHU unit.⁴⁶ Although most of the detainees in the SHU are charged with minor visa violations, and have no record of violence, the conditions described amount to “supermaximum security” custody which - according to the US authorities - is designed for the most dangerous or disruptive inmates in the US prison system.⁴⁷

Detainees in the MDC SHU are reportedly confined to sealed, usually solitary cells for 23-24 hours day;⁴⁸ the cells have a toilet and shower and detainees receive food through a slot in the door. Their sleep is disturbed by 24-hour lighting in cells. Some detainees have complained that the cells are too cold as they are supplied only with a sheet. There is reportedly a small outdoor area in which detainees can exercise alone for between half an hour or an hour a day, but many refuse as it is often too cold and in some cases exercise is offered only at 5.30 or 6.30 am. Several detainees have alleged being denied any exercise. Reportedly, no TVs or radios are allowed.

Attorneys have reported that detainees in the MDC SHU are brought to family and legal visits in leg shackles with their wrists in handcuffs which are locked to waist chains, even though the visits are “non-contact” and they are separated by a thick plexi-glass screen.

⁴⁵ The UN Human Rights Committee (which monitors states' compliance with the ICCPR) has issued a set of authoritative general comments on key articles of the ICCPR. In its general comment on Article 7 the Committee states that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.” (UN Human Rights Committee, General Comment 20 on Article 7 of the ICCPR, para 6, 10 April 1992).

⁴⁶ The SHU unit is closed to outside access and the numbers held there are based on estimates given by detainees who have spoken to attorneys. At one point it is believed the unit may have housed 60 detainees. The latest estimate, based on detainee accounts in February, was that some 40-44 detainees were housed there.

⁴⁷ Amnesty International's concerns about cruel conditions generally in US supermaximum security facilities are outlined in a number of reports, including USA: A Briefing for the UN Committee against Torture, May 2000 (AI Index: AMR 51/56/00).

⁴⁸ Some detainees are reportedly double-celled with one other inmate.

Although the waist chain is unlocked for the visit, the detainee remains in handcuffs throughout the visit.

Amnesty International heard several complaints of painful and callous use of shackles against MDC prisoners, including complaints that handcuffs were too tight. In one case, a detainee who had undergone surgery for a broken wrist several months before being taken into custody was in visible pain through being made to wear tight handcuffs. His attorney also witnessed guards grabbing him by the wrists when “escorting” him to or from the visiting chamber, rather than holding him further up the arms. The attorney complained to the prison several times about this, including in writing to the prison medical staff, but no action was taken apart from giving his client aspirin. When he spoke to Amnesty International in late January he had a request pending that his client be allowed to wear looser cuffs. Another attorney said he saw guards almost lift detainees from the ground by the waist and wrist shackles as they walked them along.

Another concern was that legal visits with detainees at MDC are video-taped, even though they are non-contact. Several attorneys told Amnesty International that, although they were told the sound was off, they found it extremely inhibiting to conduct attorney-client conversations while under the eye of a video camera. One pointed out the possibility of such conversations being lip-read. Amnesty International considers that the oppressive nature of the legal visits may breach international standards on contact between detained persons and their attorneys.⁴⁹

Amnesty International recognizes that it may be necessary at times to place people in custody in segregation for security or disciplinary purposes. However, the conditions under which post 9.11 detainees are reported to be held in the MDC SHU and similar units elsewhere appear to be unnecessarily harsh and to constitute cruel, inhuman and degrading treatment in violation of international standards.

Studies have shown that isolation in conditions of reduced sensory stimulation can cause physical or psychological damage. According to lawyers who have clients in MDC, several

⁴⁹ Principle 8 of the Basic Principles on the Role of Lawyers states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality”. Although the Principles state that consultations may be “within the sight, but not the hearing, of law enforcement officials” the inhibiting effects of the conditions under which such consultations take place in MDC may undermine the rights set out under Principle 8. One attorney pointed out that the visiting conditions for the post 9.11 detainees held in the MDC SHU was extraordinary, given their non-criminal status. He had met with clients charged with serious criminal offences (including conspiracies) in MDC many times, and was able to meet them in a room, where their hands were free, and there was no video monitor.

detainees have shown signs of depression and mental stress. Several were described as being on a “razor’s edge”, “visibly shaking” and crying continually.

- A Nepalese Buddhist was held for about 60 days in total solitary confinement in MDC SHU. He could not communicate with anyone because he did not speak any language others could understand. The FBI reportedly “cleared” him a month after his arrest and he agreed to Voluntary Departure from the USA. He remained in custody, still confined to the SHU. The prison said they could not move him to the “general population” section (as would normally have been the case while awaiting Voluntary Departure) because he was crying so much and would disrupt the other prisoners.
- An Egyptian national detained for an alleged immigration violation has been in the MDC SHU for more than five months. The window to his cell has reportedly been blacked out so he cannot see outside as punishment for failing to stand up when a guard came into his cell during prayer. As further punishment, his wife was not allowed to visit him for 60 days. He does not know why he is being held in solitary confinement and is reported to be very depressed and to have considered suicide.

Rule 32 (3) of the UN Standard Minimum Rules require prisoners in close confinement to be visited daily by the medical officer to assess their physical and mental health. INS standards provide that “A medical professional shall visit every detainee in administrative segregation at least three times a week.” Amnesty International is concerned that detainees suffering from mental distress in the MDC SHU unit may not be adequately monitored or provided with appropriate treatment in accordance with international and INS standards.

6.3 INS standards on Administrative Segregation

INS Detention Standards state that “Administrative Segregation is a non-punitive status in which restricted conditions of confinement are required only to ensure the safety of detainees or others, the protection of property, or the security or orderly running of the facility”.⁵⁰ The standards further provide that detainees in administrative segregation “shall receive the same general privileges as detainees in the general population, consistent with available resources and security considerations” and that “When space and resources are available, detainees in administrative segregation will be able to participate in TV viewing, board games, socializing and work details; and provided opportunities to spend time outside their cells, over and above recreation periods.”

The standards also provide that “ordinarily” a detainee in administrative segregation should receive the same visitation and telephone access as detainees in the general population.

⁵⁰INS Detention Standard “Special Management Unit” (Administrative Segregation) September 20, 2000

In addition to monitoring by medical staff, the standards set out procedures for the regular review of all administrative detention cases. This includes the requirement that a written record detailing the reasons for any continued segregation be given to the detainee “unless, in exceptional circumstances, this provision would jeopardize security”.

The conditions under which INS detainees are held in the MDC SHU appear to fall far wide of the INS Standards cited above and to exceed what may be warranted on legitimate security grounds. Amnesty International is not aware of detailed written reasons being provided to the MDC detainees for their confinement to the SHU, or whether each case is subject to regular review.

6.4 Denial of outside access to MDC

Amnesty International is unable to assess how far conditions in the MDC SHU violate INS Standards, or the reasons for the security restrictions imposed, as it has been denied permission to tour the facility and talk to officials. AI representatives were also denied permission to visit with several detainees. Several other organizations have similarly been denied access. AI remains deeply concerned that the facility remains closed to outside scrutiny, particularly in view of the serious concerns about conditions there. AI is currently renewing its request for access.

General concerns about conditions for Post 9.11 INS detainees.

6.5 Allegations of verbal and physical abuse

Amnesty International has received allegations that some post 9.11 detainees were subjected to physical and/or verbal abuse during their initial period in police custody or when taken to jails. Two former detainees, both Egyptians interviewed separately by AI in January 2002, said that FBI agents yelled and swore at them repeatedly during initial questioning at the federal lockup in Varick Street in October 2001. One said he was not given any food for 11 hours and slept in a room with 12 or 13 other detainees with only six mattresses. A Pakistani man detained in October 2001 was reportedly interrogated by the INS in Miami while handcuffed to a chair from 8 am to 3pm, and denied access to a lawyer - when his lawyer visited him the next day he was in shock and crying. Complaints of abuse during the initial detention period have also been reported in the media and during court proceedings.⁵¹

⁵¹ For example, in January 2002 a federal judge granted a hearing into allegations that Osama Awadallah, a Palestinian-Jordanian, while initially detained as a material witness, as subjected to coercive procedures through, among other things, being made to testify to a grand jury while shackled to a chair; it was also alleged that a guard at MDC pushed him into a wall while he was handcuffed and yanked him by the hair to force him to face the American flag (article by Steve Fainaru, Washington Post, 15 February 2002). He was released on bail in

Amnesty International also received complaints of post 9.11 detainees being subjected to verbal and racial abuse by some guards at Passaic County Jail, particularly during the three months after September 11 when there was alleged to have been some "racial tension" in the jail. Several allegations of physical abuse during this period were also reported. Amnesty International was told of a case in late December 2001, in which a detainee who spoke no English and failed to respond immediately to an order to get out of bed had his head rammed into a table by a guard, chipping his tooth. A guard had reportedly entered the dormitory with a dog, and kicked his bed and swore at him until he awoke. One of the detainees interviewed by AI in February 2002 also alleged that he was physically abused by a guard when he first arrived at Passaic jail.

Amnesty International also heard repeated complaints that dogs were at one time used to intimidate and threaten detainees at Passaic jail. The jail has a canine (K-9) unit with six dog pens, which AI observed during its tour of the jail in February. The jail authorities stressed that the dogs were used only for "narcotics patrol" and were not used to intimidate inmates. However, the case cited above suggests that dogs had been brought into the dormitories of INS detainees (who were not held for drugs or any criminal offences); one detainee told AI that dogs had been deliberately brought up close to detainees who were nervous of them. It appears, however, that this practice may have ended at the time of AI's visit. Several sources said that treatment of the detainees generally had improved since the arrival of a new sheriff in January 2002 and that dogs were no longer brought into the inmate living areas.

Amnesty International is also disturbed by several reports that post 9.11 detainees have been threatened or attacked by other inmates. Amnesty International's Memorandum to the Attorney General in November 2001 cited the case of a Pakistani student who was allegedly beaten by inmates who called him a "terrorist" in a jail in Wiggins, Mississippi; guards reportedly failed to respond to his pleas for help. (This case was reportedly under investigation by the FBI.) The housing of INS detainees with criminal detainees is in itself a breach of international standards (see below). Failure to take reasonable steps to ensure the safety of detainees is also a violation of US law and international standards. Several detainees at Passaic Jail said they were felt intimidated by being made to share a cell with people charged or convicted of criminal offences.⁵²

December 2001.

⁵² One detainee (now released) reported seeing other Muslim detainees being made to wash the underwear of general population inmates and was fearful of being in a dormitory with 60 inmates, one of whom attacked him (source: Islamic Center of North America). Some detainees held on criminal charges have also allegedly suffered attacks by other inmates after being linked to the post. 911 investigations. In February 2001 AI wrote to the Connecticut Department of Corrections about an allegation that a Pakistani national held in Walker Reception Center, Connecticut, was beaten by inmates while prison guards stood by. It was alleged that the attack took place after copies of an article from the Hartford Courant, reporting on his arrest and the fact that the

6.6 Use of restraints

International standards provide that restraints in the case of people in custody should be used only for so long as is “strictly necessary” to prevent damage or injury, on medical grounds by direction of the medical officer, or as a precaution against escape during transfer “provided that they shall be removed when the prisoner appears before a judicial or administrative authority”. The standards further provide that restraints shall never be imposed as punishment and that “Chains or irons shall not be used as restraints” (*UN Standard Minimum Rules for the Treatment of Prisons, Rules 33 and 34*).

INS detention standards provide that physical restraints shall be used to gain control of an apparently dangerous detainee only under specified conditions (*INS Detention Standard, Use of Force, I. Policy*). They further provide that “Immediate use of restraints is warranted to prevent the detainee from harming self or others, or from causing serious property damage. Hard restraint (e.g. steel handcuffs and leg irons) will be used only after soft restraints prove (or have previously proven) ineffective with this detainee”. (*INS Detention Standard, Use of Force, III. B*).

The routine use of restraints during non-contact visits with relatives and attorneys in the case of detainees at MDC appears to be incompatible with the above standards. The use of restraints during court appearances in the case of these and other detainees is also contrary to the standards. AI was told that detainees picked up in the post 9.11 sweeps are routinely shackled when taken to immigration hearings, with handcuffs attached to belly-chains and a chain between their ankles. This includes people arrested for minor visa violations who have no history of violence or escape. While it is common practice to shackle prisoners/INS detainees during transportation in the USA (a blanket practice which itself AI has criticized), post 9.11 detainees remain shackled in the court-room, with their hands cuffed to their sides at the counsel table. The cuffs are only released from the waist chain when they come before the judge and need to sign papers. One lawyer told Amnesty he was glad the families were not there to witness their relatives brought into the courthouse chained together, as it was such a degrading sight.

Amnesty International is particularly concerned that post 9.11 detainees in MDC are placed in full shackles (including waist chains and leg shackles) even when brought before a

case had drawn the attention of federal anti-terrorism investigators, was circulated within the prison. No response had been received at the time of writing to AI's inquiries with the prison authorities about this case, and the possible complicity of guards in the attack.

specialimmigration court which sits inside the prison. Furthermore, they have remained shackled when appearing before the judge -- a practice which is in direct contravention of international standards. When a lawyer asked in open court for the shackles to be removed in the case of two clients the INS refused the request on security grounds.

Amnesty International is further concerned by a report that an Egyptian man in INS custody for a visa violation was chained to a bed in for two weeks while hospitalized at the University of Medicine and Dentistry in New Jersey. His hands and feet were cuffed and his feet shackled to the bed. He was interviewed by an Amnesty International delegate in February, and showed her the abrasion on his wrist from the handcuffs. Amnesty International considers that the use of restraints on sick prisoners while they are in hospital and who do not pose a specific security threat constitutes cruel, inhuman or degrading treatment in violation of international standards.

6.7 Exercise

The UN Standard Minimum Rules provide that "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." (*Rule 21 (1) UN Standard Minimum Rule for the Treatment of Prisoners*).

INS detention standards also provide that each detainee shall have access to outdoor recreation for at least one hour daily at a reasonable time of day, five days a week, weather permitting. They also provide that, if indoor recreation is available, detainees shall have access to this for at least one hour each day. (*INS Detention Standards, Recreation III B Standards and Procedures, Recreation Schedule*.)

INS detention standards provide that even if a detainee is housed in a Special Management Unit under "administrative" or "disciplinary" segregation, detainees shall be offered at least one hour of recreation per day, scheduled at a reasonable time, at least five days a week. (*INS Detention Standards, Recreation III H Standards and Procedures, Recreation for Special Management Unit*.)

As noted above, detainees held in MDC and other high security units have reportedly been denied adequate exercise for weeks or months, contrary to the above standards. Furthermore, exercise at MDC has reportedly not been scheduled at a "reasonable time" as provided under INS standards.

Officials at Hudson County Correctional Center told Amnesty International that detainees are provided with daily outdoor exercise, weather permitting. Officials in Passaic County Jail said that "recreation" was available daily. However, detainees interviewed by Amnesty International have stated that outdoor exercise in Passaic (on a rooftop gymnasium)

is provided for an hour, or less, only two days a week. Amnesty International also met with some detainees at Hudson County Correctional Center who reported that they were only able to exercise twice a week. Several detainees in Passaic County Jail reported that they were called for exercise at 5.30 am, when it was dark and very cold, contrary to INS standards which provide that exercise should be “scheduled at a reasonable time”. Some have said that they refuse outdoor exercise because they do not have adequate clothing or shoes suitable for the cold weather. These were similar to complaints made by detainees in MDC.

6.8 Housing with Criminal Detainees

There has been general concern for several years about the housing of INS detainees (including asylum seekers) with criminal detainees in some facilities in the USA. This is contrary to international standards which provide that untried prisoners should be kept separate from convicted prisoners and afforded treatment appropriate to their unconvicted status.⁵³ INS detention standards do not appear to provide an explicit bar on INS detainees being held with non-INS detainees. However, they do provide that all facilities should develop a classification system for INS detainees, so that “each detained alien is placed in the appropriate category and physically separated from detainees in other categories”.⁵⁴ The standard goes on to state: “By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces non criminal and non violent detainees’ exposure to physical and psychological danger”. (F. Housing Assignments).

Officials at both Hudson County Correctional Center and Passaic County jail said that INS detainees were kept separate from detainees in the jail’s general criminal population. However, in Hudson it was conceded that there were occasions in which co-mingling with criminal detainees may take place during certain activities such as classes, use of the law library and some communal areas.

Several detainees interviewed in both the above jails said that they were housed in cells/dormitories with “criminals”. Although in some cases these may have been INS detainees charged or convicted of criminal offences (which may in itself be inconsistent with INS classification standards) it appears that some INS detainees may be housed with ordinary criminal detainees. One detainee in Passaic said that in his dormitory of 58, there were only 12 INS detainees. Another said that INS detainees were housed with serious felons but are now only held with criminal detainees awaiting trial or serving sentences of less than a year. Amnesty International and the other delegates were given only limited access to Passaic Jail

⁵³ Rule 85 of the UN SMR and Principle 8 of the Body of Principles.

⁵⁴ INS Detention Standard “Detainee Classification System” (1) Policy.

during their tour of the facility in February 2002 and did not visit the jail's housing area. Amnesty International was therefore unable to confirm first-hand the accuracy of these reports.⁵⁵

There have been disturbing reports of INS detainees picked up in the Post 11 September sweeps being housed with criminal detainees/prisoners in some other jails and being subjected to abuse (see for example the Mississippi case, above, where an INS detainee was reportedly attacked by inmates in a large jail dormitory).⁵⁶

A female INS detainee arrested in mid-October 2001 was reportedly held with the criminal population at the Hillsborough County Jail, Florida, for two months. According to her lawyer she was subjected to harassment by other detainees when her picture appeared in an article about the post 9.11 arrests. There is a general concern that women INS detainees are often housed with criminal detainees because of their relatively smaller number among the INS detention population and lack of special housing facilities.⁵⁷

6.9 Religion

INS detention standards provide that detainees will be given reasonable and equitable opportunities to practice their religious faith, consistent with the safety, security and the orderly operation of the facility and security, including participating in group religious activities. The standards also state that, when a detainee's religion requires special food services, either daily or during certain holy days or periods that involve fasting or restricted diets, "staff will make all reasonable efforts to accommodate them. This will require, among other things, modifying menus to exclude certain foods or food combinations, providing meals at unusual hours etc." (INS Detention Standard, Religious Practices, 111. M. Dietary Requirements)

Halal meals are not always provided and there have been reports in some facilities of Muslim detainees being served pork, which is strictly contrary to their religious dietary requirements. There were also complaints that detainees in Hudson County Correctional Center and Passaic County Jail were not served halal meals during Ramadam, and were also not getting adequate food when the fasting periods ended each day. Several detainees are reported to have gone on hunger strike to protest about this in November 2001.⁵⁸ The authorities reportedly took

⁵⁵ This was due to INS imposed time constraints.

⁵⁶ Concern at abusive treatment of post 9.11 detainees is not limited just to INS detainees but those in the general prison population may be equally at risk (see Qaiser Rafiq case, Section 6.5: Allegations of verbal and physical abuse).

⁵⁷ This has been cited as a concern in Amnesty International's report *Lost in the Labyrinth: Detention of Asylum Seekers*. *Op cit*.

⁵⁸ See for example "*Immigrants Refuse Meals to Protest*", New York Times 16 November 2001

steps to rectify these problems. In January 2002 the new sheriff of Passaic County reportedly indicated that he would entertain requests for halal food to be served at other times also.

Officials at the Hudson jail informed AI that detainees had access to religious advisers and to group religious services. AI was unable to spend enough time in Passaic jail to determine how far the religious needs of detainees in that facility were accommodated. However, there have been some allegations in both Hudson and Passaic jails and elsewhere that some Muslim inmates have been subjected to verbal abuse where guards have insulted their faith. Amnesty International was also told that some Muslim detainees in Passaic had “good behaviour” credits deducted for using bed sheets as a prayer rug. In MDC, a detainee was severely punished for not getting up while a guard entered his cell while he was praying (see above). Amnesty International is seeking clarification of the MDC’s response to this incident which appears to show gross insensitivity to the detainee’s religious needs.

6. 10 Medical treatment

There have been complaints that INS detainees find it difficult to get treatment for their medical needs. Amnesty International has not been in a position to assess these claims in any detail but notes that international standards clearly specify that medical care and treatment shall be provided whenever necessary, free of charge. INS standards state that all facilities will provide its detainee population with initial medical screening, cost-effective primary care and emergency care (INS Detention Standard, 111. Standards and Procedures. A. General) and that all detainees shall have access to medical services that promote detainee general health and well-being. (INS Detention Standard, Medical Care. 1. Policy)

Amnesty International heard several complaints that detainees at both Hudson and Passaic jails did not get prompt treatment for their medical needs. One former detainee interviewed by Amnesty International was diagnosed with Hepatitis C and had just started a course of treatment involving 3x-weekly injections and pills when he was taken into custody. He told Amnesty International that his repeated requests to be given the shots on time, and at regular intervals, were ignored by Passaic jail staff and that, for the first three weeks, he was given the injections only twice a week. He also said there was a 10-day delay in renewing his prescription once it had run out.

An Iranian man held in post 9.11 INS detention in a Wackenhut facility in Denver, Colorado, is reported to have suffered what may have been a stroke while he was held in solitary confinement. Reportedly, he received no treatment for three months, despite being in a confused state with a painful left arm. He was finally taken to a local hospital for a cardiogram. A doctor hired by his fiancée was seeking the medical records in the case when it was reported to Amnesty International.

Amnesty International also received a complaint that a man with a history of psychiatric problems was denied his medication during his interrogation by the FBI, causing severe mental stress for which he was later hospitalized. During his hospitalization he was shackled to a bed for two weeks. Amnesty International considers the routine shackling of prisoners who are ill and receiving hospital treatment to constitute cruel, inhuman or degrading treatment (case also cited under 6.6 above).

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International fully recognizes the government's obligation to take all necessary measures to protect its borders and investigate crimes and potential threats to national security. However, the organization is concerned that the government has used its expanded powers to detain non-nationals in the wake of September 11 without the necessary safeguards under international law. AI is concerned that the detentions in some cases may amount to arbitrary deprivation of liberty in violation of Article 9(1) of the ICCPR. The secrecy surrounding the detention process has, further, created a serious lack of public accountability. Transparency in the process is necessary to ensure that all persons deprived of their liberty can fully exercise their rights under US and international law. Amnesty International urges the US Government to:

- Provide in full the information requested under the FOIA; make public information on the number and nationalities of those still detained; the reasons for their detention; the date and place of arrest; date and charges; and place of detention; provide information on the numbers and nationalities of those deported or removed under voluntary departure arrangements and the countries to which they have been returned.
- Ensure that all persons in federal custody, including those held in local or county jails, are treated humanely in accordance with international standards and that no-one is subjected to torture or other cruel, inhuman or degrading treatment. The Department of Justice should fully investigate all allegations of ill-treatment of detainees or prisoners and take appropriate action in the case of those found guilty of misconduct.
- Ensure respect for the rights of everyone arrested or detained as set out under international standards, including Article 9 of the ICCPR and the Body of Principles. Such rights include the right to be informed of the reasons for arrest and to be given prompt access to attorneys and relatives and consular officials or representatives of relevant international organizations as requested. Ensure that all detained persons are provided with written notification of their rights as guaranteed by international standards and US law, in a language they understand.

- Ensure that all arrested or detained persons are brought promptly before a judge and have access to the courts and a procedure in which they may challenge the lawfulness of their detention.
- Ensure that no-one is detained on national security grounds unless charged with a recognizable offence or action is being taken to deport within a reasonable period. There must be a realistic possibility of deportation being effected.
- Ensure that no-one is removed or deported to a country where they risk being subjected to serious human rights abuses.
- Ensure that asylum seekers are not generally detained and that anyone claiming asylum is allowed a full and fair hearing of their claim as provided under the 1951 Refugee Convention and the 1967 Protocol.
- The UN High Commissioner for Refugees should be granted access to all asylum seekers and refugees in detention.
- Ensure that restraints are applied only when strictly necessary as a precaution against escape, on medical grounds or to prevent damage or injury, in accordance with international standards. Under no circumstances should detainees be shackled when appearing before immigration judges.

Additional recommendations on conditions of detention

- The Department of Justice should ensure that new detailed standards promulgated for the treatment of INS detainees are extended to all facilities housing immigration detainees, including local and county jails. Amnesty International calls on the INS to ensure that these standards are strictly monitored and adhered to.
- Amnesty International calls on the Department of Justice and the INS to conduct an urgent review of conditions under which INS detainees are housed in the Metropolitan Detention Centre (MDC) Security Housing Unit (SHU). Immediate steps should be taken to alleviate the conditions of isolation reportedly imposed on INS detainees in the unit and to improve other conditions of concern cited in this report. Steps should be taken to ensure that no INS detainee is subjected to prolonged solitary, cellular confinement in any facility.
- Administrative or disciplinary segregation should be imposed only according to strict procedures under INS standards, and must be subject to regular, independent review. All detainees in segregation should be visited daily by qualified medical staff.

- All INS detainees should be provided with a minimum of one hour of exercise daily, at a reasonable time, whether or not in administrative segregation. Detainees in administrative segregation should have the opportunity for indoor recreation outside their cell as well as outdoor exercise, as provided under INS standards.
- All facilities housing INS detainees should provide reasonable arrangements for visits by appropriate outside organizations, including those giving “Know Your Rights” presentations in accordance with INS Standards.
- All INS detainees should be provided with adequate medical treatment in accordance with US and international standards.
- INS Detention Standards on visitation and exercise of religion should be fully adhered to in all facilities.