EXECUTIVE SUMMARY & RECOMMENDATIONS

ASSESSING THE NEW NORMAL, the third in a series of reports, documents the continuing erosion of basic human rights protections under U.S. law and policy since September 11. Today, two years after the attacks, it is no longer possible to view these changes as aberrant parts of an emergency response. Rather, the expansion of executive power and abandonment of established civil and criminal procedures have become part of a "new normal" in American life. The new normal, defined in part by the loss of particular freedoms for some, is as troubling for its detachment from the rule of law as a whole. The U.S. government can no longer promise that individuals will be governed by known principles of conduct, applied equally in all cases, and administered by independent courts. As this report shows, in a growing number of cases, legal safeguards are now observed only insofar as they are consistent with the chosen ends of power.

PRINCIPAL FINDINGS

CHAPTER ONE: OPEN GOVERNMENT

- The administration continues efforts to roll back the Freedom of Information Act (FOIA), both by expanding the reach of existing statutory exemptions, and by adding a new "critical infrastructure" exemption. The new exemption could limit public access to important health, safety, and environmental information submitted by businesses to the government. Even if the information reveals that a firm is violating health, safety, or environmental laws, it cannot be used against the firm that submitted it in any civil action unless it was submitted in bad faith. At the same time, the administration has removed once-public information from government websites, including EPA risk management plans that provide important information about the dangers of chemical accidents and emergency response mechanisms. This move came despite the FBI's express statement that the EPA information presented no unique terrorist threat.

- The administration has won several recent court victories further restricting FOIA's reach. In *American Civil Liberties Union v. U.S. Department of Justice*, a federal district court denied the ACLU's request for information concerning how often the Justice Department had used its expanded authority under the PATRIOT Act. In *Center for National Security Studies v. U.S. Department of Justice,* a divided three-judge panel of the U.S. Court of Appeals for the D.C. Circuit upheld the executive's assertion of a FOIA exemption to withhold the names of those detained in investigations following September 11, as well as information about the place, time, and reason for their detention. Contrary to well-settled FOIA principles requiring the government to provide specific reasons for withholding information, the appeals court deferred to the executive's broad assertion that disclosure of the information would interfere with law enforcement.

- Executive Order 13292 (E.O. 13292), issued by President Bush on March 28, 2003, also promotes greater government secrecy by allowing the executive to delay the release of government documents; giving the executive new powers to reclassify previously released information; broadening exceptions to declassification rules; and lowering the standard under which information may be withheld from release – from requiring that it "should" be expected to result in harm to that it "could" be expected to have that result. In addition, E.O. 13292 removes a provision from the previously operative rules mandating that "[i]f there is significant doubt about the need to classify information, it shall not be classified." In essence, this deletion shifts the government's "default" setting from "do not classify" under the previous rules to "classify" under E.O. 13292.

- The administration continues to clash with Congress over access to executive information. The Justice Department recently provided some limited responses to congressional questions about the implementation of the PATRIOT Act only after a senior Republican member of the House threatened to subpoena the requested documents. Indeed, the Justice Department now operates under a directive instructing Department employees to inform the Department's Office of Legislative Affairs "of all potential briefings on Capitol Hill and significant, substantive conversations with staff and members on Capitol Hill" so that the office may "assist in determining the appropriateness of proceeding with potential briefings." Controversy also erupted over the administration's insistence on classifying key sections of a congressional report on the intelligence failures surrounding September 11. As of August 2003, 46 senators had signed a letter to the president requesting that he declassify additional portions of the report.

- Members of Congress from across the political spectrum are beginning to heed security experts' warnings that too much secrecy may well result in *less* security. For example, Porter Goss (R-FL), Chair of the U.S. House of Representatives Permanent Select Committee on Intelligence, recently testified that "there's a lot of gratuitous classification going on," and that the "dysfunctional" classification system remains his committee's greatest challenge. Others have emphasized that secrecy can breed increased distrust in governmental institutions. As Senator John McCain (R-AZ) has noted: "Excessive administration secrecy on issues related to the September 11 attacks feeds conspiracy theories and reduces the public's confidence in government."

CHAPTER TWO: PERSONAL PRIVACY

- The administration is vigorously defending sections 215 and 505 of the PATRIOT Act, which allow the FBI secretly to access personal information about U.S. citizens and lawful permanent residents (including library, medical, education, internet, telephone, and financial records) without demonstrating that the target has any involvement in espionage or terrorism. With little or no judicial oversight, commercial service providers may be compelled to produce these records solely on the basis of a written declaration from the FBI that the information is sought for an investigation"to protect against international terrorism or clandestine intelligence activities." And the PATRIOT Act makes it a crime to reveal that the FBI has requested such information. Thus, a librarian

who speaks out about being forced to reveal a patron's book selections can be subject to prosecution. Many have spoken out about the potential these measures have to chill freedom of expression and inquiry. As one librarian put it, section 215 "conflicts with our code of ethics" because it forces librarians to let the FBI "sweep up vast amounts of information about lots of people – without any indication that they've done anything wrong." The president's proposed additions would broaden such powers even further, allowing the attorney general to issue administrative subpoenas (which do not require judicial approval) in the course of domestic as well as international terrorism investigations.

- The administration also continues efforts to resuscitate some version of the Total Information Awareness project (TIA) – an initiative announced in 2002 that would enable the government to search personal data, including religious and political contributions; driving records; high school transcripts; book purchases; medical records; passport applications; car rentals; and phone, e-mail, and internet logs in search of "patterns that are related to predicted terrorist activities." The initial TIA proposal raised widespread privacy concerns, and experts have strongly questioned the efficacy of the project. The U.S. Association for Computing Machinery – the nation's oldest computer technology association – recently warned that even under optimistic estimates, likely "false positives" could result in as many as 3 million citizens being wrongly identified as potential terrorists each year. To its credit, Congress has taken these warnings seriously and has begun efforts to rein in TIA-related work. The Senate recently adopted a provision eliminating funding for TIA research and development, and requiring congressional authorization for the deployment of any such program. The House also adopted a provision requiring congressional approval for TIA activities affecting U.S. citizens, but it did not cut off funds. In the meantime, TIA remains part of ongoing executive efforts.

- The Transportation Security Administration's (TSA) current system for preventing terrorist access to airplanes relies on watchlists compiled from a variety of government sources. TSA has refused to supply details of who is on the lists and why. But the rapid expansion of the lists has been matched by a growing number of errors: TSA receives an average of 30 calls per day from airlines regarding passengers erroneously flagged as potential terrorists. Even this may be an underestimate: TSA has no centralized system for monitoring errors, so it does not collect complete data on how many times this happens. The confusion stems from a range of sources – from outdated name-matching algorithms to inaccuracies in the data from intelligence services. Passengers have found it almost impossible to have even obvious errors corrected.

- TSA also continues to develop a new "passenger risk assessment" system – the Computer Assisted Passenger Pre-Screening System II (CAPPS II). As envisaged, CAPPS II would assign a security risk rating to every air traveler based on information from commercial data providers and government intelligence agencies. The new system would rely on the same intelligence data used for the existing watchlists, and would also be vulnerable to error introduced by reliance on commercial databases. CAPPS II would be exempt from existing legislation that requires agencies to provide individuals with the opportunity to

correct government records. And TSA has proposed that CAPPS II be exempted from a standard Privacy Act requirement that an agency maintain only such information about a person as is necessary to accomplish an authorized agency purpose.

- The past two years have seen a significant increase in the use of foreign intelligence surveillance orders (a type of search warrant whose availability was expanded by the PATRIOT Act). These so-called "FISA orders" may be issued with far fewer procedural checks than ordinary criminal search warrants. Requests for FISA orders are evaluated *ex parte* by a secret court in the Justice Department, and officials need not show probable cause of criminal activity to secure the order. Between 2001 and 2002, FISA orders increased by 31 percent, while the number of ordinary federal criminal search warrants dipped by nine percent. The number of FISA orders issued in 2002 is 21 percent greater than the largest number in the previous decade, and FISA orders now account for just over half of all federal wiretapping. In addition, since September 11, the FBI has obtained 170 *emergency* FISA orders – searches that may be carried out on the sole authority of the attorney general for 72 hours before being reviewed by any court. This is more than triple the number employed in the prior 23-year history of the FISA statute.

CHAPTER THREE: IMMIGRANTS, REFUGEES, AND MINORITIES

- The Justice Department has moved aggressively to increase state and local participation in the enforcement of federal immigration law. The Justice Department has argued that state and local officials have "inherent authority" to "arrest and detain persons who are in violation of immigration laws," and whose names appear in a national crime database. The legal basis for this "inherent authority" is unclear. These moves have encountered strong resistance from local officials concerned that they will drain already scarce law enforcement resources and undermine already fragile community relations. As the chief of police in Arlington, Texas explained: "We can't and won't throw our scarce resources at quasi-political, vaguely criminal, constitutionally questionable, [or] any other evolving issues or unfunded mandates that aren't high priorities with our citizenry."

- During primary hostilities in Iraq, from March to April 2003, the Department of Homeland Security (DHS) operated a program of automatically detaining asylum seekers from a group of 33 nations and territories where Al Qaeda or other such groups were believed to operate. Under the program, arriving asylum seekers from the targeted countries were to be detained without parole for the duration of their asylum proceedings, even when they met the applicable parole criteria and presented no risk to the public. The program was terminated in April 2003 in the wake of a public outcry. The administration has not disclosed whether any of those detained under the program have yet been released from detention.

- While the administration has taken some steps to remedy the draconian policies that led to mass detentions of non-citizens in the weeks following September 11, the harsh effects of these now-discontinued round-ups have become clear. By the beginning of November 2001, FBI-led task force agents had detained almost 1,200 people in connection with the investigation of the September 11 attacks. Of these, 762 were detained solely on the

basis of civil immigration violations, such as overstaying their visas. As a 198-page report issued by the Justice Department Office of the Inspector General now verifies, the decision to detain was at times "extremely attenuated" from the focus of the investigation. Many detainees did not receive notice of the charges against them for weeks – some for more than a month after arrest – and were deprived of other core due process protections. Particularly harsh conditions prevailed at a Brooklyn detention center and at Passaic County Jail in Paterson, New Jersey. Of greatest ongoing concern, the expanded custody authority that was used to effect these extended detentions is still on the books. As a result, there is as yet little to prevent such widespread round-ups and detentions from occurring again.

- On April 17, 2003, Attorney General John Ashcroft issued a sweeping decision preventing an 18-year-old Haitian asylum seeker from being released from detention. In the decision (known as *In re D-J-*), the attorney general concluded that the asylum seeker, David Joseph, was not entitled to an individualized assessment of the need for his detention based on "national security" concerns. There was no claim that Joseph himself presented a threat. The expansive wording of the decision raises concerns that the administration may seek to deny broader categories of immigration detainees any individualized assessment of whether their detention is necessary whenever the executive contends that national security interests are implicated.

- The effects of the temporary registration requirements imposed by the Justice Department's "call-in" registration program – instituted last summer and concluded on April 25, 2003 – are now evident. Call-in registration required visiting males age 16 to 45 from 25 predominantly Arab and Muslim countries to appear in Immigration and Naturalization Service (INS) offices to be fingerprinted, photographed, and questioned under oath by INS officers. But misinformation about the program, including inaccurate, unclear, and conflicting notices distributed by the INS, led some men unintentionally to violate the program's requirements – often resulting in their deportation. Attorneys reported that they were denied access to their clients during portions of the interviews, and some of the registrants inadvertently waived their right to a removal hearing. There were also troubling reports of mistreatment. In Los Angeles, for example, about 400 men and boys were detained during the first phase of the registration. Some were handcuffed and placed in shackles; others were hosed down with cold water; others were forced to sleep standing up because of overcrowding. In the end, 82,000 men complied with the call-in registration requirements.

- The U.S. program to resettle refugees has long been a model for states all over the world, a reminder of the country's founding as a haven for the persecuted. But in the immediate aftermath of September 11, amid high security concerns, the program was shut down. Nearly two years later, the U.S. Refugee Resettlement Program is still struggling. Significant delays in the conduct of security checks, insufficient resources, and management failures are among the problems that bedevil the program. From an average of 90,000 refugees resettled annually before September 11, the United States anticipates 27,000 resettlements in 2003.

CHAPTER FOUR: UNCLASSIFIED DETAINEES

- A number of individuals – including two U.S. citizens – continue to be held by the United States in military detention without access to counsel or family, based solely on the president's determination that they are "enemy combatants." The executive's decision to declare someone an "enemy combatant" – as opposed to a prisoner of war or criminal suspect – appears unconstrained by any set of guiding principles. José Padilla and James Ujaama are both U.S. citizens, arrested in the United States, and accused of plotting with Al Qaeda. While Ujaama was criminally indicted and then entered a plea agreement, Padilla has never been formally charged with any offense. He has been held in incommunicado military detention for 15 months. Likewise, the executive accused U.S. citizens John Walker Lindh and Yaser Hamdi of participating in hostilities against the United States in Afghanistan. Lindh was prosecuted through the civilian criminal justice system, enjoying all due process protections available under the Constitution. Hamdi, in contrast, has remained in incommunicado detention for sixteen months. He has never seen a lawyer. The reasons for the differing treatment are unclear.

- Advocates for the two U.S. citizens held as "enemy combatants" are actively challenging their detention in court – challenges the Justice Department has vigorously resisted. In briefs filed with the U.S. Court of Appeals for the Second Circuit this summer, a wide range of experts (including the Lawyers Committee and the Cato Institute) argued that the executive's treatment of Padilla is illegal. They maintain that U.S. citizens are entitled to constitutional protections against arbitrary detention, including the right to counsel; the right to a jury trial; the right to be informed of the charges and confront witnesses against them. The Constitution identifies no "enemy combatant" exception to these rules. Further, 18 U.S.C. § 4001(a) makes clear that "[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." The parties await a decision by the Second Circuit. In Hamdi's case, the U.S. Court of Appeals for the Fourth Circuit ruled largely in the executive's favor, but rejected the executive's "sweeping proposition . . . that with no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charges or counsel on the government's say-so."

- There are strong indications that the executive has threatened criminal defendants with designation as "enemy combatants" as a method of securing plea-bargained settlements in terrorism-related prosecutions. As defense counsel Patrick J. Brown explained with respect to a case involving six Arab-American U.S. citizens from Lackawanna, New York: "We had to worry about [them] being whisked out of the courtroom and declared enemy combatants if the case started going well for us. . . . So we just ran up the white flag and folded." In a separate case, the president designated Ali Saleh Kahlah Al-Marri an "enemy combatant" less than a month before his criminal trial was set to begin, placing him in incommunicado detention, dismissing his criminal indictment, and cutting him off from his lawyers who had been vigorously defending his case. *The New York Times* quoted one "senior F.B.I. official" as explaining that "the Marri decision held clear implications for other terrorism suspects. 'If I were in their shoes, I'd take a message from this.'" And executive officials have suggested that unfavorable procedural rulings

in the Zacarias Moussaoui prosecution may lead them to consider dropping the case in federal court to pursue military commission proceedings under the president's control.

- Since President Bush announced the creation of military commissions for non-citizens accused of committing "violations of the laws of war and other applicable laws," the Defense Department has issued more detailed rules explaining commission procedures. Despite some improvements made by these rules, the commissions still provide markedly fewer safeguards than either U.S. criminal court or standard military court proceedings. The commissions allow for no appeal to any civilian court. The chargeable offenses expand military jurisdiction into areas never before considered subject to military justice. The government has broad discretion to close proceedings to outside scrutiny in the interest of "national security." And defendants will be represented by assigned military lawyers – even if they do not want them. Defendants will also be entitled to civilian lawyers, but unless a defendant can provide financing, civilian lawyers will receive no fees and will have to cover their own personal and case-related expenses. Civilian lawyers can be denied access to information – including potential exculpatory evidence – if the government thinks it "necessary to protect the interests of the United States." The Defense Department may (without notice) monitor attorney-client consultations; and lawyers will be subject to sanction if they fail to reveal information they "reasonably believe" necessary to prevent significant harm to "national security."

- In early 2002, the U.S. military removed several hundred individuals from Afghanistan to the U.S. Naval Base in Guantánamo Bay, Cuba. About 660 detainees are now housed at Guantánamo – including nationals from at least 40 countries, speaking 17 different languages. Three are children, the youngest aged 13. Since the camp opened, about 70 detainees, mainly Afghans and Pakistanis, have been released. There have been 32 reported suicide attempts. While U.S. officials originally asserted the Guantánamo prisoners are "battlefield" detainees who were engaged in combat in Afghanistan, some now held at Guantánamo were arrested in places far from Afghanistan. For example, two Guantánamo prisoners are U.K. residents who were arrested in November 2002 during a business trip to Gambia in West Africa. The Gambian police kept the two men in incommunicado detention for a month while Gambian and U.S. officials interrogated them. In December 2002, U.S. agents took the men to the U.S. military base at Bagram, Afghanistan, and, in March 2003, transported them to Guantánamo, where they remain.

- On July 3, 2003, the Defense Department announced that six current detainees at Guantánamo had become eligible for trial by military commission. Among the six were two U.K. citizens and an Australian citizen. These designations sparked protests in the United Kingdom and Australia, close U.S. allies. The British advanced "strong reservations about the military commission," and ultimately obtained some accommodations for the U.K detainees, including U.S. promises not to seek the death penalty or to monitor their consultations with counsel, and to consider letting them serve any sentence in British prisons. These promises were also extended to the Australian detainee. Despite widespread international criticism, the United States has thus far not afforded the same protections to nationals from any of the other countries represented at Guantánamo.

CHAPTER FIVE: THE UNITED STATES AND INTERNATIONAL HUMAN RIGHTS

- In the two years since September 11, a growing number of foreign governments have passed aggressive new counterterrorism laws that undermine established norms of due process, including access to counsel and judicial review. On June 30, 2003, experts associated with the UN Commission on Human Rights issued a joint statement emphasizing their "profound concern at the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights—civil, cultural, economic, political and social." They also drew attention to "the dangers inherent in the indiscriminate use of the term 'terrorism,' and the resulting new categories of discrimination."

- The United States has been pressuring other governments to hand over Al Qaeda suspects, even when this violates the domestic law of those nations. In one such case, the government of Malawi secretly transferred five men to U.S. custody, in violation of a domestic court order. The men were held in unknown locations for five weeks before being released on July 30, 2003, reportedly cleared of any connection to Al Qaeda. In a separate incident, at the request of the U.S. government, Bosnian authorities transferred six Algerian men into U.S. custody, again in violation of that nation's domestic law. The Bosnian police had arrested the men, five of whom had Bosnian citizenship, in October 2001 on suspicion that they had links with Al Qaeda. In January 2002, the Bosnian Supreme Court ordered them released for lack of evidence. But instead of releasing them, Bosnian authorities handed them over to U.S. troops serving with NATO-led peacekeepers. Despite an injunction from the Human Rights Chamber of Bosnia and Herzegovina, expressly ordering that four of the men remain in the country for further proceedings, the men were shortly thereafter transported to the U.S. detention camp at Guantánamo. They remain there today.

- During the past decade, there has been a steady erosion in states' willingness to protect fleeing refugees. The events of September 11 added new momentum to this trend. States are reducing the rights of refugees who succeed in crossing their borders, increasingly returning refugees to their countries of origin to face persecution, and devising new ways to prevent refugees from arriving in their territory in the first place. Australia and Europe (led by the United Kingdom), for example, are considering extra-territorial processing and detention centers for refugees who seek asylum in Australia and the European Union, respectively.

- According to a series of press reports, the CIA has been covertly transferring terrorism suspects to other countries for interrogation – notably Jordan, Egypt, and Syria, which are known for employing coercive methods. Such transfers – known as "extraordinary renditions" – violate Article 3 of the UN Convention Against Torture, which prohibits signatory countries from sending anyone to another state when there are "substantial grounds for believing that he would be in danger of being subjected to torture." Some detainees are said to have been rendered with lists of specific questions that U.S. interrogators want answered. In others, the CIA reportedly plays no role in directing the

interrogations, but subsequently receives any information that emerges. Although the number of such renditions remains unknown, U.S. diplomats and intelligence officials have repeatedly (but anonymously) confirmed that they do take place. There have also been reports that U.S. forces have been using so-called "stress and duress" techniques in their own interrogations of terrorism suspects. Concerns about U.S. interrogation techniques intensified in December 2002 when two Afghan detainees died in U.S. custody at the U.S. military base in Bagram, Afghanistan. Their deaths were officially classified as "homicides," resulting in part from "blunt force trauma." The U.S. military launched a criminal investigation into the deaths in March 2003. The military is also investigating the June 2003 death of a third Afghan man, who reportedly died of a heart attack while in a U.S. holding facility in Asadabad, Afghanistan.

RECOMMENDATIONS

CHAPTER ONE: OPEN GOVERNMENT

1. Congress should pass a "Restore FOIA" Act to remedy the effects of overly broad provisions in the Homeland Security Act of 2002, including by narrowing the "critical infrastructure information" exemption.

2. Congress should remove the blanket exemption granted to DHS advisory committees from the open meeting and related requirements of the Federal Advisory Committee Act.

3. Congress should convene oversight hearings to review the security and budgetary impact of post-September 11 changes in classification rules, including Executive Order 13292 provisions on initial classification decisions, and Homeland Security Act provisions on the protection of "sensitive but unclassified" information.

4. Congress should consider setting statutory guidelines for classifying national security information, including imposing a requirement that the executive show a "demonstrable need" to classify information in the name of national security.

5. The administration should modify the "Creppy Directive" to replace the blanket closure of "special interest" deportation hearings with a case-specific inquiry into the merits of closing a hearing.

CHAPTER TWO: PERSONAL PRIVACY

1. Congress should repeal section 215 of the PATRIOT Act to restore safeguards against abuse of the seizure of business records, including records from libraries, bookstores, and educational institutions, where the danger of chilling free expression is greatest. Congress should also amend section 505 of the PATRIOT Act to require the FBI to obtain judicial authorization before it may obtain information from telephone companies, internet service providers, or credit reporting agencies.

2. Congress should review changes to FBI guidelines that relax restrictions on surveillance of domestic religious and political organizations to ensure that there are adequate checks on executive authority in the domestic surveillance arena. The guidelines should be specifically amended to better protect against the use of counterterrorism surveillance tools for purely criminal investigations.

3. Congress should delay implementation of the Computer-Assisted Passenger Pre-Screening System II pending an independent expert assessment of the system's feasibility, potential impact on personal privacy, and mechanisms for error correction. Separately, Congress should immediately eliminate all funding for "Total [or Terrorism] Information Awareness" research and development.

4. The Terrorist Threat Integration Center should be housed within DHS where it may be subject to oversight by departmental and congressional officials – who can ensure investigation of possible abuses and enforcement of civil rights and civil liberties.

5. Congress should establish a senior position responsible for civil rights and civil liberties matters within the DHS Office of the Inspector General. This position would report directly to the Inspector General, and be charged with coordinating and investigating civil rights and civil liberties matters in DHS.

CHAPTER THREE: IMMIGRANTS, REFUGEES, AND MINORITIES

1. The Justice Department and DHS should continue cooperating with the Justice Department Office of the Inspector General (OIG) by implementing the remaining recommendations addressing the treatment of the September 11 detainees by the OIG's October 3, 2003 deadline. In addition, Congress should require the OIG to report semi-annually any complaints of alleged abuses of civil liberties by DHS employees and officials, including government efforts to address any such complaints.

2. The Justice Department should rescind the expanded custody procedures regulation that allows non-citizens to be detained for extended periods without notice of the charges against them, as well as the expanded regulation permitting automatic stays of immigration judge bond decisions.

3. The president should direct the attorney general to vacate his decision in *In re DJ* and restore prior law recognizing that immigration detainees are entitled to an individualized assessment of their eligibility for release from detention. Congress should enact a law making clear that arriving asylum seekers should have their eligibility for release assessed by an immigration judge.

4. The administration should fully revive its Refugee Resettlement Program and publicly affirm the United States' commitment to restoring resettlement numbers to pre-2001 levels (90,000 refugees each year). It should ensure that adequate resources are devoted to refugee security checks so that these procedures do not cause unnecessary delays.

5. The Justice Department should respect the judgment of local law enforcement officials and cease efforts to enlist local officials in the enforcement of federal immigration law.

CHAPTER FOUR: UNCLASSIFIED DETAINEES

1. The administration should provide U.S. citizens José Padilla and Yaser Hamdi immediate access to legal counsel. These individuals, and all those arrested in the United States and designated by the president as "enemy combatants," should be afforded the constitutional protections due to defendants facing criminal prosecution in the United States.

2. The Justice Department should prohibit federal prosecutors from using, explicitly or implicitly, the threat of indefinite detention or military commission trials as leverage in criminal plea bargaining or in criminal prosecutions.

3. The U.S. government should carry out its obligations under the Third Geneva Convention and U.S. military regulations with regard to all those detained by the United States at Guantánamo and other such detention camps around the world. In particular, the administration should provide these detainees with an individualized hearing in which their status as civilians or prisoners of war may be determined. Detainees outside the United States as to whom a competent tribunal has found grounds for suspecting violations of the law of war should, without delay, be brought to trial by court martial under the U.S. Uniform Code of Military Justice. Those determined not to have participated directly in armed conflict should be released immediately or, if appropriate, criminally charged.

4. President Bush should rescind his November 13, 2001 Military Order establishing military commissions, and the procedural regulations issued thereunder.

5. The administration should affirm that U.S. law does not permit indefinite detention solely for purposes of investigation, and that suggestions to the contrary in the Declaration of Vice Admiral Lowell E. Jacoby (USN) do not reflect administration policy.

CHAPTER FIVE: THE UNITED STATES AND INTERNATIONAL HUMAN RIGHTS

1. The United States should publicly renounce efforts by other governments to use global counterterrorism efforts as a cover for repressive policies toward journalists, human rights activists, political opponents, or other domestic critics.

2. As a signal of its commitment to take human rights obligations seriously, the United States should submit a report to the UN Human Rights Committee on the current state of U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR). The United States ratified the ICCPR in 1992, but has not reported to the Human Rights Committee since 1994.

3. The United States should affirm its obligation to not extradite, expel, or otherwise return any individual to a place where he faces a substantial likelihood of torture. All reported

violations of this obligation should be independently investigated. The United States should also independently investigate reports that U.S. officers have used "stress and duress" techniques in interrogating terrorism suspects, and it should make public the findings of the military investigations into the deaths of three Afghan detainees in U.S. custody.

4. The United States should respect the domestic laws of other countries, particularly the judgments of other nations' courts and human rights tribunals enforcing international law.

5. The United States should encourage all countries to ensure that national security measures are compatible with the protections afforded refugees under international law.