



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

[fff@fff.org](mailto:fff@fff.org) [www.fff.org](http://www.fff.org)

---

## **The Post-9/11 Roundup of Innocents, Part 1**

**by James Bovard**

Many Americans have been lulled into a false sense of security by the end of the George W. Bush administration. In reality, the government continues to pose grave perils to people's rights and liberties. And it could take only one shocking incident for the government to once again show its heavy-handed ways.

Prior to the September 11, 2001, attacks, the dark side of the Bush administration was barely evident. But within days after those attacks, the government seized almost any conceivable excuse to lock up anyone it chose to target. At a time when many people are lowering their guard against Leviathan, we should recall how quickly the government razed restraints on its power.

The Bush administration brought the same mentality to locking up suspects after 9/11 that the Soviet Union used for the potato harvest from collective farms. It didn't matter how many bushels of potatoes were rotten, or how many bushels were lost or pilfered along the way, or how many bushels never really existed except in the minds of the commissars who burnished the official reports. All that mattered was the total number. In the same way, the success of the immediate federal response to 9/11 was gauged largely by the number of people rounded up, regardless of their guilt or innocence.

Less than three months before the 9/11 attacks, the Supreme Court ruled that immigrants within the United States are protected by the Constitution "whether their presence here is lawful, unlawful, temporary or permanent." Justice Steven Breyer, who wrote the majority opinion, specified that "terrorism" might be one of the "special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security."

The Bush administration responded to the Supreme Court decision by presuming that practically any alien could automatically be considered a terrorist suspect. After 9/11 the Bush administration quickly requested that Congress pass legislation to formally suspend all habeas corpus rights for aliens.

A petition for a writ of habeas corpus — Latin for “produce the body” — seeks to end unlawful detention of a person by requiring the government to bring the detained person before a judge to be either formally charged or released. Thomas Macaulay, in his *History of England*, proclaimed the Habeas Corpus Act of 1679 “the most stringent curb that ever legislation imposed on tyranny” and hailed it as a law that adds to “the security and happiness of every inhabitant of the realm.” The British legislation was part of the common-law heritage incorporated into American law at the time of the nation’s founding. The Supreme Court declared in 1969 that the writ of habeas corpus is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.”

### **Rule by decree**

Attorney General John Ashcroft did not wait for a green light from Congress before making himself Czar of All Aliens. The INS, at Ashcroft’s behest, issued a new emergency regulation on September 17 expanding the time from 24 hours to 48 hours that the agency was allowed to detain aliens while deciding whether to formally charge or deport them. The edict also provided for “an exception to the 48-hour general rule for any case arising during or in connection with an emergency or other extraordinary circumstance, in which case the Service must make the determinations as to custody or release ... within an additional *reasonable period* of time.” The official announcement of the new regulation repeatedly stressed that “this 24-hour period is not mandated by constitutional requirements.”

And since a 24-hour period is not mandated by the Constitution, the Justice Department was entitled to suspend habeas corpus for any immigrant it labeled a terrorist suspect — or a potential material witness — or who was caught with box-cutters.

The following day, Ashcroft characterized the new rules as “an administrative revision to the current INS regulations regarding the detention of aliens,” adding that “this rule change will apply to these 75 individuals who are currently detained by the INS on immigration violations that may also have information related to this investigation.” As immigration lawyer Michael Boyle later testified to Congress,

This exceptionally vague and open-ended provision allows detention without reason for virtually any period of time that the jailer chooses, with no recourse or explanation. It, in effect, allows an individual to be held for long periods for no better reason than that someone in government thinks they [sic] look suspicious.

The “reasonable period” edict illustrates how an innocuous phrase can create a gaping legal sinkhole that threatens to swallow the rights of 10 million people — the number of legal immigrants in the United States.

On September 21, Michael Creppy, the chief immigration judge of the INS, acting on Ashcroft's command, ordered immigration judges to close all hearings of "special interest" detainees rounded up after 9/11 and to refuse to confirm or deny to anyone outside the courts whether such hearings were scheduled. That made it very difficult, if not impossible, for relatives to keep track of locked-up husbands, sons, or brothers and also thwarted lawyers' efforts to keep in touch with clients.

In the days after the attacks, Attorney General Ashcroft told FBI Director Robert Mueller "that any male from eighteen to forty years old from Middle Eastern or North African countries who [sic] the FBI simply learned about was to be questioned and questioned hard. And anyone from those countries whose immigration papers were out of order — anyone — was to be turned over to the INS," *Newsweek* columnist Steven Brill reported in his book *After: How America Confronted the September 12 Era*. Brill noted that Ashcroft told FBI and INS agents that the goal "was to prevent more attacks, not prosecute anyone. And the best way to do that was to round up, question, and hold as many people as possible."

### **Detaining the innocent**

While detainees were portrayed as would-be terrorists, most of the actual cases mocked the Bush administration's ominous overtones:

- A Moroccan teenager in Virginia was turned in to the feds by a high-school guidance counselor who discovered the boy's tourist visa had expired. (The teenager registered for high school near the time of the terrorist attacks.) The *New York Times* noted on February 3, 2002, "The youngster has been detained for four months." No evidence was found linking the boy to terrorist groups.

- Nacer Fathi Mustafa, a 29-year-old American citizen, was traveling back to the United States with his Palestinian father on September 15 after purchasing leather jackets in Mexico for a Florida truck stop he manages. The Mustafas were arrested after a federal official claimed that their passports had "obviously been altered with the introduction of an additional clear sheet on top of the genuine laminate." The Mustafas' lawyer, Dan Gerson, later noted, "The agent attempted to cast the Mustafas in the worst light, stating that, when questioned, 'The Mustafas declined to offer any explanation,' when in fact they denied knowledge of any alterations." The elderly father was jailed briefly and then released on condition that he wear an electronic ankle bracelet. The son was held for 67 days before a government laboratory concluded the passport had not been altered. The Mustafas sued the government to get reimbursement of their legal fees (more than \$15,000), asserting that the feds had acted in bad faith. Assistant U.S. Attorney Andrew A. Bobb scorned their lawsuit: "Both defendants' passports revealed they had traveled to the Middle

East, a factor that could be considered in light of the fact the terrorists who caused the Sept. 11 devastation had traveled from the Middle East into the United States.”

- On September 19 the FBI nabbed Mohammed Butt, a 55-year-old Pakistani living in a house with other aliens in Queens, New York. A priest had called the FBI to report local suspicions about the house’s residents: they did not cut the grass and failed to say hello. And as one 63-year-old neighbor astutely noted, “They hang their laundry — even their underwear — on the fence. Who does that?” Butt had entered the United States a year earlier and had overstayed a six-month visa. The FBI quickly decided it had no use for Butt and turned him over to the INS. He was being held in the Hudson County jail when he died of a heart attack. Butt repeatedly filled out forms requesting medical assistance in the days before his death but was scorned by the jailers. Human Rights Watch filed a Freedom of Information Act request to get information on Butt and his death but the INS refused to provide any information unless Human Rights Watch could provide Butt’s “written consent” and “written signature” permitting the INS to release the information.

- Two Moroccan men in their 20s living in Richmond, Virginia, were arrested by police during a September 13 traffic stop and handed over to the INS. The INS locked them up because they were working part-time at a pizza joint, in violation of their student visas. Their lawyer, Syed Hyder, declared, “I’ve been told no one has any evidence against these boys. But since the FBI had at one time expressed an interest in them, the INS had to hold them.”

- Raza Nasir Khan, a pizza cook, got swept up after he asked a state Fish and Wildlife agent for a map while he was hunting with his bow and arrows in Delaware on the morning of September 19. The agent suspected the Pakistani — who possessed a global-positioning-satellite device (as do many hunters) and was within a few miles of a nuclear power plant — and alerted the FBI. FBI agents descended upon his apartment the next night and discovered three firearms. Khan, an avid hunter, had applied to have his visa extended but because it had not yet been renewed, he was guilty of a felony. (Illegal aliens are prohibited from possessing firearms.) A few days later, federal Alcohol, Tobacco, and Firearms agents captured Khan on his way to the pizzeria. He was jailed and held without bond. Federal magistrate Mary Pat Thyne conceded, “There is nothing here to suggest [and] there were no indications that this individual was a terrorist.... There is no indication to me that there is a terrorism circumstance here.” Richard Andrews, a federal prosecutor in Wilmington, observed, “Mr. Khan was arrested because of Sept. 11 in the sense that [federal agents] would not have gone out to interview him but for Sept. 11.”

Attempting to help the government investigate the terrorists landed at least two people in jail:

- Mustafa Abujdai, a Palestinian living in Texas, was locked up after he voluntarily contacted the FBI after 9/11 to inform them “he had met with two men in Saudi pilot’s uniforms at a restaurant in Dallas, Texas, and that they had attempted to recruit him for flight-training school,” according to his lawyer, Karen Pennington. One of the Saudis was one of the 9/11 suicide pilots. Abujdai, who was married to an American, was interrogated for 15 hours, and then was jailed for more than two months for overstaying his visa. Abujdai claimed other jail inmates heavily abused him.

- Eyad Mustafa Alrababah, a Palestinian living in Connecticut, was also locked up after he voluntarily went to the FBI office in Bridgeport to tell them that he recognized pictures of four of the hijackers and had driven them to Virginia in June. He was locked up as a material witness, held in solitary confinement for more than 120 days, and kept incommunicado for much of the time.

*James Bovard is the author of [Attention Deficit Democracy](#) [2006] as well as [The Bush Betrayal](#) [2004], [Lost Rights](#) [1994] and [Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil](#) (Palgrave-Macmillan, September 2003) and serves as a policy advisor for The Future of Freedom Foundation.*

**This article was originally published in the May 2009 edition of *Freedom Daily*.**