

United States

The United States has long been proud of its commitment to the rule of law, its constitutional system of checks and balances, the independence of its judiciary, and its democratic political culture. The picture has never been perfect—the legacy of institutionalized discrimination that followed in slavery’s wake is the most obvious example of flaws—but the United States has long seen itself to be, and in many places has been perceived to be, an effective advocate for human rights worldwide and one that practices much of what it preaches.

Its record at home and overseas in 2004—most notably the government’s use of coercive interrogation and disregard for the Geneva Conventions in its treatment of detainees in Afghanistan, Iraq, and Guantanamo Bay, exemplified by the images of torture from Abu Ghraib prison—has undermined that reputation (*see* Introduction for analysis of U.S. torture and mistreatment of detainees). The Bush administration's efforts to expand executive power at the expense of judicial and legislative oversight in its approach to counterterrorism also continue to jeopardize long-established civil and political rights in the United States

A vibrant and diverse group of nongovernmental organizations work in the United States on domestic human rights concerns—everything from police brutality to welfare laws that victimize women who have been convicted of drug offenses to racial disparities in allocation of funds for public education. As reflected in the summary below, Human Rights Watch’s work on domestic U.S. rights practices currently focuses on the implications of the Bush administration’s counterterrorism measures, for citizen and non-citizen alike, and continuing rights violations in the U.S. criminal justice system.

Counterterrorism and Human Rights

The Bush administration continues to reject the applicability of fundamental rights protections found in U.S. and international law to persons apprehended in its global campaign against terrorism. It refuses to apply either laws of war or human rights standards to the more than five hundred men at Guantanamo Bay, Cuba, who have been held, many since 2002, in long-term indefinite and largely incommunicado detention; it has begun proceedings to try terrorist suspects before military commissions that do not meet fair trial standards; it has sought to block the most basic due process protections to U.S. citizens detained on presidential order as enemy combatants; and it has sent or assisted in the return of individuals to countries where they face torture.

Guantanamo Bay and Enemy Combatant Detentions

In 2004 the U.S. Supreme Court issued two rulings that dealt a major blow to a core component of the administration's anti-terrorism policies—the indefinite detention of “enemy combatants” without judicial review. Rejecting the administration's effort to maintain Guantanamo as a place outside the rule of law, the court ruled in the *Rasul* case that U.S. courts had jurisdiction to hear cases by the Guantanamo detainees. And in the case of Yasser Hamdi, a U.S. citizen held as an enemy combatant, the court held that those detained by the United States must be afforded a meaningful opportunity to contest the basis of their detention before a neutral decision maker.

Shortly before the Court's decisions, the Pentagon announced plans for annual military reviews of each Guantanamo detainee to determine whether he still posed a security threat or could provide useful intelligence that justified his continued detention. These review boards, which had not begun as of this writing, will not provide detainees the basic safeguards afforded criminal defendants under human rights law nor will they meet the requirements of the laws of war for security detainees.

In response to the Supreme Court's rulings, the Pentagon quickly instituted Combatant Status Review Tribunals (CSRTs) to allow each Guantanamo detainee to contest their status as an enemy combatant. This administrative process, a one-time review that has no basis in U.S. or international law, is being used by the administration to justify the detention of persons who, absent evidence of criminal wrongdoing or violation of the laws of war, should have been released at the conclusion of active hostilities between the United States and the Taliban government in 2002. It also appears designed to deprive detainees of their right to have their cases reviewed by a neutral decision maker. Detainees who have sought to contest their status before the CSRTs have not been able to bring in outside witnesses (other than other Guantanamo detainees) or be represented by counsel, nor does the process guarantee that they can see all of the evidence against them. As of late November, CRSTs had reviewed 401 cases; final action was announced in 144 cases and only one detainee was deemed to be a non-enemy combatant and released.

During 2004, some three dozen persons who had been released from Guantanamo described their treatment by U.S. forces in public statements or in interviews with Human Rights Watch. They alleged that interrogation methods included prolonged periods of painful “stress” positions, exposure to extreme cold and loud music, and threats of torture and death. They said they had been subjected to weeks and even months in solitary confinement—at times either suffocatingly hot or cold from excessive air conditioning—as punishment for failure to cooperate during interrogations or for violations of prison rules.

U.S. officials have publicly acknowledged that interrogation techniques at Guantanamo have included the use of stress positions, isolation, and removal of clothing. A brief military inquiry into the treatment of detainees at Guantanamo following the revelations of Abu Ghraib concluded that at Guantanamo there were only a handful of minor infractions—but the investigation failed to include interviews with

any detainees. According to press reports in November 2004, the International Committee of the Red Cross has told the U.S. government in confidential reports that its treatment of detainees has involved psychological and physical coercion that is “tantamount to torture.”

During 2004, three men—including two U.S. citizens—continued to be held incommunicado and without charges, having been designated “enemy combatants” by President Bush. After the Supreme Court ruled that one, Yasser Hamdi, was entitled to his day in court, the U.S. government and his attorneys negotiated his release and, in October, he was permitted to return to Saudi Arabia on condition that he renounce his U.S. citizenship (he had joint U.S. and Saudi citizenship), give up his right to challenge the lawfulness of his detention and treatment, and accept certain restrictions on foreign travel. The United States continues to insist in court that it has the authority to detain indefinitely without charges the two others, Jose Padilla and Ali-Saleh Kahlah al-Marri.

Some 150 detainees have been released from Guantanamo since the prison was opened, often as a result of negotiations between the United States and the detainee’s government. As of October 2004, the number of detainees held at Guantanamo was reported as 550. In April 2004, the Pentagon completed construction of its first permanent prison for detainees; in October it announced plans to begin building a second. The U.S. has rejected all requests by human rights organizations that report publicly, including Human Rights Watch, to examine conditions at Guantanamo or interview detainees.

The U.S. also has “disappeared” at least eleven high-level al-Qaeda suspects, holding them in undisclosed locations worldwide; some reportedly have been tortured. It has also facilitated or participated directly in the transfer of an unknown number of people to countries in the Middle East where torture is routine. (*See Introduction*).

Military Commissions

In August 2004, the military began legal proceedings against four Guantanamo detainees, the first to be charged with crimes. Another eleven detainees have been designated eligible for trial but have not yet been charged. Under an order issued by President Bush in November 2001, non-U.S. citizens accused of involvement in terrorism can be tried by ad hoc military commissions instead of by the federal courts or the well-developed U.S. court martial system (which may try prisoners of war for war crimes).

The commissions are fatally flawed in design and practice. They permit the executive branch broad powers to be prosecutor, judge, and jury without any judicial oversight whatsoever. They sharply limit a defendant’s rights to present a defense, in part by allowing the use of evidence that the accused may not see nor confront. And they do not require that those sitting in judgment have any legal training: in the initial hearings, the panel members, only one of whom was a lawyer, were unfamiliar with basic concepts of criminal law, let alone the complex international law issues at stake. Poor translations by U.S. government interpreters made a mockery of hearings and raised further fair trial concerns.

Human Rights Watch was allowed to attend and monitor the commission proceedings after joining with other human rights groups to publicly object to an initial decision by the Pentagon to prevent access by independent monitors.

In November 2004, a federal district court ordered military commission proceedings in one case halted. The court ruled that the case was improperly before a military commission because of the military's failure to determine the defendant's legal status under the Geneva Conventions and because the commission rules of evidence violated fair trial standards. The government sought an expedited appeal and the defense urged the Supreme Court to take the case directly.

Material Witness Detentions

The U.S. government continues to misuse a federal material witness law to secretly arrest and detain Muslim men in the U.S. indefinitely without charge. This law was enacted to enable authorities to temporarily detain a witness when his or her testimony is critical to a criminal proceeding and the individual is likely to flee if not detained. Since September 11, the government has used the law to incarcerate terrorism suspects while investigations into their activities continue. The Justice Department still refuses to disclose the number of material witnesses it has held in connection with the war on terror or any details about them, citing national security concerns and grand jury rules.

On May 12, 2004, the government detained as a material witness U.S. citizen Brandon Mayfield, an Oregon attorney and Muslim convert who the government believed was linked to the March 11 Madrid bombing. A month later, authorities released Mayfield when they learned that the allegations against him were based on a faulty match of fingerprints recovered from the bombing site. At the urging of members of Congress, the Justice Department's Office of Professional Responsibility and Inspector General are investigating potential wrongdoing by the FBI and U.S. attorney's office in the Mayfield case. In November 2004, an international panel of scientists, commissioned by the FBI and led by the chief of the FBI's Quality Control unit to review the Mayfield case, strongly criticized the Justice Department for the institutional intimidation that led to the misidentification of Brandon Mayfield's fingerprints.

Immigration

Congressional and executive efforts to curtail the rights of immigrants through new legislation and administrative policies continued unabated throughout 2004. Non-citizens face violations of their right to seek asylum, to be free from arbitrary detention, to defend against their deportation when it will result in separation from their U.S. citizen children or other close family members, and to be afforded full and fair deportation hearings.

The United States has for many years used a unique preliminary asylum screening process for Haitians fleeing their country who have been interdicted at sea. This rudimentary policy fails to guarantee fair access to screening for Haitians who fear being returned to a place where their lives or freedom are threatened. Haitians fleeing their country following the exile of Haitian President Aristide on February

29, 2004 were sent back in record numbers. By October 2004, 3229 had been interdicted at sea. Only ten were found to be refugees. As of this writing, they are confined to the U.S. Naval Base at Guantanamo Bay, Cuba, contrary to international standards limiting restrictions on the free movement of refugees. The U.S. government is searching for other countries that will take them in.

In December 2003, the Inspector General of the U.S. Department of Justice issued a report on the treatment in detention of non-citizens arrested after the September 11 attacks because of suspected links to terrorism. The report confirmed Human Rights Watch's findings in 2002 that some of the detainees had been physically abused. According to the Inspector General, guards in the federal Metropolitan Detention Center in Brooklyn maliciously slammed detainees against walls, twisted their fingers and wrists, and jerked their restraints to make the detainees fall. None of the detainees were indicted for crimes related to the September 11 attacks. Most were eventually deported for ordinary visa violations.

The U.S. has continued to adopt new immigration policies based on an assumed link between non-citizens and terrorism. In June 2004, the Department of Homeland Security announced that it would begin subjecting every undocumented non-citizen within 160 miles of the Mexican or Canadian border to "expedited procedures" to determine whether they are legally present. If not, they are immediately deported without a hearing.

The new policy has raised concerns about the training and capacity of border agents to assess the legal status of non-citizens and the viability of their asylum claims. A U.N. report leaked to the *New York Times* in August 2004 revealed that similar expedited procedures, in place at U.S. airports since 1996, have resulted in some non-citizens being harassed and intimidated, discouraged from seeking asylum, and interviewed without translators by airport inspectors ignorant of asylum law.

Criminal Justice

Despite steadily dropping crime rates, harsh sentencing policies continue to fuel the expansion of the nation's jail and prison population, which reached a new high of 2.2 million in 2003. The United States—which has less than 5 percent of the world's population—holds nearly 23 percent of the world's prisoner. Racial disparities in the criminal justice system remain pronounced and minor drug offenses continue to constitute a significant number of total arrests.

In response to escalating prison costs, some states have begun instituting sentencing reforms to reduce prison populations, but there is still considerable resistance. In California, for example, voters in November 2004 rejected an initiative to reform the state's infamous "three strikes law," which imposes a mandatory life sentence on anyone who commits a third criminal offense, even a minor one such as petty theft.

Prisons generally fail to provide safe and humane conditions of confinement or adequate rehabilitative services and programs for prisoners. Prison rape remains a serious problem. The congressionally

authorized National Prison Rape Reduction Commission began working in 2004 to document the problem and establish standards to eliminate it. Its work complements other new federal efforts to develop reliable statistics on the prevalence of prison rape, and to provide anti-rape grants and training to prison authorities.

Some 16 percent of prisoners are mentally ill, and prison mental health services are woefully deficient. In October 2004, Congress passed legislation that will provide federal funds to help divert the mentally ill from the criminal justice system and to improve their treatment when incarcerated. Medical treatment of prisoners is substandard in many prisons. After several prisoners with HIV/AIDS died due to appalling living conditions and negligent or incompetent medical care, the Alabama Department of Corrections in June 2004 settled a lawsuit against it by agreeing to improve the care and treatment of prisoners with HIV/AIDS.

In his 2004 State of the Union address, President Bush declared: “America is the land of the second chance—and when the gates of the prison open, the path ahead should lead to a better life.” He proposed a reentry initiative for the nearly 650,000 men and women returning each year from state and federal prisons. Congress has introduced legislation that would fund expanded access to treatment, transitional housing, and other services to ease the transition from prison to home.

Federal and local public housing policies, however, exclude hundreds of thousands of needy Americans because they have criminal records, denying them the opportunity to obtain decent, stable, and affordable housing. While such exclusions ostensibly protect existing tenants, the policies are so arbitrary, overbroad, and harsh that they exclude persons arrested for minor offenses and people who have turned their lives around and remain law-abiding..

Close to 30 percent of HIV infections in the U.S. result from the sharing of syringes by injection drug users. In every state, possession of syringes for the purposes of injecting illegal drugs can be a crime, restricting effective sterile syringe programs, such as needle exchange, that reduce the spread of HIV. In 2004, needle exchange program volunteers distributing clean syringes were arrested in at least two states—Massachusetts and Pennsylvania.

In the U.S. as well as internationally, the U.S. government continues to promote HIV prevention programs that promote sexual abstinence and marital fidelity, while censoring lifesaving information about condoms as a means of HIV prevention. Funding for “abstinence only” programs has greatly increased during the Bush administration. A growing body of evidence indicates these programs may actually increase HIV risk among teens by discouraging use of condoms and other safe-sex measures.

Death Penalty

By mid-October 2004, the U.S. had carried out forty-eight executions during 2004. Over 3,400 men and women were on death row at the end of the year, including almost eighty juvenile offenders. The

Supreme Court heard arguments in October in a case that will decide the constitutionality of the death penalty for juvenile offenders. Nineteen states and the federal government have already set eighteen as the minimum age for the death penalty. The Court's decision will determine whether the U.S. will leave the company of Iran and China, which are among the few states in the world that sentence juvenile offenders to death.

Five death row inmates were exonerated in 2004, bringing to 117 the number of men released from death row since 1973 because of evidence of their innocence. In August, a Louisiana death row inmate, Ryan Matthews, convicted of murder in 1999, was cleared of all charges after new DNA evidence exonerated him. Matthews is the fourteenth and most recent death row inmate freed with the help of DNA evidence.

In October 2004, the Congress passed the Innocence Protection Act (IPA) as part of a larger anti-crime bill. The IPA seeks to prevent wrongful executions by raising the standards for adequate representation in death penalty cases, providing greater access to post-conviction DNA testing, and ensuring that those exonerated through DNA evidence in federal cases receive compensation.

In March 2004, the International Court of Justice (ICJ) ruled that the U.S. had violated the rights of fifty-four Mexican nationals on death row because they had not been informed of their right to talk to their consular officials after they were arrested, as required by the Vienna Convention on Consular Relations. The court rejected the U.S. argument that the clemency process offered an adequate remedy and insisted that the courts had to provide "effective" review of the convictions to determine whether the violations caused "actual prejudice" to any of the fifty-four men.. The ICJ ruling did not affect other foreign nationals on death row; Hung Thanh Le, a Vietnamese national, was executed in Oklahoma despite his denial of consular notification. More than 120 foreign nationals from twenty-nine countries remain on death row in the United States.