

INTER AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 U.S.A.

September 26, 2002

**Ref: Post-September 11, 2001 INS Detainees
Request for Precautionary Measures**

Dear Ms. McDougall:

On behalf of the Inter-American Commission on Human Rights, I wish to acknowledge receipt of your communication dated September 17, 2002 and received by the Commission on September 23, 2002 by which you provided additional information concerning your June 20, 2002 petition for precautionary measures on the situation in the United States of "9/11 INS Detainees Ordered Deported or Granted Voluntary Departure." I also wish to inform you that in note dated September 18, 2002 and received by the Commission on September 19, 2002, the United States responded to the Commission's July 1, 2002 request for information in this matter. The pertinent parts of the State's response are enclosed.

Upon considering the information provided by the United States, and in light of the allegations submitted in support of your request, the Commission considers that a situation of potential irreparable harm has been demonstrated so as to warrant precautionary measures pursuant to Article 25 of the Commission's Rules of Procedure. Consequently, in a note of today's date the Commission addressed the United States in the following terms:

[T]he precautionary measures petition indicates that an undisclosed number of foreign nationals who have been granted the right to voluntarily depart the United States or have been ordered deported by an immigration judge but have remained in detention beyond the timeframes under US law within which the INS is required to effectuate their removal, referred to as the "9/11 INS Detainees Ordered Deported or Granted Voluntary Departure."

In addition, despite the Commission's specific request for information concerning the present circumstances of these detainees, the United States has failed to clarify or otherwise contradict the Petitioners' information indicating that:

1. There is no basis under domestic or international law for the detainees' continued detentions;

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2. There is no information concerning the detainees' conditions of detention or mechanisms by which those conditions are being supervised, although former detainees who have since left the United States have claimed that they were subjected to harsh conditions and verbal and physical abuse;
3. The detainees have been held, some for prolonged periods, with no effective means of challenging the legality or conditions of their detentions before domestic courts.

As the Commission has previously recognized, no person under the authority and control of a state, regardless of his or her circumstances, is devoid of legal protection for his or her fundamental and non-derogable human rights.¹ After carefully deliberating upon these circumstances, the Commission has decided to adopt precautionary measures, according to which we ask Your Excellency's government to take the urgent measures necessary to protect the fundamental rights of the 9/11 Detainees Ordered Deported or Granted Voluntary Departure, including their right to personal liberty and security, their right to humane treatment, and their right to resort to the courts for the protection of their legal rights, by allowing independent courts to determine whether the detainees have been lawfully detained and whether they are in need of protection.

In its communication to the United States, the Commission also requested that the State provide the Commission with information concerning compliance with these measures within 30 days of receipt of the communication, and thereafter on a periodic basis. In view of the observations of the parties on compliance, the Commission will decide whether to extend or lift the measures.

The Commission wishes to note in accordance with Article 25(4) of the Commission's Rules of Procedure that the granting of these measures and their adoption by the State shall not constitute a prejudgment on the merits of a case.

Sincerely yours,



Arlei Dulitzky
In charge of the Executive Secretariat

¹ IACHR, Request for Precautionary Measures Concerning the Detainees at Guantanamo Bay, Cuba, March 12, 2002