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Institution: Inter-American Commission on Human Rights
Title/Style of Cause: Foreign Nationals Detained in the United States v. United States
Doc. Type: Decision on Precautionary Measures
Dated: 26 September 2002
Citation: Foreign Nationals v. United States, Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc. 1 rev. 1, Ch. III, para. 87 (2002)

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87. On September 26, 2002 the Commission authorized precautionary measures in favor of certain foreign nationals detained in the United States. According to the petition requesting the measures, the matter pertained to an undefined number of non-U.S. nationals, most of whom were believed to be Muslims of Arab or South Asian decent, who were detained in the United States following the September 11, 2001 terrorist attacks and were being held by the INS for protracted periods of time on minor immigration violations. The petition also contended that these detainees had been granted the right to voluntarily depart the United States or had been ordered deported by an immigration judge but had remained detained for extended periods, some for as long as four months, after the timeframes under U.S. law within which the INS was required to effectuate their removal. The Petitioners indicated that they had been unable to provide the names of the specific detainees to which the request for measures applies, because the United States had blocked access to and the release of information concerning the detainees, and because the detainees who remained in INS detention were not willing to be individually named or to go public with their stories for fear of retaliation or the laying of "dubious" federal criminal charges against them. The Petitioners therefore referred to the subjects of their request collectively as the "9/11 INS Detainees Ordered Deported or Granted Voluntary Departure." The petition alleged that the detainees were at risk of irreparable harm because they faced threats of verbal and physical violence, because any detention that arbitrarily deprives an individual of his or her liberty causes that person irreparable harm, because the fact that the U.S. has refused to define the legal status of the detainees had left the detainees without means to effectively challenge the basis for their continued detention, and because the continued detention categorized and treated the detainees as terrorists, apparently based exclusively upon their religion or country of origin and therefore results in ongoing harm to their reputation and family lives. In a letter dated July 1, 2002, the Commission requested from the United States information that it considered pertinent to the situation referred to in the Petitioners' request, and as to measures that have been or could be taken to address the situation of the detainees concerned. In a communication dated September 18, 2002, the United States responded to the Commission's request for information, in which it contended, inter alia, that the Petitioners' complaint was inadmissible for failure to exhaust domestic remedies and should therefore be dismissed, and in particular because the information requested by the Commission was the subject of five cases pending before the U.S. courts. In a note dated September 26, 2002, the

Commission informed the United States that the information provided by the State failed to provide the Commission with any other insights into the specific threats of irreparable harm potentially faced by the class of INS detainee represented by the Petitioners, in particular information relating to the identities, location or status of the detainees concerned, the legal basis for their confinement, or the conditions under which they were being detained. The Commission also noted that it was not apparent that the individuals who remained in detention had effective access to judicial remedies or protection, as the proceedings cited in the State's September 18, 2002 note had either been brought by organizations that appeared to have no access to individuals in detention, or by individuals who may have been held in prolonged detention but had already been deported. In light of these circumstances, the Commission adopted precautionary measures in the same communication requesting that the State take the urgent measures necessary to protect the fundamental rights of the 9/11 Detainees Ordered Deported of Granted Voluntary Departure, including their rights to person liberty and security, to humane treatment, and 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. The Commission also requested information concerning compliance with the measures within 30 days and thereafter on a periodic basis. In the absence of a timely response from the State, the Commission reiterated its request for precautionary measures in a note dated November 18, 2002. The Commission subsequently learned that the U.S. Department of Justice had provided the media with information indicating that most of the 900 people arrested pursuant to federal investigations following the terrorist attacks of September 11, 2001 had been deported, released or convicted of minor crimes not related to terrorism, and that this included 759 of 765 people arrested by the U.S. government on immigration violations. In light of the potential relevance of this information to the INS detainees on whose behalf the Commission's measures were granted, in a note dated December 17, 2002 the Commission reiterated its request for information concerning the status of the beneficiaries of the measures.