

when the United States Maritime Administration wanted to revive the domestic shipbuilding industry, which had been beaten down by lower-cost foreign competitors. Without aid, American Classic executives say, their project would never have gotten off the ground.

"We were supposed to be promoting shipbuilding," said a former top Maritime Administration official, who insisted on anonymity. "Inouye and the whole state wanted to grow the cruise business. The maritime trade unions wanted jobs. So there was a lot of political support."

Mr. Zell never lobbied the administration directly; his top executives did. In 1996 and 1997, American Classic executives met with members of Congress, labor leaders and shipyard owners in an all-out effort to promote the project in Washington. That effort was backed by campaign contributions from Mr. Zell and American Classic to Mr. Lott, Mr. Inouye and other crucial members of Congress.

It paid off. The \$1.08 billion loan guarantee was the largest the Maritime Administration had ever approved, and it allowed American Classic to enter debt markets that would otherwise be closed to it—and at rates comparable to government debt. American Classic was also allowed to buy an old foreign-made ship and use it for Hawaii cruises while the two new ship were under construction, giving the company an exemption from a law prohibiting foreign carriers from that route.

But the souring economic picture of 2001 halted these ambitions. By last summer, the company had cash-flow problems, and the downturn in tourism after the terrorist attacks pushed it over the edge. "Sept. 11 just put it away," Mr. Zell said. <http://www.nytimes.com>

#### THE JUSTICE DEPARTMENT'S DETENTION OF OVER 1,100 INDIVIDUALS IN CONNECTION WITH THE SEPTEMBER 11 INVESTIGATION

Mr. FEINGOLD. Mr. President, I was pleased to hear the Attorney General's announcement of the first indictment of a co-conspirator to the terrorist attacks on our Nation on September 11. Zacarias Moussaoui, who was detained by the FBI for carrying a false passport before September 11 and has been in custody since that time, has been indicted by a federal grand jury in Virginia. I commend the Justice Department, the FBI, and our intelligence services, for their tireless work in seeking to bring Moussaoui and other terrorists to justice.

We have known about Mr. Moussaoui since a few short days after September 11, but we still do not know the identities of hundreds of other individuals still held in detention, the vast majority of whom have no link to September 11 or al-Qaida.

And so I rise today to speak about the Justice Department's detention of these individuals in connection with its investigation of the September 11 attacks and the administration's continued refusal to provide a full accounting of who these people are and why they have been detained.

On October 31, along with Senator LEAHY, Senator KENNEDY, Representative CONYERS, Representative NADLER, Representative SCOTT, and Representa-

tive JACKSON-LEE, I sent a letter to Attorney General Ashcroft requesting basic information about the detention of over 1,100 individuals in connection with the investigation of the September 11 attacks. We wanted to know who is being detained and why; the basis for continuing to hold individuals who have been cleared of any connection to terrorism; and the identity and contact information for lawyers representing detainees. We also wanted information regarding the government's efforts to seal or close proceedings and its legal justification for doing so.

I thank and commend Senator LEAHY, the distinguished Chairman of the Judiciary Committee, for his efforts and leadership. Chairman LEAHY held four oversight hearings on the Justice Department's actions, including one hearing that I chaired focusing on the Department's detention of individuals. Those hearings culminated with the testimony of the Attorney General himself before the Committee.

I come to the floor today because I remain dissatisfied with the Administration's response to our request for information about the detainees. Seven weeks after our letter, the Department of Justice has given flimsy and contradictory excuses but no convincing legal justification for keeping secret the identities of the over 550 people it now holds in custody for minor immigration violations.

In addition, the Department has not yet provided any information on perhaps hundreds of additional people who have been detained. These people might still be being held on state or local charges, or without charges, or they might have been released. Nor has the Department given definite information on the number of individuals held as material witnesses.

After our hearings last week, I am more convinced than ever that Congress and the American people are entitled to this information to assess the Justice Department's assertions that everyone in custody has access to legal counsel and is being treated fairly.

In the days and weeks after the attacks, the Department made announcements about the status of the investigation, including tallies of the number of individuals detained. In fact, on October 25, the Attorney General announced that "[t]o date, our anti-terrorism offensive has arrested or detained nearly 1,000 individuals as part of the September 11 investigation."

In early November, however, the Department reversed course and decided it would no longer publicly release comprehensive tallies of the number of individuals detained in connection with the September 11 investigation and that it would limit its counts to those held on federal criminal or immigration violations. Thus, it would no longer keep track of those held on state or local charges, nor would it indicate how many people have been released after being detained or have been held without charges being filed.

s+According to some recent news reports relying on sources in the Justice Department, other than Zacarias Moussaoui, none of the over 1,100 individuals who have been detained are believed to be involved with the September 11 attacks. It now appears that the Department believes that at least Mr. Moussaoui is connected to September 11. And only 10-15 of the detainees are believed to have any links to the al-Qaida organization. Furthermore, according to senior Justice Department officials quoted in the press, apart from Moussaoui, not a single one of the over 550 people detained on immigration charges is linked to al-Qaida. This leads us to a simple, critical question: Who are the remaining hundreds of people and why have they been detained?

The Attorney General undoubtedly faces an enormous challenge: He must work to find the perpetrators of the September 11 attacks and bring them to justice, while, at the same time, protect Americans from future attacks. I fully support our law enforcement officials in their tireless efforts to leave no stone unturned as they investigate the September 11 attacks and strive to protect our nation from future attacks.

But, as the Attorney General moves forward in our fight against terrorism, he has a responsibility to ensure that the constitutional foundations of our nation are not eroded. The torch of Lady Liberty must continue to shine on our Nation.

This is not just an abstract or theoretical concern. Our Constitution protects the people of this country from the arbitrary or unfair deployment of the awesome power of the Federal Government. The Federal Government has the power to ruin the lives of innocent people. The checks and balances of our Constitution are crucial in protecting the governed from an unfair government.

While the Justice Department recently began releasing some information about the people who have been detained on federal criminal charges or immigration violations, we still do not have a full picture of who is being detained and why. And there are reports that detainees have been denied their fundamental right to due process of law, including access to counsel, and have suffered serious bodily injury. We simply cannot tell if those cases are aberrations or an indication of systemic problems, if the Justice Department will not release further information about those being held in custody.

The Attorney General has repeatedly and emphatically asserted that he is acting with constitutional restraint. He even went so far as to suggest last week that those who question his actions are giving aid and comfort to the terrorists. I reject that charge in the strongest terms. And I further believe that the Department of Justice has a responsibility to release sufficient information about the investigation and the detainees to allow Congress and the

American people to decide whether the Department has acted appropriately and consistent with the Constitution. It is not disloyal to view the government's assertions with skepticism. It is the American way.

Just before Thanksgiving, in response to our October 31 letter, the Department provided copies of the complaints or indictments for about 46 people held on federal criminal charges. It also provided similar information on about 49 people held on immigration violations, but edited out their identities. Then, three weeks ago, the Attorney General announced the number and identities of all persons held on federal criminal charges and the number, but not the identities, of persons held on immigration charges. The total number of detainees is roughly 600 individuals. But the Department continues to refuse to identify the over 550 persons held for immigration violations, or provide the number and identity of persons held without charge, the number and identities of persons held on state or local charges, or even the number of material witnesses.

In statements to the press and in the Attorney General's and his associates' testimony before Congress, the Justice Department has cited a number of reasons for its refusal to provide additional information.

Very troubling is the Department's assertion that those being held for immigration violations have violated the law and therefore "do not belong in the country." Without full information about who is being detained and why, we cannot accept blindly this suggestion that each and every immigration detainee does not deserve to be in the country. Do all of these immigration violations merit detention without bond and deportation? I doubt it, as the hearing on detainees the Judiciary Committee held showed that some are very minor violations, which under normal circumstances can be cleared up with a phone call or by completing some additional paperwork.

Another reason the Attorney General has cited for refusing to disclose information about detainees is that he does not want to aid Osama bin Laden in determining which of his associates we have in custody. Yet, the Attorney General and Assistant Attorney General Michael Chertoff have said nothing prevents the detainees from "self-identifying." This, it strikes me, entirely undercuts the argument that giving out this information will help bin Laden. If the Justice Department really thought it would, it would never permit self-identification and would not have released the names of those 93 individuals who have been charged with Federal crimes.

Nor would the Department have released the name of Zacarias Moussaoui and the basis for his detention. The public has known about Moussaoui and his alleged role in September 11 and al-Qaida since shortly after the attacks. The Department never tried to keep his

identity or why he was being detained a secret or try to prevent its disclosure.

Moreover, the claim that detainees can self-identify rings somewhat hollow, since we heard during the hearing on detainees that some of these individuals have been denied access to lawyers or family, for days or weeks at a time. Ali Al-Maqtari, a Yemeni national married to a U.S. citizen, testified that for most of the nearly two months he was detained, he was allowed only one phone call, of no more than 15 minutes, per week. He was never charged with perpetrating, aiding or abetting terrorism or with any crime whatsoever, and was eventually released on bond.

Dr. Al Bader Al-Hazmi was held incommunicado—denied access to his lawyer or family—for seven days. After nearly two weeks in detention, Dr. Al-Hazmi was released with no charges filed against him.

Tarek Mohamed Fayad is an Egyptian national and dentist residing in California. He was picked up by the FBI on September 13 and then transferred to the Brooklyn Detention Center in New York City, where he remains to this day. According to the Wall Street Journal, it took his lawyer one month before she was able to locate and talk to him.

Unfortunately, there could be many more cases like these three I have mentioned. But if the Justice Department will not tell the public who is in detention, we can never know the circumstances of their cases.

It is apparent that the option of 'self-identification' is not a real option. Indeed, it borders on the fanciful to suggest that all the detainees are in a position to self-identify. Rather, there are serious questions about whether the Department has denied those detained their due process rights, including access to counsel.

The Department has also said that it is prohibited by law from disclosing the information. But when I questioned both Assistant Attorney General Chertoff and later the Attorney General himself, they admitted that there is no law that provides for a blanket prohibition on the disclosure of information about individuals who have been detained.

The Attorney General cited a section of the Privacy Act, as justification for not providing this information. The Privacy Act, however, only applies to citizens and legal permanent residents. It does not apply to aliens who are not legal permanent residents. From the information provided by the Department thus far, we know the vast majority of the detainees are not permanent residents.

Furthermore, case law under the Freedom of Information Act explicitly allows the government to release private information about even citizens and legal permanent residents where that information reflects on the performance of the agency.

And that's exactly why this information has been requested. There are serious questions about whether individuals who have been detained have been denied their constitutional right to due process of law. And the kind of information we have requested will help Congress evaluate whether the Justice Department has deprived any detainee of his or her constitutional rights. We seek this information not to embarrass or harass the detainees but to provide oversight of the Justice Department's treatment of them.

To make matters worse and further thwart public or congressional scrutiny of the Department's actions, we also learned during the oversight hearings that the Attorney General has taken the extraordinary step of closing all immigration proceedings involving about 550 of the 1,100 or more individuals who have been detained. This means no visitors, no family and no press are allowed. As Mr. Al-Maqtari's attorney Michael Boyle has said, this secrecy taints the proceedings, even when, in cases like Mr. Al-Maqtari's, the FBI has cleared the immigrant of any link to terrorism whatsoever. This should give us all pause. People innocent of any connection to terrorism are being branded terrorists and being evaluated in secret proceedings. This is not right.

In sum, the various reasons cited by the Department for not disclosing information about the detainees are contradictory and lack legal justification. I once again urge the Administration to release basic information about the people now held in federal custody, except for the identities of material witnesses. And the Administration should also give us whatever help it can in identifying people who may be held in state custody. Rather than expending its resources trying to keep these detentions secret, the Administration should show that it has confidence in what it is doing by opening up its actions to public scrutiny.

This is not simply a question of constitutional rights, it is a question of effective law enforcement. It became clear during our hearing on the detainees that the roadblocks to individuals consulting with counsel not only cause great hardship to the detainees and violate their rights, but also hinder the investigation and waste the resources of law enforcement on people who have no connection with terrorism. As Mr. Goldstein, an attorney for Dr. Al-Hazmi, testified:

Dr. Al Hazmi's attorneys had notified the appropriate law enforcement agencies and the Department of Justice in writing, requesting the whereabouts of their client and expressing their desire to communicate with him. Despite these efforts—and despite Dr. Al Hazmi's repeated requests to consult with his counsel—Federal authorities stonewalled and continued to interrogate Dr. Al Hazmi in the absence of his counsel.

Mr. Goldstein added:

By denying Dr. Al-Hazmi access to his retained counsel, Federal law enforcement officials not only violated my clients rights,

they deprived themselves of valuable information and documentation that would have eliminated many of their concerns. Their obstructionism prolonged the investigative process, wasting valuable time and precious resources.

I was gratified that a number of my colleagues expressed concern about the treatment of Mr. Al Maqtari and Mr. Al-Hazmi, and particularly about the difficulties they had in communicating with counsel. I have focused in recent weeks on the issue of access to counsel because I believe this issue is at the center of how our justice system is treating these detainees. This is the issue that takes the concern over the fate of the detainees from an abstract debate over civil liberties versus security to a very specific and very important inquiry about how our government actions affect the lives of hundreds of people.

What happened to Mr. Al Maqtari and his wife Tiffany had a severe impact on their well being. What has happened to hundreds of other detainees has similarly affected them. We are not just engaged in a hypothetical law school exam question or a mock crisis where we each play a role. We are talking about taking the liberty of real people, with real families and real lives. It is not enough to say that some liberties have to be sacrificed in these difficult times. Rather, we must be able to determine whether the actions of the Department have been reasonable, and whether the sacrifices that are being requested are justified.

That is where lawyers come in. With a lawyer, a detainee can much more readily answer concerns about his behavior, provide documents to show his whereabouts during crucial periods, and generally provide information to show that he is not a terrorist. Lawyers can help determine whether the extreme step of detention without bond is warranted. And they can explain what is going on to the detainee and the public. I asked the Attorney General at our hearing to take steps to ensure that everyone under detention who wants a lawyer can obtain one. And I asked him to determine how many of the detainees are not represented by counsel. I hope he will follow through on our discussion. It is essential that anyone who is being held have counsel and be able to communicate with counsel.

The Attorney General has said reasoned discourse should prevail. I agree. But in order to have that reasoned discourse, the Justice Department should provide Congress and the American people with enough information to promote a fair and open dialogue and make our oversight meaningful. Our hearings showed that not all the detainees have adequate access to counsel. They showed, at least, that the Congress has reason to test and examine the Administration's assertions that everyone's constitutional rights are being respected in this investigation. By continually saying in the face

of this evidence that we should take its assertions about the treatment of the detainees on faith, the Administration furthers the appearance that it has something to hide.

I hope that we are not in some sense following those who rounded up over 120,000 Japanese Americans and thousands of German and Italian Americans during World War II. The rhetoric we hear today rings awfully familiar. We must not return to the time when immigrants who provided so much to our nation were suddenly branded "enemy aliens" and deprived of their liberty and other fundamental rights.

Let us not repeat these mistakes of history. I again call on the Administration to fulfill its responsibility to protect the Constitution in its pursuit of liberty and justice for all. It can begin by identifying those now held in Federal Custody and providing the other information requested in our October 31 letter.

#### INVESTOR AND CAPITAL MARKETS FEE RELIEF ACT

Mr. SARBANES. Mr. President, I rise to address an issue which I believe may merit the attention of the Securities and Exchange Commission following enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act.

That bill has two main impacts. It authorizes the commission to raise the salaries of its staff to levels that are on a par with the compensation paid by other Federal financial regulators. Our securities markets are the envy of the world. It is important that the regulator of those markets be in a favorable position to attract and retain qualified employees. Enacting pay parity contributes towards this goal and will result in enhanced supervision of the securities markets.

In addition, the bill reduces certain fees charged to investors and issuers. Section 11 of the bill provides an effective date for reduction of transaction fees on the later of, one, the first day of fiscal year 2002; or two, 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted. Because the regular appropriation to the Commission (H.R. 2500) was signed into law on November 28, 2001, Public Law 107-77, the effect of Section 11 is to provide an effective date for transaction fee reduction of December 28, 2001, regardless of when the bill is enacted.

The legislation was passed by the Senate on December 20, 2001, and still must be signed by the President. Thus, the industry will have at most only a few days to comply with the law. I have been informed by some market participants that this may not allow them adequate time to re-program and test their computers to make certain that the transition to the new fee structure goes smoothly and without flaws.

I believe it would be appropriate, and consistent with the intent of this legis-

lation, for the commission to review this situation and determine whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to use the commission's general exemptive authority to extend the effective date for the reduction of transaction fees for a brief period as may be reasonably necessary in order for market participants to comply with the new law fully and without disruption.

Mr. GRAMM. I believe that the commission can and should alleviate this problem. When the Senate passed its version of fee reduction legislation in March, the bill, S. 143, provided for a delay of 30 days in the effective date for transaction fee reduction in order to provide securities firms and markets the necessary time to adjust their computer systems to accommodate the rate change. This language was changed when the bill was passed by the House in June, in order to comply with budget-scoring requirements. At that time, it was envisioned that congressional action on the bill would be completed well before the start of the new fiscal year in October, and that the effective date provision would not cause administrative problems for the securities industry.

It is not our intention to impose an administrative requirement that would be impossible for industry to meet. In order to comply with congressional intent and to make this provision workable, I hope that the commission will consider using its general exemptive authority under Section 36 of the Securities Exchange Act of 1934 to extend the effective date for reduction of transaction fees.

Mr. KERRY. Mr. President, I speak today on S. 1499, the American Small Business Emergency Relief and Recovery Act of 2001. This legislation provides help to small businesses hurt by the events of September 11th and to small businesses suffering in the weakened economy. Senator BOND and I have spent months trying to uncover who is behind the serial holds that have been placed on this emergency legislation and work out disagreements.

This bill hasn't been "hustled through," as some contend. It was drafted with the input of small business organizations, trade associations and SBA's lending and counseling partners through more than 30 meetings and conference calls—conference calls because we couldn't ask folks to fly in the immediate weeks after the attacks. It is cosponsored by 18 of the Small Business Committee's 19 members. And overall 62, senators, including 20 Republicans, have joined me in cosponsoring S. 1499.

On the House side, the Committee on Small Business passed the companion to S. 1499. We attempted to move this bill quickly because it is emergency legislation. It is a good bill because it can do a lot for a lot of people. It is being held because of shameful politics.