

The September 11 Detainees:

A Review of the Treatment of Aliens
Held on Immigration Charges in
Connection with the Investigation of the
September 11 Attacks



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CHAPTER ONE

INTRODUCTION

I. BACKGROUND

On September 11, 2001, terrorists hijacked four airplanes and flew two of them into the World Trade Center Towers in New York City and one into the Pentagon in Arlington, Virginia. The fourth plane crashed into a field in southwestern Pennsylvania before it could strike a target in Washington, D.C. The attacks killed more than 3,100 people, including all 246 people aboard the 4 airplanes.

The Federal Bureau of Investigation (FBI) immediately initiated a massive investigation, called "PENTTBOM," into this coordinated terrorist attack. The FBI investigation focused on identifying the terrorists who hijacked the airplanes and anyone who aided their efforts. In addition, the FBI worked with other federal, state, and local law enforcement agencies to prevent follow-up attacks in this country and against U.S. interests abroad.

Shortly after the attacks, the Attorney General directed the FBI and other federal law enforcement personnel to use "every available law enforcement tool" to arrest persons who "participate in, or lend support to, terrorist activities."¹ One of the principal responses by law enforcement authorities after the September 11 attacks was to use the federal immigration laws to detain aliens suspected of having possible ties to terrorism. Within 2 months of the attacks, law enforcement authorities had detained, at least for questioning, more than 1,200 citizens and aliens nationwide.² Many of these individuals were questioned and subsequently released without being charged with a criminal or immigration offense. Many others, however, were arrested and detained for violating federal immigration law.

¹ Memorandum from Attorney General John Ashcroft to United States Attorneys entitled "Anti-Terrorism Plan" (September 17, 2001).

² In the weeks and months following the attacks, various totals of the number of people arrested in connection with the September 11 investigation were released by the Department of Justice or appeared in media accounts. A senior official in the Department's Office of Public Affairs told the Office of the Inspector General that in the weeks after the terrorist attacks her office provided frequent updates to the media on the number of persons questioned, arrested, and detained by federal, state, and local law enforcement officials. According to this official, the Public Affairs Office stopped reporting the cumulative totals after the number reached approximately 1,200, because the statistics became confusing.

people representing 32 federal, state, and local law enforcement agencies were working 24 hours a day at FBI Headquarters. By September 18, 2001, 1 week after the attacks, the FBI had received more than 96,000 tips or potential leads from the public, including more than 54,000 through an Internet site it established for the PENTTBOM case, 33,000 that were forwarded directly to FBI field offices across the country, and another 9,000 tips called into the FBI's toll-free "hotline."

B. Department of Justice Response

In response to the September 11 attacks, the Attorney General directed all Department of Justice components to focus their efforts on disrupting any additional terrorist threats. As articulated in a September 17, 2001, memorandum to all United States Attorneys from Attorney General Ashcroft, the Department sought to prevent future terrorism by arresting and detaining violators who "have been identified as persons who participate in, or lend support to, terrorist activities. Federal law enforcement agencies and the United States Attorneys' Offices will use every available law enforcement tool to incapacitate these individuals and their organizations." Given the identities of the September 11 terrorists, the Department recognized from the earliest days that its terrorism investigation had a significant immigration law component.

The Attorney General summarized the Department's new focus in a speech he gave to the U.S. Conference of Mayors on October 25, 2001:

Forty years ago, another Attorney General was confronted with a different enemy within our borders. Robert F. Kennedy came to the Department of Justice at a time when organized crime was threatening the very foundations of the Republic...

Robert Kennedy's Justice Department, it is said, would arrest mobsters for "spitting on the sidewalk" if it would help in the battle against organized crime. It has been and will be the policy of this Department of Justice to use the same aggressive arrest and detention tactics in the war on terror.

Let the terrorists among us be warned: If you overstay your visa – even by one day – we will arrest you. If you violate a local law, you will be put in jail and kept in custody as long as possible. We will use every available statute. We will seek every prosecutorial advantage. We will use all our weapons within the law and under the Constitution to protect life and enhance security for America.

In the war on terror, this Department of Justice will arrest and detain any suspected terrorist who has violated the law. Our single objective is to prevent terrorist attacks by taking suspected terrorists off the

The following steps describe the procedures depicted by this chart:

Arrest Process:

1. U.S. law enforcement received information regarding an individual who may have connections to the September 11 attacks or terrorism in general (a PENTTBOM lead).
2. If deemed worthy of investigation, the responsible FBI field office assigned the lead for investigation (in New York City, generally to the JTTF).
3. Law enforcement personnel interviewed the individual, and an INS agent determined his immigration status. The subject was released if the FBI expressed no investigative interest related to the terrorism probe and the individual had not violated his immigration status.
4. If the INS agent determined that the alien was in violation of immigration status, the INS agent took the alien into custody and asked the FBI for an assessment of its interest in the alien with respect to the terrorism investigation.
5. The FBI determined its level of interest in the alien: generally “of interest,” “high interest,” “no interest,” or “undetermined.” Based on this assessment by the FBI, “high interest detainees” were sent to BOP high-security facilities, while “of interest” and “interest unknown” detainees generally were housed in less restrictive facilities, such as county jails under contract to the INS.

FBI Clearance Process:

1. After the FBI received the detainee’s A-File from the INS, the FBI initiated detainee clearance investigations and notified the SIOC Working Group that the alien was in custody. The Department had issued a standing order that detainees were not to be released until clearance investigations were completed.
2. The SIOC Working Group requested CIA checks on the detainee.
3. If clearance investigations and CIA checks on the detainee were clear, the detainee was determined to be of “no interest” to the FBI.
4. The FBI’s ITOS decided the final clearance of a September 11 detainee and issued a formal FBI clearance letter, signed by the ITOS Section Chief. Until the FBI issued the clearance letter, the Department did not allow the INS to remove the detainee.

CHAPTER SEVEN

CONDITIONS OF CONFINEMENT AT THE METROPOLITAN DETENTION CENTER IN BROOKLYN, NEW YORK

I. INTRODUCTION

Almost 60 percent of the 762 aliens detained in connection with the Government's investigation of the September 11 terrorist attacks were arrested in the New York City area. As discussed previously, the overwhelming majority of these aliens were arrested on immigration charges that, in a time and place other than New York City post-September 11, would have resulted in either no confinement at all or confinement in an INS or INS contract facility pending an immigration hearing. However, fear of additional terrorist attacks in New York City and around the country changed the way aliens detained in connection with the investigation of the September 11 attacks were treated.

Aliens arrested by the INS on immigration charges who were deemed by the FBI to be of "high interest" to its terrorism investigation were held in high-security federal prisons across the country, such as the Federal Bureau of Prisons's (BOP) Metropolitan Detention Center (MDC) in Brooklyn, New York.⁸⁸ Overall, the BOP confined 184 September 11 detainees in its facilities nationwide. A total of 84 detainees determined by the FBI to have a possible connection with the PENTTBOM investigation or terrorism in general were housed at the MDC from September 14, 2001, to August 27, 2002.

Generally, aliens deemed by the FBI to be "of interest" or "of undetermined interest" to the Government's terrorism investigation were detained in lower security facilities, such as the Passaic County Jail in Paterson, New Jersey (Passaic). From September 2001 to May 2002, 400 September 11 detainees were confined in Passaic.

This chapter examines the conditions of confinement for September 11 detainees held at the MDC, while the next chapter examines conditions experienced by September 11 detainees at Passaic. As we discuss in these two chapters, the FBI's initial assessment of its level of interest in specific September 11 detainees directly affected the detainees' conditions of confinement within the institution and their access to telephones, legal counsel, and their families.

⁸⁸ The MDC is a 9-story BOP facility in Brooklyn that generally houses men and women either convicted of criminal offenses or awaiting trial or sentencing. On December 10, 2002, the MDC housed 2,441 men and 181 women.