



JOSH HANER/THE NEW YORK TIMES

Other volunteers visited Chinese and Korean immigrants in Flushing, Queens.

### Count Them Out

In 2000, the Mississippi Delta contained some of the most undercounted census tracts in the state. Ten years later, it still does. Plagued by poverty and illiteracy, many Delta residents harbor a deep distrust of census takers. Community groups have worked hard to dispel skepticism, with fliers, radio ads and centers to answer questions. But it is still an uphill struggle.

BY SHAILA DEWAN, PAGE A12

### Count on Their Knock

Volunteers in New York City went door to door trying to convince people that being part of the great American count was the right thing to do. The Census Bureau knew that New York, with its huge immigrant population and its many unorthodox and sometimes illegal living arrangements, would be a challenge — and early returns were not encouraging.

BY FERNANDA SANTOS, PAGE A13

## U.S., Only to Be Jailed for Lacking Visas

Some were pulled aside, their legal advocates lost parents, siblings. Many were in safety or medical triage at Prince George's airport after aftershocks of typhoon evacuations by ports, with no time for processing. Minimal histories. They landed in the United States without visas, they were taken into custody by immigration officers and held for deportation. Even though deportation has been suspended since the legal advocates who helped survivors in February in Broward County enter, a privately operated detention facility in Pompano Beach, Fla., have tried for weeks to get government to allow them to be citizens. They are eager to take

received little or no mental health care for the trauma they suffered, lawyers at the Florida Immigrant Advocacy Center said, despite an offer of free treatment at the jail by a local Creole-speaking psychotherapist.

Their plight is a result of the scramble to cope quickly with the immigration consequences of the quake's destruction and death toll. Some Haitians who arrived without papers were handed tourist visas, only to find that status barred them from working; the more fortunate received humanitarian parole, an open-ended status that permits employ-

ment. Those already in the country illegally were allowed to apply for temporary protected status, which shields recipients from deportation for at least 18 months and lets them work.

Almost at random, it seems, immigration jail was the ad hoc solution for these 30 survivors and for others still hidden in pockets of the nation's sprawling detention network. Some of the 30 have already been transferred to more remote immigration jails without explanation.

On Wednesday, after inquiries by The New York Times, a

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## No Shortcuts When Military Moves a War

### Supplying Afghanistan From Iraq Isn't Easy

By STEPHEN FARRELL  
and ELISABETH BUMILLER

JOINT BASE BALAD, Iraq — Early this year a "fob in a box" — military slang for 80 shipping containers with all the tents, showers and construction material needed to set up a remote forward operating base — was put on trucks here for the trip from one war to another.

Left over and never used in Iraq, the fob rumbled north to Turkey, east through Georgia and Azerbaijan, by ship across the Caspian Sea to Kazakhstan, then south on the old Soviet rail lines of Uzbekistan into northern Afghanistan. There — the end of a seven-nation, 2,300-mile, two-and-a-half-month odyssey — it was assembled just weeks ago as home for several hundred of the thousands of American forces entering the country.

In trying to speed 30,000 reinforcements into Afghanistan while reducing American forces in Iraq by 50,000, American commanders are orchestrating one of the largest movements of troops and matériel since World War II. Military officials say that transporting so many people and billions of dollars' worth of equipment, weapons, housing, fuel and food in and out of both countries between now and an August deadline is as critical and difficult as what is occurring on the battlefield.

Military officials, who called the start of the five-month logistics operation "March Madness," say it is like trying to squeeze a basketball through a narrow pipe, particularly the supply route through the Khyber Pass linking Pakistan and Afghanistan.

So many convoys loaded with American supplies came under insurgent attack in Pakistan last year that the United States military now tags each truck with a GPS device and keeps 24-hour watch by video feed at a military base in the United States. Last

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## N.S.A. WIRETAPS WERE UNLAWFUL, U.S. JUDGE RULES

### EXECUTIVE POWER LIMIT

### Rejecting a Bush Policy and an Obama Effort to Quash the Case

By CHARLIE SAVAGE  
and JAMES RISEN

WASHINGTON — A federal judge ruled Wednesday that the National Security Agency's program of surveillance without warrants was illegal, rejecting the Obama administration's effort to keep shrouded in secrecy one of the most disputed counterterrorism policies of former President George W. Bush.

In a 45-page opinion, Judge Vaughn R. Walker ruled that the government had violated a 1978 federal statute requiring court approval for domestic surveillance when it intercepted phone calls of Al Haramain, a now-defunct Islamic charity in Oregon, and of two lawyers representing it in 2004. Declaring that the plaintiffs had been "subjected to unlawful surveillance," the judge said the government was liable to pay them damages.

The ruling delivered a blow to the Bush administration's claims that its surveillance program, which Mr. Bush secretly authorized shortly after the terrorist attacks of Sept. 11, 2001, was lawful. Under the program, the National Security Agency monitored Americans' international e-mail messages and phone calls without court approval, even though the Foreign Intelligence Surveillance Act, or FISA, required warrants.

The Justice Department said it was reviewing the decision and had made no decision about whether to appeal.

The ruling by Judge Walker, the chief judge of the Federal District Court in San Francisco, rejected the Justice Department's claim — first asserted by the Bush administration and continued under President Obama — that the charity's lawsuit should be dismissed without a ruling on the merits because allowing it to go forward could reveal state secrets.

The judge characterized that expansive use of the so-called state-secrets privilege as

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# N.S.A. Wiretapping Program Was Illegal, Judge Rules

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amounting to “unfettered executive-branch discretion” that had “obvious potential for governmental abuse and overreaching.”

That position, he said, would enable government officials to flout the warrant law, even though Congress had enacted it “specifically to rein in and create a judicial check for executive-branch abuses of surveillance authority.”

Because the government merely sought to block the suit under the state secrets privilege, it never mounted a direct legal defense of the N.S.A. program in the Haramain case.

Judge Walker did not directly address the legal arguments made by the Bush administration in defense of the N.S.A. program after The New York Times disclosed its existence in December 2005: that the president’s wartime powers enabled him to override the FISA statute. But lawyers for Al Haramain were quick to argue that the ruling undermined the legal underpinnings of the war against terrorism.

One of them, Jon Eisenberg, said Judge Walker’s ruling was an “implicit repudiation of the Bush-Cheney theory of executive power.”

“Judge Walker is saying that FISA and federal statutes like it are not optional,” Mr. Eisenberg said. “The president, just like any other citizen of the United States, is bound by the law. Obeying Congressional legislation shouldn’t

be optional with the president of the U.S.”

A Justice Department spokeswoman, Tracy Schmalzer, noted that the Obama administration had overhauled the department’s procedures for invoking the state secrets privilege, requiring senior officials to personally approve any assertion before lawyers could make it in court. She said that approach would ensure that the privilege was invoked only when “absolutely necessary to protect national security.”

The ruling is the second time a federal judge has declared the program of wiretapping without warrants to be illegal. But a 2006 decision by a federal judge in Detroit, Anna Diggs Taylor, was reversed on the grounds that those plaintiffs could not prove that they had been wiretapped and so lacked legal standing to sue.

Several other lawsuits filed over the program have faltered because of similar concerns over standing or because of immunity granted by Congress to telecommunications companies that participated in the N.S.A. program.

By contrast, the Haramain case was closely watched because the government inadvertently disclosed a classified document that made clear that the charity had been subjected to surveillance without warrants.

Although the plaintiffs in the Haramain case were not allowed to use the document to prove that they had standing, Mr. Eisenberg and six other lawyers working on the case were able to use public

information — including a 2007 speech by an F.B.I. official who acknowledged that Al Haramain had been placed under surveillance — to prove it had been wiretapped.

Judge Walker’s opinion cataloged other such evidence and declared that the plaintiffs had shown they were wiretapped in a manner that required a warrant. He said the government had failed to produce a warrant, so he granted summary judgment in favor of the plaintiffs.

## A victory for an Islamic charity put under surveillance.

But Judge Walker limited liability in the case to the government as an institution, rejecting the lawsuit’s effort to also hold officials, including Robert S. Mueller III, the F.B.I. director, personally liable.

Mr. Eisenberg said that he would seek compensatory damages of \$20,200 for each of the three plaintiffs in the case — or \$100 for each of the 202 days he said they had shown they were subjected to the surveillance. He said he would ask the judge to decide how much to award in punitive damages, a figure that could be up to 10 times as high. And he said he and his colleagues would seek to be reimbursed for their

legal fees over the past five years.

The 2005 disclosure of the existence of the program set off a national debate over the limits of executive power and the balance between national security and civil liberties. The arguments continued over the next three years, as Congress sought to forge a new legal framework for domestic surveillance.

In the midst of the presidential campaign in 2008, Congress overhauled the Foreign Intelligence Surveillance Act to bring federal statutes into closer alignment with what the Bush administration had been secretly doing. The legislation essentially legalized certain aspects of the program. As a senator then, Barack Obama voted in favor of the new law, despite objections from many of his supporters. President Obama’s administration now relies heavily on such surveillance in its fight against Al Qaeda.

The overhauled law, however, still requires the government to obtain a warrant if it is focusing on an American citizen or an organization inside the United States. The surveillance of Al Haramain would still be unlawful today if no court had approved it, current and former Justice Department officials said.

But since Mr. Obama took office, the N.S.A. has sometimes violated the limits imposed on spying on Americans by the new FISA law. The administration has acknowledged the lapses but said they had been corrected.

