

THE USA PATRIOT ACT: A Civil Liberties Briefing

On October 26, 2001 the US Congress passed, and President Bush signed into law, the USA PATRIOT Act, an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” The US Senate voted 98-1 for the bill, with only Senator Russ Feingold (D-WI) opposing it. The House voted 357-66 to pass it. In Massachusetts, Reps. Delahunt, Lynch, Markey, Meehan and Neal supported the Act, while Reps. Capuano, Frank, McGovern, Olver and Tierney opposed it.

This far-ranging Act contains “the sense of the Congress that...the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety.” Why then have so many concerns been expressed about its impact on the civil liberties of both Americans and non citizens?

The Act cuts back on Constitutional checks and balances, and Bill of Rights protections.

- It gives sweeping new powers of detention and surveillance to the Executive branch of government and law enforcement agencies, and deprives the Courts of meaningful judicial oversight to ensure that these law enforcement powers are not being abused.

- It gives the Secretary of State the authority to designate any group, foreign or domestic, as a terrorist organization, an authority that is not subject to review.

- It defines in Section 802 the crime of “domestic terrorism” as “activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the US or of any state; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.”

- It permits investigations based on lawful First Amendment activity if that activity can be tied somehow to intelligence purposes.

- It undermines the privacy protections of the Fourth Amendment by eroding the line between intelligence gathering and gathering evidence for a

criminal proceeding, and expands the ability of the government to spy through wiretaps, computer surveillance, access to medical, financial, business and educational records and secret searches of homes and offices.

- It undermines due process procedures guaranteed by the Fifth, Sixth and Fourteenth Amendments, and partly extended to non-citizens in over a century of Supreme Court rulings, by permitting the government to detain non-citizens indefinitely even if they have never been convicted of a crime.

What the Act means for non-citizens

- They can be arrested and held until deported if they are members of, have raised funds for or provided some kind of material support to an organization designated as “terrorist” by the Secretary of State, or for an organization which is not on the list of terrorist groups, but which at some point had engaged in some sort of violent activity which *could* have made it eligible for inclusion on the list. A limited appeals process gives an arrested person the opportunity to demonstrate that “he did not know, and should not reasonably have known, that the solicitation [of funds] would further the organization’s terrorist activity.”

- They can continue to be detained if they have never been convicted of a crime, but the Attorney General “certifies” that he has “reasonable grounds to believe” that their release will endanger “the national security of the United States or the safety of the community or any person.” After being charged with either an immigration or criminal offense within seven days, they can be held indefinitely, with the Attorney General reviewing their certification every six months. Under the Act their attorneys can initiate *habeas corpus* proceedings only to the US Supreme Court, the Court of Appeals for the District of Columbia or a district court with jurisdiction.

- If they are ordered to be deported, but no country will take them, they can be imprisoned for life in the US.

- Individuals believed to be members of foreign terrorist organizations or of any group that publicly endorses terrorist acts, as well as their spouses and children, are denied entry to the US under this Act.

What the Act means for citizens and non-citizens

- The Act eliminates much of the judicial oversight established in the 1970s after revelations that the CIA and FBI were spying on over half a million Americans during and after the McCarthy era, and opens the door widely to new possibilities of abuse.

- Law enforcement officials no longer are tied by the rules of criminal law before conducting searches in criminal cases if an intelligence link can be shown. People can be subjected to roving wiretaps or have their homes and offices secretly searched in criminal investigations without a demonstration of “probable cause” of a crime. Surveillance can follow a targeted individual to any computer or telephone he or she might use based on a single warrant that can be used anywhere in the US.

- Internet communication can be spied on if law enforcement agents tell a judge that this surveillance is “relevant” to an ongoing criminal investigation. Computers and phones can be monitored by the CIA and FBI without their having to demonstrate use by a suspect or a target of a court order. If the FBI certifies to a court that it needs this information to conduct an “intelligence” investigation, it can obtain access to sensitive educational, medical, financial, mental health and other personal records.

- Information collected in formerly secret grand jury hearings or through wiretaps in a criminal case can be disclosed to intelligence agencies if that information is seen as “foreign intelligence information” — including any information that “relates” to the national defense or security or the conduct of foreign affairs. The Act provides for broad sharing of information among the FBI, CIA, INS, Secret Service and National Security Agency.

- Americans engaged in civil disobedience or another form of protest activity might be charged with “domestic terrorism” if violence erupts.

- They may have to provide DNA samples if convicted of “any crime of violence.”

- The Attorney General may submit a written application to a court for an order requiring an educational institution to give access to educational records of both foreign and American students.

- Some of the above expanded surveillance powers will expire on December 31, 2005 unless re-authorized by Congress. Many will not, including the sharing of grand jury and other information among law enforcement agencies, the scope of subpoenas for records of electronic communication, the issuing of single jurisdiction search warrants, and permitting “sneak and peek” secret searches.

Since the USA PATRIOT Act was passed, civil liberties have been under attack through the following executive actions:

- A Justice Department ruling on October 31, 2001 permitting the monitoring of communications between federal detainees and their lawyers.

- An November 13, 2001 executive order establishing military commissions to try suspected terrorists. These tribunals would conduct trials using hearsay and secret evidence, with the accused being convicted and sentenced by two-thirds of the commissioners present.

- New regulations issued in May 2002 that enable the FBI to build profiles of individuals with information purchased from data mining companies, to spy on religious and political organizations, and engage in year-long “fishing expeditions” without having any evidence of wrongdoing.

- The targeting of Muslims and people with Middle Eastern backgrounds for FBI interviews and INS Special Registration -- not because of any evidence of wrongdoing, but because they fit a profile.

- The persistent refusal by the Justice Department to give information about the names and whereabouts of detainees, even after being ordered to do so by the courts.

- The Justice Department’s Operation TIPS program recruiting citizen spies.

- The Pentagon’s Total Information Awareness program to gather all available electronic information on everyone in the country.

- The Justice Department’s order, upheld by the 4th Circuit Court of Appeals, that citizens it labels “enemy combatants” can be stripped of due process rights and denied access to courts.

- The Attorney General’s draft of a Domestic Security Enhancement Act (PATRIOT II), that would, among many other things, allow the government to strip citizenship from any American who supports a group designated as a “terrorist organization,” extend surveillance against US citizens without court oversight, authorize secret detentions, and allow the sampling of innocent Americans’ DNA information without court order and consent.

Contact the ACLU of Massachusetts

If you would like more information about these civil liberties concerns and how you can help defend the Bill of Rights, call Nancy Murray at (617) 482-3170 x 314. Or you can write to us at 99 Chauncy Street, Suite 310, Boston, MA 02111.