



THE USA PATRIOT ACT AND CIVIL LIBERTIES CONCERNS

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The deadliest and most infamous attack on American soil came on September 11, 2001, when terrorists from the Islamic extremist group, Al-Qaeda, hijacked four airliners, two of which plowed into both buildings of the World Trade Center in New York, causing their collapse. A third plane crashed into the Pentagon, and the other was headed for the nation's capital when it crashed, most likely by passenger attempts to wrest control of the plane from the hijackers. The attacks caused the deaths of 2,996 people and both shocked and galvanized Americans. The attacks united Americans and engendered a strong sense of national honor.

In the wake of the September 11 attacks, President George W. Bush declared his intention to punish the terrorists and ensure the national security of the United States. He proposed to the U.S. Congress several acts and the creation of agencies such as the Department of Homeland Security to prevent future similar attacks on American soil, which passed both federal legislative houses overwhelmingly. One act in particular, the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (known more commonly as the "USA PATRIOT Act" or the "Patriot Act"), has become the center of

controversy as it limits due process, freedom of speech, disproportionately targets Arabs and Muslims and bypasses the need for consent and warrants in surveillance and searches. The promise of security from the Patriot Act does not justify the violation of American civil liberties such as due process, the freedom of speech, and the right to refuse consent to unreasonable searches from the government.

The Patriot Act gives law enforcement, and governments extended access to Americans' personal communications, such as emails, loosens restrictions on wiretapping, and allows the arrest of suspected terrorists by limiting due process and acting without warrants or consent. The act also extends the definition of terrorism to include acts intended to intimidate or coerce a civilian population, influence government policy by intimidation or coercion, or affect government conduct by mass destruction, assassination, or kidnapping. This extension allowed for more arrests and prosecutions on suspicion of anything regarding a threat to national security at the discretion of law enforcement (Department of Justice, 2023). Controversy and opposition to the act came quickly, with 40% of Americans claiming that rights such as the freedom of speech, right to privacy, and due process were being infringed upon (Rosentiel, 2020). However, others noted that the Patriot Act was necessary to ensure national security as it gave law enforcement and government agencies more power regarding surveillance, which could prevent future attacks.

Civil Liberties Concerns

Due Process Concerns

Critics charge that the Patriot Act infringes upon due process, a violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. The Fifth Amendment states that "no person shall be deprived of life, liberty, or property without due process of law" (Strauss, 2022). At the

same time, the Fourteenth Amendment extends this right to the state level by declaring that "no state shall deprive any person of life, liberty, or property without due process of law" (Nelson, 1988). However, Section 412 of the Patriot Act gives "the government [...] the authority to detain, possibly indefinitely, non-deportable aliens on U.S. soil that the Attorney General had reason to believe were a threat to national security" (Guruli, 2020).

The lack of due process in Section 412 entrapped 31-year-old Mohamedou Ould Slahi. Ould Slahi, a Mauritanian national, was detained at Guantanamo Bay for 14 years from 2002 to 2016 due to his past involvement with Al-Qaeda and alleged links to the Millennium Plot - a plan to bomb Los Angeles International Airport (Martin, 2021). Ould Slahi was initially accused of recruiting a member of his mosque who attempted to cross the border with bombs. However, he was released after a few weeks due to lack of evidence. After 9/11, he was again flagged as a person of interest and detained in Jordan, where he suffered torture and inhumane conditions. After allegedly being compelled to admit his involvement in the Millennium Plot, he was later transferred to Guantanamo Bay, where he was subjected to torture, sexual assault, sleep deprivation, and other dehumanizing conditions, all of which were deemed justified and "enhanced interrogation techniques" that were instrumental to ensuring national security and receiving information on the planning of 9/11. Ould Slahi's case is a dramatic example of how the Patriot Act enables authorities to infringe on due process rights. Ould Slahi was arrested, imprisoned multiple times, and kept captive for 14 years based on mere suspicion, with no charges brought against him.

Additionally, Ould Slahi had trouble getting legal representation, all of which are violations of the Sixth Amendment that guarantees the "rights of criminal defendants, including the right to a public trial without unnecessary delay, [and] the right to a lawyer" (Amend. VI). No

proof or evidence was produced that linked Ould Slahi to any crime, but he could not defend himself in court as he was a non-citizen held overseas (Elsea, 2021, p.3). However, *Boumediene v. Bush* (2008) "held that the Military Commissions Act (MCA) of 2006, which barred foreign nationals held by the United States as "enemy combatants" from challenging their detentions in U.S. federal courts, was an unconstitutional suspension of the writ of habeas corpus guaranteed in the U.S. Constitution" (Duignan et al., 2009). The Privilege of the Writ of Habeas Corpus is protected by a P.I. Clause in the Fourteenth Amendment, making Ould Slahi's imprisonment unconstitutional.

Furthermore, the Writ of Habeas Corpus and due process are not only both constitutionally protected but are also used synonymously and apply to all persons within the United States (the 1903 lease treaties between Cuba and the United States grant complete jurisdiction and control over Guantanamo Bay, so long as it remained occupied), regardless of citizenship status, and therefore whether or not Ould Slahi was an American citizen does not prevent him from being protected under the Constitution (Elsea, 2021, p.2). Ould Slahi was not alone; the Patriot Act caused many people to be held prisoner for long periods only on the suspicion that they posed a threat to national security.

Profiling Concerns

The Patriot Act has also been accused of racially profiling and targeting Arabs and Muslims. Although the act does not directly declare that Muslims are terrorists, the broad language, which enabled an increase in almost unfettered government surveillance and detainment, came at a time of rising prejudice against the Islamic community. This, in turn, led to a sharp increase in scrutiny and profiling of Muslims. For example, directly after the 9/11 attacks, the New York City Police Department embarked on the Muslim Surveillance and

Mapping Program, where undercover officers integrated themselves into Muslim communities to spy, entrap, and operate covert operations in the name of national security, even when there was no proof or evidence of any terrorism or crimes (Crary, 2016). The program had undercover informants and agents integrating themselves into aspects of these Muslim-American communities, like mosques, schools, neighborhood groups, and others. The outrage after the Associated Press exposed the program was extensive; the series of articles exposing the warrantless program won the Pulitzer Prize.

Many Americans quickly pointed out the act's complete and utter violation of rights. First, Muslim-American communities were the targets of invasive surveillance and were arrested without evidence of wrongdoing. Furthermore, even if those spied on had "nothing to worry about if they have nothing to hide," as claimed by the NYPD, the Muslim American Civil Liberties Coalition (MACLC) argued that the program had instilled an environment of fear and suspicion in Muslim-American communities, which has even led to self-censorship and suppression of religious practices. Nevertheless, the Patriot Act allowed the NYPD program, as it purportedly aimed to collect intelligence to ensure national security.

First and Fourth Amendments Violation Concerns

The first amendment in the U.S. Constitution "protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances." The First Amendment is often referred to as a staple of democracy. The Patriot Act, however, weakens its protections. Freedom of speech is generally considered to encompass not only the free access to ideas but also the freedom to express them. "The USA PATRIOT Act contains provisions that will chill or even criminalize people's legitimate expressions of their political views" (The Center

for Constitutional Rights, 2023). Section 411 of the act expands the definition of terrorism to include donations, advocacy, or support for a group defined as terrorists.

For example, Palestinian-born activist Abdelhaleem Ashqar was convicted of obstruction of justice and criminal contempt for refusing to testify against Hamas, a designated terrorist group, and sentenced to 11 years in prison (DeYoung, 2019). He had voiced support for the group and helped with their fundraising. This violates freedom of expression and association, as even non-violent support and advocacy led to Ashqar being declared a terrorist. Section 802 of the act vaguely defines domestic terrorism as "any act that is 'dangerous to human life,' involves a violation of any state or federal law and is intended to influence government policy or coerce a civilian population." (Congress, 2001, p.106). The broad definition allows for various interpretations. As many activist groups like Greenpeace or the American Civil Liberties Union have noted, a significant concern is that any protest could fall under this definition of domestic terrorism. "Civil Disobedience typically seeks to influence government policy, and therefore may be construed as an attempt to coerce that change" (The Center for Constitutional Rights, n.d.).

Furthermore, the provision does not clarify "any act that is dangerous to human life," which begs the distinction between intentional and accidental dangers. With the broadness of the definition, even a stampede at a protest that leads to death could be defined as domestic terrorism. "Furthermore, once a group has been approved for investigation, there is nothing in the guidelines to prevent the FBI from monitoring the group's legitimate, First Amendment-protected activities such as demonstrations, writings, and information such as membership data and financial transactions. Such unfettered access invites harassment" (The Center for Constitutional Rights, n.d.).

The Fourth Amendment of the Constitution guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (Amend. IV). In lay terms, the amendment allows for a reasonable expectation of privacy, the right to be protected from unreasonable searches and seizures, and the need for a warrant supported by probable cause for anything to be searched or seized. Unfortunately, the Patriot Act defies these rights. First, Sections 201 and 202 of the act authorize the interception of "wire, oral, and electronic communications relation to computer fraud and abuse offenses." The provisions allow these interceptions under the guise of national security, which is undefined. These provisions were subject to immense public scrutiny as many Americans objected to their emails, phone calls, and lives being traced without their consent. Such allowed government surveillance goes against the prohibition of unreasonable searches and seizures. Although privacy is not an explicit right in the Constitution, Supreme Court rulings have set a precedent for certain aspects of privacy to be constitutionally protected.

Furthermore, the new "spying" by the federal government and intelligence agencies led to suspicion and fear from ordinary citizens, who believed their every move was being watched. As a result, people were fearful about their opinions and speaking freely, which could be presented as an infringement upon the First Amendment. This suspicion was proven correct when in 2013, a National Security Agency (NSA) contractor, Edward Snowden, leaked classified information surrounding many secret government programs, one of which was the everyday collection of phone records, known as the "telephony metadata" (McGowan, 2014). Snowden believed that "suspicionless surveillance [had] no place in a democracy [...] the unconstitutional' bulk

collection' of Americans' private records under Section 215 of the Patriot Act must end" (McGowan, 2014). The "telephony metadata" program was allowed under Section 215 of the Patriot Act, which permitted "access to records and other items under the Foreign Intelligence Surveillance Act" (Congress, 2001, p.2). The provision allowed the federal government to "obtain a secret court order requiring third parties, such as telephone companies, to hand over any records or other 'tangible thing' if deemed 'relevant' to an international terrorism counterespionage, or foreign intelligence investigation."

Conclusion

As the second United States president, John Adams, proclaimed, "Power must never be trusted without a check." No matter the promises of security by President Bush after 9/11, the infringement upon integral aspects of the Constitution and the civil liberties of the American people must not be abridged. The Patriot Act is a vast overextension of the federal government's power and leads to the endangerment of civil liberties and distrust of the American people in their government. The act must be revised to not infringe on the constitutionally protected freedoms of Americans and to ensure the cessation of profiling to guarantee a democratic and free America.

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