

The USA PATRIOT Act: A Civil Liberties Briefing from the ACLU of Ohio



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 Ohio, Reps. Dennis Kucinich, Stephanie Tubbs-Jones, Sherrod Brown, and Robert Ney voted against it.

The potential impact of this far-ranging Act on the civil liberties of both Americans and non citizens has caused a great deal of concern.

The Act Cuts Back on Constitutional Checks and Balances

- It gives sweeping new powers of detention and surveillance to the government and law enforcement agencies, and deprives the Courts of meaningful judicial oversight to ensure that the 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 creates a broad new crime of “domestic terrorism” and expands the range of crimes defined as “terrorist offenses” and the penalties attached to them.
- 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 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 fair due process procedures guaranteed by the Constitution, extended to non-citizens

in over a century of U.S. Supreme Court rulings, by permitting the government to detain non-citizens indefinitely even if they have never been convicted of a crime.

Non-Citizens are Particularly Vulnerable

- 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 might be potentially included on the list. There is only a limited appeals process.
- They can remain 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 with the U.S. Supreme Court, the Court of Appeals for the District of Columbia or a district court with jurisdiction.
- If they are ordered 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.

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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 US 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.
- People can be subjected to roving wiretaps or have their homes and offices secretly searched in criminal investigations without probable cause. A targeted individual may be followed to any computer or telephone he or she might use based on a single warrant that can be used anywhere in the United States.
- Internet communications of Americans can be spied on if law enforcement agents tell a judge that this surveillance is “relevant” to an ongoing criminal investigation. The CIA and FBI can monitor computers and phones without 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 formerly protected records and student data of both foreign and American students. The court will issue the order based on mere certification that the records are needed for an ongoing investigation.

Some of the above expanded surveillance powers “sunset” after four years, and will expire on December 31, 2005 unless re-authorized by Congress. Others will

not. Because the Act provides for only limited reporting requirements, it is difficult to see how Congress will evaluate whether the “sunset” provisions should be renewed in four years’ time.

Since The USA PATRIOT Act Was Passed, Civil Liberties Have Been Under Attack

- The Justice Department ruled on October 31st to permit the government to monitor communications between federal detainees and their lawyers if this is seen as “reasonably necessary” to deter acts of terrorism.
- The Justice Department released a list of 5,000 foreign men wanted for questioning not because of any evidence of wrongdoing, but because they fit a profile.
- On November 1, President Bush issued an executive order that ends more than 30 years of increasing openness in government by putting off limits the Presidential records of the Reagan, Clinton and two Bush Administrations and future Presidencies unless a “need to know” request is filed and permission is given by the former and current President.
- On November 7, the FBI rejected a Freedom of Information Request concerning the more than a thousand detainees being held since September 11th. The Justice Department has also delayed giving Members of Congress information about the detainees.
- President Bush signed an executive order on November 14 authorizing military tribunals under the Department of Defense to try suspected terrorists. These tribunals would conduct secret trials, without many procedural safeguards and would be able to impose the death penalty without a unanimous verdict.

Contact the ACLU of Ohio

For more information about these civil liberties concerns and how you can help defend the Bill of Rights, contact the ACLU of Ohio at 4506 Chester Avenue, Cleveland, Ohio 44103, or by telephone at 216/472-2200.

Information, including the brochure **“Know Your Rights: What to Do if You’re Stopped by the Police, the FBI, the INS, or the Customs Service”** and action alerts are available on the ACLU of Ohio website at www.acluohio.org.