



HOW THE USA-PATRIOT ACT ALLOWS FOR DETENTION AND DEPORTATION OF PEOPLE ENGAGING IN INNOCENT ASSOCIATIONAL ACTIVITY

The final version of the anti-terrorism legislation, the Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (H.R. 3162, the "USA PATRIOT Act") permits detention and deportation of non-citizens who provide assistance for lawful activities of a group the government claims is a terrorist organization, even if the group has never been designated as a terrorist organization.

The Secretary of State can designate groups either under existing section 219 of the Immigration and Nationality Act (INA) or under a new provision created by section 411 of the USA PATRIOT Act. While existing INA section 219 permits designation of **foreign** groups with various procedural safeguards, Section 411 of the USA PATRIOT Act adds a new provision to INA section 212(a)(3)(B) that permits designation foreign **and domestic** groups, without those procedural safeguards. Under this new power, the Secretary of State could designate any group that has ever engaged in violent activity a "terrorist organization" - whether it be Operation Rescue, Greenpeace, or People for the Ethical Treatment of Animals. The designation would render the group's non-citizen members inadmissible to the United States, and would make payment of membership dues a deportable offense. Under the bill, people can be deported regardless of whether they knew of the designation and regardless of whether their assistance had anything to do with the group's alleged terrorist activity.

- The USA PATRIOT Act also allows for detention and deportation of individuals who provide lawful assistance to groups **that are not designated as terrorist organizations**. It then requires the immigrant to prove a negative: that he did not know, and should not have known, that his assistance would further terrorist activity. Section 411, amending INA sections 212(a)(3)(B).
- The USA PATRIOT Act creates a very serious risk that truly innocent individuals could be deported for truly innocent association with political groups that the government later chooses to regard as terrorist organizations. There would be no notice.
- The danger of putting the burden of proof on the immigrant, as the USA PATRIOT Act does, is greatly exacerbated by overbroad terrorism definitions. The USA PATRIOT Act amends the definition of terrorist activity so that it now covers use of a "weapon or other dangerous device . . . to cause substantial damage to property," even if such damage created no danger of injury. INA section 212(a)(3)(B) (ii)(V), as amended by USA PATRIOT Act section 411. Under the definition, groups such as World Trade Organization protestors who engage in minor vandalism, abortion foes who engage in civil disobedience, or protestors at Vieques, Puerto Rico who damage a fence, would be deemed terrorist organizations. Likewise, purely humanitarian assistance to the Northern Alliance, foes of the Taliban and foes of Osama bin Laden, could be assistance to a terrorist organization.

- Guilt by association is generally forbidden under the First Amendment and the history of McCarthyism shows the very real dangers of abuse. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (leaders of NAACP cannot be held liable for violent acts engaged in during course of NAACP-led boycott absent evidence that leaders specifically intended the violence); *United States v. Robel*, 389 U.S. 258 (1967) (federal government cannot deny security clearance for work in national defense facility on basis of membership in Communist Party, absent evidence that individual specifically intended to further the Party's illegal ends); *Aptheker v. Secretary of State*, 378 U.S. 500 (1964) (members of Communist Party cannot be denied passports absent evidence of specific intent to further Party's illegal ends).
- At the very least, if association with a group is to be a deportable offense, the government should notify non-citizens of which groups to avoid. Notice cannot be assumed because of the extraordinary variety of groups that could be labeled terrorist organizations under the definition of terrorism in the bill.
- Because of these problems, the defense allowed in the USA PATRIOT Act, requiring the immigrant to show he did not know, and reasonably should not have known, that his lawful assistance to a group not designated as a terrorist organization would nevertheless further "terrorist activity," puts an unreasonable burden on the immigrant and would certainly lead to unjust detention and deportation.
- The Justice Department argues that it can be trusted to exercise its prosecutorial discretion wisely. It says it would detain and deport those who materially support groups that common sense dictates are terrorist groups. Similar claims were made about the RICO statute, adopted to fight organized crime, but which has been used in recent years against abortion opponents, the Clinton Administration and the Republican political organizations. That history shows that discretion is not a reliable solution when a statute, read literally, permits innocent associations to be made unlawful in circumstances that Congress did not intend to reach.
- Finally, section 411 of the USA PATRIOT Act punishes speech protected by the First Amendment, even of lawful permanent residents, resurrecting the discredited McCarren-Walter Act, adopted at the height of McCarthyism, which barred non-citizens from this country on the basis of their advocacy of Communism. The USA PATRIOT Act permits immigrants to be found "inadmissible" for advocacy that the Secretary of State determines undermines our anti-terrorism efforts. Section 411, amending INA section 212(a)(3)(B). The advocacy does not have to meet the test adopted by the Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) (advocacy can be banned only if it represents "incitement to imminent lawless action"). Under this section, a lawful permanent resident who makes a controversial speech could potentially be barred from returning to his family after taking a trip abroad.

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