

44

Preserving American Values in a Time of Crisis

AFL-CIO delegates convene in the wake of the most shocking and destructive acts of terrorism ever perpetrated on our soil. Our convention is graced by an exhibit portraying the names of 631 union members among the dead since Sept. 11 and images of the heroes of that day.

The AFL-CIO is firmly committed to bringing the perpetrators of these crimes and their patrons to justice, and supports the government's military campaign to defend our nation, and all civilized society, in a global coalition to hunt and eliminate mass murderers, their networks and their sanctuaries. Nothing less is warranted amidst grave and unprecedented circumstances where international cabals intent on sowing death, disruption and dread have access to sophisticated technology and ruthlessly exploit the inherent vulnerabilities of a democratic and open society.

But there is another front in America's struggle to protect and extend freedom and security: home. And here, our love of liberty and of country compels us also to speak forcefully in opposition to a range of measures the administration has taken, or reportedly is contemplating, that threaten civil liberties, breach constitutional rights and, with tragic irony, hand our adversaries a partial victory by degrading the essential guarantees upon which our nation is founded.

In October, at the administration's prodding and at the height of post-Sept. 11 anxiety, Congress enacted the so-called "USA PATRIOT Act," which affords an array of new and powerful tools to law enforcement applicable to circumstances well beyond "terrorism" by any definition. This law permits the indefinite detention of non-citizens on minor visa violations; expands government discretion to engage in covert telephone and Internet surveillance; permanently expands its authority to conduct searches; enables the departments of Justice and State to brand groups as terrorist organizations and deport their non-citizen members; grants the Federal Bureau of Investigation broad access to business records about individuals; blurs a vital line between foreign intelligence operations and domestic law enforcement functions by enabling the Central Intelligence Agency to gather information from other agencies about American citizens and residents; and imposes excessive background check requirements on commercial truck drivers licensed to transport hazardous materials, applies vague standards and denies full protection for the driver's due process rights.

Vigilance to ensure that the Executive Branch applies these sobering new powers responsibly presents a significant challenge to law enforcement authorities, congressional oversight bodies, the judiciary and our citizens. But even before the administration implemented these new prerogatives, it launched a series of additional initiatives by executive fiat, outside of the legislative process, and without even congressional consultation or prior public notice and discussion. Each of these initiatives is disturbing in itself; collectively, they emit the air of authoritarianism.

The Justice Department has changed rules affecting federal inmates (citizens and non-citizens alike) by asserting authority to eavesdrop on attorney-client conversations upon a “reasonable suspicion” that an inmate may use such contacts to facilitate acts of “violence or terrorism.” An inmate and his or her lawyer would be informed that the attorney-client privilege does not protect such conversations or their other contacts “not related to the seeking or providing of legal advice.”

This directive converts the attorney-client privilege from an essential protection in our system of justice that governs the scope of disclosures during actual litigation under judicial supervision into a sword justifying government interference with the heart of the attorney-client relationship. Ostensible safeguards of notice and limited disclosure will not temper this new rule’s profound chilling effect and its intrusive reach well beyond the detection of potential terrorism.

Meanwhile, since Sept. 11, the government has detained over 1,000 persons with little and arbitrary public disclosure of their identities, the charges against them and the purposes of this dragnet. We do know that this selective enforcement of minor offenses and immigration status is largely predicated on ethnicity, a disturbing echo of the disgraceful treatment of American citizens of Japanese descent during World War II. In America, we do not “round up the usual suspects,” yet the government acknowledges that it believes that at most a handful of those detained have any connection with the Sept. 11 atrocities.

The president also has issued an executive order decreeing that non-citizens he selects who are arrested in connection with “terrorism” within or outside our borders will be tried in non-public trials, before special new military tribunals, barred from access to courts, denied review of evidence used against them at the prosecutor’s discretion, subject to evidence that does not meet even civil court requirements and exposed to conviction and sentence—including capital punishment—upon the decision of two-thirds of a panel composed of military officers who are subordinate to the government officials who select the defendants and oversee the prosecutors, and who alone can entertain an appeal.

This order betrays an unwarranted lack of faith in our nation's criminal justice system, which has ably and constitutionally served as the venue for trials of the 1993 World Trade Center bombers, Timothy McVeigh and Manuel Noriega, among many others of the same ilk. And the new tribunals fall well short of the standards of openness and due process that have governed the International Court of Justice at The Hague, the Nuremberg trials following World War II and even our usual, longstanding system of military justice. And the new order could reach not merely the captured leadership of recognized terrorist groups, but any non-citizen deemed connected with "terrorism," undefined; 20 million non-citizens dwell in our country today. Loose applications of such terms have provided purported justification for violations of the civil liberties of champions of workers throughout the world, from Martin Luther King Jr. to Nelson Mandela.

As our Convention begins, we also learn that the Justice Department may—again unilaterally—modify longstanding restrictions on FBI surveillance of political and religious organizations that were imposed 25 years ago to end decades of violations of citizens' First and Fourth Amendment rights, and to prevent their recurrence. Such domestic spying could eventually sweep in unions and citizens organizations and threaten independent political and social activism. Even if existing policies merit review, there must be a deliberative process with congressional involvement and a full public airing and debate before any new policy is adopted.

Our history teaches that external and internal threats can prompt repression of citizens and abuses of power. We must show other countries that we can and will treat their nationals as we have always, rightly, insisted that they treat ours. And we cannot accept excessive secrecy and unaccountable power that deny Americans the ability to question the authority and evaluate the conduct of their government.

America will prevail, and impress our adversaries with the futility of their plans, only if we uphold our traditional liberties and standards of justice with the same decisiveness and vigor that we bring to our military efforts. The AFL-CIO urges the Administration to reconsider and relinquish hastily adopted policies that debase our constitutional traditions.