



Liberty and Security: Diverse Voices Speak on the Government's Actions to Restrict Civil Liberties and Due Process Since September 11

In the over two years since September 11, 2001, security experts, law enforcement, government officials, Members of Congress, and community leaders have been carefully assessing the impact and effectiveness of the government's response to the attacks. Many have concluded that a number of government actions have not only failed to make us safer from future attacks, but may have in fact undermined our security, while eroding fundamental civil liberties. The Civil Liberties Restoration Act moves to restore freedoms without compromising our nation's safety. Below is a sampling of voices from across the country on this topic.

EDITORIAL BOARDS AND COLUMNISTS

The Washington Post

"Since the outset of the war on terrorism, the Bush administration, across a wide range of issues, has had a simple message for the federal judiciary: Trust us and don't interfere. Yesterday, in a pair of much-awaited rulings, the court delivered its response. First, the justices declared that U.S. citizens designated as enemy fighters are entitled to a 'fair opportunity' to challenge their detentions and 'unquestionably [have] the right to access to counsel' in doing so. Then the justices held that federal courts have jurisdiction to hear challenges to the detentions of non-citizens held at Guantanamo Bay, Cuba. Trust, even during wartime, has limits."

(Editorial: "Supreme Rebuke," 6/29/04)

The New York Times

Virtually every time the Bush administration feels cornered, it falls back on the argument that the president and his officials are honorable men and women. This is an invitation to turn what should be a debate about policy into a referendum on the hearts of the people making it. But this nation was organized under a rule of law, not a dictatorship of the virtuous. The founding fathers wrote the Bill of Rights specifically because they did not believe that honorable men always do the right thing.

(Editorial: "About Independence," 7/04/04)

The Detroit News

"The Constitution promises liberty to all, but it can't enforce or defend itself. That's the responsibility of the three branches of government. If one fails to do its job, the other two must step up."

(Editorial: "Losing Liberty: Due Process; Congress and the Courts Must Protect Civil Rights," 9/17/03)

The Washington Post

"[I]n absencing itself from the policymaking process, Congress does not merely fail to protect American liberty. It also fails to aid the executive branch in fighting terrorism. As several recent court decisions show, the courts will be far more likely to uphold executive actions that burden people's freedom when Congress has clearly acted in support of the president. The legislature's refusal to create reasonable statutory schemes that thoughtfully balance liberty and security forces the administration to appear in court relying on old precedents, rather than new law."

(Editorial: "Silence on the Hill," 11/5/03)

The Economist

"The world is undoubtedly less free than it was on September 10th last year. Most of the blame for this lies squarely with al-Qaeda. Many governments, it is true, have simply seized the opportunity to pass restrictive measures that they have long coveted. Others, less malign, have undoubtedly been too ready

to restrict liberty in the name of an effective campaign against terror: they have reckoned, probably correctly, that the voters would be less forgiving of another terrorist attack made possible by excessive freedom than of the various new restrictions they have imposed. Security is uppermost in the minds of citizens these days, and the true price of an erosion of freedom becomes apparent only over time, which is to say after the next election.”

(Editorial: “For whom the Liberty Bell tolls,” 9/29/02)

David Cole, Professor, Georgetown University Law Center

“In fact, every significant form of political repression that the government has used against citizens began as an anti-alien measure...So we should support the Civil Liberties Restoration Act because it is in our interest to do so. But there’s still another reason: It’s the right thing to do. The rights not to be locked up arbitrarily, tried in secret, held without charges or discriminated against based on national origin or religion are not privileges of U.S. citizenship, but basic human rights. They belong to all of us, regardless of status.”

(Op-Ed: “No More Roundups,” *Washington Post*, 6/29/04)

Harold Hongju Koh, Dean and Professor of International Law, Yale University Law School

“What’s wrong with this picture? Each prong of the Bush Doctrine places America in the position of promoting double standards, one for itself, and another for the rest of the world. The emerging doctrine has placed startling pressure upon the structure of human-rights and international law that the United States itself designed and supported since 1948. In a remarkably short time, the United States has moved from being the principle supporter of that system to its most visible outlier. ...Even after September 11th, America can still stand for human rights, but we can get there only with a little help from our friends.”

(Op-Ed: “Rights to Remember,” *The Economist*, 10/30/03)

DIVERSE ALLIES

National Commission on Terrorist Attacks Upon the United States

We must find ways of reconciling security with liberty, since the success of one helps protect the other. The choice between security and liberty is a false choice, as nothing is more likely to endanger America’s liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.

(*The 9-11 Commission Report*, 7/22/04)

Vincent Cannistraro, Former head of counterterrorism at the CIA

“When we attach the blunt instrument of immigration policy and enforcement to the [select immigrant] communities, we undercut the basis of any cooperation with the FBI and local law enforcement. And that’s the problem that I see...we’re using immigration policy as a proxy for law enforcement and it is a poor proxy because it alienates the very communities that we need to depend on for early warning.”

(From: remarks, Center for Migration Studies and the Catholic Legal Immigration Network, Inc., 4/3/03; See also: *America’s Challenge: Domestic Security, Civil Liberties and National Unity After September 11th*, Migration Policy Institute, 6/03)

James W. Ziglar, Former Commissioner of the Immigration and Naturalization Service

“Since September 11, the discussion of civil liberties seems always to be premised on the historically false assumption that civil liberties and security are, and always have been, at war with each other—and that we must ‘re-balance’, i.e., ‘give-up’ some of our freedom to be safe. I cringe every time I hear that discussion. Those freedoms that would be so casually tossed aside are the very reason that we are the most open, the most powerful, and the most secure society in the history of man. I fear that if the mission of the Department of Justice is now primarily to disrupt and prevent, then the questions that will be asked in the Department will no longer focus on whether an action is safely within the bounds

of the Constitution and Laws, but how close can they get to the line, or how much can they get away with.”

(Remarks at Membership Meeting, American Civil Liberties Union, 6/14/03)

Dr. James J. Zogby, President of the Arab American Institute

“I’m not suggesting that the government should never use immigration charges to detain a suspected terrorist, but the broad brush of terrorism should not be applied to every out-of-status immigrant who happens to be Arab or Muslim. Our immigration system is fundamentally broken. Comprehensive immigration reform is required to address this problem. We should not confuse the problems with our immigration system with our efforts to combat terrorism. Detaining large numbers of undocumented Arab and Muslim immigrants will not aid our efforts to combat terrorism, and might actually harm them.”

(“America after 9/11: Freedom Preserved or Freedom Lost?,” Statement from Senate Judiciary Committee Hearing, 11/18/03)

Wade Henderson, Executive Director, Leadership Conference on Civil Rights

“In the aftermath of 9/11, however, racial profiling has once again been falsely viewed by some as a legitimate law enforcement tool. Our experiences so far, whether through law enforcement or through other instances of discrimination on airlines and elsewhere, have demonstrated just how flawed this approach is. It is just as wrong now, not to mention ineffective, as it was before September 11 to single out an entire group for the actions of a few. If violations of civil rights and liberties are considered permissible in the name of fighting terrorism, it sets a dangerous precedent that may soon haunt us when it comes to other types of law enforcement efforts such as the war on drugs or violent crime.”

(“Statement on the Civil Liberties Restoration Act of 2004”, 6/16/04)

Nadine Strosser, President of the American Civil Liberties Union

“We must be ready to defend liberty, for liberty cannot defend itself. We as nation have no trouble understanding the necessity of a military defense. But there is another equally powerful defense that is required, and that is the defense of our Constitution- the defense of our most cherished freedoms. ...Congress must step in now to preserve the freedoms that have been eroded since September 11, 2001.”

(“America after 9/11: Freedom Preserved or Freedom Lost?,” Statement from Senate Judiciary Committee Hearing, 11/18/03)

National Council of La Raza

“While the new restrictive immigration policies following September 11, 2001 appear to be targeted at Arab American and Muslim American communities, the government appears to be granting itself broad new authority that could be used against anyone. ...Like all Americans, our nation’s Latinos want to be safe and free from future terrorist attacks. While there are important steps that must be taken to ensure our country’s security, it is unnecessary, and probably counterproductive, to harm hardworking, contributing members of our American society who happen to be—or look like they are—foreign-born.”

(Issue Brief #10, *Counterterrorism and the Latino Community Since September 11*, 5/03)

Muzaffar A. Chishti, Director of the Migration Policy Institute at New York University School of Law

“America’s challenge is to meet new security demands while defending and strengthening the civil liberties and national unity that contribute to our great strength as a nation. The terrorist threat demands a reaction that is strong but also smart. The necessary measures may please neither civil libertarians nor those who believe civil liberties are a luxury we can no longer afford. To meet this challenge, Congress must reassert leadership. Congress has accorded extraordinary deference to the executive branch since September 11. This may have been understandable immediately after the attacks. But in our constitutional system, it is now vital for Congress to assert its policy and oversight

role, and to closely monitor the executive branch's use of its expanded domestic security powers.”
 (“America after 9/11: Freedom Preserved or Freedom Lost?,” Statement from Senate Judiciary Committee Hearing, 11/18/03)

Human Rights Watch

“The right to liberty circumscribes the ability of a government to detain individuals for purposes of law enforcement—including protection of national security. While the right is not absolute, it is violated by arbitrary detentions, i.e., detentions that are either not in accordance with the procedures established by law or which are manifestly disproportional, unjust, unpredictable, or unreasonable. International and U.S. constitutional law mandate various safeguards to protect individuals from arbitrary detention, including the obligations of authorities to inform detainees promptly of the charges against them; the obligation to permit detainees to be released on bail pending conclusion of legal proceedings absent strong countervailing reasons such as the individual's danger to the community or flight risk; and the obligation to provide a detainee with effective access to a court to review the legality of the detention. In the case of hundreds of post-September 11 detainees in the United States, the government chose as a matter of policy and practice to ignore or weaken these safeguards.”

(“Above the Law: Executive Power after September 11 in the United States,” *Human Rights Watch World Report 2004*, by Alison Parker and Jamie Fellner, 2004)

Marwan Kreidie, Executive Director, Philadelphia Arab-American Corp

“Arab and Muslim Americans want this country to be secure. But the ethnic and religious profiling within the Bush administration's post-9/11 security measures has come down too hard on us. It's unfair, it's unconstitutional, and it's a waste of time and money. Our community feels under siege, not from bigots and misguided patriots-but from the overzealous acts of the administration.”

(“Arabs feel profiled by 9/11 measures,” *Philadelphia Inquirer*, 2/1/04)

Juliette Kayyem, Former member of the National Commission on Terrorism, counterterrorism expert at the Kennedy School of Government, Harvard University

“The pure accumulation of massive amounts of data is not necessarily helpful, especially for an agency like the INS that already has problems keeping track of things. Basically, what this has become is an immigration sweep. The idea that this has anything to do with security, or is something the government can do to stop terrorism, is absurd.”

(“Registration Stirs Worry, Panic,” *Washington Post*, 1/19/03)

Warren Christopher, Former Secretary of State

“I'll never forget going to Argentina and seeing the mothers marching in the streets asking for the names of those being held by the government. We must be very careful in this country about taking people into custody without revealing their names.”

(“After Sept. 11, a Legal Battle Over Limits of Civil Liberty,” *New York Times*, 8/4/02)

Nancy Foner, Author of ‘From Ellis Island to JFK: New York's Two Great Waves of Immigration

“In a bizarre inversion of the story America likes to tell itself about its splendor as a nation of immigrants, thousands of Pakistanis living in the United States have joined in a mass exodus of business owners, day laborers, students, cabbies, bricklayers, housewives, hairdressers, and peddlers. ... But the current flight of Pakistanis marks the first time in at least 100 years, she [Nancy Foner, author of *From Ellis Island to JFK: New York's Two Great Waves of Immigration*] says, when ‘a group actually feels forced into the decision to leave. It's very alarming.’”

(“Fleeing America,” *The Village Voice*, 9/10-16/03)

Glenn A. Fine, Inspector General, U.S. Department of Justice

“With regard to allegations of abuse, we concluded that the evidence indicates a pattern of physical and verbal abuse by some correctional officers at the Metropolitan Detention Center against some September 11 detainees, particularly during the first months after the attacks and during intake and

movement of prisoners. This generally consisted of slamming some detainees into walls; dragging them by their arms; stepping on the chain between their ankle cuffs; twisting their arms, hands, wrists, and fingers; and making slurs and threats such as ‘you will feel pain’ and ‘you’re going to die here.’”
(Testimony, Senate Committee on the Judiciary, 6/25/03)

Alfred P. Carlton, Jr., President of the American Bar Association

“The report in question – issued not by a civil liberties watchdog, but by the inspector general of the Department of Justice – is disturbing. It details the treatment of 762 foreign detainees swept up in the post Sept. 11 investigations. In the process, it echoes many of the concerns expressed by the American Bar Association last August . . . As troubling as these findings are, they are but one piece of a larger pattern of abuse. In fact, one could argue that the systematic violation of these peoples’ basic rights has been one of the most troubling casualties of the war on terrorism.”

(*Detroit Free Press*, 6/26/03)

Nancy Chang, Center for Constitutional Rights

“The MDC detentions illustrate the danger that allowing the executive branch the broad power to define rules for detention and execute them without oversight by Congress or the courts. We cannot be surprised when the broad exercise of power by the executive branch leads to abuses. Our system of checks and balances is intended to stop such abuses and it was not in operation in the days after September 11th.”

(“Domestic Abuse; Attorneys from the Center for Constitutional Rights fight to reveal the Abu Ghraib-style abuse of innocent 9/11 detainees in New York,” *MotherJones.com*, 6/26/04)

William Perry, Former U.S. Secretary of Defense

“Welcoming international students to our nation constitutes a crucial long-term investment in American leadership and security. Such openness has long been a bulwark of U.S. foreign policy and is a proven means to fight against the uninformed stereotypes, fear, and ignorance that are at the heart of the crisis we face today.”

(Statement, “In America’s Interest: Welcoming International Students”, Report of the Strategic Task Force on International Student Access, 7/15/03)

MEMBERS OF THE COURT

Judge Stephen Reinhardt

“[E]ven in times of national emergency—indeed, particularly in such times—it is the obligation of the Judicial Branch to ensure the preservation of our constitutional values and to prevent the Executive Branch from running roughshod over the rights of citizens and aliens alike.”

(*Gherebi v. Bush*, (03-55785), Ninth Circuit Court of Appeals, 12/18/03)

U.S. Supreme Court Justice Sandra Day O’ Conner

“We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens”

(*Hamdi v. Rumsfeld* (03-66960), 6/28/04)

Detroit Free Press v. Ashcroft

“Today, the Executive Branch seeks to take this [right of access] safeguard away from the public by placing its actions beyond public scrutiny. Against non-citizens, it seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors. The First Amendment, through a free press, protects the people’s right to know that their government acts fairly, lawfully, and accurately in deportation proceedings. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is

misinformation. The Framers of the First Amendment ‘did not trust any government to separate the true from the false for us’ They protected the people against secret government.”
(Detroit Free Press v. Ashcroft (303 F.3d 681), Sixth Circuit Court, 2002)

MEMBERS OF CONGRESS

Senator Orrin Hatch (R-UT)

“Neither the fact that the [Justice] department was operating under unprecedented trying conditions, nor the fact that 9/11 detainees were in our country illegally, justifies entirely the way in which some of the detainees were treated.”

(“Lessons Learned: The Inspector General’s Report on the 9/11 Detainees,” Statement from Senate Judiciary Committee Hearings, 6/25/03)

Senator Patrick Leahy (D-VT)

“[W]e need to examine certain Administration policies that perpetuate government secrecy rather than ensure government accountability to the American people. The knee-jerk reaction of this Administration is to keep its actions secret and conduct the public’s business behind closed doors. ...Our civil liberties were hard won, but they are easy to lose. And once we give them away, they are difficult to reclaim. Benjamin Franklin said those who would trade their freedom for security deserve neither.”

(“America after 9/11: Freedom Preserved or Freedom Lost?,” Statement from Senate Judiciary Committee Hearings, 11/18/03)

Representative James Sensenbrenner (R-WI)

“believe the [Justice] department and Congress must be vigilant toward short-term gains which ultimately may cause long-term harm to the spirit of liberty and equality which animate the American character,”

(*Associated Press*, 6/5/03)

Representative Howard Berman (D-CA)

“Some of us find that the collateral damage is greater than it needs to be in the conduct of this war.”

(*Associated Press*, 6/5/03)

National Immigration Forum, July 2004