



LEGISLATIVE PRIORITIES 2007

Military Commissions Act

The Military Commissions Act (MCA) gives any president the power to imprison non-citizens indefinitely without charging them with a crime. Under the MCA, people can be convicted, and possibly face the death penalty, based on evidence literally beaten out of them. The law cripples enforcement of the Geneva Conventions and guts the fundamental due process right of habeas corpus — the constitutional right to have a court decide whether a person is being imprisoned lawfully.

The basic right to have a court decide whether an imprisonment is unlawful is part of what separates America from our enemies. It is time for Congress to restore due process, defend the Constitution, and protect what makes us Americans by correcting the problems in the Military Commissions Act.



NSA Spying

For five years the National Security Agency (NSA) eavesdropped on the conversations of Americans in the United States without a court order, in violation of the law and the Constitution. Thousands of Americans' conversations have reportedly been intercepted under this once-secret



directive issued by President Bush. Even though a federal court in Michigan ruled in August 2006 in *ACLU v. NSA* that the NSA wiretapping program is illegal and unconstitutional, President Bush asked Congress to pass legislation to authorize the warrantless surveillance program and expand unchecked surveillance powers.

Members of Congress must uphold their responsibility to the Constitution and the American people and conduct a thorough and impartial inquiry into the facts about this abuse of presidential power. Although the president now says he will not renew the warrantless surveillance program, he must still be held accountable for five years of breaking the law and Congress must investigate whether the illegal spying has really come to an end.

Real ID

The Real ID Act attempts to turn our state driver's licenses into national identification cards that every American will need in order to fly on commercial airlines, enter government buildings, open a bank account, and more. It also creates huge administrative burdens for state governments, while providing no federal funds for implementing its onerous requirements. At the same time, it does nothing to combat terrorism,

and puts us at greater risk for invasions of privacy and identity theft.

Members of Congress should support legislation introduced in the last Congress by Senators Daniel Akaka (D-HI) and John Sununu (R-NH). The legislation addresses many of the privacy concerns with the Real ID Act including putting in safeguards to prevent third parties from getting our personal data.

Racial Profiling

Racial profiling occurs when law enforcement agents rely on race, ethnicity, national origin or religion to decide whom to target for criminal investigation or for heightened security measures. These policies — whether they are official or unofficial — are ineffective and make us all less safe by diverting limited law enforcement resources to target innocent individuals.

We need legislation that bans profiling not only based on race, but also profiling based on a person's national origin or religion. This prohibition would promote effective security and law enforcement by focusing scarce investigative resources on people whose behavior raises suspicion, rather than on a person's race, religion or national origin.





Military Commissions Act

The Military Commissions Act of 2006 gives the president absolute power to decide who is an enemy of our country and to imprison people indefinitely without charging them with a crime.

■ Eliminates due process.

This law removes the Constitutional due process right of habeas corpus for persons the president designates as unlawful enemy combatants. It allows our government to continue to hold hundreds of prisoners more than four years without charges, with no end in sight.

■ Rejects core American values.

Habeas corpus, the basic right to have a court decide if a person is being lawfully imprisoned, is what separates America from other countries. To do away with this American value makes us more like those we are fighting against. It is time to restore due process, defend the Constitution, and protect what makes us Americans.

■ The last Congress was asleep at the wheel.

The only thing scarier than a government that would take away our basic freedoms is a Congress that would let it happen. Congress must correct that mistake and restore habeas corpus and due process, and define enemy combatants as only those who engage in hostilities against the United States.

■ Permits coerced evidence.

The act permits convictions based on evidence that was literally beaten out of a witness, or obtained through other abuse by either the federal government or by other countries.

■ Turns a blind eye to past abuses.

Government officials who authorized or ordered illegal acts of torture and abuse would receive retroactive immunity for their crimes, providing them with a 'get out of jail free' card.

■ Makes the president his own judge and jury.

Under the Military Commissions Act, the president has the power to define what is — and what is not — torture and abuse, even though the Geneva Conventions already provide us with a guide.

■ Congress must fix the Military Commissions Act.

By giving any president the unchallenged power to decide which non-citizen is an enemy of our country — and eliminating habeas corpus due process for them, we allow the government to imprison people indefinitely without charging them with a crime. It is time for Congress to restore due process, defend the Constitution and protect what makes us Americans.



Racial Profiling

Racial profiling occurs when law enforcement agents rely on race, ethnicity, national origin or religion in deciding whom to target for criminal investigation or for heightened security measures. This practice violates our nation's basic constitutional commitment to equal justice under the law. Police should not and may not use race, ethnicity, national origin or religion as the sole basis of forming criminal suspicion.

Legislation to end racial profiling promotes effective law enforcement by focusing scarce resources on people exhibiting suspicious behavior, rather than on a person's race, religion or national origin.

- **Racial profiling makes us all less safe.**

By diverting limited law enforcement resources to target innocent individuals based on racial and religious biases, racial profiling makes it more difficult for officers to target real criminals and terrorists.

- **Racial profiling is ineffective.**

"Hit rate" reports for traffic stops and searches show that people of color are no more likely, and very often less likely, to be involved in illegal activity than white people.

- **Racial profiling causes resentment in the targeted communities.**

Independent data shows racial profiling makes people in targeted communities less likely to cooperate with investigators.

- **Racial profiling is un-American.**

By allowing racial and religious bias to decide who is detained by law enforcement, we betray the fundamental promise of equal protection under the law.

- **Both the president and former U.S. Attorney General Ashcroft have vowed to end racial profiling, calling it "wrong in America."**

The Justice Department's racial profiling guidelines, however, lack any enforcement mechanism and include a giant "national security" loophole. They would do practically nothing to stop local and state police officials from relying on race or ethnicity when deciding to initiate traffic stops or other investigative activities.

- **Congress must pass legislation to end racial profiling.**

Legislation will be introduced in Congress that takes a comprehensive approach to prohibiting both racial profiling in traffic stops and post-9/11 detentions based on ethnicity, religion and national origin.

- **That legislation should provide enforcement and relief.**

Racial profiling legislation should clearly define and prohibit the practice, create enforcement mechanisms, and allow legal recourse for victims.





Real ID

The Real ID Act will require every American to have a federal identification document in order to fly on commercial airlines, enter government buildings or open a bank account. It creates massive administrative burdens for state governments, while providing no federal funds for implementing its arduous requirements. Contrary to its original purpose, Real ID does nothing to combat terrorism and creates greater risk of privacy invasion and identity theft.

■ Fails to combat terrorism.

Identity-based security is not an effective means to stop terrorism. Identification documents do not reveal anything about malicious intent. Furthermore, determined terrorists will always be able to obtain fraudulent documents.

■ Is a nightmare for state governments.

Real ID requires state governments to remake their driver's licenses, restructure their computer databases and create an extensive new document storage system. It also requires state motor vehicle departments to verify the "issuance, validity and completeness" of every document presented to them, such as birth certificates and immigration documents.

■ Means higher fees, longer lines and bureaucratic nightmares.

Because Congress is forcing the cost to implement these changes, expected to be in the billions, onto states, driver's license fees will inevitably rise. We'll likely stand in longer lines to get slower service with more mistakes.

■ Increases security and ID-theft risks.

The creation of a single interlinked database, as well as the requirement that each DMV store copies of every birth certificate and other personal documents presented to each DMV, will create a one-stop shopping mall for identity thieves.

■ Will be exploited by the private sector to invade privacy.

Real ID will make it easy for anybody in private industry to snap up the data on these IDs. Bars often swipe licenses to collect personal data on customers. That will be just the tip of the iceberg as every convenience store learns to grab that information and sell it to data mining companies.

■ Creates a national identity system.

The standardized national driver's licenses required by Real ID will become a key part of a system of databases and identity checks that will track and control individuals' movements and activities.

■ Congress must fix REAL ID.

Legislation introduced by Senators Daniel Akaka (D-HI) and John Sununu (R-NH) adds important privacy and civil liberties safeguards to the Real ID Act. Members of Congress should support this bipartisan fix.

■ States are speaking out against Real ID.

The Maine state legislature recently stood for privacy and passed a resolution rejecting the Real ID Act. Many other states are expected to take similar actions.

Additional Resources:

Realnightmare.org

www.realnightmare.org



NSA Spying

On December 16, 2005, the **New York Times** reported that the National Security Agency (NSA) was eavesdropping on the conversations of Americans in the United States without a court order, in violation of the law and the Constitution. Thousands of Americans' conversations reportedly have been intercepted under this once-secret program authorized by President Bush.

■ **No one is above the law, not even the president.**

Our government is based on the separation of powers and the rule of law. President Bush dishonored these principles and violated our trust.

■ **Congress must vigorously investigate this program.**

Lawmakers must uphold their responsibility to the Constitution and the American people and conduct a thorough inquiry — Members of Congress do not know whom has been spied on. They need to learn the facts.

■ **Congress needs to reject this program.**

Lawmakers must reject any attempts to legalize the program after-the-fact, and instead investigate the program's violation of law and the Constitution.

■ **A federal court found the program to be illegal and unconstitutional.**

In August 2006, a federal judge in Detroit struck down the program stating, "there are no hereditary kings in America and no powers not created by the Constitution. So all 'inherent powers' must derive from that Constitution."

■ **Congress was not informed of the warrantless spying program.**

As the independent Congressional Research Service stated, the administration quite likely violated the law by failing to notify more than a few lawmakers about this program. The administration continues to stonewall lawmakers' efforts to investigate the program.

■ **The illegal NSA spying wastes precious anti-terrorism resources.**

The *New York Times* reported that FBI agents complained that many of the tips produced by the NSA program were wild goose chases. It got so bad that agents started joking that another round of tips from the NSA meant another round of "calls to Pizza Hut." ("Spy Agency Data After Sept. 11 Led F.B.I. to Dead Ends," Jan. 17, 2006)

■ **The president must be held accountable.**

Although the president now says he will not renew the warrantless surveillance program, he must still be held accountable for five years of breaking the law and Congress must investigate whether the illegal spying has really come to an end. And because the president and attorney general are still claiming inherent authority to spy, we need to keep up the pressure to prevent them from returning to their law-breaking ways.

Additional Resources:

www.aclu.org/nsaspying