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# The Patriot Act and its infringement [sic] on civil liberties

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# THE PATRIOT ACT AND ITS INFRINGEMENT ON CIVIL LIBERTIES

by

Andaleeb Khalil

Currently the War on Terror is a hot topic in politics. The War on Terror is President Bush's attempt to crack down on terrorists like those that helped in conducting the attacks on the World Trade Center and the Pentagon on September 11<sup>th</sup>, 2001. President Bush implements a wave of legislation to help protect the citizens of the United States. An important piece of law that was passed was an act called the Patriot Act. This Act's is supposed to help the government find terrorists and ensuring that another attack like the September 11<sup>th</sup> attacks doesn't happen again. However there are a number of constitutional questions that arise with regards to the Patriot Act. The Patriot Act grants the government more power than it had before the attacks of 9-11. It allows for the rights of citizens to be put aside when the government thinks that an individual might be affiliated with terrorist activities. I begin by discussing the important contents of the Patriot Act and what specific questions might be raised. I then turn to the experts and articles of people who wrote on this issue and analyze their analysis of the constitutionality of the Patriot Act. Furthermore, I present scenarios where the Patriot Act is used to justify the civil liberties of citizens being limited and whether or not the government's suspicions was accurate or not. I look into a specific case that received much media attention locally with a gentleman named Rabih Haddad and how the Patriot Act was used in his case. Next, I briefly evaluate the judicial branch of government and whether or not they began to look into cases involving the Patriot Act and if so, how they seem to

handle it. I conclude by showing that major parts of the Patriot Act does infringe immensely on the civil liberties of citizens and show that the costs do outweigh the benefits.

### **Constitutional Rights**

The Supreme Court decided in a case called, *Griswald v. Connecticut*, that the right to privacy exists in a number of amendments in the Constitution. These amendments include the First, Third, Fourth, Fifth, Ninth, and the Fourteenth Amendments. The First Amendment states that citizens are not to be prohibited by the government in freely expressing their ideas and have a right to a free practice of religion. The government not being allowed to interfere with one's religion and expression goes back to this notion of a general right to privacy. The Third Amendment gives protection to citizens in their home and doesn't allow the government to prohibit something that might be done in the privacy of their own home. The Fourth Amendment protects individuals "in their persons", homes, documents etc against unreasonable searches and seizures without the issuance of a warrant and probable cause. The Fifth Amendment gives citizens the right to privacy by not forcing them to possibly incriminating themselves. The Ninth Amendment states, "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people". This statement implies that there are certain rights out there that are not specifically spelled out in the Constitution, and the Supreme Court has used this amendment by saying that the right to privacy fits in here. Finally the

Fourteenth Amendment which gives notion that every citizen has the right to due process. Also, the Fourteenth Amendment states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...” (Constitution of the U.S). The right to privacy is implied in the Constitution in a number of different amendments. That’s why it is so important for Congress to define terrorism in the context of the Patriot Act because if it doesn’t define it, the term is open up to a number of different definitions.

### **Patriot Act and the Constitution**

The Patriot Act poses many threats to the civil liberties of individuals. There are a number of sections in the Patriot Act that seem to go against the general notion of privacy that is implied in the Constitution. In Title II of the Patriot Act, Section 201 titled, Authority to intercept wire, oral, and electronic communications relating to terrorism, the government acts against the Constitution. By looking at this section from a constitutional standpoint, there are many issues that are brought up just by this short sentence. First, terrorism isn’t really defined. This makes a difference because how much authority the government actually has in interfering with communications among citizens depends on how you define terrorism. It appears that terrorism is left vague to broaden the scope of the Patriot Act allowing for potential pit falls and conflicts with some civil liberties. Also, since terrorism is not defined, this opens the door to monitoring the communication among individuals hence going against the Fourth Amendment and the Constitution. In a case that the Supreme Court

decided on, *Katz v. U.S.*, Justice Harlan stated in the majority opinion, that the Fourth Amendment isn't attached to the place but rather with the person. This goes along with wiretapping because the government is monitoring the communication therefore going against the individual's right to privacy.

Section 215, titled, Access to records and other items under the Foreign Intelligence Surveillance Act, allows the government to obtain any list of names of people and look into information ( e.g. library rentals, video rentals, medical, church, mosque documents etc) without having to consult the person or receive consent, as long as the government says it is to protect its citizens from the war on terrorism (Patriot Act 3). This part of the Act alone takes the right to privacy away from citizens. Citizens do not have the liberty to check out books as they please without possibly fearing that the government might suspect them being involved with terrorism. It is true that suspicious activity of terrorism must be involved according to this part of the Act, but it is not hard for the government to make it seem that a person might be linked to terrorism. Just the mere factor of me having to worry about the government poking their nose in the books I choose to check out, is infringing on my freedom. Another part of this section that maybe unconstitutional is the snooping around library lists is unknown to the possible suspect. Without the suspect knowing, the government might go to extreme measures with the suspect before allowing him/her to simply explain the situation. If asked the government this question, members of the government would probably respond by saying that if the person is engaging in terrorist activity, them knowing what the government plans to do might cause them to

take other measures to conduct the terrorist activities that they have planned. In a scenario such as this one, one just simply must balance the interests out; the interest of the government and the interest of the people. Of all the prying around that is done, how much of it actually does deter terrorism or catch terrorists?

According to an essay done by Patrick Morgan, “terrorism is seen as a particularly nasty threat because, it is said, the perpetrators cannot be deterred” (Morgan 1). The interest of the individual is much higher here than the interest of the state or nation.

The Patriot Act continues to infringe on civil liberties. Section 213 of the Patriot Act, titled, Authority for delaying notice of the execution of a warrant, allows governmental officials to search private property without prior notice to the owner of the property. This violates common law—common law being the law that is applicable to all the states; a defacto general template which is modified by state statutes which are state specific—which in effect protects the rights of potential innocent citizens. These searches if timed correctly will turn into secret searches in which the property owner in question has no idea that their property was searched. This new power granted to government breaks the system of checks and balances placed by the founding fathers of the Constitution. Granting the government a right to search property without prior notice or any notice is not only a violation of common law but more importantly a violation of the Fourth Amendment which clearly and explicitly prohibits the government from unreasonable searches and a case called *Mapp v. Ohio* reaffirms this.

In *Mapp v. Ohio*, the Supreme Court uses this notion of an Exclusionary rule in admitting evidence in a case that was seized by police officers without a warrant. The Court says that the Exclusionary rule is necessary in order for people's rights not to be violated. The implication here is that the Fourth Amendment does clearly state that police and governmental officials are not allowed to search an area without a warrant. They had to create a rule in order to work around the Constitution.

Not only does the Patriot Act allow the government to conduct unreasonable searches, as defined by the government, it grants the government the ability to search without any reasons unreasonable or otherwise. Section 213 also negates the purpose of search warrants which allow governmental officials to search only certain areas. Furthermore Section 213 can be applied to all levels of government not just certain units that are responsible for anti-terrorism. This in and of itself violates and extends the purpose of the Patriot Act which is to prevent further terrorist attacks on the United States of America.

Section 412 of the Patriot Act, titled, Mandatory detention of suspected terrorists; habeas corpus; judicial review; violates the Sixth Amendment which guarantees a fair and speedy trial. In a case decided by the Supreme Court, *Powell v. Alabama*, the Court sets up this notion that the process has to be just no matter who the accused is. The Court ruled that if a just process is not being in place, that it is against the Constitution. Thus Section 412 is unconstitutional since it does not allow the trial process to be just.

Section 412 also expunges the trial completely. According to section 412 an individual may be held indefinitely if they pose a security threat to the United States or if they have a violation of visa status. The latter again much like section 213 has nothing to do with terrorism. Therefore if an individual has overstayed on their student visa that individual may be held indefinitely if no country will take them, that is if deportation is not possible. The former—on threats—much like the latter—visa violations—only requires the Attorney General’s “reason” to detain an individual. The whim of one individual or the whims of a collective of individuals are all that is necessary to violate the Sixth and Fourteenth Amendments and place a potentially innocent individual in detention. Section 412 also violates the system of checks and balances. In the event of a trial the prosecutor’s argument must be defended and proven to be reasonable not only by his/her presentation but also by evidence. Usually mounds of evidence to prove beyond a reasonable doubt to a jury that the individual is guilty. Section 412 circumvents this check reversing tradition and criminal due process. Remember the burden of proof of guilt lies on the prosecutor not the defendant, hence “innocent until proven guilty—on the Attorney General by granting him/her/them the ability to detain whomever they wish. There is no check on their reason.

Even “innocent” sections of the Patriot Act such as section 203 titled, Authority to share criminal investigative information, deals with sharing of information between different governmental agencies to—one would assume—assist in allowing a pooling of information, has detrimental effects. Section 203 effectively allows the CIA to begin spying on American citizens which is

completely out of their scope as a governmental organization. Domestic issues lie exclusively with the FBI and other law-enforcement agencies. The CIA deals with foreign issues, non-domestic issues. It would be foolish to think that sharing of information should be prohibited in all circumstances. However, prior to the Patriot Act sharing of information required court mediation, therefore insuring a system of checks and balances. Section 203 of the Patriot act not only removes the system of checks and balances yet again; it also expands the powers of one governmental agency severely extending its powers beyond its scope. Section 203 is also supported by section 358 which grants governmental agencies as well as the CIA reports on “suspicious” activity which also allows the CIA to obtain credit card reports in secret. Both suspicious activity reports and credit card reports deal with domestic intelligence and not foreign. Thanks to Sections 203 and 358 the scope of the CIA has been transformed from a foreign watchdog to a domestic intruder.

Section 507, titled Disclosure of educational records, like every other section discussed thus far is a gross violation of the Fourth Amendment with respect to privacy. Section 507 of the Patriot Act allows “the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an *ex parte* order requiring an educational agency or institution to permit the Attorney General (or his designee) to” grant them any and all educational records of any individual in question. Release of any personal records under normal circumstances requires the

express written permission of the owner; thereby, insuring the individual's privacy and assuring that the individual knows what's happening with their personal information. Again with complete disregard to the Fourth Amendment the Patriot Act continues on its own path even with the Supreme Court deciding in *Katz* that the privacy of the individual is with the individual and not the place. The government is to not intercept communication, whether it is verbal or written, that an individual is unaware of.

Ending our un-exhaustive list of civil liberty violations is Section 351 titled Inclusion of foreign corruption offenses as money laundering crimes. This deals specifically with financial institutions. It reads that

“ a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency...the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and...no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.”

This section alone goes against the Fourth Amendment. Not only does the government have the ability to seize financial records in secret, the financial institute that gave the records out is not allowed to inform the individual that their records were given out. Right to privacy, right of freedom from unreasonable searches and seizures not to mention a system of checks and balances are all violated.

### **Academics and Experts with the Patriot Act**

Many academics and experts have actually conducted research in this field and tried to answer many of the questions that I've raised here. I ran across an interview with Democratic Senator Russ Feingold of Wisconsin who had a few words to say about specific sections on the Patriot Act. The Senator was asked, "How do you respond to ALA's assertion of that portions of the Patriot Act threaten the 'constitutional rights and the privacy rights of library users?'" His response was, "I strongly agree that Section 215 of the Patriot Act –the so called 'library records' provision-is unnecessarily broad and raises the specter of indiscriminate governmental snooping into the private lives of innocent Americans" (ALA 1).

David Cole wrote an article on the issue of the Patriot Act and he made a number of interesting points.

"The Patriot Act broadly undermines the rights of all Americans. It reduces judicial oversight of a host of investigative measures, including wiretaps, expands the government's ability to track individuals' Internet use and gives federal officials expansive new powers that are in no way limited to investigating terrorist crimes. It authorizes an end run around the Fourth Amendment by allowing the government to conduct wiretaps and searches in criminal investigations, without probable cause of a crime, as long as the government claims that it also seeks to gather foreign intelligence--an authority that is particularly questionable in light of recent disclosures from the Foreign Intelligence Surveillance Court that the FBI has repeatedly provided misinformation in seeking such authority in the past." (Cole 2).

Cole goes on to talk about how immigrants were targeted as a result of the September 11<sup>th</sup> attacks. He mentions that most of the troubling provisions of the Patriot Act are reserved for non-citizens. It allows the government to deport citizens without giving them due process.

Valerie Demmer focuses on the issue of the government claiming to increase homeland security by taking away our civil liberties.

“In response to the terrorist attacks of September 11, 2001, the Bush administration reacted swiftly and boldly, implementing programs it claimed would strengthen the security of the United States. President George W. Bush, Secretary of Defense Donald Rumsfeld, and Attorney General John Ashcroft have all adopted a firm and unyielding stance in executing their focused reply to the menace of global terrorism. An unfortunate byproduct of these aggressive moves, however, is the erosion of civil liberties. The administration has gone beyond the legitimate needs of national security and is infringing on constitutional freedoms in the name of patriotism and security” (Demmer 1).

She then goes on and makes the interesting point of how most of the Senators that signed the bill hadn't actually read it.

“The Patriot Act was signed into law by Bush on October 26, 2001, after being rushed through Congress without giving members time to properly read or interpret its provisions. According to Representative Ron Paul of Texas (one of only three Republicans in the House to vote against the bill), ‘The bill wasn't printed before the vote--at least I couldn't get it... It was a very complicated bill. Maybe a handful of staffers actually read it, but the bill definitely was not available to members before the vote.’”(Demmer 1).

Christopher Raab reaffirms this in his article with the Duke Law and Technological Review. He writes, “...the bill was passed without meaningful debate: in the House, members were not permitted to offer amendments, nor were most even given a chance to read the bill before being asked to vote on it” (Raab 1). It's frightening to see how the law makers of our country passed a bill so lightly and quickly and yet a bill that takes away from our freedoms so much that most American citizens are unaware of to that extent. One member of Congress, who the author of article interviewed, commented on how he didn't

vote for the bill but was in danger of being perceived as an unpatriotic member of Congress. It's quite clever of the Bush administration to appeal to patriotism (the bill itself is called the Patriot Act) in order for the American people and the people of government to support such legislation after such terrorist acts have just occurred. Not only that, but the President kept focusing on the issue of the "war on terror" and that's how many people were fooled into believing that the Patriot Act is there to protect them. Cornell West writes in his popular acclaimed book, *Democracy Matters*, affirming this as well (West 29). West also makes the argument in his book that this paranoia of terrorism could potentially lead to our government possibly becoming an authoritarian government. He says, "the Patriot Act is but the peak of an iceberg that has widened the scope of the repression of our hard-earned rights and hard-fought liberties" (West 6).

In the Denver University Law Review, Norman Bay wrote an article about executive power increasing during the time of crises. This is relevant because the Patriot Act rewards the Executive branch of government more power than they would normally have without the legislation. The Constitution specifically spells out the powers of the President and the executive and Bay makes the argument that the Executive branch of government can sometimes take their powers too far.

"...under a provision of the Patriot Act, with reasonable cause, the government can detain an alien suspected of being a terrorist for up to seven days and then for renewable periods of up to six months 'if the release of the alien will threaten the national security of the United States or the safety of the community or any person.' n80 Under Article II of the Constitution, it is the duty of the President to enforce those laws. n81 This, too, expands the scope of executive discretion" (Bay 3).

He then goes on to explain about how the Executive branch can choose to exercise that discretion in a way they so choose. "That discretion, in turn, permeates each step of the criminal justice process: from the interpretation of statutes, to the investigation and prosecution of crimes, and the granting of pardons if a conviction obtains" (Bay 3). This is yet another way for the government to make it seem as if they are staying with the boundaries of the Constitution with the Patriot Act but if one looks at it closely, then they can easily see that they are potentially violating the separation of powers principle. The checks and balances principle is also absent here because there is no check on the Executive to ensure that they are not acting too powerful.

Raab also makes mention of the issue of the new governmental powers given because of the passage of the Patriot Act. Under the Patriot Act, the government is allowed to regulate the internet and tap websites without the knowledge of the person. In a previous decision that the Supreme Court decided on before the passage of the Patriot Act, *Doe v Ashcroft*, the Supreme Court actually ruled that this was unconstitutional. Raab comments on this and states,

"in *Doe v. Ashcroft*, a New York Internet service provider ("ISP") sued the FBI, claiming that the NSL it had received violated its First, Fourth, and Fifth Amendment rights. n73 The plaintiff attacked section 2709 as unconstitutional, both facially and "as applied to the facts of this case." n74 The ISP's chief contentions were that, "first, [section] 2709 gives the FBI extraordinary and unchecked power to obtain private information without any form of judicial process, and, second, that [section] 2709's nondisclosure provision burdens speech categorically and perpetually, without any case-by-case judicial consideration of whether that speech burden is justified" (Raab 4).

Even post 9-11 and post the Patriot Act, the government's ability to snoop around on internet websites is unconstitutional. The Supreme Court even decided on

such a case. Therefore the provision that is in the Patriot Act that deals with this issue, is unconstitutional as well.

Raab also mentions that the government not only infringes on the rights of those accused of carrying out terrorist activities but also ordinary citizens.

“What was once a tool used for tracking spies is now being used to sweep up data on ordinary citizens, people who just happen to use the same library computer terminal as someone under investigation. This would be bad enough if irrelevant information were simply discarded, as was formerly the case; now, however, FBI guidelines permit this information to be retained indefinitely and shared with other government agencies. n93 When such unbridled discretion is combined with secrecy and a lack of judicial review, the result is a recipe for abuse. While they may be useful for fighting terrorism, the FBI's NSL powers are far too great” (Raab 4).

### **Cases involving the Patriot Act**

While there are many experts that'll agree that the Patriot Act infringes on civil liberties, there is always the counterargument that the Patriot Act helps fight terrorism. However, the people that became victims of the government's encroachment on their civil liberties wouldn't agree. That is why it is important to take a look at a few cases where people were suspected of terrorism, and allegations were brought against them because of the Patriot Act.

A case that has been in the news recently is *Hamdi v. Rumsfeld*. This case deals with the issue of whether or not a citizen of the U.S. can be charged in a military tribunal as an “enemy combatant”. Other important issues related to the Patriot Act were that Hamdi was arrested and didn't receive a trial. The government thought that they could get away with such a thing because they thought they were in compliance with the Patriot Act. However, even though a

section in the Patriot Act allows the government to detain an individual if they feel necessary without a trial there are still conditions that the government must meet. In an amicus curie brief that the ACLU submitted for writ of cert. to the Supreme Court, they write that the Act specifically allows the detaining of an alien to occur- not a citizen- and Hamdi was a U.S. citizen (ACLU 19). The ACLU however doesn't stop there but they also mention how parts of the Patriot Act's design are unconstitutional.

“The Act permits detention of each person as to whom there is a reasonable ground to believe that such person probably will engage in, or probably will conspire with others, to engage in acts of espionage or sabotage. This criterion would seem to violate the Fifth Amendment by providing imprisonment not as a penalty for the commission of an offense but on mere suspicion that an offense may occur in the future”(ACLU 19).

This is a clear violation of the Fifth Amendment of the Constitution.

Perhaps the most troubling case to me was a case that involved false suspicion of terrorism that occurred about three years ago with a man named Rabih Haddad. He co-founded an organization called the Global Relief Foundation, a non-profit humanitarian organization, where he also served as chairman and CEO. Haddad was a husband and also a father of four children. He often volunteered at the Michigan Islamic Academy when they were short of staff. Little did Haddad know that his life was about to change forever shortly after the attacks occurred on September 11<sup>th</sup>. On December 14, 2001, three INS agents arrested Rabih Haddad. “The INS refused Mr. Haddad bond on the basis that he might be a flight risk and might pose a danger to the community, however the agency has not offered any credible basis for these allegation” (Klopfer 1).

The agency had to come up with another way to possibly justify the arrest of Rabih Haddad. The explanation for the arrest was a minor visa violation; a violation that many others have incurred without receiving any punishment. Haddad was in the process of applying for another visa when this was occurring. However Klopfer points out that he was not required to leave the country because of the visa being expired. "In accordance with a visa amnesty law passed under the Clinton administration, this does not require him to leave the country. His INS hearings were closed and secret" (Klopfer 1).

It was to only get worse for Haddad. He was transferred to Chicago without being able to notify his wife or children. Haddad did not have much access to the outside world at all. His wife attempted a number of times to visit him but was turned away with different excuses. Haddad however was not in this fight alone. He had much help from the community and from civil liberties organizations. The ACLU and the Detroit Free Press sued the federal government for illegally closing his INS hearings to the public and the press (Klopfer 1). Haddad's case made its way up the Sixth circuit court. Klopfer writes,

"On April 10, 2002 the 6th Circuit Court temporarily stayed the portion of Judge Edmunds order instructing defendants to hand over the INS hearing transcripts. On April 19th, however, the government announced that it would no longer seek a stay of Judge Edmund's ruling. According to lawyers, this means that 1) any hearings in Haddad's case that are held before the Sixth Circuit makes a ruling must be open (absent a showing by the govt. to the immigration court that a portion of the hearing must be closed to advance national security interests); and 2) the plaintiffs are entitled to the transcripts or tapes of the previous immigration hearings that were wrongfully closed. Subsequently, the New York Times (April 22, 2002) reported on the newly opened records, and stated that the main suspicion against Mr. Haddad appears to have been that he had traveled to Pakistan as part of his humanitarian work" (2).

In August, things started to seem to go in favor of Haddad. “A three-judge panel of the Sixth Circuit Court upheld Judge Edmunds’ decision and ruled that the federal government cannot hold secret deportation hearings without giving justification” (Klopper 2).

In September, a Federal District Court judge ruled that Haddad must have a new, open detention hearing with a different immigration judge or the government must be forced to release him. However, Immigration Judge Robert Newberry closed the detention hearing despite the previous ruling. Appeals were filed immediately by him and different organizations.

“On October 15 and 16, 2002, the Immigration Judge held a hearing to consider Haddad's asylum request. On the first day of the hearing, his friends and supporters were not allowed into the building, but after considerable protests, the following day the immigration court administrator claimed there had been a ‘misunderstanding’ and acknowledged that the hearings were supposed to be open. Asylum was denied on November 22nd, 2002 and soon after that his lawyer filed an appeal” (Klopper 3).

Despite all this that the federal government was doing, and how people tried to stop it, Haddad didn’t win in the end. He was deported back to his native country, Lebanon on July 14, 2003.

Rabih Haddad was part of the charitable organization because of reasons that had to do with religion. Haddad was a devout Muslim who spent much time at the Mosque of Ann Arbor, Michigan. Haddad probably wouldn’t have withdrawn from this organization no matter what the federal government threatened to do to him. It turned out in the end that this Global Relief Foundation that the government suspected was part of a terrorist financing organization,

actually was not part of terrorist activity. Klopfer mentions that a report titled Monograph of Terrorist Financing released by the September 11 Commission reviewed the U.S. government's actions against the Global Relief Foundation as well as the actions against Haddad himself. The government did not find that GRF was part of terrorist activities as they had originally thought. "The report suggests that the FBI believed that GRF had sent some money to terrorist groups opposed to the United States ('jihadist'), but did not have any evidence that it was organizing terrorist activities" (Klopfer 3). The report suggests that Haddad was deported because the government could not build a case against him.

It's sad to see that a man's life was completely ruined because the government thought his organization belonged to a terrorist financing organization. More disturbing to me is that the government claims to have done all that they did in this man's case because the law allowed them to do so. An article that I came across mentions the ACLU's concern with civil liberties in the Rabih Haddad case. The article says,

"It disregards decades of legal precedents, which have consistently granted the media the right to scrutinize the actions of the government. The directive, moreover, is flagrantly unconstitutional because it violates the basic American constitutional right to due process, which entails open hearings" (Porter 1).

Porter goes on to mention that the government treatment of aliens should not be hostile and that even if they are not a citizen of the United States, they still deserve protection under the law.

“A number of legal precedents for the democratic rights of non-citizens are cited, including the following: ‘Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law’” (Porter 1).

Of course the Patriot Act has changed some of this, but that’s why provisions under the Patriot Act are not consistent with the rule of law and the U.S. Constitution. Because under the Patriot Act, an immigrant might be detained without a fair trial, and this does go against previous precedents and against the Constitution. Also, the governments increased powers under the Patriot Act allow them to get away with things they may have previously not have been able.

“Under the new anti-terror measures established by the USA Patriot Act and implemented by US Attorney General John Ashcroft and the Justice Department, the government is given wide latitude with regard to immigrants or anyone designated as a ‘terror suspect.’ Amnesty International has documented numerous cases of immigrants denied the right to legal representation, placed in solitary confinement or locked up for 23 hours a day, shackled and denied the right to see family members” (Porter 1)

The most troubling part about this case was that since they were unable to tackle the issue of the organization being part of a terrorist financing group, they went after Haddad because of a visa violation. He was in the process of reapplying for his visa but the government didn’t even give him the opportunity to evaluate whether or not he is worthy enough to stay in the U.S. Porter mentions this also in his article and talks about how this is unprecedented (2).

## **The Judicial Branch of Government and the Patriot Act**

The judicial branch of government doesn't really like to take cases they think to be as too controversial or political. There are many cases in history that the Supreme Court didn't want to review but knew that if they didn't they would receive much negative reply from the other branches of government and from the people. However, the Supreme Court is the most powerful in the Court system not only because they are the last court that people can petition to but also because they have discretionary jurisdiction. The Supreme Court does not have to take all the cases that come to them. To get a case to the Supreme Court a person must simply apply for a writ of cert. and the writ must be granted by at least four justices on the Supreme Court (rule of four). On the same token however, the Court can't go out and pick and choose the cases that they want to review. The case does have to come to them. The Supreme Court sometimes decides not to review cases that they simply don't think it is in their arena to review. I think this is the reason that there are barely any cases that have worked its way up to the Supreme Court that deals with the Patriot Act. The only cases that I seemed to come across that has to deal with the Patriot Act and the Supreme Court reviewing is cases that have to do with U.S. citizens (of Muslim or Arab descent) being tried in a military tribunal as an enemy combatant. An example of such is a case is *Hamdi v. Rumsfeld* which I've talked about earlier.

### **Final Evaluation**

Even if the Patriot Act was formulated to serve as a tool to prevent future terrorist activities, there are major sections in the Act that seem to infringe immensely on

the rights of individuals. Evaluating major parts of the Act, I have shown that substantive rights under the Constitution seemed have been disregarded because of the cry of terrorism. When looking at such a complex issue one needs to simply conduct a balancing test to weigh out the costs and benefits of such an act. The benefits that the government seem to give for the Patriot Act is that it will act as a deterrent for terrorists who plan to plot another terrorist attack against the American people. This is when the costs start to play in. The more the government seeks to protect the American people, the more they seem to take away from our liberty. A core democratic value that America lives by is freedom and liberty. The Bill of Rights is specifically planted in the first part of the Constitution to prove that the rights of the people and freedom are what make a democracy. The government has previously intruded on the rights of Americans in other times of crises. Still however, there are parts in the Patriot Act that allows the government to do things that they never before have done. As the reporter that I quoted earlier said there are things that the government was doing that was unprecedented.

More costs to the Patriot Act include the direct violations of the Constitution. Many sections of the Patriot Act go against numerous amendments. Also, something that isn't explicitly in the Constitution is the right to privacy. The Patriot Act shuts this down though as well. Even though the Supreme Court in *Griswald*, determined that the right to privacy does exist in the Constitution, the Patriot Act completely disregards this. Another major cost to the Patriot Act is that it undermines the notion of checks and balances. When one branch of

government is given immense power over the other, the threat of tyranny is taken into account. The Patriot Act allows for the Executive to snoop in documents that they would normally not allow them to do without the check of the other branches of government. The checks and balances principle is another principle that makes the American government so distinct from others. With the Patriot Act threatening this all for the possible prevention of terrorism doesn't seem to be that much of a benefit to the people. Of the cases I have discussed and read about, they barely have even cracked down on these terrorists that might plan out another attack. For every person that is being caught as being a threat to our safety who actually turns out to be terrorists, millions of Americans rights are being infringed upon. The costs do outweigh the benefits with the Patriot Act. To me and to a number of other Americans who seem to agree that parts of the Patriot Act is unconstitutional, the potential security of the government with the exchange of the people's privacy being gone, doesn't seem to be a good enough trade off. It is the job of the Supreme Court and the judicial branch of government to ensure that the other branches of government are acting with accordance to the U.S. Constitution. The Supreme Court however doesn't seem to want to tackle this issue probably for political reasons. They barely have granted writs of certs. to cases that involve the Patriot Act. How else could we amend such a statute that seems to trample all over our rights? I guess the American people need to elect better members of Congress so they might do away with such an act.

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