Bush administration preparing new police state measures

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For months the Bush Administration has been secretly preparing a new bill to add or change dozens of federal laws and thereby dramatically increase the executive branch's power to spy on people in the US, hold them secretly, and even strip them of their US citizenship.

Entitled "The Domestic Security Enhancement Act of 2003," the bill has been dubbed "Patriot Act II," after the omnibus surveillance, immigration and crime bill rammed through Congress in the aftermath of the attacks of September 11, 2001. This secret plan to institute new police state measures only came to light because it was leaked to the Center for Public Integrity, which, on February 7, posted it on www.publicintegrity.org, along with a confidential Justice Department memorandum discussing each of its provisions.

The Justice Department memorandum is dated January 7 and marked "Confidential—Not for Distribution" on each page. It methodically describes a blood-chilling plan to give Attorney General John Ashcroft and the federal police he leads unprecedented powers to spy, to conceal their activities, to arrest in secret and hold people indefinitely, and to expel people from the country.

Section 101 removes the requirement that domestic spying under the authority of the Foreign Intelligence Surveillance Act (FISA) be limited to agents of a "foreign power." Under the new provision, according to the Justice Department memorandum, secret wiretaps and clandestine searches could target "*all* persons, regardless of whether they are affiliated with an international terrorist group, who engage in international terrorism." (Emphasis in the original.)

Section 103 eliminates the requirement that the Attorney General obtain FISA court approval for such wiretaps and searches "by allowing the wartime exception to be invoked after Congress authorizes the use of military force, or after the United States has suffered an attack creating an [*sic*] national emergency." (The present "wartime exception" to the requirement of FISA approval is 15 days following a congressional declaration of war.) These two provisions together would give federal police virtually unrestricted power to listen in on telephone calls, read faxes and emails, and search homes and offices without even the fig leaf of approval from the secret FISA court.

Section 201 adds an exemption to the Freedom of Information Act (FOIA) that "the government need not disclose information about individuals detained in investigations of terrorism until disclosure occurs routinely upon the initiation of criminal charges." Since the Bush administration claims the right to jail people indefinitely and incommunicado as "enemy combatants" without ever charging them with a crime—including US citizens such as Jose Padilla arrested on US soil—this provision would effectively institutionalize the power of the government to "disappear" its political opponents.

Since September 11, 2001, the government has, by some estimates, rounded up as many as 1,200 people for immigration violations and as "material witnesses." The executive branch has refused to identify the detainees or explain why they are being held, despite congressional requests and court FOIA orders directing it to do so. Ashcroft has distributed memoranda throughout the executive branch pledging that the Justice Department will "vigorously defend" against all FOIA requests.

There is an entire series of sections, 301-306, which sets up new procedures for the government to forcibly collect DNA samples from anyone "suspected" of any association with a "suspected terrorist group." There is no precedent for using such intrusive methods to create a database of human tissues, nor any limitation in the bill on how the tissue specimens might be used.

Section 312 would invalidate all current injunctions and judicial consent decrees limiting the ability of local police departments to gather political intelligence, and eliminate the power of courts to enter such orders in the future. The proposal would restore the notorious "red squads" of large metropolitan police agencies by eliminating court controls on police infiltration and disruption of dissident political groups. The bill recommends that the reactivated local police intelligence units share their surveillance data with the FBI and other federal agencies.

Section 322 would eliminate traditional restrictions on arrests outside the United States by allowing extradition for offenses not listed in extradition treaties and by extraditing people from nations that do not have extradition treaties with the United States. The purpose of this law is to eliminate all legal restrictions on the ability of US agents to patrol the planet, seizing anyone they want and bringing them back to the US for imprisonment without respect for foreign sovereignty.

Section 402 would remove the requirement that the government prove someone had the intent to support terrorism to obtain a conviction for providing material support to a terrorist organization, so long as the government demonstrates that the supported organization has "international terrorism" among its

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objectives. This means that anyone who makes donations to or contributes services for an organization may be held liable for the organization's alleged terrorist acts, even where that person has no way of knowing about the organization's alleged unlawful activities. This provision would most dramatically affect Islamic charities that raise funds for humanitarian efforts, but which have been accused by the Bush administration of contributing money to Al Qaeda, Hamas, and other such organizations.

Section 405 makes it more difficult for courts to grant bail to people charged with terrorist-related crimes, even where the court makes findings that flight is unlikely and the release of the person pending trial would not be dangerous. The purpose of this bill is to allow the government to imprison people for long periods without having to convict them of any crime.

Section 501 is the most extreme provision in the new bill. It would give the executive branch the power to strip an individual of his US citizenship if "he becomes a member of, or provides material support to, a group that the United States has designated as a 'terrorist organization.'" This provision flies in the face of the Constitutional provision that a US citizen can relinquish citizenship only voluntarily.

In addition, Section 503 "would give the Attorney General . . . authority to deny admission to the United States, or to remove from the United States, [aliens] whom the Attorney General has reason to believe would pose a danger to the national security." With this power, Ashcroft could unilaterally expatriate and deport political opponents of the administration under the guise of fighting terrorism.

These far-reaching proposed measures were prepared in secrecy. Most commentators agree that the Bush administration was waiting for an opportune moment to ram the bill through Congress, like it did after September 11, 2001 with the first Patriot Act, the text of which was not distributed until the last moment and was not read by most of the members of Congress who voted on it.

According to the Center for Public Integrity, although rumors of a second Patriot Act have been circulating for months, as recently as the first week in February the Department of Justice told senior members of the Senate Judiciary Committee that no such legislation was planned. After the Center obtained its leaked copy of the proposed bill, it contacted the Department of Justice. The spokesman, Mark Corallo, first denied that any such measures were under consideration. When told of the leak, Corallo responded, "This is all news to me. I have never heard of this."

After the Center posted the documents, Barbara Comstock, director of public affairs for the Justice Department, released a brief written statement declaring that "Department staff have not presented any final proposals to either the Attorney General or the White House. It would be premature to speculate on any future decisions, particular ideas or proposals that are still being discussed at staff levels."

This press release was immediately exposed as a bald-faced lie. Public Broadcasting System (PBS) commentator Bill Moyers obtained an Office of Legislative Affairs "control sheet" indicating that the "Draft Legislative proposal entitled the 'Domestic Security Enhancement Act of 2003'" was distributed to House Speaker Dennis Hastert and Vice President Richard Cheney on January 10, requesting their comments no later than January 13.

Rep. John Conyers of Michigan, the ranking Democrat on the House Judiciary Committee, learned of the proposed bill from the Center for Public Integrity's disclosure. His reaction was that the legislation "turns the Bill of Rights completely on its head." Conyers added, "This draft bill constitutes yet another egregious blow to our citizens' civil liberties. Among other things, the Bush administration now wants to imprison suspects before they are tried and create DNA databases of lawful residents that have committed no crime."

While news outlets have been bombarding the public with panic-inducing reports about "Stage Orange" terror alerts and urging concerned citizens to protect themselves against "weapons of mass destruction" with duct tape, the media has been almost silent on these proposed new governmental powers. PBS ran a lengthy Bill Moyers segment and the *Washington Post* ran a front-page story, but with the exception of one Fox News report, there has been no coverage on the television news channels, and other major dailies either buried their stories or ignored the issue altogether.

Although media reports have been few and muted, the revelations about the bill have generated a strong reaction from some civil libertarians. Yale Law School professor Jack Balkin, in a commentary for the February 13 *Los Angeles Times*, wrote, "Give a few dollars to a Muslim charity Ashcroft thinks is a terrorist organization and you could be on the next plane out of this country." Accusing the Justice Department of "cynical manipulation of public opinion" by waiting to introduce the bill until the outbreak of war with Iraq, "when political opposition would be inhibited by support for our troops," Balkin charges, "It now seems clear that there is no civil right—even the precious right of citizenship—that this administration will not abuse to secure ever-greater control over American life."

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