

LIBERTY AND SECURITY: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS

A coalition of more than twenty organizations and over seventy-five individuals collaborated to create “Liberty and Security: Recommendations for the Next Administration and Congress.” The Constitution Project coordinated the production of the report, which was released in November 2008.

“Liberty and Security” indexes policy proposals across 20 different issue areas, including privacy, secrecy and surveillance; detention, interrogation, and trials of so-called “enemy combatants”; and discrimination in immigration and charities policy. It includes recommendations for congressional and executive action, and provides in-depth background information to support action by policy makers. It also includes lists of issue-based resources and experts in the community. The report includes the following chapters:

Charities, Foundations, and National Security

CHAPTER 1: Eliminate Unnecessary Barriers to Legitimate Charitable Work

Detention, Interrogation, and Trials of Suspected Terrorists

CHAPTER 2: Closing Guantánamo

CHAPTER 3: End Illegal Detention, Torture, and Rendition

CHAPTER 4: Prosecute Terrorist Suspects in Accordance with the Law

Immigration and National Security

CHAPTER 5: Failing to Protect Refugees and Asylum Seekers: Overly Broad Definition of Material support for Terrorism.

CHAPTER 6: Ending Immigration Enforcement Based on National Origin, Ethnicity, and Religion

CHAPTER 7: Misuse of Immigration Detention Laws in Counterterrorism Efforts

Secrecy, Surveillance, and Privacy

CHAPTER 8: Revising Attorney General Guidelines on FBI Investigations

CHAPTER 9: Updating the Law Governing the Privacy of Electronic Communications

CHAPTER 10: Fusion Centers and the Expansion of Domestic Intelligence

CHAPTER 11: Promoting Government Transparency

CHAPTER 12: National Security Letters and Section 215 of the USA PATRIOT Act

CHAPTER 13: Reform of the National Security Surveillance Laws and Procedures

CHAPTER 14: Preventing Over-Classification and Retroactive Classification and Promoting Declassification of Government Documents

CHAPTER 15: Reforming the State Secrets Privilege

CHAPTER 16: Reforming Watch Lists

Separation of Powers and Executive Authority

CHAPTER 17: Assertion of Executive Authority in National Security Matters

CHAPTER 18: Executive Privilege and Congressional Oversight

CHAPTER 19: Signing Statements

CHAPTER 20: War Powers Authority

The full report is available online at <http://2009transition.org/liberty-security/>, at www.constitutionproject.org, and on the websites of many members of the coalition.

For policy questions, please contact the individuals or organizations identified in the catalogue as allies. Please direct general questions to Daniel Schuman, Director of Communications and Counsel, the Constitution Project, at 202-580-6922.

APPENDIX

Chapter 5: Failing to Protect Refugees and Asylum Seekers - Overly Broad Definition of Material Support for Terrorism

I. Jurisdiction

A. Legislative Branch

The Congress has jurisdiction to pass legislation amending terrorism definitions under immigration law and the waiver of the related bars. The Congress most recently exercised this jurisdiction through the Congressional Appropriations Act of 2008.

B. Executive Branch

Pursuant to the INA, the Secretaries of State and Homeland Security, in consultation with each other and the Attorney General, may issue waivers to terrorism bars to immigration.

The Secretary of Homeland Security has authorized the U.S. Citizenship & Immigration Services agency within Homeland Security to exempt certain individuals from the terrorism-related bars to immigration. In 2007 USCIS issued guidance on the granting of waivers.

II. Status of Actions in Legislative, Executive, and Judicial Branches:

A. Legislative Branch:

The Consolidated Appropriations Act of 2008, Pub. L. 110-161 (H.R. 2764), was sponsored by Representative Nita Lowey (D-NY) on June 18, 2007, passed the House of Representatives on June 22, 2007, passed the Senate on September 6, 2007, and was finalized (with amendments) on December 19, 2007 before being signed by the President on December 26, 2007.

The Consolidated Appropriations Act (in relevant part) grants discretionary authority, to waive terrorism grounds as bars to asylum, to the Secretary of State in consultation with the Secretary of Homeland Security and Attorney General, and to the Secretary of Homeland Security in consultation with the Secretary of State and the Attorney General (at § 212(d)(3)(B)(i) of the INA). The Act also (1) provides that certain groups will no longer be considered terrorist organizations for purposes of immigrants seeking asylum based on any act or event occurring before the Consolidations Appropriations Act was enacted; and (2) designates the Taliban as a “Tier I” terrorist organization for purposes of immigrants seeking asylum, meaning that it is posted as a terrorist organization by the State Department.

There have been several congressional hearings on the material support bar for immigrants. On September 19, 2007, the Senate Judiciary Committee, Subcommittee on Human Rights and the Law, held a hearing and the following individuals testified: Anwen Hughes, Senior Counsel in the Refugee Protection Program at Human Rights First; Paul Rosenzweig, Deputy Assistant Secretary for Policy for the Department of Homeland Security; Bishop Thomas G. Wenski, Chairman of the International Policy Committee of the United States Conference of Catholic Bishops; and a refugee from Colombia.

The same subcommittee of the Senate Judiciary Committee held another hearing on material support issues on April 24, 2007. Anwen Hughes testified, as did Ishmael Beah, a former child soldier; Kenneth Roth, executive director of Human Rights Watch; and Joseph Mettimano, Director of public policy and advocacy at World Vision.

B. Executive Branch

Before the Consolidated Appropriations Act was enacted, USCIS issued guidance on the exercise of waiver authority at www.uscis.gov/files/pressrelease/MaterialSupport_24May07.pdf.