

Why I'm Suing Barack Obama

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Attorneys Carl J. Mayer and Bruce I. Afran filed a complaint Friday in the Southern U.S. District Court in New York City on my behalf as a plaintiff against Barack Obama and Secretary of Defense Leon Panetta to challenge the legality of the Authorization for Use of Military Force as embedded in the latest version of the National Defense Authorization Act, signed by the president Dec. 31.

The act authorizes the military in Title X, Subtitle D, entitled "Counter-Terrorism," for the first time in more than 200 years, to carry out domestic policing. With this bill, which will take effect March 3, the military can indefinitely detain without trial any U.S. citizen deemed to be a terrorist or an accessory to terrorism. And suspects can be shipped by the military to our offshore penal colony in Guantanamo Bay and kept there until "the end of hostilities." It is a catastrophic blow to civil liberties.

I spent many years in countries where the military had the power to arrest and detain citizens without charge. I have been in some of these jails. I have friends and colleagues who have "disappeared" into military gulags. I know the consequences of granting sweeping and unrestricted policing power to the armed forces of any nation. And while my battle may be quixotic, it is one that has to be fought if we are to have any hope of pulling this country back from corporate fascism.

Section 1031 of the bill defines a "covered person"—one subject to detention—as "a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces."

The bill, however, does not define the terms "substantially supported," "directly supported" or "associated forces."

I met regularly with leaders of Hamas and Islamic Jihad in Gaza. I used to visit Palestine Liberation Organization leaders, including Yasser Arafat and Abu Jihad, in Tunis when they were branded international terrorists. I have spent time with the Revolutionary Guard in Iran and was in northern Iraq and southeastern Turkey with fighters from the Kurdistan Workers' Party. All these entities were or are labeled as terrorist organizations by the U.S. government. What would this bill have meant if it had been in place when I and other Americans traveled in the 1980s with armed units of the Sandinistas in Nicaragua or the Farabundo Marti National Liberation Front guerrillas in El Salvador? What would it have meant for those of us who were with the southern insurgents during the civil war in Yemen or the rebels in the southern Sudan? I have had dinner more times than I can count with people whom this country brands as terrorists. But that does not make me one.

Once a group is deemed to be a terrorist organization, whether it is a Palestinian charity or an element of the Uighur independence movement, the military can under this bill pick up a U.S. citizen who supported charities associated with the group or unwittingly sent money or medical supplies to front groups. We have already seen the persecution and closure of Islamic charity organizations in the United States that supported the Palestinians. Now the members of these organizations can be treated like card-carrying “terrorists” and sent to Guantanamo.

But I suspect the real purpose of this bill is to thwart internal, domestic movements that threaten the corporate state. The definition of a terrorist is already so amorphous under the Patriot Act that there are probably a few million Americans who qualify to be investigated if not locked up. Consider the arcane criteria that can make you a suspect in our new military-corporate state. The Department of Justice considers you worth investigating if you are missing a few fingers, if you have weatherproof ammunition, if you own guns or if you have hoarded more than seven days of food in your house. Adding a few of the obstructionist tactics of the Occupy movement to this list would be a seamless process. On the whim of the military, a suspected “terrorist” who also happens to be a U.S. citizen can suffer extraordinary rendition—being kidnapped and then left to rot in one of our black sites “until the end of hostilities.” Since this is an endless war that will be a very long stay.

This demented “war on terror” is as undefined and vague as such a conflict is in any totalitarian state. Dissent is increasingly equated in this country with treason. Enemies supposedly lurk in every organization that does not chant the patriotic mantras provided to it by the state. And this bill feeds a mounting state paranoia. It expands our permanent war to every spot on the globe. It erases fundamental constitutional liberties. It means we can no longer use the word “democracy” to describe our political system.

The supine and gutless Democratic Party, which would have feigned outrage if George W. Bush had put this into law, appears willing, once again, to grant Obama a pass. But I won’t. What he has done is unforgivable, unconstitutional and exceedingly dangerous. The threat and reach of al-Qaida—which I spent a year covering for The New York Times in Europe and the Middle East—are marginal, despite the attacks of 9/11. The terrorist group poses no existential threat to the nation. It has been so disrupted and broken that it can barely function. Osama bin Laden was gunned down by commandos and his body dumped into the sea. Even the Pentagon says the organization is crippled. So why, a decade after the start of the so-called war on terror, do these draconian measures need to be implemented? Why do U.S. citizens now need to be specifically singled out for military detention and denial of due process when under the 2001 Authorization for Use of Military Force the president can apparently find the legal cover to serve as judge, jury and executioner to assassinate U.S. citizens, as he did in the killing of the cleric Anwar al-Awlaki in Yemen? Why is this bill necessary when the government routinely ignores our Fifth Amendment rights—“No person shall be deprived of life without due process of law”—as well as our First Amendment right of free speech? How much more power do they need to fight “terrorism”?

Fear is the psychological weapon of choice for totalitarian systems of power. Make the people afraid. Get them to surrender their rights in the name of national security. And then finish off the few who aren’t afraid enough. If this law is not revoked we will be no different from any sordid military dictatorship. Its implementation will be a huge leap forward for the corporate oligarchs who plan to continue to plunder the nation and use state and military security to cow the population into submission.

The oddest part of this legislation is that the FBI, the CIA, the director of national intelligence, the Pentagon and the attorney general didn't support it. FBI Director Robert Mueller said he feared the bill would actually impede the bureau's ability to investigate terrorism because it would be harder to win cooperation from suspects held by the military. "The possibility looms that we will lose opportunities to obtain cooperation from the persons in the past that we've been fairly successful in gaining," he told Congress.

But it passed anyway. And I suspect it passed because the corporations, seeing the unrest in the streets, knowing that things are about to get much worse, worrying that the Occupy movement will expand, do not trust the police to protect them. They want to be able to call in the Army. And now they can.

Chris Hedges writes a regular column for Truthdig.com

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