

When the Government uses classified evidence to remove a terrorist, the terrorist often delays the deportation with lengthy court appeals. Usually the terrorist must be detained during his appeal, since Justice Department studies show that more than 90 percent of criminal or terrorist aliens are likely to abscond. This amendment would eliminate the funding used to detain terrorists if classified evidence is used against them. This would force the Justice Department to choose between either letting terrorists go free within the United States or revealing classified evidence that could expose U.S. agents abroad and compromise U.S. intelligence operations.

In sum, this amendment would make the Government release terrorists regardless of the consequences. It would effectively require the Government to release terrorists and suspected terrorists who are now in custody and who would then be free to commit other terrorist actions. The use of classified evidence against terrorists is a rare but vital law enforcement tool that must be managed carefully by U.S. intelligence and law enforcement agencies.

The Justice Department is now conducting a review of all pending cases to ensure that individuals are not held without justification. Meanwhile, it would be dangerous to abolish all use of classified evidence against terrorists.

This amendment is opposed by the Justice Department, the Anti-Defamation League, and other law enforcement and intelligence agencies and anti-terrorist organizations. I urge my colleagues to oppose this amendment, too.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we struggled with this question in the Committee on the Judiciary 4 years ago when this was adopted. I yield to no person in my abhorrence and opposition to terrorism. The World Trade Center explosion occurred in my district about 6 weeks into my first term of office. But I also yield to no one in my regard for due process of law and for the basic protections that we have held to protect the liberties of people ever since Magna Carta. And the use of secret evidence is fundamentally abhorrent to every concept of due process and the rule of law of every Anglo-Saxon legislative chamber and concept of law we have had for the last 900 years or so.

We have to balance some considerations. There are terrorists in this world, and they pose a threat. There are also spies who steal atomic secrets, and they pose a threat. This Congress passed a number of years ago the Classified Information Protection Act, CIPA, which deals with crimes, not with immigration; which deals with espionage, and gives people accused of serious crimes of espionage far more rights when secret evidence is sought to be used than does this law with respect to immigrants of whom we suspect they may be involved with ter-

rorism. There is no reason why we should not give those immigrants the same due process rights, if they are accused of terrorism, as we give to people accused of stealing atomic or other secrets or of espionage or of other serious crimes.

I am not comforted to hear a colleague talk about how the State Department assures us, or the Immigration and Naturalization Service assures us that they use this terrible power of prosecuting people with secret evidence sparingly and with discretion and with sensitivity. If history teaches us anything, it is that we trust no man with such power because that way lies tyranny. We can strike a much better balance.

This law, which this amendment seeks to render inoperative, says that if in the judgment of somebody, if they can go to the judge and persuade him that evidence is too sensitive to be made public, then that evidence can be used against the accused if they give him a summary of the evidence sufficient to provide a defense. Not as good a defense as if he knew the evidence, but a defense. Any old defense. And if they judge even that too dangerous, they can still use the evidence. So a man can be placed on trial, or a woman, and ask: What am I accused of? We can't tell you. Who are the witnesses? We can't tell you. What are the allegations? We can't tell you. What is the evidence? We can't tell you. Go defend yourself. Ridiculous. Impossible.

The Classified Information Protection Act says, and this is what we rely on in espionage and other serious criminal cases, if evidence is too sensitive to reveal, the evidence can be used if a summary is provided to the accused sufficient, in the opinion of the judge, to enable the accused to mount a defense as effective and as good as if he had seen the evidence itself. Not any old defense. And if he cannot be given such a summary sufficient to enable him to mount as good a defense, because it is thought to be too sensitive, then the information cannot be used.

We think the safety of this country has been adequately served against atomic spies and against people who seek to do all sorts of other crimes against this country with this use of secret information, this limited use of secret information and this balancing of the rights of the accused. Why should people accused of terrorism who are immigrants be any different? This CIPA law strikes a much better balance. It gives adequate protection to the need for the public for safety, but it does not rip asunder every tradition we have had that makes us different from totalitarian countries.

So I applaud the gentlemen for offering this amendment. I hope it is adopted. And I hope whether it is adopted or not, it will spur us to do the one simple act that will properly safeguard our liberties and our safety, and that is to extend the CIPA law from criminal law, which it covers, to the question of immigration, which it should equally cover; and we will then not need that

Draconian and this insensitive and this illiberal and this anti-libertarian law.

Mr. PAUL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. Mr. Chairman, I rise in support of the amendment, and I want to thank the gentleman from California (Mr. CAMPBELL) for bringing this amendment to the floor, along with his colleague, the gentleman from Michigan (Mr. BONIOR). This is a crucial amendment. It is vital that we pass it.

This is truly a civil libertarian issue. It does go back to 1215 with the Magna Carta. It is not an American invention, that people should be protected and not convicted on secret information. This is not something new. However, it has been abused for hundreds of years at least. It has been abused by totalitarian governments.

Now, many may say today that this is not a big deal; this is not going to affect the American citizens; it is just a couple of poor old immigrants that may be affected. But what is the motivation for the national ID card? It's good motivation to make sure there are no illegal immigrants coming in. So it's said we need a national ID card. But who suffers from a national ID card? Maybe some immigrants, and maybe there will be an illegal one caught? But who really suffers? The American people. Because they will become suspect, especially maybe if they look Hispanic or whatever.

Well, who suffers here? Well, first the immigrant who is being abused of his liberties. But then what? Could this abuse ever be transferred to American citizens? That is the real threat. Now, my colleagues may say, oh, no, that would never happen. Never happen. But that is not the way government works. Government works with incrementalism. It gets us conditioned, gets us to be soft on the protection of liberty.

Our goal should not be to protect the privacy of government. Certainly we need security, and that is important; but privacy of government and the efficiency of government comes second to the protection of individual liberty. That is what we should be here for. I wish we would do a lot less of a lot of other things we do around here and spend a lot more of our efforts to protect liberty. And we can start by protecting the liberty of the weak and the difficult ones to defend, the small, the little people who have nobody to represent them, the ones who can be pushed around. That is what is happening, all with good intentions.

The national ID card is done with good intention. Those who oppose us on this amendment, I think they are very, very sincere, and they have justifiable concerns and we should address these. But quite frankly, killing and murder for a long time, up until just recently, was always a State matter. This is rather a new phenomenon that we as a

Federal Government have taken over so much law enforcement. That is why the Federal Government, when it sets this precedent, is very bad.

So I plead with my colleagues. I think this is a fine amendment. I think this not only goes along with the Constitution, but it really confirms what was established in 1215 with the Magna Carta. We should strongly support the principle that secret evidence not be permitted to convict anyone in an American court.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. PAUL. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, the gentleman asked a very good question, whether this could ever extend to citizens. Let me suggest to the gentleman that I visited Mazan Al Najjar in jail in Florida. His little daughter is an American citizen. He cannot hug her. His wife is an American citizen. He cannot visit with her. His sister is an American citizen. He has to see her through Plexiglas.

Has it already affected American citizens? It has. And if it was not true, any of those things I just said, this practice still affects American citizens, because each of us is less free when our country is less free.

I thank the gentleman for yielding.

Mr. HINCHEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to express my appreciation to the gentleman from Michigan (Mr. BONIOR) and the gentleman from California (Mr. CAMPBELL) for bringing this issue before the House in this way. It is about time that this body faced this issue squarely. We have been ignoring it now for too many years.

It was only several years ago that a bill came before us which changed the way we deal with immigrants in very stark and dramatic ways. I am one of those who voted against that bill at that time because I was fearful that the kind of circumstance that this amendment addresses would arise, and it would arise all too soon. And most certainly it has.

The gentleman from California (Mr. CAMPBELL), I think in his opening remarks, put it very, very well. The fundamental right of any person to face their accuser and to know the basis upon which that accusation is made is, and ought to be, ingrained in our law, in our being, in our essence, in our society, in every way; and we ought to fight and struggle to the utmost of our ability when anyone tries to take it away from us.

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This is the way liberty is lost, by degrees, by inches, incrementally, not by huge gaps but by tiny measures, by tiny measures that grow into larger ones and larger ones and larger ones. First, it is this small group of people who are affected; and we ignore them

because they are not us, they are not of us. And then it is another group, and then another, and another. And before we know it, it is those who are around us, those who are of our blood, those who are us ourselves.

That is the problem that we are facing here. And today we are offered a remedy. It is a good and proper remedy. I hope that we will have the wisdom to take it.

I thank these gentlemen for giving us this opportunity. It is, in fact, about time that this House face this issue.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. HINCHEY. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I would simply like to say that I agree with every word that the gentleman from New York (Mr. HINCHEY) has said. I also agree with the words of the gentleman from New York (Mr. NADLER). I want to congratulate both sponsors of this amendment.

This may seem like a very small thing. But liberty is the biggest thing of all; and if it is not fully provided for every individual, then it is really safe for no one.

I really believe that if this is adopted today, this will be the most important thing in what is otherwise a very questionable bill.

Mr. HINCHEY. Mr. Chairman, I thank the gentleman very much for those remarks, and I yield back the balance of my time.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is probably not two times in a year that I agree with the gentleman from Michigan (Mr. BONIOR) but I do on this bill, and with the gentleman from California (Mr. CAMPBELL).

I was in Hanoi and we had Americans incarcerated in their jails, and not even Pete Peterson or one of his representatives were allowed to be present during the trial. We think that is terrible.

In China, they can go before a tribunal, an American, and not even have an English interpreter to let them know what they are charged for.

My colleagues can imagine what it was like with Saddam Hussein or those kinds of things. And most of the American people repel those kinds of ideas.

This is the United States of America.

Now, I would tell people, if they are illegals coming into this country, if they are Irish coming into this country, I just want to give them a ticket back home. But I want to tell my colleagues we have those illegals dying in our deserts, in our mountains, and in our rivers. That is wrong, and we ought to stop that. But I would give them a ticket out of here.

Whether they are legal or illegal, they have a right if they are brought and tried in this country or held in jail, it ought to be an inalienable right to at least know what they are charged for.

I mean, I cannot even comprehend the United States of America putting somebody in jail and not letting them know what the evidence against them is. It is inconceivable.

I rise in strong support of this amendment.

Ms. RIVERS. Mr. Chairman, I move to strike the requisite number of words.

(Ms. RIVERS asked and was given permission to revise and extend her remarks.)

Ms. RIVERS. Mr. Chairman, in the 104th Congress, when we passed the effective death penalty and anti-terrorism law, which covered some of this material, I remember that several Members raised concerns about this particular provision. I also remember that, right over here, a more senior Member tried to quell any fears people had by saying, do not worry, this will never apply to American citizens. This will never apply to American citizens. That is probably true.

It is also true, Mr. Chairman, that the American people would never tolerate the treatment that non-citizens have endured under this doctrine. We expect in this country that our rights and protections come not from the citizenship of the defendant but from the changeless values of the Constitution and the Bill of Rights.

I think many Members are unaware of how this doctrine actually operates. I would ask that my colleague the gentleman from California (Mr. CAMPBELL) engage in a colloquy with me so that we may explain exactly what happens to people who are arrested under this doctrine.

Can the gentleman tell me specifically, when someone is arrested under this particular provision, what is he told when he is brought into the police department?

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Ms. RIVERS. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, the person is told that the Immigration and Naturalization Service is detaining the person pending possible deportation.

Ms. RIVERS. Mr. Chairman, reclaiming my time, is he told what he is charged with or what he has done wrong?

Mr. CAMPBELL. Mr. Chairman, if the gentlewoman will continue to yield. The individual is not told what he has done wrong or what he is charged with. He is simply told that he is subject to a deportation proceeding.

Ms. RIVERS. Once he is incarcerated, is held awaiting further proceedings, if his family comes to the place that he is being held, can they find out what charges are being put against him, what evidence might exist, what is happening to him, when they might see him?

Mr. CAMPBELL. Neither the family nor the individual is told the specific reasons for the person being held pending deportation. They do not have access to the evidence which is alleged to