Terror 2016
Aziz Huq
September 29, 2006

Aziz Huq directs the Liberty and National Security Project at the Brennan Center for Justice. He is co-author of Unchecked and Unbalanced: Presidential Power in Times of Terror (New Press, 2007), and recipient of a 2006 Carnegie Scholars Fellowship. This article, originally posted here Thursday, is updated to reflect Thursday's Senate vote on the Military Commissions Act.

This week, Republicans — aided by Democratic fecklessness — bargained away both liberty and decency in the name of partisan security.

On Wednesday, the House of Representatives enacted the Military Commissions Act, a law that strikes harder at American liberties and at the fundamentals of American government than any since the authorization of the Japanese internment. Thursday, the Senate passed the same bill, and President Bush is expected to waste no time and sign it today.

Because the Act gives the president almost ultimate authority to detain, degrade (physically and psychologically), and detain forever both citizens and non-citizens, perhaps Bush will not issue a signing statement. He has used signing statements in the past to signal noncompliance with a duly enacted limit on his power. But the Military Commissions Act of 2006 places no limits on his power. It is a blank check cashed in the liberties of the country’s citizens and in the wasted lives of the unfortunate innocent people swept up in America’s global detention system.

Here’s what happens next:

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Ten years after the Military Commissions Act of 2006, they came for Bobby Jaffar and his family. Officers from a Joint Terrorism Task Force, clad in Kevlar and wielding assault rifles, didn’t knock: They cracked the door down. Ten-year old Bobby and his 17-year old sister were seized. His father—Brooklyn-born with roots in Djibouti—and his mother—a Yemeni Green Card-holder—were taken away separately. It was the last time Bobby was to see them for many years.

Bobby’s father, he later learned had been declared an “unlawful enemy combatant” under the Military Commission Act of 2006. Under a last-minute amendment to the
MCA, the President had power to designate any person—citizen or non-citizen—as someone who “purposefully and materially supported hostilities.”

But, asked Bobby, why them?

Bobby’s parents ran a bodega in Brooklyn. They sometimes handled money transfers for members of the Middle Eastern community there. Speaking to a lawyer many years later, Bobby learned that Lebanese immigrants had used the bodega to send money back to West Beqaa, an area within the Hezbollah protectorate. Because Bobby’s father knew what part of the world the money was going to, the feds concluded he had “purposefully and materially supported hostilities.” And that was enough: He could be detained indefinitely.

Before Congress passed the sweeping legislation in 2006, a lawyer ruefully told Bobby later, “material support” had been a criminal statute. People were prosecuted. They had juries. The chance to view and challenge the evidence against them. The chance to learn whether the government had exculpatory evidence about them. But that was in the day. Now, Bobby’s father had a cursory hearing at which he barely had the chance to make his story known.

Back in the day, the lawyer laughed, civil libertarians had expressed concerns about the breadth of the criminal material support prohibition and like statutes. Indeed, mere months before the MCA passed, there had been expressions of outrage about the indictment of a Staten Island man for allegedly broadcasting an Arab TV channel owned by Hezbollah, Al Manar. Surely that was speech, squarely protected by the First Amendment?

Ten years later, the federal government wasn’t even bothering with criminal charges: Federal and state agents swept in during the middle of the night, seized a person, and transported him to military brigs in Wallabout Bay, off Brooklyn. Ten years earlier there had been only two people designated as “enemy combatants” within the United States and they too had been held in military brigs in South Carolina. (Ironically, Bobby learned, Wallabout Bay was also where squalid British prison ships had anchored during the Revolutionary War, and where more than 10,000 Americans died in wretched, fetid cells).

Bobby never did learn what happened to his mother. She was probably taken to the swollen internment camp at Guantánamo Bay along with tens and then hundreds of other non-U.S. citizens. At first, Guantánamo held non-citizens seized abroad. There had never been much fuss about the fact that the camp held many people who were not picked from an actual battlefield, but were swept in from the streets of Pakistan or further afield. Despite an increasing accumulation of evidence that many of these people were wrongly detained, the MCA had stipulated by fiat that they all were “unlawful enemy combatants.” Locking up innocent people, it seemed, won votes in 2006—at least if those people had a different color skin and came from far away.
Until 2007, Guantánamo contained no one arrested in the United States. But the MCA signed off on an executive power to seize people within the States and detain them indefinitely. Before 2006, the executive branch had only tried this in two cases, most famously against Jose Padilla —although it had considered using it against citizens in at least two other criminal investigations in Detroit and Lackawanna, New York. Now, there was statutory authorization for these detentions in the MCA.

Domestic detentions did not start immediately. The first arrest of a non-citizen in the United States came a year after the Military Commission Act’s passage. It hardly received mention in the press. Indeed, Bilal Milos—an undocumented immigrant from Bosnia—never had a chance to press his case in any court—let alone the court of public opinion. He was seized in the dead of night and carried off to Guantánamo. Thanks to the MCA’s suspension of habeas corpus, he had no meaningful way to challenge the allegations against him. He slowly rotted away with the other detainees. Once that precedent was established, the government hurried more non-citizens down the same path. Fear settled like a choking fog around Arab and Muslim communities throughout the country.

To the best of Bobby’s knowledge, his mother was never designated an “unlawful enemy combatant” when she was seized and taken to Guantánamo. Still, she could not challenge her detention in the courts. The MCA did not just take jurisdiction away from the claims of all “enemy combatants”: It also applied to anyone “awaiting such determination.” So far as Bobby knew, his mother had waited and waited for her hearing, her hope and her sanity seeping slowly away in the withering Cuban heat.

What was done to Bobby’s mother to make her talk—well, Bobby tried not to think of that. He heard rumors. Days of confinement in a freezing pitch black cell. He heard about “long-time standing.” Innocuous-sounding enough, this technique had been pioneered by the KGB. After 18 to 24 hours of continuous standing, fluid accumulates in the legs. Ankles and feet swell. The skin becomes tense and intensely painful. Large blisters develop. Eventually, urine production ceases. Then, renal shutdown.

At least, Bobby thought, she was likely still in Guantánamo. Without judicial supervision, detainees were routinely handed over to Egyptian or Syrian hands, where they were subjected to even worse tortures. (Congress and the public ignored the warning bell sounded by the case of Maher Arar, a Canadian citizen mistakenly rendered to Syria for torture, simply because he happened to have lunch with the wrong person years before).

Bobby was baffled to learn later that most legislators didn’t even know what they were voting for when they cast “ayes” for the MCA. President George W. Bush, he learned, had barred all but a handful of legislators from even learning what interrogation measures they were decriminalizing. In the 2006 midterm elections, Republicans ran on a platform of fear and loathing. Democrats, frantic not to look
weak on security, gambled away a historical heritage of anti-torture rules and accountable government, with virtually no outcry. But how, Bobby asked, can such vast and terrible powers be vested in one man—without any checks or restraints to make sure they were used wisely? Was this really how democracy was supposed to work? Did no one try to fix it?

The more he learned, the more he understood how a democracy could indeed enact laws that fly in the face of the fundamental values of fairness and decency that any law-abiding society requires. Ignorance and fear flow powerfully. It proved easy for Congress to blind itself to the facts. When a group of legislators visiting Belgium in 2009 were indicted and arrested for war crimes for their sanctioning of treatment illegal under international law, they found it harder to ignore the facts. But that was little comfort for Bobby, his mother or his father.

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The final version of the MCA is as bad as this short tale suggests. Enacted out of selfish and stupid partisan motives, fuelled by fear and blind ignorance on both sides of the aisle, it is a shameful law. It will harm many innocent people and it will make the nation not a jot safer.

And any candidate for federal office who does not endorse its repeal—like every person who voted for its passage—is a candidate not fit to govern.