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From the President's Desk

Americans are paying close attention to the H1N1 flu scare - raising questions about the availability of the vaccine, whether it is safe, and even whether local internet traffic will be overwhelmed if too many people get sick and need to work from home.

But because there are other, often overlooked, implications of the H1N1 flu that also merit close attention. This led the Constitution Project to join with the University of Maryland Center for Health and Homeland Security to co-host a panel discussion yesterday. "Swine Flu: A Danger to Your Rights as Well as Your Health?" addressed the legal and constitutional implications of federal and state governments' responses to the H1N1 flu scare, including mandatory vaccinations, quarantines, and last week's declaration by President Barack Obama that the H1N1 outbreak is a "national emergency."

The event, described in more detail below, is part of our ongoing effort to ensure that issues of constitutional importance, including those that might otherwise be overlooked, receive appropriate scrutiny and attention.

Upcoming Events

The Constitution Project is pleased to announce that it is holding a joint event with Human Rights Watch to release new reports from both organizations on legal and constitutional concerns raised by the immigration detention system in the U.S. - including the lack of access to counsel for immigration detainees. The program will take place at noon on December 2 at the National Press Club. More details will follow in coming weeks, but mark your calendars now for this timely event.

News

Constitution Project Joins Coalition in Support of the USA PATRIOT Amendments Act of 2009

Earlier today, the Constitution Project joined a coalition of 20 advocacy organizations in supporting the USA PATRIOT Amendments Act of 2009. The coalition sent a joint letter to House Judiciary Committee Chairman John Conyers (D-MI) and Subcommittee Chairmen Jerrold Nadler (D-NY) and Bobby Scott (D-VA), commending them for introducing this legislation last week.

The [USA PATRIOT Amendments Act of 2009](#) addresses the three provisions of the Patriot Act scheduled to sunset this year, as well as a few other surveillance tools including, most importantly, the provision on national security letters (NSLs). Last week, the Project [welcomed the introduction of the House bill](#) and praised the legislation's cosponsors. As stated in the coalition letter, the bill "seeks to limit overly broad provisions of law that have unacceptably diminished Americans' privacy over the last eight years."

Two weeks ago, the Senate Judiciary Committee adopted its version of Patriot Act reform legislation ahead of the end-of-the-year sunsets. By a vote of 11 to 8, the USA PATRIOT Act Sunset Extension Act was sent to the Senate floor. The Senate legislation fails to include many of the needed reforms embodied in the House version, but does provide some improved privacy protections.

Constitution Project Welcomes Law Allowing Transfer of Detainees into U.S. for Prosecution

Yesterday, President Barack Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 (NDAA), a major funding bill that attracted a number of national security-related amendments. Contained within the NDAA is a provision allowing for the transfer of suspected terrorists held at the Guantanamo Bay detention facility into the United States to face prosecution. The Constitution Project [welcomed the provision permitting transfers](#), which will facilitate the prosecution of terrorist suspects in federal courts. Unfortunately, at the same time, the Act prohibits the release of any of the detainees into the United States, usurping a decision best left to courts and prosecutors. Finally, the law requires advance notice to Congress before any of the detainees are transferred to

another country.

Also contained within the NDAA is a section titled the Military Commissions Act of 2009, which revises some of the procedures first established by the Military Commissions Act of 2006. While the latest version of the MCA made some improvements to its predecessor, the newly-enacted law still fails to provide defendants with the protections that would be required by our country's traditional justice system. Constitution Project President [Virginia Sloan was quoted as saying](#), "This lesser degree of process is not justice."

Constitution Project and University of Maryland Center for Health and Homeland Security Co-Host "Swine Flu: A Danger to Your Rights as Well as Your Health?"

Yesterday at the National Press Club, the Constitution Project and the University of Maryland Center for Health and Homeland Security co-hosted a [panel discussion](#) on the legal and constitutional implications of government's response to a potential H1N1 pandemic, including mandatory vaccinations and quarantines. Senior Counsel **Sharon Bradford Franklin** moderated the [discussion](#) among Professor Michael Greenberger, head of the University of Maryland Center for Health and Homeland Security, Professor Wendy Mariner, of the Boston University School of Public Health, and Dr. Marita Mike, also with the University of Maryland. Dr. Mike provided an overview of the medical situation from the perspective of an epidemiologist, Professor Greenberger explained the extraordinary scope of the powers the government has to deal with a pandemic, and Professor Mariner outlined the civil liberties issues raised by the potential government responses.

Yesterday's event drew a diverse and engaged audience to the National Press Club's Murrow Room, including attendees from various print and radio news outlets, the Department of Homeland Security, the Equal Employment Opportunity Commission, congressional staff, as well as numerous other advocacy and health organizations. To see photos from this afternoon's event, please click [here](#). A video of the discussion will be posted on the Constitution Project website soon as it becomes available.

Constitution Project Welcomes Supreme Court's Decision to Hear Uighur Detention Case

Last Tuesday, the [U.S. Supreme Court announced](#) that it will hear the case involving the Chinese Muslims, known as Uighurs, being unlawfully detained at Guantanamo. The U.S. military and the courts have long recognized that the Uighur detainees do not pose a threat to the United States, therefore leaving no legal basis for their continued detention. Federal District Court Judge Ricardo Urbina ordered their release into the United States last October, but the U.S. Court of Appeals for the District of Columbia Circuit reversed, deciding that courts lacked the authority to order such a release. The Uighurs then sought review of their case, *Kiyemba v. Obama*, by the Supreme Court.

The Constitution Project issued a news release in support of the Court's

[announcement](#). Sharon Bradford Franklin was quoted in [multiple outlets](#) saying, "Courts must have the power to compel release in order for successful challenges to unlawful detention to have any meaning." The Project, along with the Brennan Center for Justice, the Rutherford Institute, the National Association of Criminal Defense Lawyers, and the City of New York Bar Association, filed a [friend of the court brief in the Supreme Court](#) on May 7, urging the Court to accept review of the Uighurs' case seeking release from Guantanamo now that they have been recognized not to be enemy combatants.

News in Brief

- Last Friday, in an [OpEd in the Washington Post](#), Alan Charles Raul, vice chairman of the Privacy and Civil Liberties Oversight Board from 2006 to 2008, criticized the Obama administration and Congress for neglecting to nominate and confirm individuals to serve on the PCLOB. Charged with reviewing the privacy and civil liberties implications of the government's national security policies, the PCLOB's "work remains vital regardless of what administration is in power," said Raul. Just two weeks ago, Virginia Sloan raised similar points in a [blog posted on The Huffington Post](#), stating that "[t]he president should nominate and the Senate should confirm members of the Privacy and Civil Liberties Oversight Board, and allow the Board to begin the vital work it was assigned five years ago: to protect our privacy rights and civil liberties as our government pursues policies and programs designed to defend our national security."
- Last Thursday, in an effort coordinated by the [National Campaign to Close Guantanamo](#), a [high-profile group of musicians](#), including Pearl Jam and R.E.M., filed a Freedom of Information Act (FOIA) request to obtain records concerning the approval of and use by the previous administration of incredibly loud music for long periods of time as a "harsh interrogation tactic" for detainees suspected of terrorist acts. The [National Security Archive](#) filed the FOIA request on behalf of the musicians. Two days earlier, the Campaign launched [television ads](#) on cable news networks calling on Congress to support President Obama in his plans to close Guantanamo.
- Last Monday, a federal judge in Ohio [ordered an indefinite stay of execution](#) for Kenneth Biros, who was scheduled to die by lethal injection on December 8. The stay was the fourth issued, by either the Court or the governor, since the state's botched attempt to execute Romell Broom in September. In Mr. Broom's case, officials tried for more than two hours to find a suitable vein to administer a lethal injection, but were unable to locate one. A hearing is now scheduled for November 30 to determine whether it is constitutional for the state to try again to execute Mr. Broom. Yesterday, in an [opinion piece posted on Jurist](#), Virginia Sloan discussed the latest

stay of execution: "It is now clear that a thorough review must take place before the state decides whether to resume executions. Lethal injections are the most widespread method of execution in the US and, at a minimum, new safeguards are absolutely necessary to ensure that any executions are constitutionally sound."

- Two weeks ago, the [Department of Homeland Security announced](#) that it is continuing, and [possibly expanding](#) its immigration enforcement efforts under Section 287(g) of the Immigration and Nationality Act of 1996, which deputizes local law enforcement officials to carry out and enforce federal immigration laws. The federal government has imposed stricter oversight regulations for the program, which resulted in six of the 66 participating agencies choosing to rescind their participation rather than comply. But those losses were offset by 13 additional law enforcement departments applying for participation in the federal initiative.