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STANDING TOGETHER: A Call for Unity in the Post-September 11 Battle for Civil Liberties¹

Pramila Jayapal

A. DIFFICULT TIMES

We stand today at a difficult time in history. Around us, there is war, fear, injustice, and hopelessness. There is a mistrust of the politicians we elected to lead and serve us and of those we have not elected but somehow ended up in a big white house in Washington, D.C. We are living in a world of two stories: one story describes the world where America, as one of the richest countries in the world, manages to find money for certain priorities such as defense. America has spent \$48 billion on the war in Iraq so far, and the costs are mounting at the rate of \$4 billion per month.² In this story, a triumphant and relentless America pursues its perceived enemies around the world and into every hiding place, even here at home, sparing no expense.

The second story is of an America with no money for social services, health care for all, or tax credits for the poorest people. In the second story, money that could be spent improving life for immigrant and low-income communities is instead spent on defense, costly national security measures that have not yielded results, subsidies for corporations, and tax cuts for the wealthy.³ These new measures curtail civil liberties and invade the lives of peaceful and loyal Americans of color across the country. This story of America is the one less often reported in the media, but it is also the one that is more familiar to many of us in our daily lives.

The reality is that both stories are true. If we wanted to take care of our people, we could find the money in the same way we have found money to support a war to protect us from fictional weapons of mass destruction.⁴ The reality is that Congress has now authorized the Bush administration's

request for \$87 billion to support its ongoing military efforts in Iraq, even as we see that we have yet to fulfill our promises to Afghanistan.⁵ The reality is that across America, people are losing their jobs, their homes, and their children.⁶

Following September 11, 2001, the Bush administration escalated its focus on terrorism, law enforcement, and global domination. The attacks of September 11 deserved the full attention of the country and warranted an appropriate response by the American government. However, allowing the United States government to use the attacks and the international “war on terrorism” to infringe on the constitutional rights of immigrant Americans will only result in abhorrent miscarriages of justice for targeted immigrants and, ultimately, for all Americans. Such results began to appear within days after the World Trade Center came down, while others are still coming to light or are just now being realized in our various communities.

But difficult times are not new for some Americans. Some of you have been struggling for years, decades, or whole lifetimes. Many of you may have experienced things no one should ever have to live through, but you still continue in the struggle because you see a different possibility. You see the possibility of the American promise, the possibility that we can live in a world that honors all people and their rights. Around the world, America promotes the promise of a country that honors fundamental constitutional concepts that have been central to this country for over two hundred years—the great ideals of justice, liberty, and equality for all.

As America has grown into the most powerful nation in the world, we have struggled to preserve, protect, and bring into action the incredible ideals of our great Constitution. We have upheld many principles through difficult times, but we have not won. We may want to believe that justice always wins, but it does not. We must acknowledge the violation of the rights of many people in this country through our history—from the Native American communities, who were stripped of culture, language, and land,

and to whom promises were made that have not been upheld, to the African Americans, who were brought here as slaves to build this country.

We have condoned institutionalized racism through the implementation of our war on drugs and our war on crime. Today, America incarcerates more people than any other country in the world, most of whom are young black males.⁷ Three-quarters of new inmates were incarcerated for nonviolent offenses, such as drug charges.⁸ And while African Americans only constitute 13 to 15 percent of all drug users, they are 36 percent of those arrested for drugs, and 63 percent of all drug offenders incarcerated in state prisons.⁹

Here in the Pacific Northwest, we are intimately familiar with the internment of more than 120,000 Americans of Japanese ancestry whose rights were violated in the name of national security and war.¹⁰ Then, as now, many people were afraid of appearing unpatriotic or were concerned with their personal safety rather than collective constitutional rights. Very few people stood up for Japanese Americans at that time. Perhaps that is why it was so important for the Japanese American community to stand up strongly for the rights of those targeted following September 11, 2001.

B. THE COSTS OF WAR

We have been told many times since September 11 that we are in a time of crisis. The attack on America was indeed real and devastating. But since September 11, “Attack on America” has also been used to pull every heartstring and touch every fear. In reassuring the nation, President Bush told us to hug our husbands, wives and children—forgetting that for many people of color, we are more afraid of losing our children to drugs or losing our partners to desperation of the kind that caused over a dozen people to put themselves in an airless truck to cross the border at Victoria, Texas, trying to escape poverty and war in their own country.¹¹

We may not realize it, but the international war on terrorism is intricately connected to the domestic war on terrorism. In both, the Bush admin-

istration is attempting to put itself above the law. In both, the Bush administration is trying to consolidate its power at the expense of the power of the people. Since September 11, President Bush and the Department of Justice have pushed through a series of actions that undermine basic human rights central to the U.S. Constitution. These actions were presented as separate, discrete actions, each one essential in the battle of “us” versus “them” and critical to ensuring homeland security. But when one looks at these actions together, they cannot be seen as anything less than an assault on our constitutional and civil rights. And the disproportionate burden of this assault falls on immigrants, particularly immigrant women.

Today, among others, our Fourth, Fifth, and Sixth Constitutional Amendments have been seriously compromised. Entire immigrant communities have been singled out for interrogation and arrest based on nationality and religion.¹² Deportation and detention without adequate evidence is being used in the name of national security.¹³ The Bush administration has turned the system of justice on its head, assuming people are guilty until proven innocent, simply because of what they believe or where they come from.

Since September 11, the administration has responded with the same xenophobic hysteria that resulted in the internment of Japanese Americans. In 1942, shortly after the attack on Pearl Harbor by Imperial Japan, the U.S. government responded to rumors of espionage and sabotage with draconian measures, requiring Japanese Americans on the West Coast to register and, later, report to internment camps. These actions were taken by the executive branch without a scrap of credible proof, despite the clear deprivation of constitutional rights, not the least of which was due process.¹⁴ At the time, these actions against Japanese Americans provoked virtually no comment from the country’s white majority.

Just nine days after September 11, the Department of Justice issued a regulation that allowed the government to detain individuals without charges and hold them indefinitely.¹⁵ Under the rubric of national security,

over 1,200 people, mostly men of Arab and Muslim descent, were rounded up and thrown into detention centers around the country.¹⁶ The government refused to release the names or locations of the detainees and refused to ensure their access to attorneys or to the courts.¹⁷ In December, during a Senate Judiciary Committee hearing about the secrecy surrounding the 9/11 detainees, Attorney General John Ashcroft stated that he would not release such information because it would harm the efforts to fight the war on terrorism.¹⁸ Likewise, on the Senate floor, he stated that those who questioned the actions of the government would “only aid terrorists.”¹⁹ In other words, just as Japanese Americans were told: you prove your loyalty by remaining silent in the face of injustice and violations of rights.²⁰

Six weeks after September 11, Congress passed the USA PATRIOT Act, a 342-page document that vastly expanded the power of the government to monitor, target, and apprehend both immigrants and U.S. citizens. The PATRIOT Act was one of the most far-reaching laws restricting judicial supervision in many areas, and it set the stage for selective enforcement of laws. The Act expanded the government’s power to conduct secret searches without warrants. It granted power to the Secretary of State to designate domestic groups, including purely political and religious ones, as “terrorist organizations.”²¹ It allowed the Attorney General to subject noncitizens to indefinite detention or deportation without specifying charges. It limited the disclosure of public documents and records under the Freedom of Information Act, which makes it nearly impossible to ensure people’s due process rights, as it precludes access to information that the government claims to have against you.²²

The PATRIOT Act was followed by a stunning Executive Order on November 13, 2001. This Executive Order authorized the creation of military tribunals to try those alleged to be involved in international terrorism. The Order declared these individuals “enemy combatants,” which meant that they could be held without being charged or having access to the courts until the “end” of the war on terrorism.²³ Today, more than

two years after September 11, Jose Padilla, a U.S. citizen charged as an enemy combatant, remains in detention even though charges have yet to be filed, and he still has no attorney.²⁴

These series of programs instituted by the Bush administration and Attorney General Ashcroft have singled out Arabs and Muslims, identified entire nations and the individuals from those nations as “terrorists,” and perpetuated all the stereotypes that existed long before September 11 about Muslims, Arabs, and people who “look different.”²⁵ The interviews of six thousand Arab and Muslim men after September 11, none of which have yielded any links to terrorist activity, and the recent requirement for fingerprint registration with the INS of men over the age of sixteen from, so far, twenty-five countries (twenty-four of which are Arab or Muslim) have done nothing to build the real sorts of bridges that we must have to fight terrorism.²⁶

C. CASUALTIES CLOSER TO HOME

Here in the Pacific Northwest, we have seen examples of federal agents bursting into people’s homes, taking parents away from their children. In Seattle, the Hamoui family was held in detention for over nine months, leaving a fourteen-year-old daughter and a twelve-year-old son to be cared for by uncles and aunts.²⁷ Today, the Hamouis are still fighting to stay in this country. In Seattle and Portland, Somali grocery stores have been raided because of some alleged connection to terrorist activity. Many of these peoples’ businesses and livelihoods have been destroyed, and it was only after such destruction that those of us who fought for their cases, on their behalf, learned that there was absolutely no evidence linking them to terrorist activity.²⁸

Somalis here in Seattle—a population of about twenty thousand—have also been labeled terrorists. In November 2002, after working on the release of five Somali men in Seattle who were told they would be imminently deported to Somalia, my organization found that, nationwide,

Somalis were being threatened with deportation.²⁹ In response, we filed a nationwide class action lawsuit against the Department of Justice, challenging these deportations.³⁰ The Department of Justice tried to argue that there is a link between Somalia, Al-Qaeda, and Somalis living in this country.³¹ The district court judge resoundingly rejected this argument, stating that the government had provided no credible evidence to back these assertions.³² Recently, the Ninth Circuit upheld the district court's decision, which protected 2,700 Somalis nationwide from deportation.³³ However, the Department of Justice has yet to provide our attorneys with the list of names and locations of those covered by the lawsuit, in spite of being ordered by both courts to do so.

While, the Department of Justice's refusal to provide the list of names is inexcusable, the real injustice is to the hearts and minds of the human beings who are being profiled. The real injustice is in the fear that has been created in immigrant communities across the country, and in the long-term implications of our actions on the lives of people who have fled war-torn countries, searching for hope and promise, only to be told they do not belong here. The Somali immigrants, like all of us, came seeking the freedom we hold out as the great American ideal. Now these immigrants are being told they are not wanted here, like the Japanese American community was told fifty years ago. Today, many immigrants are told that unless they are U.S. citizens, they cannot hold certain jobs. They cannot work in the airports as baggage screeners or conduct scientific or medical research. Ultimately, they are being told they cannot be trusted.

Today, Arabs, Somalis, Pakistanis, Cambodians, and Latinos are all being dehumanized. Instead of using our imaginations to create the different world we know is possible, a world based on true justice for all, we are using our imaginations to steer ourselves into paranoia. We are allowing hysteria to create such a fear of the "other" that we do not see that our own safety depends on the ability to protect everyone's safety.

The erosion of constitutional rights affects all of us in our ability to struggle for justice. It is not an uncommon reaction to think that, while the events happening around us are terrible, they do not concern us personally. If we think that these things are not about us, we need to think again. Once constitutional and civil rights for one group begin to erode, it sets a dangerous precedent for other groups. The Bush administration's most effective tactic is to divide us: to pit one group against another, to make us think that if we fight for justice for someone else, we will lose the ability to fight for justice for ourselves. In fact, the opposite is true. We must realize that if we are to win any of our individual battles, we must build a powerful coalition of voices that seek a common ground. Ultimately, we must stand for each other or there will be no one left to stand for us. While many people think that the specific actions of the Bush administration affect only Arabs or Muslims, we must realize that those actions have directly targeted all communities of color. For example, Operation Tarmac, a program launched by Attorney General John Ashcroft, raided airports across the country, including those here in the Northwest. The operation primarily targeted Latino workers in the name of national security.³⁴ The workers were arrested on a variety of immigration-related charges, but no connection to terrorism was found in any of the cases. Recently, Ashcroft also issued an opinion stating that a Haitian asylee who had fled his country and risked his life to come here, and who was ordered released from detention on bond by three appellate courts, should not be released because he posed a threat to national security.³⁵ The danger of the argument is that virtually anyone, at any time, could be labeled a "threat to national security."

D. THE SAME DAMN BOAT

Arabs, Muslims, African Americans, Asians, Latinos, Haitians—we are all in this together. Reverend Joseph Lowery, one of the original Freedom Riders in the 1960s, said, "We may have come over on different ships, but

we're in the same damn boat now."³⁶ We all know the challenges around us, the promises that we have yet to realize for America. In this climate of fear and budget-cutting, in this time when it seems that America is looking at each of us and questioning our right to be here, our right to the basic promises of the Constitution, we must come together to demand dignity, respect, and our rights. We cannot afford to be passive.

We have a real opportunity today to turn our anger, fear, sadness, and sense of betrayal into a powerful movement. This opportunity means that we have some responsibilities, the first of which is to participate in the democratic process. For most of us, participation in this process means voting. But even those who do not have the right to vote can be engaged, and we need your voices now more than ever. The second responsibility is to put aside our differences. We must find ways to honor our own experiences while also building bridges between our tribes, cultures, and our histories. This unification is the only way we will be able to build the kind of progressive majority we need to change the way the world works today. This will not be easy work. Discomfort and fear in the face of the unknown is natural. There is a tendency to want to protect what we have from those around us. But we must push ourselves to remember that truly great change comes from our essential humanity, and great magic comes from hope and imagination.

From its beginning, the Hate Free Zone Campaign of Washington has committed itself to bringing communities together.³⁷ We work across communities to find common ground between Latinos, Cambodians, South Asians, and Africans so that we can all stand together against the repressive policies of the Bush administration. For example, the Hate Free Zone co-chaired (with the King County Labor Council) a truly unique coalition that included organized labor and civil rights, immigrant and refugee, and faith-based groups for the Immigrant Worker Freedom Rides that took place in September 2003. Inspired by the 1960s' Freedom Rides for civil rights, this national, collective movement sought to draw attention to the issue of

immigrant and refugee rights as human rights. Buses from around the country, filled with immigrants and refugees, traveled to Washington, D.C. to demand the right to a path to citizenship, the right to be reunited with families, and the right to justice in the workplace, regardless of immigration status. Riders from the Seattle bus represented twenty-four countries and spoke fourteen languages, and they learned to build relationships across differences in culture and religion and also to integrate the four issue areas of the Freedom Ride: pathways to citizenships and legalization, justice on the job, civil rights and civil liberties, and family reunification. The Immigrant Worker Freedom Rides provided an opportunity not just to accomplish the actual bus rides, but to build a long-term collective movement for human rights.³⁸

E. THE DREAM

Our final responsibility is to continue to dream. I dream because I believe a different world is possible. I dream of a world where our leaders in Congress will vote on an \$87 billion package for education, health or housing, not for a war waged for personal agendas or corporate greed. I dream of a world where our society nurtures and supports African American males, rather than throwing them into prison for the color of their skin. I dream of a world where, rather than scapegoating Arab Americans, Muslims, and Sikhs in this country, we invite them into the real struggle of making our country safer by eliminating fear and ignorance. I dream of a world where we reward workers by paying them fair wages for their labor. I dream of immigrants walking proudly over the borders and being encouraged to do so, because this nation's economy depends on their hard work and labor. I dream of living in a real democracy with real moral leadership where "family values" means letting families be reunited. I dream of a country that has the courage to atone for the pain and suffering it has caused to Native Americans, African Americans, Japanese Americans,

and Latinos. I dream of a country that will move forward on courage rather than fear, on solidarity rather than arrogance.

If we do not dream first, we cannot act. But we must act, or the dream means nothing. I am proud that this movement has gathered people engaged in the struggle, people committed to real change. In 1990, Václav Havel reminded the U.S. Congress that “[t]he salvation of [the] human world lies nowhere else than in the human heart, in the human power to reflect, in human meekness, and in human responsibility.”³⁹ Standing together, we can demand dignity for all people. Standing together, we can reach for a new America, a place we can all truly call home, where we feel safe and well-cared for. Standing together, we can dream and then act. Standing together, we can reclaim the great promises of America.

¹ This article is adapted from a speech given at the Western States Center’s Community Strategic Training Initiative in Portland, OR in August 2003.

² *Pentagon: Cost of Campaign in Iraq \$48 Billion and Rising*, SEATTLE TIMES, July 18, 2003, at A5.

³ See Steve Early, *Unions are Joining Peace Parade*, BOSTON GLOBE, Mar. 1, 2003, at A15; Audrey Hudson, *Cheney Says Iraq Spending Needed; It’ll be ‘More Expensive Down the Road if We Wait,’* WASH. TIMES, Sept. 15, 2003, at A03.

⁴ At the time of this publication, no weapons of mass destruction had been found in Iraq.

⁵ See David Rogers, *Iraq-Afghan Outlay Gains in Senate: Panel Approves \$87 Billion; Critics Press for Baghdad To Repay Rebuilding Costs*, WALL ST. J., Oct. 1, 2003, at A6.

⁶ See, e.g., Shirleen Holt, *Steeped in Debt: Good Times End, Spending Doesn’t: Economic Slump Leaves Many Stranded*, SEATTLE TIMES, Oct. 13, 2003, at A1.

⁷ *Incarcerated America: Human Rights Watch Backgrounder*, (Apr., 2003), at <http://www.hrw.org/backgrounder/usa/incarceration>; see also Michael Fletcher, *War on Drugs Sends Blacks to Prison at 13 Times Rate of Whites; Human Rights Watch Says Minorities Are Disproportionately Targeted*, WASH. POST, June 8, 2000, at A10.

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., Sarah Kershaw, *Japanese-Americans Relive Barbed Era*, N.Y. TIMES, June 30, 2003, at A13.

¹¹ John Moreno Gonzales, *Crossing the Border: For Smuggled Humans, The Risk is Death*, NEWSDAY (New York), May 29, 2003, at A20.

¹² Mathew Purdy, *A Nation Challenged: The Law; Bush’s New Rules to Fight Terror Transform the Legal Landscape*, N.Y. TIMES, Nov. 25, 2001, at A1.

¹³ *Id.*

¹⁴ See Kershaw, *supra* note 10.

¹⁵ Tamar Lewin, *A Nation Challenged: The Detainees; Cleared After Terror Sweep, Trying to Get His Life Back*, N.Y. TIMES, Dec. 28, 2001, at A1.

¹⁶ Neil A. Lewis, *A Nation Challenged: The Senate Hearing; Ashcroft Defends Antiterror Plan; Says Criticism May Aid U.S. Foes*, N.Y. TIMES, Dec. 7, 2001, at A1.

¹⁷ Lewin, *supra* note 15.

¹⁸ Lewis, *supra* note 16.

¹⁹ *Id.*

²⁰ Benjamin Pimental, *A Journey to Reclaim a Painful Past: Japanese Internees Return to a World War II Camp*, S.F. CHRON., Sept. 1, 1994, at A1.

²¹ See Guy Taylor, *ACLU Sues Over Patriot Act, Says FBI Has Too Much Power*, WASH. TIMES, July 31, 2003, at A06.

²² See Tom Brune, *Appeals Court Backs U.S. on Secrecy*, NEWSDAY (New York), June 18, 2003, at A16.

²³ See *Moves on Monitoring That Worry Civil Liberties Groups*, TIMES (London), Nov. 22, 2002, at 19. "Enemy Combatant" is very similar to "enemy aliens," which was used in 1942 to label Japanese Americans.

²⁴ Padilla *ex rel. Newman v. Bush*, 233 F. Supp. 2d 564 (S.D.N.Y. 2002).

²⁵ See David Cole, *Blind Sweeps Return; Comment; Detaining Muslims and Arabs*, NATION, Jan. 13, 2003, at 5.

²⁶ In December 2003, Republican Asa Hutchinson declared the Special Registration program over, stating that "The Department of Homeland Security will utilize a more tailored system that is individual-specific rather than the broad categories by geography." Suzanne Gamboa, *U.S. Ends Foreigner Registration Program*, Dec. 1, 2003. However, several requirements remain in effect, and the fate of the 13,000 individuals put into deportation proceedings as a result of the program remains uncertain.

²⁷ See Gina Kim, *Stay is Revoked; Family Faces Deportation: Syrian Immigrants Lose Appeal*, SEATTLE TIMES, May 25, 2002, at B1.

²⁸ See Angie Chuang, *Food Stamp Dispute May Close Halal Market*, OREGONIAN, Aug. 19, 2002, at B01; Florangela Davila, *USDA Drops Case Against Embattled Somali Grocers: Use of Food Stamps Restored*, SEATTLE TIMES, July 17, 2002, at B1.

²⁹ Chris McGann, *Lawsuit is Filed in Seattle to Bar all Somali Deportations*, SEATTLE POST-INTELLIGENCER, Nov. 28, 2002, at A1.

³⁰ See *Ali v. Ashcroft*, 213 F.R.D. 390, 396 (W.D. Wash.), *aff'd*, 346 F.3d 873 (9th Cir. 2003).

³¹ *Id.* at 396.

³² *Id.* at 411.

³³ See *Ali*, 346 F.3d at 892. See also John Iwasaki, *Deportations of Five Somali Men Postponed; Sending Them Home to War-Torn Nation is Equivalent to Death Sentence, Supporters Say*, SEATTLE POST-INTELLIGENCER, Nov. 14, 2002, available at http://seattlepi.nwsource.com/local/95544_somalis14.shtml.

³⁴ See Juliet V. Casey, *Operation Tarmac: Advocates: Hispanics Unfairly Targeted*, Las Vegas Review-Journal, Feb. 9, 2002, available at http://www.reviewjournal.com/lvrj_home/2002/Feb-09-Sat-2002/news/18063260.html; Leigh Nelson, *Immigration and Naturalization Service Worksite Enforcement Operations Re-emerge as National Security Priority*, Houston Lawyer, Feb. 2003, at 12 (discussing initial implementation of

“Operation Tarmac”); Michele Waslin, *Counterterrorism and the Latino Community Since September 11*, NCLR Issue Brief 7, No. 10, June 2003, at <http://www.nclr.org/policy/briefs/IB10counterterrorism.pdf>.

³⁵ See *In re D-J*, 23 I. & N. Dec. 572 (A.G. 2003); Lyle Denniston, *Illegal Immigrants Detention Policy Changed; Ashcroft Allows Them to Be Held Indefinitely if Deemed Security Risk*, BOSTON GLOBE, Apr. 25, 2002, at A2.

³⁶ *About Us*, in Immigrant Workers Freedom Ride, Washington State Coalition, at <http://www.seattle-iwfr.org/about/index.html> (last visited Oct. 31, 2003). See also Chris McGann, *Busloads of Activists in Immigrant-Rights Drive*, SEATTLE POST-INTELLIGENCER, July 8, 2003, available at http://seattlepi.nwsource.com/local/129926_freedom08.html.

³⁷ See Hate Free Zone Campaign of Washington, at <http://www.hatefreezone.org/aboutus.asp> (last visited Oct. 31, 2003).

³⁸ See *We Will All Survive Together: Lessons from the Immigrant Workers Freedom Ride*, 2 SEATTLE J. SOC. JUST. 115 (2003).

³⁹ VÁCLAV HAVEL, *THE ART OF THE IMPOSSIBLE* 17-18 (1997).