

KODIAK CITY COUNCIL

WORK SESSION AGENDA

Tuesday, July 22, 2014

Kodiak Public Library Multi-Purpose Room

7:30 p.m.

Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.

Discussion Items

- 1. Public Comments (limited to 3 minutes)
- 2. Presentation From Jamie Fagan and Dana Carros of People Against the National Defense Authorization Act, 10 Minutes (Requested by Councilmembers Walker and Bishop).....1
- 3. Review of FY2015 Nonprofit Grant Requests..... (refer to binder)
- 4. July 24, 2014, Agenda Packet Review

To Be Scheduled

- 1. Ordinance to Change Elected Officials' Stipend
- 2. Joint Work Session Date (August 21-Sept. 21)

RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA

WHEREAS, the City of Kodiak, Alaska is not a “battlefield” subject to the “laws of war;” and

WHEREAS, Federal Judge Katherine Forrest has ruled Section 1021 of the 2012 NDAA is [unconstitutional](#); and

WHEREAS, the U.S. Supreme Court has [ruled](#) that neither Congress nor the President can constitutionally authorize the detention and/or disposition of any person in the United States, or citizen of the United States “under the law of war” who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;” and

[\(Ex Parte Milligan, 71 U.S. 2, 1866\)](#)

WHEREAS, for the purposes of this resolution, the terms “arrest,” “capture,” “detention under the law of war,” “disposition under the law of war,” and “law of war” are used in the same sense and shall have the same meaning as such terms have in the 2012 NDAA, Section 1021; and therefore

BE IT RESOLVED, that notwithstanding any treaty, federal, state, or local law or authority, enacted or claimed, including, but not limited to, an authorization for use of military force, national defense authorization act, or any similar law or authority enacted or claimed by Congress or the Office of the President directed at any person in Kodiak, Alaska who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger,” it is unconstitutional, and therefore unlawful for any person to:

- a. arrest or capture any person in Kodiak, Alaska, or citizen of Kodiak, Alaska within the United States, with the intent of “detention under the law of war,” or

RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA

- b. actually subject a person in Kodiak, Alaska to “disposition under the law of war,” or
- c. subject any person to targeted killing in Kodiak, Alaska, or citizen of Kodiak, Alaska within the United States; and be it further

RESOLVED, that Kodiak, Alaska requests the Alaska State Legislature recognize the duty of the state of Alaska to interpose itself between unconstitutional usurpations by the federal government or its agents and the people of this state, as well as the duty to defend the unalienable natural rights of the people, all of which is consistent with our oaths to defend the Constitution of the United States and the constitution of Alaska against all enemies, foreign and domestic; and be it further

RESOLVED, that Kodiak, Alaska requests our Congressional delegation commence immediately with efforts to repeal the unconstitutional sections of the 2012 NDAA, to-wit, sections 1021 and 1022, and any other section or provision which will have the same or substantially the same effect on any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;” and be it finally

RESOLVED, that Kodiak, Alaska requests our Congressional delegation introduce, support, and secure the passage of legislation which clearly states that Congress not only does not authorize, but in fact prohibits the use of military force, military detention, military trial, extraordinary rendition, or any other power of the “law of war” against any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.”

* * * **END** * * *

RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA

REFERENCES AND SOURCE DOCUMENTS

[NDAA Resolutions for State Legislators, County Commissioners, Sheriffs, City Councils, etc...](http://theintolerableacts.org/wordpress/nda-resolutions/)

[HR1540 Conference Report as Approved by the United States Congress](http://www.gpo.gov/fdsys/pkg/CREC-2011-12-12/pdf/CREC-2011-12-12-pt1-PgH8356-5.pdf)
[Alternate source: http://patriotcoalition.com/docs/HR1540conf.pdf](http://patriotcoalition.com/docs/HR1540conf.pdf)

[Authorization of Use of Military Force \(See bottom of page 6 for final version as signed into law.\)](http://patriotcoalition.com/docs/Authorization-of-Use-of-Military-Force.pdf)

[President Obama's Signing Statement: Dec. 31, 2011](http://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540)

[Declaration of Independence: \(See Freedom Documents tab\)](http://nccs.net/freedom_defined/index.htm?const.html&2)

[Constitution of the United States of America: \(See Freedom Documents tab\)](http://www.nccs.net/freedom_defined/index.htm?const.html&2)

[House Voting Record for final version of 2012 NADA](http://clerk.house.gov/evs/2011/roll932.xml)

[Senate Voting Record for final version of 2012 NADA](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00230)

[2012 NDAA, SECTIONS: 1021, 1022, 1023](http://patriotcoalition.com/docs/NDAA FOR FISCAL YEAR 2012 (1021-1022-1023).doc)

[Judge Katherine Forrest places permanent injunction against NDAA in Hedges v. Obama](http://theintolerableacts.org/docs/Hedges-v-Obama-Permanent-Injunction.pdf)



The Intolerable Acts ACTION CENTER is a joint project of [Patriot Coalition](#) and [Oath Keepers](#). The project logo is derived directly from [American history](#), particularly that relating to abuses of the colonists by King George. The "skull and crossbones" image is from a [1765 Stamp Act protest cartoon](#), which predates the "*Intolerable (Coercive) Acts*" and is super-imposed over the actual hand-written Bill of Rights as proposed by the 1st Congress and sent to the States for ratification.

About the National Defense Authorization Act (NDAA)

- NDAA section 1022(a)(1)-(2) *requires* the president to detain members of al-Qaeda, the Taliban, and individuals directly responsible for belligerent actions against the United States. Section 1022(b) specifically excludes US citizens, and legal aliens for actions occurring within the United States, but does not exclude undocumented persons and those on visas.
- Section 1021(b)(2) *authorizes* the President to designate persons as enemy combatants that "substantially supported" Al-Qaeda, the Taliban or "associated forces engaged in hostilities against the United States or its coalition partners." Section 1021 is subject to abuse because it applies to vague "substantial support" for undefined "associated forces." Pursuant to section 1021(c), the president may dispose of such covered persons according to the Law of War, including: 1) Indefinite detention without charge or trial, 2) Military tribunals, and 3) transfer to foreign jurisdictions or entities.
- Section 1021 does not exclude US citizens and legal aliens for actions occurring within the United States as section 1022(b) does. In fact, the US Senate rejected an amendment by Senator Udall that would have banned the indefinite detention of US citizens. Section 1021 also does not exclude undocumented persons and those on visas. Section 1021(e) merely seeks to preserve existing law and authorities pertaining to the detention of US citizens, legal resident aliens, and all other persons found within the United States.
- It appears from the case law that the President may designate undocumented persons as enemy combatants. The WWII case of Ex parte Quirin, 317 U.S. 1 (1942) authorized the president to designate as enemy combatants German saboteurs who illegally entered the United States.
- The ability of the President to designate citizens, legal resident aliens and visa-holders is less clear. It has not been clearly decided by the Supreme Court. Yet, the recent Fourth Circuit case of Padilla v. Hanft, 423 F.3d 386 (4th Cir. S.C. 2005) permits enemy combatant status for US citizens captured within the US whose actions are encompassed by the 2001 authorization to use military force. The Supreme Court refused to review the legality of Padilla's military detention upon Padilla's transfer to civilian jurisdiction on the eve of Supreme Court review, with three justices sharply dissenting. Padilla v. Hanft, 547 U.S. 1062 (2006).
- If US citizens (and others) within US may be designated as enemy combatants, numerous Constitutional rights and protections afforded defendants in normal criminal proceedings and trials for treason would not be present. In Boumediene v. Bush, 553 U.S. 723 (2008), our Supreme Court held that persons designated as enemy combatants for indefinite detention possess the right to a military hearing to contest their confinement, and may seek a writ of habeas corpus from the civilian courts. However, hearsay evidence is freely admissible and a preponderance of the evidence standard is sufficient for continued detention until the cessation of hostilities (although the question of whether a lesser standard of proof would be sufficient for indefinite detention has been left open). See Al-Bihani v. Obama, 590 F.3d 866 (D.C. Cir. 2010); Al Odah v. United States, 611 F.3d 8 (D.C. Cir. 2010).
- Section 1021's authorization to transfer persons to foreign jurisdictions, outside the reach of our Courts, is perhaps the most disconcerting. What rights, if any, are possessed by a US citizen, or other person, captured in the US and transferred to a foreign jurisdiction, are entirely unclear.
- The procedures outlined in Boumediene and its progeny relating to indefinite detention, as well as military tribunals of persons found within the United States, and the transfer of persons found within the United State to foreign jurisdictions, deny the most fundamental rights enshrined in the 4th 5th 6th 8th and 14th Amendments to the Constitution, subvert civilian authority to the military, and strike at the very heart of American values.

[Sign Up](#)

Email or Phone

Password

[Log In](#)

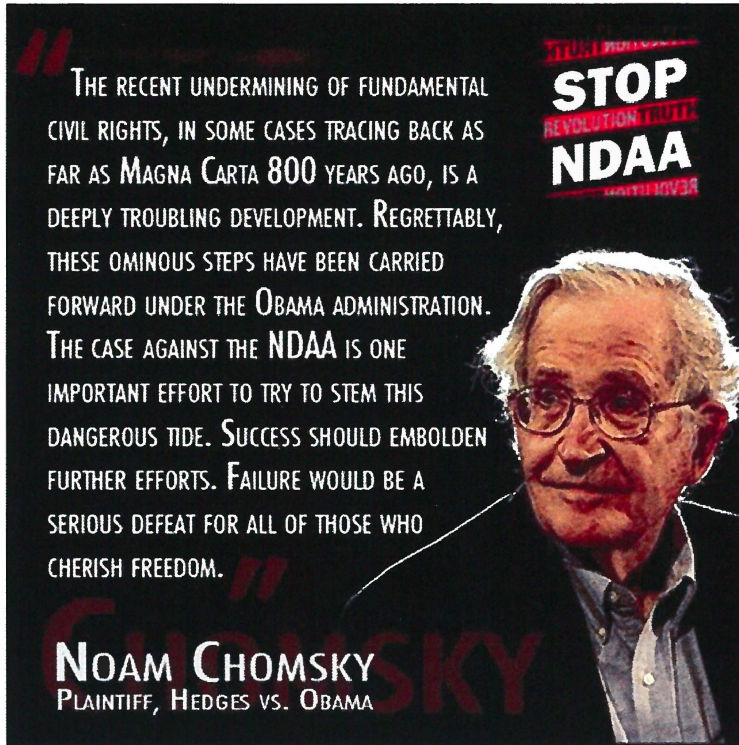
Keep me logged in

[Can't log in?](#)

Kodiak PANDA's Photos

[Back to Album](#)

[Previous](#) [Next](#)



Kodiak PANDA

Kodiak PANDA and Benjamin Pruitt like this.

1 share

From: Kodiak PANDA's Photos in Timeline Photos

Shared with: Public

[Open Photo Viewer](#)

[Download](#)

[Embed Post](#)

- [Mobile](#)
- [Find Friends](#)
- [Badges](#)
- [People](#)
- [Pages](#)
- [Places](#)
- [Apps](#)
- [Games](#)
- [Music](#)
- [Locations](#)
- [Topics](#)
- [About](#)
- [Create Ad](#)
- [Create Page](#)
- [Developers](#)
- [Careers](#)
- [Privacy](#)
- [Cookies](#)
- [Terms](#)
- [Help](#)

Facebook © 2014 · [English \(US\)](#)



Jamie Fagan <jamiefagan1963@gmail.com>

(no subject)

1 message

Jamie Fagan <jamiefagan1963@gmail.com>
To: Jamie Fagan <jamiefagan1963@gmail.com>

Mon, Jul 14, 2014 at 12:55 PM

June 21, 2013, H.B. 69 Alaska passes anti-NDAA legislation with no teeth

Governor Of Alaska Signs Hb 69, Nullifies Federal Gun Laws, Ndaa Indefinite Detention, Real Id Act
Submitted by InPursuitOfLiberty on Sat, 07/06/2013 - 11:50
in

Daily Paul Liberty Forum

"The Tenth Amendment to the Constitution of the United States guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Alaska certain powers as they were intended at the time that Alaska was admitted to statehood in 1959; the guaranty of those powers is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed to and adopted by Alaska and the United States in 1959...." -SECTION 1 (2B)

Following the hard work of Alaskans, the legislature, and Americans around the country, and with one swift signature from Alaskan Governor Sean Parnell, HB 69 has:

Made Alaska the second state to successfully complete the nullification of the national defense authorization act's sections 1021 and 1022

Declared tyrannical federal gun laws infringing upon the 2nd amendment enumerated Rights unenforceable and unconstitutional, including barring any state resources or participation

Stopped and forbidden any participation or implementation of the REAL ID Act / National ID program
"The harder the conflict, the more glorious the triumph" -Thomas Paine

The signed legislation, Alaska HB 69, which is now officially law, is summarized:

"Prohibiting state and municipal agencies from using assets to implement or aid in the implementation of the requirements of certain federal statutes, regulations, rules, and orders that are applied to infringe on a person's right to bear arms or right to due process or that implement or aid in the implementation of the federal REAL ID Act of 2005; exempting certain firearms, firearm accessories, and ammunition in this state from federal regulation; declaring certain federal statutes, regulations, rules, and orders unconstitutional under the Constitution of the United States and unenforceable in this state; requiring the attorney general to file any legal action to prevent implementation of a federal statute, regulation, rule, or order that violates the rights of a resident of the state; and providing for an effective date."

Are you a conservative, a libertarian, a Christian or a gun owner? Are you opposed to abortion, globalism, Communism, illegal immigration, the United Nations or the New World Order? Do you believe in conspiracy theories, do you believe that we are living in the "end times" or do you ever visit alternative news websites (such as this one)? If you answered yes to any of those questions, you are a "potential terrorist" according to official U.S. government documents. At one time, the term "terrorist" was used very narrowly. The government applied that label to people like Osama bin Laden and other Islamic jihadists. But now the Obama administration is **removing all references to Islam** from terror training materials, and instead the term "terrorist" is being applied to large groups of American citizens. And if you are a "terrorist", that means that you have **no rights** and the government can treat you just like it treats the terrorists that are being held at Guantanamo Bay. So if you belong to a group of people that is now being referred to as "potential terrorists", please don't take it as a joke. The first step to persecuting any group of people is to demonize them. And right now large groups of peaceful, law-abiding citizens are being ruthlessly demonized.

Below is a list of 72 types of Americans that are considered to be "extremists" and "potential terrorists" in official U.S. government documents. To see the original source document for each point, just click on the link. As you can see, this list covers most of the country...

- 1. Those that talk about "individual liberties"**
- 2. Those that advocate for states' rights**
- 3. Those that want "to make the world a better place"**
- 4. "The colonists who sought to free themselves from British rule"**
- 5. Those that are interested in "defeating the Communists"**
- 6. Those that believe "that the interests of one's own nation are separate from the interests of other nations or the common interest of all nations"**
- 7. Anyone that holds a "political ideology that considers the state to be unnecessary, harmful, or undesirable"**
- 8. Anyone that possesses an "intolerance toward other religions"**
- 9. Those that "take action to fight against the exploitation of the environment and/or animals"**
 - 10. "Anti-Gay"**
 - 11. "Anti-Immigrant"**
 - 12. "Anti-Muslim"**
 - 13. "The Patriot Movement"**
- 14. "Opposition to equal rights for gays and lesbians"**
- 15. Members of the Family Research Council**
- 16. Members of the American Family Association**
- 17. Those that believe that Mexico, Canada and the United States "are secretly planning to merge into a European Union-like entity that will be known as the 'North American Union'"**
 - 18. Members of the American Border Patrol/American Patrol**
 - 19. Members of the Federation for American Immigration Reform**
 - 20. Members of the Tennessee Freedom Coalition**
 - 21. Members of the Christian Action Network**
 - 22. Anyone that is "opposed to the New World Order"**
 - 23. Anyone that is engaged in "conspiracy theorizing"**

24. Anyone that is opposed to Agenda 21
25. Anyone that is concerned about FEMA camps
26. Anyone that "fears impending gun control or weapons confiscations"
27. The militia movement
28. The sovereign citizen movement
29. Those that "don't think they should have to pay taxes"
30. Anyone that "complains about bias"
31. Anyone that "believes in government conspiracies to the point of paranoia"
32. Anyone that "is frustrated with mainstream ideologies"
33. Anyone that "visits extremist websites/blogs"
34. Anyone that "establishes website/blog to display extremist views"
35. Anyone that "attends rallies for extremist causes"
36. Anyone that "exhibits extreme religious intolerance"
37. Anyone that "is personally connected with a grievance"
38. Anyone that "suddenly acquires weapons"
39. Anyone that "organizes protests inspired by extremist ideology"
40. "Militia or unorganized militia"
41. "General right-wing extremist"
42. Citizens that have "bumper stickers" that are patriotic or anti-U.N.
43. Those that refer to an "Army of God"
44. Those that are "fiercely nationalistic (as opposed to universal and international in orientation)"
45. Those that are "anti-global"
46. Those that are "suspicious of centralized federal authority"
47. Those that are "reverent of individual liberty"
48. Those that "believe in conspiracy theories"
49. Those that have "a belief that one's personal and/or national 'way of life' is under attack"
50. Those that possess "a belief in the need to be prepared for an attack either by participating in paramilitary preparations and training or survivalism"
51. Those that would "impose strict religious tenets or laws on society (fundamentalists)"
52. Those that would "insert religion into the political sphere"
53. Anyone that would "seek to politicize religion"
54. Those that have "supported political movements for autonomy"
55. Anyone that is "anti-abortion"
56. Anyone that is "anti-Catholic"
57. Anyone that is "anti-nuclear"
58. "Rightwing extremists"

- 59. "Returning veterans"**
- 60. Those concerned about "illegal immigration"**
- 61. Those that "believe in the right to bear arms"**
- 62. Anyone that is engaged in "ammunition stockpiling"**
- 63. Anyone that exhibits "fear of Communist regimes"**
- 64. "Anti-abortion activists"**
- 65. Those that are against illegal immigration**
- 66. Those that talk about "the New World Order" in a "derogatory" manner**
- 67. Those that have a negative view of the United Nations**
- 68. Those that are opposed "to the collection of federal income taxes"**
- 69. Those that supported former presidential candidates Ron Paul, Chuck Baldwin and Bob Barr**
- 70. Those that display the Gadsden Flag ("Don't Tread On Me")**
- 71. Those that believe in "end times" prophecies**
- 72. Evangelical Christians**

The groups of people in the list above are considered "problems" that need to be dealt with. In some of the documents referenced above, members of the military are specifically warned not to have anything to do with such groups.

We are moving into a very dangerous time in American history. You can now be considered a "potential terrorist" just because of your religious or political beliefs. Free speech is becoming a thing of the past, and we are rapidly becoming an Orwellian society that is the exact opposite of what our founding fathers intended.

Please pray for the United States of America. We definitely need it.

About the author: **Michael T. Snyder** is a former Washington D.C. attorney who now publishes **The Truth**. His new thriller entitled "**The Beginning Of The End**" is now available on **Amazon.com**.



PANDA

PEOPLE AGAINST THE NDAA

P.O. Box 653
Bowling Green, OH
43402
(567) 201-5432
pandaunite.org

NDAA FOR BEGINNERS

By Mary Sullivan (MPA, NYPD ret) & Richard Fry, Esq

Sections 1021 & 1022 of the NDAA contain legalese sleights of hand which mislead and confuse. This helps simplify it. We can't cover ALL the issues in the NDAA on one page, just the most glaring.

SECTION 1021 a

- Starts by reaffirming Authorization for Use of Military Force Act (AUMF) (passed 9/18/2001)
- In AUMF guilt is determined by the president alone-you are not found guilty in a court of law
- AUMF was limited to people believed (not proven) to be involved in 911.
- The AUMF allows the government to operate outside the constitution and set the stage for the Patriot Act & the NDAA. It removed due process for Americans and is unconstitutional.

Section 1021b-Covered persons

- **b1&2** - Once people see Taliban/Al Qaeda/911 (TAQ) they stop reading-think doesn't apply to them- HOWEVER
- **Part b2 continues with "OR"** - which means being TAQ, etc. is no longer necessary (as opposed to "and"),
- So now, "associated forces" can be ANY group of people – Libertarian Party, Tea Party, Occupy. This section allows for Americans to be held w/o due process by the military.
- Use of the word "associated" confuses people. They think it says TAQ & associates. It doesn't.
- "Substantially supported" can mean agreeing with, donating to, marching with.....
- Hostilities or belligerent acts – open to interpretation. Demonstrations? Call for new election?
- **Coalition forces** –Who are they, by the way?

Section 1021c

- **c1, 2, 3 & 4** You can be held indefinitely w/o trial by the military until hostilities end (who says when? Hostilities is undefined). An American can be removed to any foreign country.

Section 1021d

1. Contradicts what they just did! It is intentionally confusing and misleading! This isn't a mistake.
 - Does say they don't *INTEND* to change the law...not that they actually don't.

Section 1021e

- Legally confusing point. Best to leave this one to the lawyers because:
- When this law was passed Congress couldn't agree what the law was. Both pro & con cited the Hamdi and Padilla cases as proving their point. Both can't be right.
- Padilla & Hamdi were Americans held under AUMF re 911, later cleared.

Section 1022a

- **a1- Requires** military detention (the word "shall" removes all options).

fb.com/pandaunite | info@pandaunite.org | twitter.com/pandaunite



PANDA

PEOPLE AGAINST THE NDAA

P.O. Box 653
Bowling Green, OH
43402
(567) 201-5432
pandaunite.org

- **a2-** states “**Covered person**” *determined* to be TAQ/carried out attack against US, etc.
- *determined* - not found guilty in court. Since this law expands the President's powers under AUMF, he makes the final determination based on evidence that never sees the light of day.
- **a4** Lets the President make waivers solely on what HE deems to be “national security”
-

Section 1022b&c

- **b1&2** -Only removes the *REQUIREMENT* for military detention re Americans, et al, not the *option*.
- The option regarding military detention in Section 1022 **doesn't apply to Section 1021**.
- **c-2a** Lets the President pick whomever he chooses to do all this-accountable to no one but him

POINTS TO REMEMBER

- Lawrence Wilkerson, chief counsel to Colin Powell called the NDAA the road to tyranny and stated it was done as a reaction to the Occupy movement and not terrorism.
- 40 retired Admirals & Generals signed a letter protesting what the NDAA does.
- Remember what happened to Richard Jewell after the 1996 Atlanta Olympic bombing which Clinton called an act of terrorism? He was arrested and all but convicted in the press but was found to be innocent. IF the NDAA was in place, he might still be in military detention.
- The Constitution was written to prevent anyone from being convicted based on emotion and unpopularity. AUMF, NDAA & the Patriot Act reverse this.
- Recall one does not have to be convicted of anything to be held under the NDAA.
- The Constitution compels the government to prove their case. The AUMF, the Patriot Act and the NDAA have removed this bar.
- Certain elements within the government are using the emotion of 911 to gradually convince Americans to surrender their civil rights.
- There is currently great discord in military and law enforcement circles as many in uniform state the NDAA violates the oath they took to uphold the Constitution and therefore will not obey; Others say I will just be following orders. Veterans & retirees have a special duty to speak up as they know those currently in uniform are less free to openly dissent and are most imperiled by the chaos this law will cause.

fb.com/pandaunite | info@pandaunite.org | twitter.com/pandaunite



P A N D A

PEOPLE AGAINST THE NDAA

P.O. Box 653
Bowling Green, OH
43402
(567) 201-5432
pandaunite.org

- Nixon was put out of office for less than the government is doing today.
- Virginia has passed the first Anti-NDAA law already. Michael Chertoff & Ed Meese wrote a letter to VA Gov. McDonnell asking him to VETO the bill. Note: Michael Chertoff, former head of the DHS is part owner of the company who sells the body scanners to the TSA.
- **Have you noticed no one calls this a free country anymore?**

We the People demand the NDAA, Patriot Act and AUMF be repealed. Abolish the TSA & DHS
Compel ALL government agencies to work within the confines of the Constitution only!

Special thanks to

Richard Fry, Legal Counsel

Patriot Coalition/PCOK Liaison theintolerableacts.org

Mary Sullivan - rockofamerica.com

fb.com/pandaunite | info@pandaunite.org | twitter.com/pandaunite



Help us fight the NDAA

“This Measure has a chilling impact on First Amendment Rights”

-Federal District Judge Katherine Forrest

Usually a bill that just funds the military, the 2012 NDAA violates over half of the Bill of Rights.

First Amendment **free speech**

Second Amendment **right to bear arms**

Fourth Amendment **unlawful search and seizure**

Fifth Amendment **due process**

Sixth Amendment **speedy and public trial**

Eighth Amendment **cruel and unusual punishment**



**NATIONAL DEFENSE
AUTHORIZATION ACT (NDAA)**

Understanding the National Defense Authorization Act

- Signed into law on December 31st, 2011
- You may be **arrested and indefinitely detained** if the president merely alleges you are a threat or “terrorist”
- You **no longer have the right to legal representation** (and are not entitled to a phone call, to an attorney or family member)
- You can be **held for life without being convicted of a crime**. Incredibly, an amendment that would have explicitly forbidden indefinite detention was rejected
- You **no longer have the right to a trial by jury** of your peers
- You can be **executed without being convicted** of a crime

You could be a suspected terrorist if you:

- Speak out against the government
- Are active online to show “extreme views”
- Love liberty or the “radical Constitution”
- Exhibit “unusual actions” that catch the attention of others

**There is a
way to
STOP this...**

Join today and find out what simple steps you can take to STOP the NDAA in your own community. PandaUnite.org

BUSINESS INSIDER

Why You Should Be Outraged About The Ruling To Keep The NDAA Indefinite Detention Clause In Effect



MICHAEL B KELLEY
OCT. 3, 2012, 9:52 AM

On Tuesday a federal appeals court ruled the government can **indefinitely detain anyone**, at least until the courts decide whether to permanently block or confirm the indefinite detention clause (i.e. §1021) of the 2012 National Defense Authorization Act.

That the NDAA is fully enforceable right now is **scary enough**, but **the details of the ruling are truly bothersome** to those that have been following the rulings in the case.



Flickr/mpeake

First, a recap why §1021 was ruled unconstitutional and how the government reacted.

Journalists and activists sued to stop the provisions, which allow the government to indefinitely detain anyone who provides "substantial support" to the Taliban, al-Qaeda or "associated forces," including "any person who has committed a belligerent act" in the aid of enemy forces.

In May District Judge Katherine Forrest sided with the plaintiffs and ordered a **temporary block** on the grounds that **the provisions are so vague they are unconstitutional** under the First (i.e. free speech/press) and Fifth (i.e. due process) Amendments.

The government then [argued](#) that it "**construes the reach of the injunction to apply only to the plaintiffs before the Court.**" So Forrest [clarified her decision](#) in June to "leave no doubt" that U.S. citizens can't be indefinitely detained without due process.

Last month Forrest [ordered a permanent injunction](#) on the clause, the government appealed, and Appeals Court Judge Raymond Lohier [reinstated](#) the indefinite detention provisions pending a decision by today's panel.

On Tuesday Judges Lohier, Denny Chin and Christopher Droney **agreed with a government motion of appeal** that the plaintiffs "are in no danger whatsoever of ever being captured and detained by the U.S. military," then cited the text of the NDAA to rule that "the statute does not affect the existing rights of United States citizens or other individuals arrested in the United States."

So, according to the government's new argument, they would never indefinitely detain the plaintiffs or any U.S. citizen in the first place. And the judges took them at their word.

Furthermore, the appeals court judges ruled that Forrest's injunction went beyond the NDAA and limited "the government's authority under the Authorization for Use of Military Force" (AUMF).

But Judge Forrest was careful to protect the AUMF.

Previously the government argued that the NDAA adds nothing new to the AUMF, which was a resolution passed a week after 9/11 that gives the president authority "to use all necessary and appropriate force against those ... [who] aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons."

The NDAA **actually does add language to the AUMF**, [stating](#) that "**The President also has the authority** to detain persons who were part of or substantially supported, Taliban or al-Qaida forces 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 hostilities, in the aid of such enemy forces."

What Judge Forrest did was rule the extra part unconstitutionally vague while [allowing the section of the NDAA](#) that authorizes the government to indefinitely detain "those who planned, authorized, committed, or aided in the actual 9/11 attacks."

In short, **on Tuesday the appeals court judges took the government at its word** while ignoring the fact that **the NDAA's vague language creates detention powers that are nearly boundless.**

The appeals court essentially ignored both the entire argument of the plaintiffs and Forrest's subsequent ruling that the fears §1021 could impact First Amendment rights are "chilling," "reasonable" and "real."

Forrest provided the government the opportunity to define which actions and associations would lead to indefinite detention—thereby limiting the scope of indefinite detention powers—but the government chose not to do so.

Forrest noted that there is a "**strong public interest in ensuring that due process rights guaranteed by the Fifth Amendment are protected** by ensuring that ordinary citizens are able to understand the scope of conduct that could subject them to indefinite military detention," and **right now we have no clue what we could be locked up for.**

As a kicker, the three-judge panel said Forrest restricted the AUMF when she made sure not to.

SEE ALSO: [The NDAA Legalizes The Use Of Propaganda On The US Public >](#)

* Copyright © 2014 Business Insider Inc. All rights reserved.

Activists Win Preliminary Injunction Blocking Enforcement of NDAA's Military Detention Provision

Thursday, 17 May 2012 14:35

By [Jason Leopold](#), [Truthout](#) | Report

[Support Truthout's work by making a tax-deductible donation: click here to contribute.](#)

Seven journalists and activists who sued President Barack Obama earlier this year over the controversial indefinite detention provision in the 2012 National Defense Authorization Act (NDAA) were handed a surprise victory Wednesday by a federal court judge who issued a preliminary injunction blocking its enforcement.

Pulitzer Prize-winning war correspondent Chris Hedges, the lead plaintiff in the case, [filed a lawsuit](#) against the commander in chief a few weeks after he signed the NDAA into law on New Year's Eve. Hedges asserted that section [1021 of the bill](#), which authorized indefinite military detention for "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**," left him, as a working journalist, vulnerable to indefinite detention because neither Congress nor the president defined the terms "substantial support," "associated forces" or "directly supported." [Emphasis added.]

US District Court Judge for the Southern District of New York Katherine B. Forrest agreed. In a [68-page opinion](#), she wrote Hedges' and his co-plaintiffs fears that section 1021 could impact their First Amendment rights are "chilling," "reasonable" and "real."

"This Court is acutely aware that preliminarily enjoining an act of Congress must be done with great caution," wrote Forrest, who worked in the Justice Department's antitrust division as deputy assistant attorney general before Obama nominated her for a federal judgeship last year. "However, it is the



Pulitzer Prize-winning journalist Chris Hedges, lead plaintiff in a lawsuit filed against President Obama over a provision in the National Defense Authorization Act, won a preliminary injunction Wednesday blocking its enforcement. (Photo: Wikipedia)

responsibility of our judicial system to protect the public from acts of Congress which infringe upon constitutional rights ... In the face of what could be indeterminate military detention, due process requires more."

The other plaintiffs in the case are Pentagon Papers whistleblower Daniel Ellsberg; Noam Chomsky; Icelandic parliamentarian Birgitta Jonsdottir, Kai Wargalla, an Occupy London organizer, journalist, activist and author Naomi Wolf and Alexa O'Brien, an independent journalist who founded US Day of Rage, a group that coordinated a day of protests on Wall Street last September against the use of corporate money in US elections. The group dubbed themselves the [Freedom Seven](#).

Civil libertarians condemned the legislation and harshly criticized the president for signing a bill that suspends due process into law. Obama [attached a signing statement](#) to the bill vowing that his administration would "interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war and all other applicable law."

Obama's signing statement related to section 1021 said the provision did not provide him with new executive powers. Rather, he noted that Congress had already granted the president the ability to indefinitely detain individuals without affording them the right to due process when it passed the Authorization to Use Military Force (AUMF) following the 9/11 attacks. Still, the president added that his administration would also not allow for the "indefinite military detention without trial of American citizens," a point the government highlighted in a motion responding to the lawsuit in March.

But Hedges maintained that, as a reporter who has traveled the world and interviewed people the US government has branded as international terrorists, he could still be detained under section 1021 of the NDAA because of the ambiguity over "substantial support." Hedges testified in March that since the NDAA was signed into law he has "removed himself from certain situations" due to the uncertainty he now faces as a journalist.

"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?" Hedges wrote. "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?"

That's a question Forrest wondered about as well. When oral arguments in the case took place in March, she asked Justice Department attorney Benjamin Torrance whether Hedges, while acting in the capacity as a journalist, could be detained for contacting al-Qaeda or the Taliban?

Torrance, Forrest wrote in her opinion, "was unwilling to commit [at the injunction hearing] that such conduct does not fall within" section 1021's "ambit."

When Forrest pressed him to define what it means to "substantially support associated forces" Torrance said he was not "in a position to give specific examples," not even "one specific example."

Co-plaintiff O'Brien, the independent journalist and founder of US Day of Rage, testified in March that she had held back publication of at least two reports related to al-Qaeda and the Taliban because she feared she could be subject to military detention for conversing with individuals who may fall under the definition of "associated forces."

"The government was unwilling to state at the hearing that O'Brien would not be detained under [section 1021] for her expressive conduct in regard to those articles," Forrest wrote in her opinion, which cited Truthout and documents we obtained under the Freedom of Information Act that showed the Department of Homeland Security was monitoring O'Brien's US Day of Rage in the run-up to last September's protests.

The government's arguments in the case were that the plaintiffs did not have legal standing to sue and they were making a big deal out of section 1021, which is simply an "affirmation" of the powers contained in the AUMF. Moreover, the government contended, since the plaintiffs "have not to date been subject to detention under the AUMF there is no reasonable basis for them to fear detention under" section 1021 of the NDAA.

But Forrest said she was not "convinced that [section 1021] is simply a 'reaffirmation' of the AUMF."

The judge wrote in her opinion that the government's argument ignores the "obvious differences" between the AUMF and sections 1021 of the NDAA.

"This court assumes, as it must, that Congress acted intentionally when crafting the differences as between the two statutes," her opinion states. The AUMF "is tied directly and only to those involved in the events of 9/11" whereas section 1021 "has a non-specific definition of 'covered person' that reaches beyond those involved in the 9/11 attacks by its very terms."

Forrest said Congress could easily address the plaintiffs' concerns by adding "definitional language" to section 1021 pertaining to "substantial support," and "associated forces."

Congress may go a step further. An amendment to the 2013 NDAA introduced by Reps. Adam Smith (D-Washington) and Justin Amash (R-Michigan) would eliminate the provision in the bill that authorizes indefinite military detention without trial for those captured in the US.

O'Brien told Truthout Wednesday she's elated over Forrest's decision, but "it's not over yet."

"No nation on earth ever found just or stable governance in vague laws with secret interpretations," O'Brien said. "No executive can ever claim independence or strength when their office is owned by entrenched and corrupt factions, who use financial power to change laws to make themselves richer and silence dissent. Government's independence derives from its dependence on the people alone. Those are our principles."

A Justice Department spokesperson was not available late Wednesday to comment on Forrest's ruling. However, it's certain the government will appeal her decision.

Writing in the national security blog, Lawfare, Steve Vladeck, a law professor at American University College of Law, said, "the government could have made this case go away and it didn't."

"As perplexing as the injunction entered by Judge Forrest is, I'm even more perplexed by why the government allowed things to come to such a pass," Vladeck wrote. "Certainly, the government would not need to forswear the ability to detain *anyone* pursuant to expressive and 'associational' conduct to merely suggest that it would not seek to detain *these* plaintiffs ...Could it be that the government doesn't want to open the door to such *ex ante* litigation of detainability? Could it be that the government actually does believe that individuals engaged in conduct like that of these plaintiffs might actually be subject to military detention? Could it be a simple (but costly) tactical error by government counsel? Whatever the reason for why the government won't take a position, one can hardly blame Judge Forrest (or the plaintiffs, for that

matter) for thinking that the government's refusal to disavow such authority bolsters the plaintiffs' standing ..."

This article may not be republished without permission from Truthout.



JASON LEOPOLD

Jason Leopold is the author of the Los Angeles Times bestseller, [News Junkie](#), a memoir. Visit jasonleopold.com for a preview. His most recent investigative report, "From Hopeful Immigrant to FBI Informant: The Inside Story of the Other Abu Zubaidah," is now available as an [ebook](#). Follow Jason on Twitter: [@JasonLeopold](#).

Related Stories

Jason Leopold Speaks to RT About Obama's Detainee Policies

By Kristine Frazao, [Russian Times](#) | [Interview](#)

Journalist, Plaintiff Chris Hedges Hails "Monumental" Ruling Blocking NDAA Indefinite Detention

By Amy Goodman, [Democracy Now!](#) | [Video and Interview](#)

Show Comments

FRIDAY, DEC 16, 2011 02:56 AM AST

Three myths about the detention bill

The language of the bill President Obama will sign is crystal clear on most key issues -- and it is repugnant

GLENN GREENWALD

Follow

Share 7K

817

8+1

TOPICS: POLITICS NEWS



President Barack Obama speaks during a news conference in the White House briefing room in Washington, Thursday, Dec. 8, 2011. (AP Photo/Carolyn Kaster) (Credit: AP)

(updated below)

Condemnation of President Obama is intense, and growing, as a result of his announced intent to sign into law the **indefinite detention bill** embedded in the 2012 National Defense Authorization Act (NDAA). These denunciations come not only from the nation's leading **civil liberties** and **human rights groups**, but also from the pro-Obama *New York Times* Editorial Page, which today has a **scathing Editorial** describing Obama's stance as "a complete political cave-in, one that reinforces the impression of a fumbling presidency" and lamenting that "the bill has so many other objectionable aspects that we can't go into them all," as well as from vocal Obama supporters such as Andrew Sullivan, who **wrote yesterday** that this episode is "another sign that his campaign pledge to be vigilant about civil liberties in the war on terror was a lie." In damage control mode, **White-House-allied groups** are now trying to ride to the rescue with attacks on the ACLU and dismissive belittling of the bill's dangers.

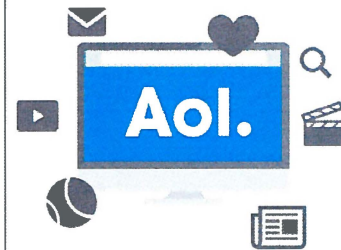
For that reason, it is very worthwhile to briefly examine — and debunk — the three principal myths being spread by supporters of this bill, and to do so very simply: by citing the relevant provisions of **the bill**, as well as the relevant passages of the original **2001 Authorization to Use Military Force (AUMF)**, so that everyone can judge for themselves what this bill actually includes (this is all above and beyond the evidence I assembled in **writing about this bill yesterday**):

Myth # 1: This bill does not codify indefinite detention

ADVERTISEMENT

ADVERTISEMENT

Homepage
Sweet
Homepage



Make AOL My Homepage

follow salon

Email Address

SUBSCRIBE

MOST READ



I will never wear a bikini
KATE HARDING, DAME



Religious right's huge risk: Why their new talking point may come back to haunt them
ELIAS ISQUITH



Wingnuts' gross war on children: Screaming and spitting at endangered kids
HEATHER DIGBY PARTON



Apple's sexist iPad engraving policy
EJ DICKSON, THE DAILY DOT

Section 1021 of the NDAA governs, as its title says, "Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF." The first provision — section (a) — explicitly "affirms that the authority of the President" under the AUMF "includes the authority for the **Armed Forces of the United States to detain** covered persons." The next section, (b), defines "covered persons" — *i.e.*, those who can be detained by the U.S. military — 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." With regard to those "covered individuals," this is the power vested in the President by the next section, (c):



It simply cannot be any clearer within the confines of the English language that this bill codifies the power of indefinite detention. It expressly empowers the President — with regard to anyone **accused** of the acts in section (b) — to detain them "**without trial until the end of the hostilities.**" That is the very definition of "indefinite detention," and the statute could not be clearer that it vests this power. Anyone claiming this bill does not codify indefinite detention should be forced to explain how they can claim that in light of this crystal clear provision.

It is true, as I've pointed out repeatedly, that both the Bush and Obama administrations have argued that the 2001 AUMF **implicitly** (*i.e.*, silently) already vests the power of indefinite detention in the President, and post-9/11 deferential courts have largely accepted that view (just as the Bush DOJ argued that the 2001 AUMF **implicitly** (*i.e.*, silently) allowed them to eavesdrop on Americans without the warrants required by law). That's why the NDAA can state that nothing is intended to expand the 2001 AUMF while achieving exactly that: because the Executive and judicial interpretation being given to the 2001 AUMF is already so much broader than its language provides.

But this is the first time this power of indefinite detention is being expressly codified by statute (there's not a word about detention powers in the 2001 AUMF). Indeed, as the ACLU and HRW both pointed out, it's the first time such powers are being codified in a statute since the McCarthy era Internal Security Act of 1950, about which I [wrote yesterday](#).

Myth #2: The bill does not expand the scope of the War on Terror as defined by the 2001 AUMF

This myth is very easily dispensed with. The scope of the war as defined by the original 2001 AUMF was, at least relative to this new bill, quite specific and narrow. Here's the full extent of the power the original AUMF granted:

(a) IN GENERAL - That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines **planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001**, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Under the clear language of the 2001 AUMF, the President's authorization to use force was explicitly confined to those who (a) helped perpetrate the 9/11 attack or (b) harbored the perpetrators. That's it. Now look at how much broader the NDAA is with regard to who can be targeted:



The universe according to Nietzsche: Modern cosmology and the theory of eternal recurrence

PAUL STEINHARDT



How I escaped my pederast

IAN GREY



The secret to successful flirting

JESSE BERING, SCIENTIFIC AMERICAN



Rand Paul's twisted race lies: His new views on civil rights are as phony as the old ones

PAUL ROSENBERG



CrossFit, neuroscience, surviving the zombie apocalypse: Is your workout a fraud?

J.C. HERZ



We must kill the McMansion! Good riddance to an American embarrassment

HENRY GRABAR



The American Century is over: How our country went down in a blaze of shame

MICHAEL LIND



Rick Perry's "pro-life" hypocrisy: How Texas puts pregnant women at risk

KATIE MCDONOUGH



First woman arrested under Tennessee law that criminalizes pregnancy outcomes

KATIE MCDONOUGH



Are you ready for size 000 jeans?

MARY ELIZABETH WILLIAMS

FROM AROUND THE WEB

Presented by Scribol



Section (1) is basically a re-statement of the 2001 AUMF. But Section (2) is a brand new addition. It allows the President to target not only those who helped perpetrate the 9/11 attacks or those who harbored them, but also: anyone who “**substantially supports**” such groups **and/or** “associated forces.” Those are extremely vague terms subject to wild and obvious levels of abuse (see what Law Professor Jonathan Hafetz [told me in an interview](#) last week about the dangers of those terms). This is a substantial statutory escalation of the War on Terror and the President’s powers under it, and it occurs more than ten years after 9/11, with Osama bin Laden dead, and with the U.S. Government **boasting** that virtually all Al Qaeda leaders have been eliminated and the original organization (the one accused of perpetrating 9/11 attack) rendered inoperable.

It is true that both the Bush and Obama administration have long been arguing that the original AUMF should be broadly “interpreted” so as to authorize force against this much larger scope of individuals, despite the complete absence of such language in that original AUMF. That’s how the Obama administration justifies its ongoing bombing of Yemen and Somalia and its killing of people based on the claim that they support groups **that did not even exist at the time of 9/11** – *i.e.*, they argue: *these new post-9/11 groups we’re targeting are “associated forces” of Al Qaeda and the individuals we’re killing “substantially support” those groups.* But this is the first time that Congress has codified that wildly expanded definition of the Enemy in the War on Terror. And all anyone has to do to see that is compare the old AUMF with the new one in the NDAA.

Myth #3: U.S. citizens are exempted from this new bill

This is simply false, at least when expressed so definitively and without caveats. The bill is purposely muddled on this issue which is what is enabling the falsehood.

There are two separate indefinite military detention provisions in this bill. The first, Section 1021, authorizes indefinite detention for the broad definition of “covered persons” discussed above in the prior point. And that section does provide that “**Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.**” So that section contains a disclaimer regarding an intention to expand detention powers for U.S. citizens, but does so only for the powers vested by that specific section. More important, the exclusion appears to extend **only** to U.S. citizens “**captured or arrested in the United States**” — meaning that the powers of indefinite detention vested by that section **apply to U.S. citizens captured anywhere abroad** (there is some [grammatical vagueness](#) on this point, but at the very least, there is a viable argument that the detention power in this section applies to U.S. citizens captured abroad).

But the next section, Section 1022, is a different story. That section specifically deals with a smaller category of people than the broad group covered by 1021: namely, anyone whom the President determines is “a member of, or part of, al-Qaeda or an associated force” and “participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.” For those persons, section (a) not only authorizes, but **requires** (absent a Presidential waiver), that they be held “in military custody pending disposition under the law of war.” The section title is “Military Custody for Foreign Al Qaeda Terrorists,” but the definition of who it covers does not exclude U.S. citizens or include any requirement of foreignness.

That section — 1022 — does **not** contain the broad disclaimer regarding U.S. citizens that 1021 contains. Instead, it simply says that **the requirement** of military detention does not apply to U.S. citizens, but it does not exclude U.S. citizens from the **authority, the option**, to hold them in military custody. Here is what it says:

ADVERTISEMENT

Ready to be a Pastor?

christianeducation.com

Earn a Degree in Pastoral Studies At Home! Take the First Step Today.

transparent bikinis

transparent-bikinis.best-price.com

best-price.com - comparison expert!
best price for transparent bikinis

HUFFPOST POLITICS

[Cliven Bundy's Son Facing Arrest In Separate Criminal Case](#)

[China's Ties With South Korea: A Snake Wrapped Around a Rabbit?](#)

[Transgender Teen Jailed In Connecticut Moved To Psych Center](#)

[On Malala Day, Prepare To Be Wowed Again By Her 10 Greatest Contributions To Humanity](#)

[Department of Agriculture Sends Misguided Fiasco of a Poultry Processing Rule to the White House](#)

UPWORTHY

[A Mother Was Being Harassed While Walking Her Baby. Find Out The 3 Unlikely Words That Stopped It.](#)

[Interesting Things Happen When Black Girls Date White Guys, Or Asian Guys, Or Latino Guys, Or...](#)

[A Bunch Of Clueless White Guys Are Probably Not The Right Guys To Tell This Girl What To Do](#)

[Summer Heat May Be Hitting Us Harder Than Ever Before. Here's Why.](#)

[These Clever Designers Are Working With The Homeless To Make Fonts That Make A Difference](#)

BuzzFeed Politics

[Ron Paul Explains How To Help Son's Potential Presidential Bid On InfoWars Radio](#)

[The 6 Worst Cultural Observations Made By Fox News Host Bob Beckel](#)

[Dick Cheney: Spend Money On Military, Not Food Stamps Or Highways](#)

[Politicians Are Covering Themselves In Ice Water For Charity](#)

[MSNBC's LeBron James Segment Goes Horribly Wrong](#)

ADVERTISEMENT



The only provision from which U.S. citizens are exempted here is the “**requirement**” of military detention. For foreign nationals accused of being members of Al Qaeda, military detention is **mandatory**; for U.S. citizens, it is **optional**. This section does **not** exempt U.S. citizens from the presidential power of military detention: only from the **requirement** of military detention.

The most important point on this issue is the same as underscored in the prior two points: the “compromise” reached by Congress includes language preserving the status quo. That’s because the Obama administration already argues that the original 2001 AUMF authorizes them to act against U.S. citizens (obviously, if they believe they have the **power to target U.S. citizens for assassination**, then they believe they have the power to detain U.S. citizens as enemy combatants). The proof that this bill does not expressly exempt U.S. citizens or those captured on U.S. soil is that **amendments offered by Sen. Feinstein providing expressly for those exemptions were rejected**. The “compromise” was to preserve the status quo by including the provision that the bill is not intended to alter it with regard to American citizens, but that’s because proponents of broad detention powers are confident that the status quo already permits such detention.

In sum, there is simply no question that this bill codifies indefinite detention without trial (Myth 1). There is no question that it significantly expands the statutory definitions of the War on Terror and those who can be targeted as part of it (Myth 2). The issue of application to U.S. citizens (Myth 3) is purposely muddled — that’s why Feinstein’s amendments were rejected — and there is consequently no doubt this bill can and will be used by the U.S. Government (under this President or a future one) to bolster its argument that it is empowered to indefinitely detain even U.S. citizens without a trial (*NYT* Editorial: “The legislation could also give future presidents the authority to throw American citizens into prison for life without charges or a trial”; **Sen. Bernie Sanders**: “This bill also contains misguided provisions that in the name of fighting terrorism essentially authorize the indefinite imprisonment of American citizens without charges”).

Even if it were true that this bill changes nothing when compared to how the Executive Branch has been interpreting and exercising the powers of the old AUMF, there are serious dangers and harms from having Congress — with bipartisan sponsors, a Democratic Senate and a GOP House — put its institutional, statutory weight behind powers previously claimed and seized by the President alone. That codification entrenches these powers. As the *New York Times* Editorial today put it: the bill contains “terrible new measures that will make indefinite detention and military trials a **permanent part of American law**.”

What’s particularly ironic (and revealing) about all of this is that former White House counsel Greg Craig **assured** *The New Yorker*’s Jane Mayer back in February, 2009 that it’s “**hard to imagine Barack Obama as the first President of the United States to introduce a preventive-detention law**.” Four months later, President Obama proposed exactly such a law — one that *The New York Times* **described** as “a departure from the way this country sees itself, as a place where people in the grip of the government either face criminal charges or walk free” — and now he will sign such a scheme into law.

UPDATE: There’s an **interview with me in Harper’s** today regarding American justice and *With Liberty and Justice for Some*.



Follow Glenn Greenwald on Twitter: [@ggreenwald](#).

Follow

MORE GLENN GREENWALD.



Share 7K

817

g+1

4



House bans the Department of Energy from acknowledging climate change

Next Article



YOU MIGHT ALSO LIKE

Warren Buffett Reveals How Anyone With \$40 Could Become A Millionaire
The Motley Fool

14 Benefits Most Seniors Didn't Know They Had
Newsmax

Little Known Way To Pay Off Mortgage
Daily Mortgage Monitor

Big data's big mistakes
Dell

5 Best Things to Say in an Interview
Monster

8 Chinese Dishes You Need to Know
Zaqat

Sponsored Content by Taboola

More from Salon

- USA Today kills ludicrous Ann Coulter story!**
- 14-year-old girl films father's sexual abuse with webcam**
- Brad Pitt keeps breaking his silence on how boring marriage to Jennifer Anisto...**
- Carrie Fisher's strange outing of John Travolta**
- Seth MacFarlane to Rush Limbaugh: Now I understand why conservatives hate th...**
- We have pubic hair for a reason**

We Recommend

- Little Known Way To Pay Off Mortgage**
(Daily Mortgage Monitor)
- Warren Buffett Reveals How Anyone With \$40 Could Become A Millionair...**
- At Last, A Sunless Tanner That Actually Works**
(Tan Physics)
- Putting Financial Heft to Work for Social Good**
(The Atlantic)
- Have You Had the "Cloud Talk" with Your Kids Yet?**
(AT&T Blog)
- Big data's big mistakes**
(Dell)

Promoted Content by Taboola

MORE RELATED STORIES

<p>Our endless</p> <p>Our endless "War on Terror": The truth behind an incoherent foreign policy</p>	<p>House bans the Department of Energy from acknowledging climate change</p>	<p>Far right's secret SCOTUS strategy: What Boehner's lawsuit is really about</p>
---	---	--

FEATURED SLIDE SHOWS

1 of 11

Thursday, 12 December 2013 09:53

Congress Rushing to Approve 2014 National Defense Authorization Act (NDAA)

Written by [Joe Wolverton, II, J.D.](#)

The House and Senate Armed Services Committees have **reached an agreement** on the fiscal year 2014 National Defense Authorization Act (NDAA).

As approved by the committees, **the text of the latest iteration of the bill** is derived from H.R. 1960, which passed the House on June 14 by a vote of 315-108 and S. 1197, a version passed by a Senate committee by a vote of 23-3, later that same day.

House and Senate leaders hurried to hammer out a mutually acceptable measure so as to get the whole package passed before the end of the year.



Concealed Carry Mistakes:

concealedcarryconfidence.org

The Worst Thing a Permit Holder Can Do & More Concealed Carry Tips:

Reading the mainstream (official) press, one would believe that the NDAA is nothing more nefarious than a necessary replenishing of Pentagon funds. Readers of *The New American* know, however, there is much more than budget issues contained in the legislation.

For two years, the NDAA included provisions that purported to authorize the president of the United States to deploy the U.S. military to apprehend and indefinitely detain any person (including an American citizen) who he believes "represent[s] an enduring security threat to the United States."

Such an immense grant of power is not only unconscionable, but unconstitutional, as well.

Regardless of promises to the contrary made every year since 2011 by President Obama, the language of the NDAA places every citizen of the United States within the universe of potential "covered persons." Any American could one day find himself or herself branded a "belligerent" and thus subject to the complete confiscation of his or her constitutional civil liberties and to nearly never-ending incarceration in a military prison.

Finally, there is in the NDAA for 2014 a frightening fusion of the federal government's constant surveillance of innocent Americans and the assistance it will give to justifying the indefinite detention of anyone labeled an enemy of the regime.

Section 1071 of the version of the 2014 NDAA approved by the House and Senate committees this week expands on the scope of surveillance established by the Patriot Act and the Authorization for the Use of Military Force (AUMF).

Section 1071(a) authorizes the secretary of defense to "establish a center to be known as the 'Conflict Records Research Center.'" According to the text of the latest version of the NDAA, the center's task would be to compile a "digital research database including translations and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the United States."

In order to accomplish the center's purpose, the secretary of defense will create an information exchange in cooperation with the director of national intelligence.

Key to the functioning of this information exchange will be the collection of "captured records." Section 1071(g)(1), defines a captured record as "a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States."

When read in conjunction with the provision of the AUMF that left the War on Terror open-ended and the prior NDAA's classification of the United States as a battleground in that unconstitutional war, and you've got a powerful combination that can knock out the entire Bill of Rights.

Finally, when all the foregoing is couched within the context of the revelations regarding the dragnet surveillance programs of the NSA, it becomes evident that anyone's phone records, e-mail messages, browsing history, text messages, and social media posts could qualify as a "captured record."

After being seized by the NSA (or some other federal surveillance apparatus), the materials would be processed by the Conflict Records Research Center created by this bill. This center's massive database of electronic information and its collaboration with the NSA converts the United States into a constantly monitored holding cell and all its citizens and residents into suspects. All, of course, in the name of the security of the homeland.

Although the outlook is dire, there are those willing to stand and oppose the threats to liberty posed by the NDAA.

For example, libertarian icon and former presidential candidate **Ron Paul recently interviewed Daphne Lee**, a lady who calls herself "just a mom" but who made an impassioned speech in Nevada against the indefinite detention provisions of the 2012 NDAA. After talking to Lee, Paul announced that he would work to fight enforcement of unconstitutional provisions of the NDAA nationwide.

Additionally, the People Against the NDAA (PANDA) organization is promoting passage of anti-NDAA legislation in towns, counties, and states. On **a website devoted to chronicling these efforts**, PANDA lists 27 cities, 17 counties, and 25 states that have enacted or are considering bills or resolutions refusing to execute any element of the NDAA that violates the constitutionally protected liberties of its citizens.

While these bills are at various spots along the process of becoming laws, one state recently signed on to thwart the abuse of power authorized by the NDAA.

On October 1, Governor Jerry Brown announced that he had signed AB 351 into law.

The new statute, called the California Liberty Preservation Act, outlaws the participation of any agency of the state of California, any political subdivision of the state, employee of a state or local agency, or member of the California National Guard from

knowingly aiding an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to (1) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (2) the federal law known as the Authorization for Use of Military Force, enacted in 2001, or (3) any other federal law, except as specified, if the state agency, political subdivision, employee, or member of the California National Guard would violate the United States Constitution, the California Constitution, or any law of this state by providing that aid....

... knowingly using state funds and funds allocated by the state to those local entities on and after January 1, 2013, to engage in any activity that aids an agency of the Armed Forces of the United States in the detention of any person within California for purposes of implementing Sections 1021 and 1022 of the NDAA or the federal law known as the Authorization for Use of Military Force, if that activity would violate the United States Constitution, the California Constitution, or any law of this state, as specified.

Interpreted broadly, the Liberty Preservation Act would outlaw state cooperation in any federal act which violates the state or federal constitutions. Although Governor Brown almost certainly didn't intend the provisions of the law to be applied this liberally, the black letter could arguably be used to protect citizens of California from deprivation of a wide panoply of fundamental rights, including the right to keep and bear arms.

It will be worth watching court dockets in California to see if anyone relies on this language to fight the state's infamous disarmament statutes.

Originally sponsored by State Assemblyman Tim Donnelly, a conservative Republican (now running for governor), the bill's senate sponsor was one of that body's "most liberal lawmakers," Mark Leno.

"Indefinite detention, by its very definition, means that we are abrogating, suspending, just throwing away the basic foundations of our Constitution and of our nation," Leno said.

After being warned by some of his fellow Democrats that siding with Donnelly was tantamount to political suicide, Leno stood firm in defense of liberty. "It doesn't matter where one finds oneself on the political spectrum," he said. "These two sections of this national defense act are wrong, unconstitutional and never should have been included."

Then, in November, **a similar bill was introduced to the Ohio State House of Representatives** by state Representatives Jim Butler and Ron Young. This concurrent resolution condemns "Section 1021 of the National Defense Authorization Act for Fiscal Year 2012" and urges "the Attorney General of the State of Ohio to bring suit to challenge the constitutionality of Section 1021 of the National Defense Authorization Act for Fiscal Year 2012."

While neither the California law nor the Ohio resolution is a perfect example of absolute nullification of an unconstitutional federal act, both stand as examples to other state legislatures of attempts to heed the counsel given by James Madison to states that want to resist federal consolidation of all power.

In *The Federalist*, no. 46, Madison recommended that an effective way to thwart federal overreach is for agents of the states to refuse "to cooperate with officers of the Union."

In order for Fiscal Year 2014 NDAA to become the "law," the House of Representatives must pass the bill this week and the Senate would have to follow suit by the end of next week. This gives Americans only a few short days to contact their federal representatives and senators and encourage them to reject any version of the NDAA that infringes on the timeless civil liberties protected by the Constitution.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He is the host of The New American Review radio show that is simulcast on YouTube every Monday. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com

1 comment



Saturday, 21 December 2013 10:07 **posted by WILLIAM F SLATER III**

Thanks! At least SOMEONE in America is awake and paying attention.

Sadly, I think we have probably turned into a nation of ignorant wussies. And that's what they want.

Keep this in mind folks: If you are indefinitely detained by the Federal Government, you won't be getting access to a laptop and the Internet. You will sit there and rot for the remaining days of your life and no one will do anything, because the current administration doesn't give a damn about the U.S. Constitution. We have no more right of Habeas Corpus anymore thanks to the NDAA: the spineless bastards in Congress and the ignorance of the American people, who are more obsessed with reality TV, twerking, selfies, drugs, pop culture, tattoos, body piercings, meh, and Duck Dynasty. If you really give a damn about the United States of America and your Future, you ought to start by memorizing the first 10 amendments to the U.S. Constitution (also known as the Bill of Rights - <http://billslater.com/billofrights.jpg>) and then watch and raise Holy Hell with your Representatives and Senators every time you see something that even remotely smells like a violation of your rights. Because that's what good citizens of the United States are supposed to do. Check out the First Amendment if you don't believe me.

Still don't believe me? Read the article at this link that was published on January 1, 2012 the day after the first NDAA was signed into law.

THE INAUGURATION OF POLICE STATE USA 2012. Obama Signs the "National Defense Authorization Act".
<http://www.globalresearch.ca/index.php?context=va&aid=28441#>

Otherwise, it really is all over folks. Do you hear the Fat Lady singing yet? Keep listening. You will.

Get on the front lines of the nullification movement! [***CLICK HERE***](#)



- Home
- JOIN US!
- Support
- READ
- Action
- Multimedia
- Connect

NDAA Sections 1021 and 1022: Scary Potential

[Home](#) [Current Events](#)



Are the detainment provisions of the 2012 National Defense Authorization Act serious?

Yes they are.

This is a complicated area, and there has been a lot of word-fudging in spinning this subject. So bear with me as we take things step by step.

* The U.S.

[Contribute fundraising via Rally.org](#)

Login

Username

Password

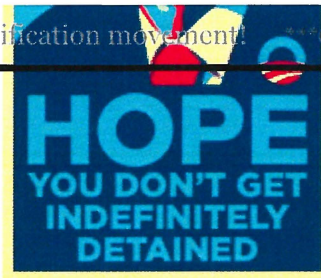


Remember Me

Constitution generally guarantees the "Privilege of the Writ of Habeas Corpus." The writ of habeas corpus is a court order a prisoner can obtain requiring the jailer to come into court and justify his detention of the prisoner. It is a traditional way in



which those held can demand a fair trial by jury in a civilian court. The writ of habeas corpus is a treasured part of our traditional liberty. Belief that the British were infringing it was one cause of the American Revolution.



(The writ is called a “privilege” rather than a “right” because it is a creation of the legal system rather than a natural right, like the right to free speech.)

* By the Constitution’s original meaning, the privilege of habeas corpus is guaranteed to all those in “allegiance” to the United States. “Allegiance” is an old technical legal term that includes both citizens and aliens legally in the country.

* By successfully convincing a judge to issue a writ of habeas corpus, citizens, foreign visitors, and legal residents may obtain a hearing that may induce the judge to order a civilian trial. It matters not how heinous the crimes they are accused of. For example, a person charged with trying to blow up a building on behalf of a foreign power can be charged with treason. But while still merely accused, he is entitled to all the protections of due process, including a fair, public trial before a jury of his peers.

* By the Constitution’s original meaning, habeas corpus does NOT apply if the Congress, as an incident to its war power, “suspends” the writ for a particular time and place. However, the Constitution says that Congress may “suspend” the writ only “when in cases of rebellion or invasion the public safety may require it.” Congress has not suspended the writ, and it is doubtful that occasional acts of terrorism constitute a sufficient “rebellion or invasion” to justify doing so. Even if Congress could suspend the writ, a Bill of Suspension would be a serious, much-debated measure for which Congress would have to assume direct political accountability. Political accountability is not a big priority with Congress right now.

* Members of all belligerent armed forces (both sides) are subject to military, not civilian, law.

* Thus, by the law of war, the executive (and the military officers under him) may incarcerate for the duration of the conflict any enemy combatants captured in the theater of war.

[CLICK HERE](#)***Login →

[Register](#)
[Lost](#)
[Password](#)



TAC Newsletter

Join Our Mailing List

** indicates required*

Email Address *

State *

▼

Optional:
Check to ALSO Get the TAC Daily Digest

TAC Daily Digest

[Subscribe](#)

Trending

[The Kentuck](#) ^
[and Virginia](#)
[Resoluti](#)
 A ▼
[Startin](#)
 < >

* By the Constitution's original meaning the executive has no

CLICK HERE [Point I](#)

Constitutional power (without formal congressional suspension of the writ) to lock up citizens or lawful aliens apprehended *outside* the war theater. If accused of crime, the accused has the privilege of a jury trial in a civilian court. By the Constitution's original meaning, this constitutional right does not apply to enemy aliens, wherever apprehended.

* In 2008, the U.S. Supreme Court (erroneously, in my view) held that alien Guantanamo detainees have the right to habeas corpus to determine if they are really enemy combatants. Still, under this case if they are found to be enemy combatants they can go back to prison indefinitely.

Now, with that background, let's look at the critical language of the Act, again step by step:

§1021: (a) Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force . . . includes the authority for the Armed Forces of the United States to detain covered persons . . . pending disposition under the law of war.

Comment: The Authorization for the Use of Military Force (AUMF) is the resolution passed in the wake of 9/11 authorizing the President to fight terrorism. The National Defense Authorization Act is sometimes justified as mere clarification of the AUMF.

(b) . . . A covered person under this section is any person as follows:

Comment: This provision includes people accused of certain terror-related crimes. Fine— *but it does not exempt U.S. citizens or legal aliens with U.S. territory.* Thus, far, it appears they can be “detain [ed] . . . pending disposition under the law of war.” But what does that mean?

c) . . . The disposition of a person under the law of war . . . may include the following:

(1) Detention under the law of war without trial until the

[Point I](#)
[Tenth](#)
[Amendme](#)
[Center](#)

[State](#)
[Bills to](#)
[Arrest](#)
[Federal](#)
[Agents:](#)
[A](#)
[Poison](#)
[Pill I](#)
[Tenth](#)
[Amendme](#)
[Center](#)

< >

end of the hostilities authorized by the Authorization for Use of Military Force. . . Click on the front lines of the duplication movement! ***CLICK HERE***

Comment: This clarifies that the government may detain anyone so charged “without trial until the end of the hostilities.” Apologists for the law point out that it permits other dispositions “under the law of war,” including civilian trial. But the point is that the law does not **require** those other dispositions. The administration can simply decide to detain you “without trial until the end of hostilities.”

(d) . . . Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

Comment: This is a basis for the argument that all Congress is really doing is clarifying the AUMF. But this is cold comfort, because the position of the Obama administration is that the AUMF *always* authorized rounding up citizen-suspects and holding them without trial!

(e) . . . Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

Comment: This provision is sometimes touted as protecting citizens because it preserves existing Supreme Court decisions. The problem is that, as yet, there are no Supreme Court decisions that squarely provide the full measure of habeas corpus protection to citizens or legal aliens accused within our borders. This is true because neither the Bush nor the Obama administration has had the audacity to round up U.S. citizens without our borders and hold them indefinitely without trial.

Here are the principal Supreme Court decisions the law preserves:

(1) A post-Civil War case (*Ex Parte Milligan*) saying a citizen non-combatant incarcerated outside the theater of war is entitled to habeas corpus. (This holding doesn’t help those accused of being combatants.)

(2) The World War II-era *Quirin* decision that permitted President Roosevelt to detain, try in a secret military hearing, and execute a U.S. citizen captured on U.S. territory and accused of being a German spy. Obviously, this decision—which is widely acknowledged to be egregious—offers no protection against the National Defense Authorization Act. ***CLICK HERE***

(3) The 2004 *Hamdi* case, which says that a U.S. citizen captured bearing arms in the war theater is NOT entitled to habeas corpus. He is entitled only to a minimal military hearing without a jury and without many of the traditional due process protections.. (Some apologists for the National Defense Authorization Act are claiming the *Hamdi* case granted a right of habeas corpus; this claim is flatly wrong.)

(4) The 2008 *Boumedienne* decision, which held that alien Guantanamo detainees are entitled to habeas corpus and a civilian hearing to show that they were non-combatants.

Obviously, none of these prior holdings addresses the habeas corpus rights of a U.S. citizen or legal alien apprehended within the U.S. and charged with being an enemy combatant. So there is no Supreme Court case providing the necessary protection preserved by the law's provision that "existing law or authorities" are preserved.

§ 1022: (b) (1) . . . The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

(2) . . . The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

Comment: This section says that the administration is not REQUIRED to keep a U.S. citizen or legal resident alien in indefinite military custody. But it does not prevent the administration from doing so.

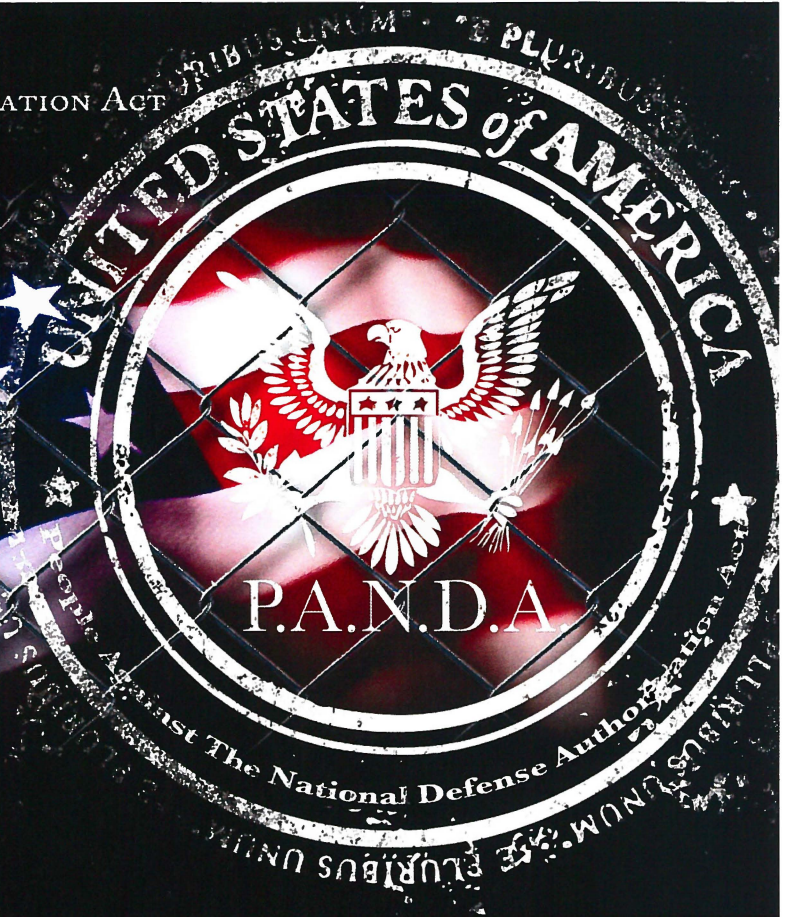
* * * *

When you look at sections 1021 and 1022 of the National Defense Authorization Act objectively, they become scary in their potential. If the

AMERICA UNDER SIEGE

FIGHTING THE NATIONAL DEFENSE AUTHORIZATION ACT

REPEAL NDAA



"The Government was unable to define precisely what 'direct' or 'substantial' 'support' means. . . Thus, an individual could run the risk of substantially supporting or directly supporting an associated force without even being aware that he or she was doing so."

"This measure has a chilling impact on First Amendment rights."

-Federal District Judge Katherine Forrest

peopleagainstndaa.com/NDAApresentation

The NDAA violates:

Article I, Section 9	<i>suspension clause</i>
Article III, Section 2	<i>trial by jury</i>
Article III, Section 3	<i>treason</i>
1st amendment	<i>free speech</i>
4th amendment	<i>unlawful search and seizure</i>
5th amendment	<i>due process</i>
6th amendment	<i>speedy trial</i>
8th amendment	<i>cruel and unusual punishment</i>

Understanding The National Defense Authorization Act

On December 31, 2011, President Obama quietly signed into law the **National Defense Authorization Act (NDAA)**, overturning the foundation that makes our country great, the Bill of Rights.

You may be **arrested and indefinitely detained** if the President merely alleges you are a danger or "terrorist"

You **no longer have the right to legal representation** (and are not entitled to a phone call, to an attorney or family member).

You can be **held for life without being charged with any crime**. Incredibly, an amendment that would have explicitly forbidden indefinite detention of American citizens without trial was rejected.

You **no longer have a right to trial by a jury of your peers**.

You can be **executed without being convicted** of a crime.

www.peopleagainstndaa.com

peopleagainstndaa.com/NDAApresentation

This is NOT a Partisan Issue

The government does not have to present ANY evidence to take these actions. The government merely has to allege you are "suspected" of being a danger or aiding terrorism. All rights to due process under the Bill of Rights are eliminated.

For those who still retain any faith in our elected representatives, please note this Act was passed by the Senate 93-7 and 283-136 in the House with little debate.

President Obama originally indicated he would veto the NDAA. Not surprisingly, he had a "change of heart" (his initial concern was the legislation would limit his authority to (illegally) detain people, but his legal department indicated it would not).

You are a suspected terrorist if you:

- Speak against the government
- Are active online to show "extreme views"
- Blame the government for your "perceived problems" (#1 You don't have any problems, they are all in your head. #2 If you blame the government for them, you are a terrorist.)
- Exhibit "unusual actions" that catch the attention of others.

Get Involved

Visit www.peopleagainstandaa.com/joinus to join the fastest growing liberty movement in the United States. Remember 'All that is needed for evil to prevail is that good men do nothing.'

peopleagainstandaa.com
facebook.com/asecondopinion
twitter.com/#!/aSecond0pinion

