



Written by [Joe Wolverton, II, J.D.](#) on September 3, 2012

Chris Hedges: Revolt Is Our Only Option

Chris Hedges worries that outright revolt may soon be the only option available to those fighting against the despotism of the Establishment.

This sentiment seems consistent with the following statement of Thomas Jefferson in the [Declaration of Independence](#):

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.



Hedges, a Pulitzer Prize-winning journalist, knows something of the abuses and usurpations by those in power.

[Hedges has sued the Obama administration](#) fearing that as a result of his work in the Middle East, the specter of indefinite detention loomed within the shadows of vagueness cast by the National Defense Authorization Act (NDAA).

The principal allegation made by Hedges and his co-plaintiffs is that the vagueness of critical terms in the NDAA could enable the federal government to interpret the law in a way that authorizes them to label journalists and political activists who interview or support outspoken critics of the Obama administration's policies as "covered persons" who have given "substantial support" to terrorists or other "associated groups."

Fearing that even the probability of such a scenario would have a chilling effect on free speech and freedom of the press in violation of the First Amendment, Hedges filed his lawsuit on January 12 in the U.S. District Court for the Southern District of New York.

Naming both President Barack Obama and Defense Secretary Leon Panetta as defendants, Hedges' complaint averred that his extensive work overseas, particularly in the Middle East covering terrorist (or suspected terrorist) organizations, could result in his being categorized as a "covered person" who — because of his writings, interviews, and/or communications — "substantially supported" or "directly supported" "al-Qaeda, the Taliban or associated forces that are engaged in hostilities against the United States or its coalition partners" under §1031(b)(2) and the AUMF [Authorization for Use of Military Force].

Specifically, Hedges alleges in his complaint that it is precisely the existence of these "nebulous terms" — terms that are critical to the interpretation and execution of the immense authority granted to the President by the NDAA — that could allow the government to classify him (or someone else in a substantially similar situation) as an enemy combatant and then send him (or someone else) away to a military detention center without access to an attorney or habeas corpus relief.

In [her order issued in May](#), Judge Katherine Forrest held:



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Section 1021 lacks what are standard definitional aspects of similar legislation that define scope with specificity. It also lacks the critical component of requiring that one found to be in violation of its provisions must have acted with some amount of scienter — i.e., that an alleged violator’s conduct must have been, in some fashion, “knowing.” Section 1021 tries to do too much with too little — it lacks the minimal requirements of definition and scienter that could easily have been added, or could be added, to allow it to pass Constitutional muster.

Simply put, “scienter” is “[a state of mind often required to hold a person legally accountable for his or her acts.](#)” In other words, the indefinite detention provisions of the NDAA are too vague and aren’t specific enough to permit a person to know whether he has violated the law.

While admitting that preventing the federal government from enforcing a congressional act is a sober matter that must be attended to with caution, Judge Forrest writes that “it is the responsibility of our judicial system to protect the public from acts of Congress which infringe upon constitutional rights.”

For the benefit of readers, [the full text of Section 1021](#) is provided here:

Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in sub-section (b)) pending disposition under the law of war.

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

(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

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.

The president has declared that to indefinitely detain American citizens without a trial on the charges laid against them “would break with our most important traditions and values as a nation.”

Ironically, the signing statement in which President Obama gave these assurances is itself violative of the Constitution and the separation of powers established therein, and only demonstrates his proclivity for ignoring constitutional restraints on the exercise of power once those powers have been placed (albeit illegally) by a complicit Congress at his disposal.

This (undoubtedly) illusory promise to preserve the most fundamental of American civil liberties reminds one of a statement made by the author of the Declaration of Independence, Thomas Jefferson:

Free government is founded in jealousy, not confidence. It is jealousy and not confidence which prescribes limited constitutions, to bind those we are obliged to trust with power.... In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

In a small measure, at least, Judge Forrest’s May 16 order tightens the “chains of the Constitution” designed to restrain the government. Knowing that the Obama administration may still try to find a loophole through which to pass its own version of due process, Judge Forrest provided a clarification in June spelling out the intended import of her opinion in very plain language:



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Put more bluntly, the May 16 order enjoined enforcement of Section 1021(b)(2) against anyone until further action by this, or a higher, court — or by Congress. This order should eliminate any doubt as to the May 16 order's scope.

It is unlikely that Judge Forrest's ruling will dissuade President Obama from exercising the full panoply of powers granted him in the NDAA.

There's more than just the NDAA threatening the future of our Republic. By a series of executive orders President Obama has seized control of the food supply and [all forms of domestic communication](#), and set out scenarios that would trigger the [imposition of peacetime martial law](#).

Recently, [The New American reported](#) on proposals for a new executive fiat that would give the president power over the Internet, as well.

The critical question is whether the modern train of abuses is long enough, whether the recent "history of repeated injuries and usurpations" is sufficient to justify "dissolv[ing] the political bands" that bind us to our federal government. Thomas Jefferson argued that King George III's actions had created "an absolute Tyranny over these states." Has such a tyranny been re-established 223 years after the Declaration of Independence?

Chris Hedges believes it is time for organized nonviolent resistance to the cabal of corporate and government interests combined to destroy our liberty. In an [interview with AlterNet.org](#), he claimed, "The electoral process has been hijacked by corporations. The judiciary has been corrupted and bought. The press shuts out the most important voices in the country and feeds us the banal and the absurd. Universities prostitute themselves for corporate dollars. Labor unions are marginal and ineffectual forces. The economy is in the hands of corporate swindlers."

While there is much truth in Hedges description of our desperate situation, other weapons are yet available in the defense of freedom. First, as the creators of the federal government, states have the right to stop federal usurpations at their borders by nullifying all unconstitutional federal acts. Next, citizens have the right and the responsibility to elect constitutionalist candidates. Finally, Americans must vigilantly monitor Congress, the courts, and the president, challenging any attempt by any branch to exceed its constitutional authority.

Photo: Chris Hedges (right) and the Manhattan seat of the U.S. District Court for the Southern District of New York



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