



Written by [Joe Wolverton, II, J.D.](#) on December 24, 2013

Ted Cruz: Indefinite Detention Retained in NDAA 2014

Eighty-five of 100 U.S. senators voted to renew the president's power to indefinitely detain Americans, denying them of their fundamental right to due process.

On December 19, [by a vote of 84-15](#) (Senator Bill Nelson, Democrat of Florida, did not vote), the Senate sent the Fiscal Year 2014 version of the National Defense Authorization Act (NDAA) to President Obama's desk. Although an overwhelming majority of Republicans and Democrats signed off on the evisceration of the Bill of Rights, a small coalition of Independents, Republicans, and Democrats refused to accede to such a devastation deprivation of rights. [A list of the lawmakers who stood against this tyranny](#) is appropriate:



John Barrasso (R-Wyo.)

Tom Coburn (R-Okla.)

Bob Corker (R-Tenn.)

Mike Crapo (R-Idaho)

Ted Cruz (R-Texas)

Mike Enzi (R-Wyo.)

Jeff Flake (R-Ariz.)

Mike Lee (R-Utah)

Jeff Merkley (D-Ore.)

Rand Paul (R-Ky.)

James Risch (R-Idaho)

Barry Sanders (I-Vt.)

Jeff Sessions (R-Ala.)

Richard Shelby (R-Ala.)

Ron Wyden (D-Ore.)

No sooner had 85 of his colleagues united to permit the president to apprehend and imprison American citizens that he alone suspects of aiding and abetting terrorists or those associated with terrorists, than consistent constitutionalist [Ted Cruz \(shown above\) issued a statement](#) explaining why he wasn't one of that considerable number:



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Today I voted against the National Defense Authorization Act. I am deeply concerned that Congress still has not prohibited President Obama's ability to indefinitely detain U.S. citizens arrested on American soil without trial or due process.

The Constitution does not allow President Obama, or any president, to apprehend an American citizen, arrested on U.S. soil, and detain these citizens indefinitely without a trial. When I ran for office, I promised the people of Texas I would oppose any National Defense Authorization Act that did not explicitly prohibit the indefinite detention of U.S. citizens. Although this legislation does contain several positive provisions that I support, it does not ensure our most basic rights as American citizens are protected.

I hope that next year the Senate and the House can come together in a bipartisan way to recognize the importance of our constitutional rights even in the face of ongoing terrorist threats and national security challenges. I look forward to working with my colleagues on the Senate Armed Services Committee toward this common goal.

Cruz's analysis of the indefinite detention provisions of the NDAA is spot on.

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.

As for the most unconstitutional parts of the NDAA 2012 that remain in effect, a bit of history is in order. [On December 31, 2011](#), with the president's signing of that law, the writ of habeas corpus — a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta — is voidable upon the command of the president of the United States. The Sixth Amendment right to counsel is also revocable at his will.

Of course, the denial of habeas corpus (or a trial) comes a little late in the process of being indefinitely detained. It's the apprehension that should be removed from the legislation next year.

Put simply, Americans would not need to worry about being held without charge if the president was not authorized in the same act to deploy the armed forces to round up the "suspects" and detain them indefinitely. Being apprised of the laws one is accused of having violated is important, but it's the detention and the manner of it that must be of more immediate concern to those who are alarmed about the new world order being defined by the NDAA.

One of the most noxious elements of the NDAA is that it places the American military at the disposal of the president for the apprehension, arrest, and detention of those suspected of posing a danger to the homeland (whether inside or outside the borders of the United States and whether the suspect be a citizen or foreigner). The endowment of such a power to the president by the Congress is nothing less than a de facto legislative repeal of the [Posse Comitatus Act of 1878](#), the law forbidding the use of the military in domestic law enforcement.

Furthermore, a key component of the NDAA mandates a frightening grant of immense and unconstitutional power to the executive branch. Under the provisions of Section 1021, the president is afforded the absolute power to arrest and detain citizens of the United States without their being informed of any criminal charges, without a trial on the merits of those charges, and without a scintilla of the due process safeguards protected by the Constitution of the United States.



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Further, in order to execute these provisions, the NDAA unlawfully gives the president the absolute and unquestionable authority to deploy the armed forces of the United States to apprehend and to indefinitely detain those suspected of threatening the security of the “homeland.” In the language of this legislation, these people are called “covered persons.”

The universe of potential “covered persons” includes every citizen of the United States of America. 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 nearly never-ending incarceration in a military prison.

Finally, although America needs more federal representatives such as Ted Cruz who are willing to disregard the example of his party’s leadership and work hard to derail the [“long train of abuses”](#) steaming out of Washington, D.C., there is another equally important and powerful way to stop the shredding of the Bill of Rights: nullification.

Nullification occurs when a state holds as null, void, and of no legal effect any act of the federal government that exceeds the boundaries of its constitutional powers.

Nullification recognizes that states possess the right to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States retain the right to act as arbiters of constitutionality of federal acts because they formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

Despite criticism by those who advocate for a more powerful federal government, nullification would not lead to anarchy, as it is only the unconstitutional federal acts that will be subject to state invalidation.

As vast majorities in one congress after another continue surrendering to the president all legislative, executive, and judicial power, the need for nullification is urgent, and liberty-minded citizens are encouraged to work to elect congressmen and senators committed to upholding their oaths of office while at the same time electing state legislators who will boldly assert their right to restrain the federal government through application of that very powerful and very constitutional principle.

At press time, the president has not indicated when he would sign the NDAA. On December 19, the White House [issued the following statement](#) on the subject:

Although the bill includes a number of provisions that restrict or limit the Defense Department’s ability to align military capabilities and force structure with the President’s strategy and implement certain efficiencies, overall the Administration is pleased with the modifications and improvements contained in the bill that address most of the Administration’s significant objections with earlier versions regarding these issues. The Administration supports passage of the legislation.

Photo of Sen. Ted Cruz: AP Images

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