



Written by [Joe Wolverton, II, J.D.](#) on April 9, 2012

## Broad Coalition of Journalists and Activists Join in Legal Challenge to NDAA

Seven dedicated plaintiffs have filed [a complaint](#) in federal court challenging key provisions National Defense Authorization Act. Specifically, the suit avers that the vagueness of several key terms in that law are creating a dangerous environment for reporters and activists to such a degree that the right of free speech is being infringed.

Named defendants in the complaint include President Barack Obama, Secretary of Defense Leon Panetta, Attorney General Eric Holder, Speaker of the House John Boehner, and Arizona Senator John McCain among others.



The Freedom 7, as the plaintiffs have been christened by the media, count many notable journalists and activists in their number. First, there is Pulitzer Prize-winning Chris Hedges (pictured above). Hedges is joined by Noam Chomsky, Daniel Ellsberg, and Icelandic politician Birgitta Jonsdottir.

On Thursday, March 29, a few of the plaintiffs appeared for the first time before District Court Judge Kathryn B. Forrest in a federal courtroom in Manhattan. In order for the case to proceed, representatives of the Freedom 7 must demonstrate that those who have joined in the lawsuit questioning the constitutionality of the NDAA have legal standing to initiate a proceeding against the federal government.

In order to clear the “standing” hurdle, plaintiffs must provide evidence sufficient to demonstrate a “reasonable fear” of being denied their First Amendment rights and of being detained by the government of the United States for the exercise thereof.

If the plaintiffs can satisfy this first threshold legal requirement, then the suit may proceed.

Hedges’s legal team anticipates the surfacing of others seeking to join the fray as fellow plaintiffs before the second round of hearings begins later this month.

One of those expected to add her name to the lawsuit is activist, author, and journalist [Naomi Wolf](#). In advance of her official attachment as a plaintiff, Wolf has filed an affidavit in support of Hedges and the suit against the NDAA.

A statement published on the [group’s website](#) proclaims the Freedom 7’s philosophy and purpose:

There is a transpartisan outpouring of citizen horror over this law. This is the juncture at which we all meet. It is here that we aim to gather diverse people and groups under one roof, so that we can peaceably force a government that is willing to indefinitely detain its own citizens to PAY ATTENTION. It is time to get creative, and thorough, in how we fight back.

Hedges, the first plaintiff, filed his lawsuit on January 12 in the U.S. District Court for the Southern District of New York.



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During oral testimony presented at the hearing, plaintiffs described the chilling effect the fear of being indefinitely detained by the government of the United States has had on their own otherwise constitutionally protected activities.

Alexa O'Brien of U.S. Day of Rage told Judge Forrest that she has received warnings regarding some of the affiliations demonstrated on the group's website. This was enough, O'Brien testified, to inspire "deep concerns" about continuing with her work, especially in the post-NDAA world in which we live.

Chris Hedges added his testimony to O'Brien's revealing that he, too, worries that his journalistic activities may expose him to suspicion leading to apprehension and indefinite detention.

Hedges's fears are not based in mere speculation, however. He claims that his work has resulted in government wiretaps and placement on government "watch lists," Said Hedges, "There is a possibility that people looking at my activity from the outside would not differentiate between myself and someone endorsing that activity." This situation, it seems, would be an implication of the vagueness of the term "associated forces" as used in section 1021 of the NDAA and under the authority of which a person could be indefinitely detained, denied habeas corpus and due process, and left in a secret government prison until the "end of hostilities."

In support of these claims, Hedges told the court that his extensive work overseas, particularly in the Middle East covering terrorist (or suspected terrorist) organizations, could cause him to be categorized as a "covered person" who, by way of such 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]."

Continuing in that vein, Hedges testified: "... what I find to be frightening is when the definition of 'associated forces' is ruled by a Manichean vision of the world (such as Oliver North, George Bush, Cheney) whose thinking is binary - i.e. good/bad; black/white.... in their assessment I would be a terrorist."

The complaint reflects Hedges's assessment of the danger lurking in the shadows of ill-defined terms.

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 him or someone in a substantially similar situation to be classified as an enemy combatant and sent away indefinitely to a military detainment center without access to an attorney or habeas corpus relief.

Other testimony was presented in furtherance of the plaintiffs' complaint against the federal government. Later in the hearing, Naomi Wolf read the written testimony of Icelandic parliament member [Birgitta Jonsdottir](#). Birgitta assisted WikiLeaks in producing a video of an airstrike on Baghdad in which 11 civilians were reportedly killed that was carried out by the U.S. military. The video went viral and brought attention to Birgitta— attention she now fears could place her in danger of being captured and indefinitely incarcerated by agents of the U.S. government.

In the sworn statement read by Wolf, Birgitta explained that she did not testify in person because she was afraid of being detained under the authority of the NDAA if she traveled to New York.

Particularly worrisome to Birgitta are the specter of the repercussions she could face for her support of WikiLeaks. Again, this is no unsupported imagination as Birgitta's Twitter account has been



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subpoenaed as part of the United States' investigation of Wikileaks and its editor, Julian Assange.

Although unable to testify at the hearing last month, Jennifer "Tangerine" Bolen is a key member of the Freedom 7 legal team. Bolen, a civil liberties advocate and independent journalist who hosts Live Panel discussions with activists and revolutionaries from around the globe, leads the work of coordinating the participation of the many co-plaintiffs in the federal suit against the NDAA.

Bolen reports that it was her own fear of apprehension and detention that motivated her to join the fight against the NDAA's violation of constitutionally protected civil liberties.

Although the evidence was certainly compelling in showing that the NDAA is inimical to the fundamental principles of freedom and the rule of law upon which the Constitution is built, Judge Forrest appeared unpersuaded. She announced her skepticism that the plaintiffs would be able to provide sufficient evidence that the NDAA interfered with the exercise of their First Amendment rights.

Moreover, Forrest said that as she interprets the NDAA, a restraint on free speech is not "the heart of the statute." She did, however, state that she sees how Section 1021 of the NDAA may have been written so as to include speech under its umbrella.

Speaking to the press after the adjournment of the hearing, Carl Mayer, an attorney representing the plaintiffs, provided his summary of the proceedings:

"I believe the plaintiffs proved in federal court why they are 'the Freedom Seven'. The plaintiffs demonstrated definitively that the Homeland Battlefield Act is massively 'chilling' free speech and intimidating activists and journalists in this country. America is not a Battlefield and we will fight this law to the highest court in the land, if we have to."



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