



Written by [Joe Wolverton, II, J.D.](#) on January 28, 2012

Pulitzer Prize-winning Journalist Files Suit Challenging NDAA

Chris Hedges (left) served as a journalist at the Old Gray Lady for 15 years, covering such proto-global terror organizations as the PLO and PKK (Kurdistan Workers Party), as well as more contemporary bugaboos, al-Qaeda and the Taliban. It was his unique résumé that attracted attorneys to Hedges, and they convinced him to sign on as the plaintiff in a case they were planning in which they would directly challenge the constitutionality of the NDAA.



Before providing a summary of the Hedges complaint, a brief rehearsal of the noxious, constitutionally offensive National Defense Authorization Act is in order.

On December 31, 2011, [President Barack Obama signed a law](#) granting himself absolute power to indefinitely detain American citizens suspected (by him) of being "belligerents."

With the President's signing of the NDAA, 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.

As Hedges described the situation [in an interview with Alex Jones](#), "the executive branch is now functioning as judge, jury, and executioner" of those branded as enemies of the state.

In a most despicable display of a brazen violation of his oath of office, Senator Lindsey Graham noted approvingly during floor debate in the Senate that the United States is now a theater in the War on Terror and American citizens "can be detained indefinitely.... And when they say, 'I want my lawyer,' you tell them: 'Shut up. You don't get a lawyer. You are an enemy combatant.' "

During his interview with Hedges, Jones remarked on Graham's betrayal, calling his exultation over the application of the indefinite detainment provision to American citizens a "weird celebration."

Despite the conspiracy of the Congress and the President to dismantle centuries of civil liberties and constitutional protections of freedom, President Obama adamantly denies that he will ever "authorize the indefinite military detention without trial of American citizens." That guarantee is all that stands between American citizens and life in prison on arbitrary charges of conspiring to commit or committing acts "belligerent" to the homeland.

The President continued by explaining 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, 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



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illegally) by a complicit Congress at his disposal.

With a grant of power that Hedges describes as “untouchable authoritarianism,” the NDAA removes from the President’s path toward tyranny the pesky impediment of the legal requirement of gathering and presenting to an impartial judge evidence probative of such evil associations. The mere suspicion of such suffices as a justification for the indefinite imprisonment of those so suspected.

As if the foregoing roster of Stalinist-style authoritarianism isn't an imposing enough threat to freedom, there is an additional aspect of the new law which places the civil liberties of Americans in greater peril.

Perhaps the most shocking provision in this permit for absolutism is that the NDAA 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.

Again, the aforementioned “conservative” Senator Lindsey Graham has no qualms about shredding our nation’s parchment protection from tyranny, either. Said Graham: “I don't believe fighting al Qaeda is a law enforcement function. I believe our military should be deeply involved in fighting these guys at home and abroad.”

The undeniable unconstitutionality of the National Defense Authorization Act and its violation of the Posse Comitatus Act are likely to result in the necessity of states nullifying those sections of the law that exceed the enumerated powers of Congress. This remedy would be applied by the legislatures of the states in an effort to protect their citizens from arrest and extradition by armed members of the federal armed forces. This effort to resist unfettered federal authority would rival the intensity of the Nullification Crisis of the 1830s — a confrontation that culminated in the Civil War and the death of at least 600,000 Americans.

During his interview with Jones, Hedges accurately described the authority over the military granted to the President by the NDAA as the “complete transference of war powers from Congress to the President.” “There is now no power that can touch them,” he added, referring to the advocates of authoritarianism now ruling the United States.

With the foregoing recital of the NDAA’s most egregious disregard of constitutional protections of the natural rights of Americans, the reader has better context for the specific allegations made by Hedges and his lawyers in the [lawsuit filed January 12 in the U.S. District Court for the Southern District of New York](#).

First, Hedges asserts 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].

The Homeland Battlefield Bill [NDAA] is sufficiently broad as to include within its scope Plaintiff’s writings and journalistic endeavors that have the effect of conveying, promoting or disseminating



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the ideas, philosophy and program of organizations, persons and entities in a state of hostility with the United States since September 11, 2001 or with organizations, persons and entities allied or associated with persons in a state of hostilities as defined under the AUMF and the Homeland Battlefield Bill.

Accordingly, Plaintiff as a result of his journalistic endeavor and profession, is in jeopardy of detention under the Homeland Battlefield Bill because he produces material, an example of which is set forth, *supra*, that may be deemed within the scope of “substantially” or “directly” supporting persons, organizations, entities and their associates, allies and colleagues, who are in a state of hostility with the United States.

According to the complaint filed by Hedges, 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.

Hedges accuses the law of violating the Constitution, including the Due Process Clause of the Fifth Amendment, as well as the First Amendment’s protection of the right of free speech and freedom of the press.

The law is set to go into effect on March 3, 2012; accordingly, Hedges requests a judgment declaring the NDAA to be void as unconstitutional and permanently enjoining the suspect provisions thereof from being enforced.

As of the date of writing of this article, a hearing on the matter has not been scheduled. *The New American* will track updates and bring them to you as they happen.

Photo: Chris Hedges



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