



Written by [Joe Wolverton, II, J.D.](#) on June 13, 2017

## Rand Paul Bill Would Repeal Indefinite Detention Provision of NDAA

Senator Rand Paul (R-Ky.) announced his plan to reintroduce S. 1300, the Sixth Amendment Preservation Act, a bill aimed at reasserting the constitutional guarantee of a speedy trial in all prosecutions.

Dr. Paul's legislation would prevent any future authorization of military force from being used to justify indefinitely detaining any person in America without trial. "Giving the accused their day in court isn't a suggestion," said Dr. Paul. "It's enshrined in our Constitution as a cornerstone of our judicial system. My bill reminds our government that the Founders did not put an expiration date on the Sixth Amendment."



The specific target of Paul's measure is a key section of the National Defense Authorization Act of 2012.

Despite being now nearly five years old, many of the most unconstitutional parts of the NDAA 2012 remain in effect. Therefore, a bit of history is in order.

On December 31, 2011, with the signature of then-President Barack Obama, the writ of habeas corpus — a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta — became voidable upon the command of the president of the United States. The Sixth Amendment right to counsel also became revocable at the will of the occupant of the White House.

Of course, the denial of habeas corpus (or a trial) comes a little late in the process of being indefinitely detained.

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 "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



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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.

In order to execute these provisions, the NDAA grants the president the absolute, unquestionable, and totally unconstitutional 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.

Senator Paul’s Sixth Amendment Preservation Act restores our nation’s constitutional commitment to individual liberty by repealing Section 1021.

Praise for Paul’s proposal comes from some very informed and influential people.

Noted civil libertarian and constitutional scholar Judge Andrew Napolitano called the Sixth Amendment Preservation Act “utterly faithful to constitutional principles.”

Although many proponents of the War on Terror and the reams of legislation that were enacted after September 11, 2001 claim that such measures were necessary to protect our people from “Muslim extremists,” history teaches us that the federal government wouldn’t hesitate to indefinitely and unconstitutionally detained loyal American citizens.

“We detained the Japanese without trial, which was a form of indefinite detention during World War II,” Paul said, as quoted by *Reason*.

In the *Reason* article reporting on Senator Paul’s plan to put forward S. 1300, the potential contemporary application of Section 1021 was highlighted (and similarly constitutionally offensive post-9/11 enactments).

“Seventy-five years later, liberal Americans worry that a President Donald Trump could very well follow in the footsteps of the late President Franklin Delano Roosevelt, this time with American Muslims. Whether or not these fears are perfectly legitimate or completely overblown is one conversation. But whether or not the implementation of the practice is still possible is another,” Zuri Davis writes.

Senator Paul expects the bill to be introduced to the Senate Judiciary Committee sometime this week.

Photo of Guantanamo Bay military prison: [U.S. Navy via Wikipedia](#)



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