Written by **Joe Wolverton, II, J.D.** on May 2, 2014

Supreme Court Tacitly Endorses Indefinite Detention Under NDAA

It's official: each branch of the federal government has signed off on the indefinite detention of Americans as (unconstitutionally) authorized by the National Defense Authorization Act (NDAA).

As *The New American* reported earlier this week, the Supreme Court refused to hear an appeal of a lower court decision overturning a previous injunction on the exercise of the extraordinary kidnapping power extended to the president in 2011 in that year's version of the NDAA. In refusing to hear the appeal, the justices made no further comment.

As readers will recall, Pulitzer Prize-winning journalist Chris Hedges is joined as a plaintiff in a lawsuit challenging the NDAA by a coterie of other prominent writers and commentators. Noam Chomsky, Daniel Ellsberg, and Icelandic politician Birgitta Jonsdottir all signed on to add their witness to that of Hedges that the fear of indefinite detention lurked within the shadows of vagueness of key terms in the NDAA.

The principal allegation made by the plaintiffs against the NDAA was that the vagueness of those critical terms could be interpreted by the federal government 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," meaning that they have given "substantial support" to terrorists or other "associated groups."

According to the text of Section 1021 of the NDAA, the president may authorize the armed forces to indefinitely detain:

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.

Fearing that this section could be applied to journalists and that the specter 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, 2012.

Hedges' complaint claims 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]."

Specifically, Hedges alleges 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.

In a statement made in 2013, Hedges summarized his sense of the autocratic world we were entering:

The world has been turned upside down. The pestilence of corporate totalitarianism is spreading rapidly over the earth. The criminals have seized power. It is not, in the end, simply Assange or Manning they want. It is all who dare to defy the official narrative, to expose the big lie of the global corporate state. The persecution of Assange and Manning is the harbinger of what is to come, the rise of a bitter world where criminals in Brooks Brothers suits and gangsters in beribboned military uniforms—propped up by a vast internal and external security apparatus, a compliant press and a morally bankrupt political elite—monitor and crush those who dissent. Writers, artists, actors, journalists, scientists, intellectuals and workers will be forced to obey or thrown into bondage.

Perhaps no organization has worked harder to expose Americans to the threat to fundamental liberties posed by the NDAA than People Against the NDAA (PANDA). In an email sent to The New American, Dan Johnson, the twenty year-old founder of the group echoed the sentiments expressed by Hedges:

If this does not provide evidence that the Federal government is corrupt beyond reform, and that is truly up to the states, cities, and counties to resist this atrocity, I do not know what will. Share this with everyone you can so they can see we are no longer a nation of laws, but of arbitrary decisions, no longer a nation of liberty, but nothing more than a militarized police state.

Later, Johnson placed the Supreme Court's demurer into historical context:

In 1944 the Supreme Court approved the pre-emptive detention of over 110,000 Japanese-Americans. The Court's denial 70 years later proves that we cannot rely on 9 people in black robes to defend our freedom.

It is now up to the states, cities, counties, and people of this nation to show the Supreme Court that it is not the final arbiter of our human rights. As 5 cities have already done so, I urge Americans across the country to begin action to ban these sections in their communities, raise awareness, and push back against this denial. If Washington D.C. thinks this is the last they will hear from us, they are very, very wrong.

In a similar vein, one of the plaintiffs and a seasoned civil liberties activist, Tangerine Bolen, issued the following statement on the Supreme Court's decision:

We are no longer a nation ruled by laws. We are nation ruled by men who have so steeped themselves in a false narrative that at the same time they are exponentially increasing the ranks of terrorists, they are destroying the rule of law itself. It is madness upon madness — the classic tale of becoming the evil you purport to fight while believing you remain righteous.

Despite the Supreme Court's tacit approval of the executive branch's usurpation of powers that would make Caligula blush, there remains hope for Americans determined to defend the rule of law in this republic.

Renowned constitutional scholar Von Holtz explained the error in accepting the Supreme Court as the ultimate arbiter of constitutional fidelity. "Moreover, violations of the Constitution may happen and the

injured cannot, whether states or individuals, obtain justice through the court. Where the wrongs suffered are political in origin the remedies must be sought in a political way," he wrote.

He continued, regarding this "aristocracy of the robe,": "That our national government, in any branch of it, is beyond the reach of the people; or has any sort of 'supremacy' except a limited measure of power granted by the supreme people is an error."

The checks and balances of the Constitution and the separation of powers it establishes are meant to be the first layers of defense against tyranny, not the last or the only as the statists would have you believe.

Constitutionally speaking, the people acting through their state governments are the final levee protecting the people as individuals from being apprehended by agents of the federal government and imprisoned indefinitely at the will and whim of an autocratic president.

Dan Johnson of PANDA recognizes this remedy, as well, "If the outcome of this lawsuit does not cement the fact that the courts will not defend the Constitution, nor our rights with it, there is little more evidence to be presented. The Federal tier has failed us. The states, localities, and eventually the people, are where we will stand. As we resist, the work of the plaintiffs will not be forgotten."

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