



Written by [Raven Clabough](#) on September 14, 2012

Indefinite Detention Provisions Struck Down by Fed Judge

Judge Katherine Forrest, a New York federal judge, [struck](#) down a provision in the National Defense Authorization Act that allows Americans to be indefinitely detained just for being accused of supporting terrorist groups. The ruling was in response to a lawsuit brought by journalists and scholars who were concerned that the NDAA would allow them to be indefinitely detained for speaking their minds. Judge Forrest's ruling reaffirms a ruling she issued back in May against the indefinite detention provision.



The National Defense Authorization Act has been quite controversial because it includes provisions that permit the indefinite detention of U.S. citizens. While the Obama administration and supporters of the NDAA had denied that the provisions found within the Act pertain to American citizens, analysts noted that there was no language in sections 1021 or 1022 of the Act — wherein the indefinite detention provision can be found — that exempted U.S. citizens.

Several lawmakers made efforts to combat the indefinite detention provisions.

Representative Adam Smith (D-Wash.), for example, wrote an amendment that would have required any suspected terrorists caught in the United States or its territories to be tried in civilian courts. He was joined by Congressmen Ron Paul of Texas, Justin Amash of Michigan, and John Garamendi of California.

The complaint of the lawmakers and other opponents was not simply that it violates the constitutional right to a trial but also that it doesn't work.

"In the last 10 years, we have successfully prosecuted — tried and convicted — over 400 terrorists," Smith said. "Even as we sit here today, there are over 300 terrorists in U.S. prisons."

Smith's amendment failed.

Other efforts were made as well. AddictingInfo.org writes:

Sen. Feinstein offered [an amendment](#) to make clear that only US citizens arrested overseas could be indefinitely detained by the military. That amendment [failed 45-55](#). Senator Rand Paul, joined by five Democratic Senators (Leahy, Wyden, Merkley, Gillibrand, and Manchin), proposed [an amendment](#) to repeal the AUMF [Authorization for the Use of Military Force]. That amendment [failed 30-67](#). And Senator Mark Udall (D-CO), joined by six Democratic Senators (Durbin, Leahy, Webb, Feinstein, Wyden, and Franken) and Senator Rand Paul (R-KY), proposed [an amendment](#) to remove the detention provisions from the NDAA. That amendment [failed 38-60](#).

Naturally, the NDAA has faced some backlash from various civil rights groups and civilians who are concerned that the law violates a number of their constitutionally protected rights.

New York Times journalist Chris Hedges and academic Noam Chomsky brought a suit against the law, asserting it was too vague and could be used to stop journalists and other civilians from exercising their freedom of speech that is supposed to be guaranteed by the First Amendment.



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Hedges and Chomsky also argued that the law was in violation of the Fifth Amendment.

According to Hedges, the indefinite detention provisions suggest “the totalitarian credo of endless war waged against enemies within ‘the homeland’ as well as those abroad.”

Agence France-Press reports, “Hedges said he already had cut back on contacts in the Middle East, for fear that his associations could lead to him being accused of breaking the law.”

Other plaintiffs on the case include Pentagon papers leaker Daniel Ellsberg and Tangerine Bolen, who runs the website Revolution Truth.

Judge Forrest agreed that the plaintiffs raised legitimate concerns about their rights and the potential for violation under the NDAA. In her ruling, she wrote that the plaintiffs in the case “present evidence that First Amendment rights have already been harmed and will be harmed by the prospect of the law being enforced.”

“The public has a strong and undoubted interest in the clear preservation of the First and Fifth Amendment rights,” she continued.

“First Amendment rights are guaranteed by the Constitution and cannot be legislated away,” Forrest said in Wednesday’s [new ruling](#). “This Court rejects the Government’s suggestion that American citizens can be placed in military detention indefinitely, for acts they could not predict might subject them to detention.”

According to the federal government, the NDAA gains its authority from the 2001 Authorization to Use Military force passed by Congress following the September 11 attacks. NDAA’s supporters argue that the NDAA simply reaffirms that power.

But Judge Forrest dismissed those contentions.

“The law of war has never been, and should not be, part of the domestic laws in the United States,” she wrote. “The law of war is vague by necessity — it needs flexibility. It is therefore ill-suited to domestic application and it would be ill-advised to make it a part of domestic law.”

As a result, the court “permanently” halts the enforcement of the sections of the National Defense Authorization Act.

Judge Forrest’s recent ruling reaffirms a ruling she issued in [May](#), when the court had issued a preliminary injunction against the indefinite detention provisions, asking Congress to reexamine the provision.

In May, Judge Forrest wrote, “At the hearing on this motion, the government was unwilling or unable to state that these plaintiffs would not be subject to indefinite detention under section 1021. Plaintiffs are therefore at risk of detention, of losing their liberty, potentially for many years.”

“An individual could run the risk of substantially supporting or directly supporting an associated force without even being aware that he or she was doing so,” Forrest wrote. “In the face of what could be indeterminate military detention, due process requires more.”

Whether the federal government is going to appeal Judge Forrest’s ruling is unknown. Some civil rights groups are already [urging](#) the President not to appeal the decision, however.

Demand Progress, a group that backed the lawsuit against the NDAA, is launching a petition urging the Obama administration not to appeal.



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Demand Progress is also calling upon the Senate to stop provisions for indefinite detention from being added to the NDAA for 2013, which is not yet up for a vote.

“It’s wonderful to see Judge Forrest — a recent Obama appointee — buck the administration and stand up for the Constitution,” Demand Progress executive director David Segal said in a statement. “Our members urge Obama to stop defending this obscene abuse of executive authority, and ask our senators to oppose indefinite detention when they vote on the NDAA later this fall.”

Bolen celebrated the judge’s ruling in a statement following the ruling.

“After eleven years of witnessing a radical departure from democracy and fundamental civil liberties and towards increased authoritarianism—all under the guise of the war on terror—we have a ray of hope and reason to keep the faith.”

Related article: [Federal Judge Permanently Blocks Indefinite Detention Under NDAA](#)

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