



Written by [Raven Clabough](#) on December 14, 2011

Lawmakers Submit Letter Opposing NDAA's Indefinite Detention Provisions

Forty members of Congress have sent a letter urging the House and Senate Armed Services Committee leaders to protest provisions of the National Defense Authorization Act that would legalize the indefinite detention of American citizens. The NDAA first passed in the House of Representatives weeks ago but endured strong opposition from a handful of lawmakers in the U.S. Senate last Thursday, where the bill was passed but with the addition of an amendment that forced the measure to be reconciled and revised for a final vote. The revised version of the NDAA was finalized on Tuesday, and a vote on it is set to take place this week.



The letter states,

The Senate-passed version of the NDAA, S. 1867, contains Section 1031, which authorizes indefinite military detention of suspected terrorists without protecting U.S. citizens right to trial. We are deeply concerned that this provision could undermine the Fourth, Fifth, Sixth, Seventh, and Eighth amendment rights of U.S. citizens who might be subjects of detention or prosecution by the military.

One signer, Rep. Martin Heinrich (D.-N.M., above left), stated, "I strongly oppose mandating military custody and allowing for indefinite detention without due process or trial. These provisions are deeply concerning and would risk putting American citizens in military detention, indefinitely. In short, this authority is at complete odds with the United States Constitution."

While the letter is comprised of Democrat signatures, it summarizes the concerns advanced by key Republicans such as Ron Paul, Rand Paul, and Justin Amash, all of whom have been quite public and outspoken regarding their opposition to the measure.

On December 5, Rand Paul [wrote](#) of the dangerous provisions found in the NDAA in the *National Review*: If you allow the government the unlimited power to detain citizens without a jury trial, you are exposing yourself to the whim of those in power. That is a dangerous game.

The final version of the bill, however, does not address any of the concerns put forth in the letter or by the Republicans opposed to the NDAA.

As [noted](#) by *The New Americans* Joe Wolverton, the revised version of the NDAA bill will now be sent in its conference form for a vote in the House and the Senate, and it includes billions of dollars appropriated for a continuation of the wars in Iraq and Afghanistan. Wolverton adds that it greases the skids for the deployment of forces into Iran (after sanctions fail to persuade Ahmadinejad to see things our way) and converts all of the United States into a battlefield, treating all Americans as potential



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suspects. The entire bill does all of this and more, costing American taxpayers \$662 billion.

The final version of the bill, which followed a series of secret meetings, is now set to be voted on by the end of the week.

Any issues that the Obama administration purported to have with the Senate-passed version of the bill, none of which seemingly had anything to do with the indefinite detention of Americans, appear to have been settled in those secret meetings, including the provision that would have cut out the Federal Bureau of Investigation from the custody and prosecution of terror suspects.

The Obama administrations veto threat was not due to the indefinite detention provision. Recent revelations by Senator Carl Levin (D-Mich.) indicate that the White House actually insisted that any language exempting American citizens from the indefinite detention provision be removed.

According to Levin, who is Chairman of the Armed Services Committee: "The language which precluded the application of Section 1031 to American citizens was in the bill that we originally approved ... and the administration asked us to remove the language which says that U.S. citizens and lawful residents would not be subject to this section."

Levin continued: "It was the administration that asked us to remove the very language which we had in the bill which passed the committee we removed it at the request of the administration. It was the administration which asked us to remove the very language the absence of which is now objected to.

Groups such as the American Civil Liberties Union and Human Rights Watch indicate that the final version of the bill does not protect Americans from any of the dangerous provisions.

The sponsors of the bill monkeyed around with a few minor details, but all of the core dangers remain the bill authorizes the president to order the military to indefinitely imprison without charge or trial American citizens and others found far from any battlefield, even in the United States itself, said the ACLU's Chris Anders.

The latest version of the defense authorization bill does nothing to address the bills core problems legislated indefinite detention without charge and the militarization of law enforcement, concurred HRW's Andrea Prasow.

The provisions found in Section 1031 of the bill provide the President full power to arrest and detain citizens of the United States without due process. Under that provision, the President is also afforded the authority to use the military to apprehend and detain those suspected individuals, dubbed covered persons. According to Section 1031, a covered person is one who either engages in terrorist acts, or anyone associated with an organization guilty of belligerent acts.

TNAs Wolverson opines, 'Belligerent act' aye, there's the rub. Given the current inhospitable constitutional climate, is it too farfetched to imagine a scenario in the coming year (when the act would become effective) where a blogger consistently criticizing the foreign policy of the President is branded a 'belligerent' and captured by the military and shut away in a secure military facility without access to an attorney or the established rules of civil procedure?

Senator Rand Paul voiced similar concerns in *National Review*:

The FBI publishes characteristics of people you should report as possible terrorists. The list includes the possession of Meals Ready to Eat, weatherproofed ammunition, and high-capacity magazines; missing fingers; brightly colored stains on clothing; paying for products in cash; and changes in hair color. I fear that such suspicions might one day be used to imprison a U.S. citizen



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indefinitely without trial. Just this year, the vice president referred to the Tea Party as a bunch of terrorists. So, I think we should be cautious in granting the power to detain without trial.

Still, supporters for the bill assert that it should not make exceptions for anyone, regardless of their citizenship.

It is not unfair to make an American citizen account for the fact that they decided to help al Qaeda to kill us all and hold them as long as it takes to find intelligence about what may be coming next, remarked Graham. And when they say, I want my lawyer, you tell them, Shut up. You dont get a lawyer.

According to the [Huffington Post](#), however, the last time something of this magnitude was even talked about was during World War Two when Japanese-Americans were put into internment camps following the bombing of Pearl Harbor.

While the indefinite detention provision managed to remain in the bill, some other significant items found their way out of it, including a 2014 audit requirement for the Pentagon, reports *Congressional Quarterly*.



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