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Obama Sets NDAA Detention Guidelines

On Thursday, March 1, the die has been cast again as the American Republic entered the post-NDAA era. On March 1, the major provisions of that unconstitutional measure went into legal effect. Then, with another stroke of his pen, President Barack Obama implemented a set of regulations establishing the policies for implementing the immense powers granted him by the National Defense Authorization Act. Thus, he, and we, crossed into uncharted territory.

The media have portrayed these directives as a move by President Obama proving the strength and sincerity of his resolve to never deploy the military to detain American citizens without a trial. A closer look reveals that the media blowing of the President's trumpet is mostly sound and fury, signifying nothing.

Nearly two months have passed since the President signed the NDAA into law. On December 31, 2011, with the portentous affixing of his signature to that law passed overwhelming by the Congress, 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 revocable at his will.

Don't worry, though. The President 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."

These promises were made in the signing statement attached by the president to the NDAA. Of course, the NDAA is an expression of power granted by the Constitution to neither the legislative nor the executive branch. The irony is that the document ostensibly guaranteeing the law-abiding use of that authority is itself unconstitutional.

In fact, the signing statement in which President Obama recorded these assurances is itself violative of the Constitution, the separation of powers established therein, and serves to demonstrate his proclivity for ignoring constitutional restraints on the exercise of power once those powers have been placed (albeit illegally) at his disposal by a complicit Congress.

Despite all of this, the policy directive is being promoted by the media as the etching in stone (promulgation of regulations) of the President's determination to preserve our liberties and the timeless

civil rights that undergird them.

The broad strokes of the NDAA are by now well-publicized, but a brief review is appropriate.

Most of what is contained in the over 500-page NDAA is in fact "inimical to liberty." For example, under the provisions of Section 1021 of the NDAA, 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 this immense power, the NDAA unlawfully grants the President the absolute and unquestionable 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."

Regardless of promises to the contrary, the language of the NDAA places every citizen of the United States within the universe of potential "covered persons." 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.

In these new enforcement guidelines, however, the White House insists that the treatment of a "belligerent," including the decision regarding whether or not to grant the armed forces custody over that person, will be circumspectly monitored so as not to place non-terrorists under the control of the Pentagon.

A more discerning reading of the policy, however, reveals that the kid gloves are more likely to be placed over the iron fist of government when the suspect is a foreigner.

An article published recently at RT.com explains the situation:

> The signing could indeed bring a cease to the requirement of military detainment for alleged adversaries of America, a requirement that is authorized under Section 1022 of the act. It does not, however, squash the indefinite detention without trial provision of Section 1021, nor does it negate the fact that the US government has already allowed itself to approve a nasty legislation that denounces the civil liberties of every American and has marred the administration of a president who campaigned on upholding constitutional rights.

The President, of course, offers and alternate explanation for not only the NDAA, but for the purpose behind the policies:

Tellingly, however, in his comments made at the time of his presenting of the directives, did not seize the opportunity to denounce outright the NDAA and the sections of it that have been called "kidnapping provisions." Rather, he instructed Americans that:

> The executive branch must utilize all elements of national power — including military, intelligence, law enforcement, diplomatic, and economic tools — to effectively confront the threat posed by al-Qa'ida and its associated forces, and must retain the flexibility to determine how to apply those tools to the unique facts and circumstances we face in confronting this diverse and evolving threat.

Words hardly soothing to those who recognize the danger to freedom posed by the powers concealed under the cover of the grey areas created by so many of the key terms of the NDAA's most noxious provisions.

To facilitate this flexibility, the President wrote that he needed to interpret Sections 1021 and 1022 in a manner most conducive to maintaining the security of the homeland.

The chosen method of distinguishing between "covered persons" (that is, those subject to indefinite detention under the custody of the military) and mere criminals is waiver. The NDAA provided for a 60-day window for the President to devise directives for the issuing of those waivers. The regulations were signed by the president on day 59.

Under the provisions establishing the rules for awarding these waivers, the Attorney General, in consultation with a cadre of other national security officials, is given the authority to waive the mandates of Sections 1021 and 1022 for "categories of conduct, or for categories of individuals, or on an individual case-by-case basis, when doing so is in the interest of national security."

Even a cursory reading of this policy reveals that the language thereof represents little more than the putting forth of policies to accelerate the process of qualifying a suspect for a bunk on the boat to Guantanamo.

Regardless of the myriad alternative analyses of the White House's regulations, the majority of news outlets will portray the act as a step in the right direction toward de facto evisceration of the most frightening provisions of the NDAA.

Others, however, might discover that in spite of the hype, the President's ability to arrest and indefinitely detain American citizens without the recourse of habeas corpus yet abides in the NDAA.