



Written by [Joe Wolverton, II, J.D.](#) on December 5, 2012

Senate Unanimously Passes 2013 NDAA; Power to Arrest Americans Remains

Just after 5:00 p.m. Tuesday, the Senate did it again. [By a vote of 98-0](#) (two senators abstained) lawmakers in the upper chamber approved the Fiscal Year [2013 National Defense Authorization Act](#) (NDAA). Not a single senator objected to the passage once again of a law that purports to permit the president, supported by nothing more substantial than his own belief that the suspect poses a threat to national security, to deploy the U.S. military to arrest an American living in America.



As [The New American reported](#), an amendment to the 2013 version of the defense spending bill passed by the Senate clarified the right to trial of “citizens and permanent legal residents” detained under the relevant sections of the revamped measure.

The amendment, known as the Feinstein-Lee Amendment, was cosponsored by Dianne Feinstein (D-Calif.), Mike Lee (R-Utah), and Rand Paul (R-Ky.). In an interview Tuesday with *The New American*, spokesmen for Lee and Paul admitted that the amendment did not go far enough in the defense of due process, but said it was a step in the right direction.

“Colored by our experience with the due process amendment to the NDAA we offered in 2012, we knew that we would have nowhere near the number of votes needed to pass an amendment that guaranteed due process for all persons detained under the NDAA,” explained Doug Stafford, chief of staff for Rand Paul.

Stafford and Rob Porter, general counsel for the office of Senator Lee, reiterated that they recognize that the Feinstein-Lee Amendment was not the ideal attack on the indefinite detention provisions of the NDAA. Senators Lee and Paul believe, the spokesmen assured *The New American*, that “the full panoply of due process rights should apply to all persons, not just American citizens.”

For now, however, the NDAA 2013 is almost law, and the president’s power to send troops to arrest Americans living in America remains intact and unabridged. That is rightfully terrifying to constitutionalists, journalists, and any other American who fears being kidnapped by the military and indefinitely detained.

Yes, the Feinstein-Lee Amendment explicitly guarantees the right of a trial by jury to American citizens, but it also explicitly authorizes the president to indefinitely detain them, a substantial step beyond even last year’s NDAA and the Authority for the Use of Military Force (AUMF), upon which it builds.

Despite this despicable extension of despotic powers so unconscionable and unconstitutional, [The Hill reported](#) after the Tuesday’s vote that this year’s NDAA passed so overwhelmingly because of the “the lack of controversial issues this year.”

Most senators were equally gleeful.



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Prior to the vote, Senator Carl Levin (D-Mich.) bragged that he was “so proud our committee could keep the tradition of passing for 51 times a defense authorization bill.”

This was, in fact, only the second time in half a century that an annual defense spending bill has passed unanimously.

Last week, President Obama threatened to veto the bill because it “trespasses on his power.”

As [reported by the online Huffington Post](#):

Among the issues the president’s Office of Management and Budget singled out were some of the controversial military detainee provisions, although it did not take issue with language passed in last year’s bill that lets the military hold American civilians without trial.

Instead, the White House complains about ongoing restrictions on its ability to transfer prisoners from the Guantanamo Bay, Cuba, prison base for terrorism suspects, which are reasserted in section 1031 on the bill.

Despite promises to shutter the notorious detention facility, this year it celebrated its 10th year of operation.

Ostensibly, raising the bar for transfer of prisoners from Gitmo riles the president, thus his threat to reject the NDAA.

As for his power, that is rightly set forth in Article II of the Constitution, not in the NDAA or any other act masquerading as law passed by an oligarchy masquerading as the people’s representatives.

The president, Congress, and the courts would be wise to remember the words of Alexander Hamilton from [Federalist, No. 33](#):

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such.
[Emphasis in original.]

Undaunted, inveterate warmonger Senator Lindsey Graham (R-S.C.) [addressed the Senate](#) following the defeat of the amendment calling for increased restrictions on the transfer of prisoners out of Guantanamo, explaining the reasons for need to deny due process to people he earlier called “crazy bastards.”

“Simply stated, the American people don’t want to close Guantanamo Bay, which is an isolated, military-controlled facility, to bring these crazy bastards that want to kill us all to the United States,” Graham said. “Most Americans believe that the people at Guantanamo Bay are not some kind of burglar or bank robber. They are bent on our destruction. And I stand with the American people that we’re under siege, we’re under attack and we’re at war.”

“Some of my colleagues in this body have forgotten what 9/11 is all about,” Graham continued. “The people who attacked us on 9/11, in that prison, want to destroy our way of life. They don’t want to steal your car. They don’t want to break in your house. And we’ve got a military prison being well run, so I think the American people are telling everybody in this body, ‘Have you lost your mind? We’re at war.’”



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Act like you're at war.'"

What Graham fails to mention, however, is that the Constitution gives Congress the exclusive power to declare war — something it has not done since World War II.

Graham and his cohorts in the war wing of the Republican Party (John McCain chief among them) are content not only to abdicate their constitutional authority to declare war, but to betray their oaths of office wherein they vowed to "preserve, protect, and defend the Constitution."

Finally, although the denial of due process to all persons and the retention of the totalitarian power granted the president to deploy the U.S. military to arrest citizens without charge are by far the most loathsome and illegal provisions of the 2013 version of the NDAA, there are other sections equally worthy of condemnation.

For example, Section 1203 authorizes the secretaries of Defense and State:

- (1) To enhance the ability of the Yemen Ministry of Interior Counter Terrorism Forces to conduct counterterrorism operations against al Qaeda in the Arabian Peninsula and its affiliates.
- (2) To enhance the capacity of the national military forces, security agencies serving a similar defense function, other counterterrorism forces, and border security forces of Djibouti, Ethiopia, and Kenya to conduct counterterrorism operations against al Qaeda, al Qaeda affiliates, and al Shabaab.
- (3) To enhance the capacity of national military forces participating in the African Union Mission in Somalia to conduct counterterrorism operations against al Qaeda, al Qaeda affiliates, and al Shabaab.

Funding limits of \$75,000,000 in each area are set in the bill. How will this money be spent? For "provision of equipment, supplies, training, and minor military construction." Looks like expansion of the drone war just got a huge kickstart.

The bill will now be sent to a House-Senate conference committee. Despite differences in the versions of the measure passed by the two chambers, it is all but certain that the right words will be spoken in the right ears, and the president will once again sign this year's NDAA into law. As one GOP staffer told *The Hill*, "While there are difference between the bills, there doesn't appear to be anything that is insurmountable or will keep the conference committee from resolving the differences."

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