

National Defense Authorization Act

Fact Sheet and Talking Points

“They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.” – Benjamin Franklin (1759)

What is the National Defense Authorization Act?

The National Defense Authorization Act (NDAA) was passed by Congress in early December. This bill contains provisions that, if made law, would allow the military to arrest, and indefinitely detain, even US citizens accused (but never found guilty) of terror-related crimes. Both of Louisiana’s Senators, David Vitter (R-LA) and Mary Landrieu (D-LA), as well as our very own La 5th district Congressman, Rodney Alexander (R-LA), voted for approval of the bill.

Those of us who care about liberty and freedom must take immediate action. Whether concerned about communities vulnerable to racial, religious, and ethnic profiling in the war on terror, or the ideological profiling apparent in the FBI’s investigation of peace and justice activists around the country, or simply preserving the right to trial or the longstanding prohibition on domestic military deployment, all Americans share a stake in this struggle.

Why are the NDAA’s detention provisions so bad?

1. The indefinite military detention of US citizens violates the Fifth and Sixth Amendments, as well as the fundamental Posse Comitatus Act, on which democracy relies. A society is not free when its citizens are subject to arbitrary detention. *“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.” – Martin Heinrich (D-NM)*

2. The NDAA’s detention provisions could authorize the indefinite military detention of activists. The FBI has long treated peace, environmental, and anti-tax activists as terrorists. Legalizing indefinite detention for anyone accused of a terror-related crime would give the president—and every future administration—the unchecked power to deny the right to trial and override the presumption of innocence in order to silence critics. *“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.” – Rand Paul (R-KY)*

3. Transforming America into a police state would do the work of our nation’s enemies. Throwing our rights and liberties to the wind is what terrorists want. And with this bill, our leaders have done more damage to our way of life than any foreign enemy. *“There’s a reason you separate military and the police. One fights the enemies of the state, the other serves and protects the people. When the military becomes both, then the enemies of the state tend to become the people.” – Commander William Adama*

4. **The NDAA's detention provisions would undermine national security.** Military detention would not only threaten constitutional rights, but also force the military to perform a mission for which it is ill suited, and it would further damage public trust in our justice system.

5. **Congress is supposed to check and balance the Executive Branch, not expand it.** The NDAA would give the executive branch—under not only President Obama, but also every future president—unprecedented power to detain US citizens without judicial review. Rather than checking and balancing the Executive Branch, Congress passed a bill granting the Executive Branch even more power than the administration wanted. *“This legislation signals the end of the rule of law in America.” – John W. Whitehead*

What is the NDAA's status?

On November 29, 2011, the Senate voted 61-39 to reject the Udall Amendment, which would have eliminated the NDAA's provisions expanding military detention, paving the way for the Senate's approval on December 1.

President Obama initially threatened to veto the bill, but after a series of closed-door meetings with congressional leaders, has backtracked on that promise. Senator Carl Levin (D-MI) announced changes to the bill on December 12, reportedly reflecting input from the Obama administration. On December 14, the administration announced that “the language [as revised] does not challenge or constrain the President's ability to collect intelligence, incapacitate dangerous terrorists, and protect the American people, and the President's senior advisors will not recommend a veto.”

On the one hand, the bill emerging from the conference committee did remove prior language *requiring* mandatory military detention for terror suspects—even US citizens. In particular, Section 1032(b) provides that “[t]he requirement to detain a person in military custody under this section does not extend to citizens of the United States.”

On the other hand, the bill still includes language permitting military detention without trial at the president's discretion. Section 1031 affirms “authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.” Subsection (b), meanwhile, includes “any person who has committed a belligerent act,” defined however any future president, attorney general, or prosecutor may choose to interpret that ambiguous term.

On Wednesday, December 14, the House approved the reconciled bill by a vote of 283-136. On Thursday, December 15, the Senate approved the bill by a vote of 86-13, *coincidentally acting on the controversial measure on the 220th anniversary of the ratification of the Bill of Rights*. Just two weeks later, on December 31, President Obama signed the National Defense Authorization Act for Fiscal Year 2012 into law.