

National Defense Authorization Act

Fact Sheet and Talking Points

What is the National Defense Authorization Act (NDAA)?

The National Defense Authorization Act (NDAA) was signed into law by President Obama on December 31, 2011. It contains provisions that allow the military to arrest, indefinitely detain, and deny a trial or day in court to anyone—even US citizens—accused of a “belligerent act,” or any terror-related offense.

The NDAA subjects these individuals to arbitrary detention without trial, denying the Fifth Amendment’s guarantee of due process and Sixth Amendment rights to challenge evidence and confront one’s accusers. The NDAA also endangers First and Fourth Amendment protections, because the PATRIOT Act expanded the definition of “material support for terrorism” to include crimes of speech and association even by defendants who neither committed nor ever intended to support violence.

Those of us who care about liberty and freedom must take action to restore due process and the right to trial. Whether concerned about racial profiling in the war on terror, the FBI’s ideological profiling of peace and justice activists across the country, or with 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?

The indefinite military detention of US citizens violates the Fifth and Sixth Amendments, as well as the Posse Comitatus Act. The Fifth Amendment ensures a right to due process of law, the Sixth Amendment ensures a right to trial, and the Posse Comitatus Act (in force since the Civil War) prohibits the domestic deployment of the military. Democracy relies on these principles. A society is not free when its citizens are subject to arbitrary and indefinite detention without trial.

The NDAA’s detention provisions would authorize the indefinite military detention of activists. Under the Animal Enterprise Terrorism Act and the material support provisions of the PATRIOT Act (upheld by the Supreme Court in *Humanitarian Law Project v. Holder*), the FBI and other law enforcement agencies have long treated peace, environmental, and anti-tax activists as terrorists. Legalizing indefinite detention for anyone accused of a terror-related crime would give any future federal government the unchecked power to silence critics, deny the right to trial, and override the presumption of innocence.

The NDAA’s detention provisions undermine national security. The FBI director, the secretary of defense, the director of national intelligence, and the chairs of the Senate Intelligence and Judiciary Committees all recognize that expanded military detention harms national security. Even President Obama had serious reservations about signing the bill, and initially opposed it. They understand that

detention would threaten constitutional rights, force the military to perform a mission for which it is ill-suited, and erode trust in our justice system.

Military detention without trial removes courts from the system of checks and balances. Our nation's founders wrote expressly about the necessary role of independent judges to prevent Executive Branch abuses. By authorizing military detention beyond the reach of the federal courts, the NDAA erodes the separation of powers as well as the individual rights to due process and trial.

The detention provisions became law because our policy process has been hijacked. The NDAA passed without a single congressional hearing and over the objections of congressional committees that were denied the chance to review it. Few major media outlets covered the debate over the NDAA's detention provisions, and many members of Congress didn't even understand the bill when they voted for it.

The NDAA's detention provisions invite the recurrence of torture. Because torture of military detainees has often gone unpunished, the military detention regime extended by the NDAA opens the door for more torture in the future. In fact, impunity for torture is one reason the NDAA passed: officials responsible for torture under the Bush administration—who are free only because the Obama administration has turned a blind eye to their war crimes—actively lobbied in favor of the NDAA's detention provisions.

Transforming the United States into a police state does the work of our nation's enemies. If our race to protect ourselves from enemies undermines our own rights and liberties, we have done our enemies' work for them.

Congress is supposed to check and balance the Executive Branch, not expand it. The NDAA gives any future administration unprecedented power to detain US citizens without judicial review. Rather than checking and balancing the Executive Branch and its many ongoing violations of civil rights, Congress passed a bill giving the Executive Branch even more unchecked power.