

- [News](#)
  - [International news](#)
  - [The Intel Hub Exclusive & Featured Articles](#)
  - [U.S. News](#)
- [Occupy Wall Street Coverage](#)
- [Satire & Comedy](#)
- [Topics](#)
  - [Police State – Human Rights – Globalism](#)
  - [War – Terror – Economy – Politics](#)

You are here: [Home](#) / [News](#) / [U.S. News](#) / [Crushing the Disinformation Surrounding Indefinite Detention of Americans Under the NDAA](#)

# Crushing the Disinformation Surrounding Indefinite Detention of Americans Under the NDAA

-->[9 Comments](#)

[Join The Exclusive Intel Hub Mailing List!](#)

Like

52 likes. Sign Up to see what your friends like.

Tweet

11

## [The Intel Hub](#)

By **Madison Ruppert**

December 17, 2011



Today Glenn Greenwald, writing for Salon, published [a piece](#) which is required reading for anyone who has been keeping up with the National Defense Authorization Act (NDAA) Fiscal Year 2012, especially those of us who have been arguing with proponents of the bill and others who do not understand the detainee provisions therein.

I will be going over Greenwald's points in this article, as they cannot be emphasized enough and are all based in the ugly reality we see unfolding before us, unlike the claims made by those contending that the bill does not allow indefinite detention of American citizens without charge or trial.

The [indefinite detention sections](#), contained within the NDAA along with other strange sections like [removing the ban on bestiality and sodomy](#) for members of the armed forces, and [Obama](#)'s support for it has drawn intense criticism from some somewhat unlikely sources.

For instance, Human Rights Watch [called](#) Obama's refusal to veto the detainee bill "a historic tragedy for rights," and characterized the NDAA as "ill-conceived."

Similarly, the American [Civil Liberties Union \(ACLU\)](#) [criticized](#) Obama for backing down on his veto threat, although as I have previously outlined, [it wouldn't really make a difference even if he did veto it](#).

If Obama actually followed through and vetoed the bill, the veto could simply be overridden by both chambers and they have far more than the 2/3 majority required to override a Presidential veto.

"If President Obama signs this bill, it will damage both his legacy and American's reputation for upholding the rule of law. The last time Congress passed indefinite detention legislation was during the McCarthy era and President Truman had the courage to veto that bill.

We hope that the president will consider the long view of history before codifying indefinite detention without charge or trial," [said](#) the director of the ACLU's Washington Legislative Office, Laura Murphy.

Even the New York Times – hardly a publication known for criticizing the Obama administration and Democrats in general – published [a heated editorial](#) in which it is written that Obama's decision to back down on the hollow veto threat "reinforces the impression of a fumbling presidency."

The editorial rightly points out, "To start with, this bill was utterly unnecessary. Civilian prosecutors and federal courts have jailed hundreds of convicted terrorists, while the tribunals have convicted a half-dozen."

There are some disturbingly prevalent myths about the NDAA that I see crop up in emails and in the comment section on [End the Lie](#) and other places that post my articles, all of which Greenwald strikes down with apparent ease.

The main three falsehoods I see parroted are: "The NDAA doesn't actually codify indefinite detention"; "The NDAA doesn't widen the definition of what the 'War on Terror' is as was previously outlined in the 2001 Authorization for Use of Military Force (AUMF)"; and "American citizens cannot be detained indefinitely under the NDAA."

All of these are demonstrably untrue, as I will show in language that anyone can understand. If, after reading this, you still do not understand that we are all in danger of being locked up indefinitely without charge or trial under this bill, please do not hesitate to contact me and substantiate your position.

To first address the codification of indefinite detention, we look to the conference report which accompanied H.R. 1540, specifically the section on detainee provisions, found [here](#).

On page three of the PDF, under Subtitle D – Counterterrorism, Section 1021, which is page 654 of the original document, we read starting on line 19, "The disposition of a person under the law of war as described in subsection (a) may include the following: (1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force."

How any sane individual could read, "Detention under the law of war without trial until the end of the hostilities," and think that this does not explicitly codify indefinite detention is beyond comprehension.

I'm not sure how they could possibly put it in a more blatant fashion. There is absolutely no arguing that this allows for indefinite detention "until the end of the hostilities" which will likely never happen, as perpetual conflict is what the entire "War on Terror" is about.

"Anyone claiming this bill does not codify indefinite detention should be forced to explain how they can claim that in light of this crystal clear provision," Greenwald rightly contends.

I would love to see someone argue this and if you're that person, please do not hesitate to email me. I very well might publish your rebuttal and my response, if you agree to it.

Greenwald aptly points out that both the Obama and Bush regimes have repeatedly argued that the 2001 AUMF tacitly gives them the power to indefinitely detain and quite unfortunately, "post-9/11 deferential courts have largely accepted that view."

These precedents allow the language to be inserted in the NDAA that says that nothing in the NDAA will expand the 2001 AUMF, which is what proponents often point to in defense of their position that it will not be used to indefinitely detain American citizens without charge or trial.

In reality, the interpretations used by the Executive branch and the so-called justice system are "already so much broader than its language provides," according to Greenwald.

This is exactly the same as the so-called "secret PATRIOT Act" which was exposed by Senator [Ron Wyden](#) in late May of this year.

This is not truly a secret PATRIOT Act, but instead is a classified interpretation of the law which "cannot be publicly assessed or challenged," according to [Wired](#).

What makes proponents of the NDAA think that the government will suddenly change course and begin to interpret the law in a straight-forward manner which we can all understand and scrutinize?

I contend that it is naïve, if not outright ignorant, to believe that the NDAA's interpretation – specifically the detainee provisions – will be interpreted in our favor.

There is simply no indication that this is the case and it would buck the disturbing trend established by the government of the United States of establishing laws and interpreting them in ways which we are not aware of.

The important fact to take home is that this is the first time that indefinite detention has been explicitly codified in a statute since the Internal Security Act of 1950 during the McCarthy "red scare" era.

The next myth is that the NDAA does not expand the definition of the "War on Terror" as previously outlined in the 2001 AUMF and like the other fallacies surrounding this bill, it is easily proven to be false.

Under the 2001 AUMF, the scope of the so-called War on Terror was much smaller than what is outlined in the NDAA and it was much more restricted in who it authorized the use of force on.

Under Section 2 of the [2001 AUMF](#) we read,

"(a) IN GENERAL- That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned,

authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

Advertisement



As you can see, the authorization is relatively quite limited compared to the new language which, on top of the guidelines in the AUMF, adds, “(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.”

The glaring part of this section is that it is wildly ambiguous and leaves the door open to lump a wide range of people under the label of “covered persons” which were previously not (at least explicitly) covered by the AUMF.

A major issue here is that the Pentagon actually considers protesting to be an act of “[low-level terrorism](#),” or at least they did until they were exposed for having a question on an employee training exam for the Department of Defense which asked, “Which of the following is an example of low-level terrorism?” the correct answer for which was, “Protests.”

Once it became public knowledge that they were demonizing people who exercise their most essential right to free speech, the Department of Defense removed the question, but it does not negate the disturbing fact that they actually included such a question on an official exam.

So, what prevents the government from saying protesters, like those involved in the Occupy movement, are terrorists who can be indefinitely detained without charge or trial?

Unfortunately, absolutely nothing is stopping them.

Another troubling aspect is the term “belligerent” which is similarly ambiguous and flexible and was likely specifically chosen for that reason.

A professor of law at Seton Hill and specialist in detainee law, Jonathan Hafetz, explained just how dangerous the ambiguity of the new language is in an interview with Glenn Greenwald earlier this month:

“One though could imagine some very frightening scenarios. Could the military arrest and detain a person arrested at his home in say Cleveland, Ohio, for writing a \$20,000 check to a group that supported AQ? Or a doctor in New Jersey who sent medical supplies to an organization in Ethiopia, for example, that provided humanitarian aid to a group in that country that was deemed to be affiliated with AQ? The answer is probably yes, under the most aggressive views of the [the new bill].”

If that doesn’t upset you, I don’t know what will.

Now we come to the most important myth of all, the belief that American citizens are wholly protected from the detainee provisions of the NDAA.

Greenwald says that the bill, and specifically the detainee provisions outlined therein, is “purposely muddled” in order to leave plenty of wiggle room in how it can be used.

One of the excerpts often quoted in an attempt to debunk the fact that this can be applied to U.S. citizens is, “Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.”

As with the rest of the NDAA, we have to carefully examine the language utilized in this passage.

The section it is referring to is section 1021 which we discussed earlier, and the most important aspect of this excerpt is the stipulation, “Nothing in this section” as it clearly limits it to that section and that section alone.

As I discussed in my [previous coverage](#), this section, part of which is also included in the Due Process Guarantee Act of 2011, only protects you if you’re an American citizen captured within the United States.

Anywhere else, the protection is null and void, and under the Due Process Guarantee Act of 2011, all that would be required to nullify that small protection would be an Act of Congress.

Given the fact that they overwhelmingly voted to betray the Constitution and our most essential rights, thus proving that every single person who voted for the NDAA is nothing short of a traitor, I do not believe it is reasonable to think that they would never remove that minuscule protection.

Robert Chesney of [Lawfare](#) argues that there is still a lingering ambiguity in the language as to whether Section 1021 (e) applies to citizens, although to me it seems relatively clear.

Now we get to the most problematic and contentious aspect of the NDAA, Section 1022.

This section deals with any individual determined by the President to be “a member of, or part of, al-Qaeda or an associated force” that “participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.”

For those who fall into this category, it is required – unless the President issues a waiver – that the person be detained “in military custody pending disposition under the law of war.”

The problem here is that the definition of who this section covers does not in fact exclude American citizens or state any requirement that the individual be a foreigner.

This is where many people get confused or misled by proponents of the bill: “The requirement to detain a person in military custody under this section does not extend to the citizens of the United States.”

This does not prevent American citizens being held in military custody indefinitely without charge or trial; it only says that it is not required.

There is a massive difference here which cannot be marginalized or ignored. If they meant to make it so no American citizens could be indefinitely detained by the military, they would have made it explicit.

However, they clearly did not and as Greenwald points out, “it does not exclude U.S. citizens from the authority, the option, to hold them in military custody.”

This cannot be explained away like many are attempting to do, as the language of legislation is very carefully chosen.

If our so-called Representatives truly sought to protect us from being held without charge or trial by the military, they would prohibit it in wholly unambiguous language.

This is clearly not the case and we simply must accept that our government is actively working against the American people and the Constitution of the United States. There

is really no way to get around this fact at this point.

I think Greenwald puts it in just about the most straightforward way humanly possible in writing, “or foreign nationals accused of being members of Al Qaeda, military detention is **mandatory**; for U.S. citizens, it is **optional**. This section does **not** exempt U.S citizens from the presidential power of military detention: only from the **requirement** of military detention.”

It would be nice to think that this means that we are exempt, but it simply is untrue and one would be delusional in assuming such.

As I have done time and time again, Greenwald points to the fact that the amendment proposed by Senator Feinstein which would explicitly exempt American citizens was struck down as evidence that we are not protected by this section.

As I previously mentioned, Senator Lindsey Graham said on the floor of the Senate that this bill does nothing to change the status quo, however, this is explicitly codifying the ability of the military to indefinitely hold Americans without charge or trial – something which hasn’t been done since the heyday of McCarthyist paranoia.

Even the New York Times’ editorial has to point out that the bill includes “terrible new measures that will make indefinite detention and military trials a permanent part of American law.”

This is entrenching the American police state like never more, and as the editorial rightly point out, this is going to be here for the long run.

The questions that remain after assessing all of these disturbing facts are: what’s next? What can we do? How do we stop this and return America to the principles of justice and liberty?

Unfortunately, I don’t have any satisfactory answers to these questions up my sleeve at the moment. I would truly appreciate the input from all of my readers so please do not hesitate to email me at [Admin@EndtheLie.com](mailto:Admin@EndtheLie.com) and if you give me permission I might utilize your ideas in an upcoming piece on solutions to this horrific crisis we have found ourselves in.

*This article also appeared at [End the Lie](#)*

**Join the Intel News Feed:**

Submit

Follow @IntelHub 1,262 followers

[Download the Ebook Now](#) - *When Food Crisis Strikes, these 41 Items Instantly Vanish - Build Your Emergency Stockpile Quick and Easy!* [Download Now!\(Ad\)](#)



Like 52

**Related Articles And Research From The Intel Hub**

