US Senators back law authorizing indefinite military detention without trial or charge

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Provisions of the National Defense Authorization Act (NDAA) bill, currently being considered in the US Senate, would authorize the military to unilaterally abduct and imprison any person anywhere in the world without charge or trial—including US citizens within the United States.

According to a statement released by the American Civil Liberties Union (ACLU, the bill "was drafted in secret by Sens. Carl Levin (D-Mich.) and John McCain (R-Ariz.) and passed in a closed-door committee meeting, without even a single hearing." The media, meanwhile, has blacked out the development of this legislation.

The official Senate "debate" this week over the NDAA's military detention provisions starkly illustrates the anti-democratic political trajectory of the American bourgeoisie. The debate on Wednesday consisted of various senators taking turns to boast about their dedication to "protecting our homeland from terrorism," competing to see who could provide the most effusive statements of support for "our troops."

Not one senator rose to defend, on a principled basis, the historic protections of the US Constitution and Bill of Rights, or even to point out the unprecedented nature of the powers the bill would grant the military. Senators from both big business parties participated in the stampede.

Senator Lindsey Graham featured prominently in the debate, repeatedly taking the floor to imply that no restrictions on the military's power to abduct and detain "enemy forces" would be tolerated, especially in the US. The NDAA military detention provision "does apply to American citizens and it designates the world as the battlefield, including the homeland," Graham insisted.

The military detention provisions are written in impenetrable legal and military jargon and incorporated into an obscure section of a defense spending bill (sections 1031 and 1032 of Senate Bill 1867, the "National Defense Authorization Act for Fiscal Year 2012").

During the official proceedings, many senators were unable to agree upon the meaning of these provisions, including whether US citizens would be subject to indefinite detention without trial.

The bill, according to its text, "affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40) includes the 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."

Covered persons under subsection (b) include anyone "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 bill further provides that the "Secretary of Defense may, in consultation with the Secretary of State and the Director of National Intelligence, waive the requirement" that the laws of war be observed with respect to individual detainees.

Translated in to plain English, this means that the US military can unilaterally cause any person to "disappear," imprisoning him or her indefinitely—without trial, without a warrant, without the involvement of an attorney or a judge, without respect for international law, and without giving any reasons.

These provisions of the NDAA are unmistakably expansive and vague. What does "associated forces" mean? What does it mean to have "supported such hostilities?" What does it mean to give "aid" to "enemy forces?"

In *Holder v. Humanitarian Law Project*, the Supreme Court held that provisions of the USA PATRIOT Act making it a crime to "provide material support to terrorism" made it a crime for the Humanitarian Law Project to provide legal advice regarding "peaceful conflict resolution" to the Kurdistan Workers Party in Turkey or the LTTE in Sri Lanka. The text of the NDAA could be similarly interpreted to authorize the military to detain anyone who provides legal advice, provides medical attention, donates money, or even writes an article deemed sympathetic to someone the US military has designated an "enemy."

In any event, if a person were abducted by the military and held incommunicado, does it make a difference whether or not the prisoner "supported" any "enemies," if the prisoner never would have the opportunity to go before a judge and argue that the provisions of the NDAA do not apply to him?

Citing the Padilla case during his speech on the Senate floor Wednesday, Graham announced that "an American citizen can be held by our military as an enemy combatant even if they're caught here in the United States because once you join the enemy forces, then you present a military threat and your citizenship is not a sort of a get-out-of-jail-free card."

José Padilla, a US citizen, was abducted within the United States by the military in 2002 as a test case for the assertion of unprecedented domestic police-state powers. Padilla was tortured in a military prison for nearly four years, during which time he suffering irreversible brain damage, on charges that were never substantiated or proven in a court of law.

The military detention provisions of the NDAA, if passed, would overturn once and for all a central principle of the relationship between the American population and its government that has persisted since 1791: the Fifth Amendment, which states, "No person … shall be deprived of … liberty … without due process of law …"

The official "opposition" to the military detention provisions consisted of supporters of an amendment to the bill proposed by Democratic Senator Mark Udall simply requiring the military to make regular reports to Congress on its secret detention program. This amendment, designed to provide the illusion of public oversight, would have been nothing more than a fig leaf.

The Obama administration has threatened to veto the entire NDAA, earning praise for Obama from various pseudo-left and liberal institutions and publications, including the ACLU.

However, the Obama administration's threat to veto the NDAA is not based on democratic or constitutional principles, but on concerns that certain provisions of the bill threaten to "micromanage" and "disrupt" the executive branch's exercise of its wartime powers.

"Any bill that challenges or constrains the President's critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President's senior advisers to recommend a veto," the Obama administration's lawyers wrote in a statement.

In any event, Democratic Senator Carl Levin of Michigan, introducing the bill (which he helped write), announced that the Obama administration had been deeply involved in the secret discussions around the drafting of the bill. Levin stated on the Senate floor that the proposed provisions of the NDAA "have been extensively modified as a result of extensive discussions with administration officials."

Ultimately, a large majority of senators, including both Democrats and Republicans, refused to accept even the flimsy modifications of the Udall amendment. The Senate rejected the Udall amendment 60 to 38 on Wednesday. Senator Jim Inhofe declared that the Udall amendment would have "hurt our national security."

It is no coincidence that the NDAA bill is being proposed in the midst of expanding popular demonstrations worldwide against the capitalist system. In every country, faced with threats from below to its interests, the bourgeoisie is abandoning democratic forms of government and driving ever more openly towards military dictatorship.

The fact that the NDAA detention provisions are even being discussed makes clear that the brutal crackdown on the Occupy Wall Street protests is only a foretaste of the lengths to which the ruling class will go to defend its interests.