

US Congress drops measure banning indefinite detention of US citizens

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The US Congress has dropped a potential amendment to the National Defense Authorization Act (NDAA) of 2013 that would have provided nominal protections of US citizens and permanent residents from indefinite detention.

The NDAA is a bill funding the US Department of Defense, which this year has a budget of some \$633 billion. Last year provisions were inserted in the NDAA that authorized the US military to arrest, detain and imprison any person anywhere in the world without a charge or trial, including US citizens.

Earlier this month, Senator Dianne Feinstein (D-Calif.), the head of the Senate Intelligence Committee, introduced an amendment to the NDAA that stated, “An authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States apprehended in the United States, unless an Act of Congress expressly authorizes such detention.” The amendment was included in the Senate version of the bill.

The amendment only applied to US citizens and permanent residents, in contradiction to the Fifth Amendment, which states, “No *person* shall be...deprived of...liberty...without due process of law” [emphasis added]. Feinstein’s amendment allows those in the US who are not citizens to be seized unilaterally by the military and held indefinitely, in direct violation of the Constitution.

Moreover, by applying only to citizens “apprehended in the United States,” the amendment explicitly accepts indefinite detention of US citizens who are apprehended outside the country. The Obama administration has also asserted the right to assassinate citizens living abroad.

The last phrase of the provision essentially nullifies

even the minimal protections of the rest of the amendment. All it takes is an “Act of Congress” to override basic constitutional obstacles.

There is also no mention of what constitutes a “trial” and nothing that explicitly says that the trial must be a public one. Using the language of Feinstein’s amendment, a legitimate trial for a US citizen could be a military tribunal or other secret trial.

Nevertheless, even this amendment was deemed unacceptable and was dropped in a Senate-House committee. The amendment was replaced with language stating that nothing in the NDAA “shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.”

This is intentionally misleading. The NDAA is a document that allows the United States to declare any individual or organization “terrorist” and to hold them anywhere in the world without trial indefinitely. Such actions overturn the oldest democratic right, *habeas corpus*, which requires the government to present evidence to a judge or a court to justify taking a person into custody.

The new language merely states that no one “entitled to the availability” of habeas corpus shall be denied it. The position of the government, however, is that those arrested in this way are not entitled to this basic democratic right.

Such language was used during the police frame-up of five antiwar activists in Chicago in the lead-up to the NATO summit that was held there in May. Police provocateurs led the activists towards activities that included planning to make Molotov cocktails and

bombs, which resulted in all five activists being charged with “terrorism.” The precedent is being set for any social opposition to the policies of the ruling class to be declared “terrorist.”

The Senate, controlled by the Democratic Party, is expected to pass the modified bill, again underscoring that there is not a base of support for the most basic democratic rights within either of the two big business parties.

While verbally criticizing the indefinite detention measure when it was first passed last year, the Obama administration has in fact aggressively defended it in court. This reached a high point when US District Judge Katherine Forest issued an injunction against the indefinite detention provision of the NDAA, which would have allowed anyone detained by the provision to bring a motion of contempt of court against the involved government officials.

The administration’s response was to appeal the ruling. The appeal will be decided sometime next year, and in the meantime there is no restriction on who can be held indefinitely.

The NDAA of 2013 also includes sanctions on Iran, declaring that Iran’s energy, shipping, shipbuilding and ports are all facilitating nuclear proliferation. This requires the president to impose sanctions on all those in business relations with Iran.



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