



Obama Admin Pushed for Indefinite Detention Provision

Amidst all of the controversy surrounding the National Defense Authorization Act (NDAA), the Obama administration attempted to paint itself as an oppositional force against the bill, threatening to veto it if it passed. Now, however, Senator Carl Levin (D-Mich., left), co-author of the bill, says that the administration in fact heavily lobbied to have removed from the bill's language that would have protected American citizens from some of the bill's provisions, such as indefinite detention without trial.



According to Levin, who is Chairman of the Armed Services Committee: "The language which precluded the application of Section 1031 to American citizens was in the bill that we originally approved ... and the administration asked us to remove the language which says that U.S. citizens and lawful residents would not be subject to this section."

Levin continued: "It was the administration that asked us to remove the very language which we had in the bill which passed the committee ... we removed it at the request of the administration. It was the administration which asked us to remove the very language the absence of which is now objected to."

The provision in question is outlined in Section 1031 of the NDAA, which in essence defines the whole world including the United States as a "battlefield" in the war against terrorism.

While a compromise amendment introduced by Sen. Dianne Feinstein (D-Calif.) was settled upon, Rep. Justin Amash (R-Mich.) contends that it is merely "cleverly worded nonsense," and does not actually protect Americans as it is claimed to do. The compromise amendment says that the bill will not "limit or expand" the President's powers under the Authorization to Use Military Force or "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."

Reason.com [notes](#), however, that leaving such a matter for the courts to decide is not ideal:

So far the government has not been eager to test the constitutionality of its detention policies. In 2004 the Supreme Court [said](#) due process required that a U.S. citizen captured on the battlefield in Afghanistan and held as an enemy combatant be given "a meaningful opportunity to contest the factual basis for that detention before a neutral decision maker." The Bush administration let him go instead. In the [two cases](#) where the Pentagon took charge of terrorism suspects arrested in the United States, the government likewise avoided a definitive judicial resolution, transferring them back to civilian custody before the Supreme Court had a chance to rule on their treatment.



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Similarly, John Wood of Change.org, who is issuing a petition to oppose the signing of the bill, observes:

The Feinstein Amendment 1031(e) is dangerously misleading. Don't be fooled: In the text of 1031(e), "Nothing in this section shall be construed...", the only word that matters is "construed" because the Supreme Court [judges] are the only ones with the power to construe the law. The Feinstein Amendment 1031(e) permits citizens to be imprisoned without evidence or a trial forever, if the Supreme Court does not EXPLICITLY repeal 1031." [Emphasis in original.]

Senior ACLU legislative counsel Christopher Anders made similar assertions regarding the compromise amendment:

The bill is an historic threat to American citizens and others because it expands and makes permanent the authority of the president to order the military to imprison without charge or trial American citizens.

The final amendment to preserve current detention restrictions could turn out to be meaningless and Sens. [Carl] Levin and [Lindsey] Graham [R-S.C.] made clear that they believe this power to use the military against American citizens will not be affected by the new language. This bill puts military detention authority on steroids and makes it permanent. If it becomes law, American citizens and others are at real risk of being locked away by the military without charge or trial.

Feinstein admits that her amendment was more of a "truce" between the two opposing groups, and that it ultimately leaves the issue of detention to the courts. Critics note, however, that such a solution marks a virtual congressional abdication of powers that were supposed to be assigned to it. It is the role of the courts to decide the constitutionality of a definitive policy established by Congress, not to attempt to make sense of a variety of ambiguous provisions.

Wood also notes that the Obama administration never explicitly took issue with 1031, only Section 1032, which is "unrelated" to the indefinite detention provision.

"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 White House said in a statement.

The administration strongly objects to the military custody provision," the White House said, noting that it could apply to people in the United States. That "would raise serious and unsettled legal questions and would be inconsistent with the fundamental American principle that our military does not patrol our streets."

But Woods contends that the President is not opposed to the indefinite detention of American citizens without due process.

"Confusingly, Obama threatened a veto for 1032, but NOT 1031. 1032 is UNRELATED to imprisoning citizens without a trial. Obama has never suggested using a veto to stop Section 1031 citizen imprisonment," writes Woods.

The difference between the two provisions is outlined by Reason.com, which explains, "Section 1031 of the National Defense Authorization Act explicitly 'affirms' the legality of military detention 'without trial,' which is not only limited to an individual who performs terrorist acts, but one that joins or supports associated forces of a terrorist attack." Section 1032, on the other hand, "creates a presumption in favor of military detention for a member of Al Qaeda or an allied organization who 'participated in the course of planning or carrying out an attack or attempted attack against the United



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States or its coalition partners.” That provision indicates “the requirement to detain a person in military custody under this section does not extend to citizens of the United States.”

And whether or not President Obama would have actually vetoed the bill was always questionable. Daphne Eviator of the Human Rights First’s Law and Security Program said, “He has said he will. Whether he will is a difficult question because, politically, it’s difficult to veto a defense spending bill that [is] 680 pages long and includes authorization to spend on a whole range of military programs.”

It is not entirely surprising that the Obama administration would lobby for such a provision as 1031, given its fondness for predator drone strikes and the authority to sponsor assassination anywhere in the world without having to provide evidence or embark on a legal process prior to carrying out such assassinations. As it is, the White House merely needs to consider someone a terrorist in order to be permitted to treat that person as a terrorist, regardless of citizenship.

On December 1, lawyers for the Obama administration confirmed that, in their view, that U.S. citizens are in fact legitimate military targets. The subject came up when government lawyers Stephen Preston and Jeh Johnson were asked about the CIA killing of American citizen Anwar al-Awlaki. The lawyers did not directly address al-Awlaki but did assert that American citizens do not have immunity when they are said to be at war with the United States.

Congress could complete congressional action on the bill and send it to the President for this signature this week. Critics of the bill are encouraging Americans to contact the White House to indicate their opposition by [clicking here](#).



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