



Written by [Raven Clabough](#) on December 2, 2011

Senate Passes Controversial Defense Bill

Several amendments were proposed by both Democrats and Republican Senators, which would have deleted the dangerous provisions that would allow the indefinite detention of American citizens. While most of those amendments were overwhelming voted down, a single compromise amendment was passed that was intended to quell fears that American citizens may be imprisoned indefinitely, though skeptics remain uncomfortable with the final outcome.



According to [Firedoglake.com](#), sections 1031 and 1032 of the NDAA will:

- 1) Explicitly authorize the federal government to indefinitely imprison without charge or trial American citizens and others picked up inside and outside the United States;
- (2) Mandate military detention of some civilians who would otherwise be outside of military control, including civilians picked up within the United States itself; and
- (3) Transfer to the Department of Defense core prosecutorial, investigative, law enforcement, penal, and custodial authority and responsibility now held by the Department of Justice.

[AddictingInfo.org](#) adds:

A provision of S. 1867, or the National Defense Authorization Act bill, written by Senators John McCain and Carl Levin, declares American soil a battlefield and allows the President and all future Chief Executives to order the military to arrest and detain American citizens, innocent or not, without charge or trial. In other words, if this bill passes and the President signs it, OWS protesters or any American could end up arrested and indefinitely locked up by the military without the guaranteed right to due process or a speedy trial.

Both Senators Mark Udall (D) and Rand Paul (R) proposed [amendments](#) to the bill that would have weakened the more dangerous provisions. Udall's amendment would have eliminated provisions regarding the handling of terrorism suspects, while Paul's amendment had far more teeth and would have struck 1031 from the legislation altogether. Neither amendment made it into the Senate-passed version of the bill; the Udall amendment was overwhelmingly rejected by a vote of 37 to 61.

"The United States Senate has a solemn obligation to our men and women in uniform to pass a Defense Authorization Act, but we also owe it to those fighting the war on terror to prevent rushed, untested and legally controversial limitations on their operations. I can't support provisions that I believe will hurt our national security," Udall said prior to the vote. "We haven't had time to adequately consider these provisions. We need to know what our military and intelligence experts — and our men and women in the field — actually need to most effectively prosecute the war on terror, especially before we change detainee provisions that are already working. I'm urging my colleagues to support my amendment so we can prevent a White House veto, move forward with the NDAA and reach a workable resolution on the



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detainee provisions."

Senator Dianne Feinstein of California also proposed an amendment that would have limited mandatory military custody for suspected terrorists captured outside the United States, but that amendment was rejected as well by a vote of 45-55. A second amendment proposed by Feinstein that would have prohibited U.S. citizens from being held in indefinite detention without being charged or brought to a trial failed by a vote of 45 to 55.

In the end, Senators Feinstein and Lindsey Graham worked out a deal to pass an amendment that states, "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." That compromise amendment passed 99 to 1, with only Senator Jon Kyl voting against it.

As noted by the *Huffington Post*:

The passage may head off a showdown with the White House, which had threatened to veto the entire bill on the grounds that the section on detentions tied the hands of counterterrorism officials in law enforcement and the military....

Left unresolved by the new language is just exactly what is constitutional when it comes to detaining American citizens in the United States. But opponents of the original provision said at least it would remain up to judges, not politicians.

"To this day the Supreme Court has never ruled on whether it is constitutional to indefinitely detain a U.S. citizen captured in the United States. Some of my colleagues see this differently, [but] the language we've agreed on makes it clear," said Sen. Dick Durbin (D-Ill.), who had been adamantly opposed to giving the military what he saw as greater reign over Americans at home.

"The Supreme Court will decide who can be detained; the United States Senate will not," Durbin said.

One amendment seemed to pass without issue: Senator McCain's amendment to provide for greater cyber-security collaboration between the Department of Defense and the Department of Homeland Security. In other words, not only is all of the United States a battlefield, but so is the Internet.

During [debate](#) on the Senate floor, Senator Paul confronted John McCain, asking, "Would it be possible that an American citizen can then be declared an enemy combatant and sent to Guantanamo Bay and detained indefinitely?" McCain responded, "As long as that individual, no matter who they are, poses a threat to the security of the United States of America, should not be allowed to continue that threat."

Judge Andrew Napolitano, host of Fox Business Network's *Freedom Watch* called McCain's response "nonsensical and unconstitutional."

In a live stream, Rand Paul [addressed](#) the American people, asserting the dangerous nature of the NDAA:

James Madison, father of the Constitution warned, "The means of defense against foreign danger historically become instruments of tyranny at home".... During war, there has always been a struggle to preserve constitutional liberties.... Rights given up now cannot be expected to be returned, so we do well to contemplate the diminishment of due process knowing that the rights we lose now may never be restored.

Paul's entire address can be seen below:



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{youtube width="500" height="281"}rghhz_t5POo{/youtube}

Debate on the legislation came to an end on Wednesday when the Senate voted on the cloture motion, paving the way for today's vote.

Without an amendment to the bill, Americans faced a blow to their constitutional rights because the NDAA, as observed by Republican Congressman Justin Amash, allows the executive branch the power to determine who is a terrorist, whether they are a U.S. citizen or not. And without clarity on the language, that threat remains in place. "Note that [the provision] does not preclude U.S. citizens from being detained indefinitely, without charge or trial, it simply makes such detention discretionary," Amash wrote on his Facebook page.

The bill had the support of both Senate Republicans as well as some Democrats. In support of this bill, Sen. Lindsey Graham (R-S.C.) explained that the bill would "basically say in law for the first time that the homeland is part of the battlefield" and people can be imprisoned without charge or trial "American citizen or not."

"It is not unfair to make an American citizen account for the fact that they decided to help al Qaeda to kill us all and hold them as long as it takes to find intelligence about what may be coming next. And when they say, 'I want my lawyer,' you tell them, 'Shut up. You don't get a lawyer,'" Graham said.

The original NDAA has already been passed in the Republican-controlled House of Representatives with nary a whimper by a [322-96 vote](#). With this new compromise amendment, the House and Senate will now have to combine the two bills, and Senate leaders have given assurances that the Senate's new language will remain, but that is not guaranteed.

President Obama, however, has threatened to veto the bill. A statement released by the White House reads:

"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."

However, not everyone is convinced. Daphne Eviator of the Human Rights First's Law and Security Program said, "Whether he [Obama] will [veto the bill] is a difficult question because, politically, it's difficult to veto a defense spending bill that 680 pages long and includes authorization to spend on a whole range of military programs."

The American Civil Liberties Union, disoriented by the compromise, said the President should veto the bill because the military still acquires too much power through the bill's provisions. "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," said ACLU senior legislative counsel Christopher Anders in a statement.

"The final amendment to preserve current detention restrictions could turn out to be meaningless and Sens. [Carl] Levin [Michigan Democrat] and Graham made clear that they believe this power to use the military against American citizens will not be affected by the new language," Anders said. "This bill puts



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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."

Thumbnail photo at top of Sen. Rand Paul: Screen-grab from video



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