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Written by **Becky Akers** on January 16, 2012

The NDAA and Suspension of Habeas Corpus: Not Just for "Enemy Combatants" Anymore

Outrage over the NDAA continues to boil 16 days into Amerika's shiny new police-state. Pray God the fury mounts: This horrific law completes the country's descent into totalitarianism by designating the "Homeland" a battlefield in the idiotic War on Terror. That unleashes the military on us. And as if this weren't wickedness enough, it enables the President to accuse anyone, even American citizens, of terrorism while imprisoning us without an iota of evidence or any hope of trial.

But of course Presidents have been doing precisely that for the last decade, à la Jose Padilla. Indeed, many commentators note that the NDAA merely authorizes the tyranny of the Bush and Obama administrations, *post facto*. Joanne Mariner, "the director of Hunter College's Human Rights Program," writes "President George W. Bush, together with Vice-President Dick Cheney, Defense Secretary Donald Rumsfeld, and a host of other senior Bush administration officials … took the most radical and important steps toward establishing indefinite detention without trial … the Bush administration, preferring to act unilaterally, did not … bother to seek congressional sanction for its indefinite detention schemes." Obama has rectified that oversight. And Congress appreciates his thoughtfulness, judging by its overwhelming and bipartisan approval of the NDAA.

Benjamin Wittes, "founder" of a blog "devote[d] … to that nebulous zone" where "homeland security" and the law collide, agrees with Mariner. "The NDAA is really a codification in statute of the existing authority the administration claims.… Nobody who is not subject to detention today will become so when the NDAA goes into effect."

In other words, a government that defies the Constitution to "indefinitely detain" and tortures "enemy combatants" will defy it to "indefinitely detain" and torture us.

The unspeakably evil "logic" behind the NDAA has been building for decades. In 1950, the Supreme Court held that "nonresident enemy aliens," all of whom were German citizens "captured in China by the United States Army and tried and convicted in China by an American military commission for violations of the laws of war committed in China," had no right to habeas corpus from the American judiciary — even though American citizens in the same circumstances would.

From this and similar rulings, George W. Bush's administration wrung the twin doctrines that the Constitution's restraints on federal power end at American shores and that the Bill of Rights protects only American citizens: The Feds may commit any crime they please overseas, against subjects of other nations. That produced the nauseatingly fastidious decision to "indefinitely detain" and torture foreign nationals at Guantanamo Bay, Cuba.

But as usual, the Supreme Court was wrong: The Bill of Rights limits the government without regard to geography or the identity and nationality of its victims. For example, the First Amendment bars Congress from "mak[ing]" any "law respecting an establishment of religion, or prohibiting the free exercise thereof." *Congress may not*, period, whether we're talking Catholicism in America or Islam in Iraq. The Constitution denies the Feds the power to interfere with *anyone's* religious beliefs or practices, anywhere. Ditto for the right to speak or print freely: *Congress may not* ban those activities.

These blanket negations of government's powers without regard to location or victims' nationality continue through the rest of the Bill of Rights. And when an amendment mentions those persons the government affects, it uses the term "people," not "citizens." The right of the *people* to bear arms shall not be infringed, whether those people are Americans defending themselves from cops or Afghanis protecting their homes from invading troops. In fact, we don't encounter the word "citizen" until we reach the 11th Amendment. (Which definitively distinguishes between "Citizens" and "Subjects of any Foreign State" when it prescribes that "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.")

Clearly, if the Founding Fathers had meant to check federal power only on American soil, only against American citizens, they would have said so. But they were far better Christians, philosophers, and historians than that. They never deluded themselves that politicians would use their powers wisely or only against certain folks in some situations. They knew fallen sinners would grab all the authority they could, that granting them power over some people guaranteed them eventual power over all.

Whatever abuses we allow politicians to visit on others only foreshadow those they'll heap on us. Want the State to punish people who ingest drugs you don't? Get ready for the FDA to control your consumption as well, and to threaten your doctor if he prescribes more morphine to ease your pain than bureaucrats prefer. Do you applaud the wall the District of Criminals is unconstitutionally building to prevent people from entering the country illegally? Fine: Barriers erected to keep *others* out will eventually keep *you* in.

And now those who lauded Leviathan for stripping "terrorists" of habeas corpus may comfort themselves with Sen. Lindsey Graham's memorable snarl: "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.'"