



Written by [Joe Wolverton, II, J.D.](#) on December 14, 2011

## Congress Agrees to Compromise on 2012 National Defense Authorization Act

That's the amount that will be spent on the defense budget for 2012 if it becomes law.

For a moment, set aside the fact that the bill authorizes spending billions of dollars on the perpetuation of two unconstitutional foreign conflicts (Iraq and Afghanistan).

Set aside momentarily that the bill greases the skids for the deployment of forces into Iran (after "sanctions" fail to persuade Ahmadinejad to see things our way).

This bill, the [National Defense Authorization Act for 2012](#) that will now be sent in its conference form, will soon arrive at the House and Senate for a final vote. Then, on to the desk of President Obama for his signature or veto.



Apart from the obvious eviscerations of the separation of powers and the enumeration thereof in the Constitution, this legislation converts America into a war zone and turns Americans into potential suspected terrorists, complete with the full roster of rights typically afforded to terrorists — none.

In advance of the holiday break set to begin on Friday, Congress is hurrying to enact the defense budget with an eye-popping \$662-billion price tag.

Despite the bipartisan and bicameral support for the defense budget bill, President Obama has vowed repeatedly to veto the measure over his disagreement with the delegation of power over the cases of detainees.

The White House has repeatedly affirmed its desire that the Federal Bureau of Investigation (FBI) should have plenary power over the disposition of issues related to the custody and prosecution of all terror suspects detained domestically.

The Obama administration insists that cutting out the FBI would reduce the overall effectiveness of investigations, as well as hamstring the efforts of intelligence officers to gather reliable intel from those believed to be fighting against the United States in Afghanistan or Iraq.

Specifically, the White House has promised to veto the legislation if it "challenges or constrains the President's critical authorities to collect intelligence, incapacitate dangerous terrorists, [or] protect the nation."

Late Monday, [congressional leaders were convinced](#) that conference committee members had hammered out a compromise on that thorny issue that will avert a rejection by the President.

[The Associated Press reported](#) the cause of the congressional confidence: "I assured the president that we were working on additional assurances, that the concerns were not accurate," Senate Armed



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Services Committee Chairman Carl Levin (D-Mich.), who spoke to Obama last week, told reporters at a news conference. "That we'd do everything we could to make sure they were allayed, and met."

White House officials said Tuesday they were reviewing the bill. It was unclear whether they would hold firm on the veto threat.

John McCain echoed his colleague's sentiment regarding the palatability of the proposal to the President. As [quoted by CNN](#), the "renegade" Arizona Republican said:

We had numerous meetings with the administration. We had a meeting with the director of the FBI. We feel like we were able to satisfy, we hope, most of their concerns. This does not change existing law and this legislation includes a national security waiver if the president chooses to exercise it.

A key component of this reconciled bill mandates a frightening grant of immense and unconstitutional power to the executive branch. Under the provisions of Section 1031, the President is afforded the absolute power to arrest and detain citizens of the United States without their being informed of any criminal charges, without a trial on the merits of those charges, and without a scintilla of the due process safeguards protected by the Constitution of the United States.

Further, in order to execute the provisions of Section 1031 described in the previous paragraph, subsequent clauses in that section unlawfully give the President the absolute and unquestionable authority to deploy the armed forces of the United States to apprehend and to indefinitely detain those suspected of threatening the security of the "homeland." In the language of this legislation, these people are called "covered persons."

The universe of potential "covered persons" includes every citizen of the United States of America. Any American could one day find himself or herself branded a "belligerent" and thus subject to the complete confiscation of his or her constitutional civil liberties and nearly never-ending incarceration in a military prison.

Per the applicable paragraphs of Section 1031, a "covered person" (that is to say, a person who can be detained by the military without trial or due process) is defined as follows:

1. A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
2. A person 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.

"Belligerent act" — aye, there's the rub. We have fallen asleep and now the federal government is perchance dreaming of taking one enormous, irrevocable stride toward total tyranny.

Given the current inhospitable constitutional climate, is it too farfetched to imagine a scenario in the coming year (when the act would become effective) where a blogger consistently criticizing the foreign policy of the President is branded a "belligerent" and captured by the military and shut away in a secure military facility without access to an attorney or the established rules of civil procedure?

In fairness, the bill does provide a time period on the possible detention period to be endured by a "covered person." In Paragraph (c), Subparagraph (1) of Section 1031, the parameters for the lawful disposition of a detainee are provided: "Detention under the law of war without trial until the end of the



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hostilities authorized by the Authorization for Use of Military Force....”?

Until the end of the hostilities. That is to be the ceiling on the time to be served by a suspected belligerent during which he is to go “without trial.” The Congress is explicitly and unapologetically destroying the protections against such jack-booted despotism provided by the Constitution.

Other equally constitutionally contravening provisions in the bill [provide funding for:](#)

military personnel, weapons systems, national security programs in the Energy Department, and the wars in Iraq and Afghanistan in the fiscal year that began on Oct. 1. Reflecting a period of austerity and a winding down of decade-old conflicts, the bill is \$27 billion less than Obama requested and \$43 billion less than Congress gave the Pentagon for fiscal 2011.

Constitutionalists are urging that the time is now for concerned citizens of the United States to contact their federal representatives and let them know that they will hold them accountable for their vote on this absolute abolition of the rule of law.



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