



Written by [Joe Wolverton, II, J.D.](#) on June 27, 2013

House Passes 2014 NDAA; NSA Surveillance Will Lead to Indefinite Detention

The annual renewal of the National Defense Authorization Act (NDAA) is underway on Capitol Hill.

[On June 14, by a vote of 315-108](#), the House of Representatives passed the [Fiscal Year 2014 version of the NDAA](#) (HR 1960).

Several amendments to the defense spending legislation were proposed, many of which were approved either by voice vote or en bloc. The first method of voting requires no report on how individual members voted, while the second method aggregates amendments, allowing them to be voted on in groups.



A few of the amendments represent significant improvements to the NDAA of 2012 and 2013. The acts passed for those years infamously permitted the president to deploy U.S. military troops to apprehend and indefinitely detain any American he alone believed to be aiding enemies of the state.

While the 2014 iteration doesn't go far enough in pushing the federal beast back inside its constitutional cage, there are at least a few congressmen willing to try to crack the whip and restore constitutional separation of powers and shore up a few of the fundamental liberties suspended by the NDAA of the past two years.

First, there is the [amendment offered by Representative Trey Radel](#) (R-Fla.). Radel's amendment requires the Department of Defense to submit to the Congress a report every year containing: (1) the names of any U.S. citizens subject to military detention, (2) the legal justification for their continued detention, and (3) the steps the Executive Branch is taking to either provide them some judicial process, or release them. Requires that an unclassified version of the report be made available, and in addition, that the report must be made available to all members of Congress.

Radel's amendment was passed by voice vote.

Next, [an amendment offered by Representative Bob Goodlatte](#) (R-Va.) would require the federal government, in habeas proceedings for U.S. citizens apprehended in the United States pursuant to the Authorization for the Use of Military Force (AUMF), to prove by "clear and convincing evidence" that the citizen is an unprivileged enemy combatant and there is not presumption that the government's evidence is accurate and authentic.

The House approved the Goodlatte amendment by a vote of 214-211.

Finally, [an amendment by Representative Paul Broun](#) (R-Ga.) forbids the Department of Defense from killing a citizen of the United States by a drone attack unless that person is actively engaged in combat against the United States.

This trio of amendments represents a laudable attempt to restrain the power of the executive. As



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constitutionalists and civil libertarians are aware, recent occupants of the Oval Office have usurped sweeping unconstitutional powers, including the authority to target Americans for indefinite detention, to withhold from them rights that have been recognized as unalienable since before the Magna Carta, and to kill American citizens who have been charged with no crime and been given no opportunity to defend themselves from the accusations that qualified them for summary assassination.

Despite these small victories in the battle to restore constitutionally protected liberty, the debate on the 2014 NDAA provided several examples of Congress violating their oaths of office by shrinking the scope of basic rights and expanding the power of the president to act as *de facto* (and now, *de jure*) judge, jury, and executioner.

For example, two amendments offered by Representative Adam Smith (D-Wash.) were rejected by his colleagues, to their dishonor.

Smith's [first proposed amendment](#) would have prohibited indefinite military detention of any person detained under AUMF authority in the United States, territories, or possessions by providing immediate transfer to trial and proceedings by a court established under Article III of the Constitution or by an appropriate state court.

Not surprisingly, Smith's amendment failed to garner approval, being voted down by a vote of 200-226 (213 Republicans voted against Smith's amendment).

This was not the first time the "conservatives" in Congress rejected a proposal by Representative Smith that would have protected due process and disgorged the president of powers to which he is not entitled. During last year's deliberations on the NDAA for Fiscal Year 2013, the House of Representatives voted to perpetuate the president's power to indefinitely detain American citizens.

By a vote of 238-182, [members of Congress rejected the amendment offered by Smith and Justin Amash](#) (R-Mich.) that would have repealed the indefinite detention provision passed overwhelmingly in 2011 as part of the 2012 NDAA.

The Fiscal Year 2013 NDAA retained the indefinite detention provisions, as well as the section permitting prisoners to be transferred from civilian jurisdiction to the custody of the military.

"The frightening thing here is that the government is claiming the power under the Afghanistan authorization for use of military force as a justification for entering American homes to grab people, indefinitely detain them and not give them a charge or trial," Representative Amash said during House debate last year.

In his impassioned speech supporting the amendment he proposed last year, Representative Smith reminded his colleagues that the NDAA granted to the president "extraordinary" powers and divested the American people of key civil liberties, as well as divesting civilian courts of their constitutional jurisdiction.

Smith pointed out that there was no need to transfer suspects into military custody as "hundreds" of terrorists have been tried in federal courts since the attacks of September 11, 2001.

The more things change, the more they stay the same. Members of Congress — mostly Republican members — have united in firm defense of the president's unconstitutional power to apprehend and indefinitely detain Americans.

There are very few more powerful reminders that there is no party in Washington, D.C., that is committed to faithfully adhering to the oath of office or to the upholding of the manifold God-given



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rights that are guaranteed by the Constitution.

Finally, there is in the NDAA for 2014, a frightening fusion of the federal government's constant surveillance of innocent Americans and the assistance it will give to justifying the indefinite detention of anyone labeled an enemy of the regime.

[Section 1061 of the 2014 NDAA](#) approved by the House expands on the scope of surveillance established by the Patriot Act and the AUMF. Sec. 1061(a) authorizes the secretary of defense to "establish a center to be known as the 'Conflict Records Research Center.'" According to the current text of the NDAA, the center would be tasked with compiling a "digital research database including translations and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the United States."

In order to accomplish the center's purpose, the secretary of defense will create an information exchange in cooperation with the director of national intelligence.

Key to the functioning of this information exchange will be the collection of "captured records." Section 1061(g)(1), defines a captured record as "a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States."

When read in conjunction with the provision of the AUMF that left the War on Terror open-ended and previous NDAAs' classification of the United States as a battleground in that unconstitutional war, and you've got a powerful combination that can knock out the entire Bill of Rights.

Finally, when all the foregoing is couched within the context of the revelations regarding the dragnet surveillance programs of the NSA, it becomes evident that anyone's phone records, e-mail messages, browsing history, text messages, and social media posts could qualify as a "captured record."

After being seized by the NSA (or some other federal surveillance apparatus), the seized materials would be processed by the Conflict Records Research Center created by this bill. This center's massive database of electronic information and its collaboration with the NSA converts the United States into a constantly monitored holding cell and all its citizens and residents into suspects. All, of course, in the name of security.

To wit, Americans zealous about retaining their rights and resisting the constant repeal of them by the federal government would be wise to remember the words James Madison wrote to Thomas Jefferson in 1798: "It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger, real or pretended, from abroad."

Photo of NSA headquarters in Fort Meade

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