



Written by [Jack Kenny](#) on December 16, 2011

Rights Activists “Appalled” as Senate Passes Prison Without Trial Bill

Despite protests that the legislation will negate centuries old rights guaranteed by the Constitution, the Senate Thursday passed a bill authorizing the arrest and imprisonment without charge or trial of terrorism suspects, including American citizens, anywhere in the world. The bill, called the National Defense Authorization Act (NDAA) also authorizes \$662 billion in military spending. It has been sent to the White House, where President Obama is expected to sign it, perhaps as early as today (Friday). Obama had threatened to veto earlier versions of bill, but on Wednesday the White House announced the President was satisfied by amendments made by a House-Senate conference committee granting the President greater discretion in determining what terror suspects to hold in military confinement.



"By withdrawing his threat to veto the NDAA, President Obama has abandoned yet another principled position with little or nothing to show for it," said Tom Parker, policy director for Amnesty International USA said. "Amnesty International is appalled — but regrettably not surprised."

Ironically, the Senate passed the law on December 15, the date of the ratification of the Bill of Rights in 1791. Only 13 Senators voted against the bill, while 86 voted for it, including some who argued that the constitutional guarantees would not be vitiated.

"We as Americans have a right to a speedy trial, not indefinite detention," said Mark Kirk (R-Ill.). "We as Americans have a right to a jury of our peers, which I would argue is ... not enlisted or military personnel sitting in a jury. You cannot search our businesses or place of business or our homes without probable cause under the Bill of Rights."

"You cannot be deprived of your freedom or your property without due process of law, and that, I would say, is not indefinite detention," added Kirk, who voted for the bill. "I would actually argue that no statute and no Senate and no House can take these rights away from you."

Supporters of the bill argued that U.S. citizens are exempted from a provision requiring military detention of foreign terror suspects. But opponents pointed that while not required, the government is still permitted to hold U.S. citizens in military confinement — indefinitely and without charge or trial — by other provisions of the bill. FBI Director Robert Mueller is among those who have opposed the bill, contending that having the military to conduct investigations and arrests of terror suspects will complicate and impede the work of the FBI.



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"This provision would for the first time in American history require our military to take custody of certain terrorism suspects in the United States," said Sen. Dick Durbin (R-Ill.) who voted against the bill. Durbin argued the Congress should not abandon a system of dealing with terror suspects that has worked well since the terror attacks of September 11, 2001.

"Since 9/11 our counterterrorism professionals have prevented another attack on the United States, and more than 400 terrorists have successfully been prosecuted and convicted —prosecuted and convicted — in federal court," Durbin said. "Why do we want to change this system when it's working so well to keep America safe? The fact that these detainee provisions have caused so many disagreements and such heated debate demonstrates the danger of enacting them into law."

In addition to Durbin, the senators who voted against the bill are: Ben Cardin (D-Md.), Al Franken (D-Minn.), Tom Harkin (D-Iowa), Jeff Merkley (D-Ore.), Ron Wyden (D-Ore.), Bernie Sanders (I-Vt.), Jim Risch (R-Idaho), Rand Paul (R-Ky., pictured above), Mike Lee (R-Utah), Jim DeMint (R-S.C.), Mike Crapo (R-Idaho), and Tom Coburn (R-Okla.). Sen. Paul, who spoke against the bill in Senate debate, had also expressed his concerns in the [National Review](#):

The FBI publishes characteristics of people you should report as possible terrorists. The list includes the possession of "Meals Ready to Eat," weatherproofed ammunition, and high-capacity magazines; missing fingers; brightly colored stains on clothing; paying for products in cash; and changes in hair color. I fear that such suspicions might one day be used to imprison a U.S. citizen indefinitely without trial. Just this year, the vice president referred to the Tea Party as a bunch of terrorists. So, I think we should be cautious in granting the power to detain without trial.

Opponents of the measure argue that by representing the whole world as a battlefield, the legislation undermines the liberties of Americans, at home as well as abroad, who have never been near an actual battlefield nor waged war against the United States. Some argue the bill fits a pattern of government excesses in the war on terror, including the assassination of Anwar al-Awlaki, an American citizen targeted and killed by a U.S. drone strike in Yemen, reportedly by order of President Obama.

"The NDAA enshrines the war paradigm that has eroded the United States' human rights record and served it so poorly over the past decade as the country's primary counterterrorism tool," charged Parker of Amnesty International. Among those supporting the bill, Sen. Lindsey Graham (R-S.C.) has been a leading proponent of viewing the entire world, including "the homeland" as a battlefield.

"If you're an American citizen and you betray your country, you're not going to be given a lawyer," Graham said. ". . . I believe our military should be deeply involved in fighting these guys at home or abroad."

But someone suspected of betraying our country is not necessarily a combatant — nor necessarily guilty. As constitutional lawyer and [Salon.com columnist](#) Glenn Greenwald noted, the Constitution requires not only due process, but enhanced due process for those accused of treason:

No Person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act or on confession in open Court. Article 3, Section 3

"To deny a citizen the right to a lawyer and go to court on the ground that they've 'betrayed their country' and thus deserve to be imprisoned without a trial (or, worse, to be assassinated without one) is as violent a betrayal of the U.S. Constitution as one can imagine, literally," Greenwald wrote.



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Civil Libertarians on both the left and right have written and spoken out against the legislation, from the American Civil Liberties Union to retired New Jersey Superior court Judge [Andrew Napolitano](#), a bestselling author and host of the popular Freedom Watch show on the Fox News channel. Writing while the NDAA was still before the Congress, Napolitano observed that the right to be left alone and not imprisoned without due process of law is among the natural rights recognized and guaranteed by the Constitution.

"Yet, your representatives in Congress are about to authorize the president to violate your natural rights by enacting legislation that would permit him to use the military to arrest Americans and restrain them without due process," Napolitano wrote. " Even King George III, against whose armies the colonists fought for freedom, did not have the power to do that. And, just because Congress votes to make these acts of tyranny legal does not mean they are constitutional. The Constitution is a higher law than anything Congress can write; and all that Congress writes must conform to it."

In an obvious reference to Rep. Ron Paul (R-Texas), the judge offered advice to voters in the two states that have the first votes in the presidential nominating process.

"If you live in Iowa or New Hampshire, you can vote for the only Republican candidate running for president who believes that the Constitution means what it says. You know who he is."



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