



Written by [Joe Wolverton, II, J.D.](#) on January 25, 2012

## The Enemy Expatriation Act and the NDAA: Due Process Destroyed?

As has been reported here since the bill was first proposed, of all the evils perpetrated by the National Defense Authorization Act, one of the most sinister is the denial of the due process of law to all those detained under its provisions. Section 1021 is unqualifiedly the most pernicious piece of legislation in many years, moving the Constitution and our Republic closer to despotism than any other paragraph imaginably could.



In a nutshell, Section 1021 permits the President of the United States to order the U.S. military to arrest and detain any American citizen suspected by him of posing a military threat to national security.

These alleged belligerents may then be detained in a federal facility until the cessation of hostilities (that is to say, indefinitely) without recourse to an attorney and without being informed as to the charges being leveled against them (in hostile violation of the habeas corpus protection of the Constitution).

After performing the prerequisite *pas de deux* of defense of the Constitution and expansion of his own already-dictatorial power, President Obama withdrew his initial promise of veto and signed this rights-shredding act into law on December 31, 2011.

Although the President now wields this enormous power, he adamantly denies that he will ever “authorize the indefinite military detention without trial of American citizens.” That guarantee is all that stands between American citizens and life in prison on arbitrary charges of conspiring to commit or committing acts belligerent to the homeland.

The President continued by explaining that to indefinitely detain American citizens without a trial on the charges laid against them “would break with our most important traditions and values as a nation.”

Ironically, [the signing statement](#) in which President Obama gave these assurances is itself violative of the Constitution, the separation of powers established therein, and only demonstrates his proclivity for ignoring constitutional restraints on the exercise of power once those powers have been placed (albeit illegally) at his disposal by a complicit Congress.

This (undoubtedly) illusory promise to preserve the most fundamental of American civil liberties reminds one of a statement made by the author of the Declaration of Independence, Thomas Jefferson:

Free government is founded in jealousy, not confidence. It is jealousy and not confidence which prescribes limited constitutions, to bind those we are obliged to trust with power.... In questions of power, then, let no more be heard of confidence in men, but bind him down from mischief by the chains of the Constitution.



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Add that timeless bit of prophetic exhortation to the fact that a presidential signing statement is not only unconstitutional, but of no legal authority whatsoever and you have an equation that equals immediate and lasting tyranny of the executive.

Now, in fairness, President Obama did promise not to imprison an American citizen without a trial. While the foregoing analysis proves that such a promise is but a chimerical charade designed to mollify some slightly worried segment of the population, there is another bill that would gut even that already empty promise.

In October, soon-to-be-retired Senator Joseph Lieberman (I-Conn.) introduced an amendment to the Immigration and Nationality Act that would grant to the federal government the power to permanently divest an American of his citizenship if he is suspected of supporting “hostilities” against the homeland. A companion measure was brought to the House of Representatives by Congressman Charles Dent (R-Penn.).

The [Enemy Expatriation Act](#), as the bills are known, augments the power of the federal government by allowing it to strip a suspect of his American citizenship based on nothing more than a suspicion of “engaging in, or purposefully or materially supporting, hostilities.” The text of the bill reads in relevant part:

A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality...committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, or willfully performing any act in violation of section 2385 of title 18, or violating section 2384 of title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

A careful reading of the preceding paragraphs reveals that as with so many of these unlawful acts which are suffocating the American body politic, cutting off the air of liberty by which we are made free, the key terms in this bill are intentionally vague so as to provide plenty of hazy cover for the federal government’s assault on the bedrock principles upon which our Republic was founded.

For example, as [one reporter noted](#), “Legally, the term ‘hostilities’ means any conflict subject to the laws of war but considering the fact that the War on Terror is a little ambiguous and encompassing, any action could be labeled as supporting terrorism.”

And also hiding effectively behind the smokescreen of safety is the fact that the Enemy Expatriation Act “does not say which government body — say a military tribunal or a congressional panel — has the power to brand suspected persons as hostiles.”

There is some opposition from familiar foes of such laws. The American Civil Liberties Union (ACLU) is one of those typically found on the front lines of the war against government overreaching.

“Fortunately, it’s unlikely that Congress would pass something like this. If it did, the law would probably be found unconstitutional since the Supreme Court has ruled that Congress cannot revoke U.S. citizenship without a citizen’s consent,” said Devon Chaffee, legislative counsel for the organization.

The landmark ruling cited by Chaffee was handed down by the high court in the case of [Afroyim v. Rusk](#),



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387 U.S. 253 (1967). In that decision, Justice Hugo Black explained in the majority opinion that Congress has no power under the Constitution to divest a person of his U.S. citizenship absent his voluntary renunciation thereof.

Furthermore, the Court in *Rusk* declared, “The Fourteenth Amendment’s provision that “All persons born or naturalized in the United States ... are citizens of the United States ...” completely controls the status of citizenship, and prevents the cancellation of petitioner’s citizenship.”

The current state of federal law conforms to the ruling in *Rusk*. Under Section 349 of the Immigration and Nationality Act as currently written, Americans can lose their U.S. citizenship only if they formally renounce it or take certain actions, such as joining the military of a foreign state, that can be reasonably interpreted as an attempt to voluntarily renounce their status as citizens of the United States of America.

The long list of presidential precedents of ignoring core constitutional principles inconveniently cluttering the path toward tyranny continues to grow. With the Enemy Expatriation Act, the [14th Amendment](#) is one of those pesky impediments that will be cleared by the congressional lickors of the Oval Office autocrat.

Attempts to justify the alienation of these basic constitutional rights were quickly forthcoming from both of the Enemy Expatriation Act’s chief sponsors. As [an article published by the \*International Business Times\* reported](#): “... both Lieberman and Dent cited Anwar al-Awlaki, the American-born Muslim cleric who led al-Qaida operations in Yemen.”

“The repeated attempts by the now-deceased al-Qaida leader Anwar al-Awlaki to recruit other American citizens to strike our homeland demonstrates the necessity of updating our laws to account for an enemy who would subvert our freedoms to attack us,” said Lieberman.

President Barack Obama ordered the assassination of al-Awlaki, an American citizen charged with no crime and not afforded any hearing on the allegations of aiding and assisting al-Qaeda, who was subsequently killed in Yemen in September 2011 by an unmanned Predator drone.

Now that the President has executed an act of Congress affording him absolute power to arrest and detain Americans, is there any doubt that he will do likewise when the Enemy Expatriation Act is sent to him by his congressional co-conspirators?

*Photo of prisoner: AP Images*



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