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The Intolerable Acts ACTION CENTER ALERT!

Jeff Lewis, March 28, 2012 / Updated: Nov 29, 2012

Due Process Guarantee Amendment to NDAA Continues "Treason to the Constitution."

U.S. Senator Diane Feinstein has cranked up her "smoke-and-mirrors generator" twice this year, each time under the pretense of restoring our rights. In the spring, she called it "The Due Process Guarantee Act of 2011." Now it's called SECTION 1033: "PROHIBITION ON THE INDEFINITE DETENTION OF CITIZENS AND LAWFUL PERMANENT RESIDENTS," introduced as an amendment to S. 3254, the 2013 NDAA.

The introduction of the "Due Process Guarantee ~~Act~~ Amendment" by Senators Feinstein, Lee, Paul, etc… to the 2013 NDAA speaks volumes. Congress has no intention of fixing the problem they created. According to Supreme Court Chief Justice Marshall, taking authority the Constitution does not grant is "treason to the Constitution." (See Marbury v. Madison)

The exact same clause appears in Senator Paul's first proposed amendment that can be found in the "Due Process Guarantee Act of 2011," and the "Due Process Guarantee Amendment" which prohibits unconstitutional acts against U.S. citizens and lawful permanent residents "*unless an Act of Congress expressly authorizes such detention.*"

The Constitution grants Congress no such power to "expressly authorize" turning our Rights into privileges. It doesn't grant any branch of the federal government such power. Below is the original article with the detailed explanation of why both the act and the amendments are frauds.

"Due Process Guarantee Act of 2011" Guarantees Indefinite Detention of U.S. Citizens

H.R. 3702 / S. 2003

On Dec. 31, 2011, President Obama signed the National Defense Authorization Act for fiscal year 2012 (NDAA) into law which included provisions unrelated to funding our military. Sections 1021 and 1022 authorize the "indefinite detention" of U.S. citizens, without a trial, without charges, without an attorney, for as long as the President wants.

"The Due Process Guarantee Act of 2011" was introduced in both the House and Senate to give the illusion that Members of Congress were actually listening to the concerns of We the People.

On the surface it sounds good, but in reality, it's no different than the Feinstein amendment to the NDAA that removed the "requirement" of military detention of U.S. citizens, but fell short of actually prohibiting it.

"The Due Process Guarantee Act of 2011" doesn't guarantee anything. In fact, once you read the language, you'll find that it essentially confirms the belief of Congress that they have the authority to, by statute, render the Constitution and Bill of Rights inapplicable.

On Feb. 29, 2012, the Senate Judiciary Committee held a hearing on S. 2003, the "**Due Process Guarantee Act of 2011**." The matching House bill is H.R. 3702**.**

> *"I opposed and will continue to oppose indefinite detention. I fought against the Bush administration policies that led to the current situation, with indefinite detention being the de facto policy. I opposed President Obama's executive order in March 2011 that contemplated indefinite detention. I opposed the provisions in the NDAA, as well.*
>
> *A regime of indefinite detention degrades the credibility of this great Nation around the globe, particularly when we criticize other governments for engaging in such conduct. Indefinite detention contradicts the most basic principles of law that I have pledged to uphold since my years as a prosecutor and in our senatorial oath to defend the Constitution. That is why I am fundamentally opposed to indefinite detention without charge or trial."*
>
> *- Senator Leahy, Chairman, Senate Judiciary Committee, Hearing on "Due Process Guarantee Act," Feb. 29, 2012*

The "Due Process Guarantee Act of 2011," like the Landry bill H.R. 3676, purports to fix the problems with the NDAA, but in reality neither does anything to repeal the unconstitutional provisions (1021 & 1022).

Under the proposed 18 USC Section 4001 Clause (2)(b)(1) it says you can't detain a citizen or lawful permanent resident without charge or trial who was apprehended in the United States "unless an Act of Congress expressly authorizes such detention."

There's a problem with that, since the "supreme law of the land" [the U.S. Constitution] doesn't authorize Congress to ignore our right to due process, and only provides for the suspension of the Writ of Habeas Corpus in the event of "Rebellion or Invasion," and only then if the public safety requires it. (See U.S. Constitution, Article I, Section 9, Clause 2)

18 USC 4001 will look like this if "The Due Process Guarantee Act of 2011" becomes law:

18 USC § 4001 - Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)

(1) An authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States apprehended in the United States, unless an Act of Congress expressly authorizes such detention. (emphasis added)

(2) Paragraph (1) applies to an authorization to use military force, a declaration of war, or any similar authority enacted before, on, or after the date of the enactment of the Due Process Guarantee Act of 2011.'

(c)

(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation. (End of bill, emphasis added.)

Congress would never authorize indefinite detention of U.S. Citizens, right?

According to several Members of Congress and the U.S. Supreme Court, **Congress already has**. Read the following passages from the Hamdi v. Rumsfeld decision, which was argued by both sides in defense of their positions during the Senate floor debate of the "indefinite detention" provisions in the 2012 NDAA. (See videos on *http://TheIntolerableActs.org*) Senator Lindsey Graham, during the debate over the "indefinite detention" provisions, said this:

> ***"And when they say, I want my lawyer, you tell them shut up! You don't get a lawyer. You're an enemy combatant."***

Senator Graham believes we are guilty until proven innocent. No wait, you don't get a lawyer. You don't get the opportunity to prove you are innocent, and they don't have to prove you're guilty. The U.S. Supreme Court would never approve of indefinite detention of Americans without trial, right? **They already have**.

HAMDI vs. RUMSFELD (U.S. Supreme Court Justice O'Conner, writing for the majority)

"…The threshold question before us is whether the Executive has the authority to detain citizens who qualify as "enemy combatants." There is some debate as to the proper scope of this term, and the Government has never provided any court with the full criteria that it uses in classifying individuals as such. It has made clear, however, that, for purposes of this case, the "enemy combatant" that it is seeking to detain is an individual who, it alleges, was " 'part of or supporting forces hostile to the United States or coalition partners' " in Afghanistan and who " 'engaged in an armed conflict against the United States' " there. Brief for Respondents 3. We therefore answer only the narrow question before us: whether the detention of citizens falling within that definition is authorized."

"The Government again presses two alternative positions. First, it argues that §4001(a), in light of its legislative history and its location in Title 18, applies only to "the control of civilian prisons and related detentions," not to military detentions. Brief for Respondents 21. Second, it maintains that §4001(a) is satisfied, because Hamdi is being detained "pursuant to an Act of Congress"–the AUMF. Id., at 21—22. Again, because we conclude that the Government's second assertion is correct, we do not address the first. In other words, for the reasons that follow, we conclude that the AUMF is explicit congressional authorization for the detention of individuals in the narrow category we describe (assuming, without deciding, that such authorization is required), and that the AUMF satisfied §4001(a)'s requirement that a detention be "pursuant to an Act of Congress" (assuming, without deciding, that §4001(a) applies to military detentions)."

(quip) "The Government maintains that no explicit congressional authorization is required, because the Executive possesses plenary authority to detain pursuant to Article II of the Constitution. We do not reach the question whether Article II provides such authority, however, because we agree with the Government's alternative position, that Congress has in fact authorized Hamdi's detention, through the AUMF."

Dictionary definition of expressly: *"in an express manner; explicitly"*

To put this in context, if the "Due Process Guarantee Act of 2011" provisions are added to 18 USC 4001, and based on recent Supreme Court rulings, what will that mean?

1) Congress is asserting by stating "unless an Act of Congress expressly authorizes such detention" is that it has the power to give the Executive branch the authority to "detain without charge or trial" any person, including U.S. Citizens and lawful permanent residents, (i.e., suspend Habeas Corpus without actually suspending it); and,

2) According to the U.S. Supreme Court, the government can detain U.S. Citizens and permanent residents without charge or trial because Congress has already authorized it in the 2001 AUMF."

The "Due Process Guarantee Act of 2011," as written, does absolutely nothing to restore the Constitutionally-guaranteed unalienable Rights of United States Citizens. The slippery slope of destroying the Bill of Rights by statute is all but complete.

When the U.S. is "waging war" on foreign battlefields, in the eyes of the international community, we are judged based on our adherence to the various international treaties and agreements we have entered into, such as The Hague and Geneva conventions.

The U.S. government, under both the Bush and Obama Administrations, has sought ways to "legalize" the indefinite detention, cruel and unusual rendition methods such as water-boarding and prolonged interrogation of suspects, regardless of nationality and citizenship, to include U.S. Citizens and lawful resident aliens.

It became obvious that they could not accomplish this and still adhere to the Constitution and Bill of Rights, because the 'supreme law of the land' expressly prohibits denying due process, trial by jury in an Article III court, etc…

They also could not apply the internationally-recognized "laws of war" as embodied in the Geneva Conventions, because they too prohibited the indefinite detention of "non-militarized" combatants by the military.

Words mean something. The Geneva Conventions only recognize two types of people as it relates to the proverbial "law of war." They are "enemy combatant" and "civilian." Each nation has its own "law of war" handbook to guide their respective military regimes on how they should "wage war."

The U.S. government's "*2010 Law of War Deskbook*" acknowledges that nowhere in the Geneva Conventions or Additional Protocols (AP's) is there a classification of "unlawful enemy combatant." That term is a legal fiction created by Congress in the 2006 and 2009 "Military Commissions Act."

Congress has "modified" the U.S. "law of war" handbook to justify the detention, torture, and killing of a "third" category of individuals they call "unlawful enemy combatants," and passed laws such as the "Military Commissions Act" to create a statutory authority for our Commander-in-Chief and U.S. military to act outside the constraints of either the Constitution or international "law of war" protocols.

AP I states: *"Consequently, under AP I, a civilian can only be lawfully, lethally targeted "for such time" that civilian has a direct causal relationship to harm being caused to military personnel or equipment at that point in time." (Law of War Deskbook, page 96)*

Anwar al-Awlaki, (a "civilian" who was "out of combat" by international treaty and "law of war" standards, and a U.S. citizen who was not on a "battlefield"), could not "lawfully" be "lethally targeted."

As a "civilian" under both the U.S. Constitution and internationally-recognized "laws of war," Anwar al-Awlaki should have been arrested, and tried by the civil courts as a criminal. As a U.S. Citizen who was

allegedly "levying War" or "adhering to their [the United States'] enemies," under the U.S. Constitution, Article III, Section 3, Awlaki should have been tried for treason. Instead, President Obama had him assassinated in Yemen with a drone attack that also killed Awlaki's teenage son. Many in Congress have expressed outrage that the President would assassinate a U.S. Citizen, yet they are the ones who passed the laws that gave such power to the Executive Branch.

America is in trouble, and if we don't get a grip soon, the Blessings of Liberty will become the Tribulations of Slavery. There is only one piece of legislation that begins the process of restoring the liberties stolen by the NDAA, and it is not "The Due Process Guarantee Act of 2011."

H.R. 3785, introduced by Rep. Ron Paul would repeal section 1021 of the 2012 NDAA. It's simple. It's honest. It's constitutional. Demand your Members of Congress stop playing politics with your freedoms, and start defending your God-given unalienable Rights.

For God & Country,

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