OMNI CIVIL LIBERTIES INDEFINITE DETENTION
NEWSLETTER #1, February 3, 2012. Compiled by Dick Bennett for a Culture of Peace and Justice.

Here is the link to all OMNI newsletters:

http://www.omnicenter.org/newsletter-archive/ For a knowledge-based peace, justice, and ecology movement and an informed citizenry as the foundation for change.
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Still angry about the NDAA?
Laura W. Murphy, ACLU aclu@aclu.org via uark.edu
to jbennet 2-27-12
Dear James,

Tell your members of Congress to fight back against indefinite military detention without charge or trial.
Are you still angry about the National Defense Authorization Act (NDAA)? Good. You should be.

As you may recall, in December, Congress passed a statute authorizing this president and all future presidents to use the military to indefinitely detain people located far from any battlefield — without charge or trial — based on suspicion alone.

Tens of thousands of ACLU supporters took action against this outrageous statute and pledged to fight it once it became law. And we have a chance to start to do so on Wednesday when the Senate Judiciary Committee holds its first public hearing on the problems caused by the NDAA.

Write your members of Congress urging them to take a public pledge to fight back against indefinite military detention without charge or trial. (Do not forward: This link will open a page with your information already filled in.)

When the Senate Armed Services Committee wrote the NDAA last year in secret, closed-door sessions, it included dangerous provisions that gave the president authority to send the American military anywhere in the world to imprison people, even in
countries where there is no armed conflict and no threat to Americans.

Congress even rejected amendments clarifying that the NDAA does not permit indefinite military detention of civilians here in the United States.

But the Senate is taking a step to fix all of this. We have to make the most of it. And right now, that means your senators need to hear from you — they need to know you reject this perversion of justice and you won't stand for worldwide indefinite military detention without charge or trial.

Write your members of Congress and urge them to pledge to fight back against worldwide indefinite military detention without charge or trial.

Let's be clear. Congress needs a new bill — one that cuts off indefinite military detention power. Although some well-intentioned bills have been introduced, none of them yet fix the problems.

In order to protect the values of freedom and justice, we have to fix the NDAA. And that means we have to act quickly and decisively to let Congress know we reject indefinite military detention before this crucial hearing on Wednesday.

Thank you for taking a stand,
Laura W. Murphy
Director, Washington Legislative Office
P.S. We hope you'll watch Wednesday's hearing. It will be broadcast live on the Senate Judiciary Committee's website.
Spread the Word
Help by sharing this campaign with friends.
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aclu@aclu.org

Constitution in Crisis :: February 2012
Bill of Rights Defense Committee bordc@mail.democracyinaction.org
from bordc@mail.democracyinaction.org
February 2012, Vol. 10 No. 2
View this newsletter as a webpage: http://www.bordc.org/newsletter/2012/02/

Undoing the damage: Transpartisan alliances and grassroots action could repeal the NDAA's detention provisions
The National Defense Authorization Act (NDAA), which President Obama signed into law on the last day of 2011, may be the worst threat to civil liberties since COINTELPRO. But perhaps the silver lining on this very dark cloud is the widespread concern the law has prompted, uniting Americans from
across the political spectrum in efforts to restore due process and the right to trial.

Get the latest news and analysis on our blog.

Recent highlights from the People's Blog for the Constitution:
"Drones to infiltrate US skies" by Lindsey Needham
"Guantánamo, ten years later" by David Wilson
"Obama administration refuses to release pertinent legal documents on assassinations" by Emily Odgers
"Peaceful dissent threatened by Chicago ordinance" by Chris Erchull
"FBI limits GPS use following Supreme Court ruling" by Louisa Rockwell
"US counterterrorism policy post-9/11: Chip Pitts vs. John Yoo" by Robert Jain
"Be careful what you tweet" by Philip Leggiere
"US seeking to prosecute anti-war activists on grounds of 'material support for terrorism'" by Farid Zakaria

Grassroots News
Patriot Award: Naji Mujahid
Each month, BORDC recognizes an individual who has done outstanding work in support of civil liberties and the rule of law by honoring that person with our Patriot Award. This month, we honor Naji Mujahid from Washington, DC, for his work to protect civil rights and to hold law enforcement accountable.

Day of action against the NDAA sees events across the country
Opponents of the National Defense Authorization Act (NDAA) gathered at congressional offices across the country for a national day of action on February 3. Organizers held events in cities from Augusta, ME, to San Diego, CA, including Louisville, KY, Rockford, IL, and many others.
Northampton, MA: Coalition challenges the NDAA's detention provisions
The Northampton Human Rights Commission approved a resolution to restore due process protections violated by the NDAA the day before a local coalition hosted a panel discussion featuring Executive Director Shahid Buttar, professor and government whistleblower Chris Pyle, and Northampton Human Rights Commissioner (and Patriot award honoree) Emily Odgers.

Connecticut: Coalition to host convening to oppose indefinite detention
On Saturday, February 18, a diverse coalition of organizations from across Connecticut will convene in Berlin, CT, to address civil liberties leaders concerned about the indefinite detention provisions in the National Defense Authorization Act.

Last month, the DC City Council heard testimony from organizations including BORDC in support of a measure to impose limits on the city’s compliance with ICE detainer requests. In addition to eroding public safety, ICE detainers have drained the District’s budget and created widespread fear within Latino communities. DC could be the next in a growing list of local jurisdictions taking action to restore civil rights by protecting their residents from federal abuses.

Asheville, NC: Vote expected on surveillance and profiling reforms
A city council vote is expected later this month on reforms that would limit dragnet surveillance and intelligence collection by local police and create measures to stop and prevent profiling according to race, religion, national origin, or ideology.

Greensboro, NC: Mobilization for civil rights condemns FBI abuses
On Thursday, February 9, the Beloved Community Center hosted a group of Greensboro leaders for a weekly round table to discuss civil liberties concerns and opportunities for community education. On Saturday, February 11, thousands marched outside the state legislature to express their support for civil liberties and concerns about rights violations committed by agencies including the local police and FBI.

Chicago, IL: Local resolution would create America’s first "torture-free city"
The movement to secure the "torture-free city" resolution cited not only the federal government’s failure to hold government officials accountable for torture, but also a history of torture by local police
officers. Meanwhile, the US Congress considered a bill partly inspired by police torture in Chicago, the Law Enforcement Torture Prevention Act, in a January 17 briefing.

San Francisco, CA: Coalition celebrates reform proposal to reign in local surveillance
In the past month, the Coalition for a Safe San Francisco (of which BORDC is a member) celebrated the introduction of the Safe San Francisco Civil Rights Ordinance in the city’s Board of Supervisors. The measure would limit intelligence gathering by the San Francisco Police Department, requiring reasonable suspicion of significant criminal activity before law enforcement can begin surveillance.

Berkeley, CA: Groups mobilize to limit local participation in fusion center
The Coalition for a Safe Berkeley, which includes a broad array of organizations recruited by BORDC and local allies, is organizing to support an effort to conduct oversight of local law enforcement. The group also continues to promote proactive reforms to address concerns about civil rights and civil liberties.

Law and Policy
New revelations show even more surveillance by the NYPD
A recently released classified document dated May 15, 2006, reveals that the NYPD has been conducting widespread surveillance of New York-area mosques based entirely on religion, rather than individualized suspicion of wrongdoing. This document is just the latest revelation in a series of ongoing civil rights violations by the NYPD.

SOPA and PIPA: Freedom of speech survives the digital age…for now
The latest assault on Internet privacy has failed, at least for the time being, after several members of Congress withdrew support from the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) in response to widespread online protests.

FBI suspicious of Internet users concerned about privacy
The FBI has released a flier suggesting that seeking privacy on the Internet should be treated as suspicious behavior. Some of the items indicated should reasonably arouse suspicion in an appropriate context, but other items indicate that common, ordinary behavior—like shielding a computer screen in a public place, paying in cash, or looking at maps and photos of sporting venues—should be reported as suspicious.

Supreme Court rules GPS tracking requires a warrant—sometimes
4th AMENDMENT PRIVACY VICTORY On January 23, the Supreme Court unanimously decided in US v. Jones that police must obtain a warrant before entering private property to place a GPS tracking device on a suspect's car. The decision is a resounding victory for the Fourth Amendment and privacy principles eroded by the government's use of advancing surveillance technologies. But reading between the lines reveals a disturbing split on the Court about how the Fourth Amendment will apply in the future.

New Resources and Opportunities
New materials for local campaigns against the NDAA
Americans from across the political spectrum have come together to raise their voices against the draconian detention provisions of the National Defense Authorization Act. If you want to help restore due process and the right to trial, check out the materials BORDC has created.

May 4-6: Convening for local civil rights campaign leaders
This spring, leaders from coalitions around the country organizing Local Civil Rights Restoration campaigns will gather for a weekend of skill building, issue education, and intensive campaign strategizing. If you’d like to participate, submit your application by March 9.

February 28: "We Are the Border" National Day of Action
Later this month, the Rights Working Group will join the Northern Border Coalition for a day of action to call for just and humane border policy.

Help BORDC restore the rule of law
Get involved! Volunteer, organize, raise your voice—we have an opportunity that's right for everyone. Read our blog. We publish the latest civil liberties news, plus analysis beyond the headlines. Support our work! Contribute online or mail a check or money order to:
Bill of Rights Defense Committee
8 Bridge Street, Suite A
Northampton, MA 01060
Follow BORDC on Facebook and Twitter. Connect with other supporters and help build the movement. Spread the word! Forward this email newsletter to your friends and family.
Bill of Rights Defense Committee
www.bordc.org • info@bordc.org • (413) 582-0110 • Fax: (413) 582-0116

CHRIS HEDGES VS. INDEFINITE DETENTION
Cindy Sheehan interviewed Hedges on her “Soapbox” that aired Feb. 12. The topic was the lawsuit Chris filed against President Obama and DefSec, Leon Panetta, regarding the recent National Defense Authority Act (NDAA). Please listen to the show--it's very informative, as usual.

The show is available streaming online at 2pm (pacific) at our new home, Community Progressive Radio and forever at the archives at Cindy Sheehan's Soapbox. http://www.cindysheehanssoapbox.com/

**Obama Crowned Himself on New Year’s Eve**

By: David Swanson Saturday December 31, 2011 8:06 pm

These were among the complaints registered the last time this nation had a king:

“He has refused his Assent to Laws, the most wholesome and necessary for the public good.

“He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

“He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

“He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

“He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

“He has affected to render the Military independent of and superior to the Civil power.

“He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

“For Quartering large bodies of armed troops among us:

“For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:
“For depriving us in many cases, of the benefits of Trial by Jury:

“For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

“He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.”

To prevent the U.S. government from behaving like a king, the drafters of the U.S. Constitution empowered an elected legislature to write every law, to declare every war, and to remove its executive from office. To further prevent the abuse of individuals’ rights, those authors wrote into the Constitution, even prior to the Bill of Rights, the right to habeas corpus and the right never to be punished for treason unless convicted in an open court on the testimony of at least two witnesses to an overt act of war or assistance of an enemy.

President Barack Obama waited until New Year’s Eve to take an action that I suspect he wanted his willfully deluded followers to have a good excuse not to notice. On that day, Obama issued an unconstitutional signing statement rewriting a law as he signed it into law, a practice that candidate Obama had rightly condemned. The law that Obama was signing was the most direct assault yet seen on the basic structure of self-governance and human rights that once made all the endless U.S. shouting of “We’re number one!” significantly less ludicrous. The National Defense Authorization Act is not a leap from democracy to tyranny, but it is another major step on a steady and accelerating decade-long march toward a police-and-war state.

President Obama has claimed the power to imprison people without a trial since his earliest months in office. He spoke in front of the Constitution in the National Archives while gutting our founding document in 2009. President Obama has claimed the power to torture “if needed,” issued an executive order claiming the power of imprisonment without trial, exercised that power on a massive scale at Bagram, and claimed and exercised the power to assassinate U.S. citizens. Obama routinely kills people with unmanned drones.

The bill just signed into law, as sent to the President, said this:

“Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.”

In other words, Congress was giving its stamp of approval to the unconstitutional outrages already claimed by the President. But then, why create a new law at all? Well, because some outrages are more equal than others, and Congress had chosen to specify some of those and in fact to expand some of them. For example:

“Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.”

And this:

“The disposition of a person under the law of war as described in subsection (a) may include the following: (1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.”

Jon Stewart explained when those detained without trial under the law might be released: “So when the war on terror ends, and terror surrenders and is no longer available as a human emotion, you are free to
An exception for U.S. legal residents and citizens was kept out of the bill at President Obama’s request. So why did Obama threaten to veto the bill initially and again after it passed the Senate? Well, one change made by the conference committee was this (note the crossed-through text):

“The Secretary of Defense may, in consultation with the Secretary of State and the Director of National Intelligence, waive the requirement of paragraph (1) if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.”

The reference here is to military tribunals. The President — that is, the current one and future ones — need not hand someone over even to a military tribunal if . . . well, if he (or she) chooses not to.

That was the most power Obama could have transferred to the White House in this bill. But it was not absolute power, and was therefore not good enough. Hence the signing statement, the relevant portion of which begins:

“Moving forward, my Administration will interpret and implement the provisions described below in a manner that best preserves the flexibility on which our safety depends and upholds the values on which this country was founded.”

This is Bush-Cheneyspeak for “I will not comply with the following sections of this law despite signing it into law.”

After having persuaded the Congress to remove an exception for U.S. legal residents, Obama has the nerve in the signing statement to assert, not that the law makes any such exception, but that he personally will choose to do so, at least for U.S. citizens. Future presidents may lock U.S. citizens up without trials, but Obama won’t do so. He promises:

“I want to clarify that my Administration will not authorize the indefinite military detention without trial of American citizens. Indeed, I believe that doing so would break with our most important traditions and values as a Nation. My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”

The first two sentences above are highly unusual if not unprecedented. Most, if not all, of Bush and Obama’s law-altering signing statements up to this point have not sought to clarify what a particular administration would choose to do. Rather, they have focused on declaring parts of the laws invalid. Usually this is done in a manner misleadingly similar to the third sentence above. By claiming the power to interpret a law in line with the Constitution, Bush and Obama have each on numerous occasions asserted the view that the Constitution grants presidents far-reaching powers that cannot be restricted by legislation. If Obama had wanted to deny that this law could be applied to U.S. citizens (or legal residents), the above paragraph would look very different, although equally unusual in that it would then be rejecting power rather than claiming it.

Also note, as Marcy Wheeler has already pointed out, Section 1021 applies to any detention, and Obama promises only not to subject U.S. citizens to indefinite military detention. While locked away forever without a trial you’ll be able to take comfort that yours is a non-military imprisonment.

Also, remember that Obama claims and exercises the power to kill U.S. citizens or anyone else (arguably at least as serious a violation of rights as imprisonment!), and for that he will use the military if he sees fit, or even allow the military to operate freely.
Also notice that legal residents are not included in the category of citizens.

Next, Obama declares Section 1022 on military custody “ill-conceived.” His personal right to a waiver, won through the conference committee, was not enough. Obama insists on also erasing this section of law: “I reject,” he writes,

“any approach that would mandate military custody where law enforcement provides the best method of incapacitating a terrorist threat. While section 1022 is unnecessary and has the potential to create uncertainty, I have signed the bill because I believe that this section can be interpreted and applied in a manner that avoids undue harm to our current operations. I have concluded that section 1022 provides the minimally acceptable amount of flexibility to protect national security. Specifically, I have signed this bill on the understanding that section 1022 provides the executive branch with broad authority to determine how best to implement it, and with the full and unencumbered ability to waive any military custody requirement, including the option of waiving appropriate categories of cases when doing so is in the national security interests of the United States. … I will therefore interpret and implement section 1022 in the manner that best preserves the same flexible approach that has served us so well for the past 3 years and that protects the ability of law enforcement professionals to obtain the evidence and cooperation they need to protect the Nation.”

Obama goes on to reject several other sections of the law, including restrictions on his unlimited power to rendition prisoners to other countries. Among the notable rejections is this:

“Sections 1023-1025 needlessly interfere with the executive branch’s processes for reviewing the status of detainees. Going forward, consistent with congressional intent as detailed in the Conference Report, my Administration will interpret section 1024 as granting the Secretary of Defense broad discretion to determine what detainee status determinations in Afghanistan are subject to the requirements of this section.”

In other words, U.S. prisoners held in Afghanistan will not be given even any formal pretense of a legalistic review of their status unless Obama and his Secretary of “Defense” see fit.

I’ve just been editing a forthcoming book in which one of the contributors writes:

“In 1971, Congress passed the Anti-Detention Act, 18 U.S.C. § 4001(a), which states that “no person shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.” Fred Korematsu, who had brought the unsuccessful case before the Supreme Court, was eventually awarded the Medal of Honor. Congress apologized and provided for limited reparations for this heinous act.”

The author is referring to the unconstitutional indefinite detention of Japanese and Japanese-Americans during World War II. This type of criminal abuse for which Congress had to apologize and pay reparations, and for which there is a misleadingly pro-war-looking memorial hidden between the U.S. Capitol and Union Station, has now been effectively sanctioned by our Constitutional Scholar in Chief.

My chief regret is that we have not seen the major resistance we could have, and without any doubt would have, seen to this if only Obama were a Republican.

76 Comments Recommend
Tags: Obama, ndaa

76 Responses to Obama Crowned Himself on New Year’s Eve

1. Synoia January 1st, 2012 at 1:05 am
While I understand and sympathize with your points, you do not amplify the complaint illustrated in your opening passage by explaining how ALL of those complaints are now reasserted.

Have you actually read those complaints?

Specifically:

1. He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

2. He has affected to render the Military independent of and superior to the Civil power.

3. He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation.

4. He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

Another version of Swanson’s article follows (D):

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Jan 4  Posted by Patriot  By: David Swanson  Saturday December 31, 2011 8:06 pm

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