



Sunday, June 10th, 2018

Office of Senator Lindsey Graham
290 Russell Senate Office Building
Washington, DC 20510

cc: Sen. McConnell, Sen. Lee, Sen. Paul, Sen. Schumer, Sen. Feinstein, Sen. Sanders

Dear Sen. Graham:

We, the undersigned organizations, representing Americans concerned about our natural rights, backed by the Constitution, urge you to withdraw your objection preventing the amendment of Sen. Lee and Sen. Paul to the National Defense Authorization Act (NDAA) from coming up for a vote. Their amendment, as you are aware, would repeal the indefinite detention provisions of the NDAA which apply to anyone anywhere, including American citizens on American soil. We also request that you and other members of Congress to work with the undersigned organizations to ensure the basic rights to due process are protected and not violated.

We understand that you disagree strongly with the content of the amendment, and that you believe that the power to detain American citizens indefinitely is critical for the effective fighting of the War on Terror. However, we believe that there is enough recent evidence of the abuse of that power, and enough evidence that the Founders would consider it to violate the separation of powers, that Senate debate on the amendment should be allowed to proceed.

Evidence suggests that American citizens are already being subjected to indefinite detention, and that the executive branch, under both Presidents Obama and Trump, has not been exercising the powers in this area cautiously or responsibly. Hundreds of U. S. citizens have been detained and in some cases deported by ICE without due process¹; most recently, US citizen and claimed 'enemy combatant' 'John Doe' has been held for over six months without access to counsel or even public acknowledgement of his identity, and has had no military or civilian court evaluate the evidence against him or whether he in fact poses a threat; he claims to have been documenting, not participating in, the Syrian war². In 2015, Homan Square, the CIA black site in Chicago, was exposed for violating due process and many other basic rights of American citizens³. There is a long history of indefinite detention⁴. We should not continue to repeat the mistakes of the past.

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Sometimes, regrettably, as you have acknowledged before, the government "cast[s] the net too broadly in determining who merit[s] enemy combatant status⁵." Sometimes, we have Presidents who cannot be trusted to behave as an angel might, implementing the law cautiously and with perfect and even-handed justice. As James Madison famously put the matter, "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself⁶." Madison would, we believe, think the power to detain citizens without any review by a detached and independent magistrate to be a monarchical power, not a power appropriate to the President of a constitutional republic. However, even if you personally believe that in the circumstances of today, such a monarchical and unconstrained power is appropriate, that is a question the Senate should be able to debate and resolve, rather than letting that assertion of power be waved through again without meaningful review.

We, the undersigned organizations, also call upon Congress to introduce, debate, and pass legislation that protects due process for all. The current indefinite detention provisions will remain in effect until they are repealed or until the end of the "war on terror," if that ever ends. As a permanent solution, we call upon Congress to work with our coalition to protect due process for all and reaffirm the inherent rights we all have that are backed by the Constitution that is consistent with the language found in Idaho's Restoring Constitutional Governance Act⁷.

Sincerely,

[People Against the NDAA](#) • [Restore The Fourth, Inc.](#) • [Free the People](#)

- [Act Now Worcester](#)
- [Campaign for Liberty](#)
- [Defending Rights & Dissent](#)
- [FreedomWorks](#)
- [Oathkeepers](#)
- [Patriot Coalition](#)
- [RootsAction](#)
- [Tenth Amendment Center](#)
- [We the People](#)
- [X-Lab](#)

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¹ See "US seeks to forcibly release American ISIS suspect in Syria", The Hill, July 7, 2018, available at <http://thehill.com/policy/national-security/391140-us-seeks-to-forcibly-release-american-citizen-in-syria>, for a discussion of this case.

² See "ICE wrongfully detained nearly 1,500 Americans: report", NY Post, April 27, 2018, available at <https://nypost.com/2018/04/27/ice-wrongfully-detained-nearly-1500-americans-report>.

³ See "The disappeared: Chicago police detain Americans at abuse-laden 'black site'", Guardian, February 24, 2015, available at <https://www.theguardian.com/us-news/2015/feb/24/chicago-police-detain-americans-black-site>

⁴ See "How We Got Here: The History of the 2012 NDAA's Indefinite Detention Power", PANDA, September 29, 2016, available at <http://pandaunite.org/ndaa-how-we-got-here-the-history-of-the-2012-ndaas-indefinite-detention-power>

⁵ See "How To Handle The Guantanamo Detainees", Sen. Graham and Sen. McCain, WSJ, May 6, 2009, available at <https://www.wsj.com/articles/SB124157680630090517>.

⁶ See Federalist Papers #51, available at <http://www.constitution.org/fed/federa51.htm>.

⁷ See "Restoring Constitutional Governance Act", available at <http://theintolerableacts.org/docs/RCG-Act.pdf>