

MAR 14 2012

SENATE RESOLUTION

URGING THE UNITED STATES CONGRESS TO REPEAL THE MANDATORY
MILITARY DETENTION AND INDEFINITE DETENTION PROVISIONS OF
THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012
AND AMEND THE AUTHORIZATION FOR USE OF FORCE.

1 WHEREAS, the United States Constitution is the foundation
2 of our nation's rights and freedom and the basis of our
3 representative democracy; and
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5 WHEREAS, no President has the power to take the United
6 States into war, except, as James Madison wrote, "to repel a
7 sudden attack on the United States"; and
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9 WHEREAS, the Authorization for Use of Military Force,
10 Public Law 107-40, approved on September 18, 2001, authorized
11 the President to use all necessary and appropriate force against
12 the nations, organizations, or persons the President determines
13 planned, authorized, committed, or aided the terrorist attacks
14 of September 11, 2001; and
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16 WHEREAS, the National Defense Authorization Act for Fiscal
17 Year 2012, Public Law 112-81, which was signed into law by
18 President Obama on December 31, 2011, affirmed the President's
19 authority under the Authorization for Use of Military Force and,
20 for the first time in United States history, codified the
21 authority of the United States armed forces to impose indefinite
22 military detention of individuals captured off of any
23 battlefield; and
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25 WHEREAS, any law authorizing indefinite military detention
26 of any person in the United States, without charge or trial,
27 violates the Fifth Amendment, the Sixth Amendment, and Article
28 III of the United States Constitution and corrodes the United
29 States' commitment to the rule of law, which generations have
30 fought and died to preserve; and
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1 WHEREAS, the Posse Comitatus Act, 18 United States Code
 2 section 1385, prohibits the use of the United States military to
 3 execute the law without express constitutional authority or an
 4 act of Congress; and

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 6 WHEREAS, there is substantial public debate and uncertainty
 7 whether sections 1021 and 1022 of the National Defense
 8 Authorization Act for Fiscal Year 2012 may be interpreted to
 9 possibly repeal the Posse Comitatus Act, thus authorizing
 10 indefinite military detention within the United States, without
 11 charge or trial, of legal permanent residents and others
 12 residing in the United States; now, therefore,

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 14 BE IT RESOLVED by the Senate of the Twenty-sixth
 15 Legislature of the State of Hawaii, Regular Session of 2012,
 16 that the United States Congress is urged to restore the system
 17 of checks and balances in the United States by repealing
 18 sections 1021 and 1022 of the National Defense Authorization Act
 19 for Fiscal Year 2012; and

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 21 BE IT FURTHER RESOLVED, that the United States Congress is
 22 urged to amend the Authorization for Use of Military Force and
 23 the National Defense Authorization Act for Fiscal Year 2012 to:

- 24
 25 (1) Prevent the armed forces of the United States from
 26 investigating, arresting, detaining, or trying any
 27 person within the United States;
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 29 (2) Prevent the armed forces from militarily detaining,
 30 without charge or trial, any civilian captured off of
 31 any battlefield;
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 33 (3) Recognize that Congress retains the authority to
 34 declare war and authorize the use of military force,
 35 consistent with Article I of the United States
 36 Constitution; and
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 38 (4) Recognize that the President retains the authority
 39 under Article II of the United States Constitution to
 40 deploy the United States military to repel a sudden
 41 attack on the United States, its territories or
 42 possessions, or its military; and
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1 BE IT FURTHER RESOLVED, that the United States Congress is
2 requested to amend the Authorization for Use of Military Force
3 to expire upon the end of the current combat operations in
4 Afghanistan; and

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6 BE IT FURTHER RESOLVED that certified copies of this
7 Resolution be transmitted to the President of the United States,
8 the Majority Leader of the United States Senate, the Speaker of
9 the United States House of Representatives, the United States
10 Attorney General, the United States Secretary of Defense, the
11 Chair of the United States Senate Committee on the Judiciary,
12 the Chair of the United States Senate Select Committee on
13 Intelligence, the Chair of the United States House of
14 Representatives Committee on the Judiciary, the Chair of the
15 United States House of Representatives Permanent Select
16 Committee on Intelligence, and the members of Hawaii's
17 congressional delegation.

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