



Committee: Committee on Public Safety & Military Affairs
Hearing Date/Time: Thursday, March 29, 2012, 10:00 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Strong Support of H.C.R. 115/H.R. 87

Dear Chair Aquino and Members of the Committee on Public Safety & Military Affairs:

The American Civil Liberties Union of Hawaii writes in strong support of H.C.R. 115/ H.R. 87.

On December 31, 2011, President Obama signed the National Defense Authorization Act (NDAA), codifying indefinite military detention without charge or trial into law for the first time in American history.

The law is an historic threat because it codifies indefinite military detention without charge or trial into law for the first time in American history. It could permit the president – and all future presidents – to order the military to imprison indefinitely civilians captured far from any battlefield without charge or trial. This kind of sweeping detention power is completely at odds with our American values, violates the Constitution, and corrodes our Nation’s commitment to the rule of law, which generations have fought to preserve.

The breadth of the NDAA’s worldwide detention authority violates the Constitution and international law because it is not limited to people captured in an actual armed conflict, as required by the laws of war. Under the Bush administration, claims of worldwide detention authority were used to hold even a U.S. citizen captured on U.S. soil in military custody, and many in Congress assert that the NDAA should be used in the same way. The ACLU does not believe that the NDAA authorizes military detention of American citizens or anyone else in the United States. Any president’s claim of domestic military detention authority under the NDAA would be unconstitutional and illegal.

Nevertheless, there is substantial public debate and uncertainty around whether Sections 1021 and 1022 of the NDAA could be read even to repeal the Posse Comitatus Act and authorize indefinite military detention without charge or trial within the United States. The law does not require even an allegation that a detained person caused any harm or threat of harm to the United States or to any U.S. interest. Mere allegation of membership in, or support of, an alleged

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Hon. Rep. Aquino, Chair, PBM Committee
and Members Thereof
March 29, 2012
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terrorist group could be the basis for indefinite detention. Under the American justice system, we don't just lock people up indefinitely based on suspicion.

Congress and the president should clean up the mess they created. Congress should repeal the NDAA's detention provisions.

More than ten years after the 9/11 attacks, with the United States withdrawing from Iraq and Afghanistan, the United States should not be asserting new worldwide authority for the military to imprison persons seized in any country.

We have seen how disregard for the rule of law has disastrous results for America's standing in the world. It is time for a return to the rule of law. It is time to turn that page. Please add Hawaii's voice in support of repealing the NDAA's dangerous detention provisions and pass H.C.R. 115/ H.R. 87.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

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The National Defense Authorization Act, which codifies indefinite military detention without charge or trial into law for the first time in American history is a travesty and an affront to the American system of justice.

Even if President Obama does not use it, any and all future presidents could order the military to imprison indefinitely civilians captured far from any battlefield without charge or trial. This kind of sweeping detention power is completely at odds with our American values, violates the Constitution, and corrodes our Nation's commitment to the rule of law, which generations have fought to preserve.

The NDAA violates the Constitution and international law because it is not limited to people captured in an actual armed conflict, as required by the laws of war. This claim of worldwide detention authority is both unconstitutional and illegal.

This Act could be read to even authorize indefinite military detention without charge or trial within the United States without even an allegation that a detained person caused any harm or threat of harm to the United States or to any U.S. interest. Mere allegation of membership in, or support of, an alleged terrorist group could be the basis for indefinite detention. Under the American justice system, we don't just lock people up indefinitely based on suspicion.

As President Obama says quite often in relation to other issues, "That's not who we are." He and the Congress need to clean up the mess they created.

Please add Hawaii's voice in support of repealing the NDAA's dangerous detention provisions and pass HCR 115/HR 87.

Thank you for the opportunity to submit testimony on this issue that is so vital to our democracy.

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