

Broad Opposition to NDAA Provisions That Would Undermine National Security, Rule of Law

As the National Defense Authorization Act (NDAA) moved from the House to the Senate a growing chorus of opposition emerged regarding the bill's detainee provisions. The final bill did not fix these dangerous provisions that would tie the President's hands, disrupt law enforcement investigations of terrorism suspects, and allow the indefinite detention of terrorism suspects, including U.S. citizens, without trial.

Across the Political Spectrum:

Senator Mark Kirk (R-IL)

*"Senators like Rand Paul and I on the right are also concerned because we think your rights as a United States citizen are inviolate and if you are picked up it's pursuant to civilian authority and you appear before a civilian court."*¹

*"I understand that others have a different view. They describe the United States as a battlefield. I would say that is an overly harsh determination of how cheaply our rights can be held."*²

Senator Rand Paul (R-KY) and Senator Mike Lee (R-UT)

*Senator Paul joined Senator Kirk going against party lines to support amendment #1107, introduced by Senator Udall that sought to strip the provisions from the legislation. Senator Lee joined them in supporting amendment #1125, by Senator Feinstein which would have limited mandatory military custody to those detained abroad.*³⁴

Senator Dianne Feinstein (D-CA)

*"This flexibility is what we are taking away from the executive branch under the provisions in this bill. It was well practiced during the Bush Presidency, and it has been well practiced by the Obama Presidency. Virtually every national security professional connected to the handling of terrorists and the intelligence obtained from them says to change it would be a mistake."*⁵

Senator Mark Udall (D-CO)

*"Our national security leadership has said the detention provisions in this bill could make us less safe. We should listen to their concerns and pass this amendment to preserve the U.S. Government's current detention and prosecution flexibility that has allowed both the Bush and Obama Administrations to effectively combat those who seek to do us harm."*⁶

Tea Party activists in Arizona have protested Senator John McCain (R-AZ) for supporting the provisions.⁷

Retired Military Leaders:

Generals Joseph P. Hoar, USMC (Ret.) and General Charles C. Krulak, USMC (Ret.)

*"There should be no disagreement...that legislation which both reduces the options available to our Commander-in-Chief to incapacitate terrorists and violates the rule of law would seriously undermine the safety of the American people."*⁸

Generals Hoar and Krulak were joined by 24 other retired military leaders on a letter stating:

*"Our leaders are constantly striving to make America more secure, but in doing so, we must be careful not to overreact and overreach, resulting in policies that will do more harm than good."*⁹

¹ FOX News Interview, November 29, 2011

² November 30th, 2011- Congressional Record pg. 8037

³ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00210

⁴ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00213

⁵ November 29th, 2011- Congressional Record pg. 7962

⁶ December 1st, 2011- Congressional Record pg. 8107

⁷ "Tea Party Patriots and Conservatives Protest Senator John McCain's National Defense Authorization Act in His Home Turf, Tucson, Arizona"

⁸ http://www.humanrightsfirst.org/wp-content/uploads/pdf/Hoar_Krulak_letter_to_Obama_re_NDAA.pdf

⁹ <http://www.humanrightsfirst.org/wp-content/uploads/pdf/2011.11.28%20RML%20on%20Udall%20Amdt%20to%20NDAA.pdf>

Former Bush Administration Officials:

- ✓ **Cully Stimson, former Deputy Assistant Defense Secretary for Detainee Affairs**
“Most of the proposed legislation potentially encroaches on the commander in chief’s executive power under the U.S. Constitution, denies the President needed flexibility...”¹⁰
- ✓ **John Bellinger and Matthew Waxman, former State Department officials**
“These legislative encroachments on the president’s authorities would likely have been as strongly opposed by the Bush administration as by the Obama administration.”¹¹
- ✓ **Lawrence Wilkerson, retired U.S. Army colonel who served as State Department Chief of Staff**
“By limiting the use of the traditional criminal justice system -- and, specifically, the unparalleled experience and talent of the FBI and other domestic law enforcement officers -- the defense bill could actually weaken our counterterrorism efforts.”¹²

Former Counterterrorism, Law Enforcement and Intelligence Officials:

- ✓ **Richard Clarke, counterterrorism expert and former administration official**
“The Pentagon leadership... does not want to be given the roles now performed by the Federal Bureau of Investigation, the federal courts and the Bureau of Prisons. Nor do the attorney general or FBI director want to be forced to divest themselves of their duties to deal with terrorists who have been arrested.”¹³
- ✓ **Joe Navarro, former FBI special agent in counterintelligence and behavioral assessment joined 15 other former officials in signing a statement stating, in part:**
“Law enforcement and intelligence officials have a proven track record of handling international terrorism cases, and Congress should not undermine their efforts by taking tools out of the toolbox.”¹⁴
- ✓ **Don Borelli, former Assistant Special Agent-in-Charge in the NY Joint Terrorism Task Force (JTTF)**
“Using law enforcement as a tool in the U.S. counterterrorism toolbox is not only effective, transparent and legal, it has the added benefit of preserving our reputation as a nation built on the rule of law and basic freedoms afforded to all people.”¹⁵
- ✓ **Ali Soufan, former FBI interrogator who revealed that Khalid Sheikh Mohammed was the 9/11 mastermind**
“I know both systems well. I’ve been the main witness at several trials held in Guantánamo... from experience, I know that federal courts are often better.”¹⁶
- ✓ **National Journal’s national security experts side with those opposing the provisions in a recent poll¹⁷**

These voices join our nation’s top military, law enforcement and intelligence leaders in opposing this legislation:

- ✓ **Secretary of Defense Leon Panetta**
“I am convinced we all want the same result- increased flexibility for our national security professionals in the field to detain, interrogate and prosecute suspected terrorists. The department has substantial concerns , however, about the revised text.”¹⁸
- ✓ **FBI Director Robert Mueller**
“This legislation may call into question the FBI’s continued use or scope of its criminal investigative or national security authorities.”¹⁹
- ✓ **Director of National Intelligence, General James Clapper**
“In my view, some of these provisions could limit the effectiveness of our intelligence and law enforcement professionals at a time when we need the utmost flexibility to defend the nation from terrorist threats.”²⁰

¹⁰ Stimson, Cully “Common Sense Principles for Detainee Policy”, Heritage Foundation, October 17, 2011

¹¹ Bellinger, John and Waxman, Matthew “A Problematic Terrorist Detention Bill”, Council on Foreign Relations, December 5, 2011

¹² Wilkerson, Lawrence “No need to override system of justice for terror suspects”, Detroit Free Press, October 2, 2011

¹³ Clarke, Richard “GOP Plays Politics with Terrorism”, Baltimore Sun, November 13, 2011

¹⁴ [http://www.humanrightsfirst.org/wp-](http://www.humanrightsfirst.org/wp-content/uploads/pdf/11%2023%202011%20STATEMENT%20IN%20SUPPORT%20OF%20A%20ROBUST%20MULTILAYERED%20APPROACH.pdf)

[content/uploads/pdf/11%2023%202011%20STATEMENT%20IN%20SUPPORT%20OF%20A%20ROBUST%20MULTILAYERED%20APPROACH.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/11%2023%202011%20STATEMENT%20IN%20SUPPORT%20OF%20A%20ROBUST%20MULTILAYERED%20APPROACH.pdf)

¹⁵ Borelli, Don “Use Rule of Law to Confront Terrorists”, The Hill, October 25, 2011

¹⁶ Horton, Scott “The Black Banners: Six Questions for Ali Soufan”, Harper’s Magazine, November 1, 2011

¹⁷ Sorcher, Sara “Insiders Side with White House on Detainee Provisions”, National Journal, December 4, 2011

¹⁸ http://www.politico.com/static/PPM229_111115_dodletter.html

¹⁹ <http://www.lawfareblog.com/wp-content/uploads/2011/11/NDAA-Sec-1032-Mueller-ltr.pdf>

²⁰ <http://www.humanrightsfirst.org/wp-content/uploads/pdf/DNI%20Response%20to%20Chairman%20Feinstein%20on%20NDAA%2022%20Nov%202011.pdf>