

# Obama's "Indefinite Detention Law" Blocked. Historic Law Suit against Obama

Score One for Hedges v. Obama

By [Stephen Lendman](#)

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Region: [USA](#)

Theme: [Law and Justice](#)

*On July 20, 1969, Neil Armstrong called his Apollo 11 landing "one step for man, a giant leap for mankind." Hedges v. Obama perhaps reflects a baby step, if temporary, for justice.*

*On September 12, Southern District of New York federal Judge Katherine B. Forrest [blocked](#) Obama's indefinite detention law.*

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In her 112-page ruling, she called it "facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient definitional structure and protections to meet the requirements of due process."

She added that:

"If, following issuance of this permanent injunctive relief, the government detains individuals under theories of 'substantially or directly supporting' associated forces, as set forth in" the National Defense Authorization Act, "and a contempt action is brought before this court, the government will bear a heavy burden indeed."

At issue is section 1021 of the 2012 National Defense Authorization Act (NDAA). It states in part:

"Congress affirms that the authority of the president to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (AUMF) 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."

"Covered persons" are defined as:

Anyone "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces."

Plaintiffs argued that broad, ambiguous language like "substantially supported," "associated forces" and "directly supported" leaves them and others vulnerable to lawless indefinite detention.

For example, meeting someone rightly or wrongly designated a terrorist, staying in their homes, inviting them to speak at conferences or in panel discussions, perhaps interviewing

them, or socializing with them can be called dealing with the enemy.

So can writing anti-imperial articles, exposing and/or discussing US crimes of war and against humanity, and participating in anti-war protests.

Hedges and others also said concerns arose from NDAA's passage. It grants unconstitutional presidential authority. It exceeds the September 2001 congressional approval for Authorization for Use of Military Force (AUMF) for "the use of United States Armed Forces against those responsible for the recent attacks launched against the United States."

On January 16, 2012, [Hedges](#) wrote "Why I'm Suing Barack Obama," saying:

He and others challenged AUMF's legality "as embedded in the (2012 NDAA) signed by (Obama) on Dec. 31." He picked New Year's eve. Perhaps he thought no one would notice.

It created a firestorm but not in the media. They reported virtually nothing on enacted tyranny.

Hedges said NDAA "authorizes the military in Title X, Subtitle D, entitled 'Counter-Terrorism,' for the first time in more than 200 years, to carry out domestic policing."

"With this bill, which will take effect March 3, the military can indefinitely detain without trial any U.S. citizen deemed to be a terrorist or an accessory to terrorism."

"And suspects can be shipped by the military to our offshore penal colony in Guantanamo Bay and kept there until 'the end of hostilities.' It is a catastrophic blow to civil liberties."

As a journalist, he spent many years abroad. He "met regularly with leaders of Hamas and Islamic Jihad in Gaza."

He also met Arafat and other PLO leaders when they were called terrorists. He "spent time with the Revolutionary Guard in Iran and was in northern Iraq and southeastern Turkey with fighters from the Kurdistan Workers' Party."

They were all called terrorists. So are others journalists meet with regularly and will again. It's their job.

Hedges said he "suspect(s) the real purpose of this bill is to thwart internal, domestic movements that threaten the corporate state. The definition of a terrorist is already so amorphous under the Patriot Act that there are probably a few million Americans who qualify to be investigated if not locked up."

Washington's war on terror is ill-defined and vague. It reflects totalitarian state harshness. It equates dissent with treason. It fosters "mounting state paranoia. It expands our permanent war to every spot on the globe." It destroys fundamental constitutional rights.

Obama lets CIA torturers, Wall Street crooks, other corporate criminals, lawless war profiteers, and other venal high-level civilian or government officials off scot-free.

In contrast, he usurped unconstitutional diktat authority. At issue is freely targeting US citizens anywhere in the world, indefinitely detaining them, and killing them if he wishes on his say so alone.

Freedom in America is fast disappearing. On December 14, the House passed the FY 2012 National Defense Authorization Act (NDAA). On December 15, the Senate followed suit. Ironically it was Bill of Rights Day.

Obama signed it into law. The measure ends constitutional protections for everyone, including US citizens. Specifically it targets due process and law enforcement powers.

With or without evidence, on issues of alleged terrorist connections posing national security threats, the Pentagon now supplants civilian authorities. It's well beyond its mandate.

Militaries exist to protect nations from foreign threats. America's Uniform Code of Military Justice (UCMJ) applies solely to its own personnel as authorized under the Constitution's Article I, Section 8. It states:

"The Congress shall have Power....To make Rules for the Government and Regulation of the land and naval forces."

In America, state and local police, the Justice Department, and FBI are responsible for criminal investigations and prosecutions. No longer on matters relating to alleged national security concerns.

Enactment means America's military may arrest anyone anywhere, including US citizens. They can be indefinitely held without charge or trial, based solely on suspicions, baseless allegations, or none at all.

No reasonable proof is required, just suspicions that those detained pose threats. Henceforth, indefinite detentions can follow mere membership (past or present) or support for suspect organizations or individuals.

Constitutional, statute and international laws don't apply. Presidential diktats replaced them. No one anywhere is safe.

Presidents have unchecked power. They can unjustifiably accuse anyone of posing a threat. They may order arrests and imprisonment for life without charge or trial. Abuse of power replaced rule of law protections. It's happening in real time.

Ahead of their holiday break, leaders from both Houses met secretly to resolve final language differences before sending NDAA to Obama to sign.

Senate bill sponsor Carl Levin said administration officials, in fact, lobbied against language excluding US citizens from indefinite military detentions without trials or due process. According to Levin:

"The language which precluded the application of Section 1031 to American citizens was in the bill that we originally approved....and the administration asked us to remove (it) which says that US citizens and lawful residents would not be subject to this section."

"It was the administration that asked us to remove the very language which we had in the bill which passed the committee. (W)e removed it at the request of the administration....It was the administration which asked us to remove the very language, the absence of which is now objected to."

In other words, Obama wants US citizens indefinitely detained in military prisons whether or not charged. He fully supports police state repression. Only his disingenuous rhetoric says otherwise.

His earlier Executive Order authorized indefinite detentions of anyone designated national security threats. Specifically intended for Guantanamo detainees, it's now for everyone, including US citizens at home or abroad.

Moreover, CIA operatives and Special Forces death squads got presidential authorization to kill targeted US citizens abroad. As a result, they can be hunted down and murdered in cold blood for any reason or none at all.

Inviolable rights are dead. Protesting imperial lawlessness, social injustice, corporate crime, government corruption, or political Washington run of, by and for rich elites can be criminalized.

So can free speech, assembly, religion, or anything challenging America's right to kill, destroy and pillage with impunity. Tyranny arrived in America. The nation's unsafe to live in. There's no place to hide. Anyone challenging injustice can be arrested, charged with supporting terrorism, and indefinitely imprisoned forever.

In response to Judge Forrest's ruling, administration officials appealed. They claimed she exceeded enjoining NDAA's section 1021. In a 38-page [filing](#), they said her ruling:

"threatens irreparable harm to national security and the public interest by injecting added burdens and dangerous confusion into the conduct of military operations abroad during an active armed conflict."

Forrest questioned how AUMF is interpreted. The 2001 authorization and NDAA's section 1021 aren't the same, she said. "They are not co-extensive. Military detention based on allegations of 'substantially supporting' or 'directly supporting' the Taliban, Al Qaeda, or associated forces, is not encompassed within the AUMF and is enjoined by this order regarding" NDAA.

Washington uses AUMF and other twisted legal interpretations to wage war on humanity. At issue also is giving Obama dictatorial authority to indefinitely detain or kill anyone he wishes with or without charges or trials.

Habeas and due process rights are null and void. So are all other constitutional rights. Obama effectively granted himself dictatorial powers.

His minions overstepped by saying Forrest took "it upon (herself) to disagree with an interpretation of the military's detention authority that had previously been endorsed by all three branches of government."

"What is more, (she) expressly invites actions for contempt sanctions if the military exercises detention authority in a manner inconsistent with the court's deeply flawed understanding of that authority."

In June, she issued a preliminary injunction against enforcing the statute she questions. While appealing her ruling, Obama officials didn't block it.

After making her injection permanent, they asked for an emergency stay. They claimed she made an “unprecedented” ruling affecting wartime matters.

On September 17, Second Circuit Court of Appeals Judge Raymond Lohier issued a one-page order. It stayed Forrest’s decision until a three-judge panel rules. On September 28, it’ll hear pro and con arguments.

If it upholds her injunction, expect the Supreme Court to decide.

Bruce Afran is one of several attorneys representing plaintiffs. He called the government’s concern unfounded. Forest’s injunction doesn’t touch its separate AUMF powers. “The general thrust of (its) argument seems to be that the president and Congress are immune from judicial review.”

No matter which way the Second Circuit or perhaps Supreme Court rules, this issue is far from resolved. At the behest of Obama or Romney if he’s elected, Congress can pass new overriding legislation. It happened several times during the Bush administration.

If so, we’re back to square one. Repression will continue unchecked. With or without NDAA, it’s largely that way now. America isn’t fit to live in. A new dark age dawned no matter which party wins in November.

*Stephen Lendman lives in Chicago and can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net).*

*His new book is titled “How Wall Street Fleeces America: Privatized Banking, Government Collusion and Class War”*

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### About the author:

Stephen Lendman lives in Chicago. He can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net). His new book as editor and contributor is titled "Flashpoint in Ukraine: US Drive for Hegemony Risks WW III."

<http://www.claritypress.com/LendmanIII.html> Visit his blog site at [sjlendman.blogspot.com](http://sjlendman.blogspot.com). Listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network. It airs three times weekly: live on Sundays at 1PM Central time plus two prerecorded archived programs.

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