

US Supreme Court Refuses to Uphold the Constitution: Allows Indefinite Detention

By [Washington's Blog](#)

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Region: [USA](#)

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“We Are No Longer a Nation Ruled By Laws”

Pulitzer prize winning reporter Chris Hedges – along with journalist Naomi Wolf, Pentagon Papers whistleblower Daniel Ellsberg, activist Tangerine Bolen and others – [sued the government](#) to join the NDAA’s allowance of the indefinite detention of Americans.

The trial judge in the case asked the government attorneys *5 times* whether journalists like Hedges could be indefinitely detained simply for interviewing and then *writing about* bad guys.

The government [refused to promise](#) that journalists like Hedges won’t be thrown in a dungeon for the rest of their lives without any right to talk to a judge.

The trial judge [ruled](#) that the indefinite detention bill was unconstitutional. But the court of appeal [overturned](#) that decision, based upon [the assumption](#) that limited the NDAA to non-U.S. citizens:

We thus conclude, consistent with the text and buttressed in part by the legislative history, that Section 1021 [of the 2012 NDAA] means this: With respect to individuals who are not citizens, are not lawful resident aliens, and are not captured or arrested within the United States, the President’s [Authorization for Use of Military Force] authority includes the authority to detain those responsible for 9/11 as well as those who were 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—a detention authority that Section 1021 concludes was granted by the original AUMF. But with respect to citizens, lawful resident aliens, or individuals captured or arrested in the United States, Section 1021 simply says nothing at all.



Painting by Anthony Freda:

www.AnthonyFreda.com

Monday, the U.S. Supreme Court declined to hear an appeal of the case, [holding](#):

The appeals court said the challengers had no standing because they could not show the provision has any bearing on the government's authority to detain U.S. citizens.

The court ignored the fact that the co-sponsors of the indefinite detention law said it [does apply](#) to American citizens, and that top legal scholars [agree](#).

The courts' Orwellian reasoning may sound – at first blush – like it might be a good thing. After all, both the Court of Appeal and the Supreme Court said that there's no indication that the indefinite detention provision will be applied against U.S. citizens.

However, by refusing to strike down the law and insist that any future laws explicitly exempt U.S. citizens, it leaves discretion in the hands of the executive branch.

The effect of the decision will be to allow the U.S. government to kidnap and indefinitely detain U.S. citizens who protest or dissent against the government ... and the courts will *never hear* any legal challenge from the prisoners. The detainees will not get to say:

Hey, the Supreme Court said the indefinite detention law isn't written to apply to U.S. citizens, so you have to let me go!

After all, prisoners can be held under the indefinite detention bill without trial, without presenting evidence, without letting the citizen consult with a lawyer, and without even charging the citizen.

So – if you’re thrown into a hole somewhere – no one will even *hear* your side of the story.

Chris Hedges [noted](#) in November:

If [the indefinite detention law] stands it will mean, as [the trial judge] pointed out in her 112-page opinion, that whole categories of Americans—and here you can assume dissidents and activists—will be subject to seizure by the military and indefinite and secret detention.

Constitutional attorney John W. Whitehead [agrees](#):

No matter what the Obama administration may say to the contrary, actions speak louder than words, and history shows that the U.S. government is not averse to locking up its own citizens for its own purposes. What the NDAA does is open the door for the government to detain as a threat to national security anyone viewed as a troublemaker. According to government guidelines for identifying domestic extremists—a word used interchangeably with terrorists, that technically applies to anyone exercising their First Amendment rights in order to criticize the government.

If you think people are crying wolf, just remember that the CIA director [relabeled “dissidents” as “terrorists”](#) in 1972 so that he could continue spying on them ... and [nothing has changed](#).

Daniel Ellsberg notes that Obama’s claimed power to indefinitely detain people without charges or access to a lawyer or the courts is a power that even [King George - the guy we fought the Revolutionary War against - didn’t claim](#). And former judge and adjunct professor of constitutional law Andrew Napolitano points out that Obama’s claim that he can indefinitely detain prisoners *even after they are acquitted of their crimes* is a power that even [Hitler and Stalin didn’t claim](#).

After the Supreme Court published its decision, Tangerine Bolen [wrote](#):

The Supreme Court has made it abundantly clear, first via Citizens United, then most recently via *McCutcheon v. FTC*, that corporations are “persons” whose “free speech” must be protected at all costs – including the cost of democracy – while our rights – the rights of living, breathing people, the fundamental right of due process and our fundamental rights of free speech and association – those no longer matter. They are to be trampled.

Under the war on terror, the United States government has trampled upon the fundamental human rights of people around the world since 9/11. The Bush administration manufactured a false war based on carefully crafted lies, false evidence and sickening manipulation. In the wake of that war, our courts prefer to continue to defer to a disingenuous national security narrative that has arisen out of the lies, paranoia, and incredible lawbreaking of our own government, including kidnapping, torturing, indefinitely imprisoning, and assassinating people with impunity – all of this against both reason and international law.

We are no longer a nation ruled by laws. [[She's right.](#)] We are nation ruled by men who have so steeped themselves in a false narrative that at the same time they are exponentially increasing the ranks of terrorists, they are destroying the rule of law itself. [Indeed, we've gone from a nation of laws to a [nation of powerful men making one-sided laws to protect their own interests ... in secret.](#) Government folks are [using laws to crush dissent.](#) It's gotten so bad that even [U.S. Supreme Court justices are saying](#) that we are descending into tyranny.] It is madness upon madness – the classic tale of becoming the evil you purport to fight while believing you remain righteous.

We have tried to stand up to this madness: we are outnumbered, outspent, and outgunned – a David intrepidly fighting a Goliath that spans the planet and has the power to shape our “reality” – thus shaping what the courts even see. We have sacrificed greatly to do this – and yet we would do it all again.

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