

FROM: JEFF LEWIS, National Director, Patriot Coalition, co-founder, The Intolerable Acts ACTION CENTER

Senator Burr, my fellow North Carolinians, (my comments are in blue, citations are in red),

(Senator Burr): I read with great disappointment an editorial in your paper last week that chastised me for my vote on the National Defense Authorization Act. I welcome the opportunity to set the record straight after your baseless attack on my reasons for voting the way I did.

Your claim that this bill allows for the suspension of habeas corpus is simply incorrect.

There is no claim that Habeas Corpus has been suspended in either this article by the Beaufort Observer Editor, or in the resolutions prepared by the Patriot Coalition and Oath Keepers legal teams. The reality is that Congress and the Administration believe that Habeas Corpus and the Constitution simply don't apply. One can certainly make the claim they are not suspending something [Habeas Corpus] they don't even acknowledge as applicable.

What Congress and the President have resolved is that the Constitution is no longer the "supreme law of the land," but that the ubiquitous "law of war" reigns supreme.

(Senator Burr): That would be unconstitutional, and Section 1021 makes it clear that United States citizens cannot be held in military custody without judicial process.

Section 1021 "makes it clear" that the "indefinite detention" of United States citizens is "authorized," [again] attempting to apply the "law of war" instead of the U.S. Constitution.

The "due process" guaranteed under the Constitution requires a Habeas Corpus hearing, an indictment, a speedy and public trial by a jury of one's peers, the right to defense counsel, the right to have witnesses in one's favor, and the right that said trial occur in the jurisdiction in which the alleged crime occurred.

For "indefinite detention" of U.S. citizens to be Constitutional [and lawful], Congress would have to enact the "Suspension Clause," Article I, Section 9, Clause 2. Such a suspension could only be constitutional if the 'public safety' required it during a "Rebellion or Invasion."

Section 1021(a) - (a) IN GENERAL.—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) 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. (emphasis added)

Section 1021(b) - COVERED PERSONS.—A covered person under this section is any person as follows:

- (1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.*

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Note: Part (1) of the definition of ‘covered persons’ is consistent with that used in the AUMF, which only authorized the President to go after the scoundrels who attacked [past tense] the United States on 9/11/2001.

- (2) A person 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.

Note: Part (2) of the definition of ‘covered persons’ is not consistent with that used in the AUMF. Section 1021(b)(2) expands the scope of the AUMF in that the ‘targeting profile’ of covered persons now includes persons who had nothing to do with the attacks of 9/11/2001, undefined “belligerent acts,” expands the timeframe beyond that of the events of 9/11/2001 to infinity, and also creates new policy in that it expands the entities being protected to include undefined ‘coalition partners.’ Section 1021 authorizes:

- (1) Detention under the law of war
- (2) Indefinite detention
- (3) Trial before a court other than an ‘Article III’ court, including military tribunals
- (4) Transfer for trial by an “alternative court” or “military tribunal”
- (5) Transfer of custody to a foreign country, or (unnamed) foreign entity
- (6) Makes no differentiation between an alleged crime having occurred on a ‘foreign battlefield’ or on ‘U.S. soil,’ no distinction between the treatment of citizens and non-citizens, and no distinction between uniformed lawful combatants operating within a control and command structure and that of un-uniformed common criminals.

(Senator Burr): Section 1022 of the NDAA, which concerns military custody for a narrow subset of foreign al-Qaeda terrorists, has been the subject of much misinformation.

Section titles are not the law, but are merely there to provide guidance. The Supreme Court has determined (paraphrased) “that if you have to use section titles to define or explain the intent of the law, you are doomed from the start.” A well-crafted ‘section title,’ coupled with sophisticated, convoluted, and deceptive language within the actual law can certainly misdirect the perception of both the public and the public servants (legislators) to whom the respective legislation is being marketed. This was certainly the case with sections 1021 and 1022 of the 2012 NDAA.

(Senator Burr): Contrary to claims that United States citizens will be picked up and put into military detention, this section makes clear that the detention requirement applies only to those foreign al

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Qaeda members who have participated in planning or carrying out an attack against the United States.

(Senator Burr): In fact, section 1022 explicitly states that there is no requirement to detain United States citizens.

This statement is meaningless. Assertions that there is no “requirement” to detain United States citizens and lawful resident aliens contained within Section 1022 are not the same thing as a “prohibition” against it.

The absence of a “prohibition” against the detention [indefinite or temporary] of U.S. citizens and lawful resident aliens by the military is the legal equivalent of: **“It’s permissible, just not required.”**

(Senator Burr): Because these sections ensure that the most dangerous foreign al Qaeda terrorists will be detained, they are essential to our national security.

The allegiance mutually owed between citizens and their country is inviolate, regardless of where the citizen is physically located, anywhere in the world. The protections of the Constitution and Bill of Rights travel with them. The same protections are afforded foreign nationals on U.S. soil, and that of its protectorates.

The author of the Declaration of Independence advised:

“On every question of Construction, [let us] carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.” - Thomas Jefferson

Where the sophisticated and deceptive language of sections 1021 and 1022 do not afford reasonable men to reach agreement on their meaning and intent, we should not look to the section titles which have no legal binding, but should take the advice of Jefferson and look to the debates on the floor of the U.S. Senate for guidance as to the “true intent and purposes” of these sections, in the same fashion that we should look to the Declaration of Independence, the debates of the Constitutional Convention of 1787, the ratification conventions of the several States, and to the Federalist Papers, which were the “marketing documents” of the intent of the Constitution used to convince the sovereign states to enter this ‘new’ compact.

The authors and proponents of Sections 1021 and 1022 claimed on the floor of the U.S. Senate that America is the “battlefield,” that the “law of war,” along with treaties and conventions the United States has entered into (or adheres to), are superior to the “supreme law of the land,” the U.S. Constitution, and further, that the protections of the Bill of Rights do not apply under the “law of war,” and that mere suspicion without charge is good enough to deny a person his life, his liberty, and his due process in a court ordained or authorized under the Constitution’s Article III.

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(Senator Burr): They do not put American citizens at risk of being unlawfully detained.

That would depend on one's definition of "unlawfully." Since Congress has a long and shameful history of merely giving lip-service to their oath-bound duty to uphold the Constitution, and gives more credence to case law and statutory law than the "supreme law of the land" those laws were supposed to be written in pursuance of, simply stating that American citizens are not "at risk of being unlawfully detained" does not generate a sense of relief that such is not the case.

If Congress, the Judiciary, and the President (current and former) believed as the Founding Fathers and early U.S. Supreme Courts that a law in conflict with the Constitution was "null and void" upon its inception, and that as such, it was unenforceable; and if the oath-bound public servants in the sovereign states would hold their oaths and the Constitution with some sense of reverence, then perhaps a statement regarding "unlawful" detention might have some meaning. Currently, it does not.

Sections 1021 and 1022 of the 2012 NDAA absolutely DO put Americans at risk, and Members of Congress who fail to listen to the pleas of the People to unequivocally defend our God-given unalienable Rights are themselves "at risk" of being thrown out of office in the next election.

Subsequent legislation that's been proposed, akin to the Feinstein Amendment to S. 1687 that pretended to "appease the natives" with its crafty and meaningless "requirement" language, and H.R. 3702 / S. 2003, "The Due Process Guarantee Act of 2011," which still supposes that Congress has the Constitutional authority to, by statute, effectively declare that the Bill of Rights do not apply, should also be rejected.

Honest and constitutional efforts must be undertaken to undo these 'intolerable acts' post haste. Short of an actual "rebellion or invasion," there are no circumstances by which the chains of the Constitution can be cast off. For anyone to suggest otherwise is indicative of either an arrogance of immunity, or an ignorance of our nation's Founding Documents.

Merely calling a U.S. citizen an "unlawful combatant," or "belligerent" does not revoke their Constitutional Rights, yet that is exactly what the 112th Congress and President Obama have declared. Under the Constitution, a citizen who wages "war" against the United States, or gives "aid and comfort" to the enemies of the United States, is probably guilty of treason.

U.S. Constitution, Article III, Section 3 requires that a citizen charged with "treason" cannot be convicted of such without the "*...Testimony of two Witnesses to the same overt Act, or on Confession in open Court.*" (Emphasis added.)

Several Members of Congress have attempted to explain their vote for a bill that contains egregious violations and usurpations of the Constitution with claims that it was necessary to "support keeping the military operating."

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In fact, Sections 1021 and 1022 have absolutely nothing to do with funding our military. In fact, attaching unconstitutional provisions to a bill that's by design intended to fund our military is a red flag that these provisions couldn't stand on their own. For Members of Congress to then wrap themselves in the flag to justify voting away the Constitution and Bill of Rights is [reprehensible](#).

[The Intolerable Acts ACTION CENTER](#) legal team and Constitutional scholars will respectfully debate the meaning, applicability to U.S. citizens, and constitutionality of sections 1021 and 1022 with Senators Burr and Hagan, (or any other Member of Congress, state legislator, county commissioner, city councilman, etc...) in a public forum, at a time and place of their choosing.

We are also available to meet privately to discuss solutions to the national security issues that this and other 'intolerable acts' passed since 9/11/2001 purport to address.

We cannot restore Constitutional governance, nor secure the "*Blessing of Liberty to ourselves and our Posterity*" by failing (or refusing) to defend the Constitution and Bill of Rights against all enemies, foreign and domestic.

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