



FACT SHEET: Smith-Amash Amendment to Fiscal Year 2013 National Defense Authorization Act



The Problems:

- ***Indefinite Detention of Individuals Arrested on US soil:*** If the President declares an individual to be an enemy of the state, existing law may allow him to indefinitely detain that person— including citizens of the United States - without due process and with little independent review or oversight. That is far too much power.
- ***Mandatory Military Custody:*** Current law requires that some individuals suspected of terrorism and detained on U.S. territory may be transferred to military custody, and that some must be detained in military custody. This provision has been opposed by the Director of the Central Intelligence Agency, Secretary of Defense, Director of Federal Bureau of Investigations, and the Director of National Intelligence, as well as several Bush administration national security officials.
- ***Habeas Corpus Not the Problem:*** Some would argue that because the Afghanistan Authorization for Use of Military Force (AUMF) and the 2012 NDAA do not “deny the availability of the writ of habeas corpus . . . for any person who is detained in the United States,” that there is no issue. That sounds like an effective solution until you realize that no one believes habeas has been suspended. Habeas corpus is available to Americans detained on U.S. soil, but it offers very limited protection. Habeas is a judicial review that only looks at the legality of detention, it does not address detention authority itself. It doesn’t prevent the government from detaining Americans based on accusations that they’ve “substantially supported” forces “associated” with terrorists. It doesn’t guarantee Americans that the government will charge them with a crime and try them in a court of law. And it does nothing to stop the government from locking them up for the rest of their lives. **In short, habeas is no substitute for Americans’ full constitutionally protected rights.**
- ***Threat to Civil Liberties, Undermines National Security:*** Leaving these powers on the books is not only a dangerous threat to our civil liberties; it also undermines one of our strongest assets in trying suspected terrorist: Article III Courts and domestic law enforcement. Since September 11th, our Federal courts and domestic law enforcement agencies have successfully prosecuted over four hundred defendants charged with crimes related to international terrorism in the United States since 9/11.

The Bipartisan Fix:

- ***The Solution:*** The Smith-Amash Amendment will ensure that any individual detained on U.S. soil has the rights and civil liberties enshrined in the Constitution. The amendment will ensure that no person detained, captured, or arrested in the United States pursuant to the Authorization for Use of Military Force could be indefinitely detained, held in military custody, or forced to face a military tribunal. As the Constitution states, it makes clear that any person apprehended in the United States would be guaranteed due process provided by a civilian court established under Article III of the Constitution of the United States or an Appropriate State Court.
- ***Protects Civil Liberties While Providing for National Security:*** Eliminates indefinite military detention without trial for any person detained pursuant to the AUMF in the United States; eliminates mandatory military custody; embraces the success of our federal court system by providing immediate transfer for trial and proceedings under Article III of the Constitution (federal courts) or appropriate state courts.