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PROGRAMS
JOINT ECONOMIC COMMITTEE

Oppose Indefinite Detention of Americans. Vote NO on NDAA.

Dear Colleague:

The final version of the National Defense Authorization Act (NDAA), which we will vote on this afternoon, authorizes the President to indefinitely detain Americans, arrested on U.S. soil, without charge or trial. The NDAA's detention provisions should trouble anyone who values our constitutional rights. I urge you to join me in opposing the conference report to H.R. 1540, the NDAA.

Section 1021—which is taken word-for-word from the Senate's NDAA—authorizes the President to detain persons who “substantially supported” forces “associated” with al-Qaeda or the Taliban that “are engaged in hostilities” against the U.S. or its “coalition partners.” None of the quoted terms are defined. We do not know what constitutes substantial support, hostilities, or our coalition partners. Critically, the bill does not attempt to define “associated forces,” either. Without knowing what qualifies as an associated force, no one can be sure they are safe from the government's detention.

The Senate attempted to obscure the NDAA's effects on American citizens by inserting language that might seem to exempt Americans from the bill. *Don't be fooled: In no way does the Senate's “fix” block the President from detaining American citizens indefinitely.*

The Senate amendment, now subsection 1021(e) of the bill, states that nothing in the discretionary detention section “shall be construed to affect existing law or authorities” relating to persons arrested on U.S. soil. The problem with that statement is that the President already claims he has the authority to indefinitely detain American citizens arrested on U.S. soil. The past two administrations have argued in court that the September 2001 Authorization for Use of Military Force (9/11 AUMF) empowers them to detain Americans who are “associated forces” of terrorists, even though the 9/11 AUMF does not mention detention, let alone the detention of American citizens. Subsection 1021(e) therefore allows the President's position on detaining Americans to continue.

The proponents easily could have blocked the President from detaining American citizens. Instead of going along with the President's litigation position, the proponents could have made clear that no American citizen arrested on U.S. soil may be detained indefinitely. They chose instead to adopt the Feinstein amendment, which they understood would not protect American citizens' right to trial.

Our Constitution does not permit the federal government to detain American citizens indefinitely without charge or trial. I strongly believe in protecting the country's security and equipping our Armed Forces with the tools they need to defeat our enemies. But we cannot support measures that, in the name of security, violate Americans' constitutional rights.

Sincerely,



Justin Amash