

Indefinite Detention: Political Washington Abolishes Due Process Protections

By [Stephen Lendman](#)

Global Research, December 17, 2011

17 December 2011

Region: [USA](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#)

Main Street Europe and America face protracted Depression conditions. As a result, millions lost jobs, homes, incomes, and futures.

Human misery is growing. So is public anger. Rage across America and Europe reflect it. Gerald Celente explains the stakes, saying:

“When people lose everything and have nothing else to lose, they lose it.”

Draconian police state provisions were enacted to contain them. Hundreds of secret Federal Emergency Management Agency (FEMA) camps may hold them. Martial law may authorize it, claiming “catastrophic emergency” conditions. Senators blew their cover calling America a “battleground.”

During WW II, loyal Japanese Americans were lawlessly detained. Today, social justice protesters and others wanting change are at risk. Political Washington’s targeting them to assure business as usual continues. Obama’s fully on board.

On December 14, the House passed the FY 2012 National Defense Authorization Act (NDAA). On December 15, the Senate followed suit – ironically on Bill of Rights Day.

Obama will sign 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. Its Uniform Code of Military Justice (UCMJ) applies solely to its own personnel as authorized under the Constitution’s Article I, Section 8, stating:

“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.

Henceforth, America’s military may arrest and indefinitely detain anyone anywhere, including US citizens, based on suspicions, spurious allegations, or none at all if presidents

so order dictatorially.

Law Professor Jonathan Turley expressed outrage, saying:

“I am not sure which is worse: the loss of core civil liberties or the almost mocking post hoc rationalization for abandoning principle. The Congress and the President have now completed a law that would have horrified the Framers.”

“Indefinite detention of citizens is something (they) were intimately familiar with and expressly sought to bar in the Bill of Rights.”

Other legal scholars agree about all alleged criminals having habeas, due process, and other legal rights in duly established civil courts.

Military tribunals are constitutionally illegal. Since June 2004, America’s (conservative) High Court made three landmark rulings.

In *Rasul v. Bush* (June 2004), the Court granted Guantanamo detainees habeas rights to challenge their detentions in civil court. Congress responded with the 2005 Detainee Treatment Act (DTA), subverting the ruling.

In *Hamdan v. Rumsfeld*, the Supreme Court held that federal courts retain jurisdiction over habeas cases. It said Guantanamo Bay military commissions lack “the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions (of) 1949.”

In October 2006, Congress responded a second time. It enacted the Military Commissions Act (MCA). It subverted the High Court ruling in more extreme form.

Undermining fundamental rule of law principles, it gave the administration extraordinary unconstitutional powers to detain, interrogate, torture and prosecute alleged terrorist suspects, enemy combatants, or anyone claimed to support them.

It lets presidents designate anyone anywhere in the world (including US citizens) an “unlawful enemy combatant” and empowers him to arrest and detain them indefinitely in military prisons.

The law states: “no (civil) court, justice, or judge shall have jurisdiction to hear or consider any claim or cause for action whatsoever....relating to the prosecution, trial or judgment of....military commission(s)....including challenges to (their) lawfulness....”

On June 12, 2008, the High Court again disagreed. In *Boumediene v. Bush*, it ruled that Guantanamo detainees retain habeas rights. MCA unconstitutionally subverts them. As a result, the administration has no legal authority to deny them due process in civil courts or act as accuser, trial judge and executioner with no right of appeal or chance for judicial fairness.

Nonetheless, Section 2031 of the FY 2010 NDAA contained the 2009 Military Commissions Act (MCA). The phrase “unprivileged enemy belligerent” replaced “unlawful enemy combatant.” Language changed but not intent or lawlessness to assume police state

powers.

So far, military commissions haven't tried Americans. Henceforth, based on alleged national security concerns, they will be under draconian FY 2012 NDAA provisions.

Notably, Jose Padilla, a US citizen, was lawlessly held over three and a half years in military and civilian confinement as an alleged "enemy combatant." Charges against him were spurious. Yet he was denied due process, tortured, brutalized, dehumanized, and transformed in solitary confinement to mush.

Emotionally destroyed ahead of his civil trial, his lawyer said he resembled "a piece of furniture," unable to represent himself properly in court. In military detention ahead of his court martial, Bradley Manning's barbaric treatment may have left him less than fully able.

A Final Comment

For years, America's crept closer to totalitarian rule. Notably, the 1996 Antiterrorism and Effective Death Penalty Act eased surveillance and death penalty restrictions, eroded habeas protection, and smoothed the way for repressive measures to follow.

Post-9/11, they proliferated. Constitutional protections have been systematically eliminated. FY 2012 NDAA provisions destroy fundamental Bill of Rights ones, including Fifth and Fourteenth Amendment due process rights.

The Fifth Amendment says, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.."

Moreover, no one shall "be subject for the same offense to be twice put in jeopardy of life or limb....be compelled (to bear) witness against himself, nor be deprived of life, liberty, or property, without due process of law...."

The Fourteenth Amendment says, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are" US citizens.

"No state shall make or enforce any law which shall abridge the privileges or immunities of (US) citizens..nor shall any state deprive any person of life, liberty, or property, without due process of law...."

Overall, America's Constitution protects against unreasonable, arbitrary, or capricious laws not based on rule of law principles.

Supreme Court rulings affirmed Bill of Rights protections. In November 2008, Justice Anthony Kennedy sided with a majority ruling, saying:

"After carefully considering the relevance of the 10 inviolable rights that comprise the ideological foundation on which our nation is built, the court finds that these basic freedoms remain important for the time being, and should not be overturned."

"Until such time as it can be definitively proven that citizens no longer require the protections provided by the Bill of Rights, it shall remain the principal legal guidance for the United States of America."

Under Obama and the 112th Congress, inviolability no longer holds. Tyranny replaced it. America's no different than other totalitarian states. As a result, no one challenging state power is safe.

Denouncing imperial lawlessness can be criminalized. So can defending right over wrong. Constitutional protections no longer apply.

People power alone can restore them. There's no other way.

Stephen Lendman lives in Chicago and can be reached at lendmanstephen@sbcglobal.net.

Also visit his blog site at www.sjlendman.blogspot.com and listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network Thursdays at 10AM US Central time and Saturdays and Sundays at noon. All programs are archived for easy listening.

<http://www.progressiveradionetwork.com/the-progressive-news-hour>

The original source of this article is Global Research
Copyright © [Stephen Lendman](#), Global Research, 2011

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Stephen Lendman](#)

About the author:

Stephen Lendman lives in Chicago. He can be reached at 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://www.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.

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca
www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those

who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca