

The US Government's Judicial Assault on Fundamental Political Rights

Dangerous Mischaracterization In NDAA Ruling

By [Raymond Lotta](#)

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Barack Obama had promised to put an end to torture, to Guantanamo, and to other outrages of the Bush Administration. But what has ensued since he has taken office is quite different: not only the continuation of rendition, the Patriot Act, and arbitrary imprisonment in Guantanamo, but a ratcheting up of the government-judicial assault on fundamental rights.

In the 2010 case of Holder v HLP [Humanitarian Law Project], the Obama administration made, and won, its argument before the courts for broadening the crime of "material support" to "terrorists" to include speaking with and advising (even on some legal matters) any such group designated as terrorist. Then there is Attorney-General Eric Holder outrageously and fascistically claiming that when the President secretly orders assassinations he is effectively meeting Constitutional requirements of due process.

The most recent example of the expansion of illegitimate government powers of repression is the National Defense Authorization Act (NDAA) of 2012. The NDAA, in particular Section 1021 of the law, gives any President the power to detain people, including U.S. citizens, indefinitely in military prisons, without charge or trial. It is a very ominous development that threatens dissent and opposition to the government and status quo.

Lawsuit Challenges NDAA

This attack on fundamental rights has aroused concern and prompted protest and legal challenges. But how this ongoing government-legal juggernaut is fought, and what principles should be adhered to in order to truly advance the people's interests and just struggles, is also of great consequence. In this light, the lawsuit *Hedges et al. v Obama et al.*, involving several progressive activists, journalists, and scholars, including Daniel Ellsberg and Noam Chomsky, and the ruling by the judge, take on notable significance.

On May 16, a federal judge decided in favor of the lawsuit brought by the seven plaintiffs, declaring that Section 1021 of the law is unconstitutional. In the Opinion, the judge agreed with the plaintiffs that this provision "is not merely an 'affirmation' of the Authorization to Use Military Force [AUMF] passed in 2001," as argued by the Obama administration. The judge found that, in its broad language—allowing the government to use "all necessary and

appropriate force” to detain any person, including U.S. citizens, who are “part of or substantially supported by al-Qaeda, the Taliban, or associated forces, under the law of war until the end of hostilities”— this provision of the NDAA “has a non-specific definition of ‘covered person’ that reaches beyond those involved in 9/11 attacks by its very terms.”

In essence, the judge found Section 1021 of the NDAA to be overly broad and vague, such that it could make people who have nothing to do with the 9/11 attacks, or with terrorism in general, vulnerable to indefinite detention by the government. *The judge issued a preliminary injunction blocking the enforcement of Section 1021. At this writing (at the beginning of August), a further legal process is underway that will determine whether this injunction will become permanent.*

The RCP and Bob Avakian Dragged into Judge’s Ruling

The judge’s ruling on section 1021 is a positive development. But dragged into and incorporated in the judge’s Opinion is the following:

“[Chris] Hedges also testified that he has previously associated with a group called Bob Avakian Revolutionary Party [sic], a Maoist group, which he stated he understands endorses the use of violence towards revolutionary ends—a philosophy to which Hedges stated he did not ascribe. Tr. 177. Despite that fact, Hedges understands Sec. 1021 as potentially encompassing his association with the Avakian Revolutionary Party [sic] and thus, the statute already has had a chilling effect on his associational activities. Tr. 177.”

What is being referred to in the above passage is, in actuality, the **Revolutionary Communist Party, USA** whose Chairman is **Bob Avakian**. More importantly, the characterization of this Party and its Chairman does not comport with the facts—yet this mischaracterization sits in the ruling, uncontested. *This creates what can only be described as a very threatening situation for the Revolutionary Communist Party, USA (RCP) and Bob Avakian.* The ruling carries the danger of sweeping this Party into a category that could be construed as outside the boundaries of what is considered protected speech, and potentially into a category of terrorist-like organizations.

This part of the May 16 ruling follows after many paragraphs which deal with organizations that are identified as “terrorist” by the U.S. government. Thus, while the RCP and its Chairman Bob Avakian are, as a matter of fact, fundamentally different, in their views, objectives, and methods, from these other organizations, the way this ruling is constructed, and formulated, could have the effect of furthering the false impression or insinuation that the RCP and Bob Avakian are “terrorists.”

A political organization and its leader have been named and singled out as something they are not. In consequence, this ruling could facilitate government persecution and harassment against, and attempts to restrict the political activity of, the Revolutionary Communist Party and its Chairman, with spillover effects to broader forces of dissent and opposition to the powers-that-be. The ruling could also invite and “legitimize” attempts by reactionary forces to act against Bob Avakian and the RCP.

In response to the ruling, a legal brief objecting to the mischaracterization, while expressing agreement with the plaintiffs’ overall assessment of Section 1021 of the NDAA, was filed in

July with the court (for a summary, see "[Brief Filed Objecting to Dangerous Mischaracterization of RCP, USA](#)").

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