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Congress of the United States
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JOINT ECONOMIC COMMITTEE

December 7, 2011

Dear House Conferees:

The Senate's National Defense Authorization Act (NDAA) gives the President new authority to detain persons he suspects are associated with terrorism. As we learn more about the Senate's detention provisions, we are increasingly concerned with their breadth and their potential to authorize the indefinite detention of American citizens without charge or trial. When you begin negotiations with your Senate counterparts in the coming weeks, we ask that you insist the detention provisions be stripped from the bill or modified to protect Americans' constitutional rights.

Section 1031 of 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 when they support any group.

We also are concerned that the Senate's NDAA allows one past act of support for a group permanently to subject a person to detention. The Senate's NDAA states that a person who "substantially supported . . . associated forces that are engaged in hostilities against the United States or its coalition partners" may be detained indefinitely. The bill thus allows one act of support for a group that at the time was not hostile to the U.S. to endanger the person's future liberty.

For example, a person makes a one-time donation to a non-violent humanitarian group. Years later, the group commits hostile acts against an ally of the U.S. Under the Senate's NDAA, if the President determines the group was "associated" with terrorists, the President is authorized to detain the donor indefinitely, and without charge or trial.

The Senate's NDAA does not even distinguish between American citizens and non-citizens, or between persons caught domestically and abroad. The President's power, in his discretion, to detain persons he determines have supported associated forces applies just as strongly to Americans seized on U.S. soil as it does to foreigners captured on a far away battlefield.

Our Constitution does not permit the federal government to detain American citizens indefinitely without charge or trial. We 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.

House and Senate conferees will have the last chance to amend the bill. We ask that you take this final opportunity to narrow the broad and dangerous scope of the Senate NDAA.

Sincerely,



Justin Amash