

Congress Gives Obama His Hitlerian Enabling Act

by Carl Osgood

Dec. 19—Last week, the U.S. Congress voted to give President Obama a Nazi-style Enabling Act which gives him the legal cover to rip up the Constitution, and enforce a dictatorship over the United States by “disappearing” anyone he designates as an enemy of the United States. This comes after Obama has already arrogated to himself, the right to designate American citizens as targets for assassination, as in the case of Anwar al-Awlaki, an American citizen Obama assassinated by means of a drone strike in Yemen.

The provisions at issue are the detainee provisions in the fiscal 2012 National Defense Authorization Act (NDAA), which codifies in U.S. law the authority of the President to imprison indefinitely, anyone, including American citizens, deemed to be a terrorist threat to the United States, without trial or due process, thus ripping up the 3rd, 4th, 5th, 6th, and 7th Amendments to the Constitution. Obama’s pressing to include this unconstitutional Enabling Act in the defense bill is yet another impeachable offense for which Obama must be removed from office.

Lyndon LaRouche, speaking with associates after the Senate voted on Dec. 15, compared the bill to the Enabling Act that made Adolf Hitler dictator of Germany in 1933, because it allows the Executive to depart from the Constitution. It would create a dictatorship in the United States, just as similar legislation made Hitler a dictator in Germany in 1933. LaRouche added that those Senators and Congressmen who were stupid and foolish enough to support this legislation may find

themselves in the dock at a war crimes tribunal in the not-too-distant future. And, as we document below, this measure was not something that was foisted on Obama by the Congress, but rather, Congress giving in to Obama’s demand for dictatorial powers.

On April 11, 2009, LaRouche first publicly identified Obama’s narcissism problem—what he characterized Obama’s Nero Syndrome—and the need, at that time, to bring him under control. “[H]is self-adulation, his manic, euphoric self-adulation, is the mentality of the worst kind of dictator,” LaRouche said. “Don’t let him get in a position where he has that kind of power. Keep him under constraint, the legal constraint within the American Presidential system as it works. Keep him in that constraint. If you don’t, you’re creating a monster. You don’t want a Frankenstein monster. You don’t want a Narcissus in the Presidency, and he’s a case of Narcissus, just like Nero.” Otherwise? *“He’s a danger to all humanity if you don’t keep him under control.”*

The failure of the institutions of government to act on LaRouche’s warning, has led to the point that the Congress has now given Obama full dictatorial powers to go after anyone he dislikes, just by labeling them a “terrorist suspect.” That’s the language in the relevant provision (Section 1021) of the Defense Authorization Bill.

“This President has . . . just put the Enabling Act of Adolf Hitler into effect for the United States,” LaRouche said on Dec. 18. “You can all be taken out and shot, with nobody to complain. It’s all there, now, because we didn’t get rid of Obama.”



White House/Pete Souza

Obama's latest move for dictatorship—a grab for a Nazi-style “Enabling Act”—is in gross violation of the U.S. Constitution, as established by the Founders, including George Washington, pictured above.

What the Bill Actually Says

For the first time, the authority for indefinite detention that, previously, President George W. Bush, and then Obama, have claimed under the Sept. 18, 2001 Authorization for Use Military Force (AUMF), passed by Congress in the aftermath of the 9/11 attacks, is codified in U.S. law.

Under “covered persons,” it not only targets those who may have been involved in planning, aiding, and carrying out the 9/11 attacks but: “A person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.”

Such persons are to be disposed of by: “Detention

under the law of war without trial until the end of hostilities authorized by the Authorization for Use of Military Force,” or trial by military commission, trial by an alternative tribunal constituted for such purpose or by transfer to the custody of the person’s country of origin, or any other foreign country or entity.

It includes two other paragraphs: Nothing in this section is intended to limit or expand the powers already granted under the AUMF; and nothing in this section is to be construed as affecting existing law “relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.” But, as we shall see, this statement is nothing but a meaningless sop to those who fear its real intent.

By expanding “covered persons” to include anyone who has allegedly supported al-Qaeda or the Taliban or otherwise has committed belligerent acts against the United States, the bill effectively makes the so-called global war on terrorism infinite in both time and space. It claims the right of the United States to attack anyone in any country deemed to be such a threat, including inside the borders of the United States, regardless of citizenship. The definitions are so vague that anyone who opposes the Administration’s war on terrorism policies could be deemed as “substantially supporting” al-Qaeda or the Taliban, or “associated forces” and locked away without charge or trial in a war that, by definition, has no end.

There are no practical limitations placed on the President in doing so, either. “This bill authorizes permanent warfare anywhere in the world,” Rep. Dennis Kucinich (D-Ohio) told the House on Dec. 14. “It gives the President unchecked power to pursue war. It diminishes the role of this Congress.”

It’s Obama’s Bill

Section 1021, and the following section on military custody of foreign al-Qaeda terrorists, unleashed a firestorm among civil libertarians, for obvious reasons, but they tended to treat it as if the Congress put something over on Obama, in part, because of the wording of the veto threat that the White House had issued. Nothing could be further from the truth, however, as Sen. Carl Levin (D-Mich.), the chairman of the Senate Armed Services Committee, documented on several occasions.

Levin told the Senate on Nov. 17 that the original bill passed by the committee on June 22 included language *precluding* the application of the detention provi-



Joe Polimeni



markudall.senate.gov/

Sen. Carl Levin (left) told the Senate that the Administration had demanded unconstitutional powers to detain U.S. citizens; Sen. Mark Udall (right) warned that Obama's Enabling Act "could well represent an unprecedented threat to our constitutional liberties."

So, the language added to the conference report, stating that nothing in this section shall be construed to affect existing law regarding U.S. citizens or lawful resident aliens captured or arrested inside the United States is a figleaf. As Levin showed, the Administration already believes it has the authority to indefinitely detain U.S. citizens without trial *under existing law*, and opposed any effort in the Congress to place limitations on that authority. Levin confirmed this to be the case on Dec. 15, when he reported that the effect of that language is to leave the question of indefinite detention of U.S. citizens to the executive branch and the courts.

sion to U.S. citizens and lawful resident aliens for conduct taking place inside the United States, and it was the Administration that asked for that language to be removed from the bill. In a colloquy with Sen. Mark Udall (D-Colo.), Levin asked: "*Is the Senator familiar with the fact that it was the administration which asked us to remove the very language which we had in the bill which passed the committee, and that we removed it at the request of the Administration that this determination would not apply to US citizens and lawful residents?*" [emphasis added]

In a statement the following day, Levin explained that the section "expressly 'affirms' an authority that already exists. The Supreme Court held in the Hamdi case that existing law authorizes the detention of American citizens under the law of war in the limited circumstances spelled out here, so this is nothing new." So, this is not a *new* authority, but rather authority that Obama, and before him, George W. Bush, had already claimed, and that the courts had upheld.

"The initial bill reported by the committee included language expressly precluding 'the detention of citizens or lawful resident aliens of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States,'" Levin further explained. "The Administration asked that this language be removed from the bill."

On Nov. 29, Udall offered an amendment to strip the detainee provisions from the bill, so that the Congress would have "an opportunity to take a hard look at the needs of our counter-terrorism professionals and respond in a measured way that reflects the input of those who are actually fighting our enemies." He warned that the detention provision "could well represent an unprecedented threat to our constitutional liberties" because it fails to answer the question of guilt or innocence. "How do we know a citizen has committed crimes unless they are tried and convicted?"

The philosophy behind the provision was clearly articulated by Sen. Lindsay Graham (R-S.C.), who told the Senate that fighting al-Qaeda, or any terrorist group for that matter, is not a law enforcement function, but rather a military function, and that therefore, due process is not applicable, including in a case where the suspect is an American citizen.

"If you join al-Qaeda, you suffer the consequences of being killed or captured," he said. "If you are an American citizen and you betray your country, you are going to be held in military custody and you are going to be questioned about what you know. You are not going to be given a lawyer if our national security interests dictate that you not be given a lawyer and go into the criminal justice system because we are not fighting a crime, we are fighting a war."

Graham's view prevailed, and Udall's amendment was defeated by a vote of 60-38.

The Senate vote on Dec. 15 was 86-13 in favor, with many of those who had voted for the Udall amendment voting for the final bill, anyway. Udall was one of these. He explained to the *Denver Post* that, despite his opposition to the detainee provisions, he had voted for the bill anyway, because it includes provisions that he wrote, including one that mandates further "greening" of the Defense Department.

Sen. Jeff Bingaman (D-N.M.) had also supported the Udall amendment, but ended up voting for the final bill because, he said in a statement, of the money that it brings to DoD facilities in his state. Like Udall, he also promised to keep an eye on the implementation of the detainee provisions.



Sen. Dianne Feinstein introduced the "Due Process Guarantee Act," which restores the exemption for U.S. citizens from unlawful detention that had been included in the original bill.

Opposition Emerges

Immediately after the bill was passed, Sen. Dianne Feinstein (D-Calif.), who had also opposed the detainee provisions in statements from the floor, but voted for the bill in the end, introduced, along with 12 co-sponsors, the "Due Process Guarantee Act" (S. 2003), which essentially restores the exemption for U.S. citizens that had been included in the original committee bill, that the Administration opposed.

"We must clarify U.S. law to state unequivocally that the government cannot indefinitely detain American citizens inside this country without trial or charge," Feinstein said in a statement. "I strongly believe that Constitutional due process requires U.S. citizens apprehended in the U.S. should never be held in indefinite detention." But Feinstein, as did eight of her co-sponsors, buckled under White House pressure, and voted for the bill.

At the same time, opponents in the House, in shock over the bill's passage, also introduced two bills to reverse it. The first, H.R. 3676, was introduced while debate on the NDAA was still ongoing, by Rep. Jeff Landry, a freshman Republican from Louisiana; the second, H.R. 3702, was introduced the next day by

Democrats Rep. John Garamendi of California and Martin Heinrich of New Mexico. The text of both bills, like Feinstein's similar bill in the Senate, is short and direct.

H.R. 3676's two operant paragraphs are summarized in its title: "To amend the detainee provisions of the National Defense Authorization Act for Fiscal Year 2012 to specifically state that United States citizens may not be detained against their will without all the rights of due process afforded to citizens in a court ordained or established by or under Article III of the Constitution of the United States."

Landry stated that he introduced his bill "to guarantee our citizens their most basic rights under the Constitution," adding, "I hope my colleagues from both sides of the aisle and chamber will join my call for liberty."

H.R. 3676 was introduced with 19 co-sponsors, but by Dec. 21, the number had grown to 28—22 Republicans and 5 Democrats. All of the Democrats are members of the Black Caucus, including chair Emmanuel Cleaver. Landry told *The Hill* that he had extracted a commitment that the Armed Services Committee would hold hearings on the proposed bill early next year, he hopes in January, so that it can quickly move to the House floor.

H.R. 3702, the Due Process Guarantee Act of 2011, features the same language as the Senate bill. So far, its sponsors are all Democrats, as is Feinstein's.

The House vote on Dec. 14 was 283-136, with the Democrats split down the middle—93 votes for and 93 votes against—while 43 Republicans also voted against the bill. The opposition included about three-quarters of 83-member Progressive Caucus, and about 75% of the 39-member Black Caucus. They were joined by anti-war Republicans such as Rep. Walter Jones (N.C.) and Tea Party Republicans who neither trust Obama, nor their own leadership.

Several of those speaking in opposition cited a letter to the Senate signed by 26 retired military flag officers, led by retired Marines Gen. Joseph P. Hoar and Gen. Charles Krulak (see below).