



United States Senate

WASHINGTON, DC 20510-2202

March 12, 2012

Mr. Paul V. Sheridan
22357 Columbia Street
Dearborn, MI 48124-3431

Dear Mr. Sheridan:

Thank you for contacting me about the detainee-related provisions in the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81), which President Obama signed into law on December 31, 2011.

The National Defense Authorization Act for Fiscal Year 2012 includes important funding for our troops and their families and for the nation's defense, but most Americans have heard about only a small portion of the statute, one dealing with the handling of terrorism detainees. Unfortunately, much of what has been said and written about the detainee provisions is simply wrong. If this bill did what some people claim it does, I would have opposed it.

Here is what the detainee-related provisions would do. First, it affirms the Obama administration's military detention policy for individuals captured in our fight against al Qaeda, a position upheld by the federal courts. This provision will prevent future administrations from adopting more expansive and problematic interpretations of military detention authority. Second, it establishes a presumption of military detention in the case of one narrow category of individuals – foreign al Qaeda terrorists who are captured in the course of planning or conducting attacks against the United States. The executive branch can waive that presumption, and its ability to try detainees in civilian courts is protected. Third, it establishes new procedural rights, including access to a military judge and a military lawyer, for any individual who is to be held in long-term military detention. Here is a link to a brief summary of the detainee provisions on my website at [<http://go.usa.gov/ncD>]. It explains in a straightforward manner what each of the provisions does.

I would also like to address some common inaccuracies about the legislation.

--It does not prohibit civilian trials of terror suspects. In fact, the legislation specifically authorizes the use of civilian courts.

--It does not strip the FBI and other federal law enforcement agencies of their anti-terrorism duties and hand those authorities to the military. The statute specifically preserves the role of civilian law enforcement, saying its provisions on detention of foreign al Qaeda terrorists shall not "be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with regard to [terror suspects]." The military is not given any new authority to conduct investigations or make arrests inside the United States.

--It does not allow military troops to make arrests on U.S. soil. Posse comitatus, the Civil War-era law that bars the military from civilian law enforcement functions, remains unchanged.

--It does not give presidents new authority to indefinitely hold U.S. citizens without charge or trial. The legislation does not change current law regarding U.S. citizens. In fact, the bill specifically states that its provisions do not "affect existing law or authorities 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." While one provision establishes a presumption that foreign al Qaeda detainees will be held by the military, U.S. citizens are specifically exempted from this provision.

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--It does not allow indefinite detention of U.S. citizens without access to civilian courts. The law does not affect the right of habeas corpus – the right to petition a court to challenge detention before a judge.

Two respected legal experts have written extensively on the detainee provisions. While they do not always agree with the legislation, Benjamin Wittes and Robert Chesney have written a useful summary that counters what they call the "sheer, unadulterated nonsense zipping around

the internet” about the detainee provisions. You can find that summary here:
[<http://www.lawfareblog.com/2011/12/ndaa-faq-a-guide-for-the-perplexed/>].

Thank you again for contacting me.

Sincerely,

A handwritten signature in black ink that reads "Carl Levin". The signature is written in a cursive style with a large, prominent "C" and "L".

Carl Levin