

**2013 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SCR 4014**

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

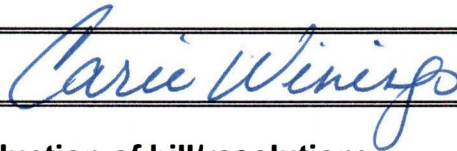
SCR 4014

02/15/2013

Job Number 19027

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging Congress to reexamine Section 1021 of the National Defense Authorization Act which allows the military to detain United States Citizens.

### Minutes:

**Chairman Dever:** Opened the hearing on SCR 4014.

**Senator Mathern, District 11:** See Attachment #1 for testimony brought from constituent and to explain the resolution. Gives an example of a former resolution that was brought before this body and how it in the end did serve a purpose.

**(10:42) Chairman Dever:** I will read

**Senator Mathern:**

**(11:40) Sebastian Ertelt, Resident of North Dakota:** Testified in support of the bill. I would have liked to see this in the form of a bill to prohibit enforcement of the NDAA in North Dakota and especially this particular section and it that line I would urge a do pass recommendation of SCR 4014 with an amendment to strike the word re-examine in lines 1 and 14 with the word repeal. I also think Lincoln would have found abhorrent this section that does remove due process and sends us closer toward slavery; which the Gettysburg address so eloquently addressed.

**(13:15) Chairman Dever:** His handling of Habeas Corpus might have some implication to this as well.

**(13:50) Brigadier General Murray G. Sagsveen (Ret.), Resident of North Dakota:** See Attachment #2 for testimony in support of the bill.

**(16:20) Chairman Dever:** Asks a question unrelated to bill of the Brigadier General.

**(17:48) Andrew Bornemann, Resident of North Dakota:** Testified in support of the bill. I would like to see this a little stronger in the wording about the issues brought in Section 1021 of the National Defense Authorization Act. I see this as a good first step on the least. As a private citizen I do not like the idea of our military being able to detain US citizens indefinitely with very little cause. I would also support the amendment proposed by Mr. Ertelt.

**(19:30) Senator Sitte:** Testified in support of the bill. I signed onto this bill because I completely support it. I don't have any prepared remarks. I just wanted to register my support.

**Chairman Dever:**

**Susan Beehler, Resident of North Dakota:** Began to testify on the wrong bill. She intended to testify on SB 4017.

**(23:20) Chairman Dever:** Closed hearing on SB 4014.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

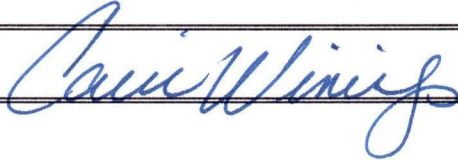
SCR 4014

02/21/2013

Job Number 19322

☐ Conference Committee

Committee Clerk Signature



### Minutes:

**Chairman Dever:** Opened SCR 4014 for committee discussion.

**Senator Cook:** Moved a Do Not Pass.

**Vice Chairman Berry:** Seconded.

**A Roll Call Vote Was Taken:** 5 yeas, 2 nays, 0 absent.

**Vice Chairman Berry:** Carrier.

Date: 2/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 4014

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Berry

| Senators                    | Yes | No | Senator                    | Yes | No |
|-----------------------------|-----|----|----------------------------|-----|----|
| Chairman Dick Dever         | ✓   |    | Senator Carolyn Nelson     |     | ✓  |
| Vice Chairman Spencer Berry | ✓   |    | Senator Richard Marcellais |     | ✓  |
| Senator Dwight Cook         | ✓   |    |                            |     |    |
| Senator Donald Schaible     | ✓   |    |                            |     |    |
| Senator Nicole Poolman      | ✓   |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |

Total (Yes) 5 No 2

Absent \_\_\_\_\_

Floor Assignment Senator Berry

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SCR 4014: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).  
SCR 4014 was placed on the Eleventh order on the calendar.

**2013 TESTIMONY**

**SCR 4014**

required by subsection (a), the Comptroller General of the United States shall submit to Congress an assessment by the Comptroller General of the report, including a determination whether or not the report complies with applicable best practices.

## Subtitle D—Counterterrorism

10 USC 801 note. **SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.**

(a) **IN GENERAL.**—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

(b) **COVERED PERSONS.**—A covered person under this section is any person as follows:

(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

(2) A person who was a 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.

(c) **DISPOSITION UNDER LAW OF WAR.**—The disposition of a person under the law of war as described in subsection (a) may include the following:

(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111-84)).

(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

(4) Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

(d) **CONSTRUCTION.**—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

(e) **AUTHORITIES.**—Nothing in this section shall be construed to 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.

(f) **REQUIREMENT FOR BRIEFINGS OF CONGRESS.**—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be “covered persons” for purposes of subsection (b)(2).



Testimony on Senate Continuing Resolution 4014  
To  
North Dakota Senate Government and Veterans Affairs Committee

By Joseph Richardson, Fargo, February 11, 2013

Chairman Dever and Members of the Committee:

I applaud the authors of this resolution and welcome its passage thereby joining four other states (Rhode Island, Michigan, Nevada and Washington) passing bills or resolutions opposing Section 1021 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA).

During past wars there have been liberties curtailed. Much of the time those takings of liberties have in retrospect been of less value than were originally promoted and found to be unconstitutional. No politician wants to be perceived as weak in the face of war. The value of dismissing liberties is more political than operational. Each time that we back away from the right to know specifically why we are being incarcerated and given the opportunity to challenge accusations in a court of law aided by learned counsel with the outcome determined by civilian peers, we inform the world that our system of justice can not withstand the challenges that are so often present in other countries. We loudly declare the weakness of rule of law. We cloak ourselves in the power of kings; a power that we once spilled precious blood to renounce.

Those who attacked us on September the 11<sup>th</sup>, 2001 have caused us to alter core tenets we once held up as enduring examples for other countries. Now with Section 1021 of the National Defense Authorization Act for FY 2012, we have given the President the ability to order the military to pick up anyone, including a U.S. citizen, anywhere in the world and hold them without counsel, without charge, without trial "until the end of hostilities." Further, under (C) (4) of 1021, the person detained can be "transfer[ed] to the custody or control of the person's country of origin, any other

foreign country, or any other foreign entity.” No restriction over transferring them only to countries that foreswear torture.

In the War on Terrorism, there is no one party that represents others in negotiating and enforcing terms of surrender or cease-fire. We are fighting a Hydra, a beast with many heads; one that grows two new heads for each cut off. We are fighting an “ism,” or a tactic of persuasion as repugnant as that is. The war on something rather than someone is likely never won or lost....just keeps on. The “War on Terrorism” is now in its twelfth year and no one knows when or where it ends. One head on the Hydra can surrender; however, the war continues with all of the others. Liberties lost for the duration of this war are likely lost forever.

A group of journalists headed by Chris Hedges brought suit in U.S. District Court asking for a permanent injunction against any military detentions under Subsection 1021 (b) (2) of the NDAA.

(b) COVERED PERSONS.—A covered person under this section is any person as follows:

(2) A person who was a 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.

The plaintiff’s argued that fear of military detention prohibits them from freely writing critically about facets of the War on Terrorism less it be deemed to “substantially support” or it be a “belligerent act” or it be deemed to be directly “supporting such hostilities in aid of such enemy forces.”

Judge Forrest found the journalists to have standing in their claim that their journalistic rights to free speech might be cause for military detention”

*“The Government did not – and does not – generally agree or anywhere argue that activities protected by the First Amendment could not subject an individual to indefinite military detention un Subsection 1021 (b) (2). The First Amendment of the U.S. Constitution provides for greater protection: it prohibits Congress from passing any law abridging speech and associational rights. To the extent that Subsection 1021 (b) (2) purports to encompass protected First Amendment activities, it is unconstitutionally overbroad.”*

After Judge Forrest found that the journalist’s had standing, the government changed their tune and parsed out a statement suggesting that the journalists may not be subject to military detention merely by their “independent journalistic activities.” Judge Forrest responded to the change in the government’s position in her opinion, “*it’s newly espoused position cannot erase what it said previously.*”

*“The due process rights guaranteed by the Fifth Amendment require that an individual understand what conduct might subject him or her to criminal or civil penalties. Here, the stakes get no higher: indefinite detention—potential detention during a war on terrorism that is not expected to end in the foreseeable future, if ever. The Constitution requires specificity – and that specificity is absent from Subsection (b) (2).”*

*“The Court finds that Subsection 1021 (b) (2) is facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient structure and protections to meet the requirements of due process.”*

Judge Forrest, United States District Court Southern District of New York. Ruling for Permanent injunction against enforcement of Section 1021 (b) (2). Hedges vs. Obama. September 12, 2012.

The injunction was stayed, pending appeal, by the U.S. Court of Appeals for the Second Circuit. The appeal is based on standing.

It is possible that Judge Forrest's opinion would be overturned based on standing of the Plaintiffs. That would mean that we may have to wait years for someone who has been detained without the right of trial to take on the law. This begins to parallel the detention of Japanese or the denial of Habeas Corpus during the Civil War, both later found illegal after rights and liberty had been for years denied.

This audacious section of the NDAA rallies the ire of people from across the political spectrum. That is because all of us rely on certain rights and liberties that are bedrock to our vibrant and diverse society. Lose those liberties and we lose "we the people" and any possible formation of a "more perfect union." We trade the securing of the "blessings of liberty to ourselves and our posterity," for the illusion of physical security. Who, which group of terrorists is so strong that they would make us jettison our liberties? Are we to deny due process, a chance for a citizen picked up in the U.S. to refute accusations that alone can lead to being permanently incarcerated and transferred to a foreign country without charge or trial? Have we become this country?

SCR4014 is a light but very important statement of resistance. In its passage, it says that the legislature of North Dakota, a state not known to act on fads or transient fashion, will not quietly let core liberties slip away.

Joseph Richardson  
2816 27<sup>th</sup> Street South  
Fargo, North Dakota 58103  
701-239-4848

**Testimony on Senate Concurrent Resolution 4014**  
before the  
**Senate Government and Veterans Affairs Committee**  
**February 15, 2013**

I am Murray G. Sagsveen, personally testifying in support of Senate Concurrent Resolution 4014.

Since 2005, a group of retired admirals and generals have worked with Human Rights First on a variety of human rights issues including efforts to close Guantanamo, oppose torture of persons detained by U.S. authorities, prosecute terrorists in U.S. federal courts, and address troublesome issues in Section 1021 of the National Defense Authorization Act. I have participated in that effort for the past eight years.

The enclosed June 2011 from members of our group to the leadership of the Senate Armed Services Committee is only one example of our efforts.

Also enclosed is an information sheet for Human Rights First that addresses problematic issues in Section 1021. This information sheet explains the problems much better than I can.

Therefore, I urge this committee to vote "Do Pass" on this resolution.

BG Murray G. Sagsveen (Ret.)  
3428 Chevelle Circle  
Bismarck, ND 58503-1701  
[mgsagsveen@gmail.com](mailto:mgsagsveen@gmail.com)  
701-426-1905

GENERAL JOSEPH HOAR, USMC (RET.)  
GENERAL MERRILL A. McPEAK, USAF (RET.)  
LIEUTENANT GENERAL ROBERT G. GARD JR., USA (RET.)  
LIEUTENANT GENERAL HARRY E. SOYSTER, USA (RET.)  
MAJOR GENERAL PAUL D. EATON, USA (RET.)  
MAJOR GENERAL WILLIAM L. NASH, USA (RET.)  
BRIGADIER GENERAL DAVID M. BRAHMS, USMC (RET.)  
BRIGADIER GENERAL EVELYN P. FOOTE, USA (RET.)  
BRIGADIER GENERAL DAVID R. IRVINE, USA (RET.)  
BRIGADIER GENERAL MURRAY G. SAGSVEEN, USA (RET.)

GENERAL CHARLES KRULAK, USMC (RET.)  
GENERAL WILLIAM G.T. TUTTLE JR., USA (RET.)  
LIEUTENANT GENERAL CHARLES OTSTOTT, USA (RET.)  
MAJOR GENERAL JOHN BATISTE, USA (RET.)  
REAR ADMIRAL JOHN D. HUTSON, JAGC, USN (RET.)  
MAJOR GENERAL THOMAS J. ROMIG, USA (RET.)  
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.)  
BRIGADIER GENERAL LEIF H. HENDRICKSON, USMC (RET.)  
BRIGADIER GENERAL RICHARD O'MEARA, USA (RET.)  
BRIGADIER GENERAL STEPHEN N. XENAKIS, USA (RET.)

June 15, 2011

Senator Carl Levin  
Chairman, Senate Armed Services Committee  
Russell Senate Office Building Room 269  
Washington, DC 20510

Senator John McCain  
Ranking Member, Senate Armed Services Committee  
Russell Senate Office Building Room 241  
Washington, DC 20510-0303

Dear Senator Levin and Senator McCain:

We are members of a nonpartisan group of forty retired generals and admirals. We believe that our national security policies should adhere to our domestic and international legal obligations.

We write to you to express our concern about certain provisions that may be considered when the Senate Armed Services Committee marks up the National Defense Authorization Act, which we believe would reshape our counterterrorism policies in ways that would undermine our national security.

We oppose any effort to return to torture of terrorism suspects. Enhanced interrogation techniques or torture, in our experience, are counterproductive, unreliable, immoral and illegal.

We oppose any Authorization for Use of Military Force ("AUMF") or "reaffirmation" of an AUMF that expands war efforts against al Qaeda, the Taliban, "associated" forces and their supporters on a global basis. We should treat those who violate U.S. and international law as criminals, not warriors. If there are legitimate national security reasons to counter threats with military force in Yemen, Somalia or any other country, then Congress should hold hearings. Hearings could examine the specific threats and assess the best response.

Lastly, we oppose any provisions that would require that all future foreign terror suspects be sent to Guantanamo or tried before a military commission. We should not turn criminals into warriors by trying them before military commissions. The military's mission should not be expanded to become judge, jury and jailor for all foreign terror suspects. Federal courts have more criminal laws to incapacitate terrorists, more precedent to guide them, and more experience in adjudicating these laws than military tribunals. Federal courts have obtained more than 400 convictions of persons on terror related crimes, while

commissions have convicted only six. We do not support making permanent certain restrictions governing detainees at the Detention Facility at Guantanamo for the same reasons.

If any of these provisions are offered during mark-up of the National Defense Authorization Act, we ask that you oppose them. We believe that strong counterterrorism policies adhere to the rule of law and American values.

Sincerely,

General Joseph P. Hoar, USMC (Ret.)  
General Charles C. Krulak, USMC (Ret.)  
General Merrill A. McPeak, USAF (Ret.)  
General William G. T. Tuttle Jr., USA (Ret.)  
Lieutenant General Robert G. Gard Jr., USA (Ret.)  
Lieutenant General Charles Otstott, USA (Ret.)  
Lieutenant General Harry E. Soyster, USA (Ret.)  
Major General John Batiste, USA (Ret.)  
Major General Paul D. Eaton, USA (Ret.)  
Rear Admiral John D. Hutson, JAGC, USN (Ret.)  
Major General William L. Nash, USA (Ret.)  
Major General Thomas J. Romig, USA (Ret.)  
Brigadier General David M. Brahms, USMC (Ret.)  
Brigadier General James P. Cullen, USA (Ret.)  
Brigadier General Evelyn P. Foote, USA (Ret.)  
Brigadier General Leif H. Hendrickson, USMC (Ret.)  
Brigadier General David R. Irvine, USA (Ret.)  
Brigadier General Richard O'Meara, USA (Ret.)  
Brigadier General Murray G. Sagsveen, USA (Ret.)  
Brigadier General Stephen N. Xenakis, USA (Ret.)





## Q&A: What the FY 2012 NDAA Detainee Provisions Mean

*The annual National Defense Authorization Act (NDAA) is once again being considered by Congress for the fiscal year (FY) 2013. Last year's bill, for the fiscal year 2012, contained provisions related to the detention of terrorism suspects.*

- ✓ **Question:** Under the detention provisions in the defense authorization bill, who can be detained indefinitely by the military without charge or trial?
- ✓ **Answer:** The FY 2012 NDAA permits the military to indefinitely detain without charge or trial individuals determined to be members or substantial supporters of al Qaeda, the Taliban, or associated forces. The law does not define "associated forces" or what it means to provide substantial support.<sup>1</sup>
  
- ✓ **Question:** Are American citizens or other individuals apprehended within the United States subject to indefinite military detention under the FY 2012 NDAA?
- ✓ **Answer:** American citizens can be detained under the FY2012 NDAA because the bill codifies into federal statute existing authorities, which allow the military to detain U.S. citizens. The law is less straightforward for individuals, including citizens, apprehended in the United States. Although an amendment was added making clear that the FY 2012 NDAA is not intended to "affect existing law or authorities" relating to the detention of U.S. citizens or others picked up on U.S. soil,<sup>2</sup> existing law is not clear on this point. For example, the Bush administration held two individuals apprehended in the United States – José Padilla<sup>3</sup> (a U.S. citizen) and Ali al-Marri<sup>4</sup> (a legal resident) – in military custody for years under the legal authorities that are now codified in the FY 2012 NDAA. If this or a future administration were to use the military to detain an individual apprehended on U.S. soil, it would pose serious legal issues, which would be decided by a court. President Obama has stated that he will not place an American citizen in indefinite military detention.<sup>5</sup>
  
- ✓ **Question:** Aren't citizens afforded special rights under the Constitution that protect against the kind of indefinite military detention contemplated in the FY 2012 NDAA?
- ✓ **Answer:** When it comes to fundamental liberty and due process guarantees, the Constitution affords protections to all individuals within the United States, irrespective of citizenship. These protections include the right to due process and equal protection under the law.
  
- ✓ **Question:** Does the FY 2012 NDAA suspend habeas corpus? Doesn't habeas corpus ensure against indefinite detention without charge or trial?
- ✓ **Answer:** In codifying the authority of the military to hold terror suspects without charge or trial, the FY 2012 NDAA did not suspend habeas corpus or purport to overturn any other constitutional rights. However, habeas corpus, though an incredibly important right, has not prevented the government from holding individuals indefinitely without charge or trial. Habeas corpus, in this context, means that for individuals in the United States, or at Guantanamo, the government only needs to prove to a federal judge that it's more likely than not that the person in question is a "member" or "substantial supporter" of al Qaeda, the Taliban, or an "associated force". It's

<sup>1</sup> National Defense Authorization Act for the Fiscal Year of 2012, Section 1021(b)(2).

<sup>2</sup> National Defense Authorization Act for the Fiscal Year of 2012, Section 1021(e).

<sup>3</sup> José Padilla webpage, The New York Times, available at [http://topics.nytimes.com/top/reference/timestopics/people/p/jose\\_padilla/index.html](http://topics.nytimes.com/top/reference/timestopics/people/p/jose_padilla/index.html).

<sup>4</sup> Ali Saleh Kahliah al-Marri webpage, The New York Times, available at [http://topics.nytimes.com/top/reference/timestopics/people/m/ali\\_saleh\\_kahliah\\_al\\_marri/index.html](http://topics.nytimes.com/top/reference/timestopics/people/m/ali_saleh_kahliah_al_marri/index.html).

<sup>5</sup> Statement by the President on H.R. 1540, December 31, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540>.



not clear what these vague terms mean, and in a habeas proceeding the government often presents classified information, the content of which is presumed by the judge to be accurate and reliable. Importantly, habeas corpus in this context does not guarantee a jury trial, at which the individual must be found guilty of crimes beyond a reasonable doubt, or ensure that the government only arrest people when it has probable cause.

- ✓ **Question:** Does the FY 2012 NDAA force the administration to place terror suspects into military custody?
- ✓ **Answer:** In addition to codifying the military's detention authority, the FY 2012 NDAA *requires* the military to take initial custody of a category of foreign terrorism suspects, absent a presidential waiver. Specifically, the law mandates military custody for foreign terror suspects determined to be 1) part of al Qaeda or an associated force, and 2) involved in a terror plot against the U.S. or its allies.<sup>6</sup> The President issued a policy directive substantially limiting the instances in which mandatory military custody applies, though it leaves open the possibility that it could apply to foreign terrorism suspects arrested in the United States on terrorism charges.<sup>7</sup>
- ✓ **Question:** Won't holding terrorism suspects in military rather than civilian custody make us safer by denying suspects a right to a lawyer and other essential due process requirements?
- ✓ **Answer:** No. The criminal justice system has produced large amounts of invaluable counterterrorism intelligence information precisely because it provides incentives for suspects to cooperate. Many criminal suspects apprehended cooperate with authorities, whether or not they are read Miranda rights. Intelligence gathered through the criminal justice process includes telephone numbers and email addresses used by al Qaeda and other terrorist groups, al Qaeda communications methods and security protocols, al Qaeda recruiting and financing methods, the location of al Qaeda training camps and safe houses, information on al Qaeda weapons programs, the identities of operatives involved in past attacks, and information about future plots to attack U.S. interests.<sup>8</sup> Holding individuals in indefinite military detention with little to no prospect for release does not provide incentives for cooperation.
- ✓ **Question:** Does the FY 2012 NDAA ban civilian terrorism trials? Does it require that suspected terrorists be tried by military commission?
- ✓ **Answer:** In general, terrorism suspects can be tried either in civilian courts or military commissions under the FY 2012 NDAA.<sup>9</sup> However, the FY 2012 NDAA does block the transfer of Guantanamo detainees to the United States for prosecution in civilian courts. Even detainees subject to initial mandatory military custody can be tried in civilian courts. While the FY 2012 NDAA preserves the option of civilian terrorism trials in many cases, it also politicizes prosecutorial decisions. For example, a provision in the FY 2012 NDAA requires the Attorney General to consult with the Secretary of Defense and Director of National Intelligence before moving forward with certain terrorism-related prosecutions.<sup>10</sup>
- ✓ **Question:** Does the FY 2012 NDAA prevent Guantanamo from being closed?
- ✓ **Answer:** Yes, at least for the foreseeable future. The FY 2012 NDAA contains within it transfer restrictions that limit the Obama administration's flexibility to transfer detainees out of Guantanamo. These restrictions are in effect until the end of the 2012 fiscal year (September 30, 2012). Despite these restrictions, the Obama administration can, and should, work to fulfill its pledge to close Guantanamo by transferring as many detainees as possible to foreign countries that will accept them.

---

<sup>6</sup> National Defense Authorization Act for the Fiscal Year of 2012, Section 1022(a)(2)(B).

<sup>7</sup> Presidential Policy Directive: Procedures Implementing Section 1022 of the National Defense Authorization Act for Fiscal Year (FY) 2012, *available at* <http://www.whitehouse.gov/the-press-office/2012/02/28/presidential-policy-directive-requirements-national-defense-authorizatio>

<sup>8</sup> Remarks of David Kris, Law Enforcement as a Counterterrorism Tool, Brookings Institution, June 10, 2010, P. 13 (asserting that law enforcement has elicited crucial intelligence information from suspects including: al Qaeda communications methods and security protocols, al Qaeda recruiting methods, the location of al Qaeda training camps and safe houses, and information about future plots to attack U.S. interests.)

<sup>9</sup> National Defense Authorization Act for the Fiscal Year of 2012, Section 1021(c).

<sup>10</sup> National Defense Authorization Act for the Fiscal Year of 2012, Section 1029.