

# National Defense Authorization Act

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## Fact Sheet and Talking Points

### What is the National Defense Authorization Act (NDAA)?

The National Defense Authorization Act (NDAA) was signed into law by President Obama on December 31, 2011. It contains provisions that allow the military to arrest, indefinitely detain, and deny a trial or day in court to anyone—even US citizens—accused of a “belligerent act,” or any terror-related offense.

**The NDAA subjects these individuals to arbitrary detention without trial, denying the Fifth Amendment’s guarantee of due process and Sixth Amendment rights to challenge evidence and confront one’s accusers. The NDAA also endangers First and Fourth Amendment protections,** because the PATRIOT Act expanded the definition of “material support for terrorism” to include crimes of speech and association even by defendants who neither committed nor ever intended to support violence.

**Those of us who care about liberty and freedom must take action to restore due process and the right to trial.** Whether concerned about racial profiling in the war on terror, the FBI’s ideological profiling of peace and justice activists across the country, or with preserving the right to trial or the longstanding prohibition on domestic military deployment, all Americans share a stake in this struggle.

### Why are the NDAA’s detention provisions so bad?

**The indefinite military detention of US citizens violates the Fifth and Sixth Amendments, as well as the Posse Comitatus Act.** The Fifth Amendment ensures a right to due process of law, the Sixth Amendment ensures a right to trial, and the Posse Comitatus Act (in force since the Civil War) prohibits the domestic deployment of the military. Democracy relies on these principles. A society is not free when its citizens are subject to arbitrary and indefinite detention without trial.

**The NDAA’s detention provisions would authorize the indefinite military detention of activists.** Under the Animal Enterprise Terrorism Act and the material support provisions of the PATRIOT Act (upheld by the Supreme Court in *Humanitarian Law Project v. Holder*), the FBI and other law enforcement agencies have long treated peace, environmental, and anti-tax activists as terrorists. Legalizing indefinite detention for anyone accused of a terror-related crime would give any future federal government the unchecked power to silence critics, deny the right to trial, and override the presumption of innocence.

**The NDAA’s detention provisions undermine national security.** The FBI director, the secretary of defense, the director of national intelligence, and the chairs of the Senate Intelligence and Judiciary Committees all recognize that expanded military detention harms national security. Even President Obama had serious reservations about signing the bill, and initially opposed it. They understand that

detention would threaten constitutional rights, force the military to perform a mission for which it is ill-suited, and erode trust in our justice system.

**Military detention without trial removes courts from the system of checks and balances.** Our nation's founders wrote expressly about the necessary role of independent judges to prevent Executive Branch abuses. By authorizing military detention beyond the reach of the federal courts, the NDAA erodes the separation of powers as well as the individual rights to due process and trial.

**The detention provisions became law because our policy process has been hijacked.** The NDAA passed without a single congressional hearing and over the objections of congressional committees that were denied the chance to review it. Few major media outlets covered the debate over the NDAA's detention provisions, and many members of Congress didn't even understand the bill when they voted for it.

**The NDAA's detention provisions invite the recurrence of torture.** Because torture of military detainees has often gone unpunished, the military detention regime extended by the NDAA opens the door for more torture in the future. In fact, impunity for torture is one reason the NDAA passed: officials responsible for torture under the Bush administration—who are free only because the Obama administration has turned a blind eye to their war crimes—actively lobbied in favor of the NDAA's detention provisions.

**Transforming the United States into a police state does the work of our nation's enemies.** If our race to protect ourselves from enemies undermines our own rights and liberties, we have done our enemies' work for them.

**Congress is supposed to check and balance the Executive Branch, not expand it.** The NDAA gives any future administration unprecedented power to detain US citizens without judicial review. Rather than checking and balancing the Executive Branch and its many ongoing violations of civil rights, Congress passed a bill giving the Executive Branch even more unchecked power.

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## Local Action Toolkit

### What can We the People do?

**Cities and states have a crucial role to play in restoring constitutional rights.** Our system of checks and balances includes not only the three federal branches, but also equivalents in the states (and cities and towns within them), which have a crucial role to play.

Here are some local actions you can pursue:

1. [Join our campaign to fight for the right to trial](#). We'll keep you updated about the latest in the grassroots movement against indefinite detention.
2. [Build a campaign for a local resolution or statement condemning the NDAA's detention provisions and supporting the Bill of Rights](#). Cities, counties, and even states across America have already begun mobilizing. [The first resolution opposing the NDAA](#) already passed in El Paso County, CO, home of the US Air Force Academy. Could your city or town be next? BORDC offers materials, guidance, support, and training to activists and organizations interested in helping their communities follow suit.
3. **Educate your community about the NDAA's detention provisions.** Most Americans remain unaware of the enormous blow our Constitution suffered in the closing days of 2011. Our [talking points](#) can help you educate people you know, and we've also included some creative ideas for public education events below.
4. **Share this toolkit with your communities and networks.**

### Event and action models

These are just a few ideas for actions you can hold to oppose NDAA in your community. Many of these tactics can be used as part of a campaign to secure an official resolution by your city or town.

BORDC is happy to help promote public grassroots events, so [let us know about your plans](#).

#### Community forum or teach-in

A forum can be an excellent way to share information with your friends, neighbors, and community. A forum can also offer an opportunity to recruit allies with whom to build a larger campaign.

Many forums feature prepared remarks from two or three speakers, followed by a question-and-answer period. When choosing speakers for your forum, aim for a group diverse in perspectives, areas of expertise, race, religion, age, and gender. Remember to consider students and potential coalition allies with whom you want to build relationships as speakers.

Before the panel, schedule a meeting or conference call with the speakers to review what each person will discuss. A conference call will also help acquaint the speakers with each other before the event, which will help make the public discussion more compelling.

Invite friends, community groups, and local nonprofit organizations to attend the event. Consider asking local groups and organizations to cosponsor the forum and donate to help cover expenses such as copying, postage, childcare for participants, and facility rental. Sponsorships can help expand your network for promoting the event and rally support for future efforts.

And be sure to collect the contact information of attendees and stay in touch with them going forward.

### **Film screening**

You can show a film at a local movie theatre, college or high school auditorium, religious institution, business conference room, or even a community member's home. There are lots of great films, both documentaries and fiction, that address civil rights issues and could prompt compelling discussions. Choose a film that will highlight the problems your campaign seeks to address. Refer to BORDC's [list of recommended resources](#).

Entice supporters, community members, and the press to attend your screening. It's great—but difficult—to get a film's stars or creators to attend your screening, but there are lots of easier ways to promote it as well:

- Ask local restaurants or grocery stores for food donations or request that campaign supporters bring snacks.
- Hold a raffle or door prize with donated goods or services from local businesses.
- Invite a professor at a local college to host a Q&A. BORDC can help identify supportive academics in your area.

Note: Be careful to consider copyright laws that may prohibit certain public film screenings. One way to avoid copyright violations is by requesting permission from the filmmaker or producer. Some may require you to pay royalties to show the film, but many distributors routinely allow certain types of groups and organizations to screen films for free.

### **March or demonstration**

A rally or march can demonstrate support for your goals and attract decision makers, media outlets, and more community supporters. The most effective demonstrations are strategic and energetic.

Pick a local target for your message. Good targets include the following:

- a US senator or representative who voted for the NDAA
- a local elected official who has not yet supported a local resolution opposing the NDAA
- a news outlet that has not yet covered the NDAA's detention provisions
- any courthouse, all of which are threatened by the denial of trials under military detention

Mobilize a march or demonstration only when you're sure you can attract a critical mass of supporters, as a sparsely attended demonstration can actually drain, rather than build, support. Be sure to announce your concerns by reading public statements and holding signs.

As with any event, promote the demonstration or march by posting fliers on bulletin boards, sending announcements to email lists, and distributing press releases or advisories to the media.

Check your local laws about any potential restrictions on public gatherings. If necessary, consider securing a permit in order to encourage broad participation.

### **Vigil**

A vigil is a somber, often silent, gathering of people to remember an injustice or honor victims of injustice. Often, groups hold candlelight vigils outdoors at night and invite community members.

Find a public place for your vigil where the community will see you and can easily join you. Banners, posters, and fliers can help passersby understand your concerns. Consider whether to invite a speaker (perhaps a local faith leader) to address participants, or have a member of your campaign read a statement about the dangers of military detention without trial.

If hosting a candlelight vigil, provide candles for participants. Be sure to provide protections for the candles as well. For instance, a small paper cup with a hole in the bottom can shield candles from the wind and also catch dripping wax.

Distribute information about your concerns, but do so respectfully. A vigil is a solemn event, not a time to loudly or forcefully push sign-up sheets.

### **Street theater**

Free performances in a public space offer a tremendous opportunity to convey a political message. Your campaign can use street theater to share your message with an audience you might not reach otherwise, and do it in a fun, creative way.

Consider incorporating props, puppets, music, costumes, and audience participation—anything that will grab attention can help communicate your message.

YAHA Net (Youth, the Arts, HIV & AIDS Network) provides a [great guide to planning street theater](#). They suggest performing in a public place with plenty of people, keeping the performance short and to the point, repeating a memorable and distinctive message, and engaging the audience afterwards through a discussion.

### **Lyrical ambush**

A lyrical ambush is a performance (often featuring poetry, spoken word, or hip hop in an open mic format) in a public space.

The [DC Guerilla Poetry Insurgency](#) has a variety of examples and suggestions at their website.

In addition to the voices of rotating performers, lyrical ambushes can also feature drums, musical instruments, sidewalk chalk, bubbles, and noisemakers. Bringing extra materials for public use can help draw in spectators and turn them into participants. Lyrical ambushes are also great opportunities to distribute fliers for other events you might have planned.

### **Flashmob**

Similar to street theater, a flashmob can carry a political and educational message, while creating stunning visual statements. Video recordings of flashmobs make great online awareness-raising tools.

A flashmob appears like a spontaneous convergence, often with a performance such as a skit, song, dance, or action. But despite appearances, a flashmob requires careful planning and timing.

### **Grassroots lobbying**

If you want to communicate your concerns to your elected representatives, there are several ways to contact them.

#### **Meetings with senators (or their staff)**

Did your senators and representative vote for the NDAA? Contact their state offices and request a meeting to share your concerns about the NDAA's detention provisions. If they voted against the NDAA, be sure to thank them.

Reaching out to allies and neighbors can also help. If you recruit others to join you, legislators will perceive you as more powerful and give more weight to your concerns.

When you visit your legislator's office, explain your position calmly but clearly. You may find our [talking points](#) helpful in this regard. Also, be sure to collect the business cards of the people you meet with. Most importantly, follow up afterwards and stay in touch with them going forward.

#### **Letters to Congress**

Writing letters to your senators can be more personal than a petition and can help demonstrate broad community support.

It's easiest to get a supporter to write a letter when he or she is already sitting down. For example, take a few minutes during a forum or film screening and ask people to write letters. It's helpful to offer a sample text, if participants are writing their letters themselves, or pre-printed postcards on which they can handwrite a personal message.

You can either mail the letters or cards to your senators or deliver them in person at a meeting. Remember to make copies of them beforehand so you can follow up with letter writers later.

**Don't forget to [let us know about your event](#) so that we can help you publicize it!**