MEMORANDUM

TO: All Members of the House of Representatives

FROM: American Civil Liberties Union
Appeal for Justice
Bill of Rights Defense Committee
Center for Victims of Torture
Common Bond Institute
Council on American-Islamic Relations
Defending Dissent Foundation
DownsizeDC.org, Inc.
Friends Committee on National Legislation
GOProud
Gun Owners of America
Japanese American Citizens League
Just Foreign Policy
Liberty Coalition
Maryknoll Office for Global Concerns
National Religious Campaign Against Torture
Physicians for Human Rights
Presbyterian Church (USA) Office of Public Witness
Rabbis for Human Rights –North America
The Rutherford Institute
Take Back Washington
Tenth Amendment Center
Union for Reform Judaism
Unitarian Universalist Service Committee
United Church of Christ, Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
Win Without War
Young Americans for Liberty

DATE: May 14, 2012

RE: **Vote "YES" on the Amendment by Representatives Adam Smith (D-WA) and Justin Amash (R-MI) That Explicitly Bans Indefinite Detention and Military Commissions from the United States, and Repeals Section 1022 of Last Year's National Defense Authorization Act ("NDAA"); House Will Likely Vote on the Smith-Amash Amendment on Thursday or Friday**

Our organizations strongly urge you to vote "YES" on an amendment that Congressmen Adam Smith (D-WA) and Justin Amash (R-MI) will offer next week, during House floor consideration of the National Defense Authorization Act for Fiscal Year 2013 ("NDAA"). The amendment will help protect American values and will be an important step towards restoring the rule of law to our nation's detention policies.

The Smith-Amash amendment will impose an explicit statutory ban on any president or other government official ordering the military to place anyone in the United States into indefinite detention without charge or trial, or from ordering anyone in the United States to be tried before a military commission. Such actions would be inconsistent with the Constitution and other laws, but the explicit statutory ban in the Smith-Amash amendment would ensure that no president or any other government official will ever try to use these practices in the United States itself.

During last year's consideration of the NDAA, particularly during the Senate debate on the legislation, several prominent senators urged the detention provisions in sections 1021 and 1022 of the NDAA to be used even on American soil. There was an outpouring of concern from Americans across the political spectrum. When similar concerns were raised in the House during consideration of the conference report on last year's NDAA, House leaders promised an opportunity to revise the legislation this year. The Smith-Amash amendment is the *only* legislation that reinforces the constitutional ban on use of the military for indefinite detention in the United States, and addresses the most prominent concerns raised by your constituents last year.

The Smith-Amash amendment has several important protections that would be made explicit by statute –

- The amendment would bar any president or any other government official from ordering the military to put anyone in the United States, or its territories or possessions, into indefinite detention without charge or trial, or to put anyone in the United States on trial before a military commission. Federal criminal courts are open, operating, experienced, and secure—and are the appropriate venue for any proceedings here in the United States itself.

- The amendment would bar the transfer of anyone in the United States to the military for indefinite detention without charge or trial. This provision is consistent with the Posse Comitatus Act, and would provide an additional protection against any misuse of civilian law enforcement as a way to put suspects into military detention without charge or trial.

- The amendment reaffirms the importance and availability of due process protections for all persons within the United States.

- The amendment prohibits the NDAA detention provisions from providing any authority for the military to detain persons under any claim of authority under the NDAA or the Authorization for Use of Military Force of 2001.

- The amendment repeals section 1022 of last year's NDAA. Section 1022 <u>requires</u> the military to put some civilian suspects into military detention. Although the Obama Administration waived application of section 1022 to many groups of potential suspects, it did not foreclose the possibility of section 1022 being applied to all categories of civilians, including even within the United States itself. The most certain way to avoid mistakes under section 1022 of last year's NDAA is to repeal it.

The Smith-Amash amendment is fully consistent with the Constitution, with the Posse Comitatus Act of 1878, and with the Non-Detention Act of 1971. It will reinforce the protections that most Americans assume apply—and do apply—within the United States.

Unfortunately, nothing in this year's NDAA detention provisions, as reported out of the House Armed Services Committee, affirms protection for persons in the United States. The habeas corpus provision in the reported bill does not address any of the concerns raised by your constituents last year. Nothing in last year's NDAA suspended anyone's habeas rights. Habeas provides a process for a judge to decide whether a person is being held lawfully, but on its own, it does not require that a judge find that a person must be charged with a crime. The committee-reported bill does not address the concern raised by your constituents—and fueled by several senators urging the military to indefinitely imprison persons in the United States itself—that no president or government official should ever order the military to put persons in the United States into indefinite detention without charge or trial. The Smith-Amash amendment addresses this concern; the committee-reported version of this year's NDAA does not address it.

We strongly urge you to vote for the Smith-Amash amendment to the NDAA next week. If you have any questions or concerns, please do not hesitate to contact any of our organizations.