

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
Council on American-Islamic Relations
Defending Dissent Foundation
Friends Committee on National Legislation
General Board of Church & Society
Human Rights First
Japanese American Citizens League
Just Foreign Policy
National Religious Campaign Against Torture
Physicians for Human Rights
T'ruah: The Rabbinic Call for Human Rights
Win Without War

DATE: June 12, 2013

RE: **Vote “YES” on the Amendment by Representatives Adam Smith (D-WA) and Chris Gibson (R-NY) Which Explicitly Bans Indefinite Detention and Military Commissions from the United States, and Repeals Section 1022 of the National Defense Authorization Act (“NDAA”) of FY12; House Will Vote on the Smith-Gibson Amendment THIS WEEK**

Our organizations strongly urge you to vote “YES” on an amendment that Congressmen Adam Smith (D-WA) and Chris Gibson (R-NY) will offer this week, during House floor consideration of the National Defense Authorization Act for Fiscal Year 2014 (“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-Gibson amendment would 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 are already inconsistent with the Constitution and other laws, but the explicit statutory ban in the Smith amendment would ensure that no president or any other government official will ever try again to use these practices in the United States itself.

During consideration of the 2012 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 for that year, House leaders promised to revise the legislation the following year, but failed to do so. The Smith-Gibson 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.

The Smith-Gibson 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 the 2012 NDAA. Section 1022 requires 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 is to repeal it.

The Smith-Gibson 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 last year's NDAA habeas provision provides any protection for persons in the United States. The habeas corpus provision in last year's NDAA did not address any of the concerns raised by your constituents. 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. Last year's NDAA did not address the concern raised by your constituents—and fueled by several senators during debate over the 2012 NDAA 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-Gibbons amendment addresses this concern; last year's NDAA did not address it.

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