

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

## New Defense Bill Provisions Send Mixed Signals on U.S. Detention Policy

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CONTACT: Dallas Jamison, Senior Communications Director; direct: 202.580.6922;  
cell: 720.333.1494; [djamison@constitutionproject.org](mailto:djamison@constitutionproject.org)

WASHINGTON - Today, The Constitution Project (TCP) reacted with both praise and criticism of the 2012 National Defense Authorization Act ("NDAA") as marked up by the Senate Armed Services Committee. TCP is pleased that the Committee declined to include a new authorization for the use of military force against al Qaeda, the Taliban, and associated forces without holding public hearings, and gratified that a provision that would allow for the use of "alternative courts," such as traditional federal criminal courts, to try Guantanamo detainees and other terrorism suspects was included. However, TCP is disappointed by the inclusion of language codifying a system of indefinite detention without charge, and a provision that would require military custody of terrorism suspects detained in the current conflict.

The following may be attributed to Constitution Project Counsel Mason C. Clutter: "I applaud the Senate Armed Services Committee for refusing to be bullied by the House to include a provision to reauthorize and expand the current conflict with al Qaeda, the Taliban, and associated forces without full consideration of the need for such authorization. However, codifying a system of indefinite detention without charge for current Guantanamo detainees and future detainees is a step in the wrong direction."

"Further, the provision that would require military custody of a group of foreign national terrorism suspects, regardless of their place of capture - on the battlefield or on U.S. soil - would restrict the role of the FBI and local law enforcement officers in the fight against terrorism. This provision would limit the use of the traditional criminal justice system and disrupt effective counterterrorism measures. It would effectively allow the military to engage in law enforcement activities within the United States."

Earlier this month, TCP's War Powers Committee sent a [letter](#) to the Senate Armed Services Committee expressing concern over Section 1034 of the House version of the NDAA, urging the Senate to "exercise its constitutional powers and conduct full public debate including hearings" on the need for and proper scope of an authorization to use force abroad.

In 2009, The Constitution Project issued [Beyond Guantanamo: A Bipartisan Declaration](#), promoting the use of traditional federal criminal courts to try Guantanamo detainees and ending the use of indefinite detention without charge.

### About The Constitution Project

Established in 1997, The Constitution Project (TCP) is known for its ability to bring together unlikely allies-experts and practitioners from across the political spectrum-in order to promote and safeguard America's founding charter. TCP is working to reform the nation's broken criminal justice system and to strengthen the rule of law by undertaking scholarship, consensus policy reforms, advocacy and public education. TCP was born out of the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.