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## US Courts Approve Indefinite Detention and Torture

By Stephen Lendman

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*America's a police state. It's ruthless. Iron fist authority rules. International law's quaint and out-of-date. US statute protections aren't worth the paper they're written on.*

Constitutional rights don't matter. They never did for most people. It's truer now than ever. They're null and void. Executive diktat power rules. Congress and federal courts go along. They're complicit.

They support sweeping lawlessness. It's unprecedented. It affects domestic and geopolitical issues. No one's safe anywhere.

Obama has life and death powers. He can order anyone murdered. He can do so on his say alone. US citizens are as vulnerable as foreign nationals.

He can order anyone indefinitely detained. He can throw them in military dungeons. He can deny them due process and judicial fairness.

They can remain there uncharged and untried. They can stay there forever. They can be brutally tortured. It's OK. Federal courts said so. More on that below.

Section 1031 of the FY 2010 Defense Authorization Act contained the 2009 Military Commissions Act (MCA).

The phrase "unprivileged enemy belligerent" replaced "unlawful enemy combatant."

Language changed but not intent or lawlessness. Obama did what supporters thought impossible. He exceeds the worst of George Bush.

He promised to close Guantanamo. He lied. He's a serial liar. He broke every major promise made.

He prioritizes keeping it open. He wants it expanded. He's got lots more victims in mind. He'll send there and/or to other US global torture prisons. Dozens operate worldwide. Guantanamo's the tip of the iceberg.

Obama supports torture and other forms of cruel and degrading treatment. He does so unapologetically. He treats US citizens as lawlessly as foreign nationals.

MCA grants sweeping police state powers. They include precluding civil courts from having "jurisdiction to hear or consider any claim or cause for action whatsoever....relating to the prosecution, trial, or judgment of a military commission (including) challenges to the lawfulness of (its) procedures...."

Habeas rights don't apply. Over 800 years of protection are gone. They're null and void. According to MCA:

Guilty by accusation suffices. With or without evidence, anyone "is punishable...who...aids, abets, counsels, commands, procures (or provides) material support" for alleged enemies.

Torture's permitted. International laws prohibiting it under all circumstances, at all times, with no allowed exceptions are abolished.

Diktat power replaced them. Presidents can do anything they want. They can do so on their say alone. They're virtual dictators.

Checks and balances don't apply. They never did effectively. They're more fiction than fact.

Presidents have emergency powers. They can declare martial law. They can suspend the Constitution. They can do so on national security grounds.

They can do it for any reason or none at all. They can use federal troops on US streets. They can deploy them against peaceful protesters. Insurrection Act (1807) and 1878 Posse Comitatus Act prohibitions no longer apply.

Fundamental freedoms are illusory. They're vanishing. They lie in history's dustbin. National Defense Authorization Act (NDAA) provisions let federal troops arrest and imprison US citizens and foreign nationals. They can do it at home or abroad. They can do it anywhere.

They can be held indefinitely uncharged and untried. They can be tortured. They can be forced to admit crimes they didn't commit. They can be murdered on Obama's say.

Police state lawlessness rules. It's the law of the land. Obama's a tinpot despot. He's judge, jury and executioner. Fundamental rights are gone. They don't apply.

Anyone can be arrested, imprisoned, held indefinitely and tortured for doing the right thing.

Protesting imperial lawlessness, social injustice, corporate crime, government corruption, or political Washington run of, by and for rich elites can be criminalized.

So can free speech, assembly, religion, or anything challenging America's right to kill, destroy and pillage with impunity.

It's official. Tyranny rules. America's unsafe to live in. There's no place to hide. Challenging diktat power's criminalized. Police state ruthlessness targets anyone trying.

Military dungeons or secret FEMA concentration camps await victims. America's no democracy. It's not beautiful. It's a battleground. It's nightmarish for countless numbers affected.

Law Professor Jonathan Turley called NDAA authority ruthlessness "that would have horrified the Framers."

"Indefinitely detaining citizens is something (they) were intimately familiar with and expressly sought to bar in the Bill of Rights."

Other legal experts agree. Habeas, due process, and other fundamental rights are too precious to lose. They're now quaint artifacts. They're gone. They lie in history's dustbin.

Tyranny replaced them. America's no different from other totalitarian states. It's ruthless. It's militarized for control.

It's concentrated money power running things. It's fascism writ large. It's wrapped in the American flag. It's scapegoating challengers.

It's out-of-control militarism. It's national security justification to brutalize and oppress. It's controlling the message. It's convincing people fundamental rights are abolished for their own good.

It's getting most people to believe it. It's stripping off America's mask. It's showing its true face. It's menacing, cruel and unjust. Federal court decisions explain.

In 2012, *Hedges et al v. Obama* challenged NDAA provisions. Last September, Southern District of New York federal Judge Katherine B. Forrest blocked Obama's indefinite detention law. She's the exception, not the rule.

She called it "facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient definitional structure and protections to meet the requirements of due process."

She added that:

"If, following issuance of this permanent injunctive relief, the government detains individuals under theories of 'substantially or directly supporting' associated forces, as set forth in" the National Defense Authorization Act, "and a contempt action is brought before this court, the government will bear a heavy burden indeed."

At issue is section 1021 of the 2012 National Defense Authorization Act (NDAA). It states in part:

"Congress affirms that the authority of the president to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (AUMF) 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."

“Covered persons” are defined as:

Anyone “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.”

Plaintiffs argued that broad, ambiguous language like “substantially supported,” “associated forces” and “directly supported” leaves them and others vulnerable to lawless indefinite detention.

Legally meeting someone rightly or wrongly called a terrorist, staying in their homes, inviting them to speak at conferences or in panel discussions, interviewing them, or socializing with them can be called dealing with the enemy.

So can writing anti-imperial articles, exposing and/or discussing US crimes of war and against humanity, and participating in anti-war protests.

Hedges et al won. Obama officials appealed. On Wednesday, the New York Second Circuit Court of Appeals overturned Judge Forrest’s ruling.

Three judges did so unanimously. They did it shamelessly. They called indefinite detention uncharged and untried OK.

They said Hedges et al lacked standing. It’s because federal law “says nothing at all about the president’s authority to detain American citizens.”

False! NDAA covers everyone. US citizens are as vulnerable as foreign nationals. Appeals Court Judge Lewis Kaplan said non-citizens “failed to establish standing because they have not shown a sufficient threat that the government will detain them.”

Plaintiffs’ lawyer Carl Mayer said “(w)e’re reviewing what our options are, but I strongly suspect that we will appeal to the Supreme Court.”

The ruling came on the same day the District of Columbia Court of Appeals overturned a lower court ruling. At issue are oppressive Guantanamo prisoner genital area searches. District Court Judge Royce Lamberth ordered them stopped.

Appeals Court judges overruled him. They authorized what’s conducted to degrade, harass and humiliate. They’re unrelated to security.

Separately on July 16, Washington, DC District Court Judge Rosemary Collyer ruled against three Guantanamo hunger strikers.

They sued to stop force-feeding. It’s lawless. It’s medically unethical. It’s excruciatingly painful. It’s torture as international law defines it.

Collyer supports it. Her ruling ignored inviolable laws. She’s contemptuously dismissive. She said:

“There is nothing so shocking or inhumane in the treatment of petitioners – which they can avoid at will – to raise a constitutional concern that might otherwise necessitate review.”

“Although framed as a motion to stop feeding via nasogastric tube, Petitioners’ real complaint is that the United States is not allowing them to commit suicide by starvation.”

According to the World Federation of Right to Die Societies:

“All competent adults – regardless of their nationalities, professions, religious beliefs, and ethical and political views – who are suffering unbearably from incurable illnesses should have the possibility of various choices at the end of their life.”

“Death is unavoidable. We strongly believe that the manner and time of dying should be left to the decision of the individual, assuming such demands do not result in harm to society other than the sadness associated with death.”

Brutalizing indefinite Guantanamo detention constitutes an “incurable disease.” It includes hopelessness and unbearable suffering.

It prevents any chance for freedom. It denies all rights. Death’s unavoidable. It’ll come sooner, not later. Dying with dignity’s excluded. Permitting it is fundamentally right. Not according to kangaroo federal court justice.

Collyer’s ruling replicated Judge Gladys Kessler’s July 10 decision. On the one hand, she called force-feeding “painful, humiliating and degrading.”

On the other, she abstained from ruling responsibly. She wrongfully claimed federal courts have no authority over Guantanamo. Obama alone has “authority to address the issue,” she said.

False! Kessler doesn’t know the law. Maybe she does but spurned it. She ignored High Court rulings.

In *Rasul v. Bush* (June 2004), the Supreme Court held that Guantanamo detainees may challenge their detention in civil court. In response, Congress enacted the 2005 Detainee Treatment Act. It subverted the ruling.

In *Hamdan v. Rumsfeld* (June 2006), the High Court held that federal courts retain jurisdiction over habeas cases. It ruled against military commissions.

It said they lack “the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions.”

In response, Congress passed the 2006 Military Commissions Act (MCA). In updated form, it’s the law of the land. Supreme Court justices can challenge it.

They can strike it down. They haven’t done so. Perhaps a future court will. In *Boumediene v. Bush* (June 2008), it affirmed habeas rights for Guantanamo detainees. It let them petition for release from lawlessly imposed custody.

Justice Anthony Kennedy wrote the majority opinion. He said America maintains complete jurisdiction over Guantanamo regardless of its offshore location. He opposed political branches “govern(ing) without legal restraint.”

He expressed concerns about usurping “power to switch the Constitution on or off at will.” Doing so “lead(s) to a regime in which they, not this Court, say ‘what the law is.’ ”

“Even when the United States acts outside its borders, its powers are not ‘absolute and unlimited’ but are subject ‘to such restrictions as are expressed in the Constitution.’ ”

He called habeas “an indispensable mechanism for monitoring the separation of powers.”

“The test for determining (its) scope must not be subject to manipulation by those whose power it is designed to restrain.”

This bedrock right has no adequate substitute. It doesn’t matter. Justice in America no longer exists. Diktat power replaced it.

Perhaps NDAA enactment was when freedom in America died. Post-9/11, it’s been on the chopping block for elimination altogether.

Tyranny’s the law of the land. It’s institutionalized. Fundamental rights don’t matter. Democracy’s a four-letter word. Out-of-control power runs things. It’s unaccountable.

Nonbelievers aren’t tolerated. The worst is yet to come.