



JAPANESE AMERICAN CITIZENS LEAGUE/JACL

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September 19, 2011

RE: Opposition to Indefinite Detention Without Charge or Trial Provisions in S. 1253, the National Defense Authorization Act for Fiscal Year 2012

Dear Senator:

The Japanese American Citizens League (JACL) firmly opposes those provisions in S. 1253, the National Defense Authorization Act for Fiscal Year 2012, that would authorize or mandate the indefinite detention of terrorism suspects without charge or trial. Specifically, we oppose the inclusion of section 1031, which authorizes the indefinite military detention of terrorism suspects, and section 1032, which mandates the indefinite military detention of a subset of the terrorism suspects defined in section 1031.

The JACL is particularly concerned with the issue of indefinite detention because of our own experiences related to the illegal Japanese American internment during World War II, an episode that has left an indelible scar on American history. The United States has rightly condemned its decision to forcibly relocate and indefinitely detain individuals of Japanese descent, including American citizens, without due process, and efforts to redress this extraordinary wrongdoing continue to this day.

Sections 1031 and 1032 of the NDAA would give any president the authority to put terrorism suspects found anywhere in the world into indefinite military detention without charge or trial, and based solely on suspicion and not proof beyond a reasonable doubt. These provisions would even apply within the United States itself, and incredibly, section 1031 would apply to U.S. citizens and legal residents, and section 1032 would apply to legal residents. If enacted, this would be the first time since a McCarthy era statute enacted in 1950 that Congress authorizes the indefinite imprisonment of American citizens without charge or trial.

The JACL also believes that section 1031, if enacted, would be the first time that Congress cuts back on the protections provided by the Non-Detention Act of 1971, which states that, "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." The Non-Detention Act of 1971 expressed the will of Congress and the President that America would never repeat the Japanese American internment experience, and would never subject any other Americans to indefinite detention without charge or trial. In the 40 years since President Richard Nixon signed the Non-Detention Act into law, Congress has never made any exception to it.

Senator Daniel Inouye, with the strong backing of the leadership and chapters of the JACL that made its enactment our priority, was the lead sponsor of the legislation that became the Non-Detention Act of 1971. We do not want to see the work of Senator Inouye in leading the way towards the Non-Detention Act of 1971--and our own work as an organization that worked for its enactment--rendered meaningless by an NDAA provision that cuts back on the Non-Detention Act's protections. The Non-Detention Act is only as good as the determination of this Congress and all future Congresses to maintain its protections.

It is important to remember that although the specific details of the detentions may differ, the principle remains the same: indefinite detentions based on fear-driven and unlawfully substantiated national security grounds, where individuals are neither duly charged nor fairly tried, violates the essence of American law and the most fundamental values upon which this country was built.

In 1942, Milton Eisenhower, the National Director of the War Relocation Administration, predicted that “when [the internment of Japanese Americans] is over...we, as Americans, are going to regret the...injustices” of their unlawful detention. Forty-six years later, President Reagan signed the Civil Liberties Act, which officially declared that the Japanese American internment had been a “grave injustice” that had been “carried out without adequate security reasons.” In other words, the indefinite detention of Japanese Americans during World War II was not only unconstitutional, but unnecessary. The same is true of modern indefinite detentions of terrorism suspects. Our criminal justice system is more than equipped to ensure justice and security in terrorism cases, and we certainly should not design new systems in order to accommodate the tragic and illegitimate policies of the past.

As our history shows, acting on fear in these situations can lead to unnecessary and unfruitful sacrifices of the most basic of American values. In the ten years since the 9/11 attacks, Congress has shown admirable restraint in not enacting indefinite detention without charge or trial legislation. Now, with the President seeking to end the current wars, we urge you to avoid repeating the mistakes of the past, and to protect American values and constitutional rights before they are compromised. We urge you to remove sections 1031 and 1032 from the NDAA before bringing the bill to the Senate floor.

At this critical juncture, we urge the Senate to affirm that the United States respects fundamental constitutional and human rights – even in times when fear sometimes has the potential to overshadow our commitment to our most basic American values. The JAACL urges you to consider the lessons of the Japanese American internment and reject sections 1031 and 1032 of the NDAA and any other statutory authorization of indefinite detention. We urge you to avoid passing these provisions that would surely be looked upon with shame and regret by future generations.

Sincerely,

A handwritten signature in cursive script that reads "S. Floyd Mori".

S. Floyd Mori
National Executive Director