

## **Statement for the Record**

**The Honorable Paul C. Broun, M.D. (GA-10)**

**Committee on Armed Services, U.S. House of Representatives**

**Hearing On: National Defense Priorities from Members for the FY 2014 National Defense Authorization Act**

**Wednesday, May 8, 2013**

Chairman McKeon, Ranking Member Smith, Members of the Committee, thank you for the opportunity to testify today.

There are two issues which I would like to briefly discuss before the Committee. The first relates to the continued controversy over the U.S. government's ability to indefinitely detain, without trial, U.S. citizens who are accused of terrorism or collaboration with terrorist groups. The second issue is related to the first, regarding the government's use of unmanned aerial vehicles (UAVs or "drones") to kill suspected terrorists, either in the U.S. or overseas. These issues are related insofar as they both raise the question of how, under the Constitution, suspected terrorists ought to be treated, particularly those who are U.S. citizens. While past versions of the National Defense Authorization Act (NDAA) have attempted to shed light on this question, it seems that there remains significant doubt over what the legal process should be when suspected terrorists are identified by our government.

Central to this debate is language in the Authorization for Use of Military Force in Afghanistan (AUMF) giving the U.S. government the authority to indefinitely detain individuals suspected of terrorism. The AUMF became law in 2001 and was upheld by the U.S. Supreme Court in 2004 in *Hamdi v. Rumsfeld*. While both the 2012 and 2013 NDAA bills stated that nothing in the underlying bill gives the U.S. government the authority to detain U.S. citizens suspected of terrorism without due process, neither bill included language to repeal the authority granted under the AUMF. This apparent disparity has resulted in widespread concern about whether the U.S. government may, in fact, indefinitely detain U.S. citizens accused of terrorism. If the government does have this power under the law, it is unclear under what circumstances it may use this potentially sweeping power against its own people.

Last year, I supported an amendment to the NDAA offered by Ranking Member Smith which would have ensured that individuals arrested on U.S. soil under either the AUMF or the FY13 NDAA would be provided with due process, as guaranteed by the Constitution. Unfortunately, this amendment did not pass in the House, and it was not included in the final bill language. I urge the Committee to include similar language in the FY14 NDAA, so that individuals who are accused of terrorism are afforded their right to a fair trial, either via the

criminal justice system or the military court system, depending on the situation and the citizenship of the accused.

Moreover, I urge the Committee to work towards perfecting the definition of “enemy combatant,” a broad designation which lacks a clear meaning and may be placed on individuals under the AUMF in order to allow for their indefinite detention. Allowing any administration to use such a vague designation to punish individuals without due process opens the door to exceedingly dangerous scenarios, including classifying dissenters as potential terrorists who may be punished without regard to their constitutional rights.

At the same time, I am very concerned about the “white paper” recently released by the U.S. Department of Justice, which outlines the legal framework for the use of deadly force against American citizens. While this document purportedly relates only to individuals who are suspected of working as forces of al Qaeda, I believe that it is highly dangerous nonetheless. Most significantly, it is unconscionable for the U.S. government to kill any of its own citizens without first allowing them their day in court. As with the designation of “enemy combatants,” I believe that no administration has the right to be the judge, jury, and executioner of American citizens. Our country was founded under the notion that citizens must be protected from this type of tyrannical overreach, and even in these times marred by terrorist threats, it is imperative that we stay true to that important principle.

Unfortunately, the potential for deadly force against Americans has grown with the increased use of drones by the U.S. military. While drones certainly provide a number of benefits to our armed forces, they have also become a symbol of the ease with which our government may infringe upon the constitutional rights of our citizens simply by unilaterally declaring that an individual is a terrorist, that capture is too difficult, and that his immediate demise is the best course of action, regardless of his rights. Of course, drones may also serve non-lethal functions, and as a result, their use has led to questions regarding when they may be used to gather intelligence on citizens without their knowledge or consent. I therefore urge the Committee to address the use of drones by the U.S. military, and to fine-tune the administration’s legal framework to ensure that the constitutional rights of all Americans – even those who are accused of terrorism – are protected at all times.

In the aftermath of the recent bombing in Boston, it is more important than ever to ensure that we have a system that will work to punish those who wish to do us harm, while working within the protections established by our Constitution. One of the most challenging dilemmas of our time is how to balance individual liberties with providing the military with the tools it needs to keep our nation safe. However, a free society demands limits on these tools, and these limits are clearly stated within the Constitution. I ask that the Committee do all it can to ensure that Americans’ God-given, constitutional rights are protected as it begins work on this important legislation. Thank you again for the opportunity to testify before you today.