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Written Testimony
House Committee on Armed Services
Thursday, April 28, 2022

Thank you Chairman Smith and Ranking Member Rogers for holding this hearing today, I appreciate the Committee's willingness to provide me the opportunity to discuss what I believe is an unconstitutional provision that was included in the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA).

The FY 2012 NDAA included a provision in Section 1021(b) that expanded the military's power under the 2001 Authorization for the Use of Military Force (AUMF) to indefinitely detain any member of al-Qaeda, the Taliban, or anyone who assists them. This provision does not include that those who assist do so knowingly.

While our troops have withdrawn from Afghanistan after 20 long years of war, we are still engaged in hostilities with these groups and their so-called "associated forces".

In my view, the statute essentially allows the military to detain any such person until the end of hostilities, regardless of citizenship, location, or intent. I believe that this provision is incompatible with the due process afforded American citizens under the Constitution.

My particular concern with this statute is that it makes no exception for the intent of the detained or any mechanism to challenge the detainment. This could become problematic for any American, including those on American soil. I do not believe the military should be able to exercise the power of indefinite detention at home against U.S. citizens without due process.

Being associated with a member of al-Qaeda or certain other groups could be as simple as unknowingly driving an acquaintance to a federal courthouse where you assume he works, only to find out later that the person committed a terrorist act. Unknowingly doing a favor for a neighbor could conceivably make you eligible for indefinite detention.

I am still troubled by this ambiguity and believe that our armed forces will still be able to fight terrorism effectively even with this slight change in law.

I urge this Committee to include language in the underlying NDAA text that would clarify that a person must have “knowingly” (*scienter*), assist the enemies of our country. I hope to continue discussions with the Committee on this issue and appreciate your consideration.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Morgan Griffith". The signature is fluid and cursive, with a large, stylized initial "H" and a long, sweeping underline.

H. MORGAN GRIFFITH
Member of Congress