

THE FOLKS WHO BROUGHT YOU MILITARY DETENTION IN THE NDAA ARE REWRITING THE AUMF

Yesterday, the Senate Armed Services Committee announced a hearing to revisit the 2001 Authorization to Use Military Force. In addition to a bunch of DOD figures (but not the recently departed Jeh Johnson, the DOD-connected person who said the most interesting things about the AUMF), it'll have (I've linked their most salient comments on the AUMF):

Rosa Brooks, Professor of
Law, Georgetown University Law Center

Geoffrey Corn, Professor of Law, South
Texas College of Law

Jack Goldsmith, Professor of
Law, Harvard Law School

Kenneth Roth, Executive Director, Human
Rights Watch

Charles Stimson, Manager, National
Security Law Program, The Heritage
Foundation

Curiously, John Bellinger who (as far as I understand) started the discussion of a new AUMF is not slated to testify. Also note that the Deputy Director of Special Operations for Counterterrorism will testify, but no one from CIA is scheduled to; while JSOC can operate under the President's inherent authority, it likely prefers the legal cover of an AUMF (and therefore may be one of the entities pushing for an AUMF that matches reality on the ground).

Politico reports that this hearing is more than speculative: Levin and no-longer-SASC-Ranking-

Member-but-he-might-as-well-be John McCain are planning to rewrite the AUMF, with help from Bob Corker, Dick Durbin, and Lindsey “all detainees must be military” Graham.

And if the inclusion of Graham in that group doesn’t scare you, remember that this crowd is substantively the same one that enshrined military detention in 2012’s NDAA. While that effort might be regarded as “reasonable” Carl Levin and John McCain’s attempt to present something more reasonable than House Armed Services Committee Buck McKeon was pushing for, and while the NDAA originally included exceptions for US citizens, in the event, the White House pushed Carl Levin to effectively rubber stamp its claims to unlimited authority, including detaining (or killing) US citizens.

And if that doesn’t have you worried enough about this effort, consider this quote, which mocks the contributions Rand Paul or Ted Cruz might make to this debate.

“Can you imagine what Paul or Cruz would do with this?” said one top Democratic aide. “It could be a disaster. And it would be worse in the House.”

As a threshold matter, a top aide who can’t distinguish between Paul’s more heartfelt libertarianism from Cruz’ authoritarianism pretending to be libertarianism is a concern. But to call the influence of both as “a disaster” is troubling.

Ultimately, though, what is likely to happen with this debate is that all players will be unwilling to discuss openly what we’ve actually been doing in the name of war against al Qaeda, up to and including waging war in the “homeland.” That’s one thing the 2001 AUMF was written to exclude. And I can almost guarantee you, it’s an authority the President – and the top Democratic aides who mock Rand Paul – will want to preserve.