

FEINSTEIN TRIES AGAIN TO FIX THE DETAINEE PROVISIONS

Kudos to Dianne Feinstein for trying to eliminate the President's ability to indefinitely detain (and kill?) American citizens. This time, she's trying a free-standing bill titled the Due Process Guarantee Act of 2011. It says,

(1) An authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States apprehended in the United States, unless an Act of Congress expressly authorizes such detention.

(2) Paragraph (1) applies to an authorization to use military force, a declaration of war, or any similar authority enacted before, on, or after the date of the enactment of the Due Process Guarantee Act of 2011.

The language seems sound enough to me. And given that this wouldn't constrain the President's ability to detain (or kill) Americans in Yemen, the Obama Administration might not put up as big of a fight as it did with the detainee provisions (though I suspect they would fight it, because of all the other things that rely on detention language—they'd have to rewrite a bunch of OLC memos).

Of course all that assumes this would be passed before President Newt takes over; he'd never sign something like this.

But the other thing is that DiFi has a habit of introducing very simple language and getting pushed around by the Executive, effectively letting the President tweak such language out of

existence (see also her “exclusivity provision” in the FISA Amendments Act).

I think if she could get a vote, with this language, she might just win.