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Military Detention Law Blocked by New York Judge

By Bob Van Voris and Patricia Hurtado - May 17, 2012

Opponents of a U.S. law they claim may subject them to indefinite military detention for activities including news reporting and political activism persuaded a federal judge to temporarily block the measure.

U.S. District Judge Katherine Forrest in [Manhattan](#) yesterday ruled in favor of a group of writers and activists who sued President [Barack Obama](#), Defense Secretary [Leon Panetta](#) and the Defense Department, claiming a provision of the National Defense Authorization Act, signed into law Dec. 31, puts them in fear that they could be arrested and held by U.S. armed forces.

The complaint was filed Jan. 13 by a group including former New York Times reporter Christopher Hedges. The plaintiffs contend a section of the law allows for detention of citizens and permanent residents taken into custody in the U.S. on “suspicion of providing substantial support” to people engaged in hostilities against the U.S., such as al-Qaeda.

“The statute at issue places the public at undue risk of having their speech chilled for the purported protection from al-Qaeda, the Taliban, and ‘associated forces’ - i.e., ‘foreign terrorist organizations,’” Forrest said in an opinion yesterday. “The vagueness of Section 1021 does not allow the average citizen, or even the government itself, to understand with the type of definiteness to which our citizens are entitled, or what conduct comes within its scope.”

Enforcement Blocked

Forrest’s order prevents enforcement of the provision of the statute pending further order of the court or an amendment to the statute by Congress.

[Ellen Davis](#), a spokeswoman for U.S. Attorney Preet Bharara in Manhattan, declined to comment on the ruling.

The plaintiffs claim Section 1021 is vague and can be read to authorize their detention based on speech and associations that are protected by the First Amendment to the Constitution.

Hedges and two other plaintiffs testified in a hearing before Forrest in March, the judge said. A fourth plaintiff submitted a sworn declaration. The government put on no evidence, Forrest said.

Forrest, an Obama appointee who has served on the Manhattan federal court since October, rejected the government’s arguments that the plaintiffs lacked standing to sue over the law and that it merely reaffirmed provisions in an earlier law, the 2001 Authorization for Use of Military Force, which was passed in the wake of the Sept. 11, 2001, terrorist attacks.

Plaintiffs’ Activities

In her opinion, Forrest said the government declined to say that the activities of Hedges and the other defendants don’t fall under the provision. Forrest held a hearing in March at which government lawyers didn’t call any witnesses or present evidence, according to the judge. The government did cross-examine the plaintiffs who testified and submitted legal arguments.

“The government was given a number of opportunities at the hearing and in its briefs to state unambiguously that the type of expressive and associational activities engaged in by plaintiffs -- or

others -- are not within Section 1021," Forrest said. "It did not. This court therefore must credit the chilling impact on First Amendment rights as reasonable -- and real."

Hedges, who testified he has been a foreign news correspondent for 20 years, said he has reported on 17 groups that are on a State Department list of terrorist groups. Hedges testified that after the law was passed, he changed his dealings with groups he had reported on, Forrest said.

"I think the ruling was not only correct, but courageous and important," Hedges said in a telephone interview yesterday.

The case is Hedges v. Obama, 12-cv-00331, U.S. District Court, Southern District of [New York](#) (Manhattan).

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