

Detention of U.S. Persons as Enemy Belligerents: Congressional Research Service Report R42337

Detention of U.S. Persons as Enemy Belligerents

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The detainee provisions passed as part of the National Defense Authorization Act for FY2012, P.L. 112-81, affirm that the Authorization for Use of Military Force (AUMF), P.L. 107-40, in response to the terrorist attacks of September 11, 2001, authorizes the detention of persons captured in connection with hostilities. The act provides for the first time a statutory definition of covered persons whose detention is authorized pursuant to the AUMF. During debate of the provision, significant attention focused on the applicability of this detention authority to U.S. citizens and other persons within the United States. The Senate adopted an amendment to clarify that the provision was not intended to affect any existing law or authorities relating to the detention of U.S. citizens or lawful resident aliens, or any other persons captured or arrested in the United States. This report analyzes the existing law and authority to detain U.S. persons, including American citizens and resident aliens, as well as other persons within the United States who are suspected of being members, agents, or associates of Al Qaeda or possibly other terrorist organizations as enemy combatants. The Supreme Court in 2004 affirmed the Presidents power to detain enemy combatants, including those who are U.S. citizens, as part of the necessary force authorized by Congress after the terrorist attacks of September 11, 2001. Lower courts that have addressed the issue of wartime detention within the United States have reached conflicting conclusions. This report provides a background to the legal issues presented, followed by a brief introduction to the law of war pertinent to the detention of different categories of individuals. An overview of U.S. practice during wartime to detain persons deemed dangerous to the national security is presented. The report concludes by discussing Congress role in prescribing

rules for wartime detention.

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