

Dear Mr. Danilow,

Thank you for writing me in regard to the National Defense Authorization Act for Fiscal Year 2012 (NDAA). I understand some provisions in this bill are contentious and I appreciate the opportunity to respond.

As you may know, every year the Senate Armed Services Committee presents the NDAA, which authorizes appropriations for the corresponding fiscal year, to the full Senate for consideration. The Senate passed this year's Defense Authorization Act on December 1, 2011, and following a conference committee with the House, the final version of the NDAA was passed by the Senate on December 15, 2011, by a vote 86 to 13.

I am aware this bill contains some controversial provisions related to terrorist detainees, and whether they should be held in military or civilian law enforcement custody. In particular, I am referring to Sections 1031, 1032 and 1033 of the Senate version of the NDAA. This legislation reiterates that in times of war the Armed Forces have the authority to detain terrorists in the United States if they are members of Al Qaeda or a group affiliated with Al Qaeda and/or assisted in the planning and execution of the September 11th terror attacks. During the Senate debate on the NDAA, Senator Mark Udall (CO) introduced an amendment which would have struck this language from the bill.

I voted against the Udall amendment and in favor of compromise language which states that the President already has the authority to detain individuals associated with Al Qaeda or other terror groups regardless of their citizenship. The Udall amendment failed by a vote of 37 to 61, however, the compromise language passed 99 to 1 and is contained in the final NDAA which does not change current law with regard to U.S. citizen's rights. To be clear, this NDAA does not change the Posse Comitatus Act, nor does it take away an individual's habeas corpus rights. Additionally, the language in the NDAA does not take away an individual's rights to equal protection under the 14th Amendment to the Constitution, nor does it take away one's due process rights afforded under the 5th or 14th Amendments. If this bill did such a thing, I would strongly oppose it.

I believe an act of terror against the United States is an act of war, and I believe those who commit such acts of terror should be treated as enemy combatants not as common criminals. When enemy combatants who wish to harm United States citizens are captured, the rights of these detainees are restricted to basic human rights. All detainees held by the United States are treated with dignity and respect, despite the heinous crimes they have been accused of committing against our nation. I will continue to support a detention policy that protects the United States, as well as the rights of our law abiding citizens.

It is an honor and a privilege to serve you as your United States Senator. Thank you for sharing your views with me. If I can be of any help to you with regard to this issue or any other concerns of yours, please do not hesitate to contact me.