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TCP's Sloan Pans Signing of Defense Bill

WASHINGTON, DC – Virginia Sloan, president of The Constitution Project (TCP), offered the following comments regarding President Obama signing into law the National Defense Authorization Act (NDAA) of 2012:

“We remain concerned that provisions in the new law threaten to undermine our constitutional traditions and commitment to the rule of law. One of those provisions codifies the executive branch’s power to subject a broad category of terrorism suspects to military detention without charge or trial until ‘the end of hostilities,’ a point that remains dangerously elusive more than a decade after the attacks of September 11, 2001. Other provisions prohibit the transfer of Guantanamo detainees to the U.S. for any reason, including trial, and impose a burdensome set of certification requirements before a detainee can be released to another country, even when the detainee no longer poses a threat, making it extremely difficult for President Obama to follow through on his promise to close the Guantanamo Bay prison.

“President Obama issued a signing statement in conjunction with the NDAA explaining that he believes the law’s indefinite detention provision ‘breaks no new ground.’ While the provision does contain a clause disclaiming any intent to limit or expand the executive branch’s authority to detain terrorism suspects under the 2001 Authorization for Use of Military Force (AUMF), the scope of that authority has never been resolved. In particular, the Supreme Court has not yet ruled on whether the AUMF empowers the President to subject U.S. citizens and others captured on U.S. soil to indefinite military detention without charge or trial.

“In his statement, the president insisted that his administration would not authorize such detention, at least of American citizens, and would interpret the NDAA’s detention provisions in a manner that complies with both the Constitution and the laws of war. While the president’s pledge is a step in the right direction, it is not legally binding—either on this administration or succeeding ones.

“Finally, in keeping with TCP’s long-standing concerns about the misuse of presidential signing statements, we are troubled by President Obama’s assertion that he might treat certain of NDAA’s provisions, unrelated to detention, as ‘non-binding,’ thereby effectively vetoing them without affording Congress the opportunity to override the veto, which the Constitution requires. If the president truly believes that some provisions of the NDAA are constitutionally infirm, he should have vetoed the bill.”

Obama signed the NDAA on December 31, 2011. The new law provides budget authority – but not actual funding – for military personnel, operations and weapons systems.

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Created out the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation’s broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.