Chris Hedges | Capitalism, Not Government Is the Problem

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By Chris Hedges, Truthdig | Op-Ed

Demonstrators against the NDAA in January, 2012. (Photo: Justin Norman)

The U.S. Supreme Court decision to refuse to hear our case concerning Section 1021(b)(2) of the National Defense Authorization Act (NDAA), which permits the military to seize U.S. citizens and hold them indefinitely in military detention centers without due process, means that this provision will continue to be law. It means the nation has entered a post-constitutional era. It means that extraordinary rendition of U.S. citizens on U.S. soil by our government is legal. It means that the courts, like the legislative and executive branches of government, exclusively serve corporate power—one of the core definitions of fascism. It means that the internal mechanisms of state are so corrupted and subservient to corporate power that there is no hope of reform or protection for citizens under our most basic constitutional rights. It means that the consent of the governed—a poll by OpenCongress.com showed that this provision had a 98 percent disapproval rating—is a cruel joke. And it means that if we do not rapidly build militant mass movements to overthrow corporate tyranny, including breaking the back of the two-party duopoly that is the mask of corporate power, we will lose our liberty.

"In declining to hear the case Hedges v. Obama and declining to review the NDAA, the Supreme Court has

turned its back on precedent dating back to the Civil War era that holds that the military cannot police the streets of America," said attorney Carl Mayer, who along with Bruce Afran devoted countless unpaid hours to the suit. "This is a major blow to civil liberties. It gives the green light to the military to detain people without trial or counsel in military installations, including secret installations abroad. There is little left of judicial review of presidential action during wartime."

Afran, Mayer and I brought the case to the U.S. Southern District Court of New York in January 2012. I was later joined by co-plaintiffs Noam Chomsky, Daniel Ellsberg, journalist Alexa O'Brien, RevolutionTruth founder Tangerine Bolen, Icelandic parliamentarian Birgitta Jonsdottir and Occupy London activist Kai Wargalla.

Later in 2012 U.S. District Judge Katherine B. Forrest declared Section 1021(b)(2) unconstitutional. The Obama administration not only appealed—we expected it to appeal—but demanded that the law be immediately put back into effect until the appeal was heard. Forrest, displaying the same judicial courage she showed with her ruling, refused to do this.

The government swiftly went to the U.S. Court of Appeals for the 2nd Circuit. It asked, in the name of national security, that the court stay the district court's injunction until the government's appeal could be heard. The 2nd Circuit agreed. The law went back on the books. My lawyers and I surmised that this was because the administration was already using the law to detain U.S. citizens in black sites, most likely dual citizens with roots in countries such as Pakistan, Afghanistan, Somalia and Yemen. The administration would have been in contempt of court if Forrest's ruling was allowed to stand while the federal authorities detained U.S. citizens under the statute. Government attorneys, when asked by Judge Forrest, refused to say whether or not the government was already using the law, buttressing our suspicion that it was in use.

The 2nd Circuit overturned Forrest's ruling last July in a decision that did not force it to rule on the actual constitutionality of Section 1021(b)(2). It cited the Supreme Court ruling in Clapper v. Amnesty International, another case in which I was one of the plaintiffs, to say that I had no standing, or right, to bring the NDAA case to court. Clapper v. Amnesty International challenged the secret wiretapping of U.S. citizens under the FISA Amendments Act of 2008. The Supreme Court had ruled in Clapper that our concern about government surveillance was "speculation." It said we were required to prove to the court that the FISA Act would be used to monitor those we interviewed. The court knew, of course, that the government does not disclose whom it is monitoring. It knew we could never offer proof. The leaks by Edward Snowden, which came out after the Supreme Court ruling, showed that the government was monitoring us all, along with those we interviewed. The 2nd Circuit used the spurious Supreme Court ruling to make its own spurious ruling. It said that because we could not show that the indefinite-detention law was about to be used against us, just as we could not prove government monitoring of our communications, we could not challenge the law. It was a dirty game of judicial avoidance on two egregious violations of the Constitution.

In refusing to hear our lawsuit the courts have overturned nearly 150 years of case law that repeatedly holds that the military has no jurisdiction over civilians. Now, a U.S. citizen charged by the government with "substantially supporting" al-Qaida, the Taliban or those in the nebulous category of "associated forces"—some of the language of Section 1021(b)(2)—is lawfully subject to extraordinary rendition on U.S. soil. And those

seized and placed in military jails can be kept there until "the end of hostilities."

Judge Forrest, in her 112-page ruling against the section, noted that under this provision of the NDAA whole categories of Americans could be subject to seizure by the military. These might include Muslims, activists, Black Bloc members and any other Americans labeled as domestic terrorists by the state. Forrest wrote that Section 1021(b)(2) echoed the 1944 Supreme Court ruling in Korematsu v. United States, which supported the government's use of the military to detain 110,00 Japanese-Americans in internment camps without due process during World War II.

Of the refusal to hear our lawsuit, Afran said, "The Supreme Court has left in place a statute that furthers erodes basic respect for constitutional liberties, that weakens free speech and will chill the willingness of Americans to exercise their 1st Amendment rights, already in severe decline in this country."

The goals of corporate capitalism are increasingly indistinguishable from the goals of the state. The political and economic systems are subservient to corporate profit. Debate between conventional liberals and conservatives has been replaced by empty political theater and spectacle. Corporations, no matter which politicians are in office, loot the Treasury, escape taxation, push down wages, break unions, dismantle civil society, gut regulation and legal oversight, control information, prosecute endless war and dismantle public institutions and programs that include schools, welfare and Social Security. And elected officials, enriched through our form of legalized corporate bribery, have no intention of halting the process.

The government, by ignoring the rights and needs of ordinary citizens, is jeopardizing its legitimacy. This is dangerous. When a citizenry no longer feels that it can find justice within the organs of power, when it feels that the organs of power are the enemies of freedom and economic advancement, it makes war on those organs. Those of us who are condemned as radicals, idealists and dreamers call for basic reforms that, if enacted, will make peaceful reform possible. But corporate capitalists, now unchecked by state power and dismissive of the popular will, do not see the fires they are igniting. The Supreme Court ruling on our challenge is one more signpost on the road to dystopia.

It is capitalism, not government, that is the problem. The fusion of corporate and state power means that government is broken. It is little more than a protection racket for Wall Street. And it is our job to wrest government back. This will come only through the building of mass movements.

"It is futile to be 'anti-Fascist' while attempting to preserve capitalism," George Orwell wrote. "Fascism after all is only a development of capitalism, and the mildest democracy, so-called, is liable to turn into Fascism."

Our corporate masters will not of their own volition curb their appetite for profits. Human misery and the deadly assault on the ecosystem are good for business. These masters have set in place laws that, when we rise up—and they expect us to rise up—will permit the state to herd us like sheep into military detention camps. Section 1021(b)(2) is but one piece of the legal tyranny now in place to ensure total corporate control. The corporate state also oversees the most pervasive security and surveillance apparatus in human history. It can order the assassination of U.S. citizens. It has abolished habeas corpus. It uses secret evidence to imprison

dissidents, such as the Palestinian academic Mazen Al-Najjar. It employs the Espionage Act to criminalize those who expose abuses of power. A ruling elite that accrues for itself this kind of total power, history has shown, eventually uses it.

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Chris Hedges spent nearly two decades as a foreign correspondent in Central America, the Middle East, Africa and the Balkans. He has reported from more than 50 countries and has worked for The *Christian Science Monitor*, National Public Radio, The *Dallas Morning News* and The *New York Times*, for which he was a foreign correspondent for 15 years.

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