

File No. 130151

Committee Item No. \_\_\_\_\_

Board Item No. 36

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date February 26, 2013

#### Cmte Board

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|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)



- |                          |                                     |           |
|--------------------------|-------------------------------------|-----------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | H.R. 1540 |
| <input type="checkbox"/> | <input type="checkbox"/>            | _____     |
| <input type="checkbox"/> | <input type="checkbox"/>            | _____     |

Completed by: Joy Lamug

Date February 21, 2013

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Opposing the Indefinite Detention Provisions of the National Defense Authorization Act]

2  
3 **Resolution opposing the indefinite detention provisions of the National Defense**  
4 **Authorization Act, instructing public agencies to decline requests by Federal agencies**  
5 **acting under detention powers, urging law enforcement officials to allow detainees to**  
6 **due process, and requesting members of Congress to repeal the detention provisions**  
7 **of the Act.**

8  
9 WHEREAS, The Constitution of the United States and the California Constitution are  
10 the basis of our representative democracy and reflect protections that no person will be  
11 deprived of life, liberty, or property without due process of the law; and

12 WHEREAS, These founding documents reflect the essential nature of presumed  
13 innocence, the right to a speedy public trial before an impartial jury, and other elements of  
14 effective due process, and a commitment that no person will be exposed to cruel and unusual  
15 punishment; and

16 WHEREAS, The language of Sections 1021 and 1022 of the National Defense  
17 Authorization Act (NDAA) on its face permits indefinite military detention without public trial of  
18 any person, including US citizens on US soil; and

19 WHEREAS, The NDAA could authorize the indefinite military detention of activists,  
20 journalists, lawyers, and other Americans for nothing other than exercising their First  
21 Amendment rights of free speech, assembly, and association, thus chilling speech and  
22 depriving liberty; and

23 WHEREAS, The indefinite military detention of any person without trial violates the  
24 Fifth and Sixth Amendments of the Constitution of the United States, Article III of the  
25 Constitution of the United States; and

1           WHEREAS, The NDAA threatens to eliminate the promise of presumed innocence and  
2 the right to a fair trial; and

3           WHEREAS, The NDAA's detention provisions could allow the recurrence of torture in  
4 military detention in violation of the Eighth Amendment; and

5           WHEREAS, The detention provisions could force US military service members to serve  
6 as domestic jailers, in violation of the Posse Comitatus Act, a role for which they are not  
7 trained nor is ever appropriate; and

8           WHEREAS, The FBI Director, the Defense Secretary, the Director of National  
9 Intelligence, the Department of Defense, and many of our nation's generals, admirals, and  
10 servicemen and women have opposed the NDAA's detentions provisions; and

11           WHEREAS, The City and County of San Francisco is committed to avoid repeating the  
12 tragedies and mistakes of history, including the incarceration of Japanese Americans during  
13 the World War II; and

14           WHEREAS, The families of Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi,  
15 Japanese Americans incarcerated in World War II, filed an *amicus* brief with the U.S. Court of  
16 Appeals for the Second Circuit in *Hedges v. Obama*, a lawsuit that challenges the  
17 constitutionality of the NDAA's detentions provisions, citing that, under the pretense of  
18 national security, the NDAA essentially repeats the decisions in the discredited World War II  
19 legal cases of Korematsu, Yasui, and Hirabayashi, and allows the government to imprison  
20 people without any due process rights for an indefinite time; now therefore, be it

21           RESOLVED, That the City of San Francisco strongly affirms our commitment to the  
22 rights and liberties enshrined within the Constitution of the United State, including the Fifth  
23 Amendment right to due process, the Sixth Amendment right to trial, and the Eighth  
24 Amendment prohibition on cruel and unusual punishment; and, be it,

1 FURTHER RESOLVED, That San Francisco public agencies are instructed to decline  
2 requests by federal agencies acting under detention powers granted by the NDAA or any  
3 authorization of force, that could infringe upon constitutional freedom of speech, religion,  
4 assembly, privacy, or rights to counsel; and, be it,

5 FURTHER RESOLVED, That we ask federal and state law enforcement officials acting  
6 within the City and County of San Francisco to work in accordance with local law, and in  
7 cooperation with the San Francisco Sheriff's Department and San Francisco Police  
8 Department, by allowing any detainees among San Francisco's residents or visitors access to  
9 a trial, counsel, and due process, as provided by Article III of the Constitution of the United  
10 States, the Bill of Rights, and Article I of the California Constitution; and, be it,

11 FURTHER RESOLVED, That the Board of Supervisors asks our U.S. senators and  
12 members of the Congress monitor the implementation of the NDAA and actively work for the  
13 repeal of the NDAA's detentions provisions, to restore fundamental rights and liberties  
14 embodied in the California Constitution and the Constitution of the United States. To that end,  
15 the City and County of San Francisco shall immediately send copies of this resolution to each  
16 of our senators and members of Congress, the US Senate Committee on the Judiciary, the  
17 US Senate Select Committee on Intelligence, the US House of Representatives Permanent  
18 Select Committee on Intelligence, the US Attorney General, and the President of the United  
19 States.

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required by subsection (a), the Comptroller General of the United States shall submit to Congress an assessment by the Comptroller General of the report, including a determination whether or not the report complies with applicable best practices.

## Subtitle D—Counterterrorism

### SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

(a) **IN GENERAL.**—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

(b) **COVERED PERSONS.**—A covered person under this section is any person as follows:

(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

(c) **DISPOSITION UNDER LAW OF WAR.**—The disposition of a person under the law of war as described in subsection (a) may include the following:

(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111-84)).

(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

(4) Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

(d) **CONSTRUCTION.**—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

(e) **AUTHORITIES.**—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

(f) **REQUIREMENT FOR BRIEFINGS OF CONGRESS.**—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be "covered persons" for purposes of subsection (b)(2).

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:   
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor  inquires"
- 5. City Attorney request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

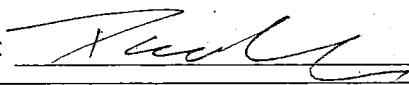
Supervisors Chiu, Avalos, Breed, Campos, Kim and Mar

**Subject:**

Resolution expressing opposition to the indefinite detention provisions of the National Defense Authorization Act.

**The text is listed below or attached:**

See attached

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: