New York state “terror” arrests—test case in attack on rights

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The FBI’s arrest earlier this month of six young Arab-American men in the depressed former steel-making center of Lackawanna, New York has initiated what may become a test case on how far the Bush administration can go in employing extra-constitutional measures in the name of its “war on terrorism.”

The charges against the six men bear the hallmarks of a trumped-up and politically motivated prosecution. Justice Department sources have indicated that the order to make the arrests came directly from the Bush White House and Attorney General John Ashcroft. The men were rounded up just two days after the first anniversary of the September 11 terrorist attacks and shortly after the administration had declared a “Code Orange” terrorist alert.

Administration officials portrayed the arrests as a rare success for US intelligence, the uncovering and apprehension of an Al Qaeda “sleeper cell” that was silently waiting inside the United States for orders to strike. The central allegation is that the defendants attended a training camp run by Al Qaeda in Afghanistan in June 2001.

As facts have emerged about the suspects and the charges against them, it has become increasingly clear that the government’s actions were hardly the coup that Washington had portrayed.

Those thus far charged are Yahya Goba, 25; Sahim Alwan, 29; Faysal Galab, 26; Shafel Mosed, 24; Yasein Taher, 24; and Mukhtar Ali al-Bakri, 22. The first five were picked up in raids in Lackawanna, while Al-Bakri was grabbed by police in Bahrain, the day after his wedding, thrown into jail, beaten up by local police and immediately extradited to the US.

They have all been under investigation since June 2001—three months before the attacks on the World Trade Center and the Pentagon—and several had freely agreed to interviews with FBI agents more than a year ago. Others, though contacted by federal agents, were never even questioned.

One of the six, Sahim Alwan, was well known to the FBI. A former security guard at a local Blue Cross/Blue Shield office, he had assisted the agency in a federal fraud investigation in the late 1990s.

Federal prosecutors have provided no evidence that the six were engaged in a terrorist plot when they were rounded up September 13. The lack of such a charge has created a serious quandary for the federal magistrate who has to rule on whether the six should be released on bail pending their indictment and trial. Federal prosecutors are opposing the granting of bail. No charges have yet been presented to a grand jury.

“I want to know if they are a danger to the community now, not in 2001, now,” Judge Kenneth Schroeder said to the prosecutors, expressing frustration over the government’s failure to spell out any criminal threat posed by the six.

In a protracted bail hearing in the Buffalo federal court, the prosecutor briefly referred to an email sent by one of the men entitled “The Big Meal,” suggesting that he was using secret code to refer to a plot. The man’s attorney pointed out that the reply to the e-mail read: “What are you talking about? What is this meal? I don’t understand anything. Do you mean a hamburger or what?”

Defense lawyers insist that the six men traveled to Pakistan for religious training with the Tablighi Jamaat, an Islamic revivalist movement with millions of devotees in the Middle East and Central Asia.

That such a movement would find converts in Lackawanna is testimony to the decay of the former industrial center, where employers like US Steel and Ford shut down industrial facilities in the 1980s that had attracted earlier generations of immigrants, including Yemenis, who began coming to the area in the 1920s. While 3,000 Yemenis remain in the town of 19,000, there are few decent jobs available to the youth of the community, which has become increasingly ghettoized.

Lawyers for the men state that the six learned of a planned trip across the border to Afghanistan only after they had arrived in Pakistan. The federal prosecutor appeared to confirm this, saying in court that it was in Karachi that one of the defendants was told “of their ultimate destination and he felt as if a shovel hit his head.”

The six are charged under the Antiterrorism and Effective Death Penalty Act (AEDPA), the same draconian statute used against John Walker Lindh after his capture during the US invasion of Afghanistan. Lindh was charged after being captured by US forces in Afghanistan together with a group of Taliban fighters in November 2001. He was accused of violating the antiterrorism act and conspiring to murder

American citizens. He pleaded to two lesser offenses and avoided a trial.

The AEDPA, enacted in 1996 under the Clinton administration, gives the US secretary of state blanket power to label any group in the world as a "foreign terrorist organization" and place on trial anyone who "knowingly provides material support or resources to [it] ...or attempts or conspires to do so..."

While Lindh was charged on the flimsy basis that he fought alongside the Taliban, which in turn was in alliance with Al Qaeda, there is even less substance to the accusations made against the six Arab-American men in Lackawanna.

They are accused of providing "training" and "personnel" for Al Qaeda by attending a camp run by the organization. Only two of the defendants have acknowledged going to the camp in Afghanistan, where the government claims that they were instructed in the use of firearms and heard a speech by Osama bin Laden. Alwan told investigators that he stayed at the camp against his will, feigning an ankle injury and crying to convince its organizers to let him leave.

Under federal trial rules, the testimony of one member of a group of defendants cannot be used against the others in the same trial.

The specific section of the statute used against them was ruled unconstitutional by a federal trial court in a decision upheld by the US Ninth Circuit Court of Appeals. In a case brought by a human rights organization asserting its right to associate with the PKK (Kurdistan Workers Party), the courts found that the words "training" and "personnel" in the statute were unconstitutionally vague.

The law effectively denies the First Amendment rights to freedom of speech and freedom of association, making it possible to criminally charge someone for nothing more than speaking out on behalf of a group placed on the US terrorist list—which has in the past included both the African National Congress and the Irish Republican Army—or associating in any way with its members.

The law as it was written "blurs the line between protected expression and unprotected conduct," the three-judge federal appeals panel ruled. The Bush administration is appealing that decision.

In another ruling in Los Angeles US District Court in June, Judge Robert M. Takasugi threw out charges against six US citizens arrested for raising funds for the Iranian dissident movement, the People's Mujahadin. He described the AEDPA as "unconstitutional on its face," noting that there is no means to challenge the designation of a group as "terrorist."

Judge Schroeder, who is to render a decision on bail in the Lackawanna case by October 3, expressed open skepticism about the government's case. "I haven't heard of any acts of violence or a propensity to acts of violence in the history of these defendants," he said. He went on to question whether the men had "provided" support to Al Qaeda, or had merely "received" it.

The government has failed to produce any evidence "that indicated any one of these defendants planned, organized, discussed, articulated or even thought of doing one single bad act to anyone, whether it be to Americans or someone else," said William Clauss, a federal public defender representing Goba. "If 9/11 means our Constitution has to be set aside because of a speculation of danger, it's not a road we can go down."

The charges against the six men in Lackawanna follow the earlier detention of two other US citizens as "enemy combatants," whom the Bush administration claims it can hold indefinitely without charges, denying them the right to either hearings or legal counsel. Reports have surfaced in the media of plans for detention camps for citizens labeled "enemy combatants," a designation that the administration claims it can make by decree, without any legal recourse for those charged as such.

What began in the wake of September 11 with the mass roundup of some 1,200 immigrants based solely on their ethnic or religious background—none of whom were charged with any terror-related crime—has now developed into a systematic attempt by the administration to utilize extraordinary and extra-constitutional legal powers to lock up US citizens.

The Bush administration is deliberately pursuing its purported "war on terrorism" on two fronts. While preparing a war of aggression abroad, it anticipates growing unrest at home, both in response to war itself and as result of its social policies, the disintegrating economy and the widening chasm between wealth and poverty.

Hence the Justice Department's description of the Lackawanna defendants as members of a terrorist "sleeper cell." The Bush administration claims that many such cells exist within the US, including both citizens and non-citizens. Such allegations are designed to sow fear and panic and create the environment for a political witch-hunt against political opponents of the government.

The use of the 1996 anti-terrorism measure in the Lackawanna case, just as the earlier detention of alleged "enemy combatants," is establishing legal precedents for a wholesale abrogation of fundamental democratic rights and the unleashing of unprecedented state repression.