Bush signs Military Commissions Act authorizing police-state tribunals, torture

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18 October 2006

President Bush signed the Military Commissions Act into law Tuesday morning, establishing a system of military tribunals to try prisoners designated as "unlawful enemy combatants." This category will include both those now imprisoned at Guantanamo Bay and anyone else, citizen or non-citizen, whom the Bush administration so designates.

The most sweeping legal change wrought by the act is to eliminate the habeas corpus rights of any non-citizen seized by the US government and imprisoned as an "unlawful enemy combatant." These individuals will have no right to a judicial hearing to examine whether there is sufficient evidence to warrant their detention.

Habeas corpus is the most elementary defense against arbitrary state action, and it has never been permanently repealed for any section of the American population—until now. This action, a blatant defiance of the Constitution as well as the Supreme Court's decision last June in *Hamdan v. Rumsfeld*, was approved by the Senate and House of Representatives last month, with significant numbers of Democrats joining a near-unanimous Republican majority.

In his remarks at the signing ceremony, Bush gave first place to the bill's authorization of CIA interrogations of prisoners using methods not permitted by the Geneva Conventions, calling it a "vital tool to protect the American people for years to come." He was referring to a provision that gives a green light to CIA torture of prisoners and retroactively legalizes the torture committed by CIA operatives from 2001 to 2005.

Bush declared that the bill would make it possible to put on trial the Al Qaeda operatives currently in US custody, like Khalid Sheikh Mohammed, whom the administration says orchestrated the terrorist attacks of September 11, 2001. He did not discuss the fact that Mohammed, Ramzi bin al-Shidh and other suspected Al Qaeda figures have been in US hands for several years. The main barrier to their trial was that their purported confessions, extracted after lengthy CIA torture including water-boarding, would not be admissible as evidence in any court in the world.

So long as they could be held indefinitely in secret CIA prisons, the Bush administration was not unduly concerned that the alleged perpetrators of 9/11 were not being prosecuted. This only became an issue after the existence of the CIA prisons was made known through leaks to the *Washington Post*, and the European Union began an investigation into CIA flights to move the prisoners into and out of prisons in the EU. Then came the Supreme Court's *Hamdan* decision, which restated the primacy of constitutional rights such as habeas corpus over Bush's claim of unlimited authority for the "commander-in-chief."

In his signing statement, Bush portrayed the issue of CIA interrogation techniques as one of legal complexity. The new law "allows for the clarity our intelligence professionals need to continue questioning terrorists and saving lives." In actuality, the "clarity" provided by the bill is an amnesty for the past actions of CIA torturers and a green light for similar actions in the future.

Bush claimed that the CIA interrogations had disrupted dozens of terror plots and "saved American lives." These claims have the most dubious credibility. None of the plots to which he referred has resulted in a prosecution of a single terrorist, nor has there been any independent confirmation of the existence of these plots.

Bush also claimed that the military commissions which are the centerpiece of the bill "will provide a fair trial, in which the accused are presumed innocent, have access to an attorney, and can hear all the evidence against them." These claims are a mixture of half-truths and outright lies.

* The trials will be patently unfair, permitting evidence extracted by torture as well as hearsay testimony.

* The accused are not really presumed innocent, since all defendants will have the status of "unlawful enemy combatants," making them presumptively guilty of taking up arms against the United States.

* The attorneys will be military officers under the discipline of the commander-in-chief, and they will have in front of them the example of Commander Charles D. Swift, the military attorney for Guantanamo prisoner Salim Hamdan. Two weeks after winning a victory for his client in the Supreme Court, Swift was denied promotion and compelled to end his military career.

* As for hearing all the evidence, this is a lie. In the case of classified materials, the prisoners will be allowed only an unclassified summary, forcing them to defend themselves against secret evidence.

The most cynical pretense is Bush's closing comment that "in memory of the victims of September the 11th, it is my honor to sign the Military Commissions Act of 2006 into law." In reality, this law has nothing to do with avenging the deaths of the innocent victims of 9/11 or punishing those responsible for that act of mass murder.

There has still been no serious investigation of the events of 9/11, and particularly of the role of US intelligence agencies.

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Reports continue to emerge—as in the recent book by Bob Woodward—of a deliberate policy on the part of the administration of refusing to heed warnings of an imminent terrorist attack during the summer of 2001. The most plausible explanation is that the Bush administration permitted or directly facilitated a terrorist attack so that it would have the necessary pretext to swing public opinion behind its planned campaign of military aggression in the oil-rich regions of the Persian Gulf and Central Asia.

The White House orchestrated the timing of the signing ceremony with an eye to the November 7 elections, seeking to portray those Democrats who voted against the law as "soft on terrorism." The McCarthy-style smears poured out of the White House, the Republican congressional leadership and the Republican campaign machine.

Bush himself took an indirect approach, declaring at the ceremony, "Every member of the Congress who voted for this bill has helped our nation rise to the task that history has given us. Some voted to support this bill even when a majority of their party voted the other way."

House Speaker Dennis Hastert, eager for a diversion from his involvement in the cover-up of the behavior of Republican Congressman Mark Foley, denounced the slightly less draconian alternative offered by his Democratic opponents, saying, "The Democratic plan would gingerly pamper the terrorists who plan to destroy innocent Americans' lives." The Republican National Committee, within minutes of the signing of the bill, issued a press release headlined, "Democrats Would Let Terrorists Free."

While a group of religious pacifists staged a protest outside the White House, shouting "Bush is the terrorist," and "Torture is a crime," and about 15 were arrested, the Democratic Party in no way shares such concerns about the implications of the new law for democratic rights. Although the Military Commissions Act is the most fundamental assault on constitutional rights enacted by Congress in at least a century, Senate Democrats made a calculated decision to allow the bill to become law, refusing to mount a filibuster, which could have been sustained by the votes of 40 senators (the Democrats now hold 44 seats, and one independent votes with them.)

More fundamentally, every leading Democrat accepts the framework of the Bush administration's "war on terror," in which democratic rights and constitutional norms must be sacrificed in the interests of an indefinite struggle in which the entire world is the battlefield. On this basis, the Bush administration can justify any crime, from the invasions of Afghanistan and Iraq, to its support for the Israeli war in Lebanon, to new wars against Iran, Syria or North Korea.

In the three weeks since the passage of the Military Commissions Act, further information has come to light on the arbitrary character of the arrests and detentions that brought prisoners to Guantanamo, and on the sweeping scale of the attack on democratic rights that has accompanied the Bush administration.

On October 15, press reports detailed the plight of Abdul Rahim al Ginco, a college student from the United Arab Emirates who had been imprisoned by the Taliban and tortured by Al Qaeda while visiting Afghanistan in 2000. He was freed from the Taliban prison only to be seized by the American military and, as an Arab found in Afghanistan, presumed to be an Al Qaeda operative and shipped to Guantanamo, where he remains after five years.

The same day, the *Los Angeles Times* reported that the US Marine Corps has sought to silence two members of the military legal team representing a Guantanamo Bay prisoner because they have spoken publicly about reports of prisoner abuse by guards at the base. The gag order was issued against Lt. Col. Colby Vokey and Sgt. Heather Cerveny by the chief defense counsel of the Marine Corps, a Marine spokeswoman revealed.

On October 13, the *New York Times* reported that internal military documents, obtained by the American Civil Liberties Union under a Freedom of Information Act lawsuit, showed that military officials had labeled antiwar activities within the United States as "potential terrorist activity."

The activities cited included a "Stop the War Now" rally in Akron, Ohio in March 2005. An internal military report in May 2005 on antiwar actions at the University of California, Santa Cruz, flatly asserted that "the Students for Peace and Justice represent a potential threat to D.O.D. (Department of Defense) personnel."

Material suggesting that antiwar activities posed the threat of criminal terrorism "were widely shared among analysts from the military, the Federal Bureau of Investigation and the Department of Homeland Security," the *Times* reported.

The implication of such reports is clear: plans are well under way, in the Bush administration and the military and intelligence agencies, to criminalize political dissent and treat those who oppose the US wars in Iraq and Afghanistan, and those who defend democratic rights, as potential terrorists, who can be branded as "unlawful enemy combatants," arrested, and locked away in a new American gulag.

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