

The specter of a police state

## Bush administration considered using military to arrest “Lackawanna Six”

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The Bush administration considered using the military to arrest six US citizens in Lackawanna, New York, in September 2002. While the proposal was ultimately rejected, the discussion was part of a concerted effort to expand the use of the military within the United States in violation of domestic law and the Constitution.

The so-called “Lackawanna Six” were a group of naturalized citizens of Yemeni descent who were alleged to have attended an al Qaeda training camp in Afghanistan in the summer of 2001. They had been monitored by US intelligence for over a year before their arrest, and several had given interviews to the FBI.

There is no evidence that they were planning any action or posed any threat. However, the US government used their arrest—shortly after the first anniversary of the September 11 attacks—to trumpet the danger of “home grown” al Qaeda cells. The six ultimately pleaded guilty under the threat of being declared “enemy combatants.”

According to a *New York Times* article on Saturday citing unnamed officials, Vice President Dick Cheney, his legal advisor David Addington, and “some senior Defense Department officials” argued that the military should be brought in to make the arrests.

The *Times* notes: “A decision to dispatch troops into the streets to make arrests has few precedents in American history...The Fourth Amendment bans ‘unreasonable’ searches and seizures without probable cause. And the Posse Comitatus Act of 1878 generally prohibits the military from acting in a law enforcement capacity.”

According to the *Times*, several leading figures in the administration opposed the use of the military, including Condoleezza Rice, then the national security adviser; Robert Mueller, director of the FBI; and Michael Chertoff, then the head of the Justice Department’s

criminal division. Details of the discussions are unclear, but the administration ultimately decided to use the FBI to make the arrests.

The Lackawanna Six posed no immediate threat, and even FBI officials in charge of the investigation said that they were 99 percent certain that if the individuals involved actually did plan some action, they could be easily stopped. The push to use the military was therefore motivated by other concerns.

One reason was that the case against the six young men was so thin that a trial against them could never succeed. The *Times* notes, “Cheney, the officials said, had argued that the administration would need a lower threshold of evidence to declare them enemy combatants and keep them in military custody.”

More fundamentally, however, administration officials sought to use the case as a precedent for unconstrained presidential powers. According to the *Times*, Cheney and his supporters cited a memorandum written by top Justice Department lawyers arguing that the “war on terror” allowed the president to deploy the military within the United States.

Deputy Assistant Attorney General John Yoo and Special Counsel Robert Delahunty argued that the Posse Comitatus Act and Constitutional rights could not restrict domestic use of the military.

According to Yoo and Delahunty, “Article II of the Constitution, which vests the President with the power to respond to emergency threats to national security, directly authorizes use of the Armed Forces in domestic operations against terrorists.” These operations would be military actions, falling under the president’s unlimited powers as Commander in Chief of the Armed forces, they argued.

Not only does the Posse Comitatus Act not

apply—because the “war on terror” is not a “law enforcement” situation—but the military would also not be constrained by Fourth Amendment requirements to demonstrate probable cause and obtain a warrant. These constraints are “unsuited to the demands of wartime and the military necessity to successfully prosecute a war against the enemy,” they argued.

The authors went on to declare, “First Amendment speech and press rights may also be subordinated to the overriding need to wage war successfully.”

“Unfortunately, the terrorist attacks of September 11 have created a situation in which the battlefield has occurred, and may occur, at dispersed locations and intervals within the American homeland itself. As a result, efforts to fight terrorism may require not only the usual wartime regulations on domestic affairs, but also military actions that have normally occurred abroad.”

That is, the attacks of September 11 justify the creation of a military-police state in the United States.

(The full memo is one of those officially disowned by the Bush administration in its last days in office. It is available here: “Authority for Use of Military Force to Combat Terrorist Activities Within the United States”)

The discussions over the Lackawanna Six came as part of a whole series of measures aimed at expanding military authority in the United States.

The memo on the domestic use of the military was part of a series of memos that argued for unlimited powers for the president in prosecuting the “war on terror”—including domestic spying, indefinite detention, torture, and other anti-Constitutional measures.

Shortly after the September 11 attacks, the administration set up a “shadow government” of executive branch officials under the control of Cheney, supposedly to take over in the event of a catastrophic attack. According to media reports in March 2002, the administration placed the Delta Force special operations unit on standby to engage in operations in the Washington area.

In June 2002, Jose Padilla, a US citizen arrested in Chicago in May, was declared an “enemy combatant” and transferred to a US naval brig in South Carolina where he says he was tortured over a period of three years. The government was able to secure plea deals by threatening the Lackawanna Six with a similar fate. “We had to worry about the defendants being whisked out of the courtroom and declared enemy combatants if the case started going well for us,” Patrick Brown, attorney for one of the six, said at the time.” So we just ran up the white flag and

folded.”

On October 1, 2002, the military formally established US Northern Command, which for the first time coordinated military actions within the United States. In July 2002, the future head of Northern Command advocated giving greater domestic powers to the military.

In October 2002, military spy planes were deployed over Washington as part of a manhunt for a sniper—a clear violation of the Posse Comitatus Act.

The Lackawanna case was considered a possible test run for deploying military forces on the streets of an American city, arresting US citizens on trumped up charges, declaring them enemy combatants and holding them indefinitely.

These plans were continued in the following years. In 2005, the military began developing war plans for operations within the United State. In 2006, a military funding bill included language to amend the Posse Comitatus Act to allow for domestic use of the military in case of emergency or “other conditions in which the president determines that domestic violence has occurred to the extent that state officials cannot maintain public order.” In 2008, the military deployed the first active duty Army combat unit for use in the United States.

These revelations once again call into question the official explanation for the events of September 11. Whatever the level of government involvement in these attacks, they were quickly seized upon to implement vast changes long-desired by the ruling elite, including a massive attack on democratic rights. These measures can be employed against any mass opposition to the policy of the American financial elite.

The threat to democratic forms of rule in the United States is no less grave under the Obama administration than it was under Bush. None of the basic policies implemented by Bush have been reversed, nor has there been any change in the enormous power exercised by the military over domestic politics.



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