

On eve of January 6 attack, Trump lawyers drafted order requiring military to seize ballots

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On Friday, *Politico* published the full text of a draft executive order written by Donald Trump's attorneys that would have deployed the military and National Guard across the country to seize millions of ballots cast by voters in the 2020 general election.

An analysis of the draft order makes clear: this was a charter for presidential dictatorship. It would have declared a state of emergency, suspended democratic rights, disenfranchised the electorate and placed the country under military rule.

The draft order, entitled "Presidential findings to preserve collect and analyze national security information regarding the 2020 general election," is based on the big lie that the 2020 election was stolen by Joe Biden and "foreign adversaries," and that millions of ballots were fraudulently cast for Biden with the aid of voting device manufacturers like Dominion Voting Systems.

Citing "evidence of international and foreign interference in the November 3, 2020 election," the draft would have ordered the military to deploy across the country to "immediately...seize, collect, retain and analyze all machines, equipment, electronically stored information, and material records" related to the election. This would have required the suspension of *posse comitatus*, the democratic principle that the military may not conduct domestic law enforcement. The military would have then been used to crush social protests and arrest opponents.

Anticipating the prospect of Democratic governors ordering state National Guard to protect ballots, the order would have given Acting Secretary of Defense Christopher Miller the power to federalize the National Guard "by name or by unit," language indicating that Trump planned to take control of the guard in states with Democratic governors, or to federalize units loyal to him in those states.

The draft order would have then mandated Trump's loyal, far-right Director of National Intelligence John Ratcliff to assess whether the election was stolen, within seven days of

the issuance of the order, an assessment pre-ordained to reach Trump's desired conclusion.

This finding would then be presented as the conclusion of "the intelligence community," at which point the order would have established a special counsel to "oversee this operation and institute all criminal and civil proceedings as appropriate based on the evidence collected and provided all resources necessary" to crack down on Trump's opponents. This would be the extra-judicial mechanism Trump would have used to prosecute, jail or execute Democratic lawmakers and political opponents on charges of sedition and treason. Given that the plan revolved around a claim of foreign election interference, the suppression of domestic opposition would likely have been combined with foreign military adventures.

As legal authority for such extraordinary measures, the order cites executive orders and statutes granting the president and intelligence agencies dictatorial power under a state of emergency.

It cites Executive Order 12333, a Reagan-era order granting the executive branch nearly unlimited power to spy on the population. Executive Order 12333 served as the basis for the mass NSA surveillance revealed by Edward Snowden. Trump's order also cites National Security Presidential Memo 13, a classified memo (the exact contents of which are not known) giving the military the power to undertake cyber warfare operations without pre-approval, and National Security Presidential Memo 21, which is so secret that its existence "has not been publicly reported," *Politico* wrote. These memos indicate that Trump was planning to order the Pentagon to shut down or censor the internet and/or television stations.

For statutory authority, the draft order cites the National Emergencies Act (NEA) and the International Emergency Economic Powers Act (IEEPA). The NEA allows the president to declare a state of national emergency and exercise unchecked executive authority. This law served as

the pseudo-legal authority for the Reagan administration's plans to implement Rex84, which would have suspended the Constitution and allowed for the indefinite detention of "subversives." The IEEPA grants the president the power to declare national emergencies in response to an "unusual and extraordinary threat to the national security" and to seize assets and confiscate the property of individuals and organizations whom the president declares are engaged in that threat.

The publication of this draft order makes Trump's strategy from November 3, 2020 through January 6, 2021 clearer. The draft order is dated December 16. Two days earlier, on December 14, electors met in the state capitals and formalized slates to be sent to Washington D.C. for the formal counting of the Electoral College on January 6.

CNN reported last week that Rudy Giuliani was leading efforts in seven battleground states to mobilize Republican state legislatures to approve slates of Trump electors to send to Washington on January 6. "Giuliani and his allies coordinated the nuts-and-bolts of the process on a state-by-state level," CNN reported, citing a source who said, "there were multiple planning calls between Trump campaign officials and GOP state operatives." Trump "lined up supporters to fill elector slots, secured meeting rooms in statehouses for the fake electors to meet on December 14, 2020, and circulated drafts of fake certificates that were ultimately sent to the National Archives."

When the state legislatures in question failed to elect alternate slates on December 14, the Trump campaign resorted to its next options. The draft executive order on ballot seizures was the most extreme version. If this was not ordered at the time, it was because the coup plotters were not certain of their support from within the military.

With the ballot-seizing executive order in his pocket, Trump and his advisors planned to disrupt the certification of the Electoral College in Washington on January 6. Their plan contained three possible routes to success.

First, Vice President Mike Pence could decide to reject the legitimate slates in states Biden won. Second, the Supreme Court could intervene to postpone the certification. To this end, on January 5 Trump lawyer Sidney Powell filed a request to Justice Samuel Alito asking him to issue an injunction halting proceedings on January 6 on a legal technicality. Third, a combination of Republican legislators and demonstrators could delay the certification of the Electoral College past January 6. In all three scenarios, a delay would be created, throwing the election to the House of Representatives, with one vote per state delegation and Republicans controlling the majority.

On January 6, all three scenarios were in play. The first scenario failed when Pence refused to support Trump's plot

and announced he would certify the lawful slates. The second scenario was not at all a long shot and would have only required the support of one justice, the reactionary Bush-appointee Alito.

Throughout January 5 and 6, Alito refused to deny Powell's request for a delay in the certification. Powell herself later acknowledged that Alito's delay forced Pelosi to reconvene the joint session on the night of January 6. This was not merely a symbolic move, as was reported in the media. "She got notice when we made our filing," Powell said. "She had to speed up reconvening Congress to get the vote going before Justice Alito might have issued an injunction." It was not until the morning of January 7, after the coup had clearly failed, that Alito formally denied Powell's request.

The third scenario, based on legislative delay and violent demonstration, took place in full view and came breathtakingly close to succeeding. The mob, spearheaded by armed assault teams of fascist Oath Keepers, was prepared to kidnap Democrats, and postpone the certification by force. This plan failed solely due to operational shortfalls, with Pence and congressional Democrats escaping with seconds or minutes to spare. The Democratic Party took no action to oppose an attempt at dictatorship out of fear that alerting the population to the danger of dictatorship would trigger massive social upheaval across the country.

January 6 exposed the rot at the core of the American political system. Democracy cannot survive in a society so riven by inequality, where the country's resources are hoarded by a tiny financial aristocracy that controls the political system and both right-wing parties. Thirty years of permanent war have poisoned the political climate to such an extent that fascist trash like Trump and his advisers could occupy the commanding heights of state power. Although their plot failed on January 6, the chief conspirators are free to plot their next moves. The urgent defense of democracy from the threat of dictatorship requires the revolutionary mobilization of the international working class against the source of fascism: the capitalist system.



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