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The National Emergencies Act was passed in 1976. It has been extended six times. In 2007, the declaration was strengthened with the issuance of National Security Presidential Directive 51 (NSPD-51) which gave the president the authority to do whatever he deems necessary in a vaguely defined "catastrophic emergency" including everything from canceling elections to suspending the Constitution.

NSPD-51 (National Security and Homeland Security Presidential Directive) is unconstitutional. It was created on May 4, 2007, as a "presidential directive" (bypassing Congress) and signed by George W. Bush. It claims the power to execute procedures for continuity of the federal government in the event of a "catastrophic emergency." Such an emergency is construed as "any incident, regardless of location, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the U.S. population, infrastructure, environment, economy, or government functions." In other words, it is a martial law directive. On May 10, 2007, The Washington Post characterized NSPD-51 as a "shadow government" directive.

The John Warner National Defense Authorization Act (NDAA) for Fiscal Year 2007 states that the military may be used during a "national emergency." Sec 1076 is extremely explicit, notes Michel Chossudovsky, and "virtually creates a Pinochet style environment for the mass arrest of political dissidents without trial, the storming of public rallies, etc." NDAA specifically mentions "epidemic" as an excuse to declare martial law.