



# Federal Troop Deployments to Quell Civil Unrest: From Tabletop Exercises to Reality

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### **Executive Summary**

On June 7, 2025, President Donald Trump issued a presidential memorandum calling into federal service at least 2,000 National Guard personnel for “60 days or at the discretion of the Secretary of Defense” for the temporary protection of U.S. Immigration and Customs Enforcement (ICE) and other U.S. government personnel performing federal functions, and to protect federal property.<sup>1</sup> Following the issuance of this memorandum, Secretary of Defense Pete Hegseth deployed a total of roughly 4,000 California National Guard troops and another 700 Marines to Los Angeles to carry out the protective purposes specified in the presidential memorandum. The authority for the federalization, 10 U.S.C. § 12406, was a rarely used statute last invoked by President Richard Nixon during a New York postal strike to ensure the continuation of mail delivery. Immediately following the deployment, the state of California sued the Trump administration. On August 13, for the first time in history, the trial over the National Guard deployment and possible violations of the Posse Comitatus Act (PCA) concluded, and a decision is pending.

The week of August 11, President Trump exercised his unique powers over the District of Columbia, deploying the D.C. National Guard and hundreds of law enforcement agents and taking control of the city’s police force. The administration described it as an effort to combat a “crime emergency” and to engage in “beautification” of the district. The president has threatened to take similar actions in other cities. Overall violent crime in the district hit a 30-year low in 2024 and has continued to decrease by an additional 26 percent in 2025. A week before President Trump’s

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<sup>1</sup> “Department of Defense Security for the Protection of Department of Homeland Security Functions,” June 7, 2025.

takeover of the D.C. police, the FBI reported that 2024 crime in the United States was at the lowest level since 1963.<sup>2</sup>

The federalization of National Guard troops for the purpose of suppressing crime and disorder, civil dissent, and unrest brings with it myriad legal complexities. In two tabletop exercises conducted in the fall of 2024, the University of Pennsylvania's Center for Ethics and the Rule of Law (CERL) addressed precisely the scenario that is now playing out in California, based on predictions of the challenges that lay ahead for the U.S. military and civilian populations in the new administration. This report brings up to date the results of CERL's predictive tabletop exercises, in which participants navigated the legal and operational challenges facing our country at present. In documenting how events unfolded when simulating conditions like those today, our hope is this report can serve as a guide as to what to expect in the coming weeks and months.

## Introduction

This past year, the Center for Ethics and the Rule of Law (CERL) at the University of Pennsylvania hosted several workshops, tabletop exercises, and symposia focused on threats to the rule of law and national security.<sup>3</sup> These events, featuring leading academics and practitioners, including members of CERL's Affiliated Faculty, Executive Board, and Advisory Council, addressed a range of challenges to democratic governance and national security law in today's political and technological landscape, focusing on attacks on central nonpartisan institutions that maintain U.S. democracy and how these challenges are reshaping the foundations of democratic governance and the rule of law in the United States. The emerging consensus arising from these events was that democracy and the rule of law in the United States are under greater strain than at any other point in the nation's recent history.

A central issue CERL and other partner institutions discussed with renewed focus during the presidential transition took center stage this month, namely **military aid to civilian law enforcement, particularly for the purpose of suppressing civil unrest**. The simulations and hypotheticals we ran as part of CERL's tabletop exercises are now unfolding before our eyes. It is essential to take stock of the lessons learned from those simulations, as they have been critical in predicting the course that Department of Defense has followed to date.

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<sup>2</sup> FBI Crime Data Explorer (2025), *Aggravated Assault Reported by Population*, "FBI Crime Data Explorer [Data set]". <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime-crime-trend>

<sup>3</sup> See "National security and legal experts stress measures to safeguard democracy and the rule of law in run-up to Election Day," Center for Ethics and the Rule of Law, October 22, 2024. <https://www.penncerl.org/news/national-security-and-legal-experts-stress-measures-to-safeguard-democracy-and-the-rule-of-law-in-run-up-to-election-day/>; See also "Penn CERL holds public symposium on threats to the rule of law and U.S. democracy," Center for Ethics and the Rule of Law, May 1, 2025. <https://www.penncerl.org/news/penn-cerl-holds-public-symposium-on-threats-to-the-rule-of-law-and-u-s-democracy/>

On Saturday, June 7, 2025, one day after federal law enforcement agents clashed with protesters near an immigration detention center in downtown Los Angeles, the president issued a memorandum in which he federalized "at least 2,000 National Guard personnel" and "any other members of the Armed Forces as necessary to augment and support the protection of Federal functions and property in any number determined appropriate."<sup>4</sup> The federalization included over 4,000 National Guard and 700 U.S. Marines. As of the time of this report, all but 300 National Guard members have been removed. He directed these service members of the California National Guard, now under his command, to support Department of Homeland Security activities in and around Los Angeles. Confrontations, initially confined to a narrow section of the city, spread to other parts of downtown, and related protests emerged across the country, including in Seattle, Chicago, New York, Las Vegas, and Washington, D.C.<sup>5</sup> Given the federal response, small-scale, non-violent protests began to turn violent.

On Sunday, June 8, 2025, officers from the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and the Los Angeles Police Department fired tear gas and crowd-control munitions at the protesters in clear escalation. National Guard troops were deployed and present, but they appeared to largely refrain from engaging with the demonstrators. There was evidence that a dozen National Guard members, along with Department of Homeland Security personnel, clashed with a group of demonstrators on Sunday.

The *New York Times* and other media outlets reported that "it was not immediately clear what prompted the escalation," as the protests had appeared to be peaceful up to that point.<sup>6</sup> President Trump said that any protest or acts of violence that impeded the carrying out of orders of deportation by immigration officials would be considered a "form of rebellion." President Trump claimed that the city had been "invaded and occupied" by "violent mobs" engaging in "riots" and looting. He asserted that "violent, insurrectionist mobs were swarming and attacking federal agents." The Secretary of Defense said that the Marines were on "high alert." California officials disputed the veracity of those statements and the necessity of the military presence, given the limited scope of the protest. The state claimed that the purpose of the deployment was "purposefully inflammatory," as there was close law enforcement coordination and "no unmet [public safety] need."

On Sunday, June 8, 2025, Governor Newsom officially requested that the presidential order be rescinded, arguing that the deployment was a breach that seemed "intentionally designed to inflame the situation." The governor accused the Trump administration of a "serious breach of

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<sup>4</sup> Presidential Memoranda, "Department of Defense Security for the Protection of Department of Homeland Security Functions," (2025). <https://www.whitehouse.gov/presidential-actions/2025/06/department-of-defense-security-for-the-protection-of-department-of-homeland-security-functions/>

<sup>5</sup> Amy O’Kruk et al., "Maps: Visualizing the anti-ICE protests and government responses," CNN, June 13, 2025, <https://www.cnn.com/us/maps-ice-trump-protests-dg>

<sup>6</sup> Rick Rojas et al., "Tensions Flare Between Protesters and Law Enforcement in L.A.," *The New York Times*, June 9, 2025, <https://www.nytimes.com/live/2025/06/08/us/la-protests-national-guard>



state sovereignty" for ordering members of the California National Guard to help gain control over demonstrations against an immigration crackdown. Contrary to the widespread riots of 1992, this was the only other time that the National Guard was seen patrolling Los Angeles streets. On that occasion, the National Guard had been requested by state and local officials. After weeks of unprecedented litigation, the trial questioning the legality of the deployment and violations of the 1878 Posse Comitatus Act (PCA) concluded on August 13, 2025.<sup>7</sup>

## Scenarios of Civil Unrest

The emerging and changing situation in the streets of the second-largest American city and the deployment of National Guard troops to the District of Columbia were scenarios anticipated and examined in detail by CERL. On April 11, 2024, a CERL event entitled "Symposium on Threats to the Rule of Law and National Security" addressed, among other topics, the use of the military since President Trump took office, declaring a state of emergency and deploying USNORTHCOM to support U.S. Customs and Border Protection.<sup>8</sup>

Panelists discussed the potential erosion of traditional restrictions on the use of the military, such as threats to the PCA, and the evolving relationship between the military and civilian law enforcement. Experts identified the legal and operational issues surrounding President Trump's plan to use the military to police protests and demonstrations. The panel noted that this was not the first time President Trump had deployed the military or federal agents to chill protests activity.

In May, Professor Finkelstein published a paper with the Center for a New American Security on the need to protect the integrity of the National Guard in which I evaluated ongoing proposals for state enforcement of the PCA.<sup>9</sup> That Act dictates a clear separation between military operations and law enforcement activity. In a handful of incidents throughout U.S. history, the National Guard has been called out to address civilian unrest. Deployments of the National Guard in its federalized capacity are usually preceded by a request for additional support from state and local law enforcement. President H. W. Bush called up the National Guard to suppress riots in Los Angeles after the Rodney King verdict in 1992, following a request from Governor Pete Wilson and Mayor Tom Bradley. Yet National Guard troops are rarely federalized and traditionally remain under the control of state governors, either under State Active Duty (SAD) status or under Title 32. The PCA

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<sup>7</sup> Katrina Kaufman and Jordan Freiman, "Trial over California National Guard deployment concludes as judge questions limits of president's authority," CBS News, August 14, 2025. <https://www.cbsnews.com/news/national-guard-los-angeles-deployment-trial-day-3/>

<sup>8</sup> Center for Ethics and the Rule of Law, "Penn CERL holds public symposium on threats to the rule of law and U.S. democracy," May 1, 2025, <https://www.penncerl.org/news/penn-cerl-holds-public-symposium-on-threats-to-the-rule-of-law-and-u-s-democracy/>

<sup>9</sup> Claire Finkelstein, "Protecting the Integrity of the National Guard: Considering Proposals for State Enforcement of the Principle of Posse Comitatus," Center for a New American Security, May 20, 2025, <https://www.cnas.org/publications/commentary/protecting-the-integrity-of-the-national-guard>

does not apply when the Guard is deployed in either of its state-led capacities. By contrast, when the National Guard is federalized under Title 10, the PCA applies the vast majority of the time. This gives the federal government every incentive to attempt to deploy the Guard in its state capacity—under either its SAD status or under Title 32.

In the run up to the 2024 presidential election, CERL held two tabletop exercises in which over 30 high-ranking retired military leaders, state and local officials, national security experts, and civil society leaders gathered to address specific scenarios. One scenario involved the possibility that a president would seek to deploy U.S. Armed Forces domestically to quell civil unrest. Although the scenario occurred in Pennsylvania, the findings that emerged from these exercises have broad applicability to other states and cities across the country. CERL subsequently issued a detailed after-action report—a report of particular importance in view of current developments.<sup>10</sup>

The tabletop and subsequent report identified legal and operational shortcomings inherent in the United States' preparedness to address civil unrest. It also considered key points of vulnerability within U.S. legal structures and practices that enable misuse of the military chain of command, risking its integrity. The goal was to explore a scenario that tested the misuse of the military and the chain of command in the face of domestic deployment in support of civilian law enforcement authorities. The exercise aimed to challenge participants to identify legal and practical vulnerabilities and propose solutions that would enhance operational readiness and mitigate the impact of interference with democratic governance and the rule of law.

The exercise simulated the deployment of law enforcement and active-duty U.S. military personnel in support of civil authority to suppress civil unrest, whether factual or pretextual. Participants were presented with seemingly conflicting legal authorities in a complex legal and moral environment. The hypothetical scenarios called on participants to address the nuances of decision-making in such contexts under a series of unprecedented yet realistic circumstances. Participants had the opportunity to test various aspects of decision-making involving the federal military, the National Guard, and state and local police, with the intention of quelling protests and public disorder.

As part of the exercise, participants assumed hypothetical positions in a variety of organizations and legal authorities, including the federal executive branch, various state National Guards, and federal and local law enforcement agencies. The overwhelming lesson from the two days of tabletop exercises was that civil unrest was a realistic, if not likely, possibility, and that federal, state, and local authorities were inadequately prepared for a scenario of mass civil unrest that could easily result from disinformation. The group concluded that leaders at all levels of government should prepare to counter threats to the rule of law that stem from the potential misuse of the

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<sup>10</sup> “Democracy on the Front Lines: An After Action Report on Tabletop Exercises to Assess the Risk of Civil Unrest and Threats to the Rule of Law in the 2024 Presidential Election,” Center for Ethics and the Rule of Law, October 22, 2024, <https://www.pennncerl.org/files/democracy-on-the-front-lines-an-after-action-report-on-tabletop-exercises-to-assess-the-risk-of-civil-unrest-and-threats-to-the-rule-of-law-in-the-2024-presidential-election/>

military. A primary takeaway from the exercises was that there are numerous vulnerabilities stemming from unresolved points of state and federal law and that, in the face of an emergency involving massive civil unrest, federal and state courts would likely not have the ability to resolve critical ambiguous points of law, given the time frame involved and the fact that most judges would be reluctant to engage with the merits of orders to military assisting civilian authority.

The full-day tabletop exercise assessed how state and local authorities, as well as civic leaders, might respond if the administration sought to use the U.S. military illegally for domestic law enforcement purposes. In the hypothetical scenario we considered, the president decided to deploy the National Guard to suppress protests and mass demonstrations in an urban environment in response to a specific political and policy decision. The scenario unfolded as follows.

*The president implements a controversial policy in a state and city where he lost the popular vote. Largely peaceful protests ensue, though there is some unrest at the margins of the otherwise peaceful assemblies. The president declares the demonstrations to be out of control, which in turn prompts larger protests against both the administration's policy and federal efforts to suppress dissent. Within days, violence and looting erupt around the city as initially peaceful protesters, law enforcement officials, and some counter-protesters clash. The president now claims that the local and state police have lost control over the city.*

*Under this scenario, the president calls on the governor of that state—for the purposes of CERL's exercise, Pennsylvania—to act more decisively and deploy the National Guard, but he refuses. In response, the president federalizes the National Guard and sends them to the city. Initially, the president does not invoke the Insurrection Act, but that soon changes. The governor objects and states that the president has breached the PCA, accusing the president of attempting to commandeer the National Guard and suppress the First Amendment rights of those opposing his policies.*

*The governor files a lawsuit against the president in the Federal District Court, seeking an injunction to halt the president's use of federalized National Guard troops. He argues that the president's use of Section 253 of the Insurrection Act in this context is both unauthorized by the statute and unconstitutional, given that it is being asserted against the stated opposition of state and local leaders and that it violates the anti-commandeering doctrine established in the Tenth Amendment of the U.S. Constitution and *Murphy v. National Collegiate Athletic Association*, 584 U.S. 453 (2018). He urges the National Guard to ignore the president's orders. The governor and president continue to issue conflicting declarations about whose control the National Guard falls under and to disregard the instructions of the other. The National Guard requests clarification of command and joins the governor's suit.*

*Armed groups of extremists arrive in this city in large numbers and begin confronting protestors. The president attempts to call out National Guards from neighboring states and declares a national emergency to justify deploying the Army against the governor, the local National Guard, and the original protesters. He orders the head of the local National Guard to answer to the authority of the Army command. Some within the ranks of the local National Guard declare allegiance to the governor, which the president declares seditious; he invokes the Insurrection Act to deploy the federal military against the National Guard. Command disruption and jurisdictional conflicts result in the potential for violence to break out between different law enforcement entities, the National Guard, and the Armed Forces.*

The goal of the exercise was to identify vulnerabilities in the military's chain of command and to develop strategies to ensure that military responses to illegal orders align with democratic values. Key questions addressed in this exercise included:

1. What if there is a conflict between the president and a governor about deployment and use of the National Guard?
2. How would the militia and the Armed Forces respond to potentially illegal orders concerning civil law enforcement?
3. What is the likely impact of the U.S. Supreme Court Immunity Decision, *Trump v. United States*, on the chain of command in a context such as this?
4. Is the legal basis for federal intervention in circumstances of civil unrest clearly established?
5. How likely are federal courts to provide guardrails against misuse of the military in general, but specifically with regard to violations of the PCA?

The tabletop exercise revealed that federal courts are unlikely to provide an effective backstop in a scenario involving fast-breaking events related to the illicit use of the military. The timeliness of a response may be problematic in the case of a litigation-based solution. Moreover, many courts may be unwilling to take jurisdiction over a matter involving commander-in-chief powers. A likely response from a federal court would be that such issues are "political questions" and should be left to the political branches to resolve.

In response to these findings, exercise participants emphasized the importance of military leaders working collaboratively with law enforcement to safeguard U.S. democracy and uphold the rule of law. Military leaders involved in the exercise also surmised that the trust among members of the chain of command, instilled as a result of their rigorous military training, is paramount to ensuring that active-duty military will respond appropriately under pressured conditions to an improper or illegal order.

Another key takeaway concerned the impact of the U.S. Supreme Court's immunity decision on the chain of command. The suggestion that the president is above the law for all official capacity



acts has the potential to disrupt good order and discipline in the military, as well as its ability to respond to improper deployments for civilian law enforcement purposes.

### *Primary Findings & Recommendations:*

1. Presidential authority will likely receive substantial deference when it comes to control of the National Guard. A federal judge would likely conclude that a president's legal authority supersedes a governor's in a contest over the deployment of the National Guard as long as the president's orders "plausibly" fell within the parameters of the Insurrection Act or other emergency powers.

2. Enhanced training is needed to ensure robust adherence to the rule of law in the military and particularly in order to teach servicemembers the parameters of the PCA. In the case of a patently illegal order, servicemembers must defend their oaths and be prepared to disobey in order to defend the U.S. Constitution. Active-duty military personnel must have the ability to recognize illegal orders and to prepare for the eventual need to reject them, particularly in the wake of the U.S. Supreme Court's presidential immunity decision in *Trump v. United States*, 603 U.S. 593 (2024).

3. Courts may be ineffective in critical circumstances involving civil unrest. The judicial system is not equipped to provide swift and comprehensive guidance to state and local officials, clarifying the scope of authority in disputes between state and federal commands over the National Guard. The slow pace of judicial decision-making may contribute to further deterioration in a situation of civil unrest during the time a court is considering a case.

4. The immunity decision created a grey area in which presidential orders might be received with uncertainty as to their legality, thereby creating confusion and potentially damaging the chain of command. The U.S. Supreme Court decision in *Trump v. United States* creates a grey area in which a president may issue a patently illegal order without placing himself in legal jeopardy, thus creating uncertainty for officials lower down the chain as to the legality of orders issued and who may be liable for the consequences of an illegal order.

5. Senior military leaders can be expected to follow court orders, even in the face of a contrary presidential order. In debating whether the military could rely on an injunctive court order to counter an illegal presidential order, the question arose whether the Secretary of Defense or lower-ranking officials could bring an action in federal court to formally oppose the presidential action in question and receive support by way of an injunction. The participants concluded that this would be beneficial as a last resort since, as a matter of practice, the military would follow the court order rather than the questionable presidential order, regardless of the legalities involved.

6. There is a risk of federal overreach in a situation involving civil unrest, particularly in the wake of the immunity decision. State and local authorities should prepare for the possibility that federal officials may extend their reach beyond official federal mandates to partner with political allies in state and local governments. State and local authorities should, therefore, maintain secure chains

of communication, clarify lines of command and authority, and be prepared to act swiftly to counter mis- and disinformation.

7. The military's commitment to political neutrality may be put under pressure in a highly charged political atmosphere involving civil unrest and a president enjoying immunity from criminal prosecution for official acts. There is an enduring tension between the apolitical standards of the professional military and situations where the military is deployed domestically to restore order, particularly when civil leadership may be attempting to exploit the military for political and ideological purposes. This tension must be carefully navigated, suggesting the need for a carefully scripted protocol and civic education among active-duty military personnel to protect the military's apolitical status.

8. Direct orders from the president to the NORTHCOM commander pose a distinct risk. The military should prepare for a situation in which the president decides that he lacks confidence in the Joint Chiefs and other Pentagon officials and bypasses them, going directly to a combatant commanders. This is, indeed, what occurred in the California situation.

### *Secondary Findings & Recommendations:*

9. The need for standard emergency procedures relating to civil unrest. State and local authorities should create and/or reinforce standard operating procedures specifically designed to address significant civil disturbances resulting from politically motivated activities. These procedures should be rehearsed with federal partners to identify weaknesses and improve coordination between federal and state authorities as well as communications across command and control systems.

10. The need for clear rules for the use of force (RUF). Relatedly, state and local authorities should establish clear RUF for law enforcement and protocols for harmonizing the chain of command for the National Guard and other partners under conditions of civil unrest.

11. Preparation for emergency scenarios by senior military leaders. Senior military figures must prepare for emergency scenarios to minimize the friction of the early hours and days in a political crisis involving civil unrest. The Joint Chiefs of Staff and other senior leaders within the Department of Defense should run scenarios to anticipate, prepare, set expectations, and establish metrics to guide their preparations for such eventualities.

12. Limitations of local officials. Mayors and other city officials are often limited in their capacity to surge resources and may be inclined to request federal support earlier than state actors typically would.

13. The need for enhanced capabilities in open-source intelligence. Intelligence officials, including those from state and local law enforcement, should conduct extensive monitoring of social media

and other open intelligence sites to combat malign activities and disinformation, as well as to preempt harmful outside interference in government processes.

14. Enhanced communication with educational leaders. City and state officials should establish clear lines of communication with secondary school and university leaders to counter student radicalization and ensure the safety of all students during periods of civil unrest.

15. Long-standing local relationships may help to counter disinformation and ensuing political violence. The governor, mayor, and other state and local authorities should leverage long-term institutional relationships between their offices and federal partners. The participants were reasonably confident that even with political actors stoking fires, these institutional partners would coordinate throughout a crisis involving civil unrest to work towards de-escalation.

16. The status of newly appointed but not confirmed federal government officials must be examined. It is an open question regarding acting officials or carry-over officials from previous administrations whether their orders are entitled to the same deference as those of Senate-confirmed appointees who are permanent occupants of their offices. It is essential to clarify the roles and authorities of individuals within the chain of command.

17. The uniformed military faces considerable pressure to deploy quickly, and this could enhance the risk of green-on-green violence in a situation of civil unrest. There could be friction when the military is rapidly deployed into a violent protest between protestors, militias, police, and the National Guard without clear communications. Measures must be taken in such emergency deployments to address the potential for conflicting lines of command, and the risk of violence within the military must be carefully assessed and countered.

CERL's tabletop exercise made clear that the risk of political violence is a very real possibility and that disinformation, a lack of response time on the part of law enforcement or the National Guard, or exaggerated responses from such authorities, as well as ineffectual handling of controversies, could accelerate civil unrest. Most participants believed that a failure to act promptly and effectively could also lead to civil unrest, raising the specter of a vicious cycle in which violence might disrupt other social dynamics, thereby spurring further unrest.

Several reassuring factors had to do with the long-standing relationships among state and local officials, which were believed to enhance communication to improve the speed and effectiveness of responses to civil unrest. Community leaders from faith-based organizations, small businesses, labor unions, and other community groups were also found to be helpful in channeling information and assisting with response processes. The exercises also made clear that federal and state governments must prepare for worst-case scenarios to enhance response time and scope logistics. Participants recommended establishing a Joint Task Force to strengthen surge capacity, coordinate responses, and improve information sharing. It is also crucial to have local officials and professional law enforcement officials prepared to respond effectively to conspiracy theories and

disinformation, with well-organized communication capacities that can quickly reach the public to dispel false reports involving public disorder.

Participants were confident that federal and state courts would fast-track sensitive cases to the best of their ability; however, it was clear that delays would still be sufficient to make judicial resolution of emergency matters in an immediate crisis an uncertain proposition. Participants also noted that courts might be hesitant to resolve cases involving complex scenarios, as judges may regard such cases as beyond the scope of federal or state judicial competence. The use of the political questions doctrine was raised as a concern, and participants worried that courts might be unwilling to second-guess the legality of military deployment decisions.

Regarding the risks of an authoritarian president misusing the military for civilian law enforcement purposes, the use of the Insurrection Act of the National Emergencies Act would enable a president to issue orders that supersede a governor's in the deployment of the National Guard. The U.S. military is trained to disobey patently illegal orders based on their oath to the U.S. Constitution. However, further training is needed to help active-duty personnel recognize and reject such orders, especially in light of the Supreme Court's immunity decision in *Trump v. United States*.

The ruling in *Trump v. United States* creates legal ambiguity in the chain of command, allowing a president to issue potentially illegal orders without personal legal risk. This could potentially pose a dilemma for individuals in the chain of command, who might find themselves facing a choice between disobeying a direct order from the commander-in-chief and potentially committing a crime.

A significant concern arising from these exercises was lack of clarity surrounding the division of labor between state and federal authorities regarding civil unrest. Lack of legal clarity may contribute to a risk of federal overreach. The legal basis for federal intervention in such a scenario requires clarification, participants concluded.

All in all, the exercises raised grave concerns about the risk of political violence and the preparedness of state and federal authorities to counter that violence effectively, as well as the likely effectiveness of federal and state courts to address ambiguities relating to law-enforcement efforts, chain of command issues, and legal questions relating to election matters that might create space for undermining confidence in the voting and vote-counting process. More work needs to be done as quickly as possible to enhance coordination, training, and communication capacities to prepare for the eventualities mentioned above and to protect freedom of speech, assembly, and the integrity of the democratic process.

## From Tabletop Exercises to Reality

During his first administration, President Trump sought to use military force on domestic soil to crush protests or riots, fight crime, and deport migrants. He has returned to these themes and has claimed that he will mobilize the National Guard, with or without the consent of state governors—or in the case of D.C., without the consent of the local authorities. The presidential order issued on June 7 regarding deployment of the Guard to California and the recent decision to mobilize the National Guard in D.C. are new significant steps in that direction. For now, the order and the facts on the ground limit the most expansive power the president may have the authority to use, given that the Insurrection Act has not been invoked. But that could change at any moment.

Here is a closer look at some of the current legal and policy issues that have emerged more specifically in this domain in the wake of CERL’s tabletop exercises.

### *Legal questions about the California and D.C. deployments:*

- Is it legal to federalize a state’s National Guard for purposes of addressing civil unrest without consent of the governor of that state?
- President Trump’s June 7 order relies on the federal governments protective power. Is this an adequate justification for federalizing the National Guard to address civil unrest?
- The order also made use of 10 U.S.C. § 12406, a rarely used statute to federalize National Guard in the event of “rebellion” or an inability to enforce the law in any other way. When are such conditions met, and was the president’s deployment of troops to California appropriate under this standard?
- What is the difference between the Insurrection Act and 10 U.S.C. § 12406 with regard to the president’s authority and possible posse comitatus constraints on federal troop activities?
- When does the PCA apply to domestic deployments, and what does it forbid?
- Does the PCA apply to the National Guard when deployed in D.C.?
- When is it appropriate for federal courts to intervene in domestic deployment decisions of federal troops?

Answering the aforementioned questions is likely to test our constitutional and legal system.

It is generally thought that the PCA does not apply when the president invokes the Insurrection Act as the basis for federalizing a state’s National Guard, but the precise relationship between the Insurrection Act and the general principle of posse comitatus has rarely been tested in a court of law.

Furthermore, a governor could challenge the federal government in an Article III court for improper use of the Insurrection Act. There are few decided cases, but two arguably bear on this



question. The 19th-century case *Martin v. Mott*, 25 U.S. 19 (1827), suggests that a presidential order issued under the Insurrection Act would be entirely nonjusticiable, while an early 20th-century case, *Sterling v. Constantin*, 287 U.S. 378 (1932), takes a different view in a suit against state officials and the adjutant general (the head of the state National Guard) rather than against federal government officials. How a Roberts court will decide this issue remains to be seen. The California case may be the first case in which the Supreme Court addresses the issue of posse comitatus.

Other open issues include how military leaders will ask their troops to engage in acts typically conducted by law enforcement officers, how law enforcement will react, and how state actors will react to federal actions. The PCA is framed as a criminal statute, and officers in the military chain of command could be prosecuted for PCA violations, despite presidential immunity. Finally, states can mandate basic training and rule-of-law instruction for their own National Guard troops, particularly training in the PCA. But will courts supply adequate guidance on what counts as a PCA violation to allow trainings to be reliably conducted? All of these issues remain unresolved, and the events on the ground in Los Angeles, Washington D.C., and other cities will dictate next steps.