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Border Deployment to Insurrection Act: Trump's Illegal Military Plans



Image courtesy of Empire Files.

The current deployment of soldiers and Marines to the US-Mexico border is illegal and immoral. The looming possibility of Trump invoking the Insurrection Act, in an attempt to paper it over, actually raises more danger of unconstitutional orders.

We have just spent 20 years being used as cannon fodder for hapless debacles in Iraq and Afghanistan. Today, soldiers and Marines are being used as propaganda fodder for the oldest Commander-in-Chief ever, taking office with the worst approval rating in modern history.

Conventional, active-duty units from the 82nd Airborne Division and the 1st Marine Expeditionary Force have been the first to the border under US Northern Command. Units from nine different Army bases have been sent so far (including my old unit, the 10th Mountain). The Air Force and Coast Guard are involved as well. Armored infantry fighting vehicles are expected to arrive soon.

Soldiers and Marines have been prohibited from posting anything on social media about the operation or face punishment under the Uniform Code of Military Justice, while official NorthCom socials glamorize the deployment.

For nearly 150 years, the use of federal troops to enforce domestic law without authorization from Congress has been banned under the Posse Comitatus Act.

Until now, US military involvement in border operations has found legal loopholes: only conducting support operations like surveillance and transportation, not direct enforcement. Or using National Guard troops, who fall under state and not federal chain of command, therefore immune from the Posse Comitatus Act.

Trump's orders explicitly give troops an enforcement role, and is an all-out military campaign. Legal challenges look inevitable.

His desire to use the military to push the limits of the law with the Insurrection Act, which suspends Posse Comitatus, was a defining feature of his first term.

This is why Donald Trump canned his previous Secretary of Defense Mark Esper. Esper publicly refuted Trump's demand to use the Insurrection Act to, in Trump's words, "crack skulls" at constitutionally-protected protest actions in 2020.

Esper did not break with Trump because the Raytheon executive and Heritage Foundation head suddenly sympathised with the protests—but because he knew such a move would implicate him in unconstitutional acts.

The Trump-appointed Chairman of the Joint Chiefs of Staff, General Mark Milley, also fought behind the scenes against Trump's demands. As the Wall Street Journal reported, Trump called on the Pentagon to "beat the f— out of" civil rights protesters and, more concerning, to "just shoot them." General Milley refused him because, of course, beating, shooting and the use of federal troops for domestic law enforcement and assaults on protestors would easily be considered unconstitutional.

No coincidence that, as soon as he took office once again, Trump had General Milley's portrait removed from the Pentagon—a standard honor for former Joint Chiefs. This has just escalated to readying an investigation against him, removing his security detail, and possibly issuing him a post-retirement demotion.

For Trump's second term, the question became: *who* would be willing to bend the law in such a way? Who better than a Fox News talking head with a LOT of skeletons in his closet!

The unprecedentedly-close vote to confirm Pete Hegseth as Secretary of Defense demonstrates he has little sway with the high command. Top Republican Mitch McConnell

surprised many with his ‘No’ vote, but McConnell is deeply informed by and connected to the Pentagon brass. He would likely not have voted No without their blessing.

Hegseth also has repeatedly—both in his book and on television—lambasted the current, Biden-appointed Chairman of the Joint Chiefs (only the second Black officer to ever hold the position) for “DEI woke shit” and having “built his generalship dutifully pursuing the radical positions of left-wing politicians, who in turn rewarded him with promotions.” It doesn’t appear he will last long, especially if he pushes back in any way. Trump can quickly replace him with a more agreeable General.

Hegseth’s importance to Trump is apparently not based on credibility among the Pentagon or to carry out foreign policy, but Hegseth’s willingness to break with the command—and potentially with the law—to use the Insurrection Act in ways that will be unconstitutional.

Also suspicious is Trump’s surprise pick to head the Army’s senior leadership: Dan Driscoll, failed Republican congressional candidate and finance bro in his 30’s who never made it past the rank of Lieutenant (and who just happens to be a close personal friend of JD Vance) as Secretary of the Army.

I spoke with Nick Place, a former Captain in the Marine Corps who served in Afghanistan 2011-2012. He is now a civil liberties and constitutional law attorney at the Partnership for Civil Justice Fund and its Center for Protest Law & Litigation. He told me:

“Before, some of Trump’s worst illegal orders wouldn’t be passed down the Chain of Command. Now, he has people who won’t tell him no. That means future illegal orders could get passed further down the chain of command and, at each link, those orders are harder to stop—until eventually they reach the service members who have to carry out those orders; to actually do the thing.

Trump and his yes men know it’s illegal to order the military to turn its guns on the American people and otherwise violate individual people’s Constitutional rights. They’re betting they won’t be held accountable for breaking the law. Troops actually on the ground, really need to ask themselves if they’ll get the same leeway as Trump and his billionaire bosses for executing the orders Trump gives from the golf course.

Everyone needs to ask themselves if directed to act against civilians in the US: is this the right thing to do? Who does it really serve? In that environment of uncertainty, if service members wonder what it is they’re going to be ordered by Donald Trump and Pete Hegseth to do, if they start getting orders to violate people’s constitutional rights, it’s certainly worth

talking to lawyers knowledgeable on military law, whether inside or outside their chain of command.”

As it stands, the deployment to the border violates the Posse Comitatus Act. Trump’s interest in the Insurrection Act is using it as a way to suspend Posse Comitatus.

As the Brennan Center for Justice has explained, the Insurrection Act can be used only in a crisis of “insurrection, rebellion or domestic violence” that is “truly beyond the capacity of civilian authorities to manage.”

While the President has the authority to define those terms and parameters, it does not mean that once the orders are given they are automatically lawful.

The Brennan Center referenced a 1932 Supreme Court decision finding that:

“Courts may still review the lawfulness of the military’s actions once deployed ... **federal troops are not free to violate other laws or trample on constitutional rights just because the president has invoked the Insurrection Act.**”

In other words, the current border deployment, and the potential use of the Insurrection Act, are likely to face legal challenges, which could fail to hold up in court. As former Captain Nick Place explained, while the burden of carrying out the orders always falls to the rank-and-file, now even the firewall preventing illegal or immoral orders from making their way down the chain of command may be gone.

Why Is This Happening?

Soldiers and Marines may be asking themselves why they are being mobilized to the border when there are clearly legal implications.

There is really one essential reason, and it is not to actually rid the country of 15 million undocumented immigrants; big business relies on them far too much. Our economy, food production, and so much more rest on the super-exploited labor of undocumented workers. These are people who work hard to make America a rich country—well, a country with a small number of very rich people—but without the rights of American citizens.

A real immigrant sweep would hurt profits. This is Shock & Awe. It is a spectacle. This is why the White House immediately produced a video for their social media featuring Marines deploying to the border.

While countless immigrants will be swept up and deported, it will be just enough to say he kept his promise, without stepping on the toes of his capitalist friends.

There is a deeper reason why Trump needs these mass raids and troops at the border: because he knows he cannot deliver on the fundamental promises that got him elected.

Funny enough, Trump won in 2024 for the same essential reason he lost in 2020, and won in 2016.

America is in a crisis. More and more working-class people—the kind of people who join the military for a better life, unlike the children of Trump, Elon Musk, and other billionaires—are finding it harder and harder to get by. Rent, health care and education are becoming more of a burden for hard-working people. Communities degrade, addiction or depression fills the void, and the light at the end of the tunnel grows further and dimmer.

In this kind of economy, anti-incumbent voting becomes more dominant. Less people believe the promises of the party in power, so they stay home or vote to try the other team once again.

But Trump knows he cannot actually solve these problems. An immigrant crackdown was not his only “Day One” campaign promise: so too was immediately lowering the cost of food. That one is not looking likely.

Musk and the other billionaires in his administration live to do one thing: maximize the transfer of wealth from working-class people to the top 1%. They know the lives of working-class families will not improve under their administration, because they know better than anyone: that is not what they have in store.

What they need, instead, are stunts; shows of force to claim “promises made, promises kept.” It is very easy for them to deliver on promises like attacking transgender people (including soldiers and Marines), or brutalizing scapegoats like immigrant workers.

In this case, they need something very important for the stunt: you, the soldiers and Marines called up or on standby for what is coming.

It is you—not the kids of the rich guys in the White House—who will be stuck at the border for an unknown number of months to pose for photos while they carry out actions that lead to the deaths of many innocent people. According to a recent report by Human Rights Watch, the “border deterrence” now carried out by soldiers and Marines causes the death of maybe more than 2,500 migrants per year, as they are intentionally forced onto the most perilous routes.

US troops, many of whom are from immigrant families themselves or have befriended children of immigrants as fellow service members, know that most people crossing the border are good people forced to risk their lives for a better future. Beyond the legal implications of the border operation, there is a serious moral one. And you have the right to question immoral orders just as much as you do illegal ones.

Dark Implications

Service members should be thinking very hard about their role and rights at this moment.

The millions of people who came into the streets in 2020—which include many veterans, active-duty, Reservists, and Guard soldiers—were very fortunate that Trump had some wall of opposition against his demand to have the military open fire on the demonstrations. It seems hard to imagine such an incident, but should now feel very close and very real.

The millions who came out this past year to oppose Israel’s genocide (which, again, included many vets and service members) are attacked as domestic terrorists by the Trump Administration. Any mass protests, for that matter, which oppose the politics of this administration are looked at as a domestic threat. Whether or not you agree with a protests’ demands, they are protected under the US Constitution. Trump has a different view. Even during his campaign, he promised to “crush” protests against Israel’s war crimes that were peaceful and legal.

This time around he has stacked his cabinet with a bizarre cohort who have spent years auditioning for the roles by marketing themselves as diehard loyalists, from Tulsi Gabbard as head of all spy agencies to Kristi Noem as head of Homeland Security. Their top qualification, like Hegseth, is that they will never say no to Trump.

Carrying out his border operation without opposition is the first step down a dangerous path. There is no telling where this could go. There is no telling how you in the military could be used. But you do have control over your own role.

Your command doesn’t advertise this, but you have a lot of rights. You have the right to speak out, even publicly, against actions you disagree with, as a US Navy Corpsman just did protesting Trump’s inauguration, announcing his plan to file as a Conscientious Objector along with many others who have done so publicly in the past year. You have the right to follow their lead, and file that packet as well.

At minimum, you have the right to question whether or not your use on the border or under the Insurrection Act could be considered illegal or immoral orders, and learn the ways you can protect yourself.

There are various free and confidential legal services at your disposal, to answer any questions, provide legal advice, and defend you if you choose to exercise those rights.

And as things head in a dark direction, how many exercise that right could make the difference.

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If you are in the military and have questions about your options, [contact us here for confidential advice and support](#).

You can also call the GI Rights Hotline 24/7 at 1-877-447-4487.

You can also get more information from to [A Guide to Getting Out of the US Military Now](#) on the Eyes Left Podcast.

This piece first appeared on [Empire Files](#).