

Trump's Illegal Use of Military Against Anti-Racist Uprisings Portends Battles Ahead

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The backlash against Donald Trump's illegal show of military force against anti-racist protesters compelled him to withdraw the troops — for now. But we must continue raising the illegality of this use of the military and pushing for barriers to guard against future such deployments. The threat of a resurgence of this violation still looms because as the protests continue, Trump might change his mind. And if he loses the election, all bets are off.

Government officials, legislators, lawyers and civil society should strenuously oppose the recall of federal troops because it would be deadly as well as illegal.

“Armed forces taking on protesters may cause them to go away, but make no mistake: People would die. And even one more death is too many,” Kelsey Baker, a former Marine who deployed to Kuwait and Iraq, [wrote](#) for Newsweek.

Although Trump didn't invoke the Insurrection Act to justify his deployment of troops against Black people and their allies, he may well do so in the future. A review of how Trump ordered military personnel to Washington, D.C., is instructive and alarming.

As the collective outrage at the police lynching of George Floyd filled streets nationwide, Donald Trump threatened to use the U.S. military against anti-racist protesters exercising their First Amendment rights.

On May 28, Trump warned he would “send in the National Guard & get the job done right,” [tweeting](#),

“....These THUGS are dishonoring the memory of George Floyd, and I won't let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!”

On June 1, Trump announced he had dispatched federal troops to Washington, D.C., “[to protect the rights of law-abiding Americans](#), including your Second Amendment rights.” Trump said he was ordering “[thousands and thousands of heavily armed soldiers](#), military personnel and law enforcement officers” to the nation's capital.

The U.S. president sees the Movement for Black Lives as the enemy to be vanquished by his military. Trump's attempt to co-opt Floyd's memory and his appeal to his gun rights base were shameful.

“Donald Trump is the first president in my lifetime who does not try to unite the American people—does not even pretend to try. Instead he tries to divide us,” former Defense Secretary James Mattis [charged](#).

“All around the country, protests against police violence have been met with more police violence,” Gerry Condon, former president of Veterans For Peace (VFP), told Truthout. “Calling in the Army and the National Guard, however, will make things worse — not better.”

Moreover, it would be illegal.

Trump Threatens Governors and Deploys Troops to Washington

Trump challenged the nation’s governors to deploy large numbers of National Guardsmen in order to “dominate the streets.” Otherwise, he warned, “[they’re gonna run over you](#), you’re gonna look like a bunch of jerks. You have to dominate.” Secretary of Defense Mark Esper echoed Trump, telling the governors, “[the sooner that you mass and dominate the battlespace](#), the quicker this dissipates and we can get back to the right normal.”

Several governors said [thanks, but no thanks](#). “I reject the notion that the federal government can send troops into the state of Illinois,” Illinois Gov. J. B. Pritzker told CNN. “The president has created an incendiary moment here.... His rhetoric is inflaming passions. He should stay out of our business. Every day he has inflamed racial tensions.”

In a joint statement, Colorado Gov. Jared Polis and Denver Mayor Michael Hancock noted,

“There is no need for the deployment of U.S. troops to maintain order in our city. The President’s threat to deploy federal troops is counterproductive and will only stoke the potential for worse violence and destruction.”

About 1,600 troops from Fort Bragg and Fort Drum [began arriving in Washington](#) on June 1. [Trump wanted 10,000 active duty troops](#) dispatched throughout the country, but Esper and Chairman of the Joint Chiefs of Staff Gen. Mark Milley reportedly talked him out of it.

“The military is not trained in peacekeeping or de-escalation. Soldiers are trained to use lethal force, which is often employed against civilians in faraway lands,” said Condon. “Now they are being ordered to suppress peaceful protesters in this country who are exercising their First Amendment rights of freedom of speech and freedom of assembly.”

Indeed, *The New York Times* reports the Pentagon [used Army National Guard helicopters](#) in Washington “as a show of force usually reserved for combat zones.” On June 1, two helicopters flew low over protesters, sending them running for cover and tearing posters from the sides of buildings. Intended as a “persistent presence,” pilots were given no guidance and were forced to wing it. “[The wind speeds created](#) by a low-hovering helicopter can lift objects and cause serious damage, potentially leading to injury or death,” according to a Human Rights Watch report.

On June 7, after his threat to use federal troops against people exercising their constitutional

rights drew widespread condemnation from military leaders, defense officials and members of Congress, Trump complied with Washington Mayor Muriel Bowser's [demand](#) and [ordered the National Guard to withdraw](#) from Washington, adding, "now that everything is under perfect control."

But Trump had threatened on June 4 that "all options are on the table" and when he gave the June 7 order, he said the troops "[can quickly return if needed](#)."

Generals and Defense Officials Oppose Using Troops Against Protesters

In a stunning statement, [89 former defense officials](#) said on June 5, "We are alarmed at how the president is betraying [his] oath [to support and defend the Constitution] by threatening to order members of the U.S. military to violate the rights of their fellow Americans." They wrote that Trump gave governors "a stark choice: either end the protests that continue to demand equal justice under our laws, or expect that he will send active-duty military units into their states." The defense officials called on Trump "to immediately end his plans to send active-duty military personnel into cities as agents of law enforcement, or to employ them or any another military or police forces in ways that undermine the constitutional rights of Americans."

Reacting to Esper's characterization of U.S. streets filled with protesters, retired Army Gen. Tony Thomas, who commanded the U.S. Special Operations Command, said that U.S. soil [should not be called a "battlespace"](#) unless a foreign power invades it.

Mattis issued a scathing rebuke of Trump's reaction to the anti-racist protests. "'[Equal Justice Under Law](#)' ... is precisely what the protesters are rightly demanding," he wrote in a statement. "Never did I dream that troops taking that same oath would be ordered under any circumstance to violate the Constitutional rights of their fellow citizens—much less to provide a bizarre photo op for the elected commander-in-chief, with military leadership standing alongside."

The former defense secretary was describing Trump's cynical [staged appearance](#) in front of a church holding a Bible after his administration used tear gas and flash-bang explosions to disperse a peaceful crowd protesting in front the White House on June 1.

Before the 2018 midterm elections, Trump also deployed active-duty troops [to the southern U.S. border](#) as a prop to show how "tough" he was.

Sen. Tammy Duckworth of Illinois, who lost both legs serving as a military helicopter pilot in Iraq, said that Esper's and Milley's participation in Trump's photo op in front of the church "[sends a horrifying message to our troops](#) — including our black and brown troops — that our military's leaders will not protect them from unlawful orders."

The Duty to Disobey Unlawful Orders

Members of the military "[will obey lawful orders](#)," retired Navy Adm. Mike Mullen, former chairman of the Joint Chiefs of Staff, wrote for *The Atlantic*.

"But I am less confident in the soundness of the orders they will be given by this commander in chief, and I am not convinced that the conditions on our streets, as bad as they are, have risen to the level that justifies a heavy reliance on military troops."

The Uniform Code of Military Justice requires that all military personnel obey lawful orders. Article 92 [says](#), “A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States.” A law that violates the Constitution or a federal statute is an unlawful order. Both the Army Field Manual and the Nuremberg Principles create a duty to disobey unlawful orders.

Using federal troops for civilian law enforcement violates the Posse Comitatus Act (PCA). The Insurrection Act contains an exception to the PCA. But it is reserved for extreme emergencies and has largely been used to enforce, not to violate, civil rights.

There are four ways to trigger the Insurrection Act to deploy the military on U.S. soil:

First, when the legislature or governor of a state asks the president for assistance to put down [an insurrection against the government](#) (section 251);

Second, when the president “[considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings](#)” (section 252);

Third, when “[any insurrection, domestic violence, unlawful combination, or conspiracy](#)” deprives people of a legal right, privilege, immunity, or protection, that results in the denial of Equal Protection (section 253(1)); or

Fourth, where “[any insurrection, domestic violence, unlawful combination, or conspiracy](#) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.” (section 253(2)).

Most of the times the Insurrection Act has been invoked have occurred pursuant to section 251. For example, in 1992, California Gov. Pete Wilson asked President George H.W. Bush to deploy federal troops to suppress the uprising after the officers who beat Rodney King were acquitted in their state trial.

Section 252, which is triggered by the president’s subjective belief, requires him to find that it is “[impracticable](#)” for the courts and criminal legal system to work properly. That threshold has not been met in the current situation. Although courts would be unlikely to overrule the president’s subjective decision, service members may decide that his order was illegal and refuse to obey it.

Moreover, there has been no violation of the Equal Protection Clause sufficient to trigger the use of section 253, which was enacted after the Civil War to ensure that Southern states enforced the federal rights of Black people. In 1962 and 1963, President John F. Kennedy used this section to send federal troops to Alabama and Mississippi to enforce civil rights laws. And President Lyndon Johnson also used section 253 in 1965 to protect civil rights demonstrators from police violence during the march from Selma to Montgomery, Alabama.

But Trump would use federal troops to violate, not protect, the civil rights of anti-racist protesters exercising their First Amendment rights.

Veterans For Peace called on “[all current National Guard members](#) to lay down their weapons and refuse to fight against their neighbors and fellow community members” and “refuse to serve violent and racist interests.” VFP cited “a connection between increasing

racist violence in the United States and the massive indiscriminate killing of hundreds of thousands of people in other lands. Growing racism against black, brown and Muslim people in the United States is a reflection of the racism that justifies killing non-white people abroad."

"To their credit, many soldiers and National Guard members know this is wrong," said VFP's Condon. "Some have already gone AWOL. Others are contacting the GI Rights Hotline for information about their legal alternatives. [They do not want to attack people right here in the United States.](#)"

The National Lawyers Guild's Military Law Task Force (MLTF) issued a statement strongly [condemning the use of National Guard](#) and other active duty troops against anti-racist protesters. The MLTF is urging "anyone who is activated or deployed or might be facing a future deployment to call us for referral to a civilian attorney or counselor to discuss your options."

Congress Members Oppose Using Troops Against Protesters

Almost two dozen Democratic senators wrote to Esper and Milley, [opposing the use of the Insurrection Act](#) to deploy federal troops within the United States. They called it "a significant departure from important historical uses of the law." The senators "oppose in the strongest terms the use of U.S. military to impede the First Amendment rights of Americans," who, they said, "are exercising their civil liberties in a call to hold government institutions to a higher standard in the fight for racial justice." They added, "The military should never be weaponized by the President to limit these expressions for liberty and justice."

On June 2, Sen. Tim Kaine of Virginia announced he would [propose an amendment to the National Defense Authorization Act](#) this week to prevent federal funding for the use of military force against protesters.

When called by Rep. Adam Smith, Democratic chairman of the House Armed Services Committee, [to testify about the role of the military](#) in the protests, Esper and Milley refused.

Although the outcry against Trump's deployment of federal troops to Washington pressured him into removing them, he could recall them at any time. We must be vigilant and sustain the opposition to Trump's illegal use of the military against anti-racist protesters.

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