

EXPERT BRIEF

What to Know About the Los Angeles Military Deployment

The president's actions are legally dubious, though courts have yet to answer some of the key questions around the deployment.



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Government Power

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President Trump's federalization of California National Guard forces and his deployment of Guard forces and U.S. Marines to Los Angeles have raised a host of questions. Some of these questions are factual in nature: How broad is the authorization to deploy forces? What actions are troops authorized to take in Los Angeles? What actions are they actually taking? Others are legal: What

legal authorities is Trump relying on, and do they authorize his actions? What is the difference between the obscure legal authorities he is citing and the more familiar Insurrection Act? And can the military's actions in Los Angeles be squared with the Posse Comitatus Act, which generally prohibits the use of federal forces to quell civil unrest or

enforce the law? This explainer tackles these questions.

Under what circumstances does the president’s memorandum authorize deployment, and what deployment has taken place?

President Trump’s [June 7 memorandum](#) [\[link-1\]](#) authorized the federalization and deployment of National Guard forces, as well as the deployment of active-duty armed forces, anywhere in the country where protests over U.S. Immigrations and Customs Enforcement activity or other “federal functions” are either occurring or likely to occur. This authorization is not limited to protests or potential protests involving violence, vandalism, obstruction of law enforcement, or any other form of misconduct.

Under this memorandum, 4,000 California National Guard forces have been federalized and more than 2,000 of

them have been [deployed](#) [\[link-2\]](#) to Los Angeles along with a battalion of 700 U.S. Marines.

What can the military do once deployed?

Under the memorandum, federal forces are authorized to protect federal personnel, property, and functions. But the administration has not publicly specified the full range of actions they are authorized to take in service of that goal. Troops in Los Angeles have not only guarded federal detention facilities, but have also

[accompanied ICE personnel on their raids](#) [\[link-3\]](#) of private establishments. On June 13, the Department of Defense confirmed that Marines apprehended and [briefly detained a civilian](#) [\[link-4\]](#) — reportedly an army veteran who crossed a yellow tape boundary on his way to an office of the Department of Veterans Affairs. Video footage also showed Marines [physically pushing](#) [\[link-5\]](#) a

crowd of protesters back as they stood on the stairs of the Federal Building.

What legal authority is the president relying on to federalize the National Guard?

National Guard forces are under the command and control of state governors unless federalized in accordance with statutory authority. The authority Trump is relying on is [Section 12406 of Title 10 of the U.S. Code](#) [\[link-6\]](#), which authorizes the president to federalize Guard forces in three circumstances: the United States is invaded or is in danger of invasion by a foreign nation; there is a rebellion or danger of a rebellion against the authority of the government of the United States; or “the President is unable with the regular forces to execute the laws of the United States.” A federal district court judge recently [found](#) [\[link-7\]](#) that those conditions were not met in Los Angeles.

However, the Ninth Circuit Court of Appeals, applying an extremely deferential standard of review, [accepted](#) [\[link-8\]](#) Trump’s determination that he was “unable with the regular forces” to execute the law, notwithstanding the administration’s [failure](#) [\[link-9\]](#) to provide any evidence that any ICE raids were thwarted or that planned ICE raids had to be canceled.

Section 12406 sounds a bit like the Insurrection Act. What is the relationship between these laws?

This is admittedly puzzling. Section 12406, enacted in 1903, appears to have substantial overlap with the earlier-enacted [Insurrection Act](#) [\[link-10\]](#), a law that [allows the president](#) [\[link-11\]](#) to deploy federal forces (including active-duty armed forces and federalized National Guard forces) to suppress insurrections or rebellions, quell domestic violence, and enforce the law when it is

being obstructed. There is scant legislative history to explain why Congress passed Section 12406. However, past presidents have almost always treated it as authorizing only the federalization of the National Guard to suppress rebellions or execute the law, but not the actual use of the Guard for those purposes without further legal backing. In other words, it's been treated as a mobilization authority rather than a substantive grant of power. It has thus almost always been invoked in conjunction with the Insurrection Act.

Can the National Guard be federalized without the consent of governors?

There are several laws that authorize federalization of the National Guard without state consent, including laws governing overseas deployment of the Guard to fight foreign enemies. The Insurrection Act authorizes federalization without state consent in certain circumstances. However, Section 12406 is at best ambiguous on this point. It

requires that federalization orders be issued “through the governors.” Arguably, this implies a level of cooperation on the part of the state, if not actual consent. The Trump administration did not even send its federalization orders to Governor Newsom, and the district court judge [held](#) [\[link-12\]](#) that this violated the statute.

The Ninth Circuit, however, [held](#) [\[link-13\]](#) that it was sufficient for the administration to send the orders to the commander of the National Guard, who acts as an agent of the governor under state law, and that Section 12406 does not give governors veto power over a presidential decision to federalize the Guard.

What legal authority is Trump relying on to deploy the U.S. Marines?

Unlike the Insurrection Act, Section 12406 does not authorize deployment of active-duty armed forces. To deploy the U.S. Marines, Trump is relying on a claim of inherent constitutional authority to

deploy troops to protect federal personnel, functions, and property when the appropriate civil authorities are unable to preserve order. This is a long-standing executive branch legal theory, reflected primarily in [opinions](#) [\[link-14\]](#) of the Department of Justice’s Office of Legal Counsel; presidents [have used it](#) [\[link-15\]](#) to justify deployments multiple times in U.S. history. Yet courts have not officially endorsed the theory. There are only two Supreme Court [cases](#) [\[link-16\]](#) that [recognize](#) [\[link-17\]](#) such a power in dicta — that is, language in a court decision that is not considered binding because it is not necessary to the holding of the case.

Do the actions of federal forces in Los Angeles violate the Posse Comitatus Act?

The [Posse Comitatus Act](#) [\[link-18\]](#) prohibits federal armed forces — including federalized National Guard forces — from directly participating in law

enforcement activities unless “expressly authorized” by Congress or the Constitution. The law is a [critical protection](#) [\[link-19\]](#) for both democracy and civil liberties, as armies turned inward may serve as an instrument of oppression or tyranny.

As noted above, it’s not clear whether Section 12406, on its own, provides any authority to deploy National Guard forces (rather than simply to call them into federal service). And if it does, it is equally unclear whether it goes as far as allowing Guard members to conduct the kind of law enforcement activities that would normally be forbidden by the Posse Comitatus Act. No court has addressed these questions.

As for the inherent constitutional authority Trump is relying on to deploy the Marines, the Justice Department’s Office of Legal Counsel historically has taken the [position](#) [\[link-20\]](#) that the Posse Comitatus Act doesn’t apply when troops are used to protect federal property and functions. But there’s no reason to think

that’s the case. Courts have [held](#) [\[link-21\]](#) that the actions of federal forces trigger the Posse Comitatus Act if they subject civilians to military power that is “regulatory, prescriptive, or compulsory in nature.” This test turns on the character of the military’s actions, not their purpose. (There is an [exception](#) [\[link-22\]](#) for actions that have a “primarily military purpose,” but that is a unique circumstance, as the Posse Comitatus Act is not intended to constrain the military when acting in the military sphere.)

Do temporary detentions and cursory searches violate the Posse Comitatus Act?

In 2018, federal troops deployed by President Trump to the border to assist Customs and Border Protection (CBP) were [authorized](#) [\[link-23\]](#) to conduct “temporary detentions” and “cursory searches” of migrants they apprehended (pending turning them over to CBP

officials to be arrested). This suggests that Trump does not consider such actions to violate the PCA even when performed in support of a civilian law enforcement function. If that is the administration’s position, courts should reject it.

The administration’s distinction between “temporary detentions” and arrests, and between “cursory searches” versus more intrusive searches, appears to be an attempt to borrow from Fourth Amendment case law. Courts have found that all of these activities trigger the Fourth Amendment’s prohibition against unreasonable searches and seizures. However, temporary investigative detentions and accompanying cursory searches (sometimes referred to as “[Terry stops](#) [\[link-24\]](#)”) require only reasonable suspicion of criminal activity, whereas arrests and more intrusive searches require probable cause. This case law actually confirms that temporary detentions and cursory searches trigger the PCA, as courts have deemed them to be searches and

seizures—actions that are widely acknowledged to come within the PCA’s prohibition.

Is there a precedent for Trump’s actions?

Quelling civil unrest is normally the responsibility of state and local law enforcement. It is exceedingly rare for presidents to deploy federal troops to quell civil unrest or enforce the law without a request from a state governor. When deployment has happened without a governor’s request, it has generally been because state and local authorities were aligned with those threatening violence or were themselves openly defying federal court orders or civil rights laws. The last time a president deployed troops without a governor’s request was in the mid-1960s, in response to a [series of incidents](#) [link-25] in which state authorities tried to prevent court-ordered school desegregation and refused to protect civil rights activists or Black Americans seeking to attend previously all-white schools.

In this case, the administration claims that the troops are merely protecting federal personnel, property, and functions, not quelling civil unrest or enforcing the law. However, that assertion is dubious given the fact that troops are accompanying ICE on their raids, detaining civilians, and physically confronting protesters.

In addition, Trump’s memorandum does not limit the deployment of troops to Los Angeles; in fact, it does not mention Los Angeles by name. It authorizes deployment “at locations where protests against these functions” — namely, ICE activities or any other “federal functions” — are occurring or are likely to occur.” As noted above, there is no requirement that the protests or expected protests involve violence or obstruction. A nationwide preemptive deployment to address any protests against any federal activities is wholly unprecedented in U.S. history. It poses a grave threat to the First Amendment right to engage in peaceful protest.

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Links

link-1: June 7 memorandum <https://www.whitehouse.gov/presidential-actions/2025/06/department-of-defense-security-for-the-protection-of-department-of-homeland-security-functions/>

link-2: deployed <https://www.factcheck.org/2025/06/qa-on-federalizing-the-national-guard-in-los-angeles/#guard-troops>

link-3: accompanied ICE personnel on their raids <https://abcnews.go.com/Politics/photos-show-national-guard-rifles-ice-enforcement-missions/story?id=122729129>

link-4: briefly detained a civilian <https://www.reuters.com/world/us/us-marines-carry-out-first-known-detention-civilian-los-angeles-video-shows-2025-06-13/>

link-5: physically pushing <https://x.com/MrOlmos/status/1933963621484409170>

link-6: Section 12406 of Title 10 of the U.S. Code <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section12406&num=0&edition=prelim>

link-7: found <https://storage.courtlistener.com/recap/gov.uscourts.cand.450934/gov.uscourts.cand.450934.64.0.pdf?inline=1>

link-8: accepted <https://storage.courtlistener.com/recap/gov.uscourts.ca9.4e2731d4-cbd8-4803-a59f-a1d0c6023daf/gov.uscourts.ca9.4e2731d4-cbd8-4803-a59f-a1d0c6023daf.32.0.pdf?inline=1>

link-9: failure <https://bsky.app/profile/lizagoitein.bsky.social/post/3lrzfh7wya225>

link-10: Insurrection Act <https://www.law.cornell.edu/uscode/text/10/subtitle-A/part-I/chapter-13>

link-11: allows the president <https://www.brennancenter.org/our-work/research-reports/insurrection-act-explained>

link-12: held <https://storage.courtlistener.com/recap/gov.uscourts.cand.450934/gov.uscourts.cand.450934.64.0.pdf?inline=1>

link-13: held <https://storage.courtlistener.com/recap/gov.uscourts.ca9.4e2731d4-cbd8-4803-a59f-a1d0c6023daf/gov.uscourts.ca9.4e2731d4-cbd8-4803-a59f-a1d0c6023daf.32.0.pdf?inline=1>

link-14: opinions <https://www.justice.gov/file/147726/dl>

link-15: have used it https://harvardnsj.org/wp-content/uploads/2024/01/Mirasola_15-Harvard-Natl-Security-J.-1-2023.pdf?inline=1

link-16: cases <https://supreme.justia.com/cases/federal/us/135/1/>

link-17: recognize <https://supreme.justia.com/cases/federal/us/135/1/>

link-18: Posse Comitatus Act <https://www.law.cornell.edu/uscode/text/18/1385>

link-19: critical protection <https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained>

link-20: position <https://www.justice.gov/file/147726/dl>

link-21: held <https://law.justia.com/cases/federal/appellate-courts/F2/924/1086/224419/>

link-22: exception <https://www.brennancenter.org/our-work/research-reports/how-turning-border-military-zone-evades-congress-and-threatens-rights>

link-23: authorized <https://www.cnn.com/2018/11/20/politics/trump-authority-border-personnel>

link-24: Terry stops https://www.law.cornell.edu/wex/terry_stop/stop_and_frisk

link-25: series of incidents <https://www.brennancenter.org/our-work/research-reports/guide-invocations-insurrection-act>