

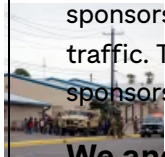
The Posse Comitatus Act was designed to limit the use of federal troops in law enforcement activities on American soil. The rule has its exceptions and loopholes, but Trump's second term and his crackdown on immigration are shaping up to be a major test of the law.

Today, thousands of active-duty troops are deployed to the U.S.-Mexico border. What the military is allowed to do there has also dramatically shifted – going beyond the typical roles of supporting the Border Patrol.

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Troops arrive at the border to help with enforcement despite fewer migrant crossings

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Among the most significant developments came last month, when Trump designated a 170-mile stretch of federal land along the southern border – which spans through California, Arizona and New Mexico – as a military installation, or a national defense area.

On Thursday, the Department of Defense announced that a second section in Texas will be marked as a military installation.

At least 82 people have been federally charged for "unauthorized entry" into the newly created National Defense Area in New Mexico as a result.

Here's what to know.

What are the restrictions under the Posse Comitatus Act?


The federal law was enacted in 1878 following the Civil War, when former Confederate states were either unwilling or unable to enforce civil laws. In response, the federal government stepped in and deployed active-duty troops to maintain order. That led to concerns of potential military overreach.

While the law came after the Civil War, it's rooted in one of the country's founding principles, which is the rejection of military involvement in civilian affairs. The ideal was a key grievance in the Declaration of Independence, which was later reflected in the Articles of Confederation and the Bill of Rights.

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POLITICS



4 things to know about the Alien Enemies Act and Trump's efforts to use it

In practice, the law prohibits federal armed forces from taking part in civilian law enforcement, like conducting searches, seizures and arrests on American streets, except when "expressly authorized by the Constitution or Act of Congress."

This restriction applies to the Army, Navy, Marine Corps, Air Force and Space Force. On the other hand, the Coast Guard is exempt. The same goes for the National Guard, as it typically operates under state authority. However, Guard units become bound to the Posse Comitatus Act when they are called into federal service.

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In some cases, the National Guard has served federal interests on state orders. For instance, in 2020, 11 states sent their National Guard troops to Washington D.C., to help respond to the protests over George Floyd's murder.

What about the new national defense area?

National Guard and federal military forces have been deployed to the U.S.-Mexico Border under previous administrations, generally in support roles to the Border Patrol, such as providing equipment, logistics and surveillance.

Now, federal military personnel will be allowed to temporarily detain and search people who are considered trespassing on the newly established national defense area at the southern border — effectively bypassing the Posse Comitatus Act.



NATIONAL Navy warship is sent to the southern border to carry out Trump's immigration plans

By doing this, he's sort of supercharging or empowering the military to be heavily involved in the immigration enforcement mission in ways they weren't before," said Mark Nevitt, a professor at the University of North Carolina School of Law who served as an attorney with the U.S. Navy Judge Advocate General's Corps (JAG).

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by clicking the Cookie Settings & Opt Out link on the bottom of the webpage. Your choices will have effect with our Website. Defense Secretary Pete Henseth addresses service members at Fort Bliss, Texas, and Joint Task Force Southern Border, to discuss the efforts they are undertaking to establish the New Mexico National Defense Area on April 25. For more details, refer to our Privacy Policy. Army Pfc. Sean Hoch/U.S. Department of Defense

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Dan Maurer, a retired lieutenant colonel in the Army JAG, also raised concerns about the lack of clarity on how much force troops will be allowed to use against people trespassing the new military installation. In the White House's memorandum NSPM-4 regarding the new designation, it states that armed forces will "follow rules for the use of force"

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In Lawfare, Maurer wrote that while those rules usually align with domestic law enforcement standards and the Constitution, they also allow deadly force to protect sensitive property. The situation is further complicated by Trump's framing that the border is facing an "invasion" and "under attack."

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"Here's the blurring of law enforcement and military operations can lead to

ambiguity as to what role they're serving in and thus what force is truly

authorized, legal, and reasonable," Maurer told NPR.

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Neijt worries that blurring the line between military and law enforcement roles

could also undermine military readiness, as well as hurt military recruitment and

retention.

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"Most people join the military to fight and defend this country, defend their

national security interests, deploy overseas," he said. "Not (to) be a domestic law

enforcer"

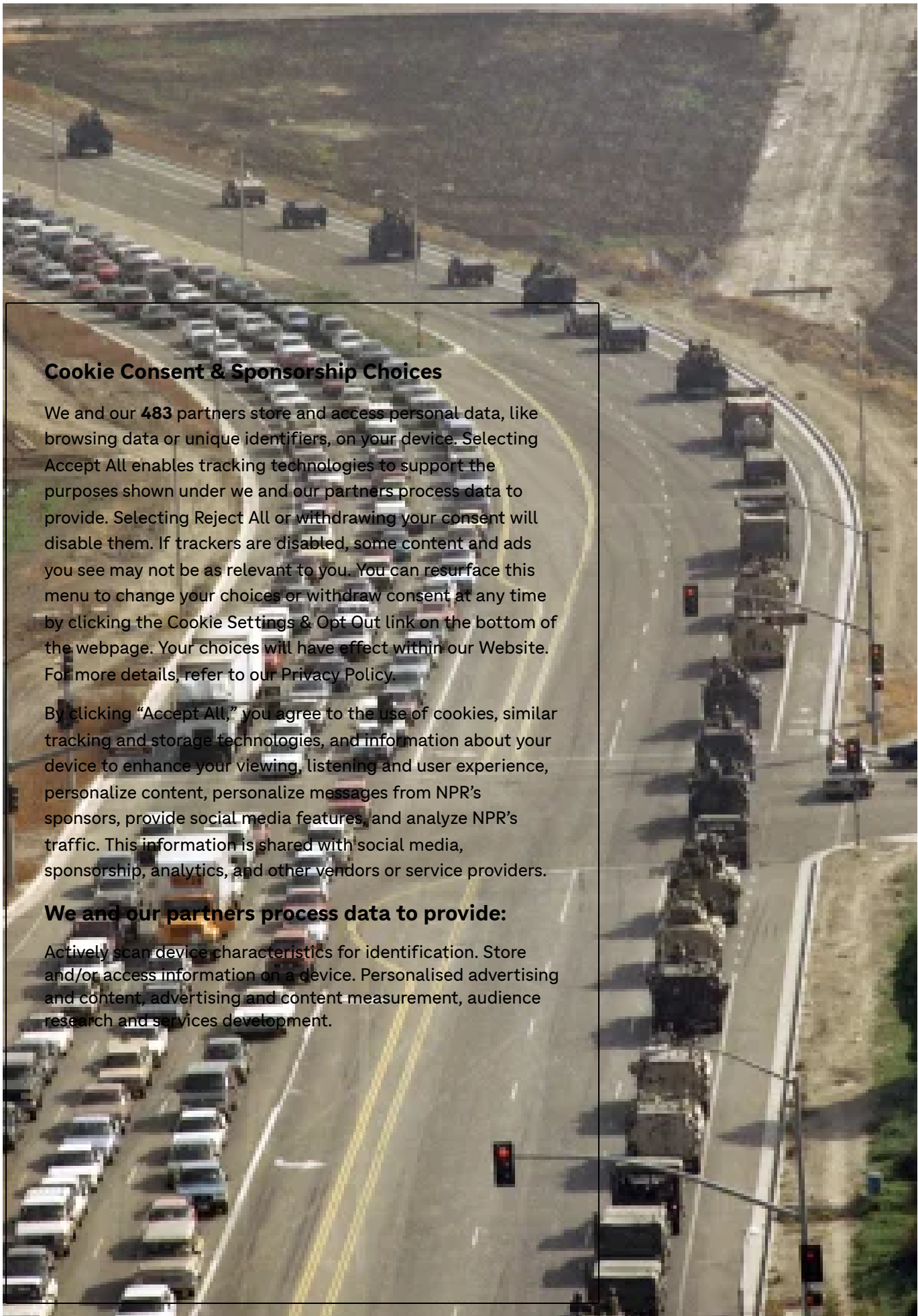
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The sweeping exception that Trump has not used yet

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A convoy of U.S. Marines (right) makes its way to the U.S. Marine Corps Air Station in Tustin, Calif., on May 1, 1992, during the Los Angeles riots.

Paul Sakuma/AP

A key exception to the Posse Comitatus Act is the Insurrection Act, which gives the president the authority to call on the military during an emergency to curb unrest or rebellion within the U.S.

The Insurrection Act has been used about 30 times in American history, largely to quell civil unrest. It was last invoked in 1992, when President George H.W. Bush sent Army and Marine troops to Los Angeles to help quell the violence following the acquittal of the police officers who beat Rodney King. It has never been used for immigration enforcement.

The Insurrection Act can be more concerning than the Alien Enemies Act, which Trump has invoked to detain and deport Venezuelan immigrants, according to Maura, who is now a professor at the Ohio Northern University Pettit College of Law.

Last week, a federal judge in Texas ruled that the president's use of the Alien Enemies Act was unlawful. Meanwhile, in 1827, the Supreme Court established that the president has the sole authority to invoke the Insurrection Act.

"But with the Insurrection Act, we already have case law that says courts can't really second guess the decision," he said.

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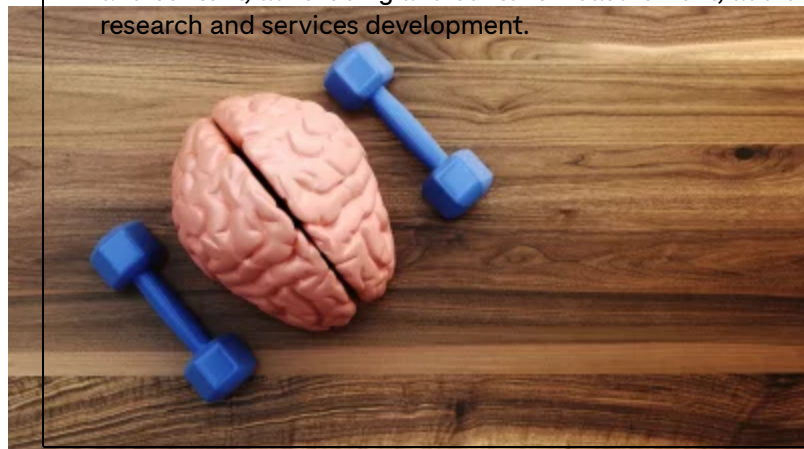
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NASA's Artemis II crew are quite the photographers. See what they've snapped so far

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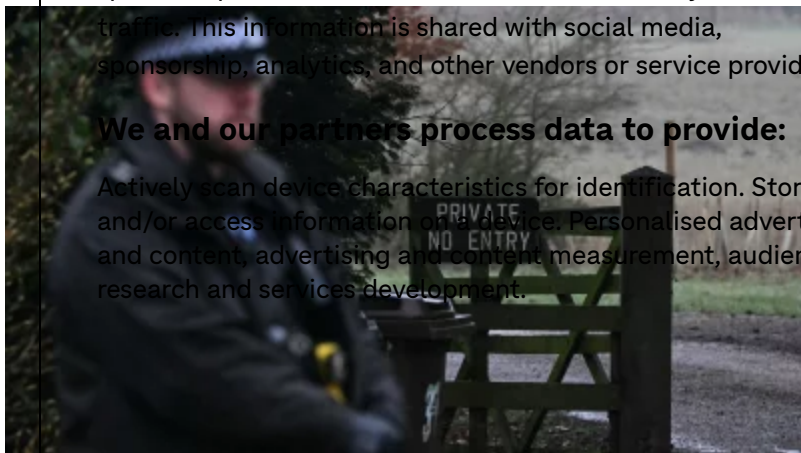
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Trump shared a racist "joke." That humor is an American tradition : Code Switch

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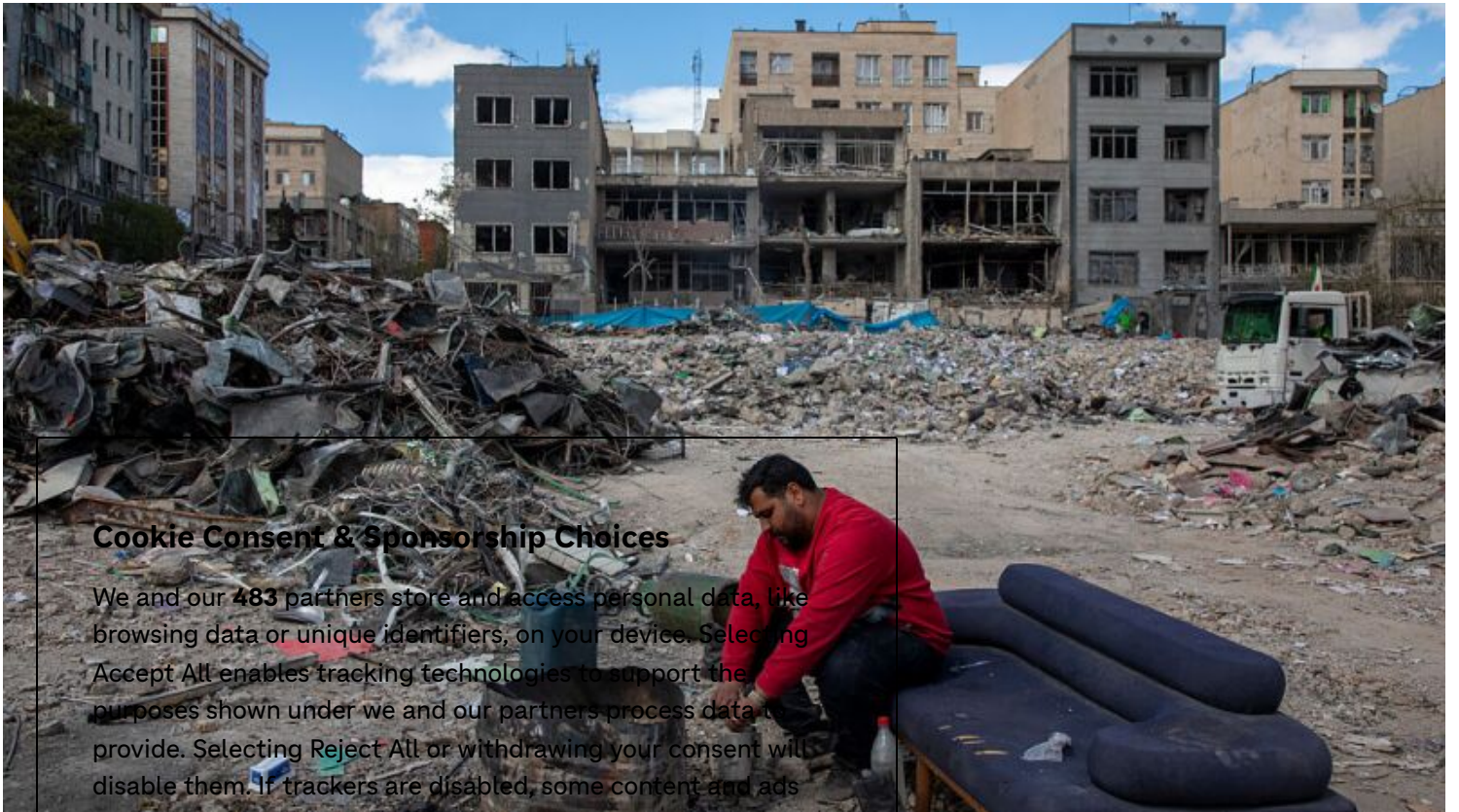
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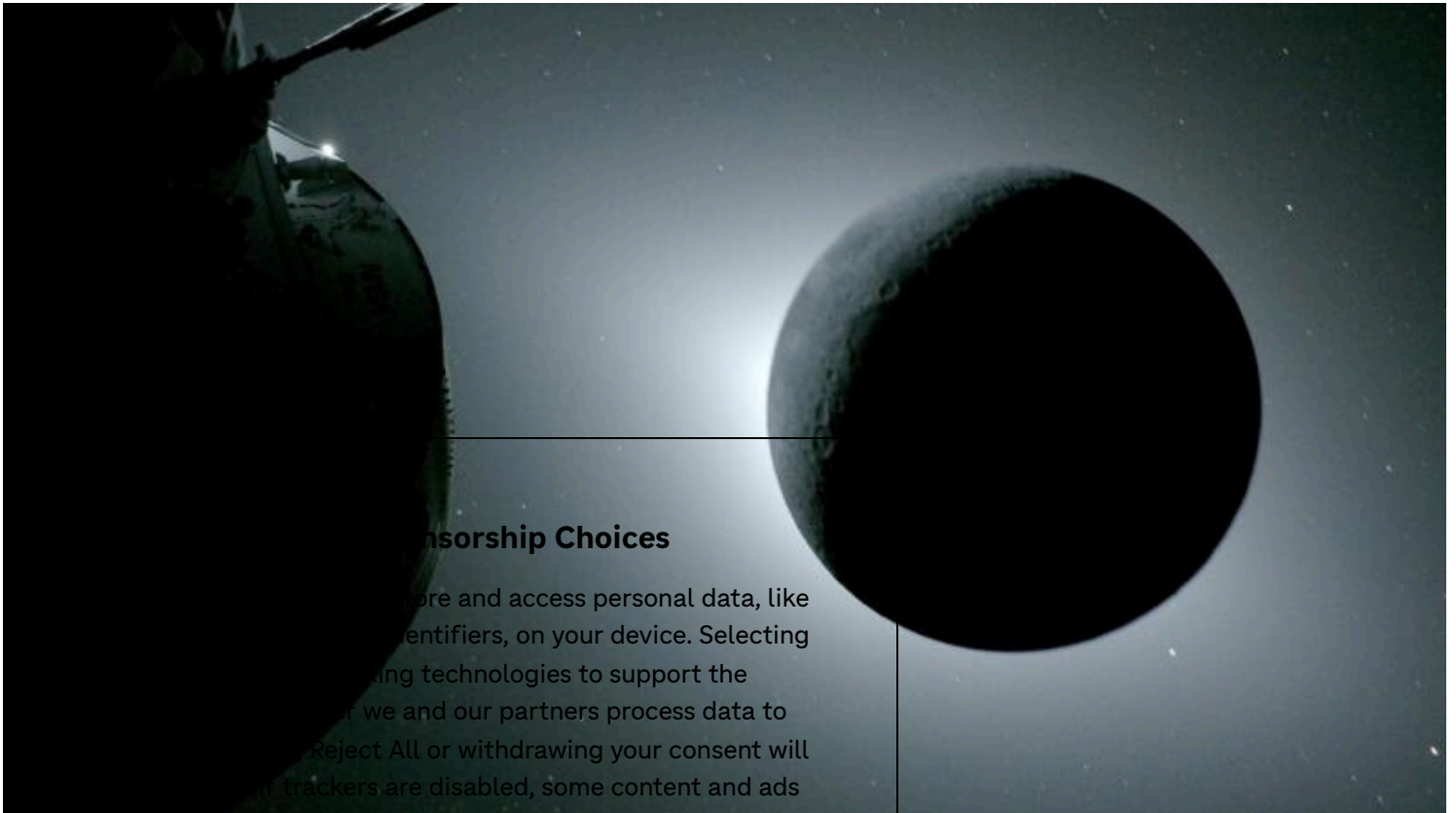
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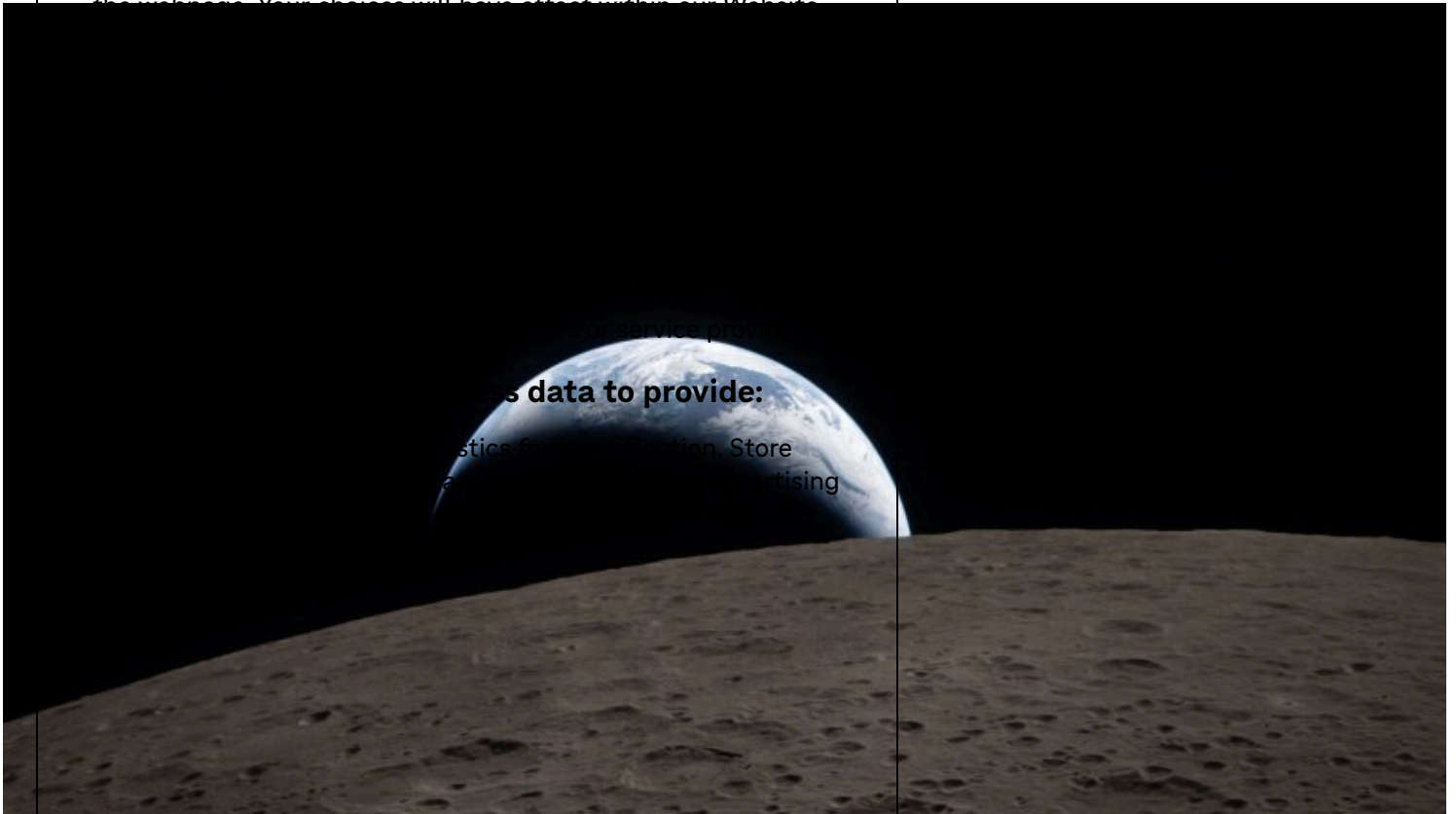
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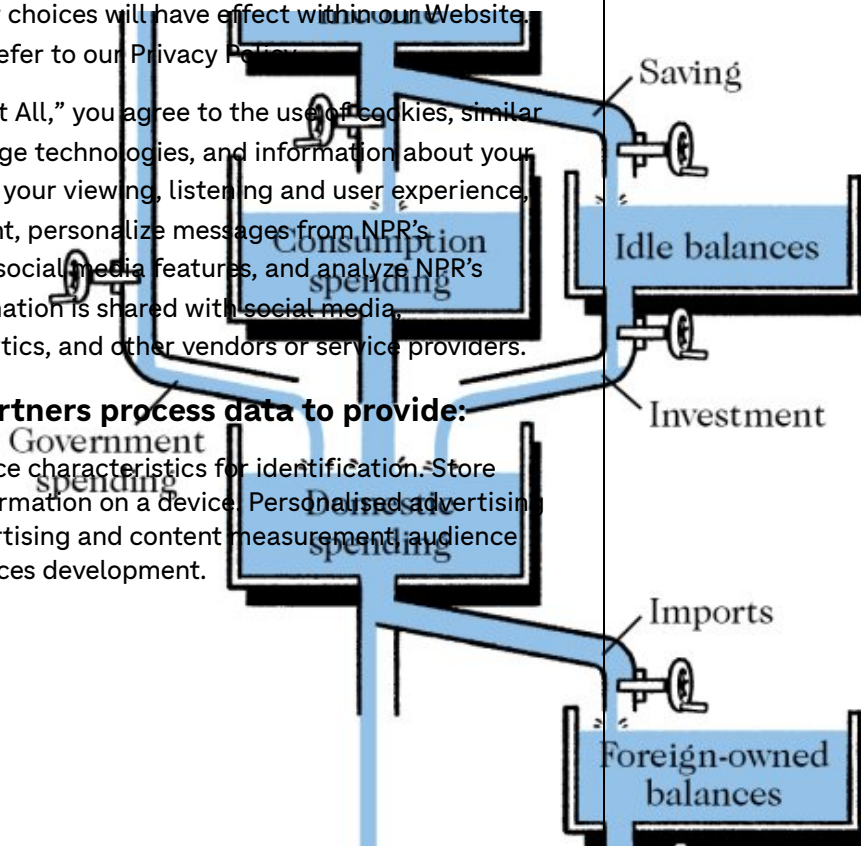
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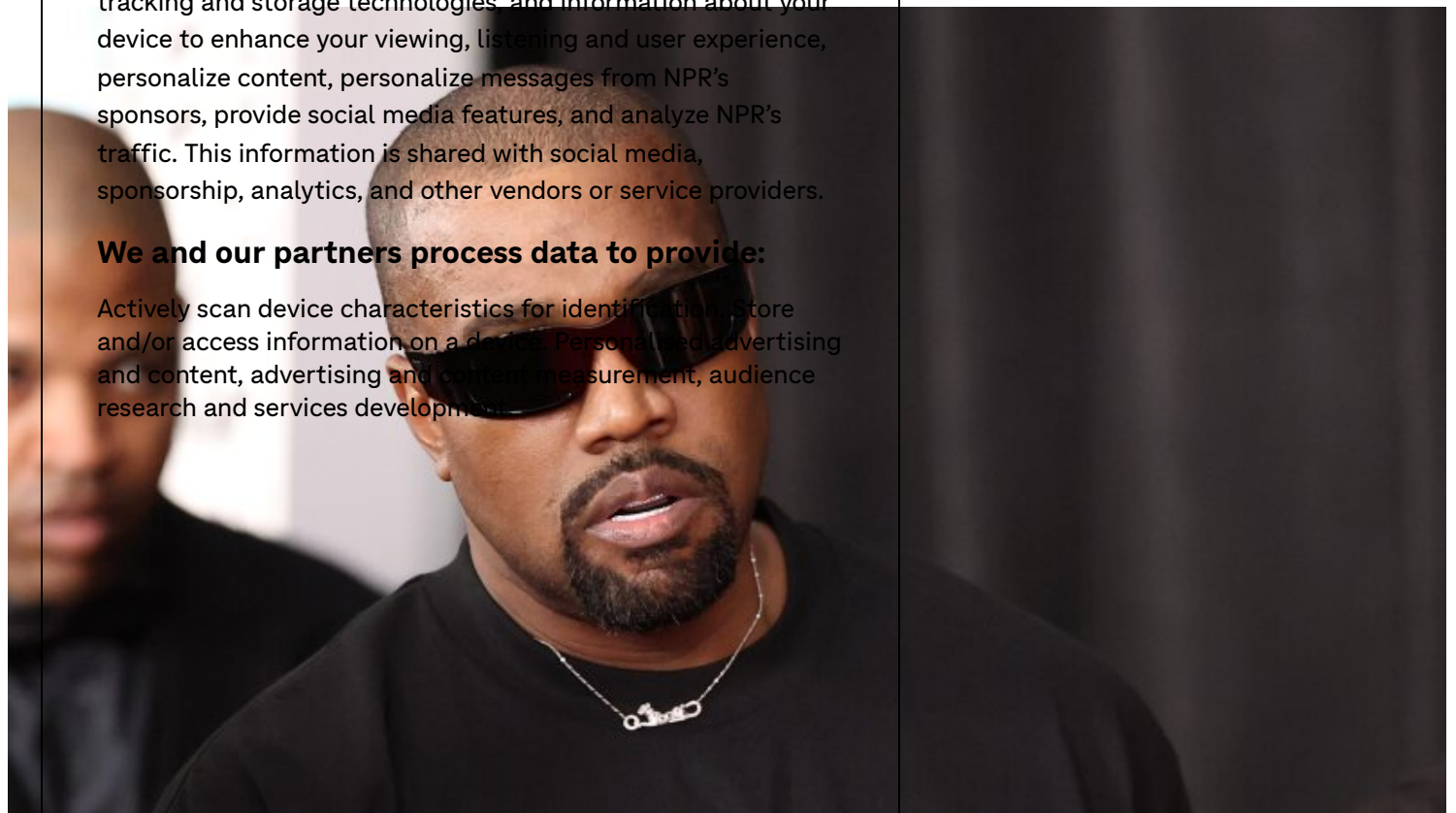
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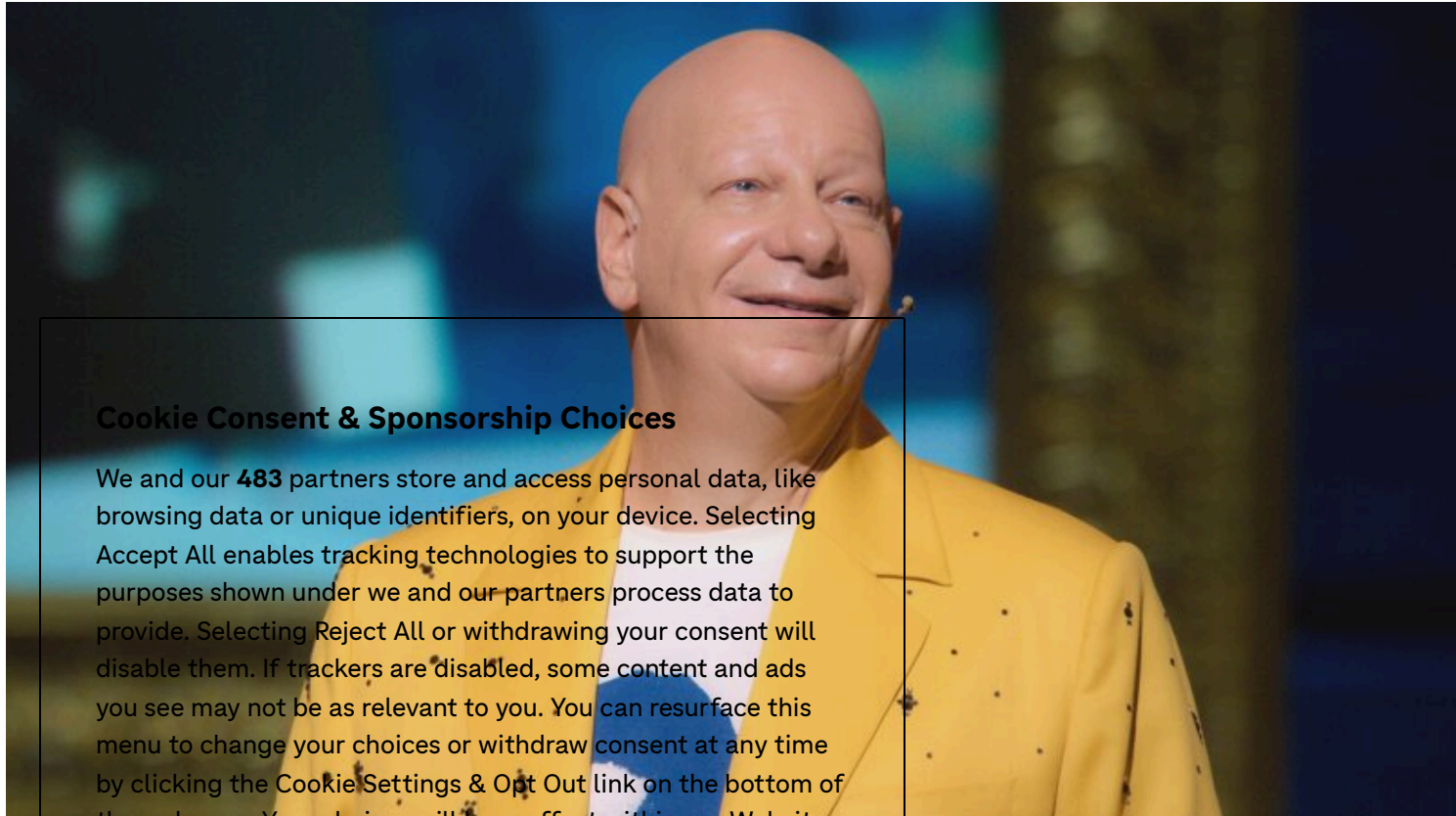
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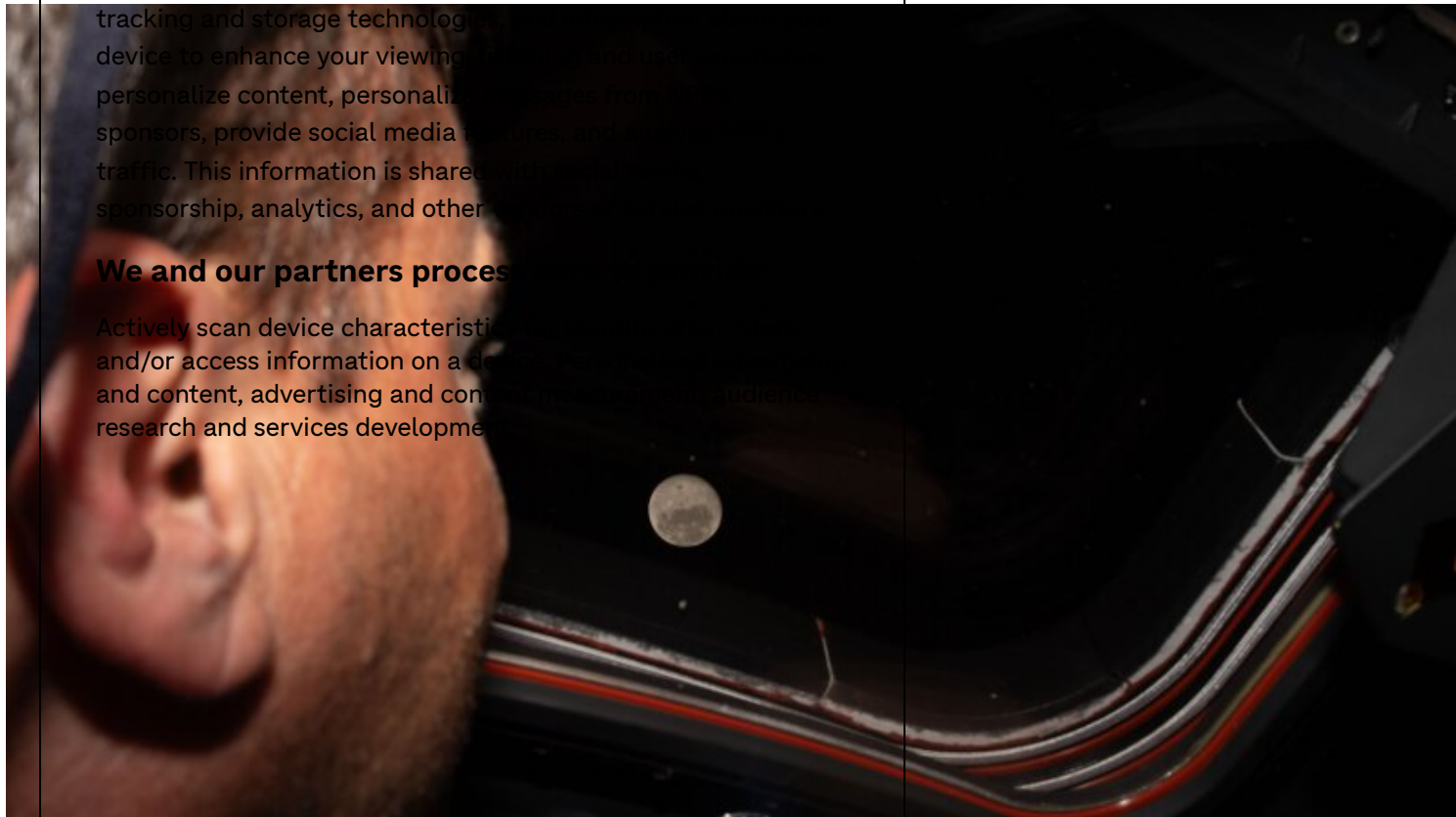
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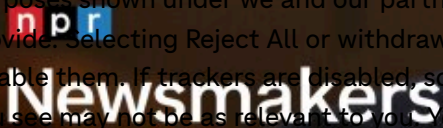
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