



## **Limitations on the Use of the National Guard for Federal Law Enforcement Missions**

August 2020

In late May, President Trump ordered over 5,000 National Guard troops—from the District of Columbia and eleven states—to storm DC streets and subdue civil rights protests. National Guard members joined other armed federal law enforcement agents who deployed tear gas, rubber bullets, and other munitions to violently disperse thousands of peaceful protesters from D.C.’s Lafayette Square. As Attorney General William Barr wrote, the Secretary of Defense—at Trump’s direction—assigned out-of-state National Guard troops the mission of protecting federal property in D.C., including law-enforcement-like duties such as “crowd control, temporary detention, cursory search, measures to ensure the safety of persons on the property, and establishment of security perimeters.”

The 54 state and territorial National Guard organizations are state entities, subject to state laws and state governors’ command almost all of the time. When the executive branch does “federalize” National Guard units, bringing them under the president’s command and control to serve federal missions or operations, Guard troops are subject to the [Posse Comitatus Act](#), which prohibits the military’s use in domestic law enforcement without express authorization.

But when the president or Secretary of Defense call National Guard members to serve missions in what’s known as a “hybrid” status, rather than “federalizing” them, they are not subject to those domestic limitations on the federal military. That is because while in hybrid status, National Guard troops serve federal missions while remaining under their state governors’ command and control. Only when commanded by their state governor may National Guard members serve as law enforcement.

Congress has prescribed permissible hybrid status activities in Title 32 of the U.S. Code. Under [32 U.S.C. § 502\(f\)](#), National Guard units may “be ordered to perform training or other duty,” which includes “operations or missions . . . at the request of the President or Secretary of Defense,” with the consent and command of their states’ governors. Under Attorney General Barr’s interpretation, this provision—part of a larger provision on National Guard training exercises—gives the Trump administration expansive authority to order out-of-state National Guard units to serve any missions the president requests.

**This administration’s interpretation of 32 U.S.C. § 502(f) is overbroad.** Congress’s laws about *training exercises for state-run organizations* cannot be interpreted to undo

fundamental *federal* prohibitions on using the military for law enforcement against U.S. civilians. In addition, the provision cannot let the president or Secretary of Defense usurp state command of the National Guard while retaining its “hybrid” status. In such an arrangement, § 502(f) would effectively allow all the powers of “federalizing” the Guard—without the baseline restriction against using the military to regulate civilians enshrined in the Posse Comitatus Act.

It is clear that the May deployments to D.C. violated the essential nature of “hybrid” status. At a July [hearing](#) before the House Armed Services Committee, Defense Secretary Mark Esper [admitted](#) that those thousands of out-of-state National Guard units in D.C. also reported to a federal chain of command, rather than remaining solely under state control. This admission means that the Trump administration effectively federalized the Guard without invoking the Insurrection Act or another statutory exception to the Posse Comitatus Act, as required by law.

Section 502(f) was not designed to provide a loophole around the Posse Comitatus Act. It allows the National Guard to train for many critical federal missions, such as disaster relief, in their hybrid status. Serving as military police under federal command is not one of them. Such a mission directed at American civilians violates bedrock constitutional and *posse comitatus* principles.

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