When the military meets the streets it's a dangerous step toward autocracy

By Dan Jacobson

The use of armed forces for domestic purposes raises concerns that President Donald Trump may be approaching a point where the balance of power in the constitutional republic risks shifting toward autocracy. As Gov. Gavin Newsom stated in his televised address on June 10: "The moment we've feared has arrived."

Peaceful protests against ICE raids have been occurring in Los Angeles since Saturday, June 7, following an ICE raid on day laborers at the city of Paramount's Home Depot. A small amount of violence has occurred alongside those peaceful protests. Police have responded effectively with arrests and tactical crowd control. Nevertheless, Trump has federalized 2,000 members of the California National Guard and deployed them to Los Angeles in response to these constitutionally protected protests. He has also sent 700 Marines to the area.

This article examines whether the president has the authority to mobilize the National Guard and the Marines for domestic military activities under the current circumstances in Los Angeles.

National Guard and the law

Article I, § 8, Clauses 15-16 of the U.S. Constitution grants Congress the power "to provide for calling forth the militia to ... suppress insurrections, and repel invasions." This power is explicitly given to Congress, not the president. Although Congress has delegated some authority to the president, it has also placed strict limitations on its use. Trump is relying on 10 U.S.C. § 12406. *See* Gov. Newsom's Motion for a TRO in *Newsom v. Trump*, Case No. 3:25-cv-04870-CRB (N.D. Cal.).

Under 10 USC § 12406, the president may call the National Guard into service to repel an invasion by a foreign nation or suppress a rebellion. The statute requires that any such order "shall be issued through the governors of the States."

The 1984 film "Red Dawn," starring Patrick Swayze, dramatizes a fictional Soviet invasion of the United States. That film depicted an invasion by "a foreign nation," which is what 10 USC § 12406 requires. Off-screen invasions by a foreign nation include Hitler's invasion of Poland and Russia's invasion of Ukraine. Nothing of that scale is happening in Los Angeles.

While there have been isolated incidents of violence, there is no evidence of a rebellion or attempt to overthrow the government. Therefore, there is no legal justification for invoking § 12406.

The statute also allows the president to act if "the regular forces" are unable to enforce federal law. However, there is no indication that ICE, the FBI, or any other federal agency is unable to carry out its duties in Los Angeles.

Recall that § 12406 requires that federalization of the National Guard orders "shall be issued throngh the governors of the States." No such order was issued through Gov. Newsom, who has explicitly opposed the deployment and formally requested that it be rescinded. *See*: Weber, Lindsay. "Gov. Newsom formally requests rescinding of National Guard amid Los Angeles protests," KCRA.com, updated 06/09/25.

Insurrection Act misuse

There has also been speculation that Trump may invoke the Insurrection Act. While the term "invoke" might conjure images of military crackdowns, the act is better understood as a safeguard against presidential overreach. The Insurrection Act of 1807 is a compilation of statutes enacted between 1792 and 1871, now codified at 10 U.S.C. §§ 251–255. *See*: Nunn, Joseph. "The Insurrection Act Explained," *Brennan Center for Justice*, April 21, 2022.

Section 251 allows the president to act in response to an insurrection against a state government, but only upon the request of that state's governor or legislature. Neither Newsom nor California's legislature has made such a request. The protests in Los Angeles have been largely peaceful and remain under control by local law enforcement.

Courts have defined "insurrection" as "a violent uprising by a group or movement acting for the specific purpose of overthrowing the constituted government and seizing its powers." *See*: *Pan Am. World Airways, Inc. v. Aetna Casualty & Surety Co.*, 505 F.2d 989 (2d Cir. 1974); accord *Younis Bros. & Co. v. Cigna Worldwide Ins. Co.*, 91 F.3d 13 (3d Cir. 1996). Under § 251, Trump lacks authority because (1) there is no request from the state and (2) there is no insurrection.

Section 252 allows the president to respond to a rebellion against federal authority. However, describing the current situation in Los Angeles as a "rebellion" is inaccurate. The protests, though sometimes marred by minor violence, have not threatened the federal government's authority.

The constitutional limits of § 253

Section 253 pertains to the president's use of armed forces (not just the National Guard) and may appear to offer broader discretion. However, it is as much a limitation as it is a grant of authority. It permits military action only if insurrection, domestic violence, unlawful combination, or conspiracy so obstructs law enforcement that people are deprived of constitutional rights.

In this case, (a) there is no insurrection, and (b) it is implausible to argue that the peaceful protests are depriving any group of constitutional rights. In fact, the protests themselves are an expression of such rights.

Attempting to apply the Insurrection Act to the Los Angeles protests is not like fitting a square peg into a round hole—it's like trying to fit a planet into a teacup.

The Posse Comitatus Act

The president's domestic use of the military is also constrained by the Posse Comitatus Act of 1878. That law criminalizes unauthorized use of the military to enforce domestic laws. 18 U.S.C. § 1385 provides:

"Whoever, except in cases and under circumstances expressly authorized by the constitution or Act of Congress, willfully uses any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."

Presidents enjoy some immunity. *Trump v. United States*, 603 U.S. 593 (2024). But *Trump* does not extend to the president the right or power to break the law. Further, *Trump* immunity does not apply to subordinates like the Secretary of Defense or White House staff. The language of the Posse Comitatus Act is clear and unambiguous.

As explained, there is no insurrection, and no one's constitutional rights are endangered by the peaceful protests. The isolated incidents of violence have been effectively addressed by local authorities.

Some observers interpret Trump's actions as part of a broader strategy: provoke unrest, use resulting images to justify federal intervention, and incrementally assert greater control over federal agencies. Critics warn this may be part of a wider effort to make Donald Trump a king, eschewing and destroying the Congress, the courts, and the rule of law. However, many Americans—including members of the armed forces—appear attuned to these risks and remain committed to constitutional order.

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