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June 1, 2020

M E M O R A N D U M

To: State-Federal Representatives
From: Mary Catherine Ott, Legislative Director
Re: Actions Related to Use of National Guard and the Insurrection Act

State of Play

White House

On Monday, President Trump fully activated the D.C. National Guard, deploying 1,200 members and reportedly requested additional forces from other states.

The White House Press Secretary Kayleigh McEnany stated that “The Insurrection Act, it’s one of the tools available, whether the President decides to pursue that, that’s his prerogative.” McEnany also stated that the Administration plans to set up a “central command center” that will include Joint Chiefs Chair Gen. Mark Milley, Defense Secretary Mark Esper and Attorney General William Barr, in conjunction with state and local officials.

Department of Defense

On Monday night, the Pentagon stated that the Department of the Army is in contact with the Mayor of D.C. and that the National Guard will be used to monitor monuments and the White House while additional forces have been put on alert status. Active duty forces will not be sent at this time.

In the States

As of Monday, 23 states and the District of Columbia had called up more than 17,000 Guardsmen to aid state and local law enforcement in responding to the civil unrest. Rules of Force vary from state to state. In all cases, state and local law enforcement agencies remain responsible for security, with the National Guard responding to their requests for assistance in augmenting law enforcement.

NGA will provide additional updates as they are made available. States should note that Guard forces responding to COVID-19 could be impacted.

The Insurrection Act – 10 United States Code, Chapter 13

The Insurrection Act, once invoked, allows the President to deploy active-duty forces within the United States without the request or the consent of a governor. The Act also allows active-duty troops to preform law enforcement missions which are normally prohibited by the Posse Comitatus Act (10 United States Code, Section 1385).

Invoking the Act

Typically invoking the Insurrection Act is done via Presidential Executive Order. At this time, no Executive Order has been issued, but is possible in the near future.

- The Insurrection Act was last invoked in 1992 by President Bush during the Rodney King riots in Los Angeles. Within President Bush’s Executive Order (Executive Order 12804), the President invoked 10 United States Code, Chapter 15 which governs military support to law enforcement.

Involuntary Mobilization Authorities for the National Guard

- Title 10 USC, Section 12406
 - Specifically Section 3 notes “the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.”
- Title 10 USC, Section 12302 – in the event of a national emergency, the President may order no more than 1 million members of the ready reserve to active duty status without their consent for up to 24 consecutive months.
- Title 10 USC, Section 12301 - allows for involuntary mobilization of reserve component members without their consent for not more than 15 days.

Other Resources

- CRS Report – The Posse Comitatus Act and Related Matter: A Sketch – 2018
- CRS Defense Primer: Legal Authorities for the Use of Military Force
- DOD Joint Publication: Defense Support of Civil Authorities – 2018
- CRS Defense Primer: Defense Support to Civil Authorities – 2019

For questions or concerns related to the contents of this memo, please contact NGA staff
(Mary Catherine Ott, mcott@)