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The Insurrection Act:

Trump's Next Test of Executive

Power

By

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Executive Summary

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- ✦ Donald Trump is considering invoking the Insurrection Act of 1807 to deploy US military forces domestically.
- ✦ The Act grants presidents broad authority to use federal troops during unrest, overriding limits set by the Posse Comitatus Act.
- ✦ Trump has already deployed National Guard units to several Democrat-led cities, sparking lawsuits from Oregon and Illinois.
- ✦ Trump argues the move is needed when courts, governors, or mayors block federal action to restore order or enforce laws.
- ✦ The administration is weighing legal risks, fearing court challenges if the Act is invoked prematurely.
- ✦ A supportive Supreme Court majority, including three Trump appointees, may strengthen his position on executive power.

Key Picture: National Guard Status Distinctions

	State Active Duty	Title 32	Title 10, Active Duty <i>Under the Posse Comitatus Act</i>	Title 10, Active Duty <i>Under Insurrection Act exception to the Posse Comitatus Act</i>
Command & Control	Governor		President	
Where	Home State or United States	United States	United States and Global	United States and Global
Pay	State	Federal	Federal	
Discipline	State Military Code		Uniform Code of Military Justice	
Mission Types	State Domestic Operations	State Domestic Operations & Federal Missions**	Federal Missions	
		Federal Training	Federal Training	Federal Training
	Includes Policing		No Policing (Support Only)	Policing

*DC National Guard is distinct from other state National Guard units. Its unique characteristics are not captured in this chart.

** 32 U.S.C. §502(f) provides for federal training and might also be read to allow other federal direction while in Title 32 status. This will be described later in this brief.

The authors added to information presented on the Emergency Management Assistance Compact (EMAC) website: "The National Guard & EMAC," EMAC, <https://www.emacweb.org/index.php/training-education/learn-about-emac-your-discipline/national-guard>.

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1. The Insurrection Act: The Background

President Donald Trump may invoke a law dating back more than two centuries that grants him the authority to deploy US military forces to support his domestic agenda.

The Insurrection Act of 1807, a seldom-invoked statute, empowers the president to use federal troops or place National Guard units under federal control to quell large-scale protests or civil unrest. In recent months, Trump has sent National Guard forces to several Democrat-led cities, including Los Angeles, Chicago, and Washington, D.C. Local officials have criticised the move, arguing that it is intended to provoke tension and legitimise a federal and military presence in American cities.¹

In October, Trump raised the idea of using the Insurrection Act, saying he would enact it “if it was necessary” and if courts “or governors and mayors were holding us up.” His administration is currently facing lawsuits from Oregon and Illinois over his efforts to send National Guard troops to Portland and Chicago.² The remarks followed lawsuits seeking to block what they call Trump’s “patently unlawful” deployment of hundreds of National Guard troops.³

What is the Insurrection Act of 1807?

When activated, the Insurrection Act grants the president the power to deploy the US military or National Guard within the nation’s borders to respond to situations like rebellion, insurrection, or civil unrest. It also allows the president to use these forces to enforce the law when normal enforcement has become “impracticable.” It serves as an exception to the Posse Comitatus Act, which generally prohibits federal troops or the National Guard from enforcing domestic laws. When invoked, it temporarily suspends those restrictions and allows the president to deploy troops, including when a state’s legislature or governor requests federal help to quell an insurrection.⁴ Because the Insurrection Act is broadly worded and lacks clear limits on its use, it grants presidents significant discretion in determining when to deploy military forces for domestic purposes.⁵

Normally, the Posse Comitatus Act bars the US military, including federally activated National Guard troops, from engaging in civilian law enforcement, reflecting a long-held belief that military involvement in civil affairs threatens liberty. Invoking the Insurrection Act suspends this rule, allowing the president to deploy troops to support civilian authorities, from enforcing federal orders to suppressing uprisings.⁶

When can the Insurrection Act be used?

Under the Insurrection Act, the president can deploy troops in three main situations:

- State request: when a state’s governor or legislature asks for federal help to stop an insurrection.
- Without state approval: If unrest or rebellion makes it impossible to enforce federal laws.
- To protect rights or justice: If violence or conspiracy prevents a state from upholding citizens’ constitutional rights or obstructs justice.

Before invoking the act, the president must first issue a public order demanding that those involved disperse peacefully within a set time.⁷

2. Why does Trump want to use the Insurrection Act?

During his campaign, Trump promised to curb illegal immigration and described the southern border as a national emergency, suggesting the Insurrection Act could help restore control. On his first day in office, he sought recommendations on whether to use the act to secure the border and soon launched aggressive enforcement actions, including mass deportations and transferring Venezuelan gang suspects abroad.

Despite these efforts, border apprehensions have dropped sharply in recent months. In October, after a court blocked his plan to send National Guard troops to Portland, Trump again considered invoking the Insurrection Act, saying he would do so if violence escalated or local leaders prevented federal action.⁸

3. Will Trump invoke the Insurrection Act?

It's uncertain but possible. According to NBC, which cites anonymous sources, the Trump administration has recently held "increasingly serious discussions" about invoking the Insurrection Act, after earlier considering it more hypothetically. NBC reports that such action isn't expected soon and would likely come only after other options for deploying troops are exhausted. Trump has indicated he might invoke the law if courts block his efforts.⁹

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In recent weeks, Trump officials have more seriously discussed invoking the Insurrection Act - an option Trump considered but never used in his first term. Earlier this month, Trump called Portland a city of "insurrectionists," while his deputy chief of staff, Stephen Miller, described an adverse court ruling in Oregon as a "legal insurrection." In addition, Vice President JD Vance said the president is considering various options for using the military to address domestic crime, while Trump asserted that he has the authority to invoke the Insurrection Act if he chooses.¹⁰

However, while the Supreme Court has long granted presidents broad authority to deploy troops under the Insurrection Act, courts can still intervene if that power is used unlawfully or in bad faith. Because of this, Trump officials reportedly worry that invoking the Act now might not hold up in court and are working to build a stronger legal case before he makes such a move.¹¹ If Trump were to invoke the act, his administration would likely face lawsuits disputing his interpretation of the law and whether the legal conditions for its use had been met.¹²

To Trump's advantage, the current Supreme Court has recently granted him broad authority in several unsigned rulings related to deportations and the removal of federal officials. The Court's 6-3 conservative majority includes three justices Trump appointed during his first term.¹³

NOTES

¹ Ariana Baio, "What is the Insurrection Act of 1807 and will Trump invoke it as he pushes for more troops in American cities?", *The Independent*, accessed 22 October 2025, <https://www.independent.co.uk/news/world/americas/us-politics/insurrection-act-of-1807-trump-military-b2840939.html>.

² Victoria Craw and Leo Sands, "Trump keeps talking about the Insurrection Act. What is it?", *The Washington Post*, accessed 22 October 2025, <https://www.washingtonpost.com/politics/2025/10/07/trump-insurrection-act-posse-comitatus/>.

³ Connor Greene, "Trump Is Threatening to Use the Insurrection Act to Deploy Troops in the U.S. Can He?", *Time*, accessed 22 October 2025, <https://time.com/7324040/insurrection-act-trump-national-guard/>.

⁴ Ariana Baio, "What is the Insurrection Act of 1807 and will Trump invoke it as he pushes for more troops in American cities?", *The Independent*

⁵ Ana Faguy, "What is the Insurrection Act?", *BBC News*, accessed 22 October 2025, <https://www.bbc.co.uk/news/articles/c9qwez9zz7jo>.

⁶ Joseph Nunn, "The Insurrection Act Explained", *Brennan Center*, accessed 22 October 2025, <https://www.brennancenter.org/our-work/research-reports/insurrection-act-explained>.

⁷ Ariana Baio, "What is the Insurrection Act of 1807 and will Trump invoke it as he pushes for more troops in American cities?", *The Independent*.

⁸ Ana Faguy, "What is the Insurrection Act?", *BBC News*.

⁹ Alison Durkee, "Will Trump Invoke Insurrection Act? Here's What He Can—And Can't—Do If He Does", *Forbes*, accessed 22 October 2025, <https://www.forbes.com/sites/alisondurkee/2025/10/09/will-trump-invoke-insurrection-act-heres-what-he-can-and-cant-do-if-he-does/>.

¹⁰ Brigham Tomco, "Will Trump use the Insurrection Act at 'No Kings' protests this weekend?", *Yahoo News*, accessed 22 October 2025, <https://www.yahoo.com/news/articles/trump-insurrection-act-no-kings-234922258.html>.

¹¹ Alison Durkee, "Will Trump Invoke Insurrection Act? Here's What He Can—And Can't—Do If He Does", *Forbes*.

¹² Connor Greene, "Trump Is Threatening to Use the Insurrection Act to Deploy Troops in the U.S. Can He?", *Time*.

¹³ Matt Grossmann, "The Supreme Court is enabling Trump's executive power", *Niskanen Center*, accessed 22 October 2025, <https://www.niskanencenter.org/the-supreme-court-is-enabling-trumps-executive-power/>.