



California National Guard unit members stood during a deployment in Los Angeles in May 1992. JOE MARQUETTE/ASSOCIATED PRESS

Insurrection Act Is Broad and Is Seldom Used

BY VICTORIA ALBERT

President Trump has threatened to invoke the Insurrection Act in the wake of widening protests over immigration enforcement in Minnesota and last week's fatal shooting of 37-year-old Renee Nicole Good by an ICE agent.

The 19th-century law would allow Trump to deploy the military inside the U.S. It would be the first use of the emergency federal power for domestic law enforcement in over three decades.

Here's what to know about the law.

An exception to the Posse Comitatus Act

The Insurrection Act is a law that authorizes the president to use military force for civilian law-enforcement in the U.S. in a narrow set of circumstances.

It is an exception to the Posse Comitatus Act that typically places strict limits on how federal forces can be used on U.S. soil.

It permits calling in federal forces whenever the president "considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States" make it impossible to enforce laws through normal judicial procedures.

It also allows Trump to use the military when an insurrection or similar action deprives someone of a constitutional right and state authorities don't remedy the situation. He can also send in federal forces, the law says, when such a group "opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."

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The law as written is extremely broad, and many of the terms it uses don't have concrete definitions, said Laura Dickinson, a professor at George Washington University's law school.

Nevertheless, she said, it has been interpreted by both parties for centuries as a final-resort emergency option to be used only when law and order has completely broken down.

"If it were invoked now, we would be in uncharted waters," Dickinson said.

Has Trump invoked this law before?

No. Trump considered using the Insurrection Act in 2020 to quell protests over the death of George Floyd, but faced pushback from within his administration. He ultimately decided against it.

The Insurrection Act has been invoked only a few dozen times in U.S. history, according to the Brennan Center for Justice, a public-policy think tank.

It was most recently used by President George H.W. Bush in 1992—at the request of California's governor—to aid with civil unrest over the acquittal of four Los Angeles police officers in the beating of Rodney King, the center said.

So far, Trump has used other legal justifications for sending National Guard troops to U.S. cities. Those troops haven't been exempt from Posse Comitatus, meaning they are largely barred from conducting law-enforcement operations. *TC*

Trump was able to deploy the National Guard in Washington, D.C., because the city is under federal control. In Los Angeles, he cited the threat posed to federal buildings and personnel.

In December, Trump said he would end National Guard deployments in Los Angeles, Chicago and Portland, Ore., following monthslong legal battles with the Democratic-led cities.

Would an invocation face court challenge?

Any invocation of the act will almost certainly be challenged in court.

It will raise several questions, including how much deference the courts should give to the president's interpretation of the situation on the ground.

While the act is historically understood as a last-ditch tool for absolute emergencies—such as when law cannot be carried out because courts have been forced to close—the Trump administration is likely to argue, as it has in similar cases, that the courts don't have the authority to second-guess the president's judgment.

The law's vague language will also play a key role, said Dickinson, the law professor. Some experts say the lack of a clear definition for terms like "rebellion" will grant the president wide discretion. Others say that invoking it under these conditions so deeply contradicts the act's principles that it is unlikely to survive legal scrutiny.

Harold Hongju Koh, a Yale Law School professor, said a use of the act in these circumstances so plainly violates the idea of the law that any ambiguity in the wording wouldn't be enough for the Trump administration to prevail.

"The entire thing is antithetical to the history and tradition of the Constitution, which is what the Supreme Court cares so much about," he said.

Would federal troops police Americans?

While the act suspends Posse Comitatus, it doesn't necessarily mean that National Guard or armed forces would involve themselves directly in law-enforcement. The military hasn't been trained to police Americans, and traditionally has been vehemently opposed to the idea of doing so.