



COURAGE TO RESIST

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Troops ordered to engage in illegal law enforcement near US-Mexico border

“Cabinet order” stands in direct violation of federal law assumed to safeguard against martial law

By Courage to Resist. December 3, 2018

It turns out that sending about 6,000 active-duty troops to the southern border was more than a \$72 million (and counting) effort to bolster GOP prospects for the midterm elections. It may have been the beginning of the end for the 1878 Posse Comitatus Act. On November 20th, the Trump admin signed a memo directing active-duty troops to take on law enforcement roles, including authorizing the use of lethal force, for the first time along the southern border.

1878 Posse Comitatus Act

Law professor Marjorie Cohn explained in *Truthout* last week, “Passed in 1878 to end the use of federal troops in overseeing elections in the post-Civil War South, the Posse Comitatus Act forbids the use of the military to enforce domestic US laws, including immigration laws. For this reason, Trump’s decision to deploy the military to the border to enforce US immigration law against thousands of desperate migrants from Central America — who have undertaken

the perilous journey over 1,000 miles through Mexico to the US border in order to apply for asylum — is an unlawful order.” Up until now, military brass was able to claim a limited support role that didn’t violate the law. That’s gone now.

“The [Posse Comitatus] law was originally intended to protect the states from being controlled by federal troops. It has evolved into a singly defining, almost church versus state-type wall forbidding active-duty forces under the control of the president from conducting any types of crowd control or law enforcement domestically, essentially ensuring that the US military is not used to control or defeat American citizens on US soil,” explained Tara Copp for the



Photo: Collage of images taken of US agents firing tear gas across the border at asylum seekers gathered in Tijuana, Mexico on November 25, 2018.

Military Times on November 21.

In schools across America, US history teachers, for decades, have taught that unlike in foreign countries, the US military doesn’t police American streets, stage coups, declare martial law, and isn’t used by rulers against domestic political adversaries. The basis for those norms has been the law that Trump is attempting to scrap.

“Farewell Posse Comitatus, 1878-2018. It was good to know you these last 140 years you kept us safe from military dictatorship,” shared the author who coined the term “mansplaining,” Rebecca Solnit, on social media as an obituary to the federal act that was updated in 1956 and 1981.

While courts have ruled that the President may use the military to suppress insurrection or enforce federal authority, this order doesn’t refer to any emergency beyond an asserted belief that the US shouldn’t follow existing law (specifically the 1951 Refugee Convention) in processing claims by asylum seekers. The other exception is “in cases and under circumstances

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Celebrating resistance through dance

On November 5th, Courage to Resist hosted a public discussion, in Oakland, on the deployment of military troops to the southern border, with attorney James Branum. We started the evening with a moving flamenco performance in honor of the youth currently being held at Tornillo Port of Entry. Courage to Resist’s Jeff Paterson gave an update on military deployments, and Grace Shimizu spoke on the long history of race-based detention camps in the US.

Deployed to the border: A test of conscience for GI's

Critical legal info for US servicemembers concerned about legality of orders to deploy to the US-Mexico border

By James M. Branum, Military Law Task Force. November 28, 2018

The Trump Admin's political stunt of trying to block asylum seekers from reaching the US, even if it requires the use of force, raises serious legal and ethical questions for military servicemembers deployed for "support operations" at the border.

The Military Law Task Force of the National Lawyers Guild (MLTF) shares the concerns of organizations such as Veterans For Peace, Courage to Resist, and others, that US servicemembers are being given illegal orders. We are also troubled about the lack of effective legal alternatives for service members dealing with possible illegal orders and believe it is essential that members of the military are fully informed about their rights and responsibilities under the law. In this memo, we will discuss briefly some of the legal challenges that a servicemember might face when deciding whether to disobey a possibly illegal order.

Definition of an unlawful order

UCMJ Article 92 states that:

Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

Article 92 says that a servicemember has an obligation to obey lawful orders or regulations, but

it does not define what "lawful" means, Part IV of the Rules for Court-Martial (Punitive Articles) paragraph 16 (c)(1)(c), gives us this definition of what a lawful order would be:

Lawfulness. A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it. See the discussion of lawfulness in paragraph 14c(2)(a).

Who can make the judgment call as to what is and isn't "lawful"?

Moving on to paragraph 14c(2)(a) of Part IV of the RCM, we are provided some troubling guidance:

- (a) *Lawfulness of the order.*
 - (i) *Inference of lawfulness. An order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.*
 - (ii) *Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.*
 - (iii) *Authority of issuing officer. The commissioned officer issuing the order must have authority to give such an order.*

Authorization may be based on law, regulation, or custom of the service.

- (iv) *Relationship to military duty. The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission,*



Army's 104th Engineer Construction Co., based at Fort Hood, setting up razor wire near Nogales, Arizona. Photo: Meridith Kohut, TIME November 15, 2018

or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this article.

(v) *Relationship to statutory or constitutional rights. The order must not conflict with the statutory or constitutional rights of the person receiving the order.*

This RCM provision leaves a servicemember with a terrible set of choices. A servicemember can refuse to obey an order due to the servicemember's belief that the order is an "unlawful" order, however, the servicemember takes this choice at his or her own peril, since the final decision of lawfulness can only be decided by a military judge in a court-martial.

The question of the legality of military deployments to the border


The question of the legality of border deployments has already been discussed at length by law professor Marjorie Cohn in "Why the deployment of active duty troops to the border is illegal" (*Truth-Out* November 19, 2018), in which she primarily discussed the federal statutory ban on the use of the military to enforce civilian laws as well as the

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"I didn't take an oath to defend illegal war abroad & immigrant concentration camps at home. True leaders refuse illegal & immoral orders."

**—Brittany DeBarros
Captain, US Army***

 couragetoresist.org

An example of Courage to Resist's ongoing social media campaign to engage servicemembers. Brittany DeBarros is not speaking on behalf of the military. Her service branch and rank are noted for identification purposes only.

Active duty troops ordered to engage in illegal law enforcement (continued from front)

expressly authorized by the Constitution or Act of Congress," which has not, and is not likely, to occur.

Resist unlawful orders

"The Uniform Code of Military Justice (UCMJ) requires that all military personnel obey lawful orders. Article 92 of the UCMJ says, "A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States...." Both the Nuremberg Principles and the Army Field Manuals create a duty to disobey unlawful orders," explained Professor Cohn.

Courage to Resist, Veterans For Peace, and About Face, have been distributing an open letter to soldiers on the border entitled, "Don't turn

them away: The migrants in the Central American caravan are not our enemies." So far troops that have been approached with leaflets seem clearly concerned about their mission, but are also fearful of taking what is seen by the military as "propaganda." This underscores the need for social media outreach, both friends sharing posts as well as the strategic paid ads that Courage to Resist is fundraising for.

"Courage to Resist exists to support the troops who refuse to fight illegal and unjust wars or face repercussions for speaking out against endless war for empire," explains Jeff Paterson, Courage to Resist's Project Director. "We will do everything possible to make sure that those troops, courageous enough to

refuse Trump's illegal and xenophobic War on Refugees, Immigrants, and People of Color in general, do not stand alone. We've been assisting military objectors of various stripes for awhile now, so we understand that these heroes will need all of the political, material, and legal assistance that can be mustered. And we stand ready to do just that today."

We can't let this become the new normal!

Legacy giving

As you are making out your will, please consider a bequest to Courage to Resist. For more information about bequest language in your estate plans, please give us a call: 510-488-3559.

Deployed to the border: A test of conscience for GI's (continued from pg. 2)

1951 Refugee Convention requirement that all people who arrive in the US have the right to apply for asylum.

Other legal issues have arisen since Cohn's article was released, most notably the Trump administration's attempt to circumvent the limitations of the Posse Comitatus Act by way of a so-called "Cabinet Order" that claims to give troops the authorization to use lethal force.

Also, on November 25, US Customs and Border Patrol agents fired tear gas canisters on civilians (including children) who were on the Mexican side of the border. While these attacks were not made by military personnel, the incident highlights the increasing likelihood that deployed US troops might be ordered to participate in similar situations (using either less-lethal kinds of weapons, such as tear gas, or live fire).

Indiscriminate attacks by military forces on civilian populations are banned under Protocol I of the Geneva Convention. However, the US is not yet a signatory to protocol I, so its applicability to the current situation is in question. But, use of chemical weapons (including tear gas) by military forces is banned under the 1993 Chemical Weapons Convention (of which the US is a signatory), which would mean that any use of chemical weapons (including tear gas) would be a violation of federal law (by way of the US Constitution treaty clause).

What should servicemembers do?

There is no easy or unambiguous answer. Servicemembers, who choose to disobey orders to deploy to the border, may face serious consequences, acting "at their own peril" that their judgment of the unlawfulness of the orders will in fact be affirmed by a military judge if they are forced to stand trial, yet those who chose to take this course will be freed from possible future prosecutions for the commission of violations of federal and/or international law, as well as the personal guilt of having participated in an immoral action in support of a racist imperial regime.

Servicemembers, who choose to obey orders to deploy to the border, will not be facing punishment in the short-term, but may find themselves placed in terrible situations that will test their personal conscience and may lead to future prosecution for the commission of violations of federal and/or international law, as well as the high likelihood of suffering possible moral trauma and PTSD as a long term consequence of their actions.

Options to avoid a deployment may be available, including finding medical, family hardship or other grounds that might show that a servicemember is not capable of being deployed and/or is eligible for a discharge. But these alternate paths to

avoid deployment may be limited due to the suddenness of the deployment.

And it must be mentioned that military servicemembers do have the right to report possible illegal orders through the use of (1) a congressional inquiry, (2) filing an IG (Inspector General) complaint, or (3) the UCMJ Article 138 process. And, of course, servicemembers enjoy first amendment protections for their speech to the public, subject to some restrictions based on military regulations and case law.

The MLTF wants servicemembers to be fully informed as they make these serious choices and urge anyone who might be facing a future deployment to call us for referral to a civilian attorney to discuss your options. Many of our member lawyers will be willing to do an initial pro-bono (free) consultation, and if additional legal defense assistance is needed, organizations like Courage to Resist, About Face: Veterans Against the War, and Veterans for Peace, stand ready to help raise needed funds.

For more info and resources:

- nlgmtf.org
- couragetoresist.org
- aboutfaceveterans.org
- veteransforpeace.org
- griightshotline.org
(1-877-447-4487)

Reprinted with permission. James M. Branum is a member of the NLG MLTF Steering Committee and a long-time military law attorney.



The Objector Church, an introduction

 objector.church

Courage to Resist is now a fiscally sponsored project of the new Objector Church.

Our Principles

The Objector Church is a different kind of spiritual community, one that is rooted in the principles of peace and religious humanism.

By peace, we are meaning much more than just the absence of war and violence, but something deeper and broader, speaking to the positive values of social justice, equality, sustainability and harmony with each other and the earth. Yet it is because of our positive peaceful values that we also object — we object to dehumanization, to hatred, to nationalism and empire and most importantly to war. Objection is part of our DNA and is why we are named “The Objector Church.”

To discuss the concept of religious humanism, we must define these two words.

“Religion” is an often misused and ambiguous term, one that often carries with it the connotations brought by the abusive behavior of many religious leaders and communities, so we need to carefully define how we are using the word.

Religion, in its most universal sense, refers to a set of beliefs, rituals, culture and practices that help to provide meaning, values, ethics and identity to its adherents. Religions help to answer the ultimate questions of what it means to be human in a particular place and time. Religions at their best moments have compelled humans to live more loving lives and to take stands for justice, but at their worst moments have led humans to hate their neighbors, draw lines of division and even to kill others who are seen as outside the flock of the faithful. Religion’s claims of ultimate meaning and loyalty give it great power for good or evil.

We believe that humanism is the essential corrective to the dangerous potential of religion. By humanism we mean that we as humankind are in the driver’s seat. We are in charge of our own destiny, both individually and collectively. This means that we must

not look primarily to a higher power to solve our problems, but rather look within ourselves.

Of course inherent in this inward look is the tension between the individual and the communal. As human beings we all have individual understandings and conscience, but we live in community, within a network of other human beings, other living creatures and the universal as a whole. We deeply value both the principles of individual conscience as well as the importance of the power of cooperation and collaboration, particularly when we can find ways to bridge the gaps of culture and history that separate us.

Related to the issue of religion and humanism is the issue of God. For many religious people, a belief in and worship of a deity (or deities) is an essential element of ultimate meaning, but for others the idea of a deity is unhelpful in the quest for meaning. As an organization, our church is agnostic on this question. We respect and welcome those who believe in God and those who do not. To us, the quest for true peace and understanding can transcend these dividing lines.

What do we do?

Aside from supporting and acting as *Courage to Resist’s* fiscal sponsor, the church will be launching a national conscientious objection registry. Right now, every young man in the United States, between the ages of 18 and 25, is required by law to register for the draft. It’s likely that this forced registration will soon be expanded to women as well, since all military jobs are now open to women for the first time.

The Selective Service System has no method of (or interest in) recording an individual’s objection to participating in war during registration. The church will provide

counseling and options such as notarized letters of support for an individual’s conscientious beliefs. These will serve as evidence of previously held beliefs in the case of a draft.

The Objector Church is built around both local congregations and at-large members scattered around the world, all interconnected through the use of technology and correspondence.

In our local congregations, we provide opportunities for community, mutual aid and service. Our ministers serve as spiritual counselors and chaplains in their communities, being ready to create and officiate individually crafted rituals and lifecycle ceremonies that are relevant to members with a wide variety of religious and philosophical understandings.

We also have a weekly online meetup Tuesdays at 10:30 am Pacific Time. We provide our members and friends with a mixture of **Inspiration** (spoken word, writing, music, art and more that help us to live for peace), **Information** (practical ideas on how to work for peace in our individual lives, communities and the world) and **Interaction** (so that all can participate, not only a select few leaders). You can join our livestream on Facebook and find recordings of previous meetups on our website.

Join Us!

We invite you to come and get to know us, through our online meetup or in one of our local congregations. And if our way of seeking peace through humanist forms of spirituality resonates with you, we invite you to join us! Visit us online at objector.church



Weekly Online Meetup with James
Every Tuesday at 10:30am Pacific Time
objector.church/meetup