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Key Principles

- Neither invoking the Insurrection Act nor any other legal authority can alter the basic constitutional distribution of power between the states and the federal government. State and local authorities always have a role to play.
- The role of military forces deployed domestically is always to assist civilian authorities, never to supplant them.

National Guard Duty Statuses

State Active Duty status

- Perform state missions with state funding
- Operate under the command and control of the state's governor
- Not subject to the Posse Comitatus Act

Title 32 or "hybrid" status

- Perform activities specified by Congress or the federal government; paid with federal funds
- Operate under the command and control of the state's governor
- Not subject to the Posse Comitatus Act

Title 10 status ("federalization")

- Perform federal missions with federal funding
- Operate under the command and control of the president
- Subject to the Posse Comitatus Act unless an exception applies

Key Statutes

Posse Comitatus Act (18 U.S.C. § 1385) – Bars the federal armed forces, including federalized National Guard, from participating in civilian law enforcement activities unless doing so has been expressly authorized by Congress. Most important statutory exception is the Insurrection Act.

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Insurrection Act (10 U.S.C. §§ 251-255) – Authorizes the president to deploy members of the federal armed forces and/or federalized National Guard personnel to (1) suppress insurrections or respond to civil unrest in a state at the request of the state’s governor, (2) suppress rebellions against the federal government, or (3), under certain narrow circumstances, to assist with the execution of federal law when federal civilian authorities

are overwhelmed and unable to do so on their own. The most important statutory exception to the Posse Comitatus Act.

32 U.S.C. § 502(f)(2)(A) (“Section 502(f)”) – Authorizes a state governor to deploy their National Guard forces in Title 32 status to assist with federal missions at the request of the president or secretary of defense. A governor may deny a request from the president or secretary under this provision, and National Guard troops operating in Title 32 status may not enter a state without that state’s consent.

10 U.S.C. § 12406 – Allows the president to federalize the National Guard when (1) the United States is invaded or in imminent danger of invasion, (2) there is a rebellion or imminent danger of rebellion against the United State government, or (3) the president is unable with the regular forces to execute federal law. After the Supreme Court’s recent decision in *Trump v. Illinois*, it is clear that the president may not rely on Section 12406 to federalize and deploy National Guard personnel to execute the law without first invoking the Insurrection Act or some other exception to the Posse Comitatus Act.