

Why is a U.S. Army brigade being assigned to the “Homeland”?

By [Glenn Greenwald](#)

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[Several bloggers today](#) have pointed to [this obviously disturbing article from *Army Times*](#), which announces that “beginning Oct. 1 for 12 months, the [1st Brigade Combat Team of the 3rd Infantry Division] will be under the day-to-day control of U.S. Army North” — “the first time an active unit has been given a dedicated assignment to NorthCom, a joint command established in 2002 to provide command and control for federal homeland defense efforts and **coordinate defense support of civil authorities.**” The article details:

They’ll learn new skills, use some of the ones they acquired in the war zone and more than likely will not be shot at while doing any of it.

They may be called upon to **help with civil unrest and crowd control** or to deal with potentially horrific scenarios such as massive poisoning and chaos in response to a chemical, biological, radiological, nuclear or high-yield explosive, or CBRNE, attack. . . .

The 1st BCT’s soldiers also will learn how to use “**the first ever nonlethal package that the Army has fielded,**” **1st BCT commander Col. Roger Cloutier said, referring to crowd and traffic control equipment and nonlethal weapons designed to subdue unruly or dangerous individuals without killing them.**

“It’s a new modular package of nonlethal capabilities that they’re fielding. They’ve been using pieces of it in Iraq, but this is the first time that these modules were consolidated and this package fielded, and because of this mission we’re undertaking we were the first to get it.”

The package includes equipment to stand up a hasty road block; spike strips for slowing, stopping or controlling traffic; shields and batons; and, beanbag bullets.

“I was the first guy in the brigade to get Tasered,” said Cloutier, describing the experience as “your worst muscle cramp ever — times 10 throughout your whole body”. . . .

The brigade will not change its name, but the force will be known for the next year as a CBRNE Consequence Management Response Force, or CCMRF (pronounced “sea-smurf”).

For more than 100 years — since the end of the Civil War — deployment of the U.S. military inside the U.S. has been prohibited under The Posse Comitatus Act (the only exceptions being that the National Guard and Coast Guard are exempted, and use of the military on an

emergency *ad hoc* basis is permitted, such as what happened after Hurricane Katrina). Though there have been some erosions of this prohibition over the last several decades (most perniciously to allow the use of the military to work with law enforcement agencies in the “War on Drugs”), the bright line ban on using the U.S. military as a standing law enforcement force inside the U.S. has been more or less honored — until now. And as the *Army Times* notes, once this particular brigade completes its one-year assignment, “expectations are that another, as yet unnamed, active-duty brigade will take over and that **the mission will be a permanent one.**”

After Hurricane Katrina, the Bush administration began openly agitating for what would be, in essence, a complete elimination of the key prohibitions of the Posse Comitatus Act in order to allow the President to deploy U.S. military forces inside the U.S. basically at will — and, as usual, they were successful as a result of rapid bipartisan compliance with the Leader’s demand (the same kind of compliance that is [about to foist a bailout package on the nation](#)). [This April, 2007 article](#) by James Bovard in *The American Conservative* detailed the now-familiar mechanics that led to the destruction of this particular long-standing democratic safeguard:

The Defense Authorization Act of 2006, passed on Sept. 30, empowers President George W. Bush to impose martial law in the event of a terrorist “incident,” if he or other federal officials perceive a shortfall of “public order,” or even in response to antiwar protests that get unruly as a result of government provocations. . . .

It only took a few paragraphs in a \$500 billion, 591-page bill to raze one of the most important limits on federal power. Congress passed the Insurrection Act in 1807 to severely restrict the president’s ability to deploy the military within the United States. The Posse Comitatus Act of 1878 tightened these restrictions, imposing a two-year prison sentence on anyone who used the military within the U.S. without the express permission of Congress. But there is a loophole: Posse Comitatus is waived if the president invokes the Insurrection Act.

Section 1076 of the John Warner National Defense Authorization Act for Fiscal Year 2007 changed the name of the key provision in the statute book from “Insurrection Act” to “Enforcement of the Laws to Restore Public Order Act.” The Insurrection Act of 1807 stated that the president could deploy troops within the United States only “to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy.” The new law expands the list to include “natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or **other condition**” — **and such “condition” is not defined or limited.** . . .

The story of how Section 1076 became law vivifies how **expanding government power is almost always the correct answer in Washington.** Some people have claimed the provision was slipped into the bill in the middle of the night. In reality, the administration clearly signaled its intent and almost no one in the media or Congress tried to stop it

Section 1076 was supported by both conservatives and liberals. **Sen. Carl Levin (D-Mich.), the ranking Democratic member on the Senate Armed Services Committee, co-wrote the provision along with committee chairman Sen. John Warner (R-Va.)**. Sen. Ted Kennedy openly endorsed it, and Rep. Duncan Hunter (R-Calif.), then-chairman of the House Armed Services Committee, was an avid proponent. . . .

Sen. Patrick Leahy (D-Vt.), the ranking Democrat on the Senate Judiciary Committee, warned on Sept. 19 that “we certainly do not need to make it easier for Presidents to declare martial law,” but his alarm got no response. Ten days later, he commented in the Congressional Record: **“Using the military for law enforcement goes against one of the founding tenets of our democracy.”** Leahy further condemned the process, declaring that it “was just slipped in the defense bill as a rider with little study. Other congressional committees with jurisdiction over these matters had no chance to comment, let alone hold hearings on, these proposals.”

As is typical, very few members of the media even mentioned any of this, let alone discussed it (and I failed to give this the attention it deserved at the time), but *Congressional Quarterly’s* Jeff Stein wrote [an excellent article](#) at the time detailing the process and noted that “despite such a radical turn, the new law garnered little dissent, or even attention, on the Hill.” Stein also noted that while “the blogosphere, of course, was all over it . . . a search of *The Washington Post* and *New York Times* archives, using the terms ‘Insurrection Act,’ ‘martial law’ and ‘Congress,’ came up empty.”

Bovard and Stein both noted that every Governor — including Republicans — joined in Leahy’s objections, as they perceived it as a threat from the Federal Government to what has long been the role of the National Guard. But those concerns were easily brushed aside by the bipartisan majorities in Congress, eager — as always — to grant the President this radical new power.

The decision this month to permanently deploy a U.S. Army brigade inside the U.S. for purely domestic law enforcement purposes is the fruit of the Congressional elimination of the long-standing prohibitions in Posse Comitatus (although there are [credible signs](#) that even before Congress acted, the Bush administration secretly decided it possessed the inherent power to violate the Act). It shouldn’t take any efforts to explain why the permanent deployment of the U.S. military inside American cities, acting as the President’s police force, is so disturbing. Bovard:

“Martial law” is a euphemism for military dictatorship. When foreign democracies are overthrown and a junta establishes martial law, Americans usually recognize that a fundamental change has occurred. . . . Section 1076 is Enabling Act-type legislation—something that purports to preserve law-and-order while formally empowering the president to rule by decree.

The historic importance of the Posse Comitatus prohibition was also well-analyzed [here](#).

As the recent militarization of St. Paul during the GOP Convention made abundantly clear, our actual police forces are already quite militarized. Still, what possible rationale is there for permanently deploying the U.S. Army inside the United States — under the command of the President — for any purpose, let alone things such as “crowd control,” other traditional law enforcement functions, and a seemingly unlimited array of other uses at the President’s sole discretion? And where are all of the stalwart right-wing “small government conservatives” who spent the 1990s so vocally opposing every aspect of the growing federal police force? And would it be possible to get some explanation from the Government about what the rationale is for this unprecedented domestic military deployment (at least unprecedented since the Civil War), and why it is being undertaken now?

UPDATE: As [this commenter notes](#), the 2008 National Defense Authorization Act somewhat limited the scope of the powers granted by the 2007 Act detailed above (mostly to address constitutional concerns by limiting the President's powers to deploy the military to suppress disorder that threatens constitutional rights), but President Bush, when signing that 2008 Act into law, issued [a signing statement](#) which, though vague, seems to declare that he does not recognize those new limitations.

UPDATE II: There's no need to start manufacturing all sorts of scare scenarios about Bush canceling elections or the imminent declaration of martial law or anything of that sort. None of that is going to happen with a single brigade and it's unlikely in the extreme that they'd be announcing these deployments if they had activated any such plans. The point is that the deployment is a very dangerous precedent, quite possibly illegal, and a radical abandonment of an important democratic safeguard. As always with first steps of this sort, the danger lies in how the power can be abused in the future.

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