



APPENDIX – NATIONAL POLICY AND LAW

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The Air Force carefully examines US policy, domestic law, and international obligations, where applicable, when planning homeland operations. There are two general points regarding homeland operations and the law:

First is the overall legal framework affecting the application of airpower in the homeland. There are restrictions on using the military to collect intelligence in the homeland. In addition, there are restrictions on using the military for direct law enforcement duties in the civilian community, with exceptions. Some examples include the President's ability to invoke the Enforcement of the Laws to Restore Public Order Act if needed and legislation permitting some use of the military in direct law enforcement roles to counter the influx of illegal narcotics.

Second are the law and its impact on potential financial reimbursement to the DOD. When managing the consequences of an event, the states normally exercise primacy over domestic incidents. Only when they ask for federal assistance, or in extraordinary circumstances, will the federal government get involved. The request process is key for the military because, except for immediate emergency situations, a formal request by the state followed by Presidential approval is necessary for the military Services to get financially reimbursed.

Because of the legal and policy complexities, prompt and frequent consultations with military legal experts are among the most important considerations in planning for and employing military assets. The homeland legal environment is very complex and dynamic. The following is a nonexclusive list of legal sources for homeland operations.

[Anti-Deficiency Act](#), 31 U.S.C. §§1341-42, 1511-19: This act generally prohibits the obligation or expenditure of appropriated funds in advance of, or in excess of, an appropriation by Congress.

[Defense Against Weapons of Mass Destruction Act](#), 50 U.S.C. Chapter 40: Requires DOD coordination with [weapons of mass destruction](#) (WMD) response agencies. Authorizes DOD support to [Department of Justice](#) when the Secretary of Defense (SecDef) and Attorney General jointly determine that a WMD threat exists and civil authorities lack sufficient capabilities.

Economy Act, 31 U.S.C. §1535: This act governs transfer of material between executive branch agencies within the federal government. The Economy Act does not apply to the transfer of material to non-federal law enforcement agencies. Reimbursement to the DOD from civilian law enforcement agencies is authorized under 10 U.S.C. § 377 to the extent such would be authorized under The Economy Act.

Enforcement of the Laws to Restore Public Order Act, 10 U.S.C. §§331-335: These statutes authorize the use of military forces by presidential order in response to civil disturbances, including rebellion, insurgency, insurrection, or domestic violence such that the state authorities cannot or will not enforce state or federal law. The statutes permit the President to use federal forces in response to a request from a state or territory, to enforce federal authority, or to protect Constitutional rights. (See DOD Instruction 3025.21, [Defense Support of Civilian Law Enforcement Agencies](#))

Executive Order 12656, Assignment of Emergency Preparedness Responsibilities: The national security emergency preparedness policy of the US is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, terrorist attack, technological emergency, or other emergency that seriously degrades or seriously threatens the national security of the US.

Executive Order 13228, Establishing the Office of Homeland Security and the Homeland Security Council: The Office of Homeland Security is headed by the Assistant to the President for Homeland Security. Its mission is to develop and coordinate the implementation of a comprehensive national strategy to secure the US from terrorist threats or attacks. The office coordinates the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attack within the US.

Foreign Intelligence Surveillance Act of 1978 and Amendments, 50 U.S.C. §§1801 et seq.: The Foreign Intelligence Surveillance Act (FISA) establishes a legal framework for foreign intelligence surveillance separate from ordinary law enforcement surveillance. It is aimed at regulating the collection of foreign intelligence information in furtherance of US counterintelligence, while protecting the privacy interests of US citizens. Under FISA, surveillance is generally permitted based on a finding of probable cause that the surveillance target is a foreign power or an agent of a foreign power; in these cases, specific procedural processes must be adhered to.

Homeland Security Act of 2002, 6 U.S.C. §§101 et seq.: The Homeland Security Act established the [Department of Homeland Security](#) (DHS) by combining and consolidating previously existing agencies, such as the [Coast Guard](#), [Transportation Security Administration](#), [Secret Service](#), Customs, and the Immigration and Naturalization Service, under one department. The DHS mission is to prevent terrorist attacks within the US; reduce the vulnerability of the US to terrorism; and minimize the

damage and assist in the recovery from terrorist attacks that occur within the US. DHS also has responsibility for investigating and prosecuting terrorism.

Military Cooperation With Civilian Law Enforcement Officials, 10 U.S.C. Chapter 18: These sections authorize support to civilian law enforcement agencies (LEA) and deal with the use of military information, equipment, facilities, and personnel.

Military Information: Information collected during the normal course of military operations may be forwarded to federal, state, or local LEA if the information is relevant to a violation of criminal law. While the needs of the LEA may be considered when scheduling routine missions, missions may not be planned for the primary purpose of aiding LEA.

Intelligence: The USA Patriot Act removed some of the legal obstacles to the sharing of information between law enforcement and intelligence components. Intelligence is a specialized activity that is governed by multiple Congressional statutes, Executive Orders (EO), and DOD Directives. (See EO 12333, [United States Intelligence Activities](#); DOD 5240.1, [DOD Intelligence Activities](#); and AFI 14-104, [Oversight of Intelligence Activities](#))

Military Equipment and Facilities: Military equipment and facilities may be made available to law enforcement agencies, subject to certain restrictions. (See DOD Instruction 3025.21, [Defense Support of Civilian Law Enforcement Agencies](#)) Generally, military working dogs can be used to support civilian LEAs. (See AFI 31-121, [Military Working Dog Program](#))

Military Personnel: Except when authorized by statute or the Constitution, direct participation by military personnel in the execution or enforcement of the law is prohibited. Prohibited activities include interdiction, searches and seizures, arrests, and surveillance activities. Generally, the Air Force will not provide advanced military training to civilian law enforcement agencies. Permissible training includes basic marksmanship, patrolling, mission planning, medical, and survival skills. (See DOD Instruction 3025.21, [Defense Support of Civilian Law Enforcement Agencies](#))

National Defense Authorization Acts: Since 1991, Congress has annually renewed military support for counterdrug operations. Under this, the SecDef may authorize support to federal, state, local, or foreign LEAs if requested. Types of support include maintenance and repair of DOD equipment, transportation of personnel and supplies for the purpose of facilitating counterdrug activities, counterdrug training activities, and aerial and ground reconnaissance, and provision of support for command and control networks. [10 U.S.C. §124](#) makes the DOD the lead federal agency for the detection and monitoring of aerial and maritime transit of illegal drugs into the US. [32 U.S.C. §112](#) authorizes certain federal funding for the state counterdrug activities of the National Guard.

National Emergencies Act, 50 U.S.C. §§1601-1651: This act establishes a process for presidential declarations of emergencies. These declarations must be published in the Federal Register and Congress must review declarations every six months. Congress is also able to terminate these declarations. This act does not impact the President's Constitutional authority.

Posse Comitatus Act, 18 U.S.C. §1385: The **Posse Comitatus Act** (PCA) prohibits the use of the Army or the Air Force for law enforcement purposes, except as authorized by Congress and the United States Constitution. This prohibition applies to Navy and Marine Corps personnel as a matter of DOD policy. Prohibited direct support includes arrests, searches, and seizures. In addition, any form of indirect support that would subject civilians to a regulatory, prescriptive, proscriptive, or compulsory use of DOD power is prohibited. The PCA does not apply to National Guard units in non-federal status.

Military Purpose: The PCA does not prohibit direct support to law enforcement agencies if the primary purpose is to further a military or foreign affairs function of the US. Actions that serve a primarily military purpose include investigations taken pursuant to the Uniform Code of Military Justice or other military administrative proceedings, and actions taken pursuant to a commander's inherent authority to protect military personnel, property, or guests, or to maintain order on an installation.

Emergency Authority: The PCA does not prohibit direct support in emergency situations when the action is taken under the inherent right of the US to preserve order and carry out government operations. During sudden or unexpected emergencies, responsible DOD officials or commanders may approve the use of military forces in a law enforcement capacity in order to prevent the loss of life or the wanton destruction of property, or to restore governmental functioning or order. This "immediate response" authority should be used with great caution and in extremely unusual situations.

Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq. (Stafford Act): The statutory authority for federal disaster assistance. The act provides procedures for declaring an emergency or major disaster, as well as the type and amount of federal assistance available. The act authorizes the President to provide DOD assets for relief once a disaster is declared. After a presidential determination is made, DOD may use resources to "save lives, protect property," and avert future threats (see DOD Directive 3025.18, **Defense Support of Civil Authorities**).
