

One scenario if Trump invokes Insurrection Act



President Donald Trump awaits reports from his secretaries of defense and homeland security that he might use as justification to invoke the Insurrection Act and declare martial law.

BY BRETT WAGNER

Throughout his time as president, and his decade on the national political stage, Donald Trump has blasted through the norms and guardrails that have preserved and protected our democratic experiment from people like him for the better part of 250 years.

The next norm to fall may be that of civilian rule, after an invocation of martial law.

On Jan. 20, Trump issued an executive order tasking the secretaries of the Department of Defense and Department of Homeland Security to submit a joint report, within 90 days, recommending “whether to invoke the Insurrection Act.” The deadline for that report is April 20.

Since making his executive order, Trump has placed a combative FOX News host with a short resume and a long history of fealty to Trumpism as his

secretary of defense. He also replaced the Chairman of the Joint Chiefs with a CPAC-darling who endeared himself to Trump by wearing a MAGA hat. And he fired the Judge Advocate Generals for the Army, Navy and Air Force — the top uniformed lawyers responsible for reviewing the orders from the commander-in-chief and defense secretary to determine whether they're legal. Trump's defense secretary explained this action was taken preemptively to prevent the JAGs from blocking "orders that are given by a commander in chief." Clearing the way, among other things, for the White House to begin consolidating federal law enforcement under military leadership. The Secretary of the Army, for example, in a move consistent with preparing for martial law, was just placed in charge of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), with surprisingly little push back.

Let's be clear what this adds up to: The man who promised to "declare martial law on day one" has wasted no time taking actions designed to subvert the military to meet this end.

Yet despite Trump's fondness for blasting through norms, there is one norm upon which his apparent plan, and political survival, depends: the military recognizing him as their commander-in-chief and obeying his orders.

That norm is no more carved in stone than any other.

Say Trump were to declare martial law. The commander-in-chief could then be removed by the military, like any commanding officer, for his crimes — especially when issuing an order that is itself a crime. The applicable authority is in Army Regulation 600-20, which addresses command function, and the command that focuses on causes for removal. Sufficient cause should be evident, and overwhelming, such as issuing unlawful orders, or acting outside of his constitutional authority.

Here's one scenario of how that might play out:

The president signs an executive order declaring martial law. A large and mostly peaceful protest breaks out in a major metropolitan area. The president then pressures the governor of that state, as happened in California during the Rodney King riots, and immediately federalizes the National Guard, ordering troops and tanks into the streets, supported by military forces. The rules of engagement are established for this operation where any resistance to military authority can be met with deadly force.

In accordance with these rules, commanders in the field authorize "shoot to kill" orders against presumed rioters. The next day, several unarmed protesters are shot and killed by National Guard troops when they fail to immediately disperse. Lawyers for the National Guard move quickly to arrest the service members involved and charge them with unlawful use of force. The president responds by ordering the release of those service members, and the lawyers involved are "relieved of their current assignment."

In response, two battalion commanders of National Guard units on the scene resign in protest, refusing to obey on the grounds they've been given unlawful orders.

Back in Washington, the Executive Officer for the Joint Staff refuses to

convey additional orders continuing martial law from the White House — and further notifies the forces that illegal orders have been issued, and that the president has acted ultra vires (i.e. “beyond his authority”) to his constitutional executive powers by issuing unlawful orders. He then proceeds to the White House with the Provost Marshal of the Military District of Washington, accompanied by a number of MPs, where they arrest the president and the vice president for violating their oaths of office.

We are now at an unprecedented moment in American government. What happens next?

Does the Speaker of the House automatically assume the office of the presidency?

No. The constitutional line of succession has been superseded by martial law.

Once Trump declared martial law — or more accurately, “military law” — the president suspended civil government, and assumed powers as Commander-in-Chief of the United States. Hence, the president, now Commander-in-Chief, and his second-in-command, Vance, come under the auspices of the Uniform Code of Military Justice. Once arrested, Trump and Vance can be held incommunicado as “dangerous to good order and discipline,” but with their constitutional rights as citizens intact until such a time as a military commission can be constituted to conduct a trial.

With civil government suspended by the now-former president, and the military’s top three JAGs removed prior to that, military government, counseled by the remaining 7,000+ members of the JAG Corps, assumes the responsibility for maintaining civil order.

Under this scenario, one question will undoubtedly be on everyone’s minds: “When, and how, do we get back to civil government?”

It could be until 2026 before that process begins.

Ideally, the two major parties would select their presidential nominees and their two standard-bearers would stand shoulder to shoulder with our military as the fireworks light the sky. But considering the divisive nature of the politics that brought us to this moment (not to mention the civil unrest which may follow the arrest of MAGA’s cult leader), 2026 might seem a little pie in the sky.

It might be helpful, therefore — should our military be forced to step in — that we remind ourselves (and often) that our country has survived one Civil War, and that this — Thank God! — was not that.

Still, our country would be in one hell of a mess, and it would take us years to dig our way out.

Admittedly, these ruminations from a pair of retired military professors barely scratch the surface of the potential scenarios in play should Trump declare martial law. It is our fervent prayer that our speculative exercise serves to discourage the president from using the Insurrection Act in the first place; to educate the general public about martial law and what may loom ahead; and to initiate a conversation inside the military itself.

We should all reflect, at this late hour, on Joint Chiefs Chairman Mark Milley's final remarks to the troops upon retiring:

"We don't take an oath to a wannabe dictator. We don't take an oath to an individual. We take an oath to the Constitution, and we take an oath to the idea of America, and we're willing to die to protect it."

Semper fi.

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