



# ON WATCH

Critical Perspectives  
on Military Law

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## A MESSAGE FROM THE STEERING COMMITTEE REGARDING THE NEW TRUMP ADMINISTRATION

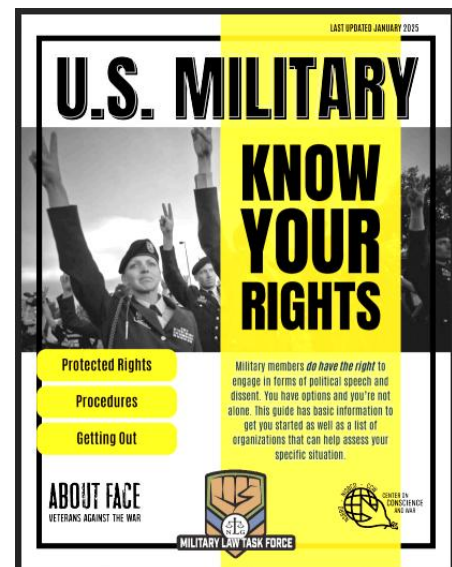
We've entered a period in which military policy, and military personnel policies, are rapidly changing. The Trump administration talks about deterring war, but its war-making actions speak otherwise. The Executive Orders eliminating DEI and calling for a Pentagon review of military transgender policy are sobering – and are likely only the first of many changes affecting the duties and lives of military personnel.

The Military Law Task Force and *On Watch* plan to monitor and assess these changes – to support servicemembers in challenging unjust policies and protecting those rights still available to them, while we protest increased militarism and threats of military intervention.

This issue of *On Watch* is an example of that work. We hope readers will help us as we launch our work in the era of Trump 2.0.

We began the year working with About Face Veterans Against War, Veterans for Peace, and the Center on Conscience and War to prepare a Know Your Rights piece for GI's: [US Military Know Your Rights](#) guide released by MLTF, About Face and CCW - [Military Law Task Force](#). We also started to recruit and train new military law attorneys and military counselors through MLTF, and to develop plans to support GI resisters and dissenters.

That recruitment and training program is designed to increase MLTF's ability to advise and represent personnel who engage in protest activities, speak out against illegal or immoral policies, or resist illegal orders. We kicked it off in February, with introductory sessions for attorneys on February 5 and one for counselors a week later. Readers who are interested in the trainings are encouraged to contact MLTF Executive Director Kathleen Gilberd at [kathleengilberd@aol.com](mailto:kathleengilberd@aol.com) or 619-463-2369. You can also find our CLE webinars at [nlgmtf.org](http://nlgmtf.org), including the day-long [On-Demand Viewing: MLTF CLE at 2024 NLG National Convention](#).



Given the gutting of DEI programs in the military, we are concerned about increased white supremacist activity, and about a fear by other servicemembers to challenge racism or other discrimination. We have developed a legal memo for attorneys and counselors on Military Equal Opportunity complaints, Assisting Servicemembers with Military Equal Opportunity Complaints, and a self-help guide for military personnel on those complaints, [NEW! Military Equal Opportunity \(MEO\) Self-Help Guide](#).

And as you'll see from this issue, *On Watch* will be covering the political and legal policy aspects of Trump's and Hegseth's efforts to change the use, culture and regulations of the armed forces. We welcome articles from our readers, and volunteers for our Task Force committees (including Publications, Gender Justice, Anti-Racism, and Selective Service Committees and our Readiness Committee/Anti-Militarism Working group). For more information, contact *On Watch* editors Jeff Lake and Kathleen Gilberd.

## MILITARY LAW TASK FORCE STATEMENT ON LIFE IN THE SECOND TRUMP ADMINISTRATION

Since the founding of the NLG's Military Law Task Force during the Johnson Administration's escalation of the US war in Indochina, the MLTF has supported servicemembers and worked to mitigate the damage done by the United States' militarist institutions. During the first Trump Administration, we represented numerous dissenters, provided guidance on deployments of the military to U.S. borders, and worked to address military trauma, racism, misogyny and homophobia.

Now, as the second Trump era begins, we're alarmed by both the plans stated in the military section of Project 2025 and the stances of Secretary of Defense Pete Hegseth. The danger is clear: attacks on the rights of servicemembers, expanded wars abroad, and the likely use of the military in the continental United States. In addition to speculating about sending troops to Gaza on a "relocation" mission and about invading Panama or Greenland, Trump has already signed four executive orders designed to reorder the military mission, mandating military support for his border policies and gutting the military's diversity, equity and inclusion programs. Already, DOD has been ordered to remove diversity, equity, inclusion and accessibility communications and trainings, ended travel assistance for servicewomen who need abortion care, and declared all transgender personnel "too disturbed" to serve. Meanwhile, Congress has ordered the Selective Service System and Pentagon to step up their contingency planning for mobilization for all-out war, such as a war with Russia and/or China, including readiness to activate a military draft on demand.

What do Trump and Hegseth want their refashioned military to *do*? We saw it by early February, when Trump ordered the expansion of the United States prison at Guantanamo Bay, Cuba, using Marines based in North Carolina to do so. We saw it when 1500 additional troops joined the 2100 already active on the southern border, with the possibility of numbers reaching up to 10,000 servicemembers – both active-duty personnel and national guard troops from states nationwide.

Servicemembers have the right and the duty to speak out and protest against illegal and immoral orders. They also retain rights under still-intact military equal opportunity policies (see MLTF's new MEO guide here).

Some of the most important limits on the ability of the President to abrogate Constitutional principles and international treaties on human rights and the law of war will be set by whether servicemembers say, "No"!

To preserve servicemembers' rights, a first stop is the new Know Your Rights Toolkit developed along with our allies About Face Veterans and the Center on Conscience and War. The Toolkit is posted on the MLTF website at: Military-Know-Your-Rights-Public-v1.pdf

Meanwhile, we will stay diligent as matters evolve. We encourage all servicemembers and military families to contact us as needed, and welcome everyone who wants to join us in this work.

# TRUMP ISN'T HIDING PLAN TO USE MILITARY TO QUASH PROTESTS AND DEPORT IMMIGRANTS

By Marjorie Cohn

*Editor's Note: This article was originally published by Truthout and is used by permission. [Trump Isn't Hiding Plan to Use Military to Quash Protests and Deport Immigrants.](#)*

Employing federal troops to suppress domestic protests and deport immigrants from U.S. soil en masse would be illegal, but Donald Trump has been pushing to do so since his first administration. The recent Supreme Court decision granting presidents nearly absolute immunity for official acts has created a situation with far fewer guardrails to prevent Trump from abusing his authority in his second presidential term.

Trump and his allies have reportedly drafted plans for him to deploy the military against civil demonstrators on his first day in office, according to a *Washington Post* [report](#) from November 2023. And Trump, who promised to carry out the largest deportation effort in U.S. history, has also [indicated](#) that he will use the military to deport millions of undocumented immigrants.

When *Fox News* asked Trump whether he thought “outside agitators” might have an effect on Election Day, Trump responded by [saying](#), “I think the bigger problem is the enemy from within.” He added, “We have some very bad people. We have some sick people, radical left lunatics. And I think they’re the big — and it should be very easily handled by, if necessary, by National Guard, or if really necessary, by the military, because they can’t let that happen.”

During his campaign, Trump also said that if re-elected, he would use the military at the southern border and to enforce the law in cities like Chicago and New York, which he dubbed “[crime dens](#).”

Trump’s prior time in office shows that his willingness to raise such threats goes beyond campaign rhetoric. After massive demonstrations erupted around the country in protest against the May 25, 2020, murder of George Floyd by Minneapolis police, then-President Trump [told](#) his Secretary of Defense Mark T. Esper and Chairman of the Joint Chiefs of Staff Gen. Mark A. Milley that he wanted to invoke the Insurrection Act — which allows the president to deploy the military domestically and use it for civilian law enforcement — and order “ten thousand troops in Washington to get control of the streets.”

On June 1, 2020, Trump [said](#), “If a city or state refuses to take the actions that are necessary to defend the life and property of their residents, then I will deploy United States military and quickly solve the problem for them.” Esper and Milley objected, saying the turmoil was best handled by civil law enforcement and the D.C. National Guard. Trump was furious. He called his top military leaders “losers” and repeated his wish to send active-duty troops into Minneapolis. “Can’t you just shoot them?” he asked Milley. “Just shoot them in the legs or something?”

Trump also proposed sending federal troops into Chicago, Seattle and Portland in response to Black Lives Matter protests and once again, Esper and Milley, joined by then-Attorney General William Barr, talked him out of it.

A former senior Defense Department official who served in the first Trump administration [said](#) that federal forces could be sent to U.S. cities to assist with Trump’s mass deportation plan once he is inaugurated.

During his second term, Trump will not likely be deterred from using the military against protesters and immigrants, even though employing federal troops to enforce domestic law in this manner would be illegal.

The Posse Comitatus Act, enacted in 1878 to end the use of federal troops in overseeing elections in the post–Civil War South, bars the use of the military to enforce domestic laws, including immigration law. The Posse Comitatus Act, which forbids the willful use of “any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus [power of the county] or otherwise to execute the laws.” The only exceptions to the Posse Comitatus Act’s prohibition are “in cases and under circumstances expressly authorized by the Constitution or Act of Congress.”

### **“SERIOUS RISK OF ABUSE” OF THE INSURRECTION ACT**

The Insurrection Act carves out an exception to the Posse Comitatus Act. The Insurrection Act can be used to authorize the president to deploy the U.S. armed forces, federalize the National Guard, or deputize private militias of nongovernmental forces within the United States.

There are three sections of the Insurrection Act that the president could invoke, only one of which requires the consent of state officials:

First, where the legislature or governor of a state asks the president for assistance to quell an insurrection against the government (section 251);

Second, where the president decides that “unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States,” render it “impracticable” to enforce U.S. or state law in the courts (section 252); or

Third, when “any insurrection, domestic violence, unlawful combination, or conspiracy” deprives people of a legal right, privilege, immunity, or protection, that results in the denial of Equal Protection or “opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws” (section 253).

Most of the instances in which the Insurrection Act has been invoked occurred under section 251. The Act was last used in 1992, when then-California Governor Pete Wilson asked President George H.W. Bush to deploy federal troops to put down the uprising against anti-Black racism and police brutality in Los Angeles that followed the state acquittal of the police officers who beat Rodney King.

Section 252 of the Insurrection Act can be triggered by the president’s subjective belief that it is “impracticable” for the courts and criminal legal system to function properly. Although courts would hesitate to overrule a president’s subjective decision, service members could decide that his order was illegal and refuse to obey it.

Section 253 of the Insurrection Act was enacted after the Civil War to ensure that Southern states enforced the federal rights of Black people. President John F. Kennedy used this section in 1962 and 1963 to send federal troops to Mississippi and Alabama to enforce the civil rights laws. In 1957, President Dwight D. Eisenhower deployed troops to desegregate schools in Little Rock, Arkansas, consistent with section 253. And in 1965, President Lyndon Johnson used section 253 to protect civil rights demonstrators from police violence during the civil rights march from Selma to Montgomery, Alabama.

The Insurrection Act does not authorize the president to deploy federal troops on U.S. soil to “restore public order,” Harold Hongju Koh and Michael Loughlin explained for the American Constitution Society in 2020.

As Laura Dickinson writes at *Lawfare*, executive branch lawyers — including members of Trump’s past administration — have previously made the case that the language of the Insurrection Act should be construed narrowly and used only as a “last resort” to avoid running afoul of the 14<sup>th</sup> Amendment; the Supremacy Clause (which says federal law trumps state law when there is a conflict); and Article IV, Section 4 of the Constitution, which requires the federal government to protect a state against “domestic violence.”

Section 253 is “particularly broad and vague,” Dickinson notes. It could encompass a small demonstration that interferes with law enforcement activities or judicial proceedings, “so long as there were a conspiracy to do so by two or more persons.”

“The Insurrection Act, if deployed without restraint, could ultimately transform a constitutional democracy into a police state patrolled by the U.S. military,” according to Dickinson.

“Trump’s threat to use U.S. military forces domestically against protesters, immigrants and other ‘enemies,’ places servicemembers in a legal and ethical dilemma,” Kathleen Gilberd, executive director of the National Lawyers Guild’s Military Law Task Force, told *Truthout*. “Soldiers have not only a right, but a duty, to refuse illegal orders; yet the legality of those orders would be determined by courts-martial of refusers. And servicemembers have a moral obligation not to harm the innocent; yet such harm would be inevitable if troops are used against civilians here.”

The Uniform Code of Military Justice requires that all military personnel obey lawful orders. A law that violates the Constitution or a federal statute is an unlawful order. Both the Army Field Manual and the Nuremberg Principles create a duty to disobey unlawful orders.

## **PROPOSED REFORM OF THE INSURRECTION ACT**

In April 2024, at the invitation of the American Law Institute, a bipartisan group led by Bob Bauer, professor at NYU School of Law and former White House Counsel to President Barack Obama, and Jack Goldsmith, professor at Harvard Law School and former Assistant Attorney General in the George W. Bush administration, issued “Principles for Insurrection Act Reform.”

“There is agreement on both sides of the aisle that the Insurrection Act gives any president too much unchecked power,” Goldsmith said.

The bipartisan group proposed amending the Insurrection Act to say the president cannot deploy the armed forces unless “the violence [is] such that it overwhelms the capacity of federal, state, and local authorities to protect public safety and security.”

The main points of reform proposed by the bipartisan group this April would:

Require the president to consult with the governor before deploying troops into any state;

Require the president to report to Congress within 24 hours of deployment about the need to invoke the Insurrection Act and about consultations held with state authorities;



Limit the president's authority to deploy troops under the Act to a maximum of 30 days unless Congress renews authorization; and

Establish a fast-track process for Congress to vote on renewal of presidential authority under the Insurrection Act.

However, the Principles for Insurrection Act Reform document states that Insurrection Act reform "need not and should not include a provision for judicial review." This appears to be a compromise reached to achieve bipartisan consensus.

On the other hand, S. 4699, titled the "Insurrection Act of 2024," which was introduced by Sen. Richard Blumenthal in July, does contain a provision for judicial review. It provides that any individual or state or local government that is injured by, or has a credible fear of injury from, the deployment of the armed forces may bring a civil lawsuit for declaratory or injunctive relief in the U.S. district court. The Supreme Court would have jurisdiction to hear an appeal from the decision of the district court.

Given the current political climate, prospects for reform of the Insurrection Act are slim to none.

#### **"THE NEXT TIME, I'M NOT WAITING" BEFORE COMMITTING TROOPS**

Citizens for Responsibility and Ethics in Washington, a nonprofit watchdog group, analyzed more than 13,000 of Trump's Truth Social posts from January 1, 2023, to April 1, 2024, and discovered that he pledged at least 19 times to weaponize law enforcement, including several branches of the military, against civilians.

An investigation by Military.com found that few checks would exist on a president who illegally orders the military to be used against U.S. citizens, particularly when he invokes the Insurrection Act.

The intent behind the Insurrection Act is to allow the president to use the military to help civilian law enforcement authorities "when they are overwhelmed by an insurrection, rebellion, or other civil unrest, or to enforce civil rights laws when state or local governments can't or won't enforce them," Joseph Nunn wrote at *Slate*. "In such cases, a narrow exception to the general rule against using the military for law enforcement makes good sense," he added. "The problem is that the Insurrection Act creates a giant loophole in the Posse Comitatus Act rather than a limited exception to it." The "central failing" of the Insurrection Act "is that it grants virtually limitless discretion to the president."

Trump expressed regret at not using the Insurrection Act in the aftermath of the summer 2020 Black Lives Matter protests. "The next time, I'm not waiting," he declared at a rally in November 2023.

"It's very likely that you will have the Trump administration trying to shut down mass protests — which I think are inevitable if they were to win — and to specifically pick fights in jurisdictions with blue-state governors and blue-state mayors," ACLU executive director Anthony Romero said in August. "There's talk that he would try to rely on the Insurrection Act as a way to shut down lawful protests that get a little messy. But isolated instances of violence or lawlessness are not enough to use federal troops."

Lee Gelernt, an ACLU attorney, told *The Washington Post* that members of the organization "are particularly concerned about the use of the military to round up immigrants," predicting that a second Trump term "will be much worse" than his first administration. "As always, we will go to court to challenge illegal policies, but it is equally essential that the public push back, as it did with family separation."

Regardless of the illegality of Trump's threatened abuse of the Insurrection Act, the Supreme Court has recently granted almost absolute immunity to presidents for official acts.

The ACLU is already drafting legal challenges to Trump's invocation of the Insurrection Act against protesters.

## MILITARY EXTREMISM: IT STARTS AT THE TOP

**By Chris Lombardi**

*Editors note: This article was written before the Inauguration and Hegseth's confirmation.*

As 2025 began, it seemed like everyone was talking about military extremism.

The year began with a literal bang, a pair of terrorist attacks via motor vehicle: a driver plowing into New Orleans' Bourbon Street, a Tesla truck blowing up in Las Vegas. The first attacker was an Army veteran who flew the ISIS flag on his truck, the second an active-duty Green Beret who urged in his final email: "Rally around the Trump, Musk, Kennedy, and ride this wave to the highest hegemony for all Americans!" In the next week the public would learn that military service is the single strongest individual predictor of becoming a "mass casualty offender (defined as four or more victims), identifying as either Islamic or white-supremacist extremists. And they'd begin to learn that the U.S. government efforts appears paralyzed in the face of both.

The FBI and the Department of Homeland Security over the past two years have scaled back efforts to disrupt violent extremists' online activities, [according to Bloomberg News](#): "FBI and DHS officials are requesting fewer content takedowns and sharing less threat-related information with social media companies, according to a US official, two former US officials and three researchers who work with the agencies, all of whom requested anonymity to preserve government relationships. In particular, the agencies have largely stopped flagging networks of white supremacist accounts that try to recruit or radicalize new followers, according to the researchers."<sup>1</sup> Bloomberg notes that unlike in 2021, when both agencies "alerted social media and gaming platforms about online communities where users had been observed floating plans for violent attacks," a [July 2023 federal ruling](#)<sup>2</sup> on disinformation halted many such efforts.

Meanwhile, Trump's choice for Secretary of Defense, Fox News host and Army veteran Pete Hegseth, survived his Senate confirmation with most of the critical questioning about allegations of sexual assault and mismanagement, and less about Hegseth's more extreme views, the ones in his [published books](#) and [tattooed on his body](#).<sup>3</sup>

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<sup>1</sup> Jeff Stone, "Violent Extremism Lingers Online With US Flagging Less Content." *Bloomberg News*, January 7, 2025.

<sup>2</sup> *Missouri v. Joseph Biden et al*, Western District of Louisiana, July 4, 2023.

<sup>3</sup> Annika Brockschmidt and Thomas Lecaue, "What's the Deal With Pete Hegseth's Crusader Tattoos?" *The Bulwark*, November 14, 2024



Hegseth, from his perch at Fox News and many published books, has called for DoD to be reverted to the Department of War, and said last month that "The dumbest phrase on planet Earth in the military is 'our diversity is our strength.'" Journalist Jonathan Katz notes Hegseth's "opposition to allowing [women in combat roles](#) or [trans people](#) in the military at all, [and] his insinuation that the current chairman of the Joint Chiefs of Staff, Gen. Charles Q. Brown, Jr., who is Black, got the job "[because of his skin color](#)." ('We'll never know ...,' Hegseth wrote, 'but since [Brown] has made the race card one of his biggest calling cards, it doesn't really much matter.')." Hegseth's books include *The War Against Warriors*, which makes the same case as Project 2025 does about diversity, and the explicitly Islamophobic *American Crusade*, whose last two words are "Deus Vult!" That last, Latin for "God wills it," was chanted by marchers in Charlottesville in 2017, and is [popular among white supremacist groups](#)<sup>4</sup>; Hegseth was [denied a slot guarding the 2021 inauguration](#) because fellow Guardsmen noticed that has those two words tattooed on his right bicep.<sup>5</sup> If he's confirmed as expected, Hegseth may be the kind of extremist we all feared.

## THE END OF DOD ANTI-EXTREMISM EFFORTS

As *On Watch* covered last year, the Defense Department's Countering Extremism Working Group actually shut down in 2022, its funding wiped out repeatedly in the NDAA's of 2023 and 2024. But the work begun in 2021 continued, with investigations and Inspector General reports and diversity goals incorporated into planning—all of which became raw meat for far-right critics of the Biden Administration.

Project 2025, the Heritage Foundation's roadmap for the new administration, incorporates that critique into [its military chapter](#),<sup>6</sup> calling on the Pentagon to "Eliminate Marxist indoctrination and divisive critical race theory programs and abolish newly established diversity, equity, and inclusion offices and staff." In his January 14 confirmation hearings, Hegseth used many Project 2025 buzzwords, assailing "DEI and CRT" and shouting "Equality, not equity!"

Outside the GOP Congress and the right-wing media ecosystem, the need to fight extremism was noticed both inside and outside the military. Last November, [The New York Times](#) noted: "In 2023, for the second consecutive year, [the Anti-Defamation League] recorded a new high in white supremacist propaganda incidents — which include distribution of racist, antisemitic and anti-L.G.B.T.Q. fliers, banners, graffiti and posters — with a total of 7,567 cases. That figure represents a 12 percent increase from the 6,746 incidents in 2022. Hate groups have a long history in the United States. In recent years, small groups have made their views more visible with public demonstrations, rallies and marches that are amplified by social media. The number of hate groups, as identified by the Southern Poverty Law Center, is resurging after a period of decline during the height of the pandemic. The figure jumped about 14 percent in 2023 from the year before, including some spinoffs from larger organizations."<sup>7</sup>

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<sup>4</sup> Shawn Proctor, "'Deus Vult': The Dark Templar Imagery and Rhetoric of the Modern Neo-Nazi and Alt-Right Movements." Falvey Library, Villanova.edu

<sup>5</sup> Eleanor Watson, Mary Walsh, Nicole Spanga "Fellow National Guardsman told superiors Hegseth might be 'insider threat' before Biden inauguration." *CBS News*, November 14, 2024

<sup>6</sup> Christopher Miller, "Department of Defense." *Project 2025: A Mandate for Leadership* (Heritage Foundation, 2024).

<sup>7</sup> Audra D.S. Burch, "White Supremacist Incidents Are Rising Across the U.S." *New York Times*, November 21, 2024.

A month before that story, the Associated Press told us that the same resurgence was happening among veterans and active-duty servicemembers. “While the pace at which the overall population has been radicalizing increased in recent years, people with military backgrounds have been radicalizing at a faster rate. Their extremist plots were also more likely to involve weapons training or firearms than plots that didn’t include someone with a military background.” This AP story then goes on to note that DoD has been quietly tracking it as well:

Between September 2020 and most of 2021, DoD researchers “[developed a way to mine data from a DoD security clearance database](#) to identify white supremacist and extremist incidents. This database included details from security incident reports filed about people who held security clearances — a wide swath of the military population, civilians and contractors included.

The operation identified hundreds of reported incidents of white supremacy and anti-government and other extremist activity over 20 years — the kinds of internal red flags that could identify issues with service members... Those include the [2020 murders of a federal security officer](#) and a sheriff’s deputy in California by an active-duty Air Force staff sergeant and the 2018 attack by a former Army soldier who [shot six women at a Florida hot yoga studio](#), killing two, before he killed himself.”

The Pentagon appears to have sat on the data, though, never sharing it with DOD’s own Countering Extremism Working Group. Tracking the issue was left to groups like MLTF and the anti-fascist veterans’ group [Task Force Butler](#)--as well as, the National Consortium for the Study of Terrorism and Responses to Terrorism ([START](#)) *On Watch* has cited often, especially about the predominance of military affiliations on January 6, 2021, and the [Global Project Against Hate and Extremism](#) (GPAHE), founded in 2020 by a pair of alumni of the Southern Poverty Law Center. Those last two became the experts tapped by the media after the January 1 attacks.

START’s director shared [a new study](#), using their established [Profiles of Individual Radicalization in the United States \(PIRUS\) database](#). From 1990 to 2010, about seven persons per year with U.S. military backgrounds committed extremist crimes. Since 2011, that number has jumped to almost 45 per year. And “Of the 451 subjects with military backgrounds in PIRUS who committed extremist crimes from 1990-2022, 170 (37.7%) are classified as mass casualty offenders.” Such individuals were 2.41 times more likely to be so classified than civilians with no military experience.<sup>8</sup> Their extremist affiliations? 69 percent identified with White Supremacist/Nativist movements, 24 percent from Islamist organizations; the rest were scattered among other labels, from “Antifa” to “Incel Movement.” The new study also offers a profile of factors contributing to radicalization: Mental health issues, like PTSD; prior arrests/criminal history; financial troubles/unemployment; and membership in an isolated clique, like the Three Percenters or ISIS “cub” youth groups.

Both of the January 1 attackers both fit the START profile and didn’t. But what’s also clear; both were veterans of the Global War on Terror who still felt its scars.

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<sup>8</sup> Given the variation in the extent of the offenders’ premeditation and their criminal behaviors, the statistics provided in this brief do not include individuals charged in relation to the January 6, 2021, attack on the U.S. Capitol building.

## THE BOYS OF NEW YEARS' DAY

Matthew Livelsberger and Shamsud al-din Jabbar shared very little except their time in Afghanistan. Both began their time there as the Obama administration was surging 30,000 troops to the region.

Shamsud al-Din [Jabbar](#) enlisted in 2007 and served for more than a decade. He had desk jobs throughout, in Human Resources and IT, earning the Army Commendation Medal (three times) and Army Achievement Medal (four times). He converted to Islam after he got back from Afghanistan, and went through three marriages; his faith deepened, and he moved to a Muslim neighborhood in Houston. It's unclear whether he subscribed to [the newsletters](#) that ISIS now uses as a recruitment tool, or spent time on their social-media pages.<sup>9</sup> Living alone and separated from his third wife, Jabbar made a set of now-deleted YouTube videos, pledging allegiance to ISIS and declaring a "war between believers and disbelievers," before he rented a truck and drove it into crowds in New Orleans.

Matthew Livelsberger, in Las Vegas, appears to have had a similarly limited media diet—but instead of ISIS media he was full MAGA, with a Truth Social account and list of favored right-wing podcasters. He was with 1<sup>st</sup> Battalion, 10th Special Forces Group, and received counseling after [a series of traumatic brain injuries](#).<sup>10</sup> In Afghanistan, he may have been part of a 2019 operation in Nimruz province that [was later investigated by the United Nations](#).<sup>11</sup> Livelsberger mentioned that mission 5 years later: "I conducted targeting for these strikes of over 125 buildings... that killed hundreds of civilians in a single day." That quote is from a long, rambling email Livelsberger sent to his favored media, in which he also said: "I have a massive VBIED (vehicle-borne improvised explosive device)." He meant the Cybertruck he'd filled with explosives, before shooting himself in the head.

Livelsberger also mentioned both his TBI and PTSD, processing it all in a MAGA framework. The letters left on his phone did the same, starting with a call to action:

"Military and vets move on DC starting now.... Occupy every major road along fed buildings and the campus of fed buildings by the hundreds of thousands. Lock the highways around down with semis right after everybody gets in. ...Try peaceful means first, but be prepared to fight to get the Dems out of the fed government and military by any means necessary." He went on to slam DEI and celebrate Trump's election, though he ended the letter with words that might not be unfamiliar to About Face: "Our soldiers are done fighting wars without end states or clear objectives ....Why now? I needed to cleanse my mind of the brothers I've lost and relieve myself of the burden of the lives I took."

## OUR PROJECT 2025

At press time, it's hard to envision what happens next: The inauguration might be preceded by militias' attempt to follow Livelsberger's call, in time for the Trump rally on the 19<sup>th</sup>. More likely: Pete Hegseth might be SecDef, and ready to declare extremism national policy. The New Years' attacks will fade from memory, but the need for voices like ours has never been clearer. MLTF can keep doing what we do: working to support dissenters and to mitigate some of the damage done by our militarist institutions.

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<sup>9</sup> Alissa J. Rubin, "How the Islamic State Radicalizes People Today." *New York Times*, January 4, 2025.

<sup>10</sup> Dave Phillips, "Soldier's Struggles Began Long Before Las Vegas Blast, Nurse Says." January 4, 2025

<sup>11</sup> United Nations Assistance Mission to Afghanistan, "Afghanistan Protection of Civilians Special Report: Airstrikes on Alleged Drug-Processing Facilities." October 2019.

# NDAA 2025: TURNING BACK THE CLOCK?

By Chris Lombardi

In many ways, this year's NDAA reflected Congress' desire for time travel.

In accordance with Trump and Project 2025, the bill envisions a time when the Department of Defense focused solely on warmaking, and didn't worry its pretty little head about anything else.

To the rest it says no. Over and over, provisions begin: "None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2025 for the Department of Defense may be made available for ..." That's the means used again and again, in the NDAA's final version, to try to undo DOD's limited progress. Over and over, the Act prohibits federal funding for:

- Implementation of regulations relating to minimizing risk of climate change. (Title IIIB, section 319)
- The Department of Defense Countering Extremism Work Group (Section 547). (See my other article in this *On Watch*.)
- Endorsement of critical race theory (Title V, 559E.) Elsewhere, the NDAA imposes a hiring freeze on "diversity, equity, and inclusion positions" on military bases.
- An odd swipe at DOD's only effort to help in Gaza: no funds for "the acquisition, construction, installation, maintenance, or restoration of a temporary pier located in Gaza or off the western coast of Gaza in the Mediterranean Sea, or for the deployment of any equipment to Gaza relating to such a pier." This one's tucked away as Section 1708 of Title VII, "Other Military Matters" — a list that includes such items as "Display of United States flag for patriotic and military observances."
- Gender-affirming care for minors in military families, here termed "Medical interventions for the treatment of gender dysphoria that could result in sterilization." Section 708 of Title VII ("Health Care Provisions"), is simple bit direct — and reflects harmful stereotypes about gender-affirming care. The Southern Poverty Law Center [explains the harms of such "sterilization" rhetoric](#): "The threat to trans lives and bodily autonomy does not come from their medical teams but from anti-trans extremists in positions of power and authority."<sup>12</sup> It also echoes rhetoric from the GOP election campaigns. Both that and the Gaza piece hint at Congress' true intent: to try to humiliate President Biden and SecDef Lloyd Austin.

It could have been much worse, according to Democratic members of the House Armed Services Committee. [Their report states](#): "House Armed Services Democrats were successful in blocking provisions that attacked DEI programs, the LGBTQ community, and women's access to reproductive health care. Also blocked were provisions that would have restricted support to Ukraine, prohibited DoD from supporting Palestinian refugees or the people of Gaza, further militarized our southern border, and lifted all restrictions on the controversial 1033 program, which provides excess military equipment to law enforcement agencies."<sup>13</sup> Most of those accomplishments were instantly reversed by Trump's January 2025 executive orders.

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<sup>12</sup> Southern Poverty Law Center, "Sterilization Rhetoric and Trans Kids." <https://www.splcenter.org/sterilization-rhetoric-and-trans-kids>

<sup>13</sup> House Armed Services Committee Democrats, "Summary of the Fiscal Year 2025 National Defense Authorization Act." [https://democrats-armedservices.house.gov/\\_cache/files/6/2/62393fd3-adf6-4101-a57c-bba870eb0e31/575CFBE27B8E28AE0F3BCFA9C931512F.20241207-ndaa-summary-final.pdf](https://democrats-armedservices.house.gov/_cache/files/6/2/62393fd3-adf6-4101-a57c-bba870eb0e31/575CFBE27B8E28AE0F3BCFA9C931512F.20241207-ndaa-summary-final.pdf)

### ***We can't keep tracking civilian casualties.***

In addition to the accomplishments mentioned above, House Democrats also insisted that “The FY25 NDAA builds on continuing efforts to reduce civilian casualties and enhance stability by extending the annual report on civilian casualties in connection with U.S military operations by five years and extending the Women, Peace, and Security program by two years.”

By press time the latter, which was started in coordination with the United Nations, appears to be safe—perhaps useful as a cover for more militarism. But the Civilian Protection Center of Excellence, rather than being bolstered, is doing something even more Orwellian than its name: [going away entirely](#). The Washington Post notes that it would take Congressional action to finalize the shutdown, so wait for the 2026 NDAA to bless the administration’s plans.

Stay tuned for more time travel.

## **A FIVE-DECADE RETROSPECTIVE ON COAST GUARD SASH REFORM**

**By Denise Krepp**

*(Editor’s Note – This article was originally published in The Maritime Executive and is used with the permission of the author.)*

To better understand the history of sexual assault in the Coast Guard, I’ve spent the past couple of months creating a chronology. Using publicly available information from newspapers, an obituary, the Congressional Record, Good Order and Discipline Reports, Congressional testimony, and social media, I’ve created a 200-page document with 300 references and I’m still compiling information. My goal is for Coast Guard leaders and Congress to use this document to set a new course for the service.

Women were first admitted into the Coast Guard in 1976, and at the 1979 US Coast Guard Academy graduation, then-Secretary of Transportation Brock Adams made reference to the LCWB (Last Class With B\_\_\_). Myrna Rottman, a USCGA faculty member, sent Adams a letter critiquing him for his speech. Per her obituary, Rottman then filed suit in the US District Court of Connecticut against the Academy's Superintendent and Commandant and the US Secretary of Transportation under Title VII of the Civil Rights Act of 1964. As shared in her obituary, the case resulted in the USCGA being required to offer mandatory sex discrimination training to all cadets and faculty. By including all of this information in her obituary, Rottman made sure that no one forgot her advocacy efforts and what triggered them.

According to newspaper reports, there were at least two rapes at the US Coast Guard Academy in the 1980s. One involved a foreign cadet who raped a female student in the fall of 1984. Per Academy officials, he was “quickly deported”. The second rape was referenced in a sex discrimination hearing wherein a witness testified that the female student was raped and then got an abortion paid for by the government. The 1980s ended with the Coast Guard chartering a study group to examine issues facing women in the Coast Guard.

The 1990s started with the release of the Women in the Coast Guard Study. Some individuals who participated in the study shared that women who filed formal grievances did not get promoted. Others shared that victims would be breaking the “code of silence” if they complained about sexual harassment or sexual assault.

Two years later, in 1992, the Culture and Climate Assessment of the US Coast Guard Academy was released. According to the study, 85% of the women at the school reported being sexually harassed.

Cadet Caitin Stopper Maro left the US Coast Guard Academy in February 2005 after accusing another cadet of sexual assault. Maro spoke with Congress in 2006 and then testified about the problems at the school in December 2023. The individual accused in the Stopper Maro case was not prosecuted.

School officials were notified of a rape in October 2005. The survivor was taken to civilian hospital, and a rape kit was conducted. The individual accused of this rape was not prosecuted.

School officials prosecuted Webster Smith in the spring of 2006, and he was convicted of indecent assault. He was the first student at the US Coast Guard Academy to be court-martialed, and questions have been repeatedly raised about why earlier cases didn’t go to trial.

In the fall of 2006, Admiral Papp chartered a Coast Guard Academy study, Congress asked the GAO to study the progress made at the Coast Guard Academy in response to sexual harassment claims. Congress also directed the Coast Guard to develop policies on sexual harassment and violence at the school.

The next decade started with a mandated Congressional report. Per the Coast Guard Authorization Act of 2010, signed into law on October 15, 2010, the service was required to provide yearly updates to Congress on sexual assault. Admiral Papp launched a service-wide “Campaign to Eliminate Sexual Assault from Our Coast Guard” on March 26, 2013. Papp testified at a Senate hearing in June 2013 stating that “(w)e will insist that all of our Shipmates live by our Core Values. And let me be clear, there are no bystanders in the Coast Guard. Respect for our Shipmates demands that each of us have the courage to take immediate action...”

Admiral Zukunft started Operation Fouled Anchor in September 2014 and for the next five years the service investigated past crimes dating back to the 1980s. Zukunft told CNN that he had intended for the service to brief Congress on the investigation, but those briefings didn’t occur until CNN reported on OFA in June 2023.

It’s hard to condense fifty years into a brief essay, so my plan is to share the [final chronology](#) with Coast Guard leaders and Congress. I’m a Coast Guard veteran who wants her service to be successful, and a successful service is one that knows its history. My journey to collect and compile the history was supported by survivors and advocates, and I’m grateful for their support. Semper Paratus.

To view the full chronology, click [here](#).



# HERITAGE FOUNDATION PROJECT WANTS TO WEAPONIZE SELECTIVE SERVICE REGISTRATION AGAINST IMMIGRANTS

By Edward Hasbrouck

According to an exclusive report by Fox News<sup>1</sup>, the Oversight Project<sup>2</sup> of the Heritage Foundation is filing Freedom Of Information Act (FOIA) requests with the Selective Service System (SSS) and the Department of Homeland Security (DHS) for records of how many “illegal immigrants” may have violated US law by failing to register with the SSS for a possible future military draft. The FOIA request alleges that “there is widespread criminal non-compliance by such aliens”.<sup>3</sup>

The Oversight Project appears to misunderstand both immigration and Selective Service law. With respect to “illegal immigrants”, seeking asylum isn't illegal – it's a human right. By international treaty, penalties cannot lawfully be imposed on refugees for “illegal entry or presence”.<sup>4</sup> And failing to register with the SSS is a crime only if it is “knowing and willful”, which it usually isn't.<sup>5</sup> Most immigrants are unaware, until the question comes up on an application for naturalization, that they are supposed to sign up for a possible U.S. draft even if they aren't U.S. citizens.<sup>6</sup>

But quotes in the Fox News article from Executive Director Mike Howell<sup>7</sup> and Chief Counsel Kyle Brosnan<sup>8</sup> of the Heritage Foundation's Oversight Project suggest that the goal of their FOIA requests is to put pressure on the Department of Justice (DOJ) to embark on bound-to-fail attempts to prosecute immigrants for failing to register with Selective Service:

Howell said the FOIA request's results could go beyond the scope of just determining whether undocumented residents of the U.S. may have attempted to avoid the draft - but also potentially offer an additional avenue for... mass deportation plans.

With failure to register with SSS being a felony and a deportable offense, Howell said that... it could provide simplified legal grounds for the mass deportation plans of the Trump administration.

‘You can turn a class of individuals into potential criminals overnight. What it also means is you don't need ICE necessarily to do it. [Alleged SSS violators] would be prosecuted by DOJ. That

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1 Charles Creitz, “New FOIA on migrants potentially avoiding the draft could open new deportation predicate: attorneys; Oversight Project is filing a FOIA request with SSS for data on illegal aliens failing to register for the draft”, Fox News, January 31, 2025, <<https://www.foxnews.com/politics/new-foia-migrants-potentially-avoiding-draft-could-open-new-deportation-predicate-attorneys>>.

2 The Oversight Project, <<https://www.heritage.org/oversight>>

3 Posted on X by the Oversight Project; available at <<https://hasbrouck.org/draft/OversightProject-SSS-FOIA-30JAN2025.pdf>>.

4 *Convention relating to the Status of Refugees*, Article 31, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees#article-31>>.

5 “Compliance, noncompliance, and enforcement of Selective Service registration”, <<https://hasbrouck.org/draft/compliance.html>>.

6 “Immigrants and Selective Service”, <<https://hasbrouck.org/draft/advice/immigrants.html>>.

7 “Mike Howell, Executive Director, Oversight Project”, <<https://www.heritage.org/staff/mike-howell>>.

8 “Kyle Brosnan, Chief Counsel, Oversight Project”, <<https://www.heritage.org/staff/kyle-brosnan>>.



means they're in other beds that aren't ICE beds. So you're looking at all of them being in federal prison potentially, as opposed to taking up space in ICE custody,' Howell said."

Immigrants shouldn't be scared, however, by these threats of deportation or prosecution for not having signed up for the draft.

The government can't deport people on mere suspicion of criminality. It can only deport them as criminals only after they've been, you know, convicted of a crime – by a jury, based on proof beyond reasonable doubt of each element of the offense charged. In the case of refusal to register, that would need to include evidence, which almost never exists, that they knew they were supposed to register.

The absence of evidence of knowledge and willfulness to support conviction means that most threats of prosecution for refusal to register, such as the hundreds of thousands of auto-generated threatening letters the SSS mails out each year, are empty threats.<sup>9</sup>

Some of these threatening letters are sent by the SSS to immigrants identified from records shared between the SSS and other government agencies, including visa and immigration records from US Customs and Immigration Services (USCIS). We don't know as much about this as we should, since neither the SSS nor USCIS has published the notices of this data sharing required by the Computer Matching Act and the Privacy Act.<sup>10</sup> But we do know that these threats are hollow and can be ignored.

The one time since the start of the current SSS registration program in 1980<sup>11</sup> that the DOJ tried to prosecute an innocent immigrant for failure to register, in 1984, it had to drop the case in embarrassment when it became clear that the man indicted, Phetsamay Maokhamphio, didn't know he was supposed to have registered.<sup>12</sup> Since 1988, the DOJ has refused to prosecute any nonregistrants,<sup>13</sup> and in 2022 the DOJ told the SSS to stop sending the DOJ lists of possible nonregistrants,<sup>14</sup> since the DOJ knew it wasn't going to do anything with them. It's precisely this inability to enforce the registration requirement through criminal prosecutions that has led the SSS to propose an equally unworkable scheme to try to register young people "automatically" by aggregating other government and commercial databases.<sup>15</sup>

The White House could, of course, order the DOJ to gear up to try to prosecute some nonregistrants. But in the absence of evidence of knowledge and willfulness, those prosecutions would likely fail. And prosecutions of deliberate nonregistrants whose public statements could be used against them in court would likely prove as counterproductive as they did in the 1980s.<sup>16</sup>

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9 "Threatening letters from the Selective Service System", <<https://hasbrouck.org/draft/advice/threatening-letters.html>>.

10 "Data sharing with the Selective Service System", <<https://hasbrouck.org/draft/FOIA/data-sharing.html>>.

11 "Background on Draft Registration and Selective Service", <<https://hasbrouck.org/draft/background.html>>.

12 "Prosecutions of Draft Registration Resisters", <<https://hasbrouck.org/draft/prosecutions/>>.

13 Steven Nelson, "Gender-Neutral Draft Registration Would Create Millions of Female Felons", *US News & World Report*, May 3, 2016, <<https://www.usnews.com/news/articles/2016-05-03/gender-neutral-draft-registration-would-create-millions-of-female-felons>>.

14 "Threatening letters from the Selective Service System", <<https://hasbrouck.org/draft/advice/threatening-letters.html>>.

15 "'Automatic' registration for a military draft" <<https://hasbrouck.org/draft/automatic.html>>.

16 "Prosecutions of Draft Registration Resisters", <<https://hasbrouck.org/draft/prosecutions/>>.

Both Howell and Brosnan of the Heritage Foundation's Oversight Project are also among the contributors<sup>17</sup> to the Heritage Foundation's "Project 2025".<sup>18</sup> Using Selective Service registration as a tool for imprisonment or deportation of immigrants seems more closely aligned with the goals of Project 2025 than with the Heritage Foundation's longstanding and unequivocal position against draft registration. As recently as July 2024, Victoria Coates, Vice-President of the Heritage Foundation's Institute for National Security and Foreign Policy, reiterated that, "As the Heritage Foundation has stated before, the current Selective Service registration system should be shut down."<sup>19</sup>

Has Project 2025 reversed the Heritage Foundation's longstanding opposition to military conscription?

It's unclear whether the latest moves by the Heritage Foundation's Oversight Project indicate a reversal of the organization's position on draft registration, or indicate that Project 2025 has been disconnected from, and prioritized over, the elements of libertarianism in the Heritage Foundation's established policy positions as well as any assessment of the legality or feasibility of the proposed enforcement scheme.

The Project 2025 playbook doesn't explicitly mention Selective Service registration or the possibility of a military draft.<sup>20</sup>

President Biden never appointed a Director of Selective Service, leaving the SSS under an Acting Director throughout his term. On the day of President Trump's second inauguration, Acting Director Joel C. Spangenberg resigned and was replaced as Acting Director by the next-highest ranking civil servant at the SSS, Craig T. Brown. In the typical revolving-door pattern of the military-industrial complex, Spangenberg – who had previously worked on U.S. Navy nuclear reactor programs – immediately took a job as the lead U.S. lobbyist ("Vice President of U.S. Operations & Government Affairs") for a U.K.-based company that makes nuclear reactors for ship propulsion and other uses.<sup>21</sup>

Brown has had a longer tenure at the SSS, and was briefly Acting Director in early 2017, between the Obama and (first) Trump Administrations. President Trump has yet to make any statement with respect to Selective Service registration or a possible draft.

We still need a sponsor in Congress (especially in the House) to reintroduce the Selective Service Repeal Act<sup>22</sup> — hopefully before Congress begins debate on this year's "defense" bill in the spring.

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17 Elena Shao and Ashley Wu, "The Many Links Between Project 2025 and Trump's World", *New York Times*, October 22, 2024, <<https://www.nytimes.com/interactive/2024/10/22/us/politics/project-2025-trump-heritage-foundation.html#table>>.

18 "Project 2025, organized by the Heritage Foundation", <<https://www.project2025.org/about/advisory-board/>>.

19 "Heritage National Security Expert and Mother of Daughter: 'There is No Justification to 'Draft Our Daughters' for Military Service'" July 22, 2024, <<https://www.heritage.org/press/heritage-national-security-expert-and-mother-daughter-there-no-justification-draft-our>>.

20 "180-Day Playbook", <<https://www.project2025.org/playbook/>>.

21 "Ex-DNFSB manager takes power industry job", *Exchange Monitor*, January 31, 2025, <<https://www.exchangemonitor.com/ex-dnfsb-manager-takes-power-industry-job/>>

22 Selective Service Repeal Act of 2024 (S. 4881, 118th Congress), <<https://www.congress.gov/bill/118th-congress/senate-bill/4881>>. See also, "Repeal Selective Service Registration!", <<https://hasbrouck.org/draft/repeal.html>>.

# NLG RESOLUTION ON DEPORTED MILITARY VETERANS

*Editor's Note: The following resolution was presented by the MLTF and adopted by the National Lawyers Guild after presentation at its Law for the People Convention in November 2024*

Whereas there are more than 32,000 non-U.S. citizens currently enlisted in the United States military and 94,000 veterans who are not citizens;

Whereas United States veterans are being and have been deported based on criminal convictions, sometimes minor, after serving in the military of the United States;

Whereas the United States Code provides that the term "national of the United States" means:

a citizen of the United States; or

a person who, though not a citizen of the United States, owes *permanent allegiance* to the United States (8 U.S. C. 1101(a)(22).)

Whereas federal law requires everyone who enlists or re-enlists in the Armed Forces of the United States to take an enlistment oath. The oath is traditionally performed in front of the United States flag and states:

I, (NAME), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

This oath is a permanent oath of allegiance to the United States of America as required.

Whereas many U.S. Military veterans who are currently being deported or have been deported have strong ties to the United States including for example:

- Those who are legal permanent residents "Green Card Veterans" prior to entering the military;
- Those who have served in all branches of the military for years;
- Those who have served in Vietnam, Grenada, Kosovo, Somalia, Persian Gulf, Iraq and Afghanistan;
- Those who have lived from 16-48 years legally in the United States;
- Those whose parents, spouses, children, siblings and partners are United States citizens and Legal Permanent Residents.

Whereas the deportation of veterans, particularly those who served during times of hostility, present a number of problems that the removal of other non-citizens do not:

- There is a moral question as to whether the commission of the crime which resulted in deportation is itself the result of the psychological stress of service in war;

- There is the possible loss of native citizenship rendering the veteran stateless;
- There is the possibility of criminal charges awaiting the veteran in their native land for his or her service in war; and
- There is possible exposure to the ICC or the courts of their native lands for alleged war crimes committed while in the U.S. military.

Therefore, be it resolved that the National Lawyers Guild calls upon the U.S. Congress to amend the United States Code to clearly state as follows:

Unless they have been naturalized, the following shall be nationals but not citizens of the United States: (1) A person who, by conscription or enlistment, entered any branch of the United States armed forces, including any active or reserve component, and (2) was discharged Honorably or Under Honorable Conditions. This designation shall be retroactive to service-persons previously removed from the United States.

Be it further resolved that the National Lawyers Guild calls upon the Department of Homeland Security to stay the immediate removal of U.S. veterans from the United States.

Be it further resolved that the National Lawyers Guild calls upon the Department of Homeland Security to repatriate those veterans already deported, who often live in poverty, without veterans benefits and separated from their families.

Be it further resolved that the National Lawyers Guild calls on all other state and national bar associations, state and local government bodies, community organizations and labor unions to adopt similar resolutions and to use all their resources to build a campaign to clearly state the U.S. military servicemembers are noncitizen nationals and petition the Department of Homeland Security to stay their removal from the United States of America.

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## About The Military Law Task Force of the National Lawyers Guild

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For membership info, see our website, or contact us using the info below.

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*The National Lawyers Guild's Military Law Task Force includes attorneys, legal workers, law students and "barracks lawyers" interested in draft, military and veterans issues. The Task Force publishes On Watch as well as a range of legal memoranda and other educational material; maintains a listserv for discussion among its members and a website for members, others in the legal community and the public; sponsors seminars and workshops on military law; and provides support for members on individual cases and projects.*

*The MLTF defends the rights of servicemembers in the United States and overseas. It supports dissent, anti-war efforts and resistance within the military, offering legal and political assistance to those who challenge oppressive military policies. Like its parent organization, the NLG, it is committed to the precept that human rights are more sacred than property interests.*

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