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THE COLLAPSE OF INTERNATIONAL LAW IN THE WESTERN HEMISPHERE: THE US VS VENEZUELA

By Martha L. Schmidt, LL.M., J.D.

Prepared for the Joint Anti-Militarism Working Group of the National Lawyers Guild's Military Law Task Force and the NLG International Committee, 3 January 2026.

US aggression since September 2025 focusing on Venezuela has to be seen as part of a larger scheme. It has become increasingly clear that Trump and the manipulator of his Western Hemispheric military and economic policy, Marco Rubio, intend to create chaos and terror in the Americas in defiance of well-established principles of international law. In order to complete their imperial plan for the region, they are taking on the country with the largest oil reserves in the world and a country which had the fastest growing GDP in the hemisphere last year (according to the Economic Commission for Latin America and the Caribbean). This aggression serves to remind the world of the US failure to address its role in global warming and the centrality of US militarism and war in accelerating human rights and environmental crises.

The US National Security Strategy released by the Executive in 2025 is a statement of intention to promote lawlessness. It declares that the US must be “preeminent in the Western hemisphere as a condition of our security and prosperity.” Do the people of the US believe this? Probably not.

The NSS 2025 plan is described as one of “enlist and expand.” The “enlist” part is described as controlling migration, stopping drug flows and “strengthening stability and security” on land and in ocean space. Four components are listed as express military goals: 1) refocusing the US military to the W. Hemisphere from other regions to address “urgent threats”; 2) increased use of the US Navy and Coast Guard (phrased as “a more suitable” presence) allegedly to stop migration, drugs and control transit routes; 3) use of lethal force (aka murder) in targeted deployments, with the alleged purpose of securing the US border and defeating cartels; and 4) establishing and expanding military access in “strategically important locations.” The “enlist” part of the plan seems predictive of more aggression using the US military. At the end of 2025, 115 people had been murdered in the Caribbean and eastern Pacific by the policy of the use of lethal force in targeted deployments.

The “expand” part of the plan is clearly meant to bar other states, especially China, from economic relations with the region (US aid, including weapons sales, to be contingent on “winding down adversarial outside influence”). All US officials are expected to apply pressure and incentives to those countries which are “partners” (in a very unequal partnership), and finance and technology will be used to “induce” regional states to reject assistance from countries outside the region who are competitors of the US. The “expand” part of the plan appears to threaten even more illegal Unilateral Economic Measures (UCMs) than exist currently. UCMs, imposed on Cuba for decades, ballooned into an economic blockade affecting third countries, banks, etc. UCMs were also imposed to a lesser degree on Venezuela and Nicaragua.

US aggression has been ramped up to a naval blockade of Venezuela, which, though partial, is an act of war under international law. Although Congress has the war-making power, the Trump administration has defied the constitutional order of a separation of powers, a cornerstone of a democratic form of government. So far this has been accomplished with impunity and avoidance of impeachment.

The administration's violations of international law, public and private, treaty and customary law, are many. Under US constitutional law, treaties are the supreme law of the land, binding on all levels of government. Supremacy Clause, Art. VI., para. 2. Two multilateral organizational treaties are particularly relevant: the United Nations Charter and the Charter of the Organization of American States (OAS).

The US is a party to the UN Charter, the foundational treaty of the international law system. The UN Charter was adopted and ratified by the US Senate in 1945 and came into effect on 24 October 1945. Including the US there are now 193 sovereign states of the UN which are legally bound parties to the Charter. (Also, two observer states, the Holy See and Palestine). The US is a party to the OAS Charter, adopted in 1948, ratified by the US and in effect since 1951.

The UN Charter is crystal clear about the duties of member states. Pursuant to Article 2(3), the US is required to settle international disputes by peaceful means so as not to threaten international peace and security. Under Art. 2(4) the US is required to refrain from the threat or use of force against the territorial integrity or political independence of another state, or in any other manner inconsistent with the purposes of the UN. Purposes of the UN as set out in Art. 1(1)-(3) include developing friendly relations based on respect for principles of equal rights and self-determination of peoples, suppressing acts of aggression, settling disputes in conformity with principles of international law, solving problems of economic, social, etc., character by cooperation and promoting and respecting human rights for all, regardless of race, sex, language, and religion.

The OAS Charter also is perfectly clear on its principles and the fundamental rights and duties of each member state (Ch. IV). Arts. 18-20 have particular application to the US threats and acts toward Venezuela.

Art. 18 No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

Art. 19 No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

Art. 20 The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

The US is in violation of these duties, which are owed not only to Venezuela but *erga omnes*, to all others. The US breach of duties damages Venezuela specifically, interfering with its right to self-determination, to be treated as an equal state, its national sovereignty and its territorial integrity. US

violations affect the entire international legal system, undermining respect for the US, causing fear and chaos, and spawning disinclination to rely on law. US violations invite other states to use threats and force, rather than to rely on international law, including recourse to international courts and other judicial bodies. US violations are contrary to building cooperation to advance human rights, as required by UN Charter Art. 56 (part of Ch. IX, International Economic and Social Co-operation).

The President and specific members of his administration, including the Secretaries of State and War, made threats to overthrow the President of Venezuela by military/CIA coup, stating that the Venezuelan president's days were "numbered," and today, January 3, 2026, Trump committed another grave war crime, by kidnapping Venezuelan President Maduro and his wife, Cilia Flores, whose whereabouts are unknown and by bombing the city of Caracas. (This kidnapping is reminiscent of the US kidnapping of President Aristide of Haiti and his wife by an earlier administration.) The US has declared a naval blockade against Venezuela to prevent commerce, including transportation of oil from Venezuela, an act of war and has blocked the ability of safe travel for vessels traveling to and from Venezuela. Elliott Abrams, former special envoy to Venezuela during the first Trump administration, confirmed in a statement to Michael Wilner, Bureau Chief of the Washington Post, that the purpose of the naval blockade is to "asphyxiate the Venezuelan economy." (Washington Post, 12/31/25) The US has interfered with Venezuelan air space, part of its national territory, including hampering civilian communications necessary for international aviation, an act of war. The US has imposed additional illegal Unilateral Coercive Measures (referred to as "sanctions" by the US media without reference to their illegality) on specific vessels which have transited through Venezuelan ocean space, through its Territorial Sea and Exclusive Economic Zone, engaged in commercial shipping. The US has attacked civilian and commercial vessels with weapons and drones, boarded vessels, kidnapped crew members of ships and killed crew members of smaller boats on the High Seas. The US has interfered with the ability of nationals of Venezuela and its neighboring states, such as Colombia, to engage in fishing, their livelihood. The US has violated the UN Convention on the Law of the Sea (UNCLOS), Art. 88, which reserves the High Seas (international waters) for peaceful purposes and Art. 89, which prohibits any state from subjecting part of the High Seas to its sovereignty, which the US has accomplished through a massive occupation of ocean space by its naval and Coast Guard vessels. The US has stolen marine vessels flagged in several states, in violation of UNCLOS Art. 90, which permits each state to flag ships on the high seas. Marine vessels and their cargo (oil) which have approached or transited Venezuelan waters have been seized and the US President has stated those will be retained by the US, in violation of maritime law. US aggression against Venezuela and specifically US military operations in airspace in and near Venezuela have endangered international peace and security by jeopardizing the safety of civilian aviation. Specifically, a collision between a US civilian airplane (JetBlue flight from Curaçao to NY) and US military aircraft was narrowly avoided in Caribbean airspace near Venezuela.

The media has failed to clarify the US violations of international law, mostly parroting the language of USG spokespeople, whose intent is to isolate Venezuela, normalize threats and violence, and distract from legal issues and legality. In the January 3 edition of *The Guardian*, the writers profess ignorance about whether the acts of kidnapping and bombing another country violate the law. Some of the euphemistic language used, besides "sanctions" mentioned above, has included "regime change" rather than illegal interference in the internal affairs of another country or illegal overthrow of another government or illegal coup, and "strikes" on boats, rather than using the words killing and murder of

people on the boats, or any discussion of depriving people of their right to life, as protected by Art. 6, International Covenant on Civil and Political Rights, a treaty ratified by the US.

Venezuela, supported by Security Council members, requested a special session of the UN Security Council under Art. VI of the UN Charter, Pacific Settlement of Disputes to discuss US threats and use of force and the problem of threats to international peace and security of the region and that session was held on 23 December 2025. A majority of states conclude the US is in violation of international law prohibiting aggression. There will need to be another session of the UNSC after today's coup. The General Assembly also can and should address collective measures to stop US aggression, one of the most serious crimes. On December 24, authoritative human rights lawyers of the UN, three UN Special Rapporteurs and one Independent Expert* issued a statement on the US threats and actions against Venezuela. (These are independent legal authorities who report to the UN Human Rights Council, which provides interpretation and advice via the Economic and Social Council to the parliamentary body of the UN, the General Assembly.) Their statement was clear. They named what the US is doing to Venezuela as illegal armed aggression. They stated the US has no right whatsoever to enforce its illegal Unilateral Coercive measures through an armed blockade. They stated that since 1974 when the General Assembly defined aggression, a blockade was an illegal act, that military force is aggression. Further, they stated that Venezuela has a right to self-defense against the US under Art. 51 of the UN Charter. They stated that the US Congress should investigate the murders of the people on boats as a violation of the right to life. No doubt there will be additional statements by human rights experts on the illegality of the coup by the US.

It is historically noteworthy that, just like the Reagan administration in the 1980s when it tried to justify its support for the Contra war against Nicaragua, the Trump administration has tried to redefine what "self-defense" is. It's an old trick, to invert who has the right to self-defense, in order to justify US aggression.

On December 24, 2025, the legal experts also called on all states to take action to stop the blockade and killings. They mentioned that universal jurisdiction is available to prosecute the crime of aggression and is recognized as a legal approach open to all states to bring those in the US responsible for these crimes to justice.

Besides collective action, the US public should demand impeachment of the President and Vice President.

*Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; George Katrougalos, Independent Expert on Promotion of a Democratic and Equitable International Order; Surya Deva, Special Rapporteur on the Right to Development; and Gina Romero, Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association.

The following is an official policy statement of the Military Law Task Force of the National Lawyers Guild.

The Military Law Task Force of the National Lawyers Guild condemns the U.S. military attack on Venezuela and the kidnapping of Mr. and Ms. Maduro by Delta Forces under illegal orders from President Trump. Like the recent U.S. bombing and sinking of small vessels in international or foreign waters and the deliberate killing of civilians on board, the attack violates the United States War Powers Act; Article 2(2) of the United Nations Charter; the International Covenant on Civil and Political Rights; the Geneva Conventions, the United Nations Convention on the Law of the Sea, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as customary international law.

Of particular concern is the wide range of U.S. servicemembers involved in these attacks, including those now in support and logistics roles. Our **FAQ On Refusing Illegal Orders** is still in effect, as is our recent Emergency Webinar on Illegal Orders Under Military Law ([youtube.com/watch?v=Fm26YhWRdXw&t=4429s](https://www.youtube.com/watch?v=Fm26YhWRdXw&t=4429s)), explains that those implementing such orders could still be liable under the UCMJ and international law.

We also call upon the United States Congress to hold hearings to investigate these war crimes, to consider articles of impeachment against President Trump and Defense Secretary Hegseth, and to enact such additional legislation as may be needed to ensure that such actions will not be repeated.

MLTF still decries the stationing of 10 naval vessels and deployment of 10,000 troops in the region, as well as the stationing of half of this force in Puerto Rico, including F-35 fighter jets, drones, and surveillance planes, as a particularly egregious provocation and misuse of Puerto Rican territory.

We further call for:

Refusal by foreign military or civilian workers to service, fuel, load, or unload U.S. warships or warplanes. Members of foreign militaries must refuse illegal orders to collaborate in these U.S. crimes.

Withdrawal by foreign governments of military cooperation agreements with the U.S.

Exercise by all foreign governments of their universal jurisdiction to arrest Trump, Hegseth, or any other U.S. officials responsible for these crimes, should they set foot on foreign territory.

Imposition of sanctions forbidding any financial or other dealings with Trump or Hegseth (exactly like the sanctions imposed on Putin et al. for Russia's invasion of Ukraine — anything less would be pure hypocrisy) and the seizure of all Trump Organization properties in foreign countries, pursuant to those sanctions.

These developments also come after over 23 years of direct U.S. involvement in coups and coup attempts in Venezuela, routine interference in Venezuelan elections, the imposition of unlawful unilateral coercive measures designed to impoverish the Venezuelan people, the arrest and

detention of Venezuelan diplomats, the unlawful confiscation of Venezuelan assets held in foreign banks, and prior attempted landings by US mercenaries. Venezuela holds the world's largest recorded oil reserves, as well as the fourth-largest natural gas reserves, and U.S. corporations have repeatedly tried to interfere with the country's independent economic development and trade in resources.

The Military Law Task Force and the National Lawyers Guild are concerned that attacks (sometimes only alleged) on vessels in international waters have been considered by the U.S. and other countries to constitute acts of war, and have often led or been the pretext for larger, longer wars, as with the sinking of the Lusitania and the Tonkin Gulf incident, and must therefore be undertaken only with the utmost case for their legality.

CONGRESS ORDERS OVERHAUL OF SELECTIVE SERVICE REGISTRATION

By Edward Hasbrouck

Pursuant to an amendment to the Military Selective Service Act (MSSA) enacted as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2026¹, the requirement in effect since 1980 for male U.S. citizens and residents ages 18 through 25 to register themselves with the Selective Service System (SSS) for a possible future military draft and report their new address to the SSS each time they move will end on December 18, 2026.

Instead, the SSS will be required to try to identify and locate potential draftees "automatically" by using information from other Federal databases collected for other purposes.

Ending the "self-registration" requirement is an extraordinary and almost entirely unrecognized victory for nonviolent direct action. It's the result of decades of spontaneous, sustained, resistance by young people to militarism, to ageist government claims to authority over young people's lives, and to a mix of threats and extortion that even included show trials and imprisonment in the 1980s of a handful of the "most vocal" draft registration resisters².

The "self-registration" system in effect since 1980 has been a failure³ from the start. Fewer than 40% of men who turned 18 in 2023 registered with the SSS.⁴ The database of potential draftees' names and

¹ Public Law 119-60, Section 535, <<https://hasbrouck.org/draft/automatic/law.html>>, to be codified at 50 U.S.C. §3802.

² "Prosecutions of Draft Registration Resisters", <<https://hasbrouck.org/draft/prosecutions/>>.

³ "Compliance, noncompliance, and enforcement of Selective Service registration", <<https://hasbrouck.org/draft/compliance.html>>.

⁴ SSS response to Freedom Of Information Act request quoted in "Military draft sign-ups plunge as war fears rise", Edward Hasbrouck's blog, October 9, 2024, <<https://hasbrouck.org/blog/archives/002751.html>>.

addresses is so incomplete and inaccurate that it would be “less than useless” for a draft, according to testimony in 2019 by a former head of the SSS.⁵ “Absolutely nobody” tells the SSS when they move, as the Chair of the House Armed Services Committee noted at a hearing in 2021.⁶

Draft registration resisters have, for 45 years, prevented re-activation of a draft. We should thank them for their service in countering military adventurism.⁷

Unfortunately, rather than admitting failure, Congress has decided to give the SSS a do-over.

The new law mandating “automatic” draft registration grants the SSS unprecedented authority to require any other Federal agency to hand over, in bulk, any information that “the Director [of the SSS] determines necessary to identify or register a person subject to registration under this section.”

Whether an individual is subject to the draft depends on sex as assigned at birth (regardless of gender on current documents) and, for non-U.S. citizens, immigration and visa status. The SSS will need to try to find all this data and will have the authority to demand it from any other Federal agency that might have it. Obviously, no Federal agency has a complete list of undocumented immigrants and their current addresses. But the SSS now has a mandate to try to compile one.

Data matching is hard, and no other Federal agency has all the information the SSS needs.⁸ In 2024, as part of a request to the Office of Management and Budget (OMB) for approval for continued collection of information directly from potential draftees, the SSS told OMB that, “There is no other known system or records collection comparable to the information collected [from registrants] to satisfy the registration requirement.”⁹ The National Commission on Military, National, and Public Service (NCMNPS) considered the possibility of “passive” database-driven registration. But in its final report in 2020, the NCMNPS rejected this option.¹⁰

The SSS is likely to demand copies of Social Security, IRS, immigration, and census databases, among many others. The aggregated “garbage-in, garbage-out” database constructed by the SSS won’t be any more accurate or complete than the current “self-registration” list. But it will be vulnerable to abuse and weaponization, especially against transgender, nonbinary, and immigrant youth. And maintaining the fiction that a draft is always available as a “fallback” will enable Congress and the Pentagon to continue

⁵ “Former Director of Selective Service says it’s time to end draft registration”, Edward Hasbrouck’s blog, April 19, 2019 <<https://hasbrouck.org/blog/archives/002344.html>>

⁶ Rep. Adam Smith, hearing on recommendations of the National Commission on Military, National, and Public service, May 19, 2019, <<https://hasbrouck.org/draft/HASC-19MAY2021.pdf#page=6>>

⁷ For more on this history and its lessons for the future, see Edward Hasbrouck, “Requiem for draft registration”, <<https://hasbrouck.org/draft/automatic/requiem.html>>.

⁸ See, “‘Automatic’ draft registration is a bad idea, and it won’t work.” <<https://hasbrouck.org/draft/automatic/>>.

⁹ Selective Service System, “Selective Service System (SSS) Form 1 (Registration), Supporting Statement, OMB Control Number: 3240-0002”, September 10, 2024, <https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202505-3240-001>.

¹⁰ “Final Report of the National Commission on Military, National, and Public Service”, March 2020, p. 98 (p. 106 of PDF), <<https://hasbrouck.org/draft/FOIA/Final-Report.pdf#page=106>>.

plan for and commit the U.S. to larger, longer, less popular wars, without having to worry about whether enough Americans will be willing to fight those wars.¹¹

“Automatic” draft registration will inevitably fail, just as self-registration has failed. But we don’t want to wait another 45 years for that to happen. In the meantime, what can we do now to limit the damage from the attempt at “automatic” draft registration and hasten its demise?

1. Federal legislation: The statutory provision for “automatic” registration takes effect December 18, 2026 – one year after it was signed into law. So, there’s still a chance to repeal the Military Selective Service Act entirely in 2026, before the attempt at “automatic” registration begins. The Selective Service Repeal act could be reintroduced as a standalone bill, or included or proposed as an amendment to the NDAA for Fiscal Year 2027 which will be considered beginning in the spring of 2026.¹²

“Automatic” registration was enacted with no public awareness or debate. The chances for repeal of the MSA may depend on how soon and how widely “automatic” draft registration is recognized as a data grab for DOGE as well as an enabler of more aggressive war planning and policies.

The SSS is funded as an “independent” agency, not as part of the Department of Defense. The SSS has not yet requested any funding for either start-up or ongoing funding for “automatic” registration. Presumably, this will be considered as part of this year’s appropriations package for independent agencies. This could provide an opportunity for opponents of “automatic” registration and members of Congress who aren’t on the Armed Services Committees to raise questions about the cost and feasibility of the SSS plans and budget request.

2. Rulemaking: The statute directing the SSS to try to register potential draftees “automatically” leaves the details to the SSS to establish through promulgation of regulations. These will need to be published for comment and finalized by the end of 2026. Changes to the SSS regulations to provide for “automatic” registration are likely to be combined with a comprehensive update to the SSS regulations – the first in decades – which the SSS had already prepared and planned to issue in 2025, and possibly with updates to the regulations for the Health Care Personnel Delivery System¹³, which were proposed in 1989¹⁴, pursuant to a statutory mandate¹⁵, but never finalized. The MLTF should plan to take a leading role in review and submission of comments on these regulations when they are proposed.

3. Notices and approvals for data collection, use, and sharing: “Automatic” registration is an exercise in data collection, sharing, and matching. Multiple elements of this process require notice and comment

¹¹ See, “‘Automatic’ Selective Service registration: A data grab for DOGE that props up planning for larger, longer wars”, <<https://hasbrouck.org/draft/automatic/automatic-leaflet.html>>.

¹² For more on the Selective Service Repeal Act, see <<https://hasbrouck.org/draft/repeal.html>>.

¹³ See, “Health Care Workers and the Medical Draft: FAQ about the ‘Health Care Personnel Delivery System’ (HCPDS)”, <<https://hasbrouck.org/draft/health/>> .

¹⁴ 54 *Federal Register* 33644-33654, August 15, 1989, <<https://hasbrouck.org/draft/HCPDS-15AUG1989.pdf>>

¹⁵ 50 U.S. C. §3809(h)

pursuant to the Privacy Act¹⁶, Computer Matching Act¹⁷, and Paperwork Reduction Act¹⁸. These notice-and-comment proceedings will provide opportunities to build alliances with privacy advocates who have not previously paid attention to the SSS as the custodian of a database of personal information. Even before the start of “automatic” registration, the SSS has given DOGE access to the registration database¹⁹ and proposed sharing it with other agencies for immigration enforcement and other purposes.²⁰ The MLTF took the lead in submitting comments objecting to the proposed “routine Uses” of Selective Service registration data for improper and unrelated purposes,²¹ in the process helping assemble an informal coalition of anti-militarist, civil liberties, and anti-draft groups to share information and collaborate on responses to SSS rulemaking for “automatic” registration.

The SSS has often disregarded statutory requirements for notice, comment, and approval. Despite its extensive current data matching programs, for example, the SSS has published no currently valid Computer Matching Act notices. If the SSS fails to promulgate the required notices or obtain the required approvals for “automatic” registration, those failings may provide a basis for litigation. We’ve gotten some of the leading Privacy Act legal experts from other groups interested in this work, but they don’t have experience with the SSS or the MSSA, so joint work will be needed.

4. State legislation: Dozens have states have laws making registration with the SSS a condition for issuance of driver’s licenses or state IDs, enrollment in state colleges and universities, state-financed student aid, or state and local government jobs. Some of these laws affect only those state residents of registration age; some apply for life. Which of these laws still apply after the requirement to register with the SSS ends, and to whom they apply, will depend on the language used in state statutes. Do they apply to those individuals who are or were required to “register”, or to those required to “be registered”? Will they still apply to those who didn’t register during the time when it was required? Until they reach age 26? Or for life? A tedious but important project will be a state-by-state close reading of these statutes to determine which still apply to whom, and which collateral sanctions will still apply, in which states, for past nonregistration. States may misunderstand or mis-apply these laws once self-registration ends or may neglect to update their procedures to take account of the change in Federal

¹⁶ Privacy Act of 1974, 5 U.S.C. §552a. See, “The Privacy Act and the Selective Service System”, <<https://hasbrouck.org/draft/automatic/privacy-act.html>>.

¹⁷ Computer Matching Act of 1988, Public Law 100-503, <<https://www.congress.gov/100/statute/STATUTE-102/STATUTE-102-Pg2507.pdf>>.

¹⁸ Paperwork Reduction Act of 1995, Public Law 104-13, <<https://www.congress.gov/104/plaws/publ13/PLAW-104publ13.pdf>>, codified at 35 U.S.C. §3501 *et seq.*

¹⁹ SSS spokesperson quoted in, “DOGE gets access to Selective Service registration database”, Edward Hasbrouck’s blog, April 17, 2025, <<https://hasbrouck.org/blog/archives/002781.html>>.

²⁰ Privacy Act of 1974, System Of Records Notice (SORN) for SSS Registration, Classification, and Verification (RCV) System, SSS-19, 90 *Federal Register* 58677-58678, December 17, 2025, <<https://www.govinfo.gov/content/pkg/FR-2025-12-17/pdf/2025-23111.pdf>>.

²¹ Privacy Act of 1974, System of Records: Comments of the Military Law Task Force (MLTF) Of the National Lawyers Guild, Jewish C.O. Project, Restore the Fourth (RT4), Electronic Privacy Information Center (EPIC), Committee Opposed to Militarism and the Draft (COMD), Project on Youth and Non-Military Opportunities (Project YANO), Episcopal Peace Fellowship (EPF), and Center on Conscience & War (CCW), January 16, 2026, <<https://hasbrouck.org/draft/MLTF-comments-SSS-SORN-16JAN2026.pdf>>.

law. So, engagement with state officials to explain the implications of the change in the MSSA, and in some cases possibly state litigation, may be required to protect the rights of past nonregistrants.

Except for repeal of the MSSA, none of these activities will stop the upcoming attempt by the SSS to register potential draftees automatically. But these actions can mitigate some of the damage, help build awareness of what the SSS is doing and why it endangers us all, and help broaden and deepen a coalition of anti-militarists, anti-authoritarians, civil libertarians, privacy advocates, and youth liberationists working to abolish the SSS and end planning and preparation for military conscription in the U.S.

TRUMP FAILS TO DEPLOY NATIONAL GUARD

By Jeff Lake

In my last article for *On Watch*, I detailed the President's deployments of National Guard soldiers to Los Angeles, Washington D.C., Memphis, Portland, and Chicago. Those deployments were made pursuant to 10 U.S.C. §12406(3). This article will discuss the legal developments concerning these deployments and what the future may hold for them.

As noted in my last article, litigation concerning the deployments was pending throughout the country. As this statute had rarely been invoked since its passage in 1908, courts struggled to figure out what it meant and how to apply it.

10 U.S.C. §12406 states:

Whenever—

(1)

the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;

(2)

there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3)

the President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in

the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

Judges in Los Angeles, Portland and Chicago found that an injunction against deployment of the National Guard was necessary as the administration had not shown that there was a rebellion or that the “regular forces” could not control demonstrators. These judges assumed that the “regular forces” were the police or ICE.

Following the issuance of an injunction in Chicago, the Seventh Circuit denied the Government’s motion for a stay. The Government then went to the Supreme Court with an application for a stay.

While the application was pending, the Supreme Court directed the parties to file supplemental letter briefs on the meaning of the term “regular forces.” Professor Martin Lederman of the Georgetown University Law Center submitted an amicus brief. Professor Lederman argued that the statute that the administration was using to justify using the National Guard was conditioned on the necessary fact that the military, not civilian law enforcement, had been deployed and failed such that the National Guard was a necessary backup.

The professor stated the following:

“There can hardly be any question that the term ‘regular forces’ in the 1908 Act – which has remained in the statute ever since, appearing today in 10 U.S.C. § 12406(3) – referred to the standing, professional *military* forces, who were commonly known as ‘Regulars.’ The effect of the law was to prescribe the National Guard as the ‘second line of defense,’ S. Rep. 61-216, at 1, i.e., as a supplement to the regular army. Requiring the President first to make use of ‘the regular’ military forces, and to mobilize the National Guard only if and when those regular forces were inadequate to the task, helped to ensure that the militia remained subject to state control where necessary.” Lederman Amicus, p. 12.

He concluded as follows:

“Because President Trump has not used regular military forces to assist or protect ICE in the Chicago area, he cannot – and he has not – determined that the Executive Branch would be ‘unable’ to execute any federal laws with the aid of such military forces. Moreover, on any plausible understanding of what it means to be ‘unable’ to execute federal laws, it is difficult to imagine that the President would be ‘unable’ to ensure faithful execution of those laws *if* he were to first deploy regular military forces to assist ICE, assuming a sufficient number of such forces were available to perform that function.” Lederman Amicus, p. 19.

On December 23, 2025, the U.S. Supreme Court rejected the administration’s request for a stay of the injunction issued by the U.S. District Court for the Northern District of Illinois. The court accepted Professor Lederman’s interpretation of the statute, finding that the term “regular forces” likely refers to the regular forces of the United States military. The court then went on to state:

So before the President can federalize the Guard under §12406(3), he likely must have statutory or constitutional authority to execute the laws with the regular military and must be ‘unable’ with those forces to perform that function.” *Trump v. Illinois*, slip opinion, p. 2.

Thus, the Supreme Court found that the Government had not met the preconditions of the statute and the application for a stay was denied.

Justice Kavanaugh concurred in the judgment. Justices Alito and Thomas dissented, as they believe that the President’s decision cannot be reviewed. In addition, they believe that even if it could be reviewed, the facts of the case “provided more than enough support for the President’s determination that he was unable to enforce federal law in the Chicago area using federal civilian officers.” *Trump v. Illinois*, slip opinion, Alito dissenting, pp. 10-11. Finally, they reason that the President can do anything he wants to “protect” federal officers and property. Justice Gorsuch also dissented, indicating that he has no idea of what any of this means but believes “the declarations federal law enforcement officials submitted below support the grant of a stay ... ” *Trump v. Illinois*, Gorsuch dissenting, slip. opinion p. 2.

Following this decision, the National Guard has left Los Angeles. It was never deployed in Portland or Chicago. It remains in Washington, D.C. where the President has special authority and it has been announced that this deployment will continue for the remainder of 2026. It is also in Memphis and New Orleans by invitation of state governors.

As this article is written, the administration’s focus has become Minneapolis, Minnesota, due to the presence of a significant Somali immigrant population whom the President has labeled “garbage” and feels it is politically popular to go after. While no National Guard servicemembers have been involved, the administration has surged 3,000 ICE agents to the area, completely dwarfing civilian law enforcement. The ensuing brutality has resulted in two fatalities, Renée Good and Alex Pretti, and numerous injuries due to beatings and the use of chemical munitions against demonstrators.

Finally, the President has mused about invoking the Insurrection Act. This would allow the use of the military to perform law enforcement functions. There are barriers and technicalities that would prevent such an invocation at this time, but it is not hard to imagine that it is bound to occur at some point soon.

THE PENTAGON'S WAR ON THE FIRST AMENDMENT

By Chris Lombardi

At times, it can feel less like a legal dispute than a moral/philosophical one, like much regarding the military.

As 2026 began, the Trump administration increased its pressure on a handful of members of Congress, all veterans, for a video¹ that restated a core principle: servicemembers are free to disobey illegal orders from their superiors. First, "Secretary of War" Pete Hegseth took administrative action against the most prominent, astronaut and Air Force veteran Mark Kelly; then, last week the Department of Justice opened investigations into the rest, from Jason Crow (D-CO) to Michigan Senator Elissa Slotkin.

At a time of raging debates about possibly-illegal actions, servicemembers might feel caught in a Catch-22, as *Philadelphia Inquirer* journalist notes: "A soldier must disobey an illegal order, yet orders, in the heat of the moment, are almost never illegal."² At the Military Law Task Force of the National Lawyers' Guild, we do what we can to support those servicemembers, and we welcomed that November 18 video and spoke out against the Pentagon targeting of Kelly.³ Unlike the Congressmembers targeted by DOJ, Kelly is vulnerable to such targeting because he served long enough to get a pension, thus the administrative action that threatened to demote Kelly and reduce his veteran's benefits.

Hegseth's threats, contained in a January 5 letter of censure against Kelly,⁴ retreat from earlier threats to prosecute Kelly,⁵ for 'contemptuous speech' under the rarely-used Article 88. When those threats were made, we were confident that a trial was unlikely, given that career military prosecutors are JAGs, well versed in what UCMJ covers.

Those JAGS would know that the Army Court of Criminal Review ruled in 1969: "As a matter of law, an order of a subordinate which contravenes the Constitution, a federal statute, a presidential executive order, a departmental regulation or other lawful directive of higher authority can have no lawful validity," (*US v Patton*, U.S.A.C.M.R. 1969). And a century earlier, the US Supreme Court pointed out: "A soldier cannot justify on the ground that he was obeying the orders of his superior officer" if "a person of ordinary intelligence would know that obedience would be illegal and criminal." *Dow v. Johnson*, 100 U.S. 158, 189 (1879). That same decision adds that "the established principle of every free people is, that the law shall alone govern; and to it the military must always yield."

And those JAGs would know that servicemembers and veterans are protected by the First Amendment's free speech provisions, as highlighted by the National Institute for Military Justice: "Although the military code criminalizes certain types of speech that may affect the military mission, the Senator's

¹ Link to video: https://youtube.com/shorts/Fk9Gh3qwW4I?si=ze6_BzRILkgU0T9x

² Will Bunch, "The Catch-22 around Trump's illegal orders." November 25, 2025.

³ "Military Law Task Force condemns DOD attacks on Senator Mark Kelly." Public statement,

<https://nlgmtf.org/military-law/2026/military-law-task-force-condemns-dod-attacks-on-senator-mark-kelly/>

⁴ Secretarial Letter of Censure, <https://www.documentcloud.org/documents/26456660-secwar-letter-05jan26/>

⁵ First made over X: <https://x.com/DeptofWar/status/1992999267967905905>

remarks are far from criminal. He simply restated a fundamental principle of military law: service members must obey lawful orders and disobey unlawful orders.”⁶

We’re not surprised, therefore, that the investigation ordered by Hegseth produced no grounds for court-martial, and that one of Hegseth’s hand-picked officials instead issued that letter of censure⁷ which Hegseth claims “outlines the totality of Captain (for now) Kelly’s reckless misconduct.” In the letter, Hegseth declared Kelly’s behavior “conduct that I have determined to be prejudicial to good order and discipline in the Armed Forces of the United States.” The Washington Post notes that Hegseth “specifically cited Article 133 — “conduct unbecoming an officer and a Gentleman” — and Article 134, a catchall that military officials use to target behavior they believe is bad for good order and discipline.”⁸ On social media, Hegseth also said he was demoting Kelly, but such demotion is not an automatic process, as USA Today points out: “[It] requires an administrative process known as officer grade determination, which by law makes its decisions based on an officer’s conduct while on active duty.”

Complicating the matter further: Kelly is not on active duty but a veteran member of Congress. His response: First, a statement that the Pentagon is telling “every single retired servicemember that if they say something he or Donald Trump doesn’t like, they will come after them the same way. It’s outrageous and it is wrong. There is nothing more un-American than that.”⁹ Then he sued DOD in turn.¹⁰ As Military Times noted, “Observers have noted the case could have consequences far beyond Kelly himself. If the Pentagon’s theory prevails, retired officers who receive pensions could face financial retaliation for political advocacy, media commentary, or academic work that displeases current leadership.”¹¹

The MLTF reaffirms our commitment of over 55 years to support all servicemembers and veterans, including Senator Kelly, as they exercise their constitutional rights. Putting on a uniform does not mean forfeiting a servicemember’s freedom of expression. Our Know Your Rights Guide provides details on what the law allows in this area. US Military Know Your Rights guide released by MLTF, About Face and CCW - Military Law Task Force For more information, please contact us at help@nlgmtf.org or (619) 463-2369.

⁶ “NIMJ Statement Against Secretary Hegseth’s Threats to Punish A Senator.” December 12, 2025

⁷ Davis Winkle, “Hegseth censures Sen. Mark Kelly, backs down from court-martial.” January 5, 2026.

⁸ Dan Lamothe and Tara Copp, “Hegseth announces censure and potential demotion of Sen. Mark Kelly.” January 5, 2026.

⁹ Over X: <https://x.com/SenMarkKelly/status/2008215189275963870>

¹⁰ “Sen. Mark Kelly Files Lawsuit Over Pentagon Effort to Cut Retirement Pay.” NBC Palm Springs, January 12, 2026.

¹¹ Haley Fuller, “Mark Kelly’s Lawsuit Against Pete Hegseth Tests the Limits of Executive Power Over Retired Officers.” Military.com, January 16, 2025.

PERSONNEL PROVISIONS OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR 2026

By Kathleen Gilbert

The 2026 National Defense Authorization Act (NDAA) for Fiscal Year 2026 was signed into law on December 18, 2025, and is available at [S.1071 - 119th Congress \(2025-2026\): National Defense Authorization Act for Fiscal Year 2026](#). This year's NDAA includes important provisions on draft registration, covered elsewhere in this issue by Edward Hasbrouck. As always, the Act includes a number of provisions on military personnel policies, ranging from recruitment processes and standards to sexual assault policies.

Traditionally, NDAs contain numerous provisions that identify and respond to problems faced by military personnel, such as access to mental health care and retaliation against whistleblowers. While this writer hasn't done a count of the 2026 personnel provisions, it appears that there are fewer protections for servicemembers than in recent years.

This article discusses a number of provisions, mostly helpful to servicemembers and their advocates, but it is by no means exhaustive. Hopefully it will give a sense of the tenor of the 2026 Act.

RECRUITMENT

There has been much attention in the last year to military recruitment, recruiter misconduct, and enlistment standards. Desperate military claims about the dearth of qualified recruits and sinking enlistment rates were followed by puff-piece reports claiming the services exceeded recruitment quotas in 2025. We have seen claims that DoD's recent efforts to eliminate "woke" programs and its emphasis on "warfighting" are increasing enlistments. (Lowering of accession standards is usually not mentioned here.) At the same time, investigative reporters have revealed problems ranging from sophisticated recruiter schemes to enlist unqualified recruits to sexual misconduct by recruiters. It is no surprise that Congress addressed several recruitment and enlistment standard issues in the NDAA.

Section 531 of the Act amends 10 USC 503(c)(1)(A)d to mandate increased recruiter access to schools and to student information. It replaces existing clauses with the requirement that local educational agencies:

“(i) shall provide to a military recruiter, for the purpose of recruiting students who are at least 17 years old, access—

“(I) to the campus of a secondary school under the jurisdiction of such local educational agency; and

“(II) that is equivalent to access provided to such campus to a prospective employer of such students, an institution of higher education, or another recruiter;

“(ii) shall, upon the request of a military recruiter for the purpose described in clause (i), provide access to at least one in- person recruitment event (such as a career fair) per academic year; and

“(iii) shall, upon the request of a military recruiter for the purpose described in clause (i), provide, not later than 30 days after receiving such request, access to secondary school student

names, addresses, electronic mail addresses (which shall be the electronic mail addresses provided by the school, if available), and telephone and mobile phone listings, notwithstanding subsection (a)(5) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g) [on parental consent for provision of student information to recruiters].

This section responds to efforts by counter-recruitment groups, schools and school boards, parents and communities to place some limits on recruiters' access to students on campus and their access to contact and personal information about students.

Medical standards for enlistment have been subject to public discussion recently, as the military asserted that the potential enlistment pool was small in part because few young Americans meet physical qualifications for enlistment. Section 533 of the NDAA addresses this issue, requiring, among other things that DoD set uniform medical accession standards and make information available to applicants about those standards and the process for obtaining medical waivers. DoD is to establish a process to review or waive disqualifying medical conditions (presumably different from current procedures). Determinations "shall be based on all available information regarding the medical condition and the operational needs of the military service concerned," and the process "shall include criteria permitting waivers when such action is in the interests of national security, defined as a compelling governmental interest in accessing an individual whose service would directly support the Department's warfighting capabilities."

Of course, annual reports to Congress are required.

Sec. 534 attempts to address concerns about how DoD calculates the number and percentage of recruits permitted to enlist despite low scores on the Armed Forces Qualification Test. It amends 10 USC 520 (a product of the 2024 NDAA which limited the number of low-scoring applicants who may be enlisted) to exclude from the low-scoring numbers anyone who graduates from a Future Servicemembers Preparatory Course with a score at or above the thirty-first percentile. The scores must be obtained in the same fiscal year the recruit attempted to enlist. While the section is unclear, it will serve to allow enlistment of more low-scoring recruits.

Under Sec. 532, 10 USC 504 will be amended to enable the Secretary of Defense to create a program giving rejected recruits information about "opportunities to work in areas of national interest to the United States." To carry this out, DoD will identify potential jobs in the "defense industrial base, cybersecurity or intelligence support, research and development in defense technologies, national emergency and disaster preparedness, or any other non-military field the Secretary considers in the national interests of the United States."

DoD is to provide information about such jobs and training and certification programs for them to rejected recruits. The section also requires DoD to "seek to enter into agreements with entities" in the occupational areas described, though there is no information about the nature of the agreements. Again, annual reports to the Armed Services Committees will be required.

Several sections are designed to strengthen JROTC programs, seen as an important recruitment tool. Sec. 541 removes the requirement that officers and non-commissioned officers have served more than

eight years of military service before being approved as JROTC instructors. Sec. 542 increases the number of allowable JROTC programs from between 3,400 and 4,000 to between 3,600 and 4,200. And Sec. 546 gives service Secretaries authority to provide a one-time bonus of up to \$10,000 to instructors who agree to serve in positions considered difficult to fill.

SEXUAL ASSAULT AND RELATED POLICIES

Section 566 requires the Secretary of Defense, working with the Joint Service Committee on Military Justice, to analyze possible modification of the definition of abusive sexual conduct used in Article 120 of the UCMJ, “to address the full range of harmful behaviors associated with sexual assault and to prevent misapplication of the offense to acts that are not inherently abusive.” The analysis is to be provided to the Armed Services Committees within 180 days of the NDAA’s enactment.

Under Sec. 567, the Secretary of Defense and the Joint Service Committee on Military Justice are to analyze the value of creating a separate UCMJ punitive article on child pornography. Their report to the Armed Services Committees is to be submitted no later than December 31, 2026.

Sec. 563 requires that DoD provide Congress with an analysis of potential modifications to the UCMJ offense of wrongfully broadcasting or distributing intimate visual images. It amends the 2025 NDAA’s Sec. 569F, to, require, among other things, that DoD:

“(2) analyze the feasibility and advisability of, and potential approaches to, modifying the offense of wrongful broadcast or distribution of intimate visual images under section 917a of title 10, United States Code (article 117a of the Uniform Code of Military Justice) --
 “(A) to clarify its applicability to the nonconsensual distribution of digital forgeries (commonly known as ‘deepfakes’); and
 “(B) to include such other changes as are indicated in the amendment proposed by section 552 of the H.R. 3838, as engrossed in the House of Representatives on September 10, 2025.”

The analysis will include any other modifications that DoD considers appropriate.

Under Sec. 565, DoD is to create and implement a policy requiring that registered sex offenders living or working on a military installation are “identified to the respective military community, including, as necessary, through agreements with State and local law enforcement agencies.” The program is to be in place within one year of enactment of the NDAA. At the same time, DoD must submit a report to the Armed Services Committees on the value of designating the Department of Defense as a “jurisdiction for purposes of notification requirements under the Sex Offender Registration and Notification Act.” (34 USC 20901 et seq.)

Sec. 514, “Report on National Guard Sexual Assault Prevention and Response Training,” will require National Guard reports to the Armed Services Committee on the numbers of Guard personnel who received training in the prior calendar year, beginning 180 days after enactment of the NDAA, and then on March 30 of succeeding years.

Sec. 7501 et seq. include extensive provisions on Coast Guard (CG) sexual assault policy, in response to exposes of high levels of sexual assault in the CG, failure to investigate reports of assaults and cover-ups of that failure. Sec. 7501 requires a report by the Government Accountability Office (GAO) within one year of the NDAA's enactment on CG efforts to address sexual assault and sexual harassment. In particular, the report must review the Commandant's mandated efforts to implement the 2023 "Commandant's Directed Actions—Accountability and Transparency," mitigating instances of assault and harassment and improving response to complaints. Within 90 days of that GAO report, the CG must respond with an implementation plan for recommendations with which it concurs, and an explanation of any non-concurrence.

Sec. 7502 gives the CG 180 days from enactment of the NDAA to review the 2021 report, "Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military." On completion of that review, or within 180 days of the NDAA's enactment, the Commandant must submit to Congress a strategy and action plan explaining changes to be made in CG policies in compliance with those recommendations, and explaining its reasons for deciding whether any recommendations are inapplicable.

Sec. 7511, amends 14 USC Chapter 25 (general CG personnel provisions) to include a new Sec. 2531 with a comprehensive policy and procedures for retention of and access to evidence and documents on incidents of sexual misconduct and other misconduct. The new section will revise existing provisions to ensure that evidence and documents are preserved long enough for victims to use them in claiming veterans benefits, and for use in administrative or disciplinary procedures, or civil litigation. The revisions will also include specific provisions for protection of the privacy of such records and access to them.

Sec. 7534 includes a remarkable and unique discharge review provision, allowing the "downgrade" of an honorable discharge to general under honorable conditions where a Discharge Review Board determines that a former CG member committed a sexual assault or sexual harassment in violation of Article 120, 120b, or 134 of the UCMJ while in the service. The Board may act on its own motion, subject to Secretarial review. This change in the character of discharge is not permitted if the honorable discharge resulted from an administrative discharge board action prior to separation. Cases would be decided on the basis of clear and convincing evidence. Where the review is requested by a victim of assault or harassment, that person may present an affidavit to or appear before the Board personally or through counsel. The subject of the review is entitled to notice and an opportunity to appear.

Under Sec. 7526, the CG must report to Congress within 90 days of enactment of the NDAA. on its whistleblower protection policies. The report will include recommendations on proposed legislative and regulatory changes to prevent whistleblower discrimination and harassment and enforce prohibitions on retaliation, such as reprisals, restrictions, ostracism, and maltreatment.

Sec. 7528 requires the CG to develop expedited procedures where victims of assault or domestic violence request transfer away from the perpetrator. And Sec. 7529 mandates updating of the CG's temporary separation policy for victims of sex-related offenses.

HEALTH CARE AND MEDICAL ISSUES

Under Sec. 521, a new Sec. 996 will be added to 10 USC, on “Individual Longitudinal Exposure Record[s].” DoD will be required to maintain a data system for exposure-related information which “compiles, collates, presents, and provides available occupational and environmental exposure information to support the needs of the Department of Defense and the Department of Veterans Affairs.” It will include military personnel service records, all available data on how, where and when members were exposed to occupational or environmental hazards, and related medical records. Where at-risk personnel are identified, their service records will be updated to include such exposure data as well.

If this is properly implemented, it will give real assistance to servicemembers and veterans seeking accurate diagnoses of injuries or illness related to blast exposure and exposure to other occupational or environmental hazards and assist them in obtaining disability pensions and other benefits for those illnesses or injuries. These medical problems have often been difficult to prove, and it is often hard to establish service-connection for lack of evidence of an in-service exposure. Hopefully the new provision will make a difference in treatment and benefit claims.

DoD will be required to report annually on this system to the House and Senate Armed Services Committees and Veterans Affairs Committees.

Another provision, Sec. 508, establishes the position of blast exposure safety officers whose duties will include overseeing blast exposure monitoring programs, ensuring members facing exposure receive appropriate training and information on possible health consequences, overseeing the application of exposure controls, helping to ensure appropriate medical surveillance, etc. Each service is required to assign officers to components where blast overpressure hazards are “reasonably anticipated.”

Other NDAA provisions also require studies and reports on possible health hazards. Sec. 733 calls for a two-year pilot program of wastewater surveillance for infectious disease hazards near military installations. Sec. 736 mandates a two-phase study of cancer among rotary-wing pilots and aviation support personnel. The initial phase is to determine whether there is an increase of cancer and cancer-related mortality in these populations compared to the general population; if such an increase is found, the second phase will examine potential causes, including toxins or hazardous chemicals or “frequencies or electromagnetic fields, in which covered individuals may have received excess exposure to non-ionizing radiation in the course of such operation, including non-ionizing radiation associated with airborne, ground, or shipboard radars....”

Sec. 737 mandates a study of mental health effects of unmanned aircraft systems in combat operations, examining the impact on military and civilian personnel operating or supporting drones in combat settings. The study will assess the prevalence of “post-traumatic stress disorder, depression, anxiety, burnout, moral injury and other mental health conditions,” examining such factors as sleep disruption, “remote witnessing of lethal operations, emotional disengagement and isolation, and exposure to civilian casualties or traumatic visual content.” The study will also examine existing mental health support for these personnel and recommend improvements in screening, treatment and prevention.

Sec. 712, "Military-civilian medical surge program," amends 10 USC 1096, the military-civilian health services partnership program. DoD and the Secretary of Health and Human Services are to collaborate on a Military-Civilian Medical Surge Program, which will support provision of civilian medical care in eight or more geographic areas identified by DoD as "operationally relevant" to its missions, including locations outside the US. The program will "enhance the interoperability and capacity of the National Disaster Medical System during a declaration of a national emergency, public health emergency, Congressional declaration of war, contingency operation, presidential action under the War Powers Resolution or any other emergency or major disaster as declared by the President." This is designed as a DoD and HHS partnership to "allow for civilian medical personnel to quickly and effectively mobilize direct support to military medical treatment facilities and provide support to other requirements of the military health system."

OTHER PROVISIONS

Under Sec. 522 of the Act, Women's Initiative Teams will be established in each branch of the service, under a new 10 USC 997, effectively reviving a program shut down in 2025 by the Secretary of Defense. The teams will "identify and address barriers, if any, to the service, recruitment, retention, and advancement of women in those armed forces." The teams will be mandated to support recruitment and retention of women, "recommend policy changes that support the needs of women members...", and "foster a sense of community." DoD must report annually to the House and Senate Armed Services Committees on the development and work of the teams for the next five years.

While this is a useful effort in the face of DoD attempts to eliminate women's programs and other "woke" DEI projects, it is unfortunate that Congress did not take the opportunity to reestablish the Defense Advisory Committee on Women in the Services (DACOWITS), a very well-respected commission eliminated by the Secretary of Defense in 2025. If DACOWITS were to be revived as a Congressionally-sponsored advisory group, DoD would not have the power to remove it again.

Section 506, "Notice of Removal of Judge Advocates General." may represent some pushback against the arbitrary removal last year of the chief Judge Advocate Generals in each of the services. While not setting criteria for removal of the JAGs prior to expiration of their terms, it requires notification of the removal and the reason for it to the House and Senate Armed Services Committees within five days of the removal.

Lest we lose sight of domestic use of the military, Sec. 513 of the Act requires the National Guard to report to Congress on the effect of any equipment shortfalls on the ability of the Guard to "perform a homeland defense activity."

And lest we be overly impressed by the NDAA's pay raise for enlisted personnel, Sec. 663 amends 10 USC 1060a to require expansion of an existing pilot program to increase access to food on military bases. Previously tested only at Army bases, the program is to be expanded to other services.

Perhaps in response to DoD's reduction of military training on issues such as the rules of engagement, Congress included in Sec. 545 a requirement for mandatory trainings on national security law and government ethics. DoD is to provide the Senate and House Armed Services Committees with briefings on implementation of this requirement, with annual trainings to begin in December of 2026. Trainings

on the law of armed conflict and rules of engagement will be required within 90 days of a mobilization or deployment. Here the training must include laws of armed conflict, rules of engagement, defense support for civilian authorities, standing rules on the use of force, and the Code of Conduct for Members of the Armed Forces of the United States (Executive Order 10631).

Overall, these provisions attempt to address the serious problems in the military despite the denial of any problems by the Secretary of “War.” Recruitment is said to be up, but the quality of the recruits is low. Sexual assault continues to be a systemic problem, as the MLTF has emphasized consistently. The problem is particularly acute in the Coast Guard, which is why there are so many provisions in this NDAA directed at that branch in particular. The number of provisions regarding health care and mandating numerous studies of all the injuries servicemembers are suffering, is an indirect acknowledgement that serious, lifelong injuries are occurring which the military is unable to eliminate or remedy. The provisions concerning women, JAGS and ethics can be seen as a backhanded criticism of the way the Department of Defense is functioning. Overall, the personnel provisions of the 2026 NDAA are best summarized as an attempt to place a band-aid on the serious problems facing the military. It is an indictment of these problems, not a cure.

DRAFT COUNSELOR TRAINING PROGRAM SET TO BEGIN IN FEBRUARY

A three-part Draft Counselor training program will kick off on **Sunday, February 8, 2026 at 1 p.m Central time**. Organized by James M. Branum, a MLTF steering committee member, the sessions will be available online via Zoom, and in person at Oklahoma City’s Joy Mennonite Church.

Timely questions will be addressed and answered, including

- **What if the U.S. reinstated a military draft?**
- **How could you, your family, and your neighbors be impacted?**
- **How can faith communities and community leaders help families prepare?**

The purpose is to train and equip volunteer civilian draft counselors who can help potential draftees exercise their rights to legally avoid being drafted. Teachers, youth leaders, clergy and parents are encouraged to participate, as are community organizers and peace and justice advocates/activists.

The first session, **Draft Counseling 101**, will last about two hours, beginning at 1 p.m. Pre-registration is strongly encouraged. There is no charge for the training, but donations will be gratefully accepted to offset costs.

To register: <https://bit.ly/OKCDraftCounseling101>

Joy Mennonite Church is located at 504 NE 16th Street in Oklahoma City.

MLTF ANNOUNCEMENTS AND NOTES

SAVE THE DATE – NLG CONVENTION

The National Lawyers Guild's 2026 convention will be held from April 8 to 12 in Detroit; information about the convention can be found at [2026 #Law4ThePeople Convention](#). MLTF hopes to host a CLE seminar on the afternoon of Wednesday, the 8th, covering the right to refuse illegal orders and servicemembers' dissent and protest rights. A Task Force membership meeting is planned for Friday, April 10, from 2:00 to 3:30 (Detroit time). Convention attendees should also be on the lookout for a workshop on challenges to current US military policies, a resolution opposing those policies and, as always, an opportunity to check out new resource materials and visit with other Task Force members at our literature table. For more information on MLTF convention plans, contact Kathy Gilberd at kathleengilberd@aol.com.

ON WATCH SPONSORSHIP OPPORTUNITY

As you may have noticed on Page 1 of this issue, we are offering, to members and allies, the opportunity to sponsor an issue of this publication. Those who donate \$250 or more per quarterly issue will have their valuable, and much appreciated, contribution recognized.

ADVICE FOR CONSCIENTIOUS OBJECTORS IN THE ARMED FORCES

The Center on Conscience and War has published a 24-page [guide for COs in the military](#) (PDF), available at centeronconscience.org. This is a really helpful overview of CO law and procedures, useful for counselors and attorneys as well as servicemembers considering conscientious objection. Donations for the guide are appreciated.

MLTF'S SERVICEMEMBERS' KNOW YOUR RIGHTS FLYER

A new [printable Know Your Rights flyer for servicemembers](#) is now available for download on our website, nlgmtf.org. It includes a QR code linking to our "Frequently Asked Questions on Illegal Orders" and to other information on the site.

ABOUT THE AUTHORS

Kathy Gilbert is a legal worker in San Diego, working primarily in the area of discharges and discharge review. She is the executive director of the Military Law Task Force and is on the board of directors for the national GI Rights Network.

Edward Hasbrouck is a legal worker in San Francisco with the Identity Project (PapersPlease.org). He has been a member of the NLG and the MLTF since the early 1980s, when he was an organizer with the National Resistance Committee and co-editor of Resistance News. He publishes a Web site about the draft, draft registration, draft resistance, and the Selective Service System at Resisters.info.

Martha L. Schmidt holds law degrees from University of Washington (LL.M., Law and Marine Affairs) and University of Wisconsin (J.D.). Currently she is a Board director of the Center for World Indigenous Studies (CWIS), a member of the Task Force of the Monique and Roland Weyl People's Academy of International Law (PAIL), a co-chair of the Human Rights Framework Project and member of the Anti-Militarism Working Group of the National Lawyers Guild (NLG). Before "retirement", she chaired the World Peace Through Law Section of the Washington State Bar Association and led a successful effort for a Bar resolution supporting US ratification of the Convention on the Rights of the Child. She also co-chaired NLG subcommittees on Peace and Disarmament, the (occupied) Hawaiian Kingdom, and the Task Force on the Americas. International solidarity activities have included trial observing (Peru), electoral observing (El Salvador), electoral acompañante (Venezuela) and participation in humanitarian, peace and educational delegations to Cuba, Colombia and Nicaragua.

Jeff Lake is an attorney in private practice in San Jose, California. He is Chair of the MLTF.

Chris Lombardi is a former staff member with the Central Committee for Conscientious Objectors. She has been writing about war and peace for more than twenty years. Her work has appeared in *The Nation*, *Guernica*, *The Philadelphia Inquirer*, *ABA Journal*, and at WHY.org. The author of *I Ain't Marching Anymore: Dissenters, Deserters and Objectors to America's Wars* (The New Press), she lives in Philadelphia.

ABOUT THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD

ON WATCH is published quarterly by the Military Law Task Force of the National Lawyers Guild. Subscriptions are free with MLTF dues (\$40), or \$25 annually for non-members.

We welcome comments, criticism, assistance from Guild members, subscribers and others interested in military, draft or veterans law.

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

Each issue is made available to the public on our website approximately one month after distribution to subscribers. A digital archive of back issues of this newsletter can be found on our website. See nlgmtf.org/onwatch/.

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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.

To join, or for more information, contact us by email or phone, or visit our website or social media pages.

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