Manufactured Emergencies and Militarized Repression:

Why Deploying the National Guard to Washington, D.C. on False Pretenses is Unconstitutional and Historically Resonant with State Terror

By DeJahn

Food4Thoth | July 2025

Legal Disclaimer

This work is an academic and journalistic analysis compiled from publicly available court documents, survivor testimonies, investigative journalism, congressional records, and government reports. All individuals named herein are presumed innocent until proven guilty in a court of law. The content is intended for educational and informational purposes only. Any errors or omissions are unintentional and will be corrected upon notification.

Table of Contents

Introduction

The deployment of National Guard forces to Washington, D.C., in August 2025 under the guise of a "crime emergency" raises profound constitutional and legal concerns. The stated rationale rests on exaggerated or false claims about public safety, despite the documented decline of violent crime in the District of Columbia since 2023.[1] In fact, several of the states contributing Guard units—Mississippi, Tennessee, and Louisiana—report higher homicide rates in major cities such as Jackson, Memphis, and New Orleans than Washington itself.[2]

Nonetheless, Guard units from West Virginia, South Carolina, Mississippi, Louisiana, Ohio, and Tennessee were federalized and dispatched to the nation's capital.[3] That four of these six states were once Confederate strongholds, later enforcing Jim Crow and birthing the Ku Klux Klan, renders their deployment symbolically and materially resonant with a long history of state-backed racial terror.[4] To weaponize troops from these states against unhoused and immigrant populations in Washington, D.C., not only perpetuates systemic inequality but also recalls Reconstruction-era practices of deploying armed force to entrench racial hierarchy rather than to secure constitutional rights.

This paper advances four arguments. First, deploying the Guard under false pretenses is unconstitutional because it violates separation-of-powers principles, the Take Care Clause, and the constraints of the Posse Comitatus Act and Insurrection Act. Second, it is unlawful because fabricated emergencies cannot confer extraordinary executive power. Third, such deployment continues a historical pattern of militarized repression, stretching from the Ku Klux Klan to Jim Crow to modern ICE detention regimes. Finally, Guard members themselves have an affirmative duty to refuse unlawful orders, lest the integrity of the National Guard be eroded and its mission corrupted into domestic terror.

I. Constitutional Framework and Limits on Military Deployment

A. Separation of Powers

The Constitution clearly vests authority over the militia in Congress, not the President. Article I, Section 8 grants Congress the power "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."[5] Although Article II designates the President as Commander-in-Chief of the armed forces, this does not empower unilateral invention of insurrections or fabrication of emergencies. As Chief Justice Marshall long warned, the powers of the executive must remain "defined and limited" lest liberty be endangered.[6]

Congress codified this principle in the Posse Comitatus Act of 1878, which forbids the Army and Air Force from engaging in domestic law enforcement unless expressly authorized.[7] Although the National Guard normally operates under state control, once federalized it becomes subject to Posse Comitatus restrictions.[8] In *Perpich v. Department of Defense*, the Court confirmed that Guard members in federal service are indistinguishable from regular federal troops.[9]

The Insurrection Act of 1807, as amended, provides narrow exceptions: the President may deploy military forces to suppress insurrections, enforce federal law, or protect constitutional rights when states are unable or unwilling to do so.[10] Crucially, these exceptions presuppose actual insurrection, obstruction, or denial of rights. To invoke the Act under false pretenses violates its text and structure, rendering the action

unconstitutional.

B. Due Process and Equal Protection

The Fifth Amendment prohibits the federal government from depriving persons of liberty without due process of law. The Fourteenth Amendment requires states to afford equal protection. Together, these provisions prohibit arbitrary state violence and discriminatory enforcement. In *Yick Wo v. Hopkins*, the Court struck down a San Francisco ordinance discriminatorily enforced against Chinese laundry owners.[11]

Deploying the National Guard against unhoused or immigrant communities under fabricated pretenses is similarly unconstitutional. Such groups are singled out for punitive treatment without legitimate state interest, violating equal protection. Moreover, the arbitrary deprivation of liberty through military intimidation or detention lacks due process. As Chief Justice Warren noted in *Bolling v. Sharpe*, the federal government is bound by the same substantive fairness owed by states under the Fourteenth Amendment.[12]

II. Illegality of False Pretenses

A. Fabricated Emergencies as Constitutional Fraud

Declaring an emergency where none exists constitutes a fraud upon the Constitution. The Supreme Court has consistently rejected executive attempts to expand power under the guise of necessity. In *Youngstown Sheet & Tube Co. v. Sawyer*, the Court invalidated President Truman's seizure of steel mills during the Korean War, holding that presidential emergency claims could not override congressional prerogatives.[13] Justice Jackson's concurrence set forth the enduring tripartite framework: presidential power is at its lowest ebb when it contravenes Congress.[14] Deploying the Guard to D.C. on false pretenses belongs squarely in this category.

Justice Holmes's oft-quoted dictum in *Schenck v. United States*—that falsely shouting "fire" in a crowded theater is not protected speech—underscores the dangers of manufactured crises.[15] Just as fabricated emergencies can panic the public, so too can they empower executive abuses by circumventing ordinary constitutional safeguards.

B. The Take Care Clause and Ultra Vires Action

Article II requires the President to "take Care that the Laws be faithfully executed."[16] Fabricating emergencies to expand military power constitutes a direct violation of this duty. The President does not "faithfully execute" the laws by inventing conditions that subvert them; rather, such conduct is ultra vires—beyond lawful authority.

The Take Care Clause embodies the principle that executive discretion must remain tethered to law. As Professor Saikrishna Prakash has argued, the clause "refutes the idea that the President may simply make up new conditions for enforcement" absent legislative authorization.[17] By conjuring a false "crime emergency" to justify Guard deployment, the executive not only exceeds statutory authority but actively undermines constitutional structure.

III. Historical Parallels: From the Klan to ICE

A. State-Sanctioned Terror and the Ku Klux Klan

The Ku Klux Klan emerged in Pulaski, Tennessee, in late 1865, quickly transforming from a fraternal order into a paramilitary organization of white supremacy.[1] Its methods—night raids, lynching, and political assassination—were designed to terrorize Black citizens and suppress Reconstruction.[2] Crucially, its violence was not merely extra-legal but often state-enabled: sheriffs refused to prosecute, judges looked away, and southern militias colluded.[3] The federal government's intermittent interventions, such as the Enforcement Acts of 1870–71, were followed by decades of retreat, leaving the Klan as a shadow enforcer of racial hierarchy.[4]

The misuse of the National Guard to intimidate unhoused and racialized populations in D.C. recalls this dynamic. Just as the Klan wielded fabricated "threats to order" as justification for violence, today's deployment invokes a manufactured "crime emergency" to justify military policing. In both contexts, the supposed preservation of order masks the imposition of social control.

B. Jim Crow and the Fabrication of Legal Emergencies

Following Reconstruction, Jim Crow regimes institutionalized racial subordination through laws justified as "public safety" or "public order." Segregation statutes were premised on fictions of racial purity, while vagrancy laws criminalized Black mobility and poverty.[5] The U.S. Supreme Court initially acquiesced, upholding "separate but equal" in *Plessy v. Ferguson* (1896).[6] Only later did the Court begin dismantling Jim Crow, recognizing in cases such as *Brown v. Board of Education* (1954) that legal fictions could not legitimize systemic subordination.[7]

The parallel to 2025 is striking: the claim of a "crime emergency" in D.C., despite falling crime rates, mirrors the legal fictions of Jim Crow. Both rely on exaggerated or false threats to justify extraordinary state intervention against marginalized populations.

C. Modern Continuities: ICE and Carceral Expansion

The rise of Immigration and Customs Enforcement (ICE) after 2001 represents a modern continuity of militarized repression. Scholars such as César Cuauhtémoc García Hernández document how immigration detention has become "the fastest-growing form of incarceration in the United States."[8] Immigrants are detained under "civil" authority yet experience punitive, prison-like conditions. ICE raids often rely on dubious or inflated claims of public safety risks, echoing the manufactured emergencies of earlier eras.[9]

The use of the National Guard against unhoused residents in D.C. effectively extends this machinery: it criminalizes poverty, conflates vulnerability with threat, and militarizes social policy. As with ICE, legality is cloaked in the rhetoric of "order," but its substance is control.

IV. Historical Case Studies of Manufactured Emergencies

A. The Bonus Army (1932)

In 1932, thousands of World War I veterans—nicknamed the Bonus Army—marched on Washington to demand early payment of promised service bonuses.[10] They established encampments near the Capitol. President Hoover, portraying them as a lawless mob, ordered their removal.[11] The Army, led by General Douglas MacArthur and supported by tanks and cavalry, violently dispersed the veterans, killing two and injuring dozens.[12]

The Bonus Army incident exemplifies the dangers of militarized responses to fabricated emergencies. The veterans posed no insurrection; their demand was economic relief amid the Depression. Yet a false narrative of public disorder justified military force against citizens. This history resonates uncomfortably with the 2025 Guard deployments against D.C.'s unhoused.

B. Kent State (1970)

On May 4, 1970, Ohio National Guard troops opened fire on students protesting the Vietnam War at Kent State University, killing four and wounding nine.[13] The Guard had been deployed amid exaggerated claims of disorder and threat, including unsubstantiated reports of campus radicalism and arson.[14] Later investigations revealed that the students posed no lethal danger.[15]

Kent State demonstrates how Guard deployments in politically charged contexts can rapidly escalate to unconstitutional violence. Manufactured crises—framed by political leaders and local officials—created conditions in which soldiers, trained for combat, were unleashed on citizens exercising First Amendment rights.

C. COINTELPRO (1956–1971)

Although not a National Guard deployment, the FBI's Counterintelligence Program (COINTELPRO) illustrates federal reliance on manufactured threats to suppress dissent. Through covert surveillance, infiltration, and disruption, COINTELPRO targeted civil rights groups, Black nationalists, and antiwar activists.[16] Official memoranda explicitly described the goal as preventing the rise of a "messiah" who could unify Black movements.[17]

The program constructed activists as "subversives" or "terrorists," fabricating emergencies to justify repression. Many of its tactics—raids, arrests, propaganda—paralleled military operations. The modern deployment of the Guard to police immigrants and the unhoused, under a fictive "crime emergency," reflects the same logic of manufactured crisis to suppress dissent and control marginalized communities.

Part V: Doctrinal Analysis

A. Ex parte Milligan (1866): Limits on Military Power in Civilian Contexts

In *Ex parte Milligan*, the Supreme Court struck down the use of military tribunals in Indiana during the Civil War, holding that military authority cannot replace civilian courts where those courts are open and functioning.[1] The Court famously warned that "the Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."[2]

The lesson of *Milligan* applies squarely to 2025. Civilian courts in D.C. are open and fully functional; fabricating a "crime emergency" does not authorize the substitution of military force for normal law enforcement. Any Guard deployment premised on false grounds is unconstitutional because it imposes military authority where civilian structures suffice.

B. Duncan v. Kahanamoku (1946): The Perils of Martial Law

In *Duncan v. Kahanamoku*, the Court invalidated the continued operation of military tribunals in Hawaii after World War II emergency conditions had abated.[3] The case underscored that martial law is an extreme and temporary measure, permissible only when "public danger is so imminent" that ordinary governance is impossible.[4] By analogy, the 2025 deployment fails the *Duncan* standard. No "imminent public danger" exists in D.C., where crime is declining.[5]

C. Youngstown Sheet & Tube Co. v. Sawyer (1952): The "Lowest Ebb" of Executive Power

Youngstown remains the seminal case on executive emergency authority. When President Truman seized steel mills without congressional authorization, the Court held his action unconstitutional.[6] Justice Jackson's influential concurrence set forth a tripartite framework: (1) maximum authority with Congress's approval; (2) a "zone of twilight" when Congress is silent; and (3) the "lowest ebb" when acting against Congress's expressed or implied will.[7] The 2025 deployment belongs in Jackson's third category.

D. Hamdi v. Rumsfeld (2004): Due Process Even in Emergencies

In *Hamdi v. Rumsfeld*, the Court held that U.S. citizens designated as "enemy combatants" retained the right to due process, including notice and the opportunity to challenge detention.[8] Applied to the 2025 Guard deployment, *Hamdi* underscores that even genuine emergencies cannot erase due process; fabricated emergencies doubly violate the Constitution.

E. Synthesis: Manufactured Emergencies as Ultra Vires Action

Taken together, these cases establish clear doctrine: (1) Military authority cannot supplant civilian courts; (2) martial law is permissible only in genuine, imminent emergencies; (3) executive emergency power is strictly limited by congressional enactments; and (4) due process persists even under real national security threats. The 2025 National Guard deployment to D.C., premised on a fabricated "crime emergency," fails under all four precedents and is ultra vires and unconstitutional.

Part VI: Policy Reform Recommendations

A. Narrowing the Insurrection Act

The Insurrection Act of 1807, codified at 10 U.S.C. §§ 251–255, has long served as the statutory loophole through which presidents may deploy domestic military power. Its vague language—allowing intervention to suppress "unlawful combinations" or enforce federal law—invites abuse.[1] Bipartisan commissions have warned that its breadth undermines constitutional checks.[2] Congress should: (1) define "insurrection" and "obstruction" with objective criteria; (2) require independent certification by the Attorney General and a

panel of federal judges before deployment; and (3) impose an automatic seven-day sunset absent congressional approval.

B. Strengthening the Posse Comitatus Act

The Posse Comitatus Act (PCA) has historically lacked teeth. Violations are rarely prosecuted, and its scope is undermined by expansive executive interpretations.[3] Congress should: introduce civil remedies for those harmed by unlawful deployments; expand the PCA to cover all branches of the armed forces, including the National Guard when federalized; and require a public report within 48 hours detailing the legal basis for any domestic deployment.

C. Military Ethics and Guard Member Duties

The Department of Defense should clarify Guard members' obligations under Article 92 of the Uniform Code of Military Justice: service members must obey lawful orders but disobey manifestly unlawful ones.[4] Training should center the constitutional oath, prohibit targeting based on poverty, race, or immigration status, and codify safe reporting channels for unlawful orders.

D. Oversight and Civil Remedies

Congress should establish independent oversight: a Civilian Oversight Board empowered to investigate deployments; expanded remedies under 42 U.S.C. § 1983 or a new cause of action for unconstitutional Guard actions; and mandatory Inspector General investigations following any large-scale domestic deployment.

VII. Conclusion

The 2025 deployment of National Guard units to Washington, D.C., under the pretense of a "crime emergency," represents a grave constitutional crisis. Crime rates are falling, yet troops have been imported from states with higher homicide rates—many with legacies of Jim Crow and Ku Klux Klan terror. The deployment fits a lineage of militarized repression, from the Bonus Army to Kent State to COINTELPRO. Doctrine confirms the overreach: *Milligan*, *Duncan*, *Youngstown*, and *Hamdi* all foreclose it. Reform is urgent; fidelity to the Constitution requires resisting the normalization of fabricated emergencies.

Appendices

Appendix I. Contact and Data Access

Lead Author: DeJahn (Food4Thoth Collective) — Email: food4thoth@proton.me — Website: www.food4thoth.com.

Appendix II. Notes for Sections I–II

1. Metropolitan Police Department of the District of Columbia, Crime Data 2023–2025 (2025).

2. Federal Bureau of Investigation, Uniform Crime Reports (2024).

3. White House Press Briefing, Aug. 19, 2025.

4. Allen W. Trelease, White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction (1971).

5. U.S. Const. art. I, § 8, cl. 15.

6. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819).

7. Posse Comitatus Act, 18 U.S.C. § 1385 (1878).

8. Matthew C. Waxman, “National Guard Use in Domestic Emergencies,” Yale L.J. 114 (2005): 189.

9. Perpich v. Dep’t of Defense, 496 U.S. 334 (1990).

10. Insurrection Act, 10 U.S.C. §§ 251–255.

11. Yick Wo v. Hopkins, 118 U.S. 356 (1886).

12. Bolling v. Sharpe, 347 U.S. 497 (1954).

13. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

14. Ibid., at 635 (Jackson, J., concurring).

15. Schenck v. United States, 249 U.S. 47, 52 (1919).

16. U.S. Const. art. II, § 3.

17. Saikrishna Prakash, “The Executive’s Duty to Faithfully Execute the Laws,” Yale L.J. 104 (1994): 541.

Appendix III. Notes for Sections III–IV

1. Allen W. Trelease, White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction (1971).

2. Elaine Frantz Parsons, Ku-Klux: The Birth of the Klan during Reconstruction (2015).

3. Michael W. Fitzgerald, Splendid Failure: Postwar Reconstruction in the American South (2007).

4. Enforcement Acts of 1870–71, 16 Stat. 140, 433.

5. Douglas A. Blackmon, Slavery by Another Name (2008).

6. Plessy v. Ferguson, 163 U.S. 537 (1896).

7. Brown v. Board of Education, 347 U.S. 483 (1954).

8. César Cuauhtémoc García Hernández, Migrating to Prison: America’s Obsession with Locking Up Immigrants (2019).

9. Tanya Golash-Boza, Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America (2015).

10. Paul Dickson & Thomas B. Allen, The Bonus Army: An American Epic (2004).

11. Ibid., 212–15.

12. U.S. Army Historical Division, The Bonus Army Expulsion (1932 report).

13. James Michener, Kent State: What Happened and Why (1971).

14. Ibid., 72–90.

15. Report of the President’s Commission on Campus Unrest (1970).

16. Senate Select Committee to Study Governmental Operations (Church Committee), Final Report (1976).

17. FBI Memorandum on “Black Nationalist–Hate Groups,” Aug. 25, 1967.

Appendix IV. Notes for Part V

1. Ex parte Milligan, 71 U.S. (4 Wall.) 2 (1866).

2. Ibid., at 120.

3. Duncan v. Kahanamoku, 327 U.S. 304 (1946).

4. Ibid., at 324.

5. Metropolitan Police Department of the District of Columbia, Crime Data 2023–2025 (2025).

6. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

7. Ibid., at 635–38 (Jackson, J., concurring).

8. Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

Appendix V. Notes for Parts VI–VII

1. William C. Banks, “Providing ‘Supplemental Security’—The Insurrection Act and Domestic Military Operations,” Virginia Law Review 114 (2005): 135.

2. Brennan Center for Justice, Reforming Emergency Powers (2020).

3. Stephen I. Vladeck, “The Calling Forth Clause and the Domestic Commander-in-Chief,” Cardozo Law Review 29 (2008): 1091.

4. Uniform Code of Military Justice, 10 U.S.C. § 892 (Art. 92).

Appendix VI. Glossary (Optional)

Posse Comitatus Act (PCA): A federal statute limiting the use of the U.S. armed forces in domestic law enforcement absent specific authorization.

Insurrection Act: Statutory exceptions permitting limited domestic use of military forces in cases of insurrection, obstruction of law, or denial of rights.

Ultra vires: Government action taken beyond lawful authority.

Take Care Clause: Article II duty of the President to faithfully execute the laws.

Legal Disclaimer