



The Militia Act of 1903 in Historical Context

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Recent events have turned public attention to the previously obscure Militia Act of 1903 and the even more obscure historians and political scientists interested in eighteenth- and nineteenth-century insurrection law. President Donald Trump claimed that the measure vests him with the power to federalize members of the California National Guard to curb what he claims is a rebellion by persons protesting U.S. Immigrant and Customs Enforcement activities in Los Angeles or an uprising that is preventing enforcement of federal immigration law. These claims are now being litigated in [federal district](#) and [federal appeals courts](#).

The Militia Act of 1903, following the Militia Acts of 1792 and 1795, authorizes the president to federalize state militia under the conditions that common and constitutional law authorizes the president to declare martial law. Federal law and Supreme Court precedent permit the President to federalize state militia and declare martial law only in response to an invasion, a rebellion, or another event, sometimes described as an “uprising,” that prevents federal courts from enforcing federal laws. Federal law and judicial precedent clearly give the president absolute discretion to determine whether to exercise these powers in response to an invasion, a rebellion, or another event that closed federal courts. No one disputes that Trump under the Militia Act is authorized to decide whether to federalize state national guard members should the United States be invaded by Spain, the former Confederate States repeat their attempt at secession, or massive riots close all federal courts in Texas.