



Written by [Joe Wolverton, II, J.D.](#) on July 8, 2010

NY National Guard Violate Posse Comitatus

Reports from the Empire State indicate that the National Guard is assisting local law enforcement in Albany, that state's capital city, to search and seize weapons from citizens — an apparent violation of the Fourth Amendment and the Posse Comitatus Act.

The unique charter of the National Guard creates a force that is a "joint reserve component of the United States Army" and therefore it is proscribed from exercising police power (the exclusive province of the state and the municipalities thereof) except under the very limited circumstances set forth in the Constitution and the Posse Comitatus Act.



As with any act of Congress, the Posse Comitatus Act may be repealed by subsequent act of Congress. In the case of the Posse Comitatus Act, the John Warner National Defense Authorization Act of 2007, signed into law by President George W. Bush on October 17, 2006, amended the law by adding the following language: "The President may employ the armed forces to restore public order in any State of the United States the President determines hinders the execution of laws or deprives the people of a right, privilege, immunity, or protection named in the Constitution and secured by law or opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."

Fortunately for our Republic and the rule of law that has kept us free, the sweeping changes made by the Warner Act were completely repealed by passage of the National Defense Authorization Act for Fiscal Year 2008. Accordingly, the present state of the applicable law governing the use of federal troops in matters of domestic law enforcement is the Insurrection Act of 1807.

According to the text of that statute, the national government may mobilize the federal army only if the "constituted authorities of that State are unable, fail, or refuse to protect that right, privilege or immunity, or to give that protection...."

Although there is no evidence that the duly empowered law enforcement officers of the state of New York or the city of Albany are failing to protect the rights of citizens, the National Guard has deployed, claiming that the "war on drugs" has overtaxed the resources of local police and that the extra help is necessary to keep the peace.

Local news station Fox 23 ran a story earlier in the week showing video of police and guardsmen using military x-ray technology to scan vehicles for weapons in violation of the Second and Fourth Amendments to the Constitution.

The Second Amendment states that the "right of the people to keep and bear Arms, shall not be infringed."



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The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Furthermore, that right "shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The video showed by Fox 23 seems to show federal troops and local law enforcement searching vehicles and seizing firearms without the requisite probable cause and specificity of the scope of the search and the items to be seized.

The technology being used in New York in open violation of the Posse Comitatus Act and the Bill of Rights is called "ionization swabbing" and it enables the troops and police to "find drugs or weapons" hidden inside cars by passing the device underneath the car. The surveillance video played on the broadcast shows a checkpoint set up with a sign warning to cars to slow down as an "under vehicle inspection" is being conducted.

Fox 23 reports that "The New York National Guard's counter-drug task force [is] providing not only the people but the equipment law enforcement may need to make drug arrests and seizures." Such seizures include marijuana and guns.

Similarly media accounts of the unlawful collaboration of the National Guard and police report that the National Guard is employing helicopters to assist police in "tracking and finding illegal growing operations." There is no applicable exception to the Posse Comitatus Act that authorizes the exercise of such power by an arm of the federal government, regardless of the complicity of local law enforcement.

As *The New American* has [documented](#) recently, the President has authorized NORTHCOM troops to carry out tasks legally and traditionally assumed by local law enforcement. Such activities include setting up and manning security checkpoints to handle "civil unrest and crowd control."

These actions and other similar deployments of federal troops in the towns of the United States are slowly acclimating the American people to accepting and disregarding the presence of armed soldiers on their streets. This example of incrementalism is alarming and will eventually inure the citizens of this Republic to the gradual alienation of their constitutional rights and the illegal role played by the U.S. military in the depriving thereof.



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