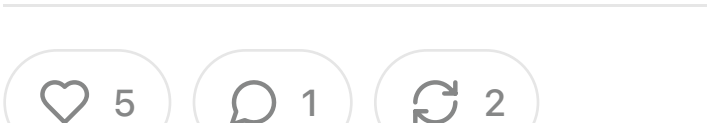




TRACKING THE WHITE HOUSE

Trump seeks to use military for police, immigration and targets local resistance to immigration enforcement

The Trump Administration issued two executive orders (EOs) on April 28 proposing further militarization of policing and to force local acquiescence to robust deportation efforts.



5 hearts, 1 comment, 2 shares, Share button

The Trump Administration issued two executive orders (EOs) on April 28 proposing further militarization of policing and to force local acquiescence to robust deportation efforts.

Troops on the streets?

President Trump raised the possibility of mobilizing military forces for immigration enforcement after issuing [an executive order in January](#) ordering the Department of Defense (DoD) and Department of Homeland Security (DHS) to study invoking the Insurrection Act of 1807 “to obtain complete operational control of the southern border” of the country. The Administration **ordered military personnel to the border** [in March, providing logistical support](#) to the US Customs and Border Protection officers.

[EO 14288](#) on April 28 is more broadly about **using the military for routine policing of state and local crimes**. The EO requests DoD to work with the Department of Justice to “determine how military and national security assets, training, non-lethal capabilities, **and personnel** can most effectively be utilized to prevent crime” (emphasis ours). It directs for more “excess military and national security assets” to be given to state and local law enforcement – think [night vision equipment, small arms, tactical vehicles, and aircraft](#). Further, it instructs DHS to develop plans for new task forces to be utilized to “advance the objectives of this order,” raising the possibility that [as in 2020](#), agents of the Federal Protective Services would participate in quelling local unrest.

Although the [Posse Comitatus Act of 1878](#) forbids federal troops from being used as a police force unless Congress overrides it, the [Insurrection Act of 1807](#) allows the President to “call forth the militia” to ensure laws are duly executed. Originally intended to deal with a separatist effort by Aaron Burr in the Louisiana Purchase territory, the [Insurrection Act can be invoked](#) by presidents to suspend the Posse Comitatus Act and deploy military personnel to assist with law enforcement in a crisis. **It has been invoked consistently in American history**, the last time being the 1992 riots in Los Angeles following the acquittal of four police officers in the beating of Rodney King. And there are few restrictions on military equipment being given to local police.

Trump pardoned [132 individuals convicted of assaulting police officers](#) and the [operator of an online platform that sold narcotics](#) in the first days of his second term, and he's halted numerous [enforcement actions against corporations](#), so the executive order's claim that “violations of law are not tolerated” rings hollow. Not to mention [Trump's own felony](#), and other run-ins with the law.

Prosecuting state and local officials and penalizing states and cities

Claiming that local leaders were “demonizing” their police forces and implementing policies that “make aggressively enforcing the law impossible,” the April 28 EO also instructs the Attorney General to “prioritize prosecution” of **state and local officials who “willfully and unlawfully direct the obstruction of criminal law**, including by directly and unlawfully prohibiting law enforcement officers from carrying out duties necessary for public safety and law enforcement.” This language comes on the heels of the [arrest of a Milwaukee County, WI judge](#) by the Federal Bureau of Investigation for obstructing a federal proceeding and concealing an individual from arrest by instructing a defendant to leave through a side door when federal immigration agents appeared at the courthouse (more analysis [here](#)).

The other April 28 EO, [EO 14287](#), takes aim at so-called sanctuary policies adopted by municipal and state governments over the last several decades, calling such policies “a lawless insurrection against the supremacy of federal law.” The order claims that state and local officials are committing several federal criminal offenses, even racketeering, through such policies. [Courts, however, have held that states and localities are not required to participate in federal immigration enforcement under the anti-commandeering doctrine of the 10th Amendment](#) to the Constitution.

Similarly to an [EO from the first Trump Administration](#), the new order directs the Attorney General to **publish a list of all state and local jurisdictions with sanctuary policies**. It then directs the Office of Management and Budget to suspend or terminate federal grants and contracts with local jurisdictions and the Attorney General to pursue legal action against local officials. [Courts have blocked](#) similar EOs aiming to strip sanctuary jurisdictions' federal grants, however, saying the executive orders “violate the Tenth Amendment because they impose coercive condition intended to commandeer local officials into enforcing federal immigration practices and law.”

Sanctuary policies refer to an [array of positions](#), with groups that oppose mass immigration policy [advancing broad definitions](#). Typically, they [limit voluntary cooperation](#) by municipal governments with Immigration and Customs Enforcement (ICE) agents' activities like directing local police not to arrest individuals for suspected immigration violations, restricting information sharing with federal agencies about immigrants, and prohibiting municipal workers from asking about an individual's immigration status.

Some cities also have set policies to refuse [detainers](#) requested by ICE agents to take suspected unlawful immigrants being held in city jails for separate arrests into custody. Detainer requests allow ICE to take custody of someone within 48 hours of their scheduled release from jail. [ICE claims](#) anti-detainer policies endanger public safety and create added work and risk for federal enforcement agents.

In addition to honoring detainer requests, state and city governments can assist ICE enforcement voluntarily in limited ways through what are known as [287\(g\) agreements](#), a program created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. **Nearly 460 police departments are participating in a 287(g) partnership program**, with more than 300 joining since Trump's second inauguration. Enthusiasm [is strongest in Florida](#), where more than 200 police departments have active agreements.

Reversing misconduct investigations

EO 14288 also instructs the Attorney General to review all federal consent decrees and other legal arrangements that state and local law enforcement agencies have entered into with the Justice Department (DOJ). **Consent decrees are agreements between the DOJ and local police departments reached in federal court to correct policing practices that have violated the constitutional rights of individuals**. Under [34 USC § 12601](#), the DOJ's Civil Rights Division is authorized to launch investigations into misconduct like Illegal searches and seizures, police brutality, abusive use of traffic stops, and property theft.

The Biden Administration [was enforcing](#) 17 court-mediated agreements, including 13 consent decrees. The Trump Administration has halted work on [12 other cases](#), including departments in Minneapolis and Louisville. About 70% of the Civil Rights Division's workforce [is expected to resign](#) this spring.

The EO also requests the DOJ “provide legal resources and indemnification” to law enforcement officers prosecuted or sued for their on-the-job conduct, including pro-bono assistance from private sector law firms. The work [could be taken](#) up by nine major law firms that have pledged a total of \$940 million in pro bono time for Trump-backed causes in agreements made with the Administration.

Subscribe to GovTrack.us

Launched 3 months ago

GovTrack.us tracks the activities of the United States Congress and the White House to help Americans be the best advocates for the issues they care about and to create a more open and accountable government.

Subscribe

By subscribing, I agree to Substack's [Terms of Use](#), and acknowledge its [Information Collection Notice](#) and [Privacy Policy](#).

5 Likes · 2 Restacks

5 hearts, 1 comment, 2 shares, Share button

← Previous

Next →

A guest post by **Chris Nehls**
Democracy, congressional reform. Former historian

Subscribe to Chris

Discussion about this post

Comments Restacks

Write a comment...

Cécile Stelzer-Johnson May 6

As far as I know, the Administration cannot launch the military on We The People.

That would go directly against "Consent of the governed".

Our young military members should be told that they do have [indeed MUST NOT] obey an illegal order [cf. Nuremberg trials]

♡ LIKE

🗨️ REPLY

🔗 SHARE

Top Latest Discussions

🔍

129 Executive Orders So Far: An Overview

A recap of orders affecting foreign policy, the federal workforce, immigration, energy and climate, elections, trans people, and education. Almost 200...

APR 21 · BRANDI M VAIL AND GOVTRACK.US

Four more ways to track President Trump's executive orders

More than 150 executive orders have been signed by President Trump since he took office.

MAY 31 · BRANDI M VAIL AND GOVTRACK.US

A Constitutional Confrontation at the Library of Congress: President Trump purports to install new official within the Legislative Branch

The Library of Congress is a legislative branch agency for nearly all intents and purposes. It provides confidential, nonpartisan research to...

MAY 13 · DANIEL SCHUMAN

See all >

Ready for more?

Subscribe