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OPENING REMARKS

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**MILLER:** Afternoon. I'm Kyle Miller, a US Navy veteran and a policy strategist at Protect Democracy. We're a nonpartisan, anti-authoritarian, nonprofit organization that seeks to build a more resilient democracy that represents all Americans. We've always recognized the importance of building a strong and diverse pro-democracy coalition to fight growing support of domestic authoritarian rule, comprised of people and organizations who represent a broad swath of civil society. That's why we've been very pleased to partner with Count Every Hero. Founded in 2020, Count Every Hero is dedicated to protecting our democracy, promoting civic and electoral participation, and ensuring that current and former military service members and their families can participate in our democracy, no matter where they are serving. This group of distinguished retired four-star officers and service secretaries believe that strong national security requires a strong democracy. And we couldn't agree more. Domestic deployment of the military stands at the intersection of democracy and national security. Traditionally, each state's National Guard serves as its regulated militia, responding to natural disasters and humanitarian crises and assisting to restore order during civil unrest. Since 2020, there's been an uptick in nontraditional missions of the National Guard, from guarding prisons in Florida to teaching high school students in New Mexico. Increasingly, state and local officials are deploying or proposing to deploy Guard personnel to perform law enforcement duties, notably deployments performed under state active duty, that is, those which are neither funded nor overseen by the federal government or Department of Defense are restricted from performing law enforcement under the Posse Comitatus doctrine. There's also little to no oversight of these missions outside of the state legislative appropriations process. This March, New York Governor Kathy Hochul deployed 750 Guard personnel to respond to an increase in violent crime on and around the New York City subway system. Philadelphia's new mayor, Cherelle Parker, has suggested the same course of action to clear out open air drug markets in Kensington. Just last week, Arkansas Senator Tom Cotton and House Speaker Mike Johnson called on the Guard to deploy to college campuses in response to anti-war protests, echoing the political violence of the late 1960s and early 1970s. To illustrate the ubiquitousness of this trend, a school board in Brockton, Massachusetts, even requested Governor Healey deploy the National Guard this February to restore order to an unruly high school. Activating Guard personnel to perform routine law enforcement activities among the U.S. public was once considered a laughable notion. Indeed, Dallas Mayor Steve Bartlett called it a completely nut ball idea in a 1993 New York Times article. However, increased deployments of Guard personnel to conduct militarized law enforcement activities reflects a growing trend toward the acceptance of authoritarian governance. Perhaps the most visible and ongoing example is Operation Lone Star at the US-Mexico border, conducted a state active duty under the command of Texas Governor Greg Abbott. Unlike

previous border missions, Operation Lone Star is being conducted separately from, and often in direct confrontation with, federal efforts to bring the border under control. Republican governors from 14 states have deployed National Guard personnel to assist in Operation Lone Star, and since its inception in March 2021, the border mission has cost Texas taxpayers over \$10 billion, with other states spending millions of dollars to send their own personnel. Perhaps most troubling, private donations have been solicited to fund these politicized deployments. Most notably, South Dakota Governor Kristi Noem accepted a \$1 million donation from a private donor in Tennessee to cover costs associated with deploying their Guard to Texas in 2021. To further examine and discuss the expanding deployments by governors of both parties of National Guard units, Count Every Hero organized a working group led by two former chiefs of the National Guard Bureau, General Craig McKinley and General Joe Lengyel, who you'll hear from today. In addition to concerns about the morale, welfare and readiness of personnel now deployed in demanding domestic missions, the working group also raised concerns about the murky parameters for mission success and perceived politicization of using a military force to address a domestic policy dispute. With a contentious and consequential presidential election ahead of the nation, a repeat of the previous election in both terms of the candidates and the stakes, those assembled on this stage today share concerns about the erosion of an apolitical military and the ill effects that could mean for our democracy. While the recent trends in domestic deployment concerns state active duty missions ordered by governors, former president and presumptive Republican nominee Donald Trump has already stated his intention to federalize blue state Guard units to conduct wide scale surveillance, arrest and deportation of suspected undocumented immigrants. During the Black Lives Matter protests in 2020, National Guard personnel were deployed in cities throughout the country in a lawful and appropriate effort to restore order. However, the Guard also faced criticism for its presence near, though not as active, participation in the clearing of Lafayette Square for political purposes by President Trump. Additionally, the reported contemplation of an executive order requiring National Guard personnel to seize voting equipment following the 2020 election demonstrated a clear willingness on behalf of the commander in chief to use military personnel to support his political efforts. As an anti-authoritarian organization, Protect Democracy is committed to the rule of law and upholding the checks and balances of our democratic republic. The erosion of long held democratic norms, such as an apolitical military and the judicious use of the military in domestic operations, threatens to upend those values. To be clear, domestic policymakers have many tools available to implement policy decisions, protect public safety, and enforce laws. The National Guard, as a military force trained to combat conduct combat operations and support, should be reserved for true crises such as natural disasters or violent riots. As you'll hear from our distinguished panel today, these trends are not simply a partizan disagreement. Indeed, the growing

overreliance on the guard transcends party labels. Rather, these deployments represent a troubling slide toward more political uses of the military in domestic operations. So, without further ado, I like to bring the panel on stage and introduce today's moderator, Brookings fellow and senior editor at Lawfare Scott Anderson to introduce our illustrious panel. Thank you.

**ANDERSON:** Well, thank you all for joining us today. Hopefully can people can hear me all right. As Kyle mentioned, I'm Scott Anderson. I'm a fellow here at Brookings in Governance Studies. I'm thrilled to be moderating an event, this event about a very important topic that is certainly on the front pages these days, about this question of state active duty deployment and the use of the National Guard in new, innovative and sometimes very politically charged ways that are creeping up in all sorts of quarters of our country and all sorts of policy issues. And we could not ask for a better panel of people with an absolute wealth of experience to talk about this with. So I'm going to take a minute to introduce our panelists before we get started. Direct to my left, we have General Craig McKinley, who served as the 26th chief of the National Guard Bureau from 2008 to 2012, capstoning 38 years of service. In this capacity, he was a military advisor to the president, the secretary of defense, and the National Security Council. That was the Department of Defense's official channel of communication to the governors and to state adjutants general on all matters pertaining to the National Guard. To his left, General Joseph Lengyel. General Joe Lengyel culminated his 39 year career as the 28th chief of the National Guard Bureau from 2016 to 2020, as the most senior National Guard officer in the nation, General Lengyel was responsible for ensuring 450,000 members of the National Guard were trained and ready across the spectrum of all National Guard military capabilities. To his left, we have our third general, General Allison Solomon, Brigadier General Allison Solomon, excuse me, who served nearly 36 years in the National Guard, both in enlisted and officer roles, retiring as assistant adjutant, adjutant, adjutant, adjutant general -- excuse me, sorry -- for air, Maryland Air National Guard, Brigadier General Solomon serves as a member of the Defense Advisory Committee for women in the services, and president of the National Guard Youth Foundation. To her left, we have Major General Daryl Bohac, Major General Daryl Bohac, he recently stepped down as the adjutant general of the Nebraska National Guard after nearly ten years in the position. Major General Bohac also served as the immediate past president of the Adjutant General Association of the United States. And finally, at the end of our line, we have our sole non-general who joins me on the stage, Dr. Paul Stockton. Dr. Stockton served as the assistant secretary of defense for homeland defense and America's security affairs from 2009 to 2013, strengthening defense partnerships with partner nations in the Western Hemisphere. So we are here to talk about a unique use of the National Guard, which is itself a unique aspect and an element of our military.

That's unique in part because of the fact that it wears multiple hats. General Lengyel, let me turn to you and ask you to give our audience for people might not be familiar with a little bit of a brief orientation for us. When we hear about the National Guard, people don't always realize that sometimes there's a Title Ten National Guard, a Title 32 National Guard, and then what we're here to discuss today, primarily, state active duty National Guard. Walk us through a little bit those different hats and statuses and why they're relevant to our discussion.

**LENGYEL:** Sure. Yeah. And first, thanks for bringing us together, thanks to Brookings for hosting us out here today. And thanks for Count Every Hero for bringing this discussion together. I hope, hopefully it's helpful. So the National Guard is a huge piece of Department of Defense. I think I would point out that, you know, of the almost 2 million soldiers, airmen, sailors, Marines, and Guardians who who wear uniforms, all components, all active in reserve and guard, the National Guard makes up almost 20% of it. It's a big piece of our national defense. And I think that, the status that they work in is very important, as you mentioned, and as Kyle mentioned in his remarks, there's there's basically three statuses. And I think most of us are familiar with the first one, which is the Title Ten status, the U.S. code Title Ten, which essentially the president, mobilizes the National Guard in time of war. And there's various levels of mobilizations that the president can call the the National Guard to force. And, you know, then essentially, for all intents and purposes, they are part of the United States Army, part of the United States Air Force. They are subject to the Code of, Uniform Code of Military Justice. They have the same restrictions, the same, everything that the United States Army, including posse comitatus restrictions, that applies to them when they are part of the United States Army and the United States Air Force. And the country benefits greatly from being able to call together the National Guard and Title Ten. As we're talking today, I suspect that there's somewhere between 20 and 30,000 members of the National Guard who are on Title Ten right now, somewhere around the world, helping to protect the national security of the United States. And those authorities are outlined in law. And, you know, the, the, the World War II scenario of total mobilization where everyone's in the active-duty component until the end of the war plus six months. Then there's a partial mobilization, which is up to a million members of the military for up to two years, which we had done mostly over the past 30 years for the global war on terror. And then there are smaller subsequent levels of mobilization that can be called Title Ten as well. But it's it's a big part of the United States Army and a big part United States Air Force. And the principal role of the National Guard is to be the combat reserve force to surge the force in time of war. So option number two is, and most importantly, I think I would point out, is when the Guard's mobilized in Title Ten, you are under the command and control of president of the United States as your commander in chief, that's a very important

part. Title 32 is how the National Guard sits and organizes, trains and equips when they're not a mobilized force. They sit in the States. They are under the command, their commander in chief are their governors. And they train, their, their drill weekends, their summer camps, they are federally funded federal dollars pay for their training. They pay their paying allowances. They pay for all of the benefits that go with serving in Title 32 status. They are not subject to the Uniform Code of Military Justice. They are subject to the laws of their individual states. Some states have their own state UCMJs. Some states have, they are subject if they break a law to the laws of their states, but they are not subject to, like our army and active duty forces, the Uniform Code of Military Justice. So every month there are people that come together. They have their drill weekends that's paid for by the United States government. And they are Title 32, and they are brought together and called, to serve and to train by their governors. And then the last and probably most common thing you're aware of, of what the National Guard does is it's called state active duty. And most commonly this is state funded activity. They are called or mobilized in state active duty by their governors in their states. So just like the president who can make them leave their jobs, leave their schools, they can come to work and serve the people of their individual state. And they are actually brought together and and they do various things. Mostly you see them, every time there's a hurricane, a national emergency, or forest fires or ice storms or, or many other things that states need the National Guard to come, and generally when they come, they are augmenting the first responders in the states. They are augmenting the law enforcement or the police in their states, and they are doing things to support the first responders, law enforcement authorities in their states. State-funded, state-controlled. So those are the three way. And then there is the hybrid, state active duty where you have seen. So it's, it's it's 502F, which is Title 32, and 502F is a very common authority that, is when there is a federal nexus, a mission to be done that has federal implications, such as post9/11, when they needed assistance in TSA to work security in airports, the federal government will come to the National Guard and say, we would like you to use your forces under your control, and the federal government will pay for it. But it's not necessarily training for their combat military operational skill set. It is some other duty as needed, but federally funded because there's a federal nexus. Much of COVID was done under 502F, it was deemed that the COVID, the pandemic, was keeping the United States Army from training, from deploying, from recruiting, it was impacting the readiness of the United States military to be ready to fight our nation's wars, therefore deemed appropriate for use of federal dollars in the states to sustain it. So those are the main categories that we'll talk about today. I think Kyle mentioned some of them in his remarks, and there are more in-depth questions that will go from there. But Title Ten, Title 32, state active duty, and then the hybrid mode of 502F that does that. And I'll stop there.

**ANDERSON:** That's phenomenally useful. Thank you. So, General McKinley, let me turn to you and your wealth of experience in the National Guard and seeing it from from both the policymaker's chair, advising policymakers, and from the National Guard yourself. The National Guard has a domestic role, and it has for a very long time. We think back to my generation in a Hurricane Katrina a National Guard being deployed there. More recently, we've seen, protests and civil unrest, at various times in recent years, we've seen National Guard deployed, for various purposes. Tell us a little bit about what the traditional domestic role, the fairly well-trodden and well-accepted National Guard role, is domestically, before we go and talk about these other, more novel applications that we've seen become increasingly frequent in recent years. What is the best, well-trodden path for the National Guard here in the United States?

**MCKINLEY:** Thanks, Scott. Appreciate you moderating. To my good friend Joe Lengyel, to Allison, to Daryl, and to Dr. Paul Stockton. Great to be panelists with you all. Thanks to Brookings and Count Every Hero for all the hard work you've put in. It's been a labor of love for about a year and a half for us now. We may have raised more questions than we have answers to some of these perplexing situations. But having been the chief of the National Guard Bureau, having been the first chief, not because of me, but because of Senator Lindsey Graham and Senator Patrick Leahy, who put together the Empowerment Act. We were putting 40, 50,000 young men and women in Iraq and Afghanistan for many, many years. The orders books were coming across my desk pretty rapidly. And my predecessor, Steve Blum, and we went to the secretary of defense to get those orders books approved. And we were we were supporting the Army and Air Force in a great way. So for 25 years, we've been at this mission. And I'll characterize a little bit later the transition from the 20th century National Guard, which was basically a strategic force, not, not highly trained, but we had time to mobilize, train on the run, and then augment our forces. And then we moved into what we called the operational reserve in the 20th century, following September 11th. I'd like to acknowledge Linda Singh, a former TAG of Maryland here today. We may have other National Guardsmen and women in the room today. So thank you, Linda, for your time and your attention and your service. Primarily, what the National Guard does is it saves lives, it protects property, and it's usually an assist to the first response, whether it be police or fire or whoever the on-scene commander might be on a natural disaster, manmade or natural, or some type of calamity where, the forces are extended, critically at the beginning, and they come to, to help those forces. Can last a day, a week, a month. Katrina lasted six months. It just depends on, on the time. One of the novel things that I think General Lengyel mentioned was the fact that we now have an election coming up. And we have, many National Guard units, General Singh's, and our other folks in Maryland have a, a intelligence operation and we also have a computer operation now too which, as we lead up into the, into the

election could be critical. Let me let me make sure I cover all the other things that we do, because it is an extensive list. With the elections coming up, cyber security, as I mentioned, is critical, important. And we have people who are in civilian lives in the cyber business. And when they mobilize or they put on their uniform, they're also able to assist in those realms, too. So those are the traditional missions.

**ANDERSON:** So over the last few years and, and I think particularly really in the last five years or so, we've seen an increasing trajectory of what can generally, I think, be described or classified as nontraditional deployments. And what has brought this group together on stage, as I understand, along with others you all have been working with, is a concern over this increased frequency in use of the National Guard for these nontraditional deployments. Examples I know we've discussed have been guarding prisons in Florida, serving as substitute teachers in New Mexico, augmenting police forces in New York City. And perhaps most well known at this point, operation Lone Star on the southern U.S. border in Texas enforcing immigration restrictions. Tell us a little bit about what makes these nontraditional domestic missions such a departure from the domestic vision and domestic practices you're familiar, with and what makes them concerning for that reason?

**MCKINLEY:** I think this really is why Count Every Hero got involved in this thing is because we don't traditionally train for some of these one-off missions. The ones you just mentioned are some of those. We train, organize, equip the way the Army trains and organizes its Army guard, and our Air Force and the Air National Guard. So, when we send our young men and women downrange, we want to make sure they understand the mission. How do you train, organize, and equip yourself for these one-off missions? And I would say it creates some tension, some conflict. And when you mix these statuses that General Lengyel spoke to, it causes confusion. When you're all Title Ten, we're all marching to the same beat, the same drummer. When we go to Texas and we have Title Ten, which is there now, in support of Customs and Border Protection, this is all in support of them trying to get their forces situated. We have Title Ten National Guard, we have Title 32 Guard, and then we have the Texas National Guard. And then we even have the Texas State National Guard, which is another anomaly or one-off. So, when you put all those forces in an area, it causes confusion and that as we, as former commanders, don't like to do that. So, it's a risk to that mission set. The coordination is very difficult. What rules of engagement? What rules for the use of force? What do we do if we, come across a group of immigrants? I mean, the Customs and Border Protection doesn't have time to explain all of that to us, nor do we train to it. We just put them in trucks and send them and say, go do the job and don't screw up. And that's a tough job for for a young person to do, and, and do it



well. These deployments can last up to a year. That's a long time to be away from your employer, who in the National Guard, most of our, soldiers and airmen work outside of the guard. And our employers are glad to give, eagerly, these young men and women to do these types of missions. But there needs to be a purpose and a mission set and a mission statement. And then finally, as General Lengyel admitted, it's a different funding stream. Allison, we'll talk about funding. Every state has its own funding mechanism. If you're in one state status, you might be earning less than in another state. And it causes confusion. And again, as we've seen in some of these one-off missions, it's tough to keep the force together and to retain them and their families which is really important. Thanks.

**ANDERSON:** So a particularly notable aspect of some of these recent missions, particularly those that have found themselves on the front pages of newspapers, that they are politically charged. They are around issues where there may be a profound disagreement between state and federal authorities, or where there is an assertion of a desire to take policy steps that are controversial among some quarter of the country for policy reasons, for political reasons. General Lengyel, I want to turn to you on this one. You know, tell us a little about what, how it impacts the National Guard to participate in these politically charged missions, to have this level of political division around their sort of mission, both at the individual level, the Guard unit, and given the role of the National Guard in society, the line it's walking with its multiple hats and multiple leaders. How does that, in fact, impact the Guard?

**LENGYEL:** So I think, you know, part of the National Guard's strength is it's, it's fit, it's trained, it's equipped, it's ready. There's very few missions that can't be called on to do, you know, on short notice. And my concern is, I think is, you know, it's hard to be a Guardsman. I mean, in that, as you know, McKinley said, Guardsmen have civilian jobs, lives. They work for employers who don't like it when they leave. You know, to be good at your military operational specialty, you have to, you have to train, you have to be fit. You have to use your weapons system. You have to, go in the field and do these kinds of things, and that takes time. And so the Guardsman's time that he has away from his full time job, which is every week, every day, Monday through Friday -- that's why we train on the weekends; it's not because we like to work weekends, it's because most of people have jobs during the week that they need to come together on the weekend and train, and then in the summer for two weeks. And employers, luckily for us and for the country, have supported that ability to make them be a part of the United States Army and United States Air Force. So first and foremost, I'm concerned that while it's, you know, hard just to stay a Guardsman to train for your military skill set, now we're going to ask you to go do other things. I think everybody understands when hurricanes come and ice

storms, ice storms come in and these things. But other enduring mission sets that take people away from their employers and away from their families, and oh, by the way, you're probably in some cases not doing the things that you're supposed to do for the United States Army and the Air Force. There is a readiness impact the United States Army, United States Air Force, and I think the services and the service secretaries are concerned about that. They would, they would want the force to be as ready as they can, to do those kinds of things. I think that some of these longer-term mission sets that that happen, southwest border might be a good one, you know, when you deploy to the Middle East, we would deploy to a fully functioning base. We would deploy to a, a location in garrison that was built to support men and women who were serving over there that were in the army, and there were support systems to help them do their jobs and do their missions. Sometimes when you go to these border outputs or rest, you're staying in hotels. You're not together as a unit. Cohesion is there. There have been issue with suicides and ability to keep units trained and good morale and discipline. It's hard for, for some units to do these kinds, kinds of things. And then, you know, I think, you want America, when they see the National Guard come out to be happy. Generally things get better when they see the National Guard roll up. National Guard rolls up with equipment, communications, power, water, food. When you see National Guard for national emergencies, generally it's because things are not going well wherever you are. And now you're going to use National Guard members longer term for these other things. And, you know, I want to separate the soldier and the airman from politics. I mean, even though even though some, some, it tends to be, in this case on the southwest border, Republican states that are sending their units there, the impacts on the individual soldiers are the same. And you have to take care of the soldier, take care of his family, take care of the person irregardless, regardless of, of, politics. So I think, you know, I think in the longer term, you want to be able to sustain and have them stay in the National Guard. You don't want to overuse them, burn them out, make their employers not support them, make their families not support them, so that it's a very efficient way to sustain our Army and our Air Force and our combat capability to have a ready National Guard. And if we if we overuse them for other things like bus drivers and schoolteachers and prison guards and all the rest, that's not, I think, really what the thought was behind the creation of a National Guard. Domestic opps was saving lives, protecting property and helping restore order if you need it. Some of these other things are new and growing and emerging missions. So maybe out of COVID, maybe that a lot of that seemed to start with COVID. Over.

**ANDERSON:** So a foundational principle of the military in the United States is civilian control. The idea that the military reports to civilian leadership and Dr. Stockton, you're unique on our stage and that you were a member that civilian leadership at the Department of Defense. So I'll turn to you on this -- .

**STOCKTON:** Let me interrupt, the the formal term is unwashed civilian.

**ANDERSON:** Let me let me turn to you with this question as as our unwashed civilian, my fellow unwashed civilian on the stage. You know, this obviously raises complex questions about civilian control in some ways and civil-military relations just more generally. This idea of both the National Guard being in this difficult two-hatted, three-hatted, it depends on how you think about it position, with multiple leadership and multiple authorities kind of pulling them in different directions potentially. But it really bears on the whole idea between the relationship between the military and the role it plays in society, not least in part because while under state active duty restrictions that we're familiar with, like posse comitatus, which restricts the use of the military for law enforcement purposes in the United States, doesn't apply because it's not a federal use, it's a state use. Tell us a little bit about how those different issues come into play in your mind. What is the relevance of this issue set for civil-military relations and civilian control questions and and what issues does it raise?

**STOCKTON:** Well, great question. So, before I answer, let me just say the usual that nothing I say necessarily represents the positions of the Department of Defense or any other federal department. Everybody believes in civilian control of the military. But saying that papers over really important issues that we need to grapple with for the rest of the discussion today. First of all, civilian control. Hey, I love it. It's great, but civilian control is not enough. Stalin had excellent civilian control. He murdered a dozen officers, general officers before Hitler invaded the Soviet Union. Things didn't go so well. You need more than civilian control. You need democratic control of the military, and you need respect for the rule of law. And when we look at some of these non-traditional, maybe politicized missions, you know, soldiers and airmen, they do not have to follow unlawful orders. In fact, they're not supposed to. That's a foundational lesson learned from the Nuremberg trials. If you're given an unlawful order, you shouldn't be obeying it. But what kind of training do we have for soldiers and airmen to know that an order is unlawful? Yeah, for Title Ten missions abroad, there's all kinds of training on that. But these domestic, these nontraditional missions, there's nothing there. And we'll talk about some potential remedies for that gap later on. So civilian control isn't enough. We need to uphold the rule of law. And then secondly, yeah, civilian control: which civilians? We're in a situation today where governors and the president may not be kissing on the lips. And that's true going forward. We may have the presidency and governors of different political parties. So, what happens when they're in conflict on the utilization of the National Guard? We had a brief discussion of Operation Lone Star, and I hope we'll go

back to that in greater detail. But I'd urge you to think about the federalization of the National Guard, the transition of the National Guard from being under the governor's control to the president's control in the context of Little Rock, Arkansas, in 1957. Now we all think it's a great idea now that the president, President Eisenhower, federalized the Arkansas National Guard to allow black kids to go to Little Rock High School, and especially in the aftermath of the Supreme Court decision. We're using the National Guard and federal status to make sure the integration went forward. So that's the good side of federalization. I urge you to think about the evil side. What if federalization is used by some future president, regardless of party, to enforce on a state missions that are deeply inappropriate? I'll leave it there, Matt.

**ANDERSON:** Well, to that actually is great transition to our our next question. So I want to come to you, Gen. Bohac, because this this kissing metaphor that we just heard, I think, usually sets up one of the big tensions that's facing National Guardsmen, and particularly National Guard leadership around the country, which is this prospect that particularly around these categories of missions that are politically charged, they're nontraditional, they're innovative maybe in good ways sometimes, but maybe in other ways, not in good ways. They raised this question about saying, well, what if there's not agreement around this being a necessary step? You have as a National Guardsmen, these two commanders in chief, the state, your governor, and your president. Talk to us a little bit about how the National Guard and members of the National Guard deconflict potentially contravening orders or orders and tension from those two channels, and the difficult position that they might be find themselves in on account of this new mission set?

**BOHAC:** Yeah. Thanks, Scott. It's a pleasure to be with this group as well and and be a part of the discussion today. You know, I think when it comes to the potential conflict, it's inherent in our system, by the way, between the federal government and the states government, the sovereignty of the states and the governor's role. And that's not what this discussion is about, as impinging on the governor's role, by the way. I think what it's got to be about and how you mitigate some of the conflict is, what's the framework that you're going to use for discussion with, at the unit level, at the individual soldier, airman level about that? And I think it starts with reminding them and ourselves as leaders, as military leaders, and then also our civilian leaders, that we took an oath to protect and defend the Constitution of the United States and, in the National Guard, which makes us constitutionally unique as a component of the armed forces, the constitution of the state that we serve in. So we are you can't be in both statuses at once. But I can tell you, as an adjutant general, you're always mindful of the other status you're not in at any given moment. Right? And so you have to take that and use that as the framework to have the discussion with your subordinate leadership and conveying

that. Now, the truth of the matter is, just like in Little Rock, the president usurped the governor in that case, but we had coalesced around a social issue as a nation and come to grips with that to one degree or another, that it was time to start the integration of our schools. And and the president saw that. I think that President Eisenhower judged correctly that this was going to be a pivotal moment and was able to really in some ways depoliticize the governor's role here in terms of the integration of the schools and therefore allow this to go forward. So I really think that's the that's the beginning of the discussion with the governor. And then when the mission comes to you, when you're asked by your governor, I think as a senior military officer in any state, you are duty bound to walk the governor through the risk from a military perspective. The political risk is the governor's issue, not not the military's issue. But the the military risk, to some things that have been mentioned earlier, will, this impact the readiness of our units? Will be ready for planned deployments that are already on the books. What are the impacts? I think thinking carefully about the impacts to our members, and what of, the, did they just come home from a Title Ten rotation? And now we're asking them to go again and do something else, this this time on behalf of the state or another state, as the case may be. All those considerations, have to be carefully thought about and then conveyed. Our young people that join the military today have the propensity to serve, because they've already raised their arm, but they also have a propensity to ask why, and we have to be prepared as leaders to address that question and explain where we're at. Now, it certainly is true whether it's a Title Ten, title 32, state active duty mission at the individual level, people may object to it. And then we have mechanisms to work through that process and that that that situation, that challenge. But it's all about being part of the team and remembering that you're serving something larger than yourself.

**ANDERSON:** So, General Solomon, I want to come to you on this issue of readiness, though I think we've heard echoed in multiple comments so far, because readiness really gets to a lot of issues underlying and concerns underlying some practices, because it's a question not just of the readiness of individual units to serve their roles and other functions they may be called upon, readiness in terms of ensuring recruitment and preparing and ensuring sustainability for members and individual members of the National Guard participating, but also the foundational role of the National Guard as our reserve military forces. The idea that they will still be available and trained and equipped adequately to step into that role if it becomes necessary. Talk to us a little bit about some of the concerns about the impact of this diversification of the National Guard mission set, this innovative, expansive use of it domestically on those readiness questions and morale and welfare questions for the National Guard and its members. Because I think that is a big thread of concern

underlying many of the comments we've heard from here. I want to dig into a little bit, talk about the concrete concerns there.

**SOLOMON:** Yeah, absolutely. And, you know, I think that, as was stated before, everyone that raises their hand understands that they may be asked to do something that they personally may not agree with. They know that they may be called involuntarily for x period of time. But I think what we've seen over the past decade or more is that call comes more and more frequently, and the call for those non-conventional missions comes more and more frequently. What kind of effect does it have on the individual, their families, their employers, the training that they need to have in order to be called for that mobilization? And also, it's about sustainability. How can you sustain a force as a reserve force for the United States active duty as an individual who needs to be prepared to respond when you're unable to find the time or have the time to do the training that you need in order to be fully prepared? How can you sustain the costs to whether it's the federal government or if you're in state active duty? It costs money to put guard people in these statuses. Can you afford to continue that on a state level? Families that are no longer collectively together on a more, less regular basis. How do you sustain the family unit? You know, childcare issues, mental health issues associated with the constant up and down, the variety of being asked to do something that is not your core competency and it's outside of, might be your personal comfort. How do you access those resources? Understanding that if you are in a state active-duty status, you do not receive certain benefits? You know, medical insurance may not be available to you if you get hurt. Something could, you know, could happen. Will the state cover your expenses and that of your families? It, and it varies by state. So not all states have the same protections for our National Guard folks when they're on state active duty. And they could all be standing right next to each other doing the same thing and have variety of benefits associated with. And so that compounds the readiness issue, because at the end of the day, we still have to be able to respond should the call come. You know that, yeah, we need to defend the homeland or we need to go abroad, because as many people that continue to be abroad today, there are just as many calls. I mean, what we had tornadoes in Oklahoma. Nebraska? Guess what? The Guard folks were there, too. They were on state active duty status. So how do you continue to be a ready force and still preserve the individual and their ability to do that? That's a critical part of it.

**ANDERSON:** So we've laid out some of the problems and concerns we have here. I want to start talking a little about the solutions and ways we may be able to address these sorts of concerns. Gen. Bohac, I'm going to start with you. Let's talk a little about what we could do in terms of existing frameworks. Are there

ways that National Guard offices in the Pentagon, relevant offices in the Pentagon, or at the state level, could better prepare Guardsmen or better think about their role to help individual, whether it's leaders and National Guard at various levels, individual Guardsmen better navigate the challenges of these new types of deployments? Provide better resources for them? You know, what would be necessary if these are something that people are insistent on pursuing? What sort of resources resources are necessary to make sure they're done responsibly and in a way that's not detrimental to the broader mission of the National Guard? And as part of that, I want to pull back a thread that I want to pull a little bit from, actually, your earlier comments as well, talking about that, think about competition between federal and state. What are the levers and tools that the federal and state governments have to push back on each other for who can control these missions? We should dig into that a little bit. And then I want to, we can talk about the ones they have and use now, and then talk about some of the other ones they might be able to use if they thought it through a little bit more.

**BOHAC:** Okay. So, I'm going to try to remember everything you just asked, Scott.

**ANDERSON:** Sorry.

**BOHAC:** So you'll help me out I'm sure. But we can start with the levers that currently exist today. And there are two clear levers from the federal side. One is money. So, resources could be withdrawn from the state as as a lever. And then again, we've talked about the ability of the president to federalize the National Guard as the second, second one, to take control literally, of the Guard of the state of concern or wherever it might be, as two control measures. And and I must say that, you know, we've rarely seen the president usurp a governor's authority by taking control of the Guard, except in the case we've already talked about and a few, I think, three others in our history of our country. And then I've not seen withdrawal of federal resources, quite frankly. But that is there. And the Fifth Circuit actually ruled on that and said that that was not one of Governor Abbott's prevailing matters in his lawsuit, that he could prevail on and the federal government still retain that responsibility. The pragmatic reality is in a state National Guard, somewhere around 95% of our budget is from federal resources. And as an adjutant general, and quite frankly, as a governor, you can't ignore that reality. If you do, it's at your peril, I think. And so, you know, you have really limited state resources put into play in terms of, of how you organize, train, and equip your state National Guard. So I think the, you know, we have some lessons in our history about, things where we've tried to achieve some consistency across the states and the territories where we have National Guard forces. One was a model

state UCMJ piece of legislation that was offered to the states as a, as a way to try to kind of level the playing field, if you will, and eliminate some of the differences that General Solomon just talked about. And I think there's the opportunity also to do something similar for domestic domestic operations. So when we prepare forces, part of our readiness training is annually we go through a briefing on the laws of armed conflict to go into combat. And what what are those rules? And that gives the framework to the soldier, airmen or to any member of the United States armed forces, the framework to determine, did I did I receive a lawful order or not? And but we don't have that for domestic operations. And the question is, could you build a framework that would be similar in, in at least, at least in type for domestic operations that could govern how we train and get our folks ready and how to help enable them, did I receive a lawful order for this domestic operation or not? I think that would go a long way, because what happens in my experience is, every time you had an event, you were revisiting the rules of, you know, use of force, rules of engagement, depending on the situation. And, and and you can't, you can't create a template that's going to answer every question for every event. But you certainly could have a framework that would help us walk through that process in a consistent manner, so that when General Solomon's soldiers or airmen from the great state of Maryland join soldiers and airmen from the great state of Nebraska somewhere, we were operating in the same moral understanding of what constitutes a lawful order.

**ANDERSON:** Thank you. Dr. Stockton, something to add here?

**STOCKTON:** Yeah, it's very well said. And I think that we need to get ready for the new security environment in this regard. The intelligence community assesses that a prime People's Republic of China goal in attacking the homeland – I'm talking about homeland defense now – is to create societal panic and disorder. And you know, the National Guard is going to be on point in Title 32 status to manage societal disorder so China can't achieve the goals it's going to seek by disrupting electric systems, water service, etc. And so thinking about exactly what you've said and getting ready for that now in a homeland defense context is vitally important.

**ANDERSON:** Please.

**SOLOMON:** If I can also follow on in, you know, the young people that come to the Guard today, as, Daryl said, ask questions and probably will and certainly ask a lot more questions than I did. Maybe I should have asked a few more questions, but I think it's a responsibility of the leadership to be able to put them – they're



trusting us to put them in situations where they will be safe, as safe as possible, that they don't have to be concerned about the political swings of whomever or whatever. They can just do the job. So if we expect them to perform optimally, the, you know, this framework we're talking about to help prepare those that are leading them to be able to answer those questions because we believe the questions will be asked. And so how do you best lay the foundation so that when they are called, they are called fully prepared and accepting of the fact that you have done the work ahead of time to put them in a situation where they can perform at an optimum level.

**ANDERSON:** So those are some possible solutions or steps in a particular, hopefully better direction that we can pursue in the current scope of authorities. But let's, let's kick the doors down a little bit, and blue sky this and imagine that we got our Congress or a state legislature to pay attention to this issue set and say, we need to think about the way these broader mission sets impacts the National Guard. And either find a way to change the mission set or adjust the National Guard to prepare it for it. What legislative proposals, whether state or federal, could be on the table that seem realistic in some extent that could help address some of these foundational concerns you are talking about? Dr. Stockton I know you've done some thinking on this. I'll start with you, but then, urge the other panelists also to jump in.

**STOCKTON:** Thanks. There's been some terrific work done earlier this month by a bipartisan commission looking at potential legislative improvements to the Insurrection Act, the criteria by which a president might employ and federalize the National Guard and employ forces, including Title Ten forces, when there's a insurrection in a state. I don't think that commission went far enough. It's good what they did, but we need to go a lot further. They didn't address this question of what constitutes the criteria for employing military force to achieve the purposes that the president has laid out. Let me give you a use case, a prime example here: I'm concerned that some future president – could be of either party – might direct the National Guard, could happen at the state level too, to provide quote security at ballot boxes in the voting process, not to actually secure the voting process, but to suppress voters' participation by the party that she or he doesn't doesn't want in power. That's the kind of use case I think we need to have in mind as we think about how do we build consensus on a bipartisan basis for, you know, things that we don't really want to be within the criteria for applying the Insurrection Act. These are tough questions. But if we don't ask and if we don't attempt to build consensus, we're still lost in the swamp.

**MCKINLEY:** Let me let me take a stab too. You know, we've talked about some of the concerning issues we have. A mentor for all of us up here and some of you in the audience was John Conaway. He was kind of the father of the National Guard, turns 90 here in a couple of months. He used to coin the phrase that the National Guard is a national community-based state and federal military organization. He encapsulated it in in one statement, and that's who, really, we are. It's a magnificent force of over 400,000 men and women and they do anything they're asked to do. I've never seen any National Guard man or woman turn down a mission. So we have to be very concerned that what we ask them to do is both in the interests of either their state or their nation, and it's lawful. And so how we get groups like the National Governors Association, state legislatures, commissions of former adjutants general to come together and sit at a table, like Count Every Hero has attempted to do with this little kickstart here, to really give these young men and women more granularity, so that they don't ever wonder if what they're doing is the right thing to do.

**LENGYEL:** And I'll just throw out, you know, one more consideration as we ponder, you know, maybe new what-ifs in terms of, the National Guard is traditionally and customarily been used in numerous ways that we all watch and see all the time. But, you know, you hear, you hear and read about, you know, documents being drafted where the military would be asked to seize voting machines, in some regard or, you know, and the way we disseminate information now is, you know, half of our country believes one thing about what's happened in the last election and the half believes another and information is, is as good as where you get it. And so, you know, you worry about, you know, somebody in a nontraditional role, Doctor Stockton mentioned secure voting booths or, or secure ballots, or secure, you know, any part of an election. Again, to maintain, there there are really rules in state active duty, no rules that govern what they might be asked to do. And there are rules in Title Ten, I think, to say what, what the military forces can do. But in, in most states, every state, it's either written in their legislative process on what they can do or it's not written at all. There's no guidance. But as long as the state has money and the governor, who is accountable to the voters, wants to do something, he pretty much can do it, unless somebody can come out and say, that's an illegal order. And that is the part of the discussion. What is a, what's an illegal order? How do we get to that part based on what people think the information is, what the scenario is. You know, a governor who assesses a fraudulent election to happen and wants to stop ballots from being counted. Not that that would ever happen, but it could. And you know, the National Guard, I say, should not be in the middle of that. It should be other mechanisms.

**ANDERSON:** General Solomon, please.

**SOLOMON:** I would also point out that I think what we haven't seen, with the raising of, the increase, in National Guard being involved in these, nontraditional, unconventional missions is, how it affects retention. We already know the military in general has a recruiting issue, light bulb moment. But how is this going to impact retention? While we may not be immediately seeing it, you know, I can just share about people that I talked to that may not stay 36 years like I did. They walk when they get to 20. What kind of force are we building if we're unable to maintain people past that initial 20-year point, so that they can continue to share what they've learned with the younger generations? So I don't think we know yet, how this can impact the National Guard writ large if we don't get some structure and guidance around giving them some kind of sense of that they can trust the organization.

**ANDERSON:** Actually, General Solomon while I have you let me ask you a follow up question. We actually got this as an advance question from Alicia working in the office of Representative Stefanik from New York. So I want to ask about this specifically. She raises the point that National Guard servicemembers who're acting under state active duty don't qualify for federal disability benefits. And really, she mentioned disability specific, but in fact, that's actually the tip of the iceberg in terms of federal benefits, reemployment or continued employment, USERRA, things like that also don't qualify. Is that a gap that Congress should consider filling? Is that something that what is the tradeoffs there in terms of thinking about the disability benefit and these sorts of missions if National Guards can be used in this way more commonly?

**SOLOMON:** Well, I think it goes to the issue of sustainability because, you know, the states, as mentioned before, all individual and their variations are just as varied as the number of states and territories that there are. So unless the state legislators, legislators and here's where actually having some kind of conversation with the council of governors or the governors associations, can help mitigate, to standardize across the states how guardsmen are protected when they're in and state active duty status, because some states will pay them X number of dollars a day, some pay them based on their rank, some cover them for insurance, some do not cover them on the workman's comp. Some will pay for, you know, health insurance, which is a huge deal for a National Guard folks when they switch from statuses to statuses, and they earn no veterans' benefits when they're under state active duty. You know, and yet it depends on each state, what that individual may have a benefit of. And it is a huge issue, I think, in terms of that unanswered question of those continued missions, how will they affect the long term, and especially the more you have folks interacting in one location from different states, guess what? They talk to each other, and suddenly you find out what the

differences between this state and that state. And how does that writ large affect the institution across the board?

**ANDERSON:** Well, as you may have noticed, I've gone to audience questions, perhaps a little prematurely there because I thought that fit in well, but is now, we've got, I think, a little bit half an hour left, we're going to turn to audience questions here. We've got a number that also came in in advance or came in online. I'm going to be kind of going back and forth to one between those two. I'm going to start with one that came in advance and will come to the audience in just a second. We'll go ahead and raise our hands. Are our mic folks will know who to come to next. Let me start with this question. It's actually a pair of questions that paired well with each other. This first one comes from Diego, who works at Secure Democracy USA wrote in to ask, a note in 2020, the New Jersey Army National Guard – oh, we were having a conversation earlier, we're not sure it's actually was actually the New Jersey Army National Guard – but at least one National Guard, maybe more than one, activated more than 120 of its soldiers and reported in civilian clothes to county election boards and polling sites in seven counties in support of the state's primary election. With the current environment and rising threats leading to high attrition rates among clerks and poll workers, how can and should the current military be leveraged to keep our elections running smoothly? What are the dangers of this and how can we mitigate? We talked a little bit about some of the role the National Guard has for a while now played in elections. This is a new one. Not unprecedented, but a newer one. General Bohac, can I turn to you on this? I think you you've had some experience in this space.

**BOHAC:** I do, actually, I think he confused New Jersey with Nebraska. So, and that happens from time to time for some reason. So actually we did in 2020, in the midst of COVID -- and I think that's the really important caveat here -- the secretary of state – we need to remember the state and the counties are responsible for conducting the elections of this nation, not the federal government -- and the secretary of state was concerned that in several rural counties that poll workers wouldn't show up for fear of COVID and other things and then therefore not having sufficient staff present, the polling site could not open and afford citizens the right to vote. And so we did. We put 131 soldiers and airmen in state active duty. They wore clothing that would not identify themselves as a military member because we were informed by the, I think it's in code or perhaps federal regulation at the very least, that military equipment or military members in uniform shall not be present at election sites. It's the federal law and that informs, informed us in the state about how to conduct the mission. But when you think about, again, our oath to support the constitution of the state of Nebraska, it seemed to me to fit very well in terms of the mission. It's how you conduct the

mission that really, at the end of the day, really matters. And again, the guidance that's given to your individual soldiers and airmen about who are going to go out and support the poll workers. So, so I think I think that's a special case. I wouldn't discount the risk that General Lengyel brought up about, you know, other, perhaps untoward, uses of the National Guard in the election cycle. But, but I think, I think, by and large, there's probably, well, I hope, I should say that, I hope there are sufficient guardrails there to prevent the abuse of the National Guard in those kinds of situations. And that's where that's where an adjutant general has to be willing to stand tall. He or her have to stand tall with their governor and and and inform the governor the leadership of the risk. That risk and then the card and then you play the cards you're dealt.

**ANDERSON:** Does anyone have any thoughts on this issue? I know we've had elections come up a few times more generally. You know, how should we see the National Guard interfacing with these elections questions? And if there is a situation where we see a problematic, we have, there's another question we had from Adrian in Greenville, North Carolina, which I'm paraphrasing, apologies, insofar as we had a situation where we had, in order to observe or do something else in elections or polling site that would be problematic, what would be the remedies be available, that might be available?

**BOHAC:** Well, I'll, I'll take a stab at that because I think the remedy is, it gets referred to law enforcement, because if you believe that a crime has occurred or there's criminal behavior occurring, if there's voter fraud occurring, that's a criminal matter. It's not, it's not really a homeland defense matter. It's it's, I'd say a criminal matter. And my guidance to the governor at that point would be, governor that sounds like a law enforcement problem to me. You should be asking your law enforcement folks. I'm not condoning that, by the way, I want to be clear on this, but. But that's where I think that that problem set belongs.

**MCKINLEY:** You know, I think it bears saying that most governors who run and succeed at becoming governor do not know their commanders in chief of their National Guard. Sounds crazy, doesn't it? But I've been around some governors who on Inauguration Day say, what is this? And I have 12,000 men and women in uniform? And it's really the relationship that that adjutant general who, in all states but one, is picked by the governor to be his or her representative to run the National Guard in peacetime. That relationship they have with the governor to call out early on, and that's kind of why we're here now, early on, before this becomes a crisis and say, let's define for our state or territory how this is going to work. So there's no ambiguity. I've seen, as former chief of the bureau, a degradation in some states where the governor has put the adjutant general 2 or 3 levels down below in his administration. Therefore, you don't have that face to

face. You don't see the governor weekly at staff meetings. You see the emergency manager. Or, how do we how do we have these discussions? Let's not, let's not make the office of adjutant general relegated to third or fourth order effect. So I would encourage governors today to take the appropriate action to set up the rules of engagement for the next eight months.

**BOHAC:** So I think this, you know, this drives us to the second framework that needs to be talked about. And that's the reality is not all states belong to the National Governors Association. And so why is that important in the context of this discussion? It's because the National Governors Association has, at least historically, offered new training for governors. And in fact, General Lengyel, you spoke at one of those training events in your, during your tenure. But if you don't belong to the association, you're likely not to go to the training. And therefore, it is left too often to the adjutant general in his or her staff to inform the governors about, hey, this is how it works, on day one. You know, if day one they're inaugurated in the office and, some event occurs, you don't want them learning their role and responsibilities that day. You need to be in that, in that vein much sooner. So, I think there's a lack of a consistent framework for that discussion with governors and what, what should be the elements that then can be this template that could be then adapted to the peculiarities of state statutes or the, you know, the state of which we're concerned with. And, and to ensure that, you know, there's some consistency across the, the 50, you know, the 54 governors that, 53 governors, to be accurate, in terms of how to use the National Guard and what what should be some of the things that you should be thinking about when events come to bear toward you? Thank you.

**SOLOMON:** And I just wanted to point out, so, the 54th is DC Guard, which, is their line of authorities through the secretary of the Army. So that's not the mayor of DC, for clarification.

**ANDERSON:** All right. Let's go to the audience for questions. Let's start over here.

**AUDIENCE QUESTION:** Okay. Thanks. Hi. Janessa Goldbeck. I'm the CEO of Vet Voice Foundation. We did a tabletop exercise two years ago here in DC with about 35 members of senior folks from the last five administrations about what happens if there's a contested election in the future and the National Guard is called in to play a role greater than what we saw in the last election? And the biggest learning from that was the gray area between for governors to the point you all just made so beautifully, understanding their authorities, understanding states attorneys general, understanding their authorities, and having a relationship with their TAG ahead of the bang, so to speak. So we're actually conducting tabletops with governors and

TAGs and attorneys general this year. And I just want to throw a shout out to the room if you're interested in participating, we're assembling a team of folks who's going to go in state to do that work. And we'd love to work with anybody who's in the room. So come see me after that.

**LENGYEL:** Sounds great.

**MCKINLEY:** Great. Thank you for that.

**ANDERSON:** Thoughts, reactions? Yeah. While we start up up front, we'll take a pair of questions before we go back to the list.

**AUDIENCE QUESTION:** Thanks. Hi, Lauren Voss, I'm a law professor at GW and I teach a class on domestic deployment of the US military. Also a reservist.

**MCKINLEY:** Why did you come up here and talk?

**AUDIENCE QUESTION:** So I was just curious. You know, we talked about National Guard really expanding missions, you know, starting with COVID going on. And we really focused on the idea of a lawful mission and identifying that. But I'm curious, you know, when we talk about the limitations that you were saying, you know, saving life, saving property, restoring order if needed, that's that's more of custom in practice, right? And there is a whole range of things at the state level that can be done by a governor that are absolutely lawful but maybe get us into that awkwardness of, is this what's actually good for the state? Or is this what is good for democracy? And so I'm kind of curious for that specific area, you know, how do you think about it? What do you do? Because you don't necessarily want the individual, you know, guardsmen saying, I don't know if this is what's good for America, right? But you, is that civil society? Is that the federal government and raising questions of federalism, like, how do you think about that narrow sliver?

**LENGYEL:** So let me.

**MCKINLEY:** Thank you, Let Paul and then Joe.

**SOLOMON:** No, I'm going to preface it by, and then I'm going to let them go on, because I think there is a part of it that every individual has to understand coming into, you know, when you raise your hand that you may not agree with what you're asked to do and how many of us have been asked to do something that we personally did not agree on? So how do you continue to support the apolitical nature of a culture that's, I know, the concern that we want to foster and continue to foster an apolitical nature of that individual understanding. Yeah, I have my own thoughts, however, I'm part of this larger organization.

**LENGYEL:** So that is a great question. And, you know, I kind of talk about it as, as this is the reason we're having this is because there's a spectrum of utility of the National Guard and domestic operations, and it moves from pretty easy stuff where we're reacting and saving lives, protecting property from natural disaster that, you know, the threat is the weather or some event. And then the next bucket is, is, is missions that harder, Linda Singh, will tell us about civil unrest in, you know, Ferguson or Baltimore or Black Lives Matter here. Now, now the issue and the friction is with human beings, it's that, may or may not see things the same way. I mean, I recall I was here during Black Lives Matter this summer or past four, four summers ago. Seems like yesterday. And it was, and there were family members on one side of the fence and guardsmen on the other side of the fence, and and it was it is a hard, dangerous mission that we don't think about a lot. And we need to have that discussion. I frequently talk about if I was a company commander of security forces in Lafayette Square -- and Lafayette Square, the guardsmen did not push protesters out. They were present, but they did not push protesters out. But they were peacefully protesting, and there was not a curfew and there was not a legal reason to remove them. And I wonder if I was a commander or a guardsman that day and somebody said, the police, because I'm there and assisting the police, if they had said, let's go, we're pushing them out, I might have without knowing, without thinking, I would not have known, hey, this is unconstitutional, that that is their civilian right, that has a constitutional right to protest or not breaking any laws. They're peaceful. They're not doing any damage. I don't know that I have been aware. I mean, the way we have it is to have the discussion and educate people and and talk through these things before those events happen. You know, the other kinds of events that were using the National Guard that no, no legal issues matter, the other bucket, are your schoolteachers or your lawyers. You're on the southwest border. You're driving busses, you're guarding prisons. That's a different and again, probably less complex mission than the civil unrest. And then there's this whole other bucket that we're all kind of talking around is, what if somebody asks us to do something that might impact the outcome of an election? And do you know if there was fraud in that precinct where they're saying, go guard those ballots? Is it right? Do we know? And that's why it's so important to have the discussion now of of what is the guard, what are the



guardrails, what are the authorities. What is, you know, it sounded reasonable to me to facilitate the execution of election, to have some men and women of the guard put on civilian clothes and actually be there to sign people in and direct them, here's a ballot, go to that machine and vote. That seems reasonable. It seems low threat. There's COVID. People don't want to come out. You know, guarding and securing an election site might be different. Totally. But I think, you know, these buckets of where they might use us and we fundamentally rely on leaders that will do the right thing. That normal and customary behavior says they will do the right thing. And I don't know if that's a valid assumption. If I can say that, I don't know. That's it. Any other comments?

**MCKINLEY:** I'm scared now.

**ANDERSON:** Well, before we come back to the audience, I see. Oh, sorry about that. Let me go back to a couple more online question. We'll come back to the live audience. We got, I think, time for a couple more questions. I'm going to go back to two related questions again to throw at you all. First one from Nikki Wentling, who's a reporter at the Military Times. She asks, what are your thoughts about Texas Governor Greg Abbott building an operating base for the National Guard at the border and contesting federal authority? Something we've touched on a few times. Let's address it a little more squarely. And a second, a related question from Mike Board, reporter at WOAI News in San Antonio, Texas, asks, from the start of Operation Lone Star – the aforementioned mission on the border – there has been a low morale and a surprisingly high number of suicides. What needs to be done to protect guardsmen who are being called upon to enforce immigration law in that particular mission? Would anybody like to start?

**MCKINLEY:** Lucky we got a Texan and live in San Antonio right here.

**LENGYEL:** Great. I'm sorry, governor. No, no, I think, you know, that the issue of, contention between federal and state activities. I would say an offer that we work through these things slowly through the courts, and we try not to inflame the situations. We've had disagreements between state and federal issues before, where, when the DOD said, for instance, same sex couples can get ID cards in your bases now, it's federal law. We're making that happen. Some states objected to that, and it took us a while to work through a scenario. We worked through it methodically with state facilities and federal facilities, and ultimately it's no longer a problem. But if we get into, you know, a, a contest of butting heads, we don't make progress. So I think we should have the courts work through these issues, and they're doing that. We don't want to make

the situation worse by putting Guardsmen against Title Ten versus state forces or military members. That would be silly. And I think slowly and methodically, we have to work through the specific issues that they're working with on the border and that Texas has a right to use the courts, and the federal system has a right to engage in the courts. And we will see ultimately where this works out. And I think the idea is not to turn the temperature up, but to turn the temperature down, have a discussion and work through it methodically until we come up with a solution.

**SOLOMON:** I do think that there needs to be some kind of survey of the force specifically related to this. You talked about the mental health issues. That's, I mean, everybody has seen the impact of the pandemic on the general public writ large. And people who would even have considered themselves, you know, in a mentally good place and how things affected them. And then you put people in stressful situations that are outside their norm, in the core of what they're trained to do probably heightens. You take them away from their family, on and on and on. So how is that force, you know, what do they need? I think we need to ask them because I think, you know, as an outsider sitting in, I can't answer that question for that young soldier or airman that's been on the border for however many months that, you know, it's been away from their family that may not be receiving the same benefit as the person next to them and, and chooses to end their life because of whatever the reason is. So we have an obligation, as, you know, as a country, if we're going to put them in that situation, ask them.

**MCKINLEY:** Also, Doctor Stockton and I, in our time in the building, we visited all the border states on the southwest border. Customs and Border Protection was undermanned, understaffed, and they are still today. And we've been at this now for three rotations that I know of. And if you define the problem, it's CBP needs more people. The guard conveniently can do that and work with that organization. But that's not the answer is, we've got to get the, it's going to be one of the large election issues, obviously, border security and immigration. So the American public are going to speak by who who campaigns to fix that. It may be unfixable, at least from Doctor Stockton's and my viewpoint, we thought we had it fixed with 10,000 National Guardsmen on orders to support Customs and Border Protection. They weren't able to recruit. And it's a tough job for them. I don't underestimate what they do. But that's the problem is we're going to continue to be called to do things when there are shortages of staff and governors will take the political risk to do what Governor Abbott has done. And he's got this big, bright spotlight on Eagle Pass and the park that he claims is his. And the federal government right outside the gate, wants to get in and do their thing and not being allowed to get in. That's an amazing situation that maybe doesn't get a lot of press up here. But I know in

Texas it's a big deal. In my home state of Florida, our governor's, you know, big on border security. We have immigration coming in from Central and South America and Haiti and Dominican Republic. So it's not going to go away overnight. And there's probably enough blame to go around for everybody. But until we get it fixed, Doctor Stockton, they're still going to have a recruiting problem.

**STOCKTON:** Completely agree with you, General McKinley. And I don't have anything to add.

**MCKINLEY:** It's not satisfying.

**ANDERSON:** Let's go back to the floor a little bit of time left. This gentleman has been very patient. Thank you.

**AUDIENCE QUESTION:** Hi I'm, Alberto Mora. I'm a former general counsel, Department of the Navy. Can we drill down into Operation Lonestar for a bit more detail? What happened? Were federal forces blocked from performing their mission on the border? How was that resolved, if that was the case? What's been the impact on the National Guard structure? And, what's ahead, for for the forces, given the likelihood of another repetition of that scenario?

**MCKINLEY:** I can't give you the full details, but I know that at one point, Governor Abbott asked his adjutant general to put 10,000 – they have a large Army National Guard in Texas, that's huge – 10,000 soldiers on the border. And that was for a year. Now, this is 2 or 3 years ago. And then he felt that the Customs and Border Protection were not stopping enough immigrants. They weren't incarcerating them. They were they were getting into Texas and actually moving further north. And so he, he he then got more governors to say, this is a this is a national problem, not just a state problem. And they agreed with him. So they're contributing force structure, a tune of about, 500,000 more in state active duty. So he's got a significant footprint on the border. I think the Justice Department has asked Governor Abbott to take down the fences at this park to allow both both groups of people to get to the river. And he said, no, it's Texas land. That's what I've heard. I could be dead wrong on the facts, but. So it's a standoff. The federal force has not gone through the gate, I don't believe, to help. They're not there to fight the Texas National Guard. They're just there to try to see how we do it better. You know, they put the barricades in the middle of the river. Justice Department said you can't do that because people are losing their lives. But that's what people in Texas feel is such a significant issue that it's become a flashpoint. And I don't know how it resolves. Doctor Stockton and General Bohac

said you can federalize Governor Abbott's troops behind that barbed wire. And is that going to solve the problem, or is it just going to cause more hard feelings? But there are only two ways to fix it. And we need, we need to come together to try to solve that problem, because National Guard men and women don't want to be confronting either the federal force or CBP. We're all on the same side down there. From a legal perspective, do you have any thoughts on is it can a state declare their territory personally theirs and the federal government cannot get into that territory. Is that legal? That's where we are. I think. Correct, fact check.

**ANDERSON:** We may be able to follow up the conversation a little more after the reception. We got a few minutes left. Yeah. It looks. Anything more? Any other questions? I saw a few other hands up. Yes. Right here.

**AUDIENCE QUESTION:** Hey, thank you guys so much. I'm Joseph Nunn from the Brennan Center for Justice, and Doctor Stockton mentioned a need to think big in this area. And I have a big idea that I want to hear your opinion on. The Posse Comitatus Act obviously only restricts federal military participation in law enforcement. And that's, you know, arguably one of the big weaknesses of the law. What, thinking about the sort of innovative uses of the Guard on state active-duty status that we've talked about and also, sort of unprecedented uses of the guard with, through section 502F, what would be your reaction to the the idea of extending Posse Comitatus Act to cover the Guard when it is under state command and control? Either if it was possible through federal legislation or having, you know, each of the 50 states implementing their own version of the Posse Comitatus Act.

**ANDERSON:** Thoughts about that?

**STOCKTON:** Yeah. I'll take a whack. I think it's a terrible idea. I love that the National Guard can serve, and support law enforcement agencies at the direction of the governor. Because in extremis, when we really need the National Guard to save and sustain lives and maintain public order, I love it that the National Guard can help support law enforcement. So I'd. I'd keep things the way they are. But as I briefly mentioned before, I think I agree with my colleagues. We start we need to start looking at the hard cases, the difficult cases. So I mentioned briefly the PRC, the People's Republic of China objective to incite societal panic. I'm not talking about the day-to-day corrosion of faith in democratic governance and efforts to divide Americans against each other. I'm talking -- that's, because that's going on, they're making some progress, and so, so is my

friend Vladimir Putin. The risk is that in a crisis, adversaries will use social media to inflame actual conflict at the societal level. And then I think we need to ask that hard case, what is going to be the role of the National Guard in helping law enforcement maintain order against adversaries that seek to inflame the divisions that they've already helped stoke amongst us?

**BOHAC:** Yeah, I would, I would agree with Doctor Stockton here about, not taking away posse comitatus availability to the states. And, just give you an example in, following the George, the murder of George Floyd and the Black Lives Matter protests in Lincoln, Nebraska. So the Black Lives Matter organizers worked with law enforcement about where they would be protesting what their routes were going to be. It worked very well. But it also created the opportunity for others, and I think we can speculate on who those others were, but in a four-block area from the Hall of Justice to the state Capitol, did over \$15 million worth of damage in two nights. And without the National Guard to support local law enforcement, and and it's worth reminding us all that we're always in support. We are not in charge when we're brought into situations. We are in support of law enforcement. So we were able to protect facilities while law enforcement could do their work with anarchists or whoever they were that were firebombing buildings and doing other things. I don't think any governor, and I don't think any state legislature would be very willing to give that up, quite frankly. And I and, and and if I was still serving as an adjutant general, I would not recommend it.

**MCKINLEY:** It's a good, it's a good question though. So, and Doctor Stockton, who's a professor said, I think it's a terrible idea. That's how he used to conduct his class. I'm just kidding, Doctor Stockton.

**ANDERSON:** We have I think we have time for one more question. Otherwise I suspect this might be a follow. So we'll go. We'll go to you.

**AUDIENCE QUESTION:** It's a quick follow-up, I don't know -- so my follow up question is, as we all know, the Posse Comitatus Act is not a prohibition on using law enforcement. It is a rule, it's a clear statement rule that law enforcement can only be used as provided by statute and by the Constitution. But that's a, you know, little asterisk there. I think the idea of extending it at the state level would be the same, that it would be the notion that, in order for governors to use the National Guard for law enforcement purposes, it would have to be as provided under statute, which would be state statute and would presumably have pretty generous allowances for, for use in supporting law enforcement, as it should. But that would prevent governors who, because this authoritarian movement that we're all concerned about, it's not just at the federal level. It's at

the state level. We're seeing that, too. And I think in terms of thinking to the future, I think we want to think about ways that governors could misuse the National Guard and whether there's a way to bring, to think about some of those potential misuses and how to make sure that there is law in place that can prevent against some of those.

**BOHAC:** Yeah, and I would, I wouldn't disagree with with your point here. I would just offer that I think first before we think about extending posse comitatus into states, rather, let's look at what's available to the governors now. So, for example, in Nebraska, in order to arm people on state activity duty requires another order and review by the attorney general's office. And also in all of these cases, I think that we would probably be talking about the governor would be required to declare an emergency, which required, well, it requires public notice, though, and he has to publicly, the governors have to publish that. And so there is there is at least some level of transparency, maybe not as much as some would like. I think there are some controls there, but I think your ideas, you know, got some worthiness from the standpoint of looking at what's in the state statutes that help provide some guardrails, right, for those kinds of situations. And you could extend that argument to every other case we've talked about today.

**ANDERSON:** Well, that's what I was going to say, it's posse comitatus, maybe it's a bad parallel as much as state regulation because gubernatorial use of National Guard isn't restricted to law enforcement or anything like that in the same way. That's a rich topic that we will dig into more. We've only gotten a chance to touch on. We do have a reception after this. We're out of time for the formal event, but thrilled to have you all join us. Please join us afterwards where we can continue the conversation at the reception. Right behind here, right next door, I'm told. Thank you all so much all our panelists. Thank you so much for our friends, for organizing with us.