

**The original documents are located in Box 42, folder “Philadelphia” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

THE WHITE HOUSE  
WASHINGTON

June 9, 1976

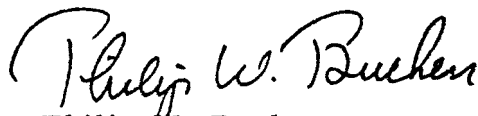
Dear Mayor Rizzo:

On behalf of President Ford, this is to confirm the understanding recently reached between Deputy Attorney General Harold Tyler and Mr. Hillel Levinson, City Manager of Philadelphia. Requests for Federalized National Guard and reserve components of the Armed Forces in suppressing civil disorders must be in accord with the provisions of Title 10 U.S.C. Section 331. Additionally, it is my understanding that the Deputy Attorney General also apprised Mr. Levinson of the Interdepartmental Action Plan for Civil Disturbances governing the use of Federal troops in a state in the event of domestic violence.

We are, of course, hopeful that the City of Philadelphia will not be the site of any mass disturbances during the Nation's Bicentennial celebration this July 4th. However, I trust that your efforts and the contingency plans of the Department of Justice authorized by 10 U.S.C. 331 will insure that the city is prepared to deal with any eventuality.

I trust this satisfies your inquiry.

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable Frank L. Rizzo  
Mayor of Philadelphia  
Philadelphia, Pennsylvania 19107



THE WHITE HOUSE

WASHINGTON

June 3, 1976

MEMO FOR:

PHIL BUCHEN

FROM:

KEN LAZARUS

Mayor Rizzo has requested that the President make available 14,000 troops for the July 4th celebration in Philadelphia. Attached are materials relevant to the legal questions raised by the inquiry. I thought you might want to familiarize yourself with them. The Domestic Council is handling the letter.

Attachments



MEMORANDUM

Re: Legal Authority for Using Federalized National Guard and Reserve Components of Armed Forces in Suppressing Civil Disorders at the Request of a State.

Questions have arisen as to whether the President, in responding to a request by a State for military aid to suppress civil disorder, is authorized by 10 U.S.C. 331 1/ (1) to federalize "the militia" (i.e., National Guard) of the requesting State, for use along with whatever other forces the President may send into that State to suppress the disorder; or (2) to use, for the same purpose, components of the Reserve of any of the armed forces. For reasons stated below, it is concluded that section 331 alone would not authorize either of these actions. However, in practical terms, ample authority exists under other provisions for federalizing the Guard of the requesting State; such authority is lacking for calling up units of the Reserves except under a temporary provision expiring June 30, 1963.

1. Federalization of the Guard of the Requesting State. Section 331 provides that the President may call into Federal service such of the militia "of the other States" as he considers necessary. This phrase need not be construed as prohibiting by implication the federalization of the Guard of the requesting State. It is clear, however, that no explicit authorization for such action can be found in section 331.

The legislative history of the original Act of 1792 from which section 331 derives, 1 Stat. 264, sheds no light on

1/ 10 U.S.C. 331 provides as follows:

"Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection."



this omission. We are not aware of any instance (and understand that Army historians are not either), prior to last summer's riot in Detroit, in which the Guard of the requesting State was federalized for use in operations authorized primarily by section 331 or its statutory predecessors. 2/

In the Detroit riot, as well as in the riots of April 1968 in Chicago and Baltimore, federalization of Guard units of the respective States of Michigan, Illinois and Maryland was based primarily upon the President's authority, under 10 U.S.C. 332, to call into Federal service the militia "of any State" to remove obstructions to the enforcement of Federal law, and, under 10 U.S.C. 333(2), to use "the militia" to suppress domestic violence and other unlawful activity which obstructs the execution of Federal law. 3/ On each of these occasions, the President's proclamation invoked Chapter 15 of Title 10 in its entirety (sections 331-34) as the basis for Federal intervention, after paraphrasing the key words of sections 332 and 333 by reciting that "domestic violence and disorder are . . . obstructing the execution of the laws of the United States, including the protection of federal property. . . ." 4/

2/ Congressional debate on the provisions of the Act of 1792 is reported in 3 Annals of Cong. 575-79.

On several past occasions, forces of the requesting State, without being called into Federal service, have been placed under the operational command of the military officer in command of the intervening Federal troops. See B.M. Rich, The Presidents and Civil Disorder 112, 191 (Brookings Institution, 1941).

3/ Pursuant to 10 U.S.C. 332 and 333, Guard units of the home State have been federalized in recent years to assist in enforcing Federal court orders protecting the exercise of civil rights in several Southern States, beginning with the Little Rock episode of 1957.

4/ Proclamation No. 3795 (32 Fed. Reg. 10905, July 24, 1967); No. 3841 (33 Fed. Reg. 5497, April 7, 1968); No. 3842 (33 Fed. Reg. 5499, April 7, 1968).

Although not explicitly cited in these proclamations, temporary supplementary authority for federalizing Guard units of the States in which those riots occurred may be found in the so-called Russell Amendment (Title I, 1967 Defense Appropriations Act, 30 Stat. 931), which authorizes the President until June 30, 1968 to order Ready Reserve units (including National Guard units, 10 U.S.C. 269(b)) of the armed forces to active duty for up to 10 months.

As a practical matter, when domestic violence breaks out on a wide enough scale to warrant a request and an affirmative response under section 331, the President will have sufficient grounds for invoking sections 332 and 333(2) along with 331 in dealing with the situation. Disorders of this magnitude are bound to violate Federal as well as State laws, and to obstruct the operations and endanger the property of the Federal Government. The absence of express authority under section 331 to federalize the Guard of the requesting State is therefore no obstacle to securing unified Federal command over all military forces in the field, pursuant to the several provisions of Chapter 15 of Title 10 (sections 331-34). 5/ It should be noted, however, that in the absence of a request under section 331 based on the inability of the requesting State to restore law and order with all the resources at its command, including its own National Guard in militia status, and an affirmative Presidential response [under section 331 to that request, there will not ordinarily be sufficient grounds for using Federal military force pursuant to sections 332 and 333(2) alone to suppress the disturbance. The primary responsibility for preserving a climate of law and order in which Federal as well as State laws can operate remains with the States under our Federal system. 6/

5/ It has also been suggested that since the federally recognized portion of the Army National Guard is a reserve component of the armed forces (10 U.S.C. 261), that portion of the Guard of the requesting State may be included among the "armed forces" which the President is authorized to "use" under section 331. However, as discussed below in section 2 of this memorandum, reserve components may not be used as parts of the armed forces until they are called or ordered into active service pursuant to statutory authority. The President's authority under section 331 to "use" the armed forces does not include authority to order into active service reserve components of the armed forces.

6/ However, if the primary effect of a disturbance should be to obstruct the execution or enforcement of Federal laws, or if this should be the incidental effect of a disturbance that continues for an unreasonable length of time without a request for aid being submitted by the Governor to the President under section 331, intervention under section 332 or 333(2) alone to suppress the disturbance may be justified.





2. Use of Reserves under Chapter 15. The second question is whether units of the Army Reserve, as part of the "armed forces," 6/ may be ordered into active service and "used" by the President pursuant to 10 U.S.C. 331-333 to suppress civil disorders. For simplicity of presentation, the question will be discussed in terms of the Army, but the same analysis would be applicable to the Air Force and Navy Reserves.

The National Defense Act of 1916, as amended, established the National Guard of the United States and the Organized Reserve Corps as reserve components of the Army. These are now the Army National Guard of the United States and the Army Reserve. As reserve components of the Army, they were from the time of their creation part of the "land and naval forces" of the United States.

Under present Title 10, both the Army Reserve and the Army National Guard of the United States are reserve components of the Army, 10 U.S.C. 261, and thus within the statutory definition of the "armed forces" of the United States, 10 U.S.C. 101(4). However, we believe, and we understand the Army lawyers concur, that it is implicit in the reserve provisions of Title 10 that reserve components may not be "used" as part of the armed forces, in the sense of sections 331-333, until they have been "called" or "ordered" to active duty pursuant to statutory authority. See especially 10 U.S.C. 672, 682, 3495. 7/ The Army National

6/ Prior to the Act of August 10, 1956, 70A Stat. 1, the predecessor provisions to 10 U.S.C. 331 and 333 authorized the President to use such part of the "land or naval forces" as he deems necessary for the purposes of these provisions, while the predecessor provision to 10 U.S.C. 332 authorized use of "land and naval forces." That Act codified these as sections 331-333 of Title 10, United States Code, and substituted the words "armed forces" for the quoted phrases. The legislative history makes clear that this codification did not intend any substantive change. Moreover, the variant uses of the words "and" and "or" in the predecessor sections do not appear to have any significance.

7/ Pursuant to section 632, it is clear that units of the Army Reserve on active duty may be used to suppress civil disorders upon exercise of the President's authority under sections 331-333.

Guard, as the "militia" of a State, explicitly may be "called" into Federal service pursuant to 10 U.S.C. 331 or 332, and we understand section 333 likewise to require a "call" though the word is not used there. Cf. 10 U.S.C. 3500.

There is no similar authorization in sections 331-333 for ordering to active duty units of the Army Reserve. Permanent authority for ordering various parts of the Army Reserve to active duty is to be found in 10 U.S.C. 672, 673 and 674, none of which appears applicable at the present time. Temporary authority to order units of the Ready Reserve to active duty now exists in the so-called Russell Amendment (Title I, 1967 Defense Appropriations Act, 80 Stat. 981), which authorizes the President until June 30, 1968 to order such units of any of the armed forces to active duty for up to 24 months. <sup>1</sup>

With the exception of exercise of the temporary authority contained in the Russell Amendment, it appears that under present law units of the Army Reserve may not be ordered to active duty to suppress civil disorders.

§1 Section 303 of P.L. 90-500, 82 Stat. 850, extended this authority to June 30, 1969.





APR 1 1969

MEMORANDUM FOR THE PRESIDENT

Re: Interdepartmental Action Plan  
for Civil Disturbances

Introduction

This memorandum outlines a plan by which the Departments of Defense and Justice propose (1) to coordinate their preparations for and their responses to any serious civil disturbance that may hereafter occur in a city in the United States, and (2) to assist the President in responding appropriately and effectively to any request he may receive for Federal military forces to aid in suppressing such a disturbance. While the plan is principally geared to situations involving a State request for assistance in controlling urban violence and disorder under section 331 of Title 10, United States Code, the relationships it formalizes are equally applicable to other situations, such as the enforcement of Federal law under 10 U.S.C. 332 or the protection of civil rights pursuant to 10 U.S.C. 333, that may require the employment of Federal armed forces.

The Secretary of Defense and the Attorney General join in submitting this plan for your consideration and approval. If you approve it, our Departments will work out the details. We believe that the proposed plan merits your prompt attention because you may have to decide, on short notice, whether to honor a request for military aid to quell a civil disturbance.



A principal feature of the plan is the designation of the Attorney General as the chief civilian officer in charge of coordinating all Federal Government activities relating to civil disturbances. The Attorney General is the logical choice for this role in view of his responsibilities as chief law enforcement officer of the Federal Government, and as chief legal adviser to the President on the critically important decisions the President must personally make as to whether and when to commit military forces in response to a request.

On the other hand, all essentially military preparations and operations, including especially the employment of military forces at the scene of a disturbance, will be the primary responsibility of the Secretary of Defense. In discharging these functions, he will observe such law enforcement policies as the Attorney General may determine. To the extent practical, such law enforcement policies will be formulated during the planning stage so that military commanders can familiarize themselves with them and train their personnel to implement them. This will assure that military planning and operations are consistent with Administration policy and the requirements of law.



The responsibilities of the Department of Defense under this plan will be carried out principally through the Department of the Army, inasmuch as the Secretary of the Army is assigned primary responsibility for civil disturbance matters, as Executive Agent, subject to the general supervision of the Secretary of Defense. Within the Department of the Army, a Directorate for Civil Disturbance Planning and Operations serves the Secretary and the Army Chief of Staff as the principal military staff agency for such matters.

Prior to the time a decision has been made to commit Federal armed forces in a locality the White House shall be responsible for all public information activities. Thereafter, the dissemination of all public information in connection with the control of civil disturbance shall be undertaken by or as directed by the White House.

### I. The Basic Plan

The plan is divided chronologically into four phases:

1. The period of civil disturbance planning and intelligence operations prior to the outbreak of any actual disturbance.
2. The period from the initial outbreak of an actual disturbance to the time at which the President decides to employ Federal military force.
3. The period during which Federal military forces are employed at the scene of the disorder.



4. The portion of the latter period during which the advisability of withdrawing the Federal forces is considered decided, and acted upon.

The basic plan for each of these phases is as follows:

Phase One--Advance Planning and Intelligence Operations

As in the recent past, the Secretary of Defense will have the primary responsibility for training, equipping, and designating the forces to be used in controlling civil disturbances. He will also retain primary responsibility for preparing operation plans, determining procedures for alerting and moving the forces, and testing command and control arrangements. The Attorney General will be consulted on important questions of law and law enforcement policy arising in connection with these plans and preparations.

The Attorney General will contact all the State Governors, reminding them of the legal requirements for obtaining Federal military aid pursuant to section 331 of Title 10, United States Code; that a situation of serious domestic violence exists within the State; that such violence cannot be brought under control by the law enforcement resources available to the Governor, including local and State police forces and the National Guard; and that the Governor requests the President to employ the Armed Forces to bring the violence under control. The Governors will be advised to direct to the Attorney General all preliminary communications concerning the possible need for Federal military assistance under such circumstances.



Under the supervision of the Attorney General, raw intelligence data pertaining to civil disturbances will be acquired from such sources of the Government as may be available. Such data will be transmitted to the Intelligence Unit of the Department of Justice, and it will be evaluated on a continuing basis by representatives from various departments of the Government. After evaluations have been made, the data will be disseminated to the Attorney General, the Secretary of Defense, and the White House.

Phase Two--Responding to Early Phases of a Civil Disturbance

During the early stages of a crisis in which it appears that a request for Federal military assistance may be forthcoming, the intelligence organization of the Department of Justice will alert the Attorney General and the Secretary of Defense. It is expected that responsible State and local officials will promptly inform the Attorney General of the situation and will thereafter keep him informed of developments. When advised that a serious disturbance is in the making, the Attorney General will immediately inform the President.

If time permits, the Attorney General and the Secretary of Defense may dispatch their personal representatives to the disturbance area to appraise the situation before any decision is made to commit Federal forces. Such action can help to assure that the Federal Government responds in accordance with the realities of the situation as perceived by its own observers.





Precautionary steps, such as alerting Federal armed forces and prepositioning them relatively near the disturbance area, can be taken by the Federal Government prior to receipt of a formal request from a Governor for Federal military assistance. Prepositioning of more than a battalion-sized unit (approximately 500 men) by order of the Secretary of Defense will be undertaken only with the informal approval of the President. Such approval will be sought by the Attorney General, and, ordinarily, only if there appears to be a substantial likelihood that such forces will be required.

When the State Governor anticipates that a request for Federal military assistance will shortly become necessary, he will confer with the Attorney General concerning the facts of the situation, so that the Attorney General can review the legal sufficiency of the impending request. After consultation with Department of Defense officials on the gravity of the situation, the Attorney General will advise the President whether the conditions would warrant honoring a request at that particular time.

When the Governor concludes that a formal request for military assistance is necessary, he will address it directly to the President. At such time, the President must exercise his personal judgment as to whether or not to commit Federal armed forces. The decision may be a difficult one, as it involves a weighing of the apparent need for Federal



forces in the circumstances, and the President's responsibility to respond to State requests for such assistance, against the primary responsibility of State and local authorities for maintaining local law and order, and the inadvisability of employing Federal military force for that purpose except in the last resort.

The Attorney General will have furnished the President with an appropriately drawn Proclamation and Executive Order, to be signed by the President in the event that he decides to honor the request. These documents will formalize the decision and state the factual and legal grounds on which it is based. <sup>\*/</sup>

Phase Three--Management of Federal Troops

The Executive Order will authorize the Secretary of Defense to conduct the military operation, subject to the law enforcement policies determined by the Attorney General during the planning phase. Guided by such policies, pursuant to established procedures within the Department of Defense the

\*/ Attached are proposed forms of Proclamation and Executive Order, one set for use in response to a State request, the other for use in connection with a civil disturbance in the Washington Metropolitan area.

The Proclamation is essentially a formality which fulfills the requirement of 10 U.S.C. 334. The attached Proclamations are based on the form developed by Attorney General Brownell in the Little Rock disturbance of 1957, and used since that time in a variety of civil disturbance situations. The attached forms of Executive Order, however, embody several improvements over those used in recent incidents, notably in spelling out the respective responsibilities of the Attorney General and the Secretary of Defense in coping with a civil disturbance.



Secretary of Defense is responsible for the necessary military decisions and for issuance of the appropriate orders to the military commanders concerned. Thus the chain of military command running down from the Secretary of Defense will be preserved. The established law enforcement policies may require revision or elaboration during the actual military operations; in that event, the Secretary of Defense will refer such matters, military exigencies permitting, to the Attorney General, together with his recommendations. The Executive Order further authorizes the Secretary of Defense to federalize National Guard Units and, if required, to order units of Reserve Components of the Armed Forces to active duty for purposes of the operation.

The Attorney General will have a personal representative located with the military task force commander in each city where armed forces are committed. Standing military instructions to Task Force Commanders will instruct the commanders to consult with the Attorney General's representative on all significant matters.

By the terms of the Order, the Attorney General will remain responsible (1) for coordinating the activities of all Federal agencies assisting in the suppression of violence and in the administration of justice in the affected area, and (2) for coordinating these activities with those of State and local agencies similarly engaged.

#### Phase Four--Withdrawal of Federal Troops

As the employment of Federal military forces succeeds in bringing the disturbance under control, the military commander and the representative



of the Attorney General at the scene of the disturbance will make recommendations to their respective superiors concerning the timing for the withdrawal of Federal units, the defederalization of National Guard units, and the release from active duty of any Reserve units. It is expected that the Secretary of Defense will decide these matters in the light of the Attorney General's recommendations as to the ability of the civil authorities to resume full responsibility for the maintenance of law and order in the affected area.

## II. The Basic Plan for the Washington Metropolitan Area

The respective roles of the Secretary of Defense and the Attorney General in preparing for and responding to a civil disturbance in the Washington metropolitan area are essentially the same as described above with respect to disturbances within a State. Thus the Attorney General will be responsible for coordinating Federal activities and determining Federal law enforcement policies relating to civil disturbances in this area, and the Secretary of Defense will be in charge of military operations to suppress such a disturbance.

There are, however, several supplemental features and variations that characterize the basic plan as applied to the Washington area.

Those are as follows:

1. The basic plan must include not only provisions for dealing with generalized disturbances, but also provisions for protecting government property, functions, or personnel in this area against any



form of unlawful interference. Military operations to suppress such interference will be the responsibility of the Secretary of Defense, subject to the law enforcement policies of the Attorney General.

2. The President will ordinarily look to the Mayor of the District, as he does to the Governor of a State, to make a formal request for military assistance to control a local civil disturbance.

3. In addition to his general authority to employ Federal military forces as described above, the President, as Commander-in-Chief of the D.C. National Guard, is authorized to use that Guard in militia status to suppress a civil disturbance in the District without the necessity for a Proclamation or Executive Order.

To facilitate the practical availability of this option, the outstanding Executive Order of 1949 vesting administrative control over the D.C. Guard in the Secretary of Defense (E.O. 10030) should be amended to establish the Secretary's authority in such cases to call out the Guard in militia status to control a local civil disturbance. An amended Executive Order will be prepared for the President's approval and signature.

The D.C. National Guard will be used in militia status for the purpose of suppressing a civil disturbance only after the informal approval of the President has been obtained. In a particular civil disturbance situation, the Attorney General, after consulting with the Secretary of Defense, will advise the President as to the choices available to him with respect to utilization of the D.C. National Guard and active armed forces.





4. In addition to actual outbreaks of civil disorder, the D.C. planning takes account of the possibility that peaceful demonstrations in the District may develop into civil disturbances. In order to minimize that risk, provision can be made for the policing of such demonstrations by National Guardsmen in their militia status as well as by District police forces. Moreover, planning provides for the limited use of active armed forces to protect Government property and functions against unlawful interference (as on the occasion of the demonstration at the Pentagon in October of 1967).

If you approve the plan as outlined above, the Departments of Defense and Justice will take all necessary steps to implement it.

Melvin R. Laird  
Secretary of Defense

John N. Mitchell  
Attorney General





Office of the Attorney General  
Washington, D. C. 20530

Dear Governor:

At the President's request, I am writing you regarding the legal requirements for the use of Federal troops in case of severe domestic violence within your state. The requirements are simple. They arise from the Constitution. So the principles will be clearly in mind, I will briefly outline here the basic considerations of Federal law applicable to such a situation.

The underlying constitutional authority is the duty of the United States under Article IV, Sec. 4, to protect each of the states "on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." This pledge is implemented by Chapter 15 of Title 10, U. S. C and particularly 10 U.S. C. 331, which derives from an act of Congress passed in 1792. The history of the use of Federal forces at the request of governors in varied circumstances of local violence over more than a century is also instructive.

There are three basic prerequisites to the use of Federal troops in a state in the event of domestic violence:

(1) That a situation of serious "domestic Violence" exists within the state. While this conclusion should be supported with a statement of factual details to the extent feasible under the circumstances, there is no prescribed wording.

(2) That such violence cannot be brought under control by the law enforcement resources available to the governor, including local and State police forces and the National Guard. The



judgment required here is that there is a definite need for the assistance of Federal troops, taking into account the remaining time needed to move them into action at the scene of violence.

(3) That the legislature or the governor requests the President to employ the armed forces to bring the violence under control. The element of request by the governor of a State is essential if the legislature cannot be convened. It may be difficult in the context of urban rioting, such as we have seen this summer, to convene the legislature.

These three elements should be expressed in a written communication to the President, which of course may be a telegram, to support his issuance of a proclamation under 10 U. S. C. 334 and commitment of troops to action. In case of extreme emergency, receipt of a written request will not be a prerequisite to Presidential action. However, since it takes several hours to alert and move Federal troops, the few minutes needed to write and dispatch a telegram are not likely to cause any delay.

Upon receiving the request from a governor, the President, under the terms of the statute and the historic practice, must exercise his own judgment as to whether Federal troops will be sent, and as to such questions as timing, size of the force, and federalization of the National Guard.

Preliminary steps, such as alerting the troops, can be taken by the Federal government upon oral communications and prior to the governor's determination that the violence cannot be brought under control without the aid of Federal forces. Even such preliminary steps, however, represent a most serious departure from our traditions of local responsibility for law enforcement. They should not be requested until there is a substantial likelihood that the Federal forces will be needed.

While the formal request must be addressed to the President, all preliminary communications should be with me. When advised by you that serious domestic violence is occurring, I will inform the President and alert the proper military authorities. You can reach me at my office, my home, or through the White House switchboard at any hour.



Enclosed are copies of the relevant constitutional and statutory provisions and a brief summary of past occasions on which a governor has requested Federal military assistance. Your legal counsel, I am sure, keeps you fully advised of requirements of state law as well.

If you have any questions or comments, please let me know.

Sincerely,

Attorney General

Enclosures



## THE CONSTITUTION

### Article IV, Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## TITLE 10, UNITED STATES CODE

### Chapter 15

#### § 331. Federal aid for State governments.

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

\* \* \* \* \*

#### § 334. Proclamation to disperse.

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

