

No. 1

Navigating Domestic Climate Crises Responses for the Operational Judge Advocate

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Today, no nation can find lasting security without addressing the climate crisis. We face all kinds of threats in our line of work, but few of them truly deserve to be called existential. The climate crisis does.¹

The recent emergence of sweeping and pointed national climate change policy reflects the gravity of this threat to U.S. national security.² Despite deliberate action by President Biden and the Department of Defense (DoD) to address climate change, there is a void in secondary, practice-oriented sources to assist the Title 10 operational judge advocate (JA) in navigating a unit's sudden and unexpected domestic deployment in response to extreme weather events. Furthermore, resources explaining the intricacies and analysis associated with Defense Support of Civil Authorities (DSCA) tend to be outdated and difficult to find.

While providing Federal support to states in the wake of a disaster is not new, climate change presents unique challenges to these missions. As extreme weather events become more frequent and devastating,³ local entities are more likely to become overwhelmed by response requirements. Federal resources will, therefore, be called upon to augment local efforts more than ever. Adding to the complexity of this challenge is the fact that advisors at the operational level are often first- or possibly second-term

captains with limited experience as a JA, let alone in advising on DSCA. This article serves as an updated resource to specific portions of DSCA most likely to impact a brigade-level JA and offers helpful practice tips and methods of conducting legal mission analysis in the wake of increased requests for Federal assistance.⁴

After providing a brief background of climate change and its importance in U.S. national security and a short overview of DSCA, it briefly explains the request and approval procedures for Title 10 forces to support local entities in a crisis. It then offers tools for the JA advising a responding command and an explanation of the chain of command in these operational scenarios. Finally, it explains the Immediate Response Authority (IRA) of commanders to provide instant assistance to local civil authorities in circumstances of time-sensitive crises.

Background and Importance

The U.S. military's shift in its mission from counterinsurgency operations to large-scale near-peer conflict requires a shift in legal



A view of heavy rain destruction during flood rescue and recovery operations in Boulder, CO, on 16 September 2013. U.S. Soldiers with 4th Combat Aviation Brigade, 4th Infantry Division, assisted state and local emergency response efforts under IRA. (Credit: SGT Jonathan C. Thibault)

focus for JAs.⁵ In addition to anticipating the competitive actions of hostile state actors, preparation and training must also include the impacts of climate change. Climate change is one of the most significant and enduring threats to national security.⁶ However, unlike a near-peer state, climate change's security impact is not only guaranteed to affect the territorial integrity and daily lives of U.S. citizens, but its impact is arguably irreversible.⁷

Mark Nevitt, a leading scholar at the intersection of climate and security, proposes that climate change's impact on U.S. national security and stability will manifest in two ways: as a "threat accelerant" and a "catalyst for conflict."⁸ As a threat accelerant, climate change will strain existing environmental stressors; as a "catalyst for conflict," it will undermine political stability via the emergence of climate refugees and competition for resources.⁹ From the domestic

standpoint, local authorities will be unable to respond to the intensifying weather and climate threats, ensuring increased reliance on DoD assets to assist in response efforts.¹⁰ This will, in turn, act as a "threat accelerant," placing strain on the DoD's resources and capabilities as these requests become more frequent and robust.¹¹

Defense Support of Civil Authorities and the Stafford Act

Generally, states are primarily responsible for using their internal resources to respond to disasters within their borders. The use of Federal resources to support state and local response continues to be the exception to this rule.¹² The historical hesitation of Federal intervention in state and local crises originates in federalism.¹³ The Tenth Amendment of the U.S. Constitution reads, "The powers not delegated to the United States by the Constitution, nor prohibited

by it to the States, are reserved to the States, respectively, or to the people."¹⁴ "Reserved powers" include police powers; under police powers, states are primarily responsible for preparing for, responding to, and paying for disasters/emergencies within their borders.¹⁵ Therefore, the Federal Government will not become involved until and unless the state requests help because its internal response efforts are overwhelmed.

DSCA is defined as "support provided by military forces . . . in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities."¹⁶ DSCA encompasses all DoD domestic response authority and procedures.¹⁷ It is a melding of legal authority and policy that enables the DoD to execute domestic missions. These missions are not limited to natural disaster relief; they also include assistance to local law enforcement.¹⁸

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act)¹⁹ is just one of the many statutory authorities that encompass DSCA. It provides the statutory authority for employing Federal forces for domestic disaster relief efforts.²⁰ The Stafford Act does not authorize the use of Federal forces to maintain law and order.²¹ Rather, Federal resources under the Stafford Act are limited to activities such as rescue, evacuation, emergency medical treatment, restoration of public services, debris removal, and distribution of food and supplies.²²

Summary of the DSCA Request and Approval Process

When a natural disaster hits, Federal assistance is provided when it is clear that either local relief efforts have fallen short or are anticipated to fall short.²³ Requests must be made in writing from the local civil authority to the Executive Secretary of the Department of Defense.²⁴ The local civil authority requesting assistance must be the state governor or their delegated official; requests from lower-level local officials will not suffice.²⁵

The decision to provide Federal relief under DSCA falls on the Secretary of Defense and must include the analysis of six criteria: cost, appropriateness, risk, readiness, lethality, and legality.²⁶ The request must also include an offer to reimburse the DoD at the earliest available opportunity.²⁷ If the request is granted, the DoD will coordinate with the requesting agency, the Federal Emergency Management Agency (FEMA), and on-scene personnel to determine what support to provide.²⁸

Mobilization and Deployment

There are several aspects to a successful domestic deployment, from preparing and training the formation to conducting anticipatory analysis of legal issues and instituting evaluation systems once deployed. The below suggests best practices, recommendations, and tools collected from various sources to ensure operational and legal success.

Train and Prepare the Force

Domestic deployments will require legal preparation and training that spans multiple

disciplines, from operational law to Federal law to legal assistance. Accomplishing each of these quickly, correctly, and thoroughly is of critical importance.

1. Establishing the Rules for the Use of Force

While distilling the rules for the use of force (RUF) for the specific mission is the commander's responsibility,²⁹ predictably, commanders will look to their JA to spearhead this process. JAs are responsible for supporting their organizations in carrying out their planning responsibilities by providing legal advice on all aspects of mission planning.³⁰ Severely condensed and chaotic timelines associated with a disaster response will likely not allow for the traditional military decision-making process.³¹ Even so, every effort should be made to involve the S4, S3, and S2, primarily to ensure that RUF development considers all aspects of operations and intelligence.

A JA should identify whether other units will be assigned to their area of operation. A catastrophic weather event will likely require more than one Title 10 unit to deploy to the same area with a similar, yet distinct, mission. The JA must collaborate with the S3 to identify other units tasked within the anticipated area of operation and, if possible, make contact with that unit's JA before deployment. This connection is critical not only for RUF development but also for follow-on coordination.

Once RUF development is complete, the commander's approval is required. The approval authority for the RUF may be a higher headquarters (division or corps). Coordination with the staff judge advocate throughout and before submitting RUF for approval is key. Both the RUF and weapons posture should be clearly annotated on RUF cards: pocket-sized cards that must be created (ideally laminated) and issued to all deploying Soldiers. Given the severely abbreviated timeline, it may be easiest to hand out RUF cards as Service members load planes or vehicles (assuming providing them at an in-person training is impossible).

Appearances are more important than ever during domestic operational deployments. Any indication or perception that Title 10 forces exceed their authority can cause public anxiety and confusion.³²

Therefore, the importance of effectively training RUF to the lowest level cannot be overstated. Overwhelmingly, Soldiers are used to operating under the permissive umbrella of the standing rules of engagement (SROE).³³ Ensuring all deploying personnel internalize the restrictive and prescriptive nature of the standing rules for the use of force (SRUF) is key to avoiding future issues. Deployments in response to natural disasters are unique in that a response may be needed in a matter of hours. Therefore, legal offices should have a standing brief on the SRUF and the Posse Comitatus Act (PCA),³⁴ both of which may only need minor tweaks and corrections based on unique aspects of the assigned mission. To better ensure comprehension of the RUF and the consequences of failing to adhere to RUF, JAs should rely heavily on the use of vignettes with their audience rather than solely reiterating the letter of the law.³⁵

2. Individual Legal Readiness

Finally, to the extent possible given time constraints, deploying Soldiers should have the opportunity to execute any powers of attorney and wills before departure.³⁶ This may require a request for support from the legal assistance office, ensuring the maximum number of attorneys and paraprofessionals to expediently process these actions.

Legal Planning

Legal planning for a DSCA mission should include preparation to anticipate and track legal issues before and during the mission. Efforts to predict legal issues in advance will help a JA plan what personnel, resources, materials, and equipment are required to provide legal support throughout all deployment phases.³⁷

1. Preparing for the Operation:

The Legal Planning Matrix

One method to assist in planning is to use the legal planning matrix (LPM).³⁸ The LPM is derived from the legal preparation of the battlefield (LPB), a systematic approach to anticipating legal issues that Lieutenant Colonel (Retired) Geoffrey Corn developed while a professor at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.³⁹ Orig-

inally developed to anticipate and plan for an armed conflict,⁴⁰ LPB can be modified to assist in weather-related domestic relief scenarios. The DSCA LPM contemplates six⁴¹ functional legal areas for a domestic relief response and cross-sections those areas with each phase of the operation. These six legal areas are legal personnel/equipment, command and control/authorities, standard rules of force/posse comitatus act, staff integration and coordination, force administration and support, and force discipline/military justice.⁴² The operational phases are mobilization and pre-deployment, load-out, the relief mission, civil unrest, and redeployment.⁴³ These legal areas and phases are unique to DSCA missions. JAs should analyze the legal concerns for each phase to anticipate requirements and issues before they develop.

For a complete demonstration of the use of the LPM, see Appendix A. JAs are encouraged to use this model as a tool to think through, to the fullest extent possible, legal problems in the preparation phase of deployment.

2. During the Operation: The Running Estimate

Running estimates are long-standing doctrinal tools that all members of a staff use, including legal personnel. They facilitate the continuous assessment of the operational environment and track ongoing legal issues. JAs are directed to employ running estimates,⁴⁴ as doing so allows a commander to understand legal concerns and limitations.⁴⁵ At baseline, running estimates contain facts, assumptions, friendly force statuses, enemy activities and capabilities, civil considerations, and conclusions/recommendations with associated risks.⁴⁶ However, the doctrine allows flexibility for each staff section to manage information related to their individual areas of expertise.⁴⁷ In order to be most effective, the legal estimate should be tailored to not only meet the needs of each specific staff element but also to a specific mission.

Colonel Ryan Howard and Major M. Keoni Medici created a helpful example of a legal running estimate.⁴⁸ Appendix B provides a running estimate modified to fit the needs of a weather-related DSCA mission. Like all running estimates, this

DSCA-specific tool prompts the user to identify legal and mission authorities, legal support status, specified/implied/essential tasks, constraints, significant events in the last and next twenty-four hours, ongoing relief missions, and brigade orders.⁴⁹ This running estimate acknowledges weather-specific constraints on the legal mission, including the legal basis for the mission (IRA or FEMA), connectivity and power issues, and SRUF limitations.⁵⁰ Additional tailoring is encouraged to meet the specific needs of a particular mission.

Command and Control: The Dual-Status Commander

During DSCA missions, advising JAs will be expected to understand and explain the unique existence of the dual-status commander (DSC). Two of the most significant shortcomings in the Federal response to Hurricane Katrina were the failure to integrate military support from different Services or components and a lack of unity of command.⁵¹ Unity of command requires every mission to fall within the authority of a single, responsible commander.⁵² In other words, two commanders may not simultaneously exercise the same command relationship over the same force.⁵³ This did not exist in August 2005, and the confusion it caused directly impacted the Katrina relief effort. To address this issue, Congress enacted legislation establishing the DSC in 2006.⁵⁴

A DSC is a commissioned officer of the Regular Army or Air Force, or a federally recognized Army National Guard or Air National Guard officer, authorized by the Secretary of Defense, and with the consent of the applicable governor, to exercise legal command over state National Guard and Federal active-duty forces.⁵⁵ This individual holds a commission in both the active and National Guard components.⁵⁶ A DSC may not command both Federal and state military personnel at the same time. Instead, this “dual status” authorizes the DSC to command Federal and state forces in a mutually exclusive manner.⁵⁷ In other words, a DSC may not give an order to both Title 10 and Title 32 forces on the same document. Their command and control of one chain of command must be entirely separate from the other.

DSC-led joint task forces are intended for use in both pre-planned and no-notice

events, including natural disasters.⁵⁸ Certain conditions must be met, however, to employ an established DSC. If the response to an incident includes or has the potential to include both Title 10 and 32 forces, The Adjutant General (TAG) for the governor of the affected state will recommend activating the DSC to the governor.⁵⁹ The governor will then contact the Secretary of Defense, while TAG contacts the chief of the National Guard Bureau.⁶⁰ Once approved and activated, this dual status typically requires two deputy commanders: a National Guard officer in state status and a Federal military officer.⁶¹ A DSC provides the benefit of a single state and Federal commander in an operating space and mitigates the likelihood of confusion or duplicating efforts.⁶² The DSC provides a unity of effort, enabling the smooth execution of the relief mission. However, the DSC is not intended for use in civil disturbance operations, homeland defense operations, or for Federal military commanders to provide assistance under their immediate response authority.⁶³

The increased frequency of natural disasters requiring a joint state and Federal response necessitated pre-identified DSCs in fifty states and three U.S. territories.⁶⁴ These DSCs are appointed via nomination and an agreement, which dictates the Federal and state forces’ legal, operational, fiscal, and administrative responsibilities.⁶⁵ Typically, the DSC is a general officer, vetted and agreed upon by both the governor (or delegate) and the President (or delegate).⁶⁶ A detailed memorandum of agreement (MOA) is created in tandem to this process to establish the legal and operational responsibilities of each party with regard to the DSC.⁶⁷

In cases where a disaster affects multiple states, there cannot be a single DSC to command the entire response. In a multi-state response, it may be necessary to employ multiple DSCs, each of whom would have control within the boundaries of their state.⁶⁸ All DSCs activated in response to a disaster operate under the operational control of the U.S. Northern Command (USNORTHCOM) commander for their Title 10 chain of command.⁶⁹ DSCs also have a state chain of command through TAG to the governor.⁷⁰

A JA will need to identify the DSC as well as request, read, and understand



U.S. Soldiers with the 4th Combat Aviation Brigade, 4th Infantry Division, evacuate elementary school students in the wake of extreme flooding on 14 September 2013 during emergency response efforts under IRA. (Credit: SSG Wallace Bonner)

the standing MOA. Moreover, the ability to explain the role of the DSC to their commander is of paramount importance, especially if the DSC is of another component or Service. Identifying the DSC's legal advisor is critical for technical chain coordination as the mission progresses. National Guard and Federal staff should integrate, to the greatest extent possible, to best support both their title-specific deputy and the DSC. This integration should include synchronized battle rhythms as well as integrated processes and procedures.⁷¹

Immediate Response Authority

In circumstances where this formal request for assistance process would result in loss of life, human suffering, or great property damage, commanders have the authority to respond immediately to requests for assistance from civil authorities.⁷² IRA is rooted in the military's historical role of providing

immediate or emergency assistance to the civilian community in times of overwhelming disaster.⁷³ While IRA is not founded in statute,⁷⁴ the U.S. Supreme Court's interpretation of the common law principle of necessity by a military commander has long supported its employment.⁷⁵

While examples of commanders exercising IRA exist,⁷⁶ its use is historically rare. Nevertheless, in the wake of rapidly worsening climate crises, IRA has the potential to become a more frequent occurrence. Therefore, the operational legal advisor must comprehensively grasp IRA's analytic framework to best advise commands receiving these urgent requests.

Requests and Approval for Immediate Assistance

IRA's present-day authority derives from DoD Directive 3025.18.⁷⁷ In situations warranting IRA, civil authorities must

still request assistance.⁷⁸ Absent a request, Federal commanders may not provide support.⁷⁹ "Civil authority" is defined as "any elected or appointed officer or employee of the government of the United States, the governments of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and [U.S.] Virgin Islands, Guam, insular areas, and political subdivisions thereof."⁸⁰ Therefore, a request for assistance under IRA may originate from *any* local elected leader (e.g., a mayor, school board president, or Federal judge).⁸¹ Assistance provided under IRA allows the initial assistance request to be oral, followed by a written request.⁸² This written request can take any form, from an email to a handwritten note. In June 2016, Rainelle, West Virginia, experienced overwhelming flooding that transformed entire communities into lakes.⁸³ The flooding caused catastrophic property damage and killed at least



Members of the 811th Ordnance Company, 321st Ordnance Battalion, 38th Regional Support Group, perform rescue efforts in partnership with local and state emergency first responders in Rainelle, WV, on 24 June 2016. (Credit: MAJ Sean Delpech)

twenty-five people.⁸⁴ Mayor of Rainelle Andrea Pendleton handwrote her request for immediate Federal assistance on a piece of lined notebook paper.⁸⁵

The request should include an offer to reimburse, though this is not required. Mayor Pendleton's request had no offer to reimburse.⁸⁶ However, this did not delay the commander's response. In fact, DoD Directive 3025.18 states that response will not be delayed due to lack of reimbursement.⁸⁷ If a civil authority does not make an offer to reimburse, the receiving commander must send a request for reimbursement.⁸⁸

DoD Directive 3025.18 provides some legal maneuverability regarding what kind

of "commander" may authorize an IRA request. While the directive states a request should be directed to the installation commander,⁸⁹ nothing indicates it is required. The directive bestows IRA to "Federal military commanders, heads of DoD components, and/or responsible DoD civilian officials."⁹⁰ The *Manual for Courts-Martial* defines "commander" as "a commissioned or warrant officer who, by virtue of rank and assignment, exercising primary command authority over a military organization or prescribed territorial area, which under pertinent official directives is recognized as a 'command.'"⁹¹ This is the same definition for "commander" found in Army

Regulation 600-20, *Army Command Policy*, paragraph 1-6;⁹² and Navy JAG Instruction 5800.7G, paragraph 0106.⁹³ IRA, therefore, provides the opportunity for commanders at all levels to receive, consider, and act upon a request for immediate assistance.⁹⁴ On 23 June 2016, First Lieutenant Nicholas Kranz, commander of the 811th Ordnance Company, received Mayor Pendleton's written request and immediately activated his company to evacuate citizens from the rising waters.⁹⁵

Evaluation Criteria to Exercise IRA

A commander's IRA is a vehicle to prevent unnecessary loss of life and property when time does not allow for a traditional request for assistance. Although IRA may be interpreted broadly to fulfill this humanitarian need, it must also be balanced with the principle of federalism. To assist with this analysis, a commander should consider the following criteria in DoD Manual 3025.01:

- (1) whether action is needed to save lives, prevent human suffering, or mitigate great property damage;
- (2) whether the time to act does not permit obtaining higher headquarters approval;
- (3) whether military actions do not involve the use of lethal force or subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory;
- (4) whether actions must not subject DoD personnel to undue risk;
- (5) whether commitment by the request to reimburse DoD is not a factor;
- (6) the ability, if known, of non-defense entities to respond to the urgency of the request; and
- (7) whether responding should not jeopardize DoD missions.⁹⁶

All seven of these factors must be met to employ IRA.

Change 2 to DoD Directive 3025.18 removed the requirement that the approving commander be "local," providing commanders the flexibility to respond to requests for assistance even if the requests are outside the traditional "local" area.⁹⁷ While the physical distance between commander and disaster is no longer dispositive, it should still be a consideration in determining the DoD's ability to support the request. With



The Second General Support Aviation Battalion, 4th Aviation Regiment, 4th Combat Aviation Brigade, 4th Infantry Division, takes a celebratory flyby to say “thank you” to the Colorado National Guard and all the emergency agencies involved in flood rescue operations after concluding its mission under IRA in Boulder, CO, on 19 September 2013. (Credit: SGT Jonathan C. Thibault)

any IRA assessment, recency is key. Relief provided under this authority should be within hours of the catastrophic event.⁹⁸ This may inherently limit a commander’s ability to effectively respond if the location of the disaster is too far away.

A commander may also rely on other informational resources (news, intelligence reports, etc.) to determine if a request warrants the exercise of IRA. Finally, while a company commander may conduct this evaluation and approve a request, practically speaking, the request should be pushed to the brigade level, at a minimum, for situational awareness. While further approval beyond the receiving command-

er is not required, IRA does require rapid and prescriptive reporting requirements described below.

Notification Requirements

The use of IRA requires immediate notification to the National Joint Operations and Intelligence Center (NJOIC).⁹⁹ The notification must include seven key details: the civil authority requesting support and the time of the request, the type of support requested, an incident description, the type of support provided, the status of personnel responding, the duration of support, and the cost of support.¹⁰⁰ The JA should be prepared to assist in drafting, or at a minimum

reviewing, this notification. The NJOIC will, in turn, notify USNORTHCOM and/or U.S. Indo-Pacific Command (USIN-DOPACOM) of the response and reassess the situation no later than seventy-two hours after receipt of the request.¹⁰¹ While commanders may not normally continue support under IRA beyond seventy-two hours, should the need for assistance persist, it may continue with constant reassessment and reporting.¹⁰²

Fiscal Concerns

Exercising IRA means initially acting without FEMA’s support or financial reassurance. DoD expenditures for actions taken pursuant

to a traditional FEMA request for assistance receive FEMA reimbursements.¹⁰³ However, this reimbursement mechanism is not generally available for IRA.¹⁰⁴ Rather, DoD doctrine states that IRA assistance will be provided on a cost-reimbursable basis.¹⁰⁵ As mentioned above, reimbursement assurance by the requesting entity is not necessary, nor should a response be delayed due to fiscal concerns.¹⁰⁶ Therefore, the responding unit's existing operations and maintenance funds for the current fiscal year will initially fund a command's response.¹⁰⁷ JAs should, therefore, advise commands of the high likelihood that unit funds will be spent and possibly not be reimbursed.

Conclusion

Active-duty DoD components should not view domestic disaster relief missions as an unusual occurrence; worsening climate crises mean this is no longer a "them" problem. Extreme weather events are not just likely; they are inevitable and will require Federal resources otherwise unavailable to local and state entities. JAs are in the best position to advise their commands on these missions when armed with the knowledge, tools, and historical context to ensure mission success. The clear and present threat that climate crises pose and the policy initiatives to prioritize planning for its effects put the force on notice that it is not a matter of if, but when. This article offers a foundational resource for the anticipatory planning and eventual execution of robust domestic relief missions. Confronting the legal complexities of this unconventional threat now will help ensure mission success when the call for help eventually sounds, and your command answers. **TAL**

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Notes

1. Lloyd J. Austin III, U.S. Sec'y of Def., Address at the 2021 Leaders' Summit on Climate (Apr. 22, 2021), <https://www.defense.gov/News/Transcripts/Transcript/Article/2582828/secretary-austin-remarks-at-climate-change-summit>.

2. See THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 9 (2022) [hereinafter 2022 NSS]; NAT'L INTEL. COUNCIL,

NATIONAL INTELLIGENCE ESTIMATE: CLIMATE CHANGE AND INTERNATIONAL RESPONSES INCREASING CHALLENGES TO US NATIONAL SECURITY THROUGH 2040, at I (2021) [hereinafter NIE]; U.S. DEP'T OF DEF., 2022 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 5 (2022) [hereinafter 2022 NDS]; U.S. DEP'T OF DEF., SUSTAINABILITY REPORT & IMPLEMENTATION PLAN 1 (2020); U.S. DEP'T OF DEF., CLIMATE ADAPTATION PLAN 1 (2021); U.S. DEP'T OF DEF., CLIMATE RISK ANALYSIS 2 (2021) [hereinafter CRA]; U.S. DEP'T OF DEF., DIR. 4715.21, CLIMATE CHANGE ADAPTATION AND RESILIENCE 1 (Aug. 31, 2016); U.S. DEP'T OF ARMY, ARMY CLIMATE STRATEGY IMPLEMENTATION PLAN FISCAL YEARS 2023-2027 (2022) [hereinafter ARMY IMPLEMENTATION PLAN]; U.S. DEP'T OF NAVY, CLIMATE ACTION 2030 1 (2022) [hereinafter NAVY CLIMATE ACTION]; U.S. DEP'T OF AIR FORCE, CLIMATE ACTION PLAN (2022) [hereinafter AF CAP].

3. Jesse E. Bell et al., *Changes in Extreme Events and the Potential Impacts on Human Health*, 68 J. AIR WASTE MGMT. ASSOC. 265 (2018) (stating that extreme weather and climate-related events have been increasing in frequency and intensity in the United States over the last several decades).

4. This article will only focus on domestic responses. The author recognizes the potential for international response requirements under Foreign Humanitarian Assistance. While this area is relevant and necessary to evaluate in the wake of climate change, it falls outside the scope of this article.

5. See Lieutenant General Charles Pede & Colonel Peter Hayden, *The Eighteenth Gap: Preserving the Commander's Legal Maneuver Space on "Battlefield Next,"* MIL. REV., Mar.-Apr. 2021, at 6.

6. See CRA, *supra* note 2, at 2; 2022 NSS, *supra* note 2, at 9; Jim Garamone, *Hicks Defines Need to Focus DOD on Climate Change Threats*, DoD NEWS (Aug. 30, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3510772/hicks-defines-need-to-focus-dod-on-climate-change-threats>.

7. John Comiskey et al., Climate Security: A Pre-Mortem Scenario Planning to Homeland Defense, 2020 Homeland Defense Academic Symposium, NORAD-NORTHCOM North American Defense and Security Academic Alliance 2 (2020), <https://www.northcom.mil/Portals/28/ComiskeyLarranagaCarlsonFinalwDisclaimer.pdf>; 2022 NSS, *supra* note 2, at 9; NIE, *supra* note 2, at 4.

8. Mark P. Nevitt, *On Environmental Law, Climate Change, & National Security Law*, 44 HARV. ENV'T L. REV. 321, 321 (2020).

9. *Id.* at 325, 345.

10. See 2022 NDS, *supra* note 2, at 4.

11. See CRA, *supra* note 2, at 8; 2022 NDS, *supra* note 2, at 4.

12. See Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5208; CTR. FOR L. AND MIL. OPERATIONS (CLAMO), THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, DOMESTIC OPERATIONAL LAW 4 (2021) [hereinafter DOPLAW HANDBOOK].

13. See Commander Jim Winthrop, *The Oklahoma City Bombing: Immediate Response Authority and Other Military Assistance to Civil Authority (MACA)*, ARMY LAW., July 1997, at 7-8.

14. U.S. CONST. amend. X (original style retained).

15. See *Berman v. Parker*, 348 U.S. 26 (1954) (stating "[p]ublic safety, public health, morality, peace and qui-

et, law and order . . . are some of the more conspicuous examples of the traditional application of the police power" (however, these examples do not constitute the full scope of state police powers)); Major Vo-Laria N. Brooks, 283d SOLO: Defense Support of Civil Authorities, at slide 9 (2021) (unpublished PowerPoint presentation) (on file with author).

16. JOINT CHIEFS OF STAFF, JOINT PUB. 3-28, DEFENSE SUPPORT OF CIVIL AUTHORITIES I-2 (29 Oct. 2018) [hereinafter JP 3-28].

17. See U.S. DEP'T OF DEF., DIR. 3025.18, DEFENSE SUPPORT OF CIVIL AUTHORITIES (29 Dec. 2010) (C2, 19 Mar. 2018) [hereinafter DoDD 3025.18]; see also U.S. DEP'T OF DEF., INSTR. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (8 Feb. 2019) [hereinafter DoDI 3025.21].

18. See JP 3-28, *supra* note 16, at I-2.

19. 42 U.S.C. §§ 5121-5208.

20. JENNIFER K. ELSEA & R. CHUCK MASON, CONG. RSCH. SERV., RS22266, THE USE OF FEDERAL TROOPS FOR DISASTER ASSISTANCE: LEGAL ISSUES 4 (2012) [hereinafter USE OF FEDERAL TROOPS].

21. *Id.*

22. *Id.* at 5.

23. JP 3-28, *supra* note 16, at I-4.

24. DoDD 3025.18, *supra* note 17, at 3.

25. 44 C.F.R. § 206.35a (2022); DOPLAW HANDBOOK, *supra* note 12, at 4; JP 3-28, *supra* note 16, at I-4.

26. DoDD 3025.18, *supra* note 17, at 4.

27. *Id.*

28. MICHAEL J. VASSALOTTI & LAWRENCE KAPP, CONG. RSCH. SERV., IF11324, DEFENSE PRIMER: DEFENSE SUPPORT OF CIVIL AUTHORITIES (2022) [hereinafter DEFENSE PRIMER].

29. CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01B, STANDING RULES FOR THE USE OF FORCE FOR US FORCES, encl. L, para. 3 (13 June 2005).

30. JOINT CHIEFS OF STAFF, JOINT PUB. 3-84, LEGAL SUPPORT, at I-13 (2 Aug. 2016).

31. See U.S. DEP'T OF ARMY, DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS paras. 2-92 to 2-94 (31 July 2019) [hereinafter ADP 5-0] (describing the military decision-making process as an orderly, analytical process consisting of seven steps where each step requires inputs, and a series of sub-steps; this useful but intricate process takes more time than a unit will likely have when called to assist in foreign disaster relief).

32. See Crispin Burke, *4 Lessons the Military Learned in the Wake of Hurricane Katrina*, TASK & PURPOSE (Aug. 27, 2015), <https://taskandpurpose.com/news/4-lessons-the-military-learned-in-the-wake-of-hurricane-katrina> (stating the military should have taken more of a support role to the National Guard in the Katrina response and the failure to do so resulted in the appearance that Federal forces were leading the efforts, which should never have been the case); The author conducted multiple interviews with key personnel surrounding lessons learned from the Katrina response. These interview notes are on file with the author.

33. See NAT'L SEC. L. DEP'T, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, OPERATIONAL LAW HANDBOOK ch. 5, para. V(3)(c) (2024).

34. 18 U.S.C. § 1385.

35. See, e.g., Anya Samek et al., *Using Vignettes to Improve Understanding of Social Security and Annuities*, NAT'L BUREAU OF ECON. RSCH. (Aug. 2019), <https://www.nber.org/papers/w26176> (demonstrating that exposure to vignettes leads individuals to better understand complex topics by 10 to 15 percentage points).
36. See CTR. FOR L. AND MIL. OPERATIONS (CLAMO), THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, LAW AND MILITARY OPERATIONS IN CENTRAL AMERICA: HURRICANE MITCH RELIEF EFFORTS 1998-1999, at 34 (2000) [hereinafter HURRICANE MITCH].
37. *Id.* at 35.
38. *Id.* at 36.
39. *Id.* at 198 (Then-MAJ Geoffrey Corn, professor in the International and Operational Law Division at the then-named Judge Advocate General's School in Charlottesville, Virginia, developed the LPB concept to be used in an elective that was offered during the 46th Graduate Course. It was later printed for distribution during that year's Worldwide Continuing Legal Education conference).
40. *Id.*
41. *Id.*
42. See *infra* Appendix A.
43. *Id.*
44. ADP 5-0, *supra* note 31, para. 5-12.
45. Major Ryan Howard & Captain Keoni Medici, *The Running Estimate*, OPERATIONAL L.Q., June 2017, at 8 (CAC/EAMS-A access required).
46. U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, COMMANDER AND STAFF ORGANIZATION AND OPERATIONS para. 7-11 (May 2022) [hereinafter FM 6-0].
47. *Id.* para. 2-9.
48. Howard & Medici, *supra* note 45, at 8. The development of this running estimate was based on then-Major Howard and then-Captain Medici's observations at the Joint Readiness Training Center at Fort Polk, Louisiana. *Id.*
49. See *infra* Appendix B.
50. *Id.*
51. Trent O. Dudley, The Evolution of Dual Status Command Authorities: A New Construct for Implementation 3 (2016) (Air War College, Air University), <https://apps.dtic.mil/sti/pdfs/AD1036952.pdf>.
52. U.S. DEP'T OF ARMY, DOCTRINE PUB. 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES para. 2-100 (31 July 2019) [hereinafter DOC. PUB. 6-0].
53. *Id.*
54. 32 U.S.C. §§ 315, 325 (2006).
55. JP 3-28, *supra* note 16 at C-1; Colonel John T. Gereski & Lieutenant Colonel Christopher R. Brown, *Two Hats are Better Than One: The Dual Status Commander in Domestic Operations*, ARMY LAW., June 2010, at 72, 73.
56. Dudley, *supra* note 51, at 3.
57. JP 3-28, *supra* note 16, at C-1.
58. N. AM. AEROSPACE DEF. COMMAND (NORAD) & U.S. N. COMMAND (USNORTHCOM), INSTR. 10-127, NORAD AND USNORTHCOM TITLE 10 SUPPORT TO DUAL STATUS COMMANDER LED JOINT TASK FORCE PROGRAM 8 (24 Mar. 2022) [hereinafter INSTR. 10-127].
59. *Id.* at 9.
60. *Id.* NORAD and USNORTHCOM Instruction 10-127 details the process in which the governor requests and SECDEF approves activation of the DSC. *Id.*
61. JP 3-28, *supra* note 16, at C-7.
62. Gereski & Brown, *supra* note 55, at 77.
63. JP 3-28, *supra* note 16, at C-1.
64. THE NAT'L GUARD, DUAL STATUS COMMANDER (DSC) FACT SHEET (2020).
65. Gereski & Brown, *supra* note 55, at 75.
66. *Id.*
67. JP 3-28, *supra* note 16, at C-2; Gereski & Brown, *supra* note 55, at 75.
68. JP 3-28, *supra* note 16, at C-2; CTR. FOR L. AND MIL. OPERATIONS (CLAMO), THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, DOMESTIC DISASTER RESPONSE 2017: HURRICANES HARVEY, IRMA, AND MARIA: LESSONS LEARNED FOR JUDGE ADVOCATES 154 (2017) [hereinafter 2017 DISASTER RESPONSES].
69. INSTR. 10-127, *supra* note 58, at 13.
70. *Id.*
71. Gereski & Brown, *supra* note 55, at 77.
72. DoDD 3025.18, *supra* note 17, at 5.
73. See Winthrop, *supra* note 13, at 4, 8.
74. *Id.* at 5.
75. See *Mitchell v. Harmony*, 59 U.S. 115 (1851) (describing the doctrine of necessity as a response to events that are immediate and impending, where the action of the civil authority would be an inadequate response; the Court reasons that necessity is related to the "public service"); *United States v. Russell*, 80 U.S. 623, 627-28 (1871) (justifying the Federal seizure of private vessels for military service during the Civil War on the basis of necessity; the Court states that necessity is justified in cases of "public danger").
76. See Winthrop, *supra* note 13, at 3-5 (citing multiple examples of the use of IRA: in 1995 the commander of Hamilton Air Force Base provided personnel to build levees and evacuate civilians immediately following the devastating flood in Yuba-Marysville, California; the 1994 Flint River Flood in southwest Georgia left 40,000 people homeless, and the commander of the Marine Corps base in Albany, Georgia, provided personnel to assist in rescue efforts; immediately following the Oklahoma City bombing in April 1995, the commander of Fort Sill, Oklahoma, relied on IRA to provide two MEDEVAC helicopters and two bomb detection dog teams hours before President Clinton declared the event a national emergency).
77. DoDD 3025.18, *supra* note 17.
78. *Id.* para. 4(d).
79. 2017 DISASTER RESPONSES, *supra* note 68, at 19.
80. JP 3-28, *supra* note 16, at GL-6.
81. E-mail from Robert Gonzales, Senior Nat'l Sec. L. Att'y, U.S. Army North, to author (Nov. 23, 2022, 00:58 EST) (on file with author). U.S. Army North's (NORTHCOM's) interpretation of "civil authority" is broad, and explicitly includes all elected governmental positions, regardless of the nature or area of responsibility. *Id.* Thus, a request should be considered regardless of the office from which the request originates. *Id.*
82. DoDD 3025.18, *supra* note 17, at 3.
83. Brian Godette, *U.S. Army Reserve's 811th Soldiers Answer the Call in West Virginia*, DVIDS (June 27, 2016), <https://www.dvidshub.net/news/202550/us-army-reserves-811th-soldiers-answer-call-west-virginia>.
84. *Id.*
85. *Id.*
86. *Id.*
87. DoDD 3025.18, *supra* note 17, at 5.
88. U.S. DEP'T OF DEF., MANUAL 3025.01, DEFENSE SUPPORT OF CIVIL AUTHORITIES: DoD INCIDENT RESPONSE, vol. 2, para. 5.6(b) (Aug. 11, 2016) (C1, Apr. 12, 2017) [hereinafter DoDM 3025.01].
89. DoDD 3025.18, *supra* note 17, at 3. The installation commander includes a civilian installation commander. *Id.*
90. *Id.*
91. MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. V, ¶ 2a (2024) [hereinafter MCM].
92. U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 1-6 (24 July 2020) [hereinafter AR 600-20].
93. U.S. DEP'T OF NAVY, JAGINST 5800.7G, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) sec. 0106(a) (15 Jan. 2021) (C2, 1 Dec. 2023).
94. E-mail from Robert Gonzales, Senior Nat'l Sec. L. Att'y, U.S. Army North, to author (Jan. 11, 2023, 09:11 EST) (on file with author).
95. Godette, *supra* note 83.
96. DoDM 3025.01, *supra* note 88, para. 5.5(b).
97. See DoDD 3025.18, *supra* note 17.
98. DoDD 3025.18, *supra* note 17, para. 4-5; Winthrop, *supra* note 13, at 7.
99. U.S. Army NORTHCOM directs that the DoD official approving the initial response do so through their higher headquarters. *Admin and Logistics*, in CHAIRMAN OF THE JOINT CHIEFS OF STAFF, SUPPORT OF CIVIL AUTHORITIES EXORD 4.B.4.A (2019). The email address for this notification is mbx.njoic-battle-captain-nmcc@mail.mil and the phone number is 703-692-4595. *Id.* This notification is expected within two hours of the decision to exercise IRA. *Id.*
100. DoDM 3025.01, *supra* note 88, para. 5.5(d); 2017 DISASTER RESPONSES, *supra* note 68, at 14.
101. DEFENSE PRIMER, *supra* note 28, at 1.
102. DOPLAW HANDBOOK, *supra* note 12, at 42.
103. U.S. DEP'T OF DEF., 7000.14-R, DoD FINANCIAL MANAGEMENT REGULATION vol. 11A, ch. 19, 19-9 (July 2015).
104. *Id.* FEMA has, on occasion, provided reimbursement to the DoD for IRA activities via "ratification" of the DoD action after the fact. Winthrop, *supra* note 13, at 7 n.47. However, FEMA is under no obligation to do so, and this retroactive approval cannot be relied on. *Id.*
105. DoDD 3025.18, *supra* note 17, at 5.
106. *Id.*
107. See National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, sec. 301, 135 Stat. 1541, 1625 (2021) (appropriating operations and maintenance funds for the use of the Armed Forces and other activities and agencies of the DoD for expenses not otherwise provided for); DoDM 3025.01, *supra* note 88, para. 5.6(a); CONT. & FISCAL L. DEP'T, THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, FISCAL LAW HANDBOOK 2-10 (2022).