



Center on Conscience & War

Board of Directors

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Are you or a loved one in the military and having concerns about being mobilized to patrol the Black Lives Matter demonstrations?

You may have options available to you to protect not only you and your conscience, but also your and others' lives. **This is general guidance only.** There is not a one-size fits all solution. Please reach out to us to speak directly to your situation and about specific options you (or your loved one) may have.

If you are a service member...

The most important thing you can do right now is prepare a plan. Even if you have not been mobilized yet, be prepared for what you will do if you are. If you are in the National Guard, the mobilization of your unit may be considered voluntary. In other words, your command may put out a call to see who is available. Even if they say it is mandatory, you could be excused if you have a documented issue that would prevent your participation, such as a family or financial hardship, no one to care for your children in your absence, a medical issue, an aging or sick parent or sibling or spouse, etc. Those things should be documented now, while you have the luxury of time – before you are called up. We can help you with this.

Lawful v. Unlawful Orders

Lawful orders do not violate the Constitution.

Article 92 of the UCMJ defines the consequences of disobeying an order. If you are prosecuted for disobeying, only a military judge can determine if the order was lawful. **If you believe you are facing an unlawful order, the best thing that you can do is be prepared to document the situation immediately in the moment.** This could mean having an app on your phone that can record with one tap, without having to unlock your phone.

If someone in your command tells you to do something that you believe violates the constitutional rights of another person, ask, “is that a direct order?” If the command says it is, ask, “under what authority is this order lawful?” And state, “I believe this is an unlawful order.” We have seen in numerous situations that simply asking these questions will halt an unlawful order. **Make every effort to document this exchange and the moments that follow. Documenting this exchange could stop the unlawful order or could serve as evidence for you in your defense, if necessary.**

continued

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“Stopping war one soldier at a time”

Making a Conscientious Objection Claim

Under military regulations, which also apply to the National Guard, conscientious objectors have a right to be honorably discharged or to be reassigned as conscientious objectors, depending on the nature of their beliefs. There are two classifications of conscientious objection (CO): The first is an opposition based on religious, moral or ethical grounds to war in any form. This means that you oppose your participation in any and all wars, and you seek full discharge from the military. This is a belief that may have only recently “crystallized” for you, as a result of being mobilized or facing the threat of mobilization. You may realize that your moral, ethical or religious beliefs are telling you that you not only oppose being called to take up arms against civilian protesters, but also that you can no longer support the mission of the military in general, which is to fight wars.

The second classification of conscientious objection is noncombatant, meaning that you have a deeply held moral, ethical or religious opposition to personally bearing arms and your *personal participation* in war, but you still wish to remain in the military. Either of these **claims of conscientious objection would need to be made in writing as soon as possible**. We are here to help you with this process. Once your CO claim is documented, your command is required to accommodate your beliefs, pending consideration of your claim. **This means that your CO claim should protect you from participation in activities that are in conflict with your conscience, including training with or carrying a weapon.** This may be enough to take you off a National Guard or Reserve mobilization or to keep you out of an active zone where carrying a weapon may be required. **Please call or email us immediately to begin this process.**

In addition, if you have a *religious* objection to participating in the actions you are being ordered to take, you may have a right to an exemption under a federal law called the Religious Freedom Restoration Act (RFRA), **even if your objection does not extend to war in any form, or otherwise does not satisfy the conscientious objector rules. If you believe this may apply to you, please get in touch with us, and we can help you document your objection clearly with your commanding officer. In this case, it must be clear that your objection is *religious* in nature.**

Please note that neither conscientious objector status nor RFRA protects political objections.

Your Right to Join the Protests

You still have First Amendment rights as a service member. You can download Department of Defense Instruction (DODI) 1325.06 to learn more about your rights regarding protesting. While that regulation imposes some limitations, you can take part in protests and you can post your opinions to social media. Just be sure not to do so while on duty, while wearing your uniform, or in a way that could seem as though you are trying to represent the military. It is not advised to post pictures of yourself in your uniform alongside political statements on social media.

Be advised that you still risk arrest, even if you are behaving lawfully and peacefully at a protest. Even if the civilian charges are dropped or you are found not guilty, your command may still take action against you for the arrest.

You are not alone! We are here to support you and make sure you are able to stay safe and stay true to your conscience. Call 202-483-2220, visit our website centeronconscience.org or email us at ccw@centeronconscience.org.