

# **Whole Of Government Approach To Countering Domestic IEDS: Leveraging Military Capabilities**



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## EXECUTIVE SUMMARY

Law enforcement authorities, together with the intelligence community, have been successful in thwarting many recently attempted IED attacks targeting the United States. However, the potential for a sustained IED campaign against our nation remains. Considering that the means available to respond to domestic IEDs have grown significantly with Homeland Security grants, the issuance of Homeland Security Presidential Directive-19 and the recent expansion of military counter IED capabilities, we have a responsibility to optimize those resources to provide our nation with the best possible response. Moreover, current fiscal constraints demand a more efficient use of our ample resources in this critical area of vulnerability. Shortfalls in current law, military doctrine, organizational structure, training and information sharing protocols are preventing an optimized and united, or “whole of government” approach to addressing this threat as called for in HSPD-19 and the National Security Strategy. This paper explores those shortfalls and recommends several solutions. Chief among them is establishment of a DoD counter-IED Joint Task Force (JTF) headquarters to facilitate improved response, training and sharing of information from military Explosive Ordnance Disposal (EOD) forces in support of civil law enforcement authorities.

**TABLE OF CONTENTS**

**I. INTRODUCTION.....5**

**II. CURRENT LAW, POLICY AND STRATEGY..... 7**

**III. CURRENT STRUCTURE AND INFORMATION FLOW..... 12**

**a. CIVIL LAW ENFORCEMENT..... 13**

**b. MILITARY..... 17**

**IV. RECOMMENDATIONS AND CONCLUSIONS..... 21**

**V. BIBLIOGRAPHY..... 25**

*“Terrorists have repeatedly shown their willingness and ability to use explosives as weapons worldwide, and there is ample intelligence to support the conclusion that they will continue to use such devices to inflict harm. The threat of explosive attacks in the United States is of great concern considering terrorists’ ability to make, obtain, and use explosives, the ready availability of components used in IED construction, the relative technological ease with which an IED can be fashioned, and the nature of our free society.”<sup>1</sup>*

*Homeland Security Presidential Directive 19*

## **I. Introduction**

Improvised Explosive Device (IED) attacks within the United States have occurred sporadically for many years with some occasional high profile incidents such as the “Unabomber” attacks from 1978 – 1995, the World Trade Center bombing in 1993, and the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. However, the IED campaign that developed in Iraq during Operation IRAQI FREEDOM brought this threat to the forefront of American public discourse more so than any of the previous domestic IED attacks. Logically, it should follow that the experience gained by terrorists operating in Iraq and Afghanistan, combined with their demonstrated opposition to American ideals and the relative ease of making and employing IEDs in our free and open society, would lead to an eventual domestic campaign of terrorist IED attacks. The Al-Qaeda inspired bombings in 2004 targeting commuter trains in Madrid and in 2005 targeting London’s public transportation systems demonstrated that IEDs could be employed effectively by terrorists outside of the armed conflicts in Afghanistan and Iraq against well-developed nations. In response to this growing threat, President Bush issued Homeland Security Presidential Directive 19 (hereafter referred to as HSPD-19) in 2007 entitled *Combating Terrorist use of Explosives in the United States*. In HSPD-19, the President called for establishment of a national strategy and plan to address the prospect of terrorist IED attacks in the homeland, and defined the term IED as “an explosive device that is fabricated in an improvised manner incorporating explosives or other destructive, lethal, pyrotechnic, or incendiary chemicals.”<sup>2</sup>

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<sup>1</sup> George W. Bush, *Homeland Security Presidential Directive 19 Combating Terrorist use of Explosives in the United States*, (The White House, February 12, 2007), 1.

<sup>2</sup> *Ibid.*

In part, as a result of HSPD-19, national and departmental-level policy in the area of preventing and responding to terrorist use of explosives and IEDs is now extensive. Similarly, homeland security grants since the 9/11 attacks have significantly increased the availability of trained and equipped local bomb squads to respond to domestic IED events.<sup>3</sup> However, we have not done enough to capitalize on the experience and capabilities developed within the Department of Defense (DoD) during the protracted counter-IED campaigns in both Iraq and Afghanistan over the past several years. Furthermore, clear law and policy addressing the coordination of domestic DoD response to IED events in support of civilian authorities, and sharing of information and the lessons learned from counter-IED operations in Iraq and Afghanistan are still lacking.

The purpose of this paper is to explore the shortfalls in current law, policy and practice related to counter-IED support, coordination and information exchange provided by DoD to civil authorities and recommend improvements in these areas. Specifically, I call for establishment of a DoD counter-IED Joint Task Force (JTF) headquarters to facilitate improved response, training and sharing of information from military Explosive Ordnance Disposal (EOD) forces in support of civil law enforcement authorities. I also believe that appropriate federal law or regulation and DoD policy must be clarified to clearly delineate the authorities and reporting requirements for this improved coordination and support. To be clear, I am not suggesting that DoD forces should, by any measure, take the lead in response to domestic IED attacks, but rather, that the support they provide to civil law enforcement agencies, at the request of those agencies, be more comprehensive and better coordinated so that we may provide the most effective response possible to this threat without compromising the traditional domestic supporting role that the active duty military holds. Furthermore, while IEDs can and have been used as weapons of mass destruction (WMDs), this paper is not intended to address military support to the consequence management efforts following an attack by a weapon with chemical, biological, radiological or nuclear (CBRN) effects. While military EOD forces are trained and ready to render safe munitions and improvised devices that contain CBRN material, they typically do not play a significant role in responding to their aftermath, other than to render safe any devices that failed to fully function during

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<sup>3</sup> The number of FBI accredited local bomb squads in the United States increased by 20% from approximately 386 in 2001 to 466 in 2012. Louis J. Freeh, Statement for the Record on the Threat of Terrorism to the United States before the United States Senate Committees on Appropriations, Armed Services, and Select Committee on Intelligence. (May 10, 2001), [http://www.apfn.org/apfn/fbi\\_terrorism.htm](http://www.apfn.org/apfn/fbi_terrorism.htm); and Amy G. Tolson, Bomb Technician Training Impacts Public Safety, Redstone Rocket. (February 22, 2012), <http://www.theredstonerocket.com/content/bomb-technician-training-impacts-public-safety>.

the attack or secondary explosive devices that are discovered during the consequence management response. Nor is this paper intended to address the threat of explosive devices aboard aircraft, which is primarily a function of the Transportation Security Administration and traditionally does not require support from DoD.

## II. Current Law, Policy and Strategy

The laws, policies and strategies currently in place do provide the authority for DoD support to civil authorities in response to IEDs, but as I detail below, they lack clarity and are often misunderstood by military commanders that are not well versed in homeland security laws and policy.

While it is true that development of strategies, plans and policies have significantly increased following the issuance of HSPD-19, the laws, policies and practice of authorizing military support in response to domestic IED events are long-standing. For example, dating back to 1995, over a two-year period, an Army EOD company stationed at Tooele Army Depot near Salt Lake City, Utah responded to 34 IED related events in support and at the request of civil law enforcement authorities in Utah, Idaho, Colorado and Nevada.<sup>4</sup> This is just one example of how the nearly 40 Army EOD companies that were dispersed throughout the country prior to 9/11 provided IED response support to civil authorities in areas that lacked a counter-IED capability. However, even today, the average military commander who is not engaged in the field of defense support of civil authorities would be hard-pressed to explain under what authority such responses could take place.

The primary authority relied upon for military EOD response in support of local and state government officials is the *Immediate Response Authority*. There is no explicit law establishing this authority, but a continued and unchallenged practice of military commanders providing immediate support to local authorities during crisis without prior Presidential approval, dates back to the 1906 earthquake in San Francisco.<sup>5</sup> This authority is separate from the “emergency authority” detailed in federal regulation as a

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<sup>4</sup> The author served as commander of the 62<sup>nd</sup> Ordnance Company (EOD), which provided these responses. In addition to maintaining readiness to deploy for military contingencies, this company provided back-up support to communities within Utah, Wyoming, much of Idaho, parts of Nevada and Colorado that did not have access to Public Safety Bomb Squads.

<sup>5</sup> Immediately following the San Francisco earthquake of 1906, General Frederick Funston, commander of the Pacific Division, pressed all of his available troops into action in support of local authorities to deal with the aftermath and destruction of the event. Jim Winthrop, “The Oklahoma City Bombing: Immediate Response Authority and Other Military Assistance to Civil Authority (MACA)” Army Law, (July 2007), 4-5.

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constitutional exception to the Posse Comitatus Act. This exception, as described in 32 C.F.R. §215.4.(c)(1)(i), is based on the constitutional right of the U.S. Government to preserve public order and perform governmental functions “by force if necessary.”<sup>6</sup> This explicit authorization of force for the “emergency authority” provides a clear distinction from the Immediate Response Authority, which “does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory.”<sup>7</sup> Some have argued that Immediate Response Authority is based upon the common law principle of necessity, which implies that these responses are a technical breach of the law, but necessary and therefore justified in order to save life or property.<sup>8</sup> Whether the Immediate Response Authority stems from the President’s Article II powers, or from common law that has been recognized by the Supreme Court, it provides an important, rapid capability to local and state governments in crisis situations where they lack sufficient capability to protect life or property.

Employment of military support to civil authorities under all conditions, to include the Immediate Response Authority, is governed by DoD Directive 3025.18. This directive outlines the conditions that must be considered by military commanders upon receipt of a request for support from civil authorities. These conditions are meant to ensure that all support will: (1) be in compliance with current laws; (2) not pose unnecessary risk to DoD forces or the community; (3) not significantly impact the DoD budget; (4) be an appropriate use of DoD forces; and (5) not significantly degrade the readiness of DoD forces to perform their primary mission. The directive also provides additional conditions for military response, specifically under the Immediate Response Authority, stating that such responses must: (1) be at the request of civil authorities; (2) be under imminently serious conditions where any delay to request higher approval could adversely affect the situation; (3) be temporary in nature; and (4) serve to save lives, prevent human suffering, or mitigate great property damage within the United States.<sup>9</sup> Speaking at the annual National Domestic Preparedness Workshop, Dr. Paul Stockton, the Assistant Deputy Secretary of Defense for Homeland Defense and Americas' Security Affairs, underlined the importance of the Immediate Response Authority in providing responsive defense support to civil authorities. There, he explained that among the many efforts ongoing to ensure that DoD is prepared to support the

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<sup>6</sup> 32 C.F.R. §215.4.(c)(1)(i)

<sup>7</sup> U.S. Department of Defense, Directive 3025.18 Defense Support of Civil Authorities. (Washington, DC: U.S. Department of Defense, December 29, 2010), <http://www.dtic.mil/whs/directives/corres/pdf/302518p.pdf>, 4.

<sup>8</sup> Winthrop, *Immediate Response Authority*, 5-7.

<sup>9</sup> DoD Directive 3025.18, 4-5.

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domestic needs of the States, “leveraging the capabilities and the authorities under Immediate Response (is) one of our primary lines of effort.”<sup>10</sup>

While the Immediate Response Authority pertains solely to immediate military support to civil authorities without the requirement for Presidential disaster or emergency declaration, legislation exists to authorize broader and more deliberate federal assistance to state and local authorities in larger-scale emergencies and disasters. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, signed into law in its current form in 1988 with subsequent amendments in 2006 and 2007, has roots in legislation that dates back to 1803.<sup>11</sup> This act serves as the basis for most federal assistance to state and local governments for recovery assistance following declared disasters and emergencies. The act defines the term emergency as “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”<sup>12</sup> While this act could be used to authorize the deliberate employment of military EOD forces to support local and state authorities in response to a protracted and widespread domestic IED campaign, it does not support the type of immediate response support needed by local authorities during sudden IED events in areas that lack a public safety bomb squad. These responses are normally in support of a local event that would not rise to the level necessitating request for an emergency or disaster declaration. Furthermore, employment of military forces via the Stafford Act requires a deliberate and time consuming approval process that does not support the type of timely response necessary in these instances, thus the reliance on the Immediate Response Authority for such responses.

The Economy Act provides the legislative authority for interagency support among various federal agencies and departments.<sup>13</sup> This act is used to facilitate routine military support to other federal agencies for occasions designated as National Special Security Events (NSSE), such as a political convention, which require significant security support. The primary purpose of this act is to facilitate the fiscal reimbursement for any support that is provided from one federal agency or department to

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<sup>10</sup> Paul Stockton, Keynote Address to the Domestic Preparedness Workshop, National Harbor, Maryland, 22 February 2012.

<sup>11</sup> William C. Banks, “The Legal Landscape for Emergency Management in the United States”, New America Foundation, February 2011, [http://newamerica.net/publications/policy/the\\_legal\\_landscape\\_for\\_emergency\\_management\\_in\\_the\\_united\\_states](http://newamerica.net/publications/policy/the_legal_landscape_for_emergency_management_in_the_united_states), 10.

<sup>12</sup> 42 U.S.C. § 5192a, (2006).

<sup>13</sup> 31 U.S.C. § 1535, (1990).

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another. This legislation is regularly used to authorize and fund most routine military EOD support that is provided to federal law enforcement agencies as well as support that is provided to the Department of State when providing protection for visiting heads of state.

Though the Immediate Response Authority as well as the Stafford and Economy Acts authorize military EOD response to civil authorities, the Posse Comitatus Act (PCA) limits how the active duty military can provide this support. Originally passed into law in 1878, the PCA “established a statutory presumption”<sup>14</sup> against the use of active duty military personnel to “execute the laws.”<sup>15</sup> While the PCA impacts the legality of using the military to enforce laws, it does not however, prohibit active duty military personnel from supporting law enforcement agencies when that support does not perform an explicit *law enforcement* function. Therefore, military EOD support to civil authorities is not hindered by the PCA so long as the support is technical in nature and focused on providing for the public safety. That is, military EOD forces must respond solely to render safe IEDs or other explosive hazards in circumstances where no such civilian law enforcement capability exists, and cannot enforce any laws or participate in investigations, without additional authorization by the President or further legislation. This act does not apply to the use of National Guard military forces for law enforcement purposes provided that those forces remain under control of the State, in either State Active Duty or Title 32 status.

HSPD-19 directed the Attorney General to coordinate and prepare a report to the President that included a National Strategy and recommendations to achieve the Directive’s goals. While the complete report, to include the National Strategy, are classified documents, an unclassified executive summary of the report describes the overall strategy as “forg(ing) a layered and united approach to aggressively deter, prevent, detect, protect against, and respond to terrorists’ evolving efforts to employ explosives in the United States.”<sup>16</sup>

Revisions to HSPD-19 are ongoing with an interagency effort to update the directive in order to better reflect the “whole of government approach” to national security that President Obama calls for in his 2010 National Security Strategy. The National Security Strategy emphasizes the need for improved

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<sup>14</sup> Banks, “The Legal Landscape for Emergency Management in the United States”, 57.

<sup>15</sup> 18 U.S.C. § 1385, (1994).

<sup>16</sup> Michael Mukasey, HSPD-19 Report to the President of the United States Including a National Strategy and Recommendations Executive Summary, December 2007.

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“integration of skills and capabilities within our military and civilian institutions, so they complement each other and operate seamlessly” and also calls for greater sharing of information among federal, state and local entities engaged in homeland security.<sup>17</sup>

The DoD Strategy for Homeland Defense and Civil Support clearly establishes that homeland defense is the top priority for DoD, with support to civil authorities as a secondary priority.<sup>18</sup> However, the robust EOD and counter IED capabilities built up over the past ten years can and should be employed in support of a united approach to addressing the domestic IED threat when they are not deployed in support of traditional military missions.

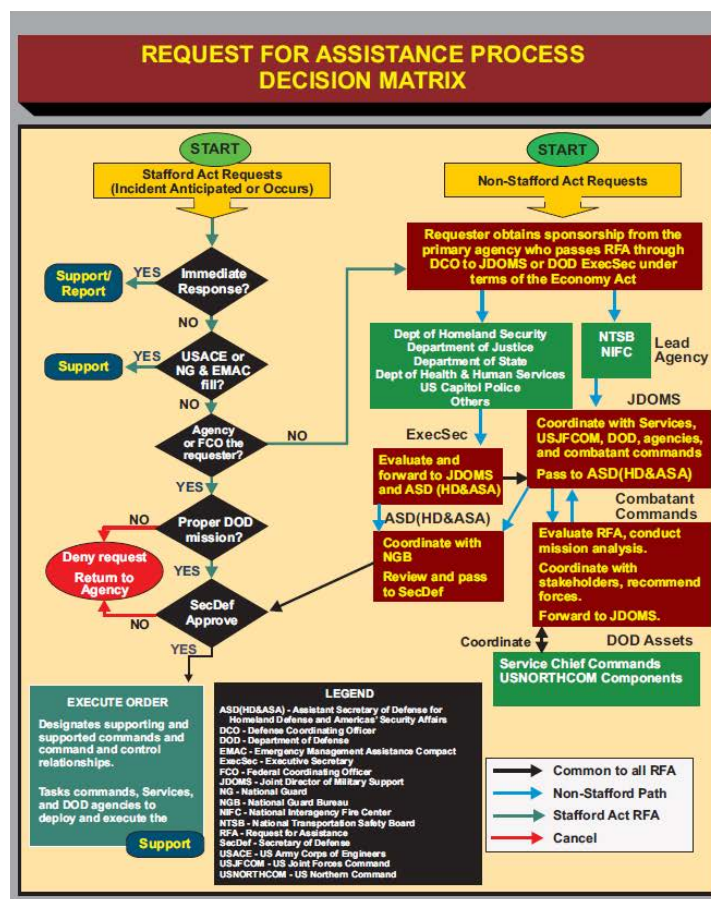


Figure 1. DoD Request for Assistance Process Decision Matrix.<sup>19</sup>

<sup>17</sup> Barack Obama, *National Security Strategy*, Washington, DC: The White House, May 2010, available at [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf), 14-16.

<sup>18</sup> U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*, (Washington, DC: U.S. Department of Defense, 2005), 4.

<sup>19</sup> U.S. Department of Defense, *Civil Support, Joint Publication 3-28*, (Washington, DC: U.S. Department of Defense, 2007), II-5.

The figure above from DoD Joint Publication 3-28, *Civil Support*, depicts the decision process for providing DoD support to civil authorities. From this illustration, one can clearly see how Immediate Response is the only means by which active duty military forces could provide the timely response needed during an emergent situation such as an IED attack.

While Joint Publication 3-28 provides very clear and supportable doctrine for the vast majority of joint military support to civil authorities and agencies, it is silent on EOD support. Due to the unique ‘emergency response’ nature of the support and frequency with which military EOD forces have provided this support over the last several decades, domestic EOD response should be specifically addressed in this document.

Furthermore, the lack of specific legislation addressing the Immediate Response Authority increases the likelihood that military commanders will hesitate to apply this concept. This point is underscored by the fact that Figure 1 from Joint Publication 3-28 incorrectly depicts “Immediate Response” as an action taken in response to Stafford Act requests, while it is well established that they are distinct actions stemming from separate authorities. While it is certainly prudent to not ‘over exercise’ this authority, explicitly authorizing the practice via future amendment to the Stafford Act, or short of that, clearly authorizing the practice in federal regulation would serve to clarify the concept and lead to improved policy in its application. This action would also serve to increase the informed use of the Immediate Response Authority to improve the responsiveness of military support to civil authorities when needed.

### **III. Current Structure and Information Flow**

The figure below depicts the significant resources existing at the federal, state and local level from both civilian and military organizations to provide for domestic counter-IED response. However, as described in further detail, inadequate coordination of these capabilities is preventing the united and whole of government approach to this issue that is called for in national level strategy and policy.

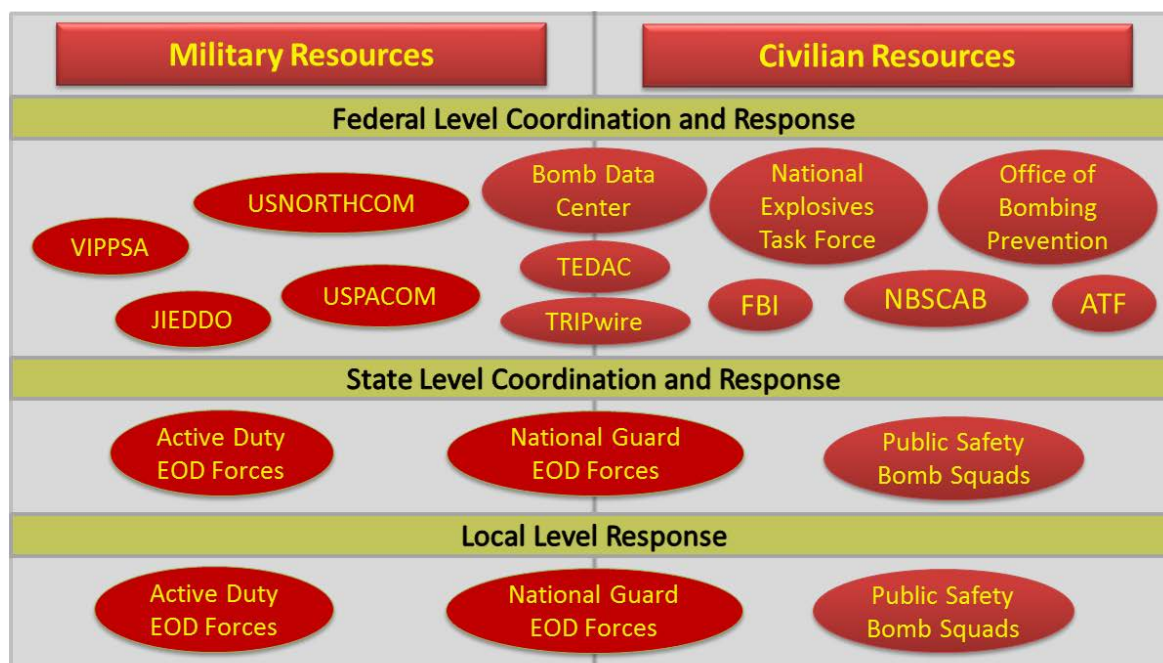


Figure 2. Military and Civilian Counter-IED Coordination and Response Capabilities.

#### a. Civil Law Enforcement

Numerous federal, state and local departments and agencies address the threats and response requirements posed by IEDs with generally overlapping jurisdictions and capabilities, yet some gaps remain in areas of the country. And while well-defined reporting and information exchange structures and protocols exist for some organizations, their use is uneven and falls short in many cases. Initial efforts to establish a national-level coordination entity for improved information sharing and synchronization of counter IED response capabilities is showing promise, but lacks the funding and authority necessary to bring long-term meaningful improvement to the situation.

Not long after its establishment, the Department of Homeland Security (DHS) launched the WMD/Bombing Prevention Unit in 2003, which would evolve to become the Office for Bombing Prevention (OBP) in 2006 following the London and Madrid bombings. OBP's mission is to coordinate some of the programs that serve to deter, detect, prevent, protect against, and respond to IED threats.

Their two main focus areas are: (1) coordinate national IED awareness programs; and (2) analyze counter-IED requirements, capabilities and gaps. While OBP does not have operational control of any



of the law enforcement elements that investigate or respond to IED events, they do serve to facilitate the free exchange of information between federal, state and local experts in the field with the Technical Resource for Incident Prevention, or *TRIPwire*. *TRIPwire* was developed in response to Presidential mandate in HSPD-19. It is a limited access system that allows for the free flow of technical information, enabling bomb technicians from local, state and federal law enforcement agencies, as well as military EOD units to share sensitive, but critical data on bombing trends and observed tactics. Unfortunately, use of this system is largely voluntary and while useful information is often shared on *TRIPwire*, it is not a comprehensive collection of current information related to IED events or emerging IED techniques. Among other responsibilities, OBP assists with the coordination of multi-jurisdictional security plans to de-conflict the overlap in jurisdictions related to IED events, while also maintaining the National Capabilities Analysis Database to track the various capabilities that are available to address the IED threat throughout the nation.<sup>20</sup>

The FBI plays a significant role in countering the domestic IED threat and lists among its priorities, “protecting the United States against terrorist attack,” and “combating significant violent crime,” which both support the requirement for specially trained agents to deal with the IEDs that are often employed by both terrorists and criminals.<sup>21</sup> To that end, the FBI established the Hazardous Devices Operations Section, which is comprised of Special Agent Bomb Technicians (SABT) and the Hazardous Devices School (HDS). The SABTs are assigned to each FBI field office and are trained and equipped to address any IED or WMD hazards that are encountered in the course of FBI operations and they also assist in the training of local and state public safety bomb squads. HDS is an interagency program that is managed by the FBI and run by the Army. It is the primary institution in the United States that trains and certifies public safety bomb technicians to render safe hazardous devices such as IEDs.<sup>22</sup>

In response to a pressing need to analyze the numerous IEDs and components that were being recovered by military EOD forces in Iraq and Afghanistan, the FBI, in conjunction with the ATF and DoD, established the Terrorist Explosive Device Analytical Center (TEDAC) in October 2003. The center not only provides valuable intelligence and forensic data on components from more than 71,000 IEDs

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<sup>20</sup> U.S. Department of Homeland Security. About the Office of Bombing Prevention, accessed on February 7, 2012, [http://www.dhs.gov/xabout/structure/gc\\_1184010933025.shtm](http://www.dhs.gov/xabout/structure/gc_1184010933025.shtm).

<sup>21</sup> Federal Bureau of Investigation, *Quick Facts*, accessed on January 24, 2012, <http://www.fbi.gov/about-us/quick-facts>.

<sup>22</sup> Federal Bureau of Investigation, *Critical Incident Response Group, Hazardous Devices Operations*, accessed on January 24, 2012, <http://www.fbi.gov/about-us/cirg/hazardous-devices>.

submitted to date, TEDAC also provides both the FBI and ATF with access to the emerging trends in IED development among terrorists and insurgents which could eventually migrate to the homeland.<sup>23</sup>

The FBI, in partnership with OBP, manages the Joint Program Office for Combating Terrorist Use of Explosives, which was established pursuant to HSPD-19.<sup>24</sup> The purpose of this office is to coordinate the interagency efforts toward completing the 36 recommendations provided in the National Strategy and recommendations document. Despite its important role in carrying out the National Strategy, the office receives no funding and is scarcely resourced internally.<sup>25</sup>

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) mission largely overlaps that of the FBI in the area of IEDs, to wit: "...protects our communities from violent criminals... bombings, acts of terrorism...."<sup>26</sup> To this end, specialized ATF agents, known as Explosives Enforcement Officers are trained to render safe IEDs and accomplish missions related to explosives throughout the country. The key difference between these two federal agencies' missions relative to IEDs is that the ATF is mainly focused on criminal activity, whereas the FBI concentrates its efforts on terrorist-related activities.<sup>27</sup>

Owing to the difficulty of drawing a clear line between criminal and terrorist-related activity, an audit by the Department of Justice (DOJ) Office of the Inspector General in October 2009 noted several instances of jurisdictional dispute between the FBI and ATF related to IED and explosive incident responses.<sup>28</sup>

Similar to the FBI, the ATF operates a training facility focused on explosives and IEDs called the National Center for Explosives Training and Research. This facility "offer(s) advanced training in bombing investigations and explosives disposal to local, state, federal and military students."<sup>29</sup> The key

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<sup>23</sup> Federal Bureau of Investigation, *Laboratory Services, Terrorist Explosive Device Analytical Center*, accessed on January 24, 2012, <http://www.fbi.gov/about-us/lab/tedac>.

<sup>24</sup> Stew Magnuson, "With no Budget, Joint Federal Office Tackles High Explosives Problem", *National Defense* (May 2010), <http://www.nationaldefensemagazine.org/archive/2010/May/Pages/JointFederalOfficeTacklesHighExplosivesProblem.aspx>.

<sup>25</sup> James Carafano, "Blocking Bombs Gives Buck its Rightful Bang," *The San Francisco Examiner*, 29 November 2011. <http://www.sfoxaminer.com/opinion/op-eds/2011/11/blocking-bombs-gives-buck-its-rightful-bang>, and; Stew Magnuson, "Plan to Create Center to Thwart Domestic Bombings Falls Short," *National Defense* (July 2011), <http://www.nationaldefensemagazine.org/archive/2011/July/Pages/PlantoCreateCenterToThwartDomesticBombingsFallsShort.aspx>.

<sup>26</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Mission, Vision and Values*, accessed on January 23, 2012, <http://www.atf.gov/about/mission/>.

<sup>27</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Explosive Enforcement Officers*, accessed on January 23, 2012, <http://www.atf.gov/explosives/programs/explosives-enforcement-officers/>.

<sup>28</sup> U.S. Department of Justice Office of the Inspector General Audit Division, *Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives Audit Report 10-01, 2009*, 22.

<sup>29</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Fact Sheet, National Center For Explosives Training And Research*, accessed on January 23, 2012, <http://www.atf.gov/publications/factsheets/factsheet-ncetr.html>.

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differences between the two federal training facilities are the ATF's focus on advanced training and explosives research, which complements the FBI's HDS baseline training and certification programs.

The primary repository for reporting IED responses within the United States is maintained by the ATF Bomb Data Center (BDC) using the Bombing and Arson Tracking System (BATS).<sup>30</sup> However, the 2009 DOJ Inspector General audit found that more than half of the accredited state and local bomb squads rarely or never reported their responses in BATS, with an even larger majority that rarely or never query BATS for information related to IED events.<sup>31</sup>

In an attempt to better coordinate federal, state and local efforts, a National Explosives Task Force, with volunteer membership from key agencies, has begun informal monthly meetings to work through the myriad of existing jurisdictional and reporting issues. This forum has great potential for addressing the gaps and seams that exist in the nation's ongoing efforts to address the threat of IEDs while redirecting duplicative efforts, but has not received any funding or formal mandate to achieve that potential.<sup>32</sup>

Public Safety Bomb Squads serve as the local and state-level responders to domestic IED events and are the primary responders for the vast majority of IEDs throughout the nation. Much like the broader law enforcement community, state and local approaches to organizing their Public Safety Bomb Squads are varied. However, the initial training and certification of each of the approximately 470 state and local bomb squads is conducted at HDS, providing a baseline capability for much of the country.<sup>33</sup> Increased emphasis on the development and fielding of these squads through Homeland Security grant guidance in recent years has resulted in a 20 percent increase in the number of certified squads and provided improved equipment for counter-IED response.<sup>34</sup> These separate squads are represented at the national level by the National Bomb Squad Commanders Advisory Board (NBSCAB). The NBSCAB serves to represent the collective interests of the state and local public safety bomb squads with various federal agencies on issues related to training, equipment and other operational matters.<sup>35</sup>

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<sup>30</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Fact Sheet, U.S. Bomb Data Center*, accessed on January 23, 2012, <http://www.atf.gov/publications/factsheets/factsheet-us-bomb-data-center.html>.

<sup>31</sup> U.S. Department of Justice Office of the Inspector General Audit Division, *Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives Audit Report 10-01, 2009*, 42.

<sup>32</sup> Magnuson, "Plan to Create Center to Thwart Domestic Bombings Falls Short," 2011.

<sup>33</sup> Tolson, "Bomb Technician Training Impacts Public Safety," Redstone Rocket.

<sup>34</sup> U.S. Department of Homeland Security, *Fiscal Year 2008 Homeland Security Grant Program Guidance and Application Kit*, [http://www.fema.gov/pdf/government/grant/hsgp/fy08\\_hsgp\\_guide.pdf](http://www.fema.gov/pdf/government/grant/hsgp/fy08_hsgp_guide.pdf).

<sup>35</sup> National Bomb Squad Commanders Advisory Board, accessed on April 5, 2012, [http://nbscab.org/NBSCAB/nbscab\\_ex.php](http://nbscab.org/NBSCAB/nbscab_ex.php).

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## **b. Military**

As one might expect, the DoD organizational structure related to EOD support is mainly focused on preparing and employing EOD forces in support of military operational requirements. However, the longstanding support that military EOD forces have provided to civil agencies has resulted in some limited structure dedicated to coordinating and facilitating that support. Nevertheless, even with the establishment of the United States Northern Command (USNORTHCOM), there remains insufficient structure or reporting protocol to effectively marshal the military EOD response, or ensure effective and routine information exchange with civil authorities engaged in countering IEDs within the United States as detailed below.

At the DoD level, the Chief, EOD and Humanitarian Mine Action Peacekeeping Policy and Operations Directorate is responsible for all department-level policy related to EOD matters, to include EOD support to civil authorities. The geographic combatant commands of USNORTHCOM and the United States Pacific Command (USPACOM) oversee most military support to civil authorities operations within the United States,<sup>36</sup> but these commands generally do not control military support that is provided under Immediate Response Authority, as is the case with military EOD responses to domestic IEDs.<sup>37</sup> In the case of deliberate military EOD support to other federal agencies, for missions such as routine protection of the President or designated National Special Security Events, the Very Important Person Protective Service Activity (VIPPSA), a subordinate activity of USNORTHCOM, provides coordination and oversight for military EOD forces from all four armed services. While another subordinate element of USNORTHCOM, JTF – Civil Support (JTF-CS), would seem to be involved in military EOD support to civil authorities based upon its name, the command is focused mainly on consequence management support and does not play a role in domestic EOD or counter-IED responses.

Within DoD, each of the four main branches of the armed forces maintains a separate EOD capability. All military EOD personnel receive training at a common training center, the Naval School Explosive Ordnance Disposal, which is managed by the Navy at Eglin Air Force Base, Florida. This initial common training provides the basic EOD skills required by all four services, to include IED response,

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<sup>36</sup> USNORTHCOM oversees this support to the “lower 48” states, Alaska, as well as the District of Columbia and territories in the Atlantic, while USPACOM oversees this support for Hawaii and territories located in the Pacific.

<sup>37</sup> Command of forces responding under the Immediate Response Authority remains with the local commander for up to 72 hours. U.S. Department of Defense, *Directive 3025.18 Defense Support of Civil Authorities*. (Washington, DC: U.S. Department of Defense, December 29, 2010), <http://www.dtic.mil/whs/directives/corres/pdf/302518p.pdf>, 4-5.

but is supplemented with additional training by each service for service-specific additional skills such as underwater ordnance training for Navy EOD personnel.

The organizational structure related to EOD forces within each service varies, with both the Army and Navy maintaining EOD-specific organizational structure up to the Group-level (commanded by an Army colonel or Navy captain), while the Air Force and Marine Corps maintain a more limited EOD-specific command and control force structure at lower echelons. Each of the services is authorized to provide support to civil authorities for domestic IED response, but until recently, the Army has primarily supported the land mass of the United States for this mission.<sup>38</sup>

Prior to 2007, Army EOD companies were dispersed throughout the nation on various military and federal installations in order to provide responsive geographical coverage for the country. This disposition of forces enabled the commanders of these companies to conduct regular liaison with their local civil authorities in order to provide a shared understanding of existing regional counter-IED capabilities and conduct routine training and information exchange with local public service bomb squads. The lower operational tempo prior to 2001 also allowed Army EOD forces to train in areas specific to domestic response, such as the Resource Conservation and Recovery Act, the Military Munitions Rule and the Posse Comitatus Act. As military operations in Afghanistan and Iraq highlighted the need for more, and better integrated Army EOD forces, the Army grew additional EOD force structure and consolidated that structure onto fewer installations. The increased demand for training that was more focused on the skills most needed in those two operations also necessitated a shift away from domestic response training and all but eliminated the opportunity to conduct liaison visits with local civil authorities. The relocation of these forces allowed for improved integration and training with the Army combat units that the EOD companies and battalions would support during operations in Afghanistan and Iraq, but left a void of counter-IED capability in many regions throughout the country.

In order to mitigate the consequences of consolidating Army EOD companies and the increased operational tempo of those forces, Navy, Air Force and Marine Corps EOD forces have increasingly begun responding to domestic IED events in support of civil authorities based on a “closest unit”

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<sup>38</sup> Headquarters Departments of the Army, Navy and the Air Force, *Joint Army Regulation 75-14 Interservice Responsibilities for Explosive Ordnance Disposal*, 1992, 2.

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response concept. This domestic response framework, while effective at increasing regional coverage, lacks centralized direction and management to reestablish the liaison and training requirements that ensure effective response. This is another area where a coordination element such as VIPPSA, with proper augmentation and empowerment, could serve as a standing counter-IED JTF headquarters to provide the standards and oversight necessary for a consistent domestic EOD response capability from all four services.

Currently, information flow for reporting of domestic IED response missions by military EOD forces is problematic as there is no centralized operational oversight for the four separate services that provide response. While reporting of domestic Army EOD responses within the lower 48 states is consolidated and reviewed within the Army chain of command, there is no formal mechanism for sharing those reports with the interagency, nor is there a centralized effort to consolidate or share reports from the domestic EOD responses of the other services.

An additional resource that resides within eleven states and territories is the Army National Guard EOD force structure. These forces are trained and equipped to the same standards as active component EOD forces and have recent operational experience from counter IED campaigns in Iraq and Afghanistan.

### **Military EOD Response in Support of Civil Authorities**

*Say for example that an IED is discovered near a school by local law officials just south of Davis Monthan Air Force Base in Arizona. It is likely that the officials would request immediate support from the Air Force EOD unit that resides on the base to render the IED safe. That Air Force EOD unit would likely respond within minutes, with the approval of the Davis Monthan installation commander and begin a notification process that would eventually make its way up to the Air Staff in the Pentagon and possibly USNORTHCOM. However, notification of the response might not reach the highest levels until after the mission is completed and the EOD team has returned safely to Davis Monthan. Because the responding Air Force EOD team would be exercising "Immediate Response Authority," they would remain under the command and control of the local military commander from Davis Monthan for the duration of the support (for up to 72 hours), even though they are providing defense support to civil authorities in the USNORTHCOM area of responsibility. Assuming the team successfully renders the device safe in support of the local law enforcement authorities, they would return to their installation and submit a report of the event through their chain of command that might eventually reach the Air Staff or USNORTHCOM. The team might also submit the report through the ATF's Bombing and Arson Tracking System (BATS) to inform other EOD and Public Safety Bomb Squad personnel of the IED event. In this very plausible example, USNORTHCOM has no influence in the execution of this support, nor does it receive timely notification or reporting of the event.*

But, because these units are a state asset and managed by each state's Adjutant General, they can be employed within their states and territories to augment public safety bomb squads except when they are activated to Title 10 status and deployed elsewhere for federal service. Additionally, these forces can respond to neighboring states via the Emergency Management Assistance Compact and operate domestically without the restrictions of the Posse Comitatus Act in most cases.<sup>39</sup> In this regard, National Guard EOD units could be considered as much a state and local response capability as a federal or military one. The main limiting factor is the scarcity of these forces, and the fact that most National Guard soldiers do not serve on a full-time status and therefore are not always available for short-notice response.

In response to the significant IED campaigns that developed in Afghanistan and Iraq, DoD established the Joint IED Defeat Organization, or JIEDDO, in February 2006 to rapidly provide counter-IED capabilities to the broader military force that is facing this threat. With a budget of more than \$18 billion since its inception, JIEDDO has led the sizeable DoD effort to identify and resource technical and tactical solutions to counter IED threats and networks by pursuing three major lines of effort: (1) attack the networks that finance, supply, manufacture and emplace IEDs; (2) develop technical solutions to defeat the devices once they are emplaced; and (3) train the force on the best techniques for predicting, locating and defeating emplaced IEDs. With such a sizeable investment in these capabilities, JIEDDO leadership has recognized the importance of sharing successful advances with interagency partners while also collaborating with efforts to help address the threat of domestic IED attacks.<sup>40</sup>

The United States Strategic Command is a functional combatant command that, among its other functions, serves to "integrate and synchronize the Department's efforts to combat worldwide WMD."<sup>41</sup> However, those efforts are focused on a rather narrow definition of WMD used by DoD, that excludes conventional explosives, and thus, does not address the IED threat either domestically or globally.

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<sup>39</sup> National Guard forces on State Active Duty or Title 32 status are not subject to the restrictions of the Posse Comitatus Act.

<sup>40</sup> Joint IED Defeat Organization, Counter-IED Strategic Plan 2012-2016, 11.

<sup>41</sup> U.S. Strategic Command, Fact Sheet: USSTRATCOM Center for Combating Weapons of Mass Destruction (SCC-WMD), [http://www.stratcom.mil/factsheets/USSTRATCOM\\_Center\\_for\\_combating\\_Weapons\\_of\\_Mass\\_Destruction/](http://www.stratcom.mil/factsheets/USSTRATCOM_Center_for_combating_Weapons_of_Mass_Destruction/).

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Despite the fact that the DoD Strategy for Homeland Defense and Civil Support calls for “shared situational awareness within DoD with domestic and foreign partners,”<sup>42</sup> information sharing between DoD and domestic interagency partners related to counter IED operations is largely coincidental to the shared efforts in forensic analysis of the IED components recovered in Iraq and Afghanistan rather than a concerted and systematic effort. Both the FBI and ATF have contributed significantly to the success of counter-IED efforts in Iraq and Afghanistan through assignment of agents to the military counter-IED commands in those theaters, and establishment of TEDAC, which has provided them with access to critical information on emerging IED trends and tactics.<sup>43</sup> However, DoD still lacks a coherent and reliable mechanism for sharing information on domestic IED responses with the interagency. The overall organizational structure for EOD forces within DoD are necessarily optimized for their primary function of supporting military operations and contingencies, but the longstanding and significant amount of support these forces provide to domestic civil agencies, in response to IEDs, begs for improved coordination at higher levels. While the current resource constraints and looming cuts to authorized military end strength would seem to weigh against the establishment of any new organization to serve this purpose, the current organization, VIPPSA, that already conducts interagency coordination for preplanned EOD support to federal agencies could, with limited augmentation from all four services, also serve this purpose for emergency military EOD support to civil authorities in response to domestic IEDs as a standing counter-IED JTF headquarters. Furthermore, this organization could ensure the systematic sharing of information on military EOD responses to domestic IED events with the interagency.

#### **IV. Recommendations and Conclusions**

Law enforcement authorities, together with the intelligence community, have been successful in thwarting many recently attempted IED attacks in the United States. However, the likelihood of a sustained IED campaign targeting our nation remains. The means available to deal with domestic IEDs have grown considerably with Homeland Security grants. Similarly, the issuance of HSPD-19 and the recent expansion of military counter-IED capabilities provide an impetus toward optimizing these

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<sup>42</sup> U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*, (Washington, DC: U.S. Department of Defense, June 2005) <http://www.defense.gov/news/Jun2005/d20050630homeland.pdf>, 23.

<sup>43</sup> Federal Bureau of Investigation, *Laboratory Services, Terrorist Explosive Device Analytical Center*, accessed on January 24, 2012, <http://www.fbi.gov/about-us/lab/tedac>.

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resources so as to provide our nation with the best possible response. Moreover, current fiscal constraints demand a more efficient use of our ample resources in this critical area of need.

Shortfalls in current law or regulation, military doctrine, organizational structure, training and information sharing protocols are preventing an optimized united, or “whole of government,” approach to addressing this threat as called for in HSPD-19 and the National Security Strategy. In order to fully engage our valuable resources against this vulnerability, the following actions are recommended:

- a. Propose an amendment to the Stafford Act or, short of that, revise the Code of Federal Regulations, to more clearly define and explicitly authorize the *Immediate Response Authority*. This would not only provide a better national understanding of the current practice of military EOD supporting local law enforcement, but also encourage an increased use of this authority to improve the overall responsiveness of other military support to civil authorities during times of crisis. I suggest another possibility that is worthy of further research, would be to explore the feasibility of delegating Stafford Act authorities to lower levels to allow for more rapid military response to civil authorities within the framework of that legislation.
  - b. Refine Joint Publication 3-28, *Civil Support*, to include specific references and illustration of the framework of domestic EOD response to civil authorities and correct depiction of the Immediate Response Authority. This would serve to better inform joint military commanders and staff of the unique role that is carried out on a frequent basis by military EOD forces within the USNORTHCOM and USPACOM areas of responsibility. These are missions that currently receive little recognition, but provide a valuable capability throughout the country. Revision of this joint doctrine could also serve to standardize domestic EOD response across all four services, while also codifying the practice of interagency liaison.
  - c. Establish a standing DoD counter-IED JTF headquarters for domestic response that is partnered with the National Explosives Task Force, and organized under USNORTHCOM with links to USPACOM, and the National Guard. The goal of this organization would be to improve coordination with federal, state and local law enforcement, while also improving DoD visibility of military EOD response and support provided to civil authorities. This headquarters could also coordinate the more routine DoD EOD interagency support functions that occur with the United States Secret Service, Department of State and Department of Homeland Security for Very Important Person support and National Special Security Events – missions that are currently coordinated by VIPPSA. While
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establishing a new standing JTF in order to coordinate defense support to civil authorities, during a time of declining defense budgets might seem unrealistic, this headquarters could be based on the currently existing VIPPSA, and only require minor augmentation from each of the four services, to assume an expanded role. For this small investment in manpower, the new headquarters would also provide a single point of contact within DoD to formally process and pass lessons learned and critical IED information and advancements to and from interagency partners – essentially it would be one step removed from a Joint Interagency Task Force, but with ties to any interagency task force or entity that is engaged in domestic counter-IED response. This action would be predicated upon the empowerment and resourcing of the recently established National Explosives Task Force to serve as the nation's primary interagency coordination and fusion center for all domestic IED events.

d. Establish standardized domestic response training requirements for all military EOD forces stationed within the United States. As the demands of operations in Afghanistan begin to wane, we should reemphasize among other recently neglected EOD skills, the operational and regulatory guidelines that are necessary to provide effective domestic IED response support to civilian authorities. Furthermore, domestically-stationed military EOD forces should be encouraged to conduct liaison and interagency training with civil authorities to develop an improved shared understanding of capabilities, refine processes and develop common response procedures.

e. Simplify and standardize domestic IED response reporting, to include providing greater incentive for local, state, federal and military IED responders to provide consistent reporting, as well as establishing a protocol to import key IED data from military operations overseas. These actions would provide the entire domestic IED response community with a more complete understanding of the threats that are being encountered within the United States and during contingency operations elsewhere in the world.

While these proposals are primarily focused to improve military support to civilian authorities in response to domestic IEDs, any success would be contingent upon one key improvement to the civilian counter-IED response framework. The National Explosive Task Force should be funded, resourced with key personnel from the FBI, ATF, DHS, TSA, NBSCAB and DoD, and empowered to coordinate and deconflict domestic IED responses. This action alone would allow for a much improved response capability and provide the ability to respond more decisively to any future coordinated IED campaign that might take place in the United States.

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The arguments presented in this paper may raise concerns related to limitations on domestic military roles, detracting from military focus on its primary function to fight and win wars, and further expansion of requirements during times of fiscal difficulties. However, the recommendations presented would only serve to improve the efficiency and effectiveness of military support that has been provided to civilian agencies for decades and would not, in any way expand military authority. Nor would any of these recommendations infringe on civil liberties or result in military overreach because the supporting relationship to the requesting civil authorities and longstanding restrictions on the domestic employment of active duty military forces would remain unchanged.

Furthermore, these actions would not distract military EOD forces from their ability to support combat operations because of the significant drawdown in operational tempo, combined with the vast gains in operational experience and resources within all military EOD services over the past ten years. Although the priority of effort for military EOD forces must remain on supporting ongoing military operations overseas, and readiness for future operations, the sizeable gain in capability to respond to IEDs can and should be applied to support domestic efforts in countering IEDs without adversely impacting military readiness. The additional experience gained during domestic IED responses would also serve to improve military EOD capabilities as the frequency of IED encounters continues to decrease in deployed military operations.

Finally, the recommendations of this research do not require any significant growth, but rather reorganization of current resources and refinement of laws or regulations, policies and practice in order to best apply our existing capabilities against the most likely threat that our nation will face from domestic and foreign actors.

Addressing the existing shortfalls in law or regulation, policy and practice that prevent the optimal coordination of our considerable resources to respond to domestic IEDs is achievable without significant further growth or expenditure. The nature of this threat, combined with our vulnerability demand that we take action to provide the best possible response for our citizens.

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