

California National Guardsman files suit against extension of tour of duty

John Levine
24 August 2004

An army sergeant in the California National Guard filed a lawsuit August 19 charging the White House with violating the contract of thousands of military and National Guard recruits through its use of “stop-loss” orders. Choosing to remain anonymous for fear of right-wing attacks, he filed the suit under the name of John Doe and is represented by attorney Michael Sorgen.

After the Vietnam War, Congress gave the Pentagon the legal right to issue “stop-loss” orders, sending soldiers into two-year tours from 90 days before until 90 days after their enlistment period ends. According to the lawsuit, however, this can only be done during war and during national emergencies, which require Acts of Congress rather than presidential decrees.

Before the present Iraq war the Pentagon targeted these orders at specific skill groups. The latest orders, which were issued in November 2003, January 2004 and June 2004, apply to all units. Some 40,000 soldiers, including 16,000 members of the National Guard, have thus been prevented from retiring or leaving the service.

John Doe has served in the Army and Marines for 12 years, including participation in the invasion of Somalia and last year’s invasion and occupation of Iraq. His time in Iraq was extended by four months in a previous stop-loss order. After returning from Iraq, he joined the California National Guard, in the “Try One” program. This meant signing a one-year contract that was set to end in December, so he could test if the National Guard duty would be compatible with family life. He was assured by the recruiter that it was unlikely his unit would be called into Iraq, as they had already been deployed on the Iraqi-Kuwaiti border in 2002.

In July, he received yet another stop-loss order and documentation that would extend his enlistment for 40 years, until 2043. In addition, he received orders that he

would begin with six months’ training at Fort Bliss, Texas, and serve an additional 18 months in Iraq. According to the memorandum written by Michael Sorgen, Doe’s attorney, “The Army has asserted authority to extend enlistments indefinitely under the stop-loss program, and thus could impose a longer or indefinite extension of Doe’s involuntary service.”

Returning to Iraq, he would leave behind a wife and two daughters, aged six and three. On top of this, he is currently undergoing treatment at a Veteran’s Hospital for post-traumatic stress disorder resulting from direct combat experiences in Iraq only last year.

This is the second legal challenge to the military’s stop-loss program. The first suit, by a Georgia soldier during the first Gulf War, ended in the Pentagon’s favor. The military defended stop-loss orders at that time on the basis of a Congressional resolution authorizing the use of military force to “liberate Kuwait,” although there was no formal declaration of war.

This time, the army asserted its authority to issue the stop-loss orders based solely on an Executive Order issued by President Bush on September 14, 2001, which authorized Defense Secretary Donald Rumsfeld to prepare the military “to respond to the continuing and immediate threat of further terrorist attacks on the United States.”

On this basis, the Pentagon claimed the right to issue stop-loss orders to members who had finished their terms of duty. Doe’s attorney countered, however, that “The former Iraqi regime has been removed from power, and Iraq cannot be considered to present any threat of terrorism against the US, if it ever did. The stop loss order, accordingly, is invalid.”

According to the contract signed upon enlistment, every enlistee must be available to serve on active duty

for up to eight years, although they are usually free after four years. Doe already served 12 years in the Army and Marine Corps, so his one-year contract would have allowed him to retire at its termination.

In addition to the stop-loss orders, the Pentagon recalled into service 5,600 soldiers who had completed active duty and returned to civilian life under this eight-year clause. Hundreds of thousands of soldiers and their relatives will follow Joe Doe's case closely to see whether they too will be recalled for two years of extra service beyond what they expected.

The Associated Press describes the heavy reliance on these back-up forces: "The military operations in Iraq are relying on reserves to a degree not seen since WWII. In the first year of Operation Iraqi Freedom, reservists and National Guardsmen made up about 25 percent of troops in Iraq. [This figure is now 40 percent.] Of the 141,000 U.S. troops in Iraq, the National Guard contributes about 40,000. But an estimated 96,000 have been mobilized—called to full-time service—to serve or prepare for duty there or in Afghanistan, and a further 53,000 are on alert. About 40,000 Army Reservists are serving in Iraq and Afghanistan. Overall, 131,000 Army Guard and Reserve soldiers are on active duty in the United States and overseas, in most cases for 15 to 18 months. Full-time soldiers' foreign deployments typically are one year."

Many working class youth signed up for the National Guard or the reserves having been told they will likely stay in their own communities, except in the case of disaster. Now, tens of thousands have been displaced and are having trouble returning to their communities, finding their jobs gone or promotions rescinded. About 4,000 Guardsmen and reservists have filed job complaints with the Labor Department since September 11. Many have drawn on their bank accounts to support their families or had to declare bankruptcy and shut down their small businesses as a result of their military service.

Already at least two soldiers, Brandon Hughey and Jeremy Hinzman, have refused to report for duty and escaped to Canada amid some publicity. Camilo Mejia, another soldier who refused to go to war, was arrested and sentenced to a year in jail. The antiwar newsletter *Traveling Soldier* is being distributed among members of the armed forces, basing itself on the Vietnam era

Broken Arrow. Various agencies serving veterans say they are swamped with phone calls asking for help.

If the stop-loss orders are deemed valid by the courts, that would set a precedent that gives the president arbitrary power to mobilize the entire National Guard and Reserves and use them anywhere in the world on a whim without oversight from Congress. If the courts deem the orders invalid, this would cut off a major supply of bodies to the army. With recruitment levels for the all-volunteer force shrinking far below expectations and forces stretched thin around the world, calls for reimplementation of the draft are becoming more and more inevitable.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact