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8
9 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

10
11 GAVIN NEWSOM, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE
12 STATE OF CALIFORNIA; STATE OF
CALIFORNIA,

13 Plaintiffs,

14 v.

15
16 DONALD TRUMP, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE
17 UNITED STATES; PETE HEGSETH, IN
HIS OFFICIAL CAPACITY AS
18 SECRETARY OF THE DEPARTMENT
OF DEFENSE; U.S. DEPARTMENT OF
19 DEFENSE,

20 Defendants.

NO. 3:25-cv-04870-CRB

**BRIEF FOR THE STATES OF
WASHINGTON, DELAWARE,
ARIZONA, COLORADO,
CONNECTICUT, HAWAII,
ILLINOIS, MAINE, MARYLAND,
MASSACHUSETTS, MICHIGAN,
MINNESOTA, NEVADA, NEW
JERSEY, NEW MEXICO, NEW
YORK, NORTH CAROLINA,
OREGON, VERMONT, WISCONSIN,
RHODE ISLAND, AND THE OFFICE
OF THE GOVERNOR OF KANSAS
AS AMICI CURIAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Date:
Time:
Courtroom:
Judge: Hon. Charles R. Breyer
Trial Date:
Action Filed: 6/9/2025

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I. INTRODUCTION

President Trump’s federalization and deployment of California’s National Guard, without the consent of California’s Governor and in clear violation of the statute on which he relies, is unlawful, unconstitutional, and undemocratic. It is also wholly inconsistent with one of our Nation’s founding principle that freedom depends on the subordination of the military to civilian authority. By calling forth troops when there is no invasion to repel, no rebellion to suppress, and when state and local law enforcement is fully able to execute the laws, the President flouts the vision of our Founders, undermines the rule of law, and sets a chilling precedent that puts the constitutional rights of Americans in every state at risk.

Emergency relief is vitally necessary to vindicate state sovereignty and protect the States’ National Guards, which play a vital role in ensuring the security of our states and preparing for and responding to emergencies. States rely on their National Guard units to protect their residents and save lives. National Guard troops fight fires, respond to hurricanes, protect their residents from flooding, and provide much-needed security. By undermining states’ authority, unlawfully deploying the National Guard troops, and leaving the door wide open to deploy the Guards of every state, the President has made us all less safe. This Court should enjoin the federal government from continuing down this unlawful and perilous path.

II. IDENTITY AND INTEREST OF AMICI STATES

The States of Washington, Delaware, Arizona, Colorado, Connecticut, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, Wisconsin, Rhode Island, and the Office of the Governor of Kansas (“Amici States” or “States”) respectfully submit this *amicus curiae* brief in support of Plaintiffs’ Motion for a Temporary Restraining Order. Acceptance and consideration of amicus briefs is within this Court’s “inherent authority.” *Cal. Ass’n of Sch. Psychs. v. Superintendent of Pub. Educ.*, No. C-93-2891 DLJ, 1994 WL 224433, at *4 (N.D. Cal. May 17, 1994). “District courts frequently welcome amicus briefs from non-parties concerning legal

1 issues that have potential ramifications beyond the parties directly involved or if the amicus has
 2 ‘unique information or perspective that can help the court beyond the help that the lawyers for
 3 the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.
 4 Supp.2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C.
 5 2003)). *See also Arena v. Intuit Inc.*, No. 19-cv-2546-CRB, 2020 WL 7342716, at *1 (N.D. Cal.
 6 Dec. 14, 2020) (granting leave where amici’s “perspective is plainly relevant to various questions
 7 that [pending motion] presents”). Here, the States’ perspective is plainly relevant, and their
 8 interests in preventing the President’s unlawful deployment of the National Guard and Marines
 9 are numerous.

10 *First*, the Amici States are implicated by the unlimited scope of the June 7, 2025,
 11 presidential memorandum titled “Department of Defense Security for the Protection of
 12 Department of Homeland Security Functions” (Trump Memo). This memo, which federalizes
 13 the National Guard in support of “ICE” and other unspecified “Federal functions,” does not
 14 restrict its application to Los Angeles, the State of California, or any specific geographic region.
 15 Instead, it is an unlimited claim of presidential authority to deploy the National Guards of any
 16 State for a period of 60 days.

17 This broad invocation implicates the Amici States’ interest in ensuring that the
 18 deployment of their National Guard units is governed by the rule of law, and not the whims of
 19 the President or his appointees. Indeed, the Trump Memo and subsequent orders from the
 20 Department of Defense (DOD Orders) were issued purportedly pursuant to 10 U.S.C. § 12406.
 21 However, the circumstances where Congress authorized invocation of § 12406 were not and are
 22 not present in California, and the President failed to issue the orders through the governor of
 23 California as required by statute. Allowing the President and the Secretary of Defense to ignore
 24 the plain-text requirements of the statute they invoked undermines the rule of law.

25 *Second*, the States have an interest in ensuring their National Guard units are available
 26 and able to perform the essential services that they provide the States on an ongoing basis. As

1 discussed below, National Guard personnel provide critical services across the country which
 2 include responding to wildfires, floods, and hurricanes; responding to chemical, biological,
 3 radiological, and nuclear incidents; conducting counter-drug operations; and providing
 4 cybersecurity and election support. Nationally, there are over 430,000 National Guard members
 5 engaged in these essential services and who are making significant contributions to public safety.
 6 Allowing an unlawful federalization of the National Guard pulls volunteer service members
 7 away from performing vital services for which they are specially trained, and which Amici States
 8 cannot replace.

9 *Third*, the States have an interest in providing public safety and combating violence; the
 10 Defendants' actions exacerbate these challenges in the name of addressing them. In Los Angeles,
 11 the President's deployment has dramatically worsened the situation on the ground. And in Amici
 12 States, the unjustified deployment of military personnel to California stokes fear that the same
 13 will happen throughout the nation. As a result, local law enforcement may be required to respond
 14 to incidents of violence that may otherwise never have occurred.

15 *Fourth and finally*, the States have an interest in maintaining and promoting a free and
 16 open society in which lawful dissent is not chilled by the presence of military forces deployed
 17 domestically in our cities and towns. Of course, under the First Amendment, the States' residents
 18 may use public spaces to exercise their views lawfully and peacefully—and where any violation
 19 of the law is addressed by civil law enforcement instead of the military. The President's unlawful
 20 deployment of military to California without justification or legal authority is already having,
 21 and will likely continue to have, a chilling impact on constitutionally protected activity. The
 22 President's broad assertion of the authority to respond to lawful protest activity is anathema to a
 23 democratic society and flies in the face of the values of a free society and protections of federal
 24 and state constitutions. Each State has an interest in protecting their citizens from the threats to
 25 their constitutional rights to freedom of expression and assembly that the unjustified use of
 26

domestic military force pose, whether the President deploys forces in California or in any of the Amici States.

III. ARGUMENT

A. The National Guard Is the Organized Militia of the States and Is Under Governor Command and Control Except When Properly Called into Federal Service

As the modern-day successor to the Founding-era concept of the militia, the National Guard is explicitly governed by the United States Constitution. *Ass’n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992 (D.C. Cir. 2010). Article I, Section 8 gives Congress the power “[t]o provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions[.]” U.S. Const. art. I, § 8, cl. 15. It also gives Congress the power “[t]o provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” U.S. Const. art. I, § 8, cl. 16. These two clauses, known as the Militia Clauses, “reflect a delicate compromise that gives the States power over their respective militias—subject to the President’s power to call those militias into national service when necessary.” *Abbott v. Biden*, 70 F.4th 817, 821 (5th Cir. 2023).

The statutory scheme governing the National Guard reflects this compromise. As the Fifth Circuit has explained, “the National Guard includes two ‘overlapping but distinct organizations’—the National Guards of the various States and the National Guard of the United States.” *Id.* at 822 (quoting *Perpich v. Dep’t of Def.*, 496 U.S. 335, 345 (1990)). “All who enlist in a State’s National Guard must simultaneously enlist in the National Guard of the United States, which is a reserve component[] of the armed forces.” *Id.* (internal quotations and citations omitted); 10 U.S.C. § 10101. However, “[m]embers of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.” 10 U.S.C. § 12401. The States retain control over the National

Guard when it is not called into federal service—at the command of their Governors as commanders-in-chief. 32 U.S.C. §§ 328, 502(f); *see also, e.g.*, Wash. Const. art. III, § 8; Wash. Rev. Code §§ 38.08.020, .040; Del. Const. art. III, § 8; 20 Del. Laws § 171; KS Const. Art. 8, § 4; Md. Code Ann., State Gov't § 3-303; Mich. Const. art. V, § 12; Mich. Comp. Laws § 32.551(1); Mich. Comp. Laws § 32.551(1); N.M. Const. art. V, § 4; N.M. Stat. Ann. § 20-2-3; N.Y. Const. art. IV, § 3; N.Y. Military Law § 3. In sum, the National Guard is “a ‘hybrid’ entity that carefully combines both federal and state characteristics.” *Ass’n of Civilian Technicians*, 603 F.3d at 992 (quoting *Lipscomb v. Fed. Labor Rels. Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)). But there is no question that “Guard Soldiers’ primary area of operation is [in] their home state.”¹

B. Fear of a Standing Army and Tyranny by the Federal Government Compelled the Framers to Permanently Embed State Control of the Militias in the Constitutional Framework

The National Guard’s long tradition of civilian control traces its origins through the prehistory of our country, is enshrined in our Founding documents, and has continued unabated until the present day. “Civilian rule is basic to our system of government.” *Bissonette v. Haig*, 776 F.2d 1384, 1387 (8th Cir. 1985), *on reh’g*, 800 F.2d 812 (8th Cir. 1986), *aff’d*, 485 U.S. 264 (1988). Civilian authority is necessary to uphold our cherished liberties, because the “use of military forces to seize civilians can expose civilian government to the threat of military rule and the suspension of constitutional liberties.” *Id.* Military force may also threaten “vital Fourth and Fifth Amendment rights,” “chill the exercise” of the rights to “speak freely and to vote,” and can “create the atmosphere of fear and hostility which exists in territories occupied by enemy forces.” *Id.* Accordingly, “a traditional and strong resistance of Americans to any military intrusion into civilian affairs . . . has deep roots in our history.” *Laird v. Tatum*, 408 U.S. 1, 15 (1972). President Trump’s unconstitutional effort to use the National Guard to intrude into state civilian rule threatens this longstanding tradition.

¹ Army National Guard, *GUARD FAQs, What is the National Guard?*, <https://nationalguard.com/guard-faqs>.

1 **1. At America’s Founding, the Colonists Sought to Prohibit Military Rule After**
 2 **Centuries of Abuse in England**

3 In creating our country, one of the Founders’ “well-established purpose[s]” was to keep
 4 the military strictly subordinate to civil authority. *Reid v. Covert*, 354 U.S. 1, 30 (1957). This
 5 purpose stemmed from centuries of British citizens taking “political action against aggressive
 6 military rule,” namely by kings abusing their power. *Duncan v. Kahanamoku*, 327 U.S. 304, 320
 7 (1946). These abuses ultimately led Parliament to pass the English Bill of Rights, which forbade
 8 the King from maintaining a standing army without Parliament’s consent.²

9 Against these guarantees of freedom from domestic use of troops that British subjects
 10 had enjoyed for generations, George III’s deployment of British soldiers in the colonies
 11 galvanized a revolution. Starting in 1768, George III quartered British troops in Boston “to
 12 support unpopular royal governors and to intimidate the local populace.” *Reid*, 354 U.S. at 27.
 13 The colonists’ worst fears were realized when British troops, deployed to enforce the Crown’s
 14 tax acts, murdered five protestors in the Boston Massacre.³

15 As our Nation took its first steps toward self-government, the Founders maintained their
 16 commitment to civilian control, even as they faced down the Revolutionary War. In drafting the
 17 Articles of Confederation in 1777, the Continental Congress placed primary reliance on state
 18 militias (what would become National Guards) to provide internal security in emergencies, while
 19 eschewing the role of federal troops. The Articles ensured that “every state shall always keep up
 20 a well regulated and disciplined militia” but prohibited a standing army.⁴ They further provided
 21 that each state’s militia was limited to those needed for the “defense” of the state, and the civilian
 22 Congress had exclusive control over the size and activities of federal armed forces.

23 Under the Articles, “[t]he executive and military officials who . . . found it necessary to
 24 utilize the armed forces to keep order in a young and turbulent nation, did not lose sight . . . that

25 ² 1 W. & M., sess. 2, ch. 2 (1688), *reprinted in 6 Statues of the Realm*, at 142.

26 ³ See Neil L. York, *The Boston Massacre: A History with Documents* (2010).

⁴ Articles of Confederation of 1781, art. VI, para. 4.

existing civilian government . . . were not to be interfered with by the exercise of military power.” *Kahanamoku*, 327 U.S. at 320. For example, in 1786, when 1,500 farmers and unpaid former Continental Army soldiers armed themselves to attack courts and a federal armory in Massachusetts in what became known as Shays’ Rebellion, Massachusetts’ governor deployed the militia to assist with civil law enforcement. But even then, the governor directed the militia that they were “to consider [themselves] in all [their] military offensive operations constantly as under the direction of the civil officer, saving where any armed force shall appear and oppose [their] marching to execute these orders.” *Id.* The rebels ultimately dispersed before matters escalated into open hostilities.⁵

2. The Constitution Enshrines a Deliberate Balance of State and Federal Military Control

When the Framers of the Constitution met to craft a new framework for self-government in 1787, the document they created reflects their deep concerns about military subversion of civilian rule. Yet, recent history, including Shays’ Rebellion and looming threats from European powers, led the Framers to acknowledge that some permanent national military might be necessary to supplement the traditional role of state militias. The result was a compromise: the Framers cautiously embraced a standing army but put it under the command of a civilian President as Commander in Chief, and gave Congress, not the President, authority to raise, support, and regulate the armed forces. U.S. Const., art. II, § 2, cl. 1; art. I, § 8, cls. 12-14.

At the same time as the Framers adopted national armed forces under the control of Congress and the President, they preserved a role for “the Militia of the several States.” *Id.*, art. II, § 2. Under the Constitution, Congress was given the power

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; [and]

⁵ Office of the Judge Advocate General, *Federal Aid in Domestic Disturbances, 1903-22*, S. Doc. No. 263, at 10, 67th Cong., 2d Sess. (1922), <https://babel.hathitrust.org/cgi/pt?id=pst.000057379777&seq=7>.

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress

Id., art. I, § 8, cls. 15-16.⁶ Meanwhile the President was assigned the role of “Commander in Chief of . . . the Militia of the several States, *when called into the actual Service of the United States*[.]” *Id.*, art. II, § 2 (emphasis added).

Thus, Congress was given certain powers over state militias, including the power to call forth the state militia—but only in limited circumstances of invasion, insurrection, or breakdown in federal law. And when, but only when, the militias were called forth pursuant to Congress’ command, could the President exercise authority over them. Otherwise, state militias remained entirely within the states’ control. Or, as Justice Story put it: “It is almost too plain for argument, that the power here given to Congress over the militia; is of a limited nature, and confined to the objects specified in these clauses; and that in all other respects, and for all other purposes, the militia are subject to the control and government of the State authorities.” *Houston v. Moore*, 18 U.S. 1, 50 (1820) (Story, J., concurring); *see also Abbott*, 70 F.4th at 829 (“The States . . . retain exclusive power to appoint officers, train militiamen, and govern the non-federalized militia; the States also share concurrent authority with Congress to provide for organizing, arming, and disciplining the militia—so long as the States’ rules aren’t inconsistent with Congress’s.”).

Following its directive to “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions,” the Second Congress passed the Calling Forth Act in 1792. 1 Stat. 264, § 1 (1792). The Act authorized the President to call forth state militias “whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe . . . to repel such invasion.” *Id.* In the event of “insurrection in

⁶ “The National Guard is the modern Militia reserved to the states by art. I § 8, cl. 15 and 16 of the Constitution.” *Illinois Nat. Guard v. Fed. Labor Rels. Auth.*, 854 F.2d 1396, 1397 (D.C. Cir. 1988).

any state,” the Act gave the President power to federalize state militias to suppress the insurrection, but only “on application of the legislature” of the state facing the insurrection, “or of the executive (when the legislature cannot be convened).” *Id.*, § 2. The Act also included a provision authorizing the President to call forth the militia without a request from a state if “the laws of the United States shall be opposed, or the execution thereof obstructed . . . by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the [federal] marshals.” *Id.*

In 1807, Congress passed another law that largely tracked the 1795 Calling Forth Act and also permitted the President to deploy regular military forces in the same circumstances under which militias could be deployed. 2 Stat. 443 (1807). This statute is commonly known as the Insurrection Act.

3. Throughout Our History, Presidents Have Carefully Avoided Domestic Deployment of the Militias Unless Absolutely Necessary

Since 1792, when Congress first gave the President the authority to call forth the militia in limited circumstances, the President has only ever used it as “a last resort,” when a state requests help to quell an insurrection, when necessary to enforce a federal court order, or when state and local law enforcement are unable to enforce the law.⁷ All told, between 1792 and June 5, 2025, Presidents relied on the Calling Forth and Insurrection Acts approximately thirty times to engage National Guards in domestic law enforcement.⁸ Presidents have called the National Guard forth to respond to armed uprisings like the Whiskey Rebellion in 1794, Fries’ Rebellion in 1799, and the Brooks-Baxter War in 1874; deadly riots that overwhelmed local law enforcement like the Colfax Massacre in 1873, the Seattle Riot of 1886, and the LA Riots in

⁷ Mary C. Lawton Letter to Antonin Scalia, *Laws Relating to Civil Disturbances* (Jan. 6, 1976), https://www.justice.gov/d9/pages/attachments/2022/09/02/la_19750106_law_relating_to_civil_disturbances_0.pdf.

⁸ See generally Joseph Nunn & Elizabeth Goitein, *Guide to Invocations of the Insurrection Act*, Brennan Center for Justice (Apr. 25, 2022), <https://www.brennancenter.org/our-work/research-reports/guide-invocations-insurrection-act>.

1992; the Civil War⁹ and post-war reign of terror by the Ku Klux Klan; crippling labor strife like the Pullman Strike of 1894, the Colorado Coalfield War of 1914, and the Battle of Blair Mountain in 1921; and states' refusals to comply with desegregation orders and protect civil rights protestors in Little Rock in 1957, Ole Miss in 1962, and Selma in 1965.¹⁰

Meanwhile, Congress has periodically adjusted the guardrails to ensure the President has power to respond to genuine emergencies, while preserving the supremacy of civilian rule and protecting the delicate state-federal balance enshrined in the Constitution. During Reconstruction, President Grant repeatedly called forth the armed forces to address the threats posed by the Ku Klux Klan and other revanchist terrorist groups and to support fragile Reconstruction governments.¹¹ In this unique epoch of American history, extensive military involvement was indispensable in fighting a Civil War, reconstructing a shattered nation, and

⁹ During the Civil War, Congress amended the Insurrection Act to give President Lincoln the needed flexibility to fight the Civil War and invade states of the fraying union. The so-called Lincoln Law amended the Calling Forth Act to permit the President to deploy state militias or regular armed forces whenever "by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President . . . to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State." An Act to Provide for the Suppression of Rebellion against and Resistance to the Laws of the United States, ch. 25, 12 Stat. 281 (1861).

¹⁰ Nunn & Goiten, *supra*. On occasion, federal troops were also deployed prior to the Civil War without invocation of the Calling Forth or Insurrection Acts, such as when violence erupted between pro- and anti-slavery elements in the new Kansas Territory in the 1850s. Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders 1789-1878*, at 176, Center of Military History United States Army Washington D.C. (1988), https://www.google.com/books/edition/The_Role_of_Federal_Military_Forces_in_D/Ydx1_L_FkbjcC?hl=en&gbpv=1&pg=PA3&printsec=frontcover. Additionally, in one of the more shameful chapters of our history, an 1850 amendment to the Fugitive Slave Act permitted the use of posse comitatus to capture runaway slaves, which sometimes led to federal and state militia troops being pressed into service. 9 Stat. 462 (1850) (repealed 1864); *see also* Charles Emery Stevens, *Anthony Burns: A History*, Boston John P. Jewett and Co. (1856), <https://archive.org/details/anthonyburnshiststev/page/n5/mode/2up>. As detailed below, in 1878, Congress passed the Posse Comitatus Act, forbidding exactly this.

¹¹ Nunn & Goiten, *supra*; *see also* Ulysses S. Grant, Proclamation (May 3, 1871), <https://millercenter.org/the-presidency/presidential-speeches/may-3-1871-message-regarding-fourteenth-amendment>.

1 protecting the rights of newly freed slaves. As President Grant explained it, “I have not employed
2 troops on slight occasions, nor in any case where it has not been necessary to the enforcement of
3 the laws of the United States.”¹²

4 In 1876, however, Republican Rutherford B. Hayes lost the popular vote, but won the
5 electoral vote after promising to withdraw federal troops from the former Confederacy. Shortly
6 thereafter, Congress passed the Posse Comitatus Act to severely restrict any further use of the
7 armed forces for law enforcement.¹³ As presently codified, the Act provides:

8 Whoever, except in cases and under circumstances expressly authorized by the
9 Constitution or Act of Congress, willfully uses any part of the Army, the Navy, the
10 Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise
11 to execute the laws shall be fined under this title or imprisoned not more than two
12 years, or both.

13 18 U.S.C. § 1385. After the experience of Reconstruction, the Posse Comitatus Act firmly
14 reiterated the antebellum balance. It sharply limited military involvement in civilian affairs,
15 while preserving some flexibility for the President to use the armed forces in extraordinary
16 circumstances.

17 Congress next spoke in 1903. Following the Spanish-American War, Congress passed
18 the Militia Act of 1903—known as the Dick Act—to improve the readiness and training of the
19 state militias.¹⁴ Acting pursuant to the Militia Clauses, the Dick Act created the modern National
20 Guard and set forth the circumstances under which they could be federalized. *See Perpich*, 496
21 U.S. at 342. As Rep. Charles Dick, then Chairman of the Committee on Militia explained, the
22 National Guard was “never designed to be a militia of the United States” and the President could

23 ¹² Ulysses S. Grant to the House of Representatives (Jan. 22, 1877) *quoted in* G. Norman
24 Lieber, *Use of the Army in Aid of the Civil Power*, at 8 (1898), <https://archive.org/details/useofarmyinaidof00liebrich/page/n3/mode/2up>.

25 ¹³ An Act Making Appropriations for the Support of the Army for the Fiscal Year Ending
26 June Thirtieth, Eighteen Hundred and Seventy-Nine, and for Other Purposes, ch. 263, § 15, 20
Stat. 145, 152 (1878).

¹⁴ The Dick Act, ch. 196, 32 Stat. 775, § 4 (1903); *see also* Wikipedia, *Militia Act of 1903*
(last edited June 9, 2025, 11:55 a.m.), https://en.wikipedia.org/wiki/Militia_Act_of_1903.

1 not call up the National Guard at “his arbitrary pleasure” but only in specific enumerated
 2 circumstances.¹⁵ Indeed, Rep. Dick noted, “[i]t was the hereditary fear of standing armies, as a
 3 menace to liberty in time of peace, which lead the framers of the Constitution to provide that the
 4 militia should always remain a militia of the States.”¹⁶

5 Section 4 of the Dick Act included a provision that would later be codified as 10 U.S.C.
 6 § 12406. As initially passed, it provided:

7 “That whenever the United States is invaded, or in danger of invasion from any
 8 foreign nation, or of rebellion against the authority of the Government of the United
 9 States, or the President is unable, with the other forces at his command, to execute
 10 the laws of the Union in any part thereof, it shall be lawful for the President to call
 11 forth, for a period not exceeding nine months, such number of the militia of the
 12 State or of the States or Territories or of the District of Columbia as he may deem
 13 necessary to repel such invasion, suppress such rebellion, or to enable him to
 14 execute such laws, and to issue his orders for that purpose to such officers of the
 15 militia as he may think proper.”

16 Notably—and perhaps in response to the experience of the Civil War during which some pro-
 17 slavery Union states declined to send forth their militia¹⁷—this early version of what would
 18 become Section 12406 did not include any role for the governor of the state whose National
 19 Guard was being federalized. But just five years later, before Section 4 was ever invoked,
 20 Congress amended the statute to add the explicit requirement that when the President has need
 21 to nationalize the Guard in the face of invasion, rebellion, or inability to enforce the laws, he
 22 must “issue his orders for that purpose, through the governor of the respective State or Territory,
 23 or through the commanding general of the militia of the District of Columbia, from which State,
 24 Territory, or District such troops may be called.”¹⁸ In 1956, when the Dick Act was recodified

25 ¹⁵ Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 Harv. L. Rev.
 26 181, n. 74 (Dec. 1940) (cites H.R. Rep. No. 1094, 57th Cong., 1st Sess., at 22-23 (1902)).

¹⁶ *Id.*

¹⁷ See 1908 Congr. Rec. 6942 (Statement of Rep. Parker of New Jersey),
<https://www.congress.gov/bound-congressional-record/1908/05/25/42/house-section/article/6893-6949?q=%7B%22search%22%3A%221908+Congr.+Rec.+6942%22%7D&s=2&r=1>.

¹⁸ Pub. L. No. 60-145, § 3, 35 Stat. 400 (1908). The statute has been amended since and
 in 1956 was adopted in essentially its current form. Pub. L. No. 84-1028, 70A Stat. 199 (1956).

1 into the current Title 10, the statute was amended again into its current form.¹⁹ Section 12406
 2 thus now provides, in full:

3 Whenever-

4 (1) the United States, or any of the Commonwealths or possessions, is invaded
 or is in danger of invasion by a foreign nation;

5 (2) there is a rebellion or danger of a rebellion against the authority of the
 Government of the United States; or

6 (3) the President is unable with the regular forces to execute the laws of the
 United States;

7 the President may call into Federal service members and units of the National
 8 Guard of any State in such numbers as he considers necessary to repel the invasion,
 suppress the rebellion, or execute those laws. Orders for these purposes shall be
 9 issued through the governors of the States or, in the case of the District of Columbia,
 through the commanding general of the National Guard of the District of Columbia.
 10

11 In the hundred-plus years Section 12406 and its predecessors have been on the books, it
 12 has only been invoked twice. In 1916, after Pancho Villa attacked the United States as part of an
 13 ongoing border dispute, U.S. Army forces chased him deep into Mexico. With the regular army
 14 drawn away, other Mexican forces attacked undefended towns in Texas, leading President
 15 Wilson to call up National Guard units to defend the United States against any further border
 16 incursions.²⁰

17 Section 12406 was next invoked 54 years later, when President Nixon called upon the
 18 National Guard to deliver mail in New York during a Postal Service Strike. Exec. Order No.
 19 11519, 35 Fed. Reg. 5003 (March 23, 1970). At that time, the Postal Service strike had stopped
 20 the delivery of mail entirely in New York. As President Nixon explained, federal statute
 21 “require[d] that the business of the Post Office Department, including the expeditious processing
 22 and delivery of the mail, be regularly carried on.” *Id.* In determining that he was “unable solely
 23

24 ¹⁹ Pub. L. No. 84-1028, 70A Stat. 199 (1956).

25 ²⁰ Alexander F. Barnes, *On the Border: The National Guard mobilizes for war in 1916*,
 26 U.S. Army (Feb. 26, 2016), https://www.army.mil/article/162413/on_the_border_the_national_guard_mobilizes_for_war_in_1916.

1 with the regular forces” to carry out these laws, President Nixon declared a national emergency,
 2 *see* Proclamation 3972, and federalized nearly 12,000 National Guardsmen.²¹

3 In the 55 years since, Section 12406 has lain dormant.

4 In short, President Trump’s invocation of the statute here—to call forth armed National
 5 Guard soldiers and entangle them in protests that local law enforcement is able to manage, is
 6 contrary to the purpose of the militia and tradition of restraint in their use. And that President
 7 Trump mobilized the National Guard over the objection of California’s Governor is utterly
 8 unprecedented in our history. While our leaders have long recognized that the armed forces,
 9 including the National Guard, might sometimes be necessary to respond to emergencies, this has
 10 always and only been used as a last resort, and always with an eye toward respecting the primacy
 11 of civil law enforcement and state control of the militias. By invoking Section 12406 here,
 12 President Trump undermines one of our Nation’s founding principles: that freedom depends on
 13 the subordination of the military to civilian authority.

14 **C. The National Guard Plays a Vital and Irreplaceable Role in Ensuring the Security**
 15 **and Disaster Preparedness of the States**

16 While the National Guard may be called into federal service in the emergency situations
 17 describes above, its daily, indispensable role is in service of the States. This includes responding
 18 to natural disasters and other (sometimes life-threatening) emergencies that imperil the States’
 19 residents, providing security at large and high-profile events, and protecting the security and
 20 integrity of elections. The States invest millions of dollars every year to fund this critical work.

21 Although the National Guard is primarily funded through federal appropriations, *see*
 22 32 U.S.C. §§ 106-107, it also receives funding from the States. For example, California’s enacted
 23 budget for fiscal year 2024 allocated more than \$293 million for its National Guard; of this
 24

25 ²¹ Homer Bigart, *Military in Post Offices, Begins Handling the Mail*, New York Times
 26 (March 24, 1970), <https://www.nytimes.com/1970/03/24/archives/military-in-post-offices-begins-handling-the-mail-military-in-post.html> (digitized version).

amount, more than \$148 million—approximately 51% of the budget—came from California’s General Fund.²² In Washington, the adopted budget for 2023-2025 allocated over \$151 million in state appropriations to the Military Department, including more than \$59 million for the disaster response account²³; in federal fiscal year 2024, Washington spent about \$6.3 million on National Guard facilities, construction, and projects, and the state also appropriates almost \$1 million per year combined to the Guard for wildland fire training, administrative costs, and death benefits for families of Guard members who died in service. Vermont’s fiscal year 2025 budget allocated almost \$7 million to its military department, most of which flows to various National Guard functions.²⁴ And in Massachusetts, the enacted budget for the fiscal year 2025 included state spending for (among other things) the office of the adjutant general, certain National Guard aviation facilities, and National Guard missions and division operations.²⁵

The National Guard has thousands of members assigned for duty in each state. In March 2025, for example, Washington had 5,410 members of the Army National Guard and 2,003 members of the Air National Guard assigned for duty in the State.²⁶ Illinois had 9,480 members of the Army National Guard and 2,693 members of the Air National Guard assigned for duty in

²² California State Budget Office, *2023-24 STATE BUDGET – GGI*, 8940 Military Dep’t, <https://ebudget.ca.gov/2023-24/pdf/Enacted/GovernorsBudget/8000/8940.pdf> (last visited June 11, 2025).

²³ Engr. Sub. S.B. 5187, 68th Leg., Reg. Sess., 2023 Wash. Sess. Laws, ch. 475, §§ 132-33.

²⁴ State of Vermont, FY2025 Governor’s Recommended Budget: Rollup Report, <https://perma.cc/LNY6-E2EJ>.

²⁵ Military Division, *Budget Summary FY2025 Enacted*, Commonwealth of Massachusetts, <https://budget.digital.mass.gov/summary/fy25/enacted/public-safety/military-division/> (last visited June 11, 2025).

²⁶ Defense Manpower Data Center, *Number of Military and DoD Appropriated Fund (APF) Civilian Personnel* (Mar. 31, 2025), <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports> (March 2025 Spreadsheet under *Military and Civilian Personnel by Service/Agency by State/Country*).

1 the State.²⁷ New York had 11,258 members of the Army National Guard and 5,815 members of
 2 the Air National Guard assigned for duty in the State.²⁸ New Mexico had 2,350 members of the
 3 Army National Guard and 884 members of the Air National Guard assigned for duty in the
 4 State.²⁹ And Vermont had 1,690 members of the Army National Guard and 1,012 members of
 5 the Air National Guard assigned for duty in the State.³⁰

6 Through its response to natural disasters in Amici States, the National Guard saves lives.
 7 The National Guard responded to major wildfires in Washington in 2024 and California in
 8 2025.³¹ Members of the Vermont Army National Guard collaborated with search and rescue
 9 teams to evacuate nineteen people from Hurricane Beryl in one night in 2024.³² In 2023, the
 10 Hawai'i National Guard responded to devastating wildfires on Maui, including the wildfire-
 11 initiated urban conflagration that consumed the historic town of Lahaina, by maintaining order,
 12 fighting the fires, and searching for victims.³³ In 2019, 200 members of the Illinois National
 13
 14

15 ²⁷ *Id.*

16 ²⁸ *Id.*

17 ²⁹ *Id.*

18 ³⁰ *Id.*

19 ³¹ Joseph Siemandel, *Year in Review: 2024 was a busy year for Washington Military*
 20 *Department*, Defense Visual Information Distribution Service (DVIDS) (Jan. 7, 2025),
[https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-](https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-department)
[department](https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-department).

21 ³² Maj. J. Scott Detweiler, *Vermont National Guards Supports Cyclone Beryl Response*,
 22 DVIDS (July 11, 2024), [https://www.dvidshub.net/news/475930/vermont-national-guards-](https://www.dvidshub.net/news/475930/vermont-national-guards-supports-cyclone-beryl-response)
[supports-cyclone-beryl-response](https://www.dvidshub.net/news/475930/vermont-national-guards-supports-cyclone-beryl-response).

23 ³³ Air Force Master Sgt. Erich B. Smith, *Hawaii Army National Guard Supports Maui*
 24 *Wildfire Response*, National Guard (Aug. 28, 2023), [https://www.nationalguard.mil/News/](https://www.nationalguard.mil/News/Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/)
[Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/](https://www.nationalguard.mil/News/Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/).
 25 As an insular state located more than 2,000 miles away from the mainland, Hawai'i cannot
 26 readily expect to receive prompt material assistance from elsewhere when responding to
 emergencies.

Guard responded to major river floods by placing sandbags and monitoring levees.³⁴ In January and April of this year, Maryland and Michigan activated their respective National Guards to respond to severe winter storms.³⁵

States also send members of their National Guard to assist other states facing major natural disasters. All fifty states, plus the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and the Northern Mariana Islands, have enacted legislation to become members of the Emergency Management Assistance Compact (“EMAC”).³⁶ EMAC is a formal compact that facilitates states’ sharing of personnel and resources when a governor in one state declares an emergency.³⁷ National Guard members are deployed to respond to disasters in other states through EMAC.³⁸ For example, in 2024, many states sent personnel and resources to Florida to help respond to Hurricane Milton. New York sent sixty-five members of its National Guard.³⁹

³⁴ Lt. Col. Bradford Leighton, *Ill. National Guard helps civilian agencies fight flooding*, National Guard (June 3, 2019), <https://www.nationalguard.mil/News/Article-View/Article/1863818/ill-national-guard-helps-civilian-agencies-fight-flooding/>.

³⁵ Maryland National Guard, *Maryland National Guard activated to support winter storm response across the state* (Jan. 8, 2025), <https://news.maryland.gov/ng/2025/01/08/maryland-national-guard-activated-to-support-winter-storm-response-across-the-state/>; Department of Military and Veterans Affairs, *More than 800 Michigan National Guard Soldiers and Airmen Mobilized to Support Michigan Communities Impacted by Northern Michigan Ice Storm* (April 4, 2025), <https://www.michigan.gov/dmva/newsroom/press-releases/2025/04/04/mobilized-to-support-michigan-communities-impacted-by-northern-michigan-ice-storm>.

³⁶ Emergency Management Assistance Compact (EMAC), *What is EMAC?*, <https://www.emacweb.org/index.php/learn-about-emac/what-is-emac> (last visited June 11, 2025).

³⁷ *Id.*

³⁸ *Id.*

³⁹ State of New York, *Governor Hochul Announces 65 New York national Guard Soldiers and Airmen Are Deploying to Assist in Florida in Responding to the Impact of Hurricane Milton*, New York’s Governor’s Office (Oct. 9, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-65-new-york-national-guard-soldiers-and-airmen-are-deploying-assist>.

Colorado sent a helicopter and crew.⁴⁰ Delaware sent 100 members of its National Guard.⁴¹ Connecticut deployed members of its National Guard in the wake of Hurricane Helene in 2024.⁴² In 2022 alone, over 100,000 members of the National Guard were deployed to fight wildfires in nineteen states.⁴³ And in 2012, in the aftermath of Hurricane Sandy, 12,000 National Guard members—including 2,000 deployed by New Jersey—assisted eleven states, working with search and rescue teams, staffing evacuation shelters, clearing routes, and delivering essential equipment and supplies.⁴⁴ As the Amici States—and the nation as a whole—face increasingly catastrophic wildfires, hurricanes, and other natural disasters, a robust National Guard staffed with every qualified service member is essential to protect people and property.

In addition to natural disasters, States' National Guard forces play an important role in counterdrug and counterterrorism activities. In 2024, the Washington National Guard

⁴⁰Colorado National Guard Public Affairs, *Colorado National Guard supports Hurricane Milton relief efforts*, Colorado National Guard (Oct. 9, 2024), <https://co.ng.mil/News/Archives/Article/3930948/colorado-national-guard-supports-hurricane-milton-relief-efforts/>

⁴¹ State of Delaware, *Governor Carney to Activate Delaware National Guard to Assist with Florida's Hurricane Response*, Office of the Governor (Oct. 8, 2024), <https://news.delaware.gov/2024/10/08/governor-carney-to-activate-delaware-national-guard-to-assist-with-floridas-hurricane-response/>.

⁴² State of Connecticut, *Governor Lamont Announces Connecticut National Guard Sending Additional Soldiers and Aircraft to North Carolina for Further Hurricane Helene Disaster Assistance* (Oct. 3, 2024), https://portal.ct.gov/governor/news/press-releases/2024/10-2024/governor-lamont-announces-connecticut-national-guard-sending-additional-soldiers-to-north-carolina?language=en_US.

⁴³ Anshu Siripurapu & Noah Berman, *What does the U.S. National Guard Do?*, Council on Foreign Relations (last updated June 10, 2025), <https://www.cfr.org/background/what-does-us-national-guard-do#:~:text=The%20National%20Guard%20can%20also,normally%20funded%20by%20the%20state.>

⁴⁴ Army Sgt. 1st Class Jim Greenhill, *12,000 National Guard Members Helping 11 States Recover from Hurricane Sandy* (Oct. 30, 2012), <https://www.nationalguard.mil/News/Article/574966/12000-national-guard-members-helping-11-states-recover-from-hurricane-sandy/>; National Centers for Environmental Information, *Storm Events Database*, <https://www.ncdc.noaa.gov/stormevents/eventdetails.jsp?id=416939> (last visited June 11, 2025).

1 Counterdrug Program helped coordinate 12 multi-jurisdictional law enforcement task forces,
 2 partnering with state, local, and tribal agencies. Together, “they seized more than 4.6 million
 3 lethal doses of fentanyl and other narcotics, denying drug trafficking organizations (DTOs)
 4 approximately \$71 million in revenue.”⁴⁵ The New York National Guard contributes members
 5 to the Joint Task Force Empire Shield, which conducts land and waterborne Homeland Security
 6 Operations in the New York City metropolitan area to deter and prevent terrorist acts.⁴⁶

7 Additionally, States sometimes activate members of the National Guard to provide
 8 security support at major events. For example, in 2024, members of Nevada’s National Guard
 9 assisted local law enforcement in providing security at the Formula 1 Las Vegas Grand Prix,
 10 which drew several hundred thousand attendees to the city.⁴⁷ Members of about forty states
 11 provided security for President Trump’s 2025 Inauguration, in a tradition dating back to the first
 12 inauguration of President George Washington.⁴⁸

13 The National Guard also uses the technical expertise of its members to provide
 14 cybersecurity support during elections. As of 2022, the National Guard cyber force included over
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18 ⁴⁵ Washington Military Department, *Annual Report 2024/2025*, https://d34w7g4gy10iej.cloudfront.net/pubs/pdf_72587.pdf.

19 ⁴⁶ C. Todd Lopez, *New York Guard’s Joint Task Force Empire Shield: Guarding NYC transit hubs since 9/11*, Army New Service (Sept. 9, 2016), <https://www.nationalguard.mil/News/Article-View/Article/939398/newyork-guards-joint-task-force-empire-shield-guarding-nyc-transit-hubs-since-9/>.

20 ⁴⁷ Capt. Emerson Marcus, *Nevada Guard set to support Clark County first responders during Formula 1 Las Vegas Grand Prix*, Nevada National Guard (Nov. 20, 2024), <https://nv.ng.mil/News/Article-Display/Article/3973518/nevada-guard-set-to-support-clark-county-first-responders-during-formula-1-las/>.

21 ⁴⁸ District of Columbia National Guard, *National Guard support to the District of Columbia and the 60th Presidential Inauguration* (Jan. 13, 2025), <https://dc.ng.mil/Public-Affairs/News-Release/Article/4028262/national-guard-support-to-the-district-of-columbia-and-the-60th-presidential-in/>.

2,200 members from thirty-eight units.⁴⁹ These members provided cybersecurity support during the 2022 primary elections in eight states.⁵⁰ In 2024, fifteen states activated the National Guard to provide cybersecurity for the November general election.⁵¹ Many states rely on the National Guard for their cybersecurity needs because many state and local governments experience gaps in their cybersecurity workforce.⁵²

All of this work is vital. And all of it requires significant advance training, planning, and preparation. Amici States cannot simply replace the National Guard's work if its members are suddenly whisked from their State missions and pressed into service as domestic law enforcement. For that reason, unlawful activation of the National Guard risks significant harm to people and property as the Guard diverts resources from its core state mission.

The Court should not bless that harm, nor the damage the Trump Memo and DOD Orders work on state sovereignty and the constitutional requirement that the military remain separate from civilian law enforcement. The rule of law must hold, and Defendants must be enjoined.

IV. CONCLUSION

This Court should grant Plaintiffs' request for a Temporary Restraining Order.

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⁴⁹ Army Sgt. 1st Class Whitney Hughes, *National Guard Provides Critical Election Cybersecurity*, National Guard (Nov. 7, 2022), <https://www.nationalguard.mil/News/Article/3211891/national-guard-provides-critical-election-cybersecurity/>.

⁵⁰ *Id.*

⁵¹ Jeff Schogol, *Many of the National Guardsmen activated for election focus on cybersecurity*, Task & Purpose (Nov. 5, 2024), <https://taskandpurpose.com/news/national-guard-election-cybersecurity/>.

⁵² Skylar Rispens, *National Guard ready to assist states with cyber response, say officials*, State Scoop (Mar. 20, 2024), <https://statescoop.com/national-guard-ready-assist-with-state-cyber-response/>.

1 DATED this 11th day of June 2025.

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