

IN THE
Supreme Court of the United States

DONALD J. TRUMP, *et al.*,
Petitioners,
v.
STATE OF ILLINOIS, *et al.*,
Respondents.

ON EMERGENCY APPLICATION FOR STAY

TO THE HONORABLE AMY CONEY BARRETT, ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT

**BRIEF OF *AMICI CURIAE* FORMER U.S. ARMY AND NAVY
SECRETARIES AND RETIRED FOUR-STAR ADMIRALS AND
GENERALS**

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INTEREST OF *AMICI CURIAE*¹

Amici are former secretaries of the Army and Navy and retired four-star admirals and generals. Collectively, they served under each president from John F. Kennedy to Barack Obama.

Amici are interested in this case because presidential deployment of the National Guard to perform local law enforcement should be rare, carefully considered, and in strict compliance with the Posse Comitatus Act. Deployments that fail to adhere to these long-established guardrails threaten the Guard's core national security and disaster relief missions; place deployed personnel in fraught situations for which they lack specific training, thus posing safety concerns for servicemembers and the public alike; and risk inappropriately politicizing the military, creating risks to recruitment, retention, morale, and cohesion of the force.

This submission is based on *amici*'s collective experience serving in and leading our military, their direct experience commanding active-duty service personnel, and their interest in preserving our military's apolitical role in safeguarding national security.

Amici are **Admiral Steve Abbot, U.S. Navy (Retired); Admiral Thad Allen, U.S. Coast Guard (Retired); Former Secretary of the Army Louis Caldera; General George Casey, U.S. Army (Retired); General Michael Hayden, U.S. Air Force (Retired); Admiral Samuel Jones Locklear, III, U.S.**

¹ In accordance with Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

Navy (Retired); General Craig McKinley, U.S. Air Force (Retired); Former Secretary of the Navy Sean O’Keefe; Admiral Bill Owens, U.S. Navy (Retired). *Amici’s* short biographies in the Appendix capture a measure of their distinguished service, as well as their expertise on matters encompassing the mission of the military and the well-being of those in uniform.

INTRODUCTION

The National Guard, founded in 1636 as a citizen-soldier force, has a dual mission: (1) to serve as a reserve component of the active-duty military, and (2) to protect life and property within communities at home.² In the Guard’s long and proud history, its members have fought in nearly every U.S. conflict since the Revolutionary War and saved countless lives in domestic disaster responses – indeed, thousands of members of the Guard are deployed abroad on any given day.³

Another tradition older than the nation itself is the strong aversion to military personnel under control of the national government engaging in local law enforcement. This prohibition was codified in 1878 in the Posse Comitatus Act,⁴ 18 U.S.C. § 1385, and has continued as a bedrock of American federalism and civil-

² See *About the Guard: How We Began*, NATIONAL GUARD, <https://www.nationalguard.mil/About-the-Guard/How-We-Began> (last visited Sept. 26, 2025); *Our History*, ARMY NATIONAL GUARD (2025), <https://nationalguard.com/guard-history>.

³ See Michael D. Doubler, *I Am The Guard: A History of The Army National Guard, 1636-2000* (2001), <https://www.nationalguard.mil/portals/31/Documents/About/Publications/Documents/I%20am%20the%20Guard.pdf>.

⁴ The Posse Comitatus Act prohibits federal military personnel from acting as a domestic police force unless doing so is “expressly authorized by the Constitution or Act of Congress.” 18 U.S.C. § 1385.

military relations ever since. While there are important exceptions for extraordinary circumstances, the Act reflects the straightforward and heretofore uncontroversial expectation that the President not use the American military to police America. One extraordinary circumstance supporting an exception to this prohibition is an internal rebellion justifying invocation of the Insurrection Act. Federal law also recognizes that states may authorize National Guard under their control to support local law enforcement in their own communities. Notwithstanding these limited exceptions, strict adherence to this principle – that military personnel operating at the direction of the President and his subordinates may not engage in domestic law enforcement – has been a touchstone of Republican and Democratic administrations alike.

Experience has taught *amici* that this commitment keeps our military stronger and our communities safer. Any domestic deployment that fails to comply with the foundational principles of the Posse Comitatus Act and similar authorities⁵ poses risks to the core mission of the Guard, the well-being of the troops, and the safety of the communities they are committed to protect. *First*, deploying military personnel in the context of domestic law enforcement diverts them from their primary mission, which is to train and to be ready to fight and win the nation’s wars and protect communities after disasters. Accordingly, such assignments come at the expense of local, state, and national safety, as well as troop morale. *Second*, active-duty National Guard personnel are neither intended nor specifically trained to conduct domestic

⁵ For example, 10 U.S.C. § 275, which restricts the direct participation of military personnel in activities like searches, seizures, and arrests, with exceptions requiring authorization by law or regulation.

law enforcement operations. This poses a danger to the safety of the troops and the public. *Third*, use of federal military personnel in the context of law enforcement should be a last resort to avoid the politicization of the military, which inevitably erodes public trust, hurts recruitment, and undermines morale. Peaceful protests of government actions are constitutionally protected speech deserving of the highest protection, not intimidation by the military.

Amici submit this brief to more fully explain these risks and assist the Court in its disposition of the pending motion.

FACTUAL BACKGROUND

The summer and early fall of 2025 have witnessed stark deviations from the traditional roles of the National Guard. Beginning in June, following protests at ICE facilities in Los Angeles, President Trump issued orders federalizing and deploying the California National Guard in southern California over the objections of California’s governor. Underscoring the aberrational nature of that deployment, a federal court found that the actions the troops were ordered to undertake in California violated the Posse Comitatus Act.⁶ Notably, that deployment was pursuant to a presidential memorandum broadly authorizing the federalization of National Guard under 10 U.S.C. § 12406 at locations “where protests against [Federal] functions [were] occurring or are likely to occur.”⁷

⁶ See *Newsom v. Trump*, 786 F. Supp. 3d 1235, 1242–43 (N.D. Cal. 2025), *stayed pending appeal*, 141 F.4th 1032 (9th Cir. 2025).

⁷ Memorandum from President Donald J. Trump to Attorney General Pam Bondi and Secretary of Homeland Security Kristi Noem, *Department of Defense Security for the Protection of Department of Homeland Security Functions*, WHITE HOUSE (June 7, 2025),

Continuing this recent – and concerning – trend, President Trump declared a crime emergency in Washington, D.C. in August and began to deploy to the District the D.C. National Guard as well as Guard troops from eight cooperating states. As in California, the local authorities – in D.C., the Mayor – neither requested nor agreed to these deployments. Unlike in the California litigation, in D.C. the Administration did not dispute that law enforcement was a central purpose of the Guard’s deployment there. Rather, the federal government expressly described the mission as designed in part to address crime.⁸

The next city to receive a deployment was Memphis in September for the stated purpose of addressing crime in the city.⁹ Similar to the circumstances in Washington, D.C., Memphis’s mayor did not agree to the deployment of troops.¹⁰ The trend continued weeks later when President Trump posted on social media that he would send troops to “War ravaged Portland,” authorizing “Full Force, if necessary.”¹¹

www.whitehouse.gov/presidential-actions/2025/06/departments-of-defense-security-for-the-protection-of-department-of-homeland-security-functions/.

⁸ Exec. Order No. 14339, 90 Fed. Reg. 42121 (Aug. 28, 2025).

⁹ Jonathan Mattise, *Trump says he’ll send National Guard to Memphis, escalating his use of troops in US cities*, ASSOCIATED PRESS (Sept. 12, 2025), <https://apnews.com/article/trump-memphis-national-guard-federal-intervention-73a7747f02bdf111574cbe9cc59201dd>.

¹⁰ The mayor of Memphis commented that, while federal support to reduce crime would be welcome, such support “shouldn’t come in the form of military personnel, people carrying semi-automatic weapons and driving around in armored vehicles.” Kayla Solomon, *Mayor Harris, Mayor Young comment on possible National Guard deployment*, FOX13 (Sept. 11, 2025), https://www.fox13memphis.com/news/mayor-harris-mayor-young-comment-on-possible-national-guard-deployment/article_bbba041f-c016-441f-99bc-314a0dca02c0.html.

¹¹ Michelle Wiley, *From passing mention to authorized deployment: A timeline of the president’s pressure on Portland*, OPB (Sept. 29, 2025), <https://www.opb.org/article/2025/09/29/timeline-donald-trump-pressure-portland/>.

Secretary Hegseth then issued a memo authorizing the federalization and deployment of 2000 members of the Oregon National Guard.¹² Again, this deployment was over the objection of the governor of Oregon.¹³

Against this backdrop, in early September, President Trump signed an order renaming the Department of Defense the Department of War. The order purports to “sharpen[] the Department’s focus on [] our adversaries’ focus on our willingness and availability to wage war to secure what is ours.”¹⁴ Aligning with a transformation in civil-military relations toward widespread domestic peacetime deployment of the military, the President has also ordered the Department to “ensure the availability of a standing National Guard quick reaction force that shall be resourced, trained, and available for rapid nationwide deployment.”¹⁵

Consistent with an increasingly aggressive posture, President Trump has promised to deploy the National Guard to police more American cities: “We’re going to take care of all of them step by step, just like we did in D.C.”¹⁶ These public

¹² Memorandum from Secretary of War Pete Hegseth to the Adjutant General, Oregon National Guard through: The Governor of Oregon, *Calling Members of the Oregon National Guard into Federal Service*, DEPARTMENT OF WAR (Sept. 28, 2025), <https://www.documentcloud.org/documents/26159492-hegsethmemosept282025/>.

¹³ Opinion at 14, *Oregon v. Trump*, No. 3:25-cv-1756, (D. Or. Oct. 4, 2025), ECF No. 56, https://storage.courtlistener.com/recap/gov.uscourts.ord.189270/gov.uscourts.ord.189270.56.0_1.pdf.

¹⁴ Exec. Order No. 14347, 90 Fed. Reg. 43893 (Sept. 5, 2025).

¹⁵ Exec. Order No. 14339, *supra* note 8.

¹⁶ Luke Broadwater & Emily Cochrane, *Trump Signs Off on Sending the National Guard to Memphis*, N.Y. TIMES (Sept. 15, 2025), <https://www.nytimes.com/2025/09/15/us/politics/trump-memphis-national-guard-crime.html>.

pronouncements sometimes name specific cities as future targets for military deployment, including Chicago, Baltimore, New Orleans, and St. Louis.¹⁷ One of the President’s social media posts warned that Chicago was “about to find out why it’s called the Department of WAR.”¹⁸

On October 4, the Administration followed through on that threat. Secretary Hegseth invoked 10 U.S.C. § 12406 to federalize up to 300 members of the Illinois National Guard, over the objection of the governor of Illinois. The following day, Secretary Hegseth invoked the same statute to federalize up to 400 additional National Guard troops – this time from Texas – to deploy into Chicago.

Over the past several months, the Administration has abandoned the American tradition against domestic deployment of the military, embracing instead what the District Court of Oregon described as “martial law.”¹⁹ The Administration has suggested it plans to use U.S. cities as “training grounds” for the military, turning our troops on the “enemy within”²⁰ – the very people they have sworn to protect, with

¹⁷ Rachel Treisman, *How Chicago, Baltimore and New Orleans are reacting to Trump's National Guard threats*, NPR (Sept. 5, 2025), <https://www.npr.org/2025/09/05/nx-s1-5530051/trump-national-guard-chicago-baltimore-new-orleans>; Broadwater & Cochrane, *supra* note 16.

¹⁸ Joe Hernandez & Kat Lonsdorf, *Trump walks back Chicago 'war' threat, but vows to 'clean up' cities*, NPR (Sept. 7, 2025), <https://www.npr.org/2025/09/07/nx-s1-5533191/trump-chicago-threat-baltimore-new-orleans>.

¹⁹ Opinion at 30, *supra* note 13.

²⁰ NPR Washington Desk, *Trump defends use of the U.S. military against the 'enemy within'*, NPR (Sept. 30, 2025), <https://www.npr.org/2025/09/30/nx-s1-5557232/hegseth-generals-trump>.

their own lives if necessary. Thousands of troops have been deployed in our communities over the objection of local leaders, with the promise of more.

ARGUMENT

I. The Posse Comitatus Act Prohibits the Military from Acting as Domestic Law Enforcement Absent Express Congressional Authorization

The general expectation that the military will not engage in domestic civilian law enforcement is foundational to American civil-military relations. Long before Congress enacted the Posse Comitatus Act in 1878, the U.S. Constitution and American tradition aimed to avoid repeating the British military’s police state-like presence in colonial society. “Over the centuries, American political and military leaders ingrained in the U.S. military a nonpartisan commitment to support and defend not any person or party but the Constitution itself. This nonpartisan commitment *** mitigates against the most extreme threats to the republic, from insurrection to civil war.”²¹ See, e.g., U.S. Const. amend. III, IV; *Laird v. Tatum*, 408 U.S. 1, 15 (1972) (discussing the “traditional and strong resistance of Americans to any military intrusion into civilian affairs,” a “tradition [that] has deep roots in our history”). This tradition was later codified in the Posse Comitatus Act, which now reads: “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army, the Navy,

²¹ Joseph F. Dunford Jr., et al., *Guardians of the Republic: Only a Nonpartisan Military Can Protect American Democracy*, FOREIGN AFFAIRS (Jan. 5, 2023), https://www.foreignaffairs.com/united-states/guardians-republic?check_logged_in=1&utm_medium=promo_email&utm_source=lo_flows&utm_campaign=article_link&utm_term=article_email&utm_content=20250916.

the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”²²

Notably, the Posse Comitatus Act permits U.S. military engagement in domestic law enforcement when expressly authorized by Congress. This, too, is consistent with experience and tradition, as the country has at times relied on the military to lawfully intercede during periods of internal crisis. For example, President Eisenhower federalized Guard troops to enforce *Brown v. Board of Education*’s command to desegregate schools, requiring the Guard to play a rare but critical role in upholding the Constitution. Consistent with this need, a significant exception to the Posse Comitatus Act is the Insurrection Act. When invoked, the Insurrection Act gives limited authority to the President to deploy federal troops to quell “any insurrection, domestic violence, unlawful combination, or conspiracy against the United States government and to execute federal civil rights laws when they are obstructed.”²³ That authority has been used sparingly throughout our history, and rightfully so in a democracy governed by civilians elected by the people.

Significantly, federalized Guard troops are legally equivalent to active-duty forces and therefore are subject to the Posse Comitatus Act. In the rare cases where a president lawfully invoked the Insurrection Act to address civil unrest, the

²² Posse Comitatus Act, 18 U.S.C. § 1385.

²³ 10 U.S.C. § 253. For background on the Insurrection Act, see Elizabeth Goitein, “*The Insurrection Act*” by Any Other Name: Unpacking Trump’s Memorandum Authorizing Domestic Deployment of the Military, JUST SECURITY (June 10, 2025), <https://www.justsecurity.org/114282/memorandum-national-guard-los-angeles/>.

condition of the Posse Comitatus Act that activities be “expressly authorized by *** [an] Act of Congress” was satisfied.²⁴ This was the case, for instance, when President George H.W. Bush invoked the Insurrection Act and federalized Guard troops—upon the governor’s request—to quell the Los Angeles riots in 1992.

President Trump has not invoked the Insurrection Act or other comparable authority in relation to the events that underlie this lawsuit. As such, the conduct of any federalized National Guard troops deployed in Illinois should conform to the prohibitions on law enforcement activities set forth in the Posse Comitatus Act. Indeed, “the military has a long-standing practice of avoiding involvement in civilian affairs which it believes are contrary to the [Posse Comitatus] act.”²⁵ As discussed *infra*, several important civil-military values reinforce the guardrails imposed by the Posse Comitatus Act and should inform any domestic deployment.

II. The Posse Comitatus Act Permits Non-Law-Enforcement Uses of Military Personnel for National Security and Civil Support; Violations Divert Them from Their Primary Mission

The National Guard is unique within the military as a dual-status force with state *and* federal responsibilities, allowing it to be activated under the authority of either state or federal leadership, pursuant to strict legal limitations. The Guard plays a critical role in protecting national security as the primary combat reserve of

²⁴ 18 U.S.C. § 1385.

²⁵ Jennifer K. Elsea, CONG. RSCH. SERV., R42659, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law* (2018) (citations omitted), <https://www.congress.gov/crs-product/R42659>.

the U.S. Army and Air Force. Within the U.S., the Guard primarily provides domestic civil support, natural disaster relief, border security, election support, and other support as requested by governors and/or the President. In rare times of civil unrest, the Guard has been called to provide law enforcement support, but almost always under the direction of the relevant governor—not the President. With limited exceptions, the Posse Comitatus Act prohibits the Guard from engaging in domestic law enforcement while in federalized status.

According to the National Guard Association of the United States, “[t]he National Guard are a critical component of disaster response across the nation, with members trained to use military expertise and equipment [to] provide fast and effective emergency support in severe weather events such as hurricanes and wildfires, and to conduct search and rescue operations.”²⁶ Each state’s Guard is vital to its disaster preparedness and emergency response needs. To do this work effectively, the Guard relies on the trust of the local communities they serve. In each state, the Guard is called upon for innumerable tasks requiring the cooperation and trust of the community, including rescuing stranded families from floodwaters, airlifting individuals from remote locations, providing medical services to communities in dire situations, and training local first responders.²⁷ This work is put

²⁶ Zita Fletcher, *Texas Guardsmen Rescue Over 520 Flood Victims*, THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES (July 8, 2025), <https://www.ngaus.org/newsroom/texas-guardsmen-rescue-over-520-flood-victims>.

²⁷ *The National Guard: Strengthening Local Communities Through Service and Support*, AFBA (Apr. 8, 2024), <https://www.afba.com/uniformed-services-news/national-guard/the-national-guard-strengthening-local-communities-through-service-and-support/>.

at risk when the Guard is called into politically charged situations that those in the local community may perceive as partisan.²⁸ For example, in Illinois, the mayor of Broadview (the location of an ICE processing facility, where the Guard may be ordered pursuant to the orders challenged in this case) has accused federal agents of “making war on [her] community.”²⁹ According to the mayor, federal agents have been “endangering Broadview neighbors, police officers and firefighters with their ‘relentless’ use of tear gas, pepper spray and rubber bullets against protesters[.]”³⁰ Even the perception that the Guard is being deployed into an environment in which it is associated with endangerment of the communities it is sworn to protect risks the Guard’s ability to effectively deploy in these same neighborhoods in future natural disasters, pandemics, or other crises.

Another risk is that deploying the Guard for these efforts diverts them from their primary mission. As noted above, active troops who are not protecting our national security overseas are providing critical support to local communities. For instance, when the Administration federalized and deployed members of the California Guard in the Los Angeles area, they were diverted from wildfire protection,

²⁸ Christopher Purdy, *Opinion: What we lose by distorting the mission of the National Guard*, ANCHORAGE DAILY NEWS (Sept. 5, 2025), <https://www.adn.com/opinions/national-opinions/2025/09/05/opinion-what-we-lose-by-distorting-the-mission-of-the-national-guard/#:~:text=The%20National%20Guard%20has%20become,and%20letters%20to%20the%20editor.>

²⁹ Kelly Bauer & Colin Boyle, *ICE Is ‘Making War’ On Broadview — And It Must Stop, Suburban Mayor Says*, BLOCK CLUB CHICAGO (Sept. 26, 2025), <https://blockclubchicago.org/2025/09/26/ice-is-making-war-on-broadview-and-it-must-stop-suburban-mayor-says/>.

³⁰ *Id.*

leaving the specialized fire protection unit at 40% of its normal strength during peak wildfire season.³¹ Similarly, as part of the D.C. deployment, South Carolina sent Guardsmen out of state during hurricane season. Discussing this decision, the governor stated that “should a hurricane or natural disaster threaten our state, these men and women can and will be immediately recalled home to respond.”³² But the governor’s statement elides the likely operational difficulties of recalling deployed troops and diverting them to a disaster zone, not to mention the risk of burnout among those immediately recalled from one mission to another. Ultimately, in any state, the diversion of Guard personnel during critical times risks degrading capacity and preparedness to protect local populations during emergencies.

Finally, the proliferation of domestic deployments for missions outside of core duties threatens the health of the military itself in several respects. First, it threatens long-term readiness. Non-emergency deployments – especially lengthy or back-to-back deployments – reduce combat preparedness by cutting into training time and contributing to fatigue and burnout. As one former Army National Guard member noted, “For three decades, Guardsmen have rotated through seemingly never-ending deployments to Kosovo, Iraq, Afghanistan, Syria, Ukraine, and the Horn of Africa.

³¹ Andre de Channes, *National Guard Diversion to Los Angeles Weakens California's Wildfire Defenses*, MENDOCINO COUNTY PUBLIC BROADCASTING (July 7, 2025), <https://www.kzyx.org/2025-07-07/national-guard-diversion-to-los-angeles-weakens-californias-wildfire-defenses>.

³² *Gov. Henry McMaster Authorizes Deployment of National Guard to Washington, D.C.*, S.C. OFFICE OF THE GOVERNOR (Aug. 16, 2025), <https://governor.sc.gov/news/2025-08/gov-henry-mcmaster-authorizes-deployment-national-guard-washington-dc>.

Adding domestic-policing duties to the list of responsibilities degrades the Guard's readiness for missions that only the armed forces can perform.”³³

Second, excessive or inappropriate deployments can degrade morale and exacerbate retention and recruitment challenges within the Guard. For example, a Guard recruiter from a state that deployed troops to D.C. reportedly stated that the D.C. mission “has deterred potential recruits and pushed already disillusioned soldiers to their breaking points.”³⁴ Regarding the D.C. deployment, a National Guard Public Affairs document highlighted “[m]entions of [f]atigue, confusion, and demoralization” among the troops deployed there, citing concerns that they are “just gardening,” have an “unclear mission,” and are driving a “wedge between citizens and the military.”³⁵ Across the Guard, members have civilian lives – many have families, civilian jobs – that they put on hold when deployed. While all Guard members expect this sacrifice for their service, the toll can be exacerbated by frequent, months-long absences on politically controversial missions, especially those for which the need for their service may be in question. For instance, the Adjutant General of the Illinois National Guard has stated: “There is no public safety need or other emergency requiring the National Guard ***.”³⁶ Morale is further at risk as the members of the

³³ Purdy, *supra* note 28.

³⁴ Schuyler Mitchell, *The National Guard Soldier Pissed About Trump's DC Takeover*, MOTHER JONES (Sept. 3, 2025), <https://www.motherjones.com/politics/2025/09/national-guard-morale-dc-takeover-interview-soldiers-pissed-angry/>.

³⁵ Alex Horton, *National Guard documents show public 'fear,' veterans' 'shame' over D.C. presence*, WASH. POST (Sept. 10, 2025), <https://www.washingtonpost.com/national-security/2025/09/10/national-guard-trump-dc/>.

³⁶ Complaint ¶ 129, *Ill. v. Trump*, No. 1:25-cv-12174 (N.D. Ill. Oct. 6, 2025), ECF No. 1.

Guard now being deployed “are not being paid during the government shutdown, creating financial hardships for their families.”³⁷

III. National Guard Personnel Are Not Trained to Operate in the Context of Domestic Law Enforcement

Military missions and law enforcement missions are distinct undertakings requiring different skill sets, training, and rules. “While an LEO [law enforcement officer] is obliged to begin with an attempt at a constitutional arrest and escalate to force as necessary, a combatant may strike an enemy first and resort to lesser measures, like arrest, as the situation requires.”³⁸ Consistent with these distinct roles, Guard personnel typically receive limited instruction and training on how to handle civil disturbances. This minimal training pales in comparison to the in-depth and ongoing education provided to civilian law enforcement officers. Domestic law enforcement—particularly in emotionally charged situations involving civil unrest—requires a specific skill set for which law enforcement officers train extensively and continually, including training in de-escalation and respecting civilians’ constitutional rights. As the federal court in Oregon concluded, military personnel lack that training. Opinion at 5, *supra* note 13 (“Members of the National Guard generally do not receive training to perform local law enforcement tasks, such as

³⁷ Mark Richardson, *National Guard members supporting ICE operations working without pay during government shutdown*, LIVENOW FOX (Oct. 3, 2025), <https://www.livenowfox.com/news/national-guard-members-work-without-pay-government-shutdown>.

³⁸ Joseph Hope, *GOOD TOOL, WRONG TASK: ARMED FORCES IN LAW ENFORCEMENT OPERATIONS*, WAR ROOM (July 17, 2018), <https://warroom.armywarcollege.edu/articles/armed-forces-in-law-enforcement/>.

learning de-escalation techniques, the use of non-lethal force, or how to properly conduct criminal investigations.”). *See also Bissonette v. Haig*, 776 F.2d 1384, 1387 (8th Cir. 1985) (“[M]ilitary enforcement of the civil law leaves the protection of vital [constitutional] rights in the hands of persons who are not trained to uphold these rights.”), *aff’d on reh’g en banc*, 800 F.2d 812 (8th Cir. 1986), *aff’d*, 485 U.S. 264 (1988); *United States v. McArthur*, 419 F. Supp. 186, 193–94 (D.N.D. 1975) (“[M]ilitary personnel must be trained to operate under circumstances where the protection of constitutional freedoms cannot receive the consideration needed in order to assure their preservation. The posse comitatus statute is intended to meet that danger.”), *aff’d sub nom. United States v. Casper*, 541 F.2d 1275 (8th Cir. 1976). Our tradition of entrusting domestic law enforcement to local, state, and federal police has allowed the military to remain focused on its core mission.

Amici are concerned that troops in this deployment tasked with activities relating to law enforcement are not positioned for success, with potentially grave risks of escalation or confusion given their lack of experience with domestic law enforcement. *See United States v. Red Feather*, 392 F. Supp. 916, 925 (D.S.D. 1975) (“Activities which constitute an active role in direct law enforcement are: arrest; seizure of evidence; search of a person; search of a building; investigation of crime; interviewing witnesses; pursuit of an escaped civilian prisoner; search of an area for a suspect and other like activities.”). Indeed, few Guard members have had more than cursory law enforcement training, inviting confusion and disagreement over what constitutes appropriate conduct in contentious civilian situations and risking split-

second miscalculations.³⁹ Nonetheless, Secretary Hegseth signed an order authorizing the Guard members deployed in D.C. to carry weapons.⁴⁰ As the President has pledged to model other deployments on D.C., *amici* are concerned that a similar order in Illinois could put both the troops and the public they are sworn to protect at risk, as the weapons training received by the Guard is not applicable to patrolling American streets in peacetime.

These differences could have deadly consequences. For example, in a joint operation between the LAPD and Marines during the 1992 Los Angeles riots, a police officer asked Marines to “cover me,” intending for the Marines to be prepared to fire to protect him *only if necessary*. The Marines, however, understood the request in military parlance and fired over one hundred rounds into a civilian’s house.⁴¹ These seemingly small details can be the difference between life and death, and underscore the importance of maintaining a separation between military operations and domestic law enforcement. Several weeks ago, a sixteen-ton National Guard armed vehicle driving through downtown D.C. reportedly crashed into a car, hospitalizing

³⁹ *E.g.*, Greg Jaffe, *Hegseth Authorizes Troops in D.C. to Carry Weapons*, N.Y. TIMES (Aug. 22, 2025), <https://www.nytimes.com/2025/08/22/us/politics/national-guard-weapons.html#:~:text=Mr.,Pentagon%20and%20the%20U.S.%20military>.

⁴⁰ Mosheh Gains & Daniel Arkin, *Hegseth Authorizes National Guard Troops in D.C. to Carry Weapons*, NBC NEWS (Aug. 22, 2025), <https://www.nbcnews.com/news/us-news/hegseth-authorizes-national-guard-troops-dc-carry-weapons-rcna226536>.

⁴¹ Susan Rosegrant, *The Flawed Emergency Response to the 1992 Los Angeles Riots (A)*, KENNEDY SCH. OF GOV’T CASE PROGRAM (Sept. 1, 2000), <https://case.hks.harvard.edu/the-flawed-emergency-response-to-the-1992-los-angeles-riots-a/>.

the civilian driver.⁴² Public reporting from Illinois suggests that federal agents are already employing Black Hawk helicopters, tear gas, and flash bang grenades in their law enforcement operations.⁴³ *Amici* are concerned that the addition of the military to such an environment would risk increasing tensions and the potential for the use of deadly force.

IV. To Avoid Politicization of the Military, Deploying Military Personnel to Assist with Law Enforcement Should Be a Last Resort

A bedrock principle of American democracy is that our military is apolitical. That is, the military should be used to accomplish military objectives and not to advance any domestic political agenda. This principle is enshrined throughout U.S. law and policy, and in the legislative and judicial history of the Posse Comitatus Act, which Congress passed in 1878 to restore the traditional separation between the federal military and civilian authorities in domestic affairs that had come undone in the politically turbulent Reconstruction era. *United States v. Allred*, 867 F.2d 856, 870 (5th Cir. 1989) (explaining that the “legislative and judicial history of the Act *** indicates that its purpose springs from an attempt to end the use of federal troops to police state elections in ex-Confederate states”). Efforts to establish new governments in ex-Confederate states were particularly contentious, with presidents receiving more requests for military aid from governors in those years than all previous decades

⁴² Luke Garrett, *One Civilian injured in crash with D.C. National Guard military vehicle*, NPR (Aug. 20, 2025), <https://www.npr.org/2025/08/20/g-s1-83950/national-guard-dc-crash>.

⁴³ *Helicopters, tear gas, blown doors: A look at recent scenes in Chicago*, NBC CHICAGO (Oct. 6, 2025), <https://www.nbcchicago.com/news/local/helicopters-tear-gas-blown-doors-a-look-at-recent-scenes-in-chicago/3834233/>.

combined, and sometimes even receiving simultaneous requests from rival governors from different parties with competing claims to power. Courts and military scholars alike have recognized the American tradition and need to keep the military apolitical. *E.g.*, *Greer v. Spock*, 424 U.S. 828, 839 (1976) (upholding military regulation prohibiting partisan political activity and recognizing the need for the military to be “insulated from both the reality and the appearance of acting as a handmaiden for partisan political causes or candidates”). As the Supreme Court has observed, a “politically neutral military” is an “American constitutional tradition” and has been “reflected in numerous laws and military regulations throughout our history.” *Id.*

Accordingly, military personnel are not permitted to engage in political conduct while on duty or to use their military status to endorse candidates or political causes.⁴⁴ Any attempts to circumvent these laws and the underlying principles for political purposes detracts from the military’s focus on external threats and jeopardizes the military’s public standing. For instance, while a president may lawfully fire senior military officials without cause or explanation to replace them with loyalists—including the Chairman of the Joint Chiefs of Staff, three of five service chiefs, the heads of the National Security Agency and Defense Intelligence Agency, and all three service Staff Judge Advocates—such politicization of the military does not enhance national security.⁴⁵ The country relies on informed,

⁴⁴ *Directive 1344.10, Political Activities By Members of the Armed Forces*, U.S. DEP’T OF DEF., at 3 (Feb. 19, 2008), <https://www.fvap.gov/uploads/FVAP/Policies/doddirective134410.pdf>.

⁴⁵ Dave Barno & Nora Bensahel, *Rough Seas Ahead: Steering the Military Profession*, WAR ON THE ROCKS (Mar. 4, 2025), <https://warontherocks.com/2025/03/rough-seas-ahead-steering-the-military-profession/>.

experienced leadership committed to providing professional military advice, rather than maintaining presidential favor. Military leaders are duty-bound to provide nonpartisan counsel “and, if required, include advice contrary to what politicians want to hear or that goes against current policy. The information should include an explanation of what the military operations will entail, the military objectives, the number of personnel and equipment required for mission success, and the limitations of such actions.”⁴⁶

One of the “core principles and best practices” of “healthy American civil-military relations” is that “[m]ilitary officers swear an oath to support and defend the Constitution, not an oath of fealty to an individual or to an office.”⁴⁷ If an officer is afraid to speak the truth fearing the consequences of not wholeheartedly embracing a president’s preferred course of action—or has been installed because he or she is known to be predisposed to defer to the president—then military and national security decisions will not be based on a full understanding of the facts needed to keep America safe. For instance, “if senior military leaders whose first loyalty was to the person who appointed them were put to tests such as the 2020 election, the republic could indeed be at risk.”⁴⁸ *Amici* fear such a risk may already be materializing.

⁴⁶ Patrick Paterson, *Civil-Military Relations: Guidelines in Politically Charged Societies*, in 52 PARAMETERS 5, 7-8 (Mar. 3, 2022), <https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=3126&context=parameters>.

⁴⁷ *To Support and Defend: Principles of Civilian Control and Best Practices of Civil-Military Relations*, WAR ON THE ROCKS (Sept. 6, 2022) <https://warontherocks.com/2022/09/to-support-and-defend-principles-of-civilian-control-and-best-practices-of-civil-military-relations/>.

⁴⁸ Dunford, Jr., et al., *supra* note 21.

During the recent California deployment, when Major General Sherman (commander of the troops deployed to California) expressed concern about a risky plan for an operation because of the likelihood of escalation, Border Patrol Chief Bovino accused him of being insufficiently loyal.⁴⁹

Also critical to the military's ability to carry out its core functions is retaining the public's respect and maintaining cohesion and unity within its ranks—regardless of the political leanings of individual citizens or soldiers. Since Reconstruction, an apolitical military has served administrations of both parties, maintaining continuity of service and security as the White House changed parties back and forth. Even the perception that the military welcomes only one political view can be damaging to recruitment, as it cuts the pool of potential recruits in half; this is of special concern to a military that relies on an all-volunteer force.

Caution is therefore necessary if the military is to be deployed domestically in the context of a politically charged situation. It is essential that such deployments be a *last* resort, especially in the context of constitutionally protected activities or activities likely to be perceived as partisan intimidation tactics. For example, military personnel were ordered to accompany federal agents on an operation in Los Angeles, for the apparent purpose of demonstrating “a show of presence.”⁵⁰ According to the troops' own planning documents, they judged the risk of *not* conducting the operation

⁴⁹ *Newsom v. Trump*, No. 25-CV-04870-CRB, 2025 WL 2501619, at *7 n.4 (N.D. Cal. Sept. 2, 2025).

⁵⁰ *Id.* at *7.

as low and hypothetical, and the risks of conducting the operation as high.⁵¹ Nevertheless, the troops were ordered to proceed with the operation to achieve the mission of displaying federal capacity to the civilian population. Reporting indicates that similar missions may be taking place already in Chicago that, if service members are deployed alongside federal agents on these missions, could be perceived as entanglement with a partisan undertaking.⁵² *Amici* are concerned that service members deployed on these and similar missions – for instance, Border Patrol Chief Bovino’s fleet of boats on the Chicago River, with officers armed with semi-automatic rifles⁵³, or the use of tear gas on unarmed reporters and protesters⁵⁴ – could embroil the military in politically charged situations and risk the trust of all Americans in the neutrality of the U.S. military.

In line with the need to avoid politicizing the military, federal deployments on U.S. soil have historically been rare—reserved for the most serious situations and only with clear legal justification.⁵⁵ Prior to the recent deployment in California that

⁵¹ *Id.*

⁵² *Id.* at *24.

⁵³ Mohammad Samra, et al., *Border Patrol spotted with guns on Chicago River in Trump's latest deportation push*, CHICAGO SUN-TIMES (Sept. 26, 2025), <https://chicago.suntimes.com/immigration/2025/09/25/border-patrol-chicago-river-immigration-enforcement-greg-bovino-deportation>.

⁵⁴ Siri Chilukuri, *Body slamming, teargas and pepper balls: viral videos show Ice using extreme force in Chicago*, THE GUARDIAN (Oct. 4, 2025), <https://www.theguardian.com/us-news/2025/oct/04/ice-chicago-extreme-force-protesters-journalists#:~:text=Local%20journalists%20have%20been%20detained,Chicago%20for%20over%2015%20years>.

⁵⁵ *Cf. Greer*, 424 U.S. at 845 (Powell, J., concurring) (citation omitted) (“The overriding reason for preserving this neutrality is ... ‘the lesson of ancient and modern history that the major

a federal court found to have violated the Posse Comitatus Act, *Newsom*, 2025 WL 2501619, at *1, the last major domestic deployment of federal troops occurred during the 1992 Los Angeles riots. In stark contrast to the present deployment in Illinois, the 1992 deployment occurred at the request of the governor pursuant to the Insurrection Act. Further, that deployment followed dozens of civilian fatalities, the burning of entire blocks of homes and businesses, and widespread violence and looting. Notwithstanding routine crime that is troubling wherever it occurs, the situation here appears to be markedly different from Los Angeles in 1992. As of the filing of this brief, there have been no credible reports of widespread unrest.

Deployments over the objections of state and local officials have been even rarer, involving situations where such officials defied court orders or refused to protect citizens exercising their constitutional rights, such as when the Alabama National Guard was federalized in 1965 to protect those marching from Selma to Montgomery for civil rights. These conditions have been absent in each of the recent Guard deployments. Across the board, local officials in Los Angeles, Washington D.C., Memphis, Portland, and now Chicago have *not* requested Guard assistance.⁵⁶ To the contrary, state and local officials in most of the affected communities – including Illinois – have suggested that the deployment of troops would more likely escalate,

socially destabilizing influence in many European and South American countries has been a highly politicized military.”).

⁵⁶ Holly Bailey & Molly Hennessy-Fiske, *Trump’s use of Guard may have lasting impact on cities and troops*, WASH. POST (Oct. 6, 2025), <https://www.washingtonpost.com/nation/2025/10/06/national-guard-deployment-chicago-portland-trump/>. Memphis Mayor Paul Young recently remarked that in Memphis “[t]he National Guard ... seems to be the entity that brings the most fear and concern.” *Id.*

rather than lessen, the public safety risk.⁵⁷ Moreover, reports of the troops' low morale have surfaced, including discomfort with being drawn into domestic policing and concerns that the public views the deployments as political, unnecessarily pitting the Guard against the people they have sworn to protect.⁵⁸ *Amici* are concerned that the morale of troops has been and will be undermined if their sacrifices are perceived to be part of a political exercise rather than in response to a true emergency or operational need.⁵⁹

The risks of politicization here are profound and not speculative, especially where the President has, in his official capacity, overtly placed the military against his professed political opponents. In a recent speech at Fort Bragg, President Trump repeatedly denounced the Governor of California, while encouraging service personnel to cheer as if at a political rally.⁶⁰ Speaking in advance of a military parade,

⁵⁷ Rebecca Shabad, *Mayor Muriel Bowser Says Trump's Surge of Federal Law Enforcement Has Lowered Crime in D.C.*, NBC NEWS (Aug. 27, 2025), <https://www.nbcnews.com/politics/politics-news/bowser-trump-police-takeover-lower-dc-crime-national-guard-ice-rcna227582>; Christine Fernando, *Chicago and Illinois sue to stop Trump's Guard deployment plan after Portland ruling*, ASSOCIATED PRESS (Oct. 6, 2025), <https://apnews.com/article/national-guard-portland-chicago-trump-a35549dc8d198b0270eaa95e5230ba94> (“Officials in Illinois and Oregon say military intervention isn’t needed and that federal involvement is inflaming the situation.”).

⁵⁸ “‘Go home,’ a crowd of people chanted two weeks ago to some troops standing outside the Columbia Heights metro.” Isabelle Khurshudyan, et al., *With no end in sight, National Guard troops deployed to DC grow weary*, CNN POLITICS (Sept. 4, 2025), <https://www.cnn.com/2025/09/04/politics/national-guardsmen-deployed-to-dc-balance>.

⁵⁹ Ken Klippenstein (@kenklipp), THREADS (Sept. 2, 2025), <https://www.threads.com/@kenklipp/post/DOGuxh0igjL/video-amid-morale-problems-dc-national-guard-commander-issued-a-message-of-gratitude-t>.

⁶⁰ Konstantin Toropin & Steve Beynon, *Bragg Soldiers Who Cheered Trump's Political Attacks While in Uniform Were Checked for Allegiance, Appearance*, MILITARY.COM (June 11, 2025), <https://www.military.com/daily-news/2025/06/11/bragg-soldiers-who-cheered-trumps-political-attacks-while-uniform-were-checked-allegiance-appearance.html> (noting that “fat

President Trump said, “For those people that want to protest, they’re going to be met with very big force.”⁶¹ While the President is entitled to criticize his political opponents, involving the military in domestic political skirmishes risks harming the military’s ability to recruit and retain servicemembers and garner broad public support, therefore undermining its ability to achieve its core mission of protecting the nation. It is precisely for this reason that the military should be kept out of domestic law enforcement whenever possible.

CONCLUSION

Amici appreciate the Court’s consideration of these critical factors in adjudicating the pending motion.

soldiers” and soldiers who disagree with the current administration were excluded from attending).

⁶¹ *Trump Warns Protests at Military Parade Will Be Met With Force*, REUTERS (June 11, 2025), <https://www.reuters.com/world/us/trump-warns-protests-army-parade-will-be-met-with-very-big-force-2025-06-10>.

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APPENDIX

Admiral Steve Abbot, U.S. Navy (Ret.), graduated from the U.S. Naval Academy in 1966, after which he was deployed to Vietnam and began a 34-year career with the U.S. Navy. His final active-duty tour was as Deputy Commander-in-Chief, U.S. European Command from 1998 to 2000. Following his retirement, Admiral Abbot served as Deputy Homeland Security Advisor to President George W. Bush.

Admiral Thad Allen, U.S. Coast Guard (Ret.), retired in 2010 as the 23rd Commandant of the U.S. Coast Guard. Admiral Allen led the federal responses to Hurricanes Katrina and Rita and the Deepwater Horizon oil spill. He led Atlantic Coast Guard forces in response to the 9/11 attacks and coordinated the Coast Guard response to the 2010 Haitian earthquake.

Former Secretary of the Army Louis Caldera graduated from the U.S. Military Academy at West Point and served in the Army on active duty from 1978 to 1983. He served in two Senate-confirmed positions in the Clinton Administration, including Secretary of the Army, and as an Assistant to the President and Director of the White House Military Office in the Obama Administration.

General George Casey, U.S. Army (Ret.), enjoyed a 41-year career in the U.S. Army. He is an accomplished soldier and an authority on strategic leadership. During his tenure as the Army Chief of Staff, he is widely credited with restoring balance to a war-weary Army and leading the transformation to keep it relevant in the 21st century. Prior to this, General Casey commanded the Multi-National Force – Iraq, a coalition of more than 30 countries.

General Michael Hayden, U.S. Air Force (Ret.), entered active military service in 1969. During his career, he rose to the rank of four-star general and served as Director of the CIA and the NSA. General Hayden also served as Commander of the Air Intelligence Agency and held senior staff positions at the Pentagon, Headquarters U.S. European Command, and the National Security Council.

Admiral Samuel Jones Locklear, III, U.S. Navy (Ret.), graduated from the U.S. Naval Academy in 1977. He served for 39 years and retired as commander of U.S. Pacific Command. His prior commands include Commander, U.S. Naval Forces Europe, U.S. Naval Forces Africa, and Allied Joint Force Command Naples; Commander, U.S. 3rd Fleet; and Commander, Nimitz Strike Group.

General Craig McKinley, U.S. Air Force (Ret.), retired as a four-star general in 2012 after 38 years of service. His last assignment was as the Chief of the National Guard Bureau, where he also served as a member of the Joint Chiefs of Staff. In this capacity, he was a military adviser to the President, the Secretary of Defense, and the National Security Council, and he was the Department of Defense's official channel of communication to the Governors and to State Adjutants General on all matters pertaining to the Guard.

Former Secretary of the Navy Sean O'Keefe began his public service career in 1978 at the Department of Defense and as U.S. Senate staff until appointed the Department of Defense Comptroller and Chief Finance Officer in 1989. President George H.W. Bush later named him the 69th Secretary of the Navy. Secretary

O’Keefe also served in President George W. Bush’s Administration as Deputy Director of OMB and the 10th Administrator of NASA.

Admiral Bill Owens, U.S. Navy (Ret.), retired in 1996 as the Vice Chairman of the Joint Chiefs of Staff. He began his career as a nuclear submariner, spending a total of 4,000 days aboard submarines, including duty in Vietnam. Admiral Owens was a senior military assistant to two Secretaries of Defense and served as commander of the U.S. 6th Fleet during Operation Desert Storm.