

In the Supreme Court of the United States

DONALD J. TRUMP, *et al.*,
Applicants,

v.

STATE OF ILLINOIS, *et al.*,
Respondents.

**BRIEF OF THE STATE OF CALIFORNIA AND ITS GOVERNOR AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE

On June 7, for the first time in our Nation’s history, the President invoked 10 U.S.C. § 12406 to federalize a State’s National Guard over the objections of the State’s Governor. President Trump and Defense Secretary Hegseth transferred 4,000 members of California’s National Guard—one in three of the Guard’s total active members—to federal control to serve in a civilian law enforcement role on the streets of Los Angeles and other communities in Southern California. The State of California and Governor Gavin Newsom (collectively, the State of California) brought suit to challenge that unprecedented action. The litigation is ongoing.

Since that time, it has become clear that the federal government’s actions in Southern California earlier this summer were just the opening salvo in an effort to transform the role of the military in American society. President Trump and Secretary Hegseth have deployed thousands of soldiers to the streets of Washington, D.C. for the purpose of civilian crime control. They have federalized troops in Oregon and Illinois; called up Texas Guardsmen to engage in law enforcement activities in Chicago, Portland, and elsewhere; and deployed federalized members of California’s Guard to other States—including Illinois. A recent executive order directs Secretary Hegseth to ensure that National Guard troops in all 50 States are ready to be deployed for civilian law enforcement purposes. Indeed, the order requires the Secretary to establish a new “standing National Guard quick reaction force” for “rapid nationwide deployment.” Exec. Order 14339, 90 Fed. Reg. 42121-42122 (Aug. 25, 2025).

At no prior point in our history has the President used the military this way: as his own personal police force, to be deployed for whatever law enforcement missions he deems appropriate.

The State of California has a substantial interest in the proper resolution of the legal issues presented in the application. Federalized members of California's National Guard are presently in Illinois, and their activities are directly affected by the Court's disposition of the application in this proceeding. More broadly, the federal government presents a nearly limitless conception of presidential authority to federalize the National Guard. Its arguments, if accepted, would pose a serious threat to our system of federalism, the separation of powers, and longstanding norms against "military intrusion into civilian affairs." *Laird v. Tatum*, 408 U.S. 1, 15 (1972).

SUMMARY OF ARGUMENT

The State of California agrees with respondents that the federal government's application should be denied. California submits this amicus brief to describe the State's recent experience with the federal government's ever-expanding mission for the federalized members of California's National Guard. As detailed below, the federal government initially justified its federalization order by pointing to sporadic episodes of violence outside of federal facilities in Los Angeles over the course of a two-day period in early June. Since that time, the federal government has steadily expanded the Guard's mission; sent hundreds of California's National Guard forces far beyond Los Angeles to Portland and Chicago; and repeatedly extended the

duration of the deployment, which is now set to last until February 2026—more than eight months after the June events that initially prompted the federalization.

In defense of these unprecedented actions, the federal government has taken the extraordinary view that there are neither time limits on federalization nor any constraints on the President’s “allocation[] of troops in the field.” C.A. Dkt. 136.1 at 13-14.¹ The federal government also believes federalized troops are free to engage in *any* law-enforcement activities whatsoever, and that the courts have no role to play in reviewing this norm-defying conduct. Collectively, those arguments would sideline the Judiciary, ignore Congress’s limitations, trample over the States’ sovereign interests, and vastly expand the federal government’s power.

Indeed, if the federal government’s arguments were accepted, it would transform the role of the military in our society. It would mean, for example, that the FBI could station heavily armed Marines alongside agents conducting interrogations; that EPA and USDA could bring troops for security and a “show of presence” (C.A. Dkt. 126.1 at 6) on inspections of factories and other businesses; that ATF could enlist the Army or Marines for support when executing search warrants and carrying out gun-trafficking investigations; and

¹ Unless otherwise noted, “C.A. Dkt.” refers to the docket in *Newsom v. Trump*, No. 25-3727 (9th Cir.). “D.Ct. Dkt.” refers to the docket in *Newsom v. Trump*, No. 25-cv-4870-CRB (N.D. Cal.).

that ICE and the DEA could rely on the military to quell protests and control crowds at the sites of raids and other enforcement actions.

To avoid those consequences, the Court should reject the federal government's far-reaching arguments. Nothing in Section 12406 or this Court's precedent bars courts from reviewing attempts to commandeer the States' National Guard personnel for federal service. And the federal government badly misconstrues Sections 12406(2)-(3). Nothing remotely close to a "rebellion" has occurred in this country in recent months. Nor has the federal government shown that it is "unable with the regular forces" to execute the laws. Its expansive understanding of that language would effectively license the President to sidestep Congress and augment federal executive personnel and resources by conscripting the States' National Guard forces for federal enforcement priorities. Section 12406(3) at most provides limited, temporary authority to federalize the National Guard in response to extraordinary exigencies that federal civilian law-enforcement personnel are unavailable to handle or incapable of handling.

Such exigencies are exceedingly rare: before this year, Section 12406 had been invoked by the President only a single time in the 122 years since it was enacted.² The Court should not depart from the statute's plain text, or distort settled justiciability principles, to facilitate the ability of the current

² Nat'l Guard Bureau Hist. Servs., Federalizations of the Guard for Domestic Missions through 2025 (June 9, 2025), <https://tinyurl.com/4bavvnfj>.

President—and any future administration—to use the military to expand federal power in ways that defy our longstanding democratic traditions.

ARGUMENT

I. CALIFORNIA’S RECENT EXPERIENCE ILLUSTRATES THE FEDERAL GOVERNMENT’S NEARLY LIMITLESS UNDERSTANDING OF SECTION 12406 AND DEFIANCE OF LONGSTANDING CONSTITUTIONAL NORMS

1. “Opposition to the use of military force in the enforcement of civil law is deeply imbedded in American tradition.” Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, at 3 (1988). “The image of hated Redcoats shooting down innocent citizens in the Boston Massacre of 1771 was a vivid one, easily transferable to any soldier employed as an instrument of internal control by a central government.” *Id.* Many Founding-Era leaders feared that the new federal government would suppress civil liberties and gain excessive powers vis-à-vis the States if it were empowered to use the military for civil law enforcement. *See, e.g., id.* at 7-19. Indeed, “if the framers had even suggested that standing armies might be used to control domestic violence or enforce federal law,” it would have been quite “dangerous to the ratification of the Constitution.” *Id.* at 14-15.

One way that the Framers limited the federal government’s military authority was to vest principal control over the state militias—in modern terms, the National Guard—in the States. At the Constitutional Convention, “the Framers heavily debated . . . whether the entire military power should be transferred to the national government.” Leider, *The Modern Militia*, 2023 Mich. St. L. Rev. 893, 916 (2023). James Madison “advocated for full national

control of the militia.” *Id.* Other delegates “stress[ed] the importance” of state control. *Id.* at 917; *see also* Vladeck, Note, *Emergency Power and the Militia Acts*, 114 Yale L.J. 149, 157 (2004). Under the prevailing compromise, embodied in the Constitution’s Militia Clauses, the States retain control absent a valid federalization pursuant to a statute enacted by Congress. *See* U.S. Const. art. I, § 8, cls. 15-16. By vesting federalization authority “in the Congress, not the president,” the Framers ensured that the President would not have unfettered power to call forth state militias for service at the federal level. Coakley, *supra*, p. 14; *see also* 3 Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 412, 415 (1836).

Congress has enacted multiple statutes that build on these Founding Era concerns. Exercising its power under the Militia Clauses, Congress has delegated limited statutory authority to the President to call the Guard into federal service. As relevant here, Section 12406 gives the President authority to federalize the National Guard in cases of invasion, rebellion, or when “the President is unable with the regular forces to execute the laws of the United States.” 10 U.S.C. § 12406; *see* 32 Stat. 775, 776 (1903) (original version of the statute authorizing federalization in cases of invasion, rebellion, or when “the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof”).

Congress has also enacted legislation to bar “the use of military personnel to enforce civil laws.” *United States v. Walden*, 490 F.2d 372, 375 (4th Cir.

1974). The Posse Comitatus Act prohibits the use of federal military forces, including federalized members of the National Guard, “as a posse comitatus or otherwise to execute the laws” “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.” 18 U.S.C. § 1385.³ As a result, it is generally unlawful for the military to carry out law-enforcement activities on American soil. *See generally United States v. Dreyer*, 804 F.3d 1266, 1275 (9th Cir. 2015) (en banc); Kealy, *Reexamining the Posse Comitatus Act*, 21 Yale L. & Pol’y Rev. 383, 390-392 (2003) (“[T]he closer the role of the military . . . comes to that of a police officer on the beat, the greater the likelihood that the Posse Comitatus Act is being violated.”).

2. The federal government’s recent actions concerning California’s National Guard illustrate a nearly limitless conception of its authority under those statutes. In response to a two-day period of protests and instances of violence in the Los Angeles area in June of this year, President Trump issued a memorandum invoking Section 12406 and authorizing Secretary Hegseth to “call[] into Federal service . . . at least 2,000 National Guard personnel . . . for 60 days” or longer. C.A. Dkt. 57.1 at ER-190. The memorandum authorized the deployment of federalized troops to protect any “United States Government personnel who are performing Federal functions, including the enforcement of Federal law” at any “locations where protests against these functions are

³ *See also* Elsea, Cong. Rsch. Serv., R42659, *The Posse Comitatus Act & Related Matters* 61-62 (2018).

occurring or are likely to occur[.]” *Id.* Secretary Hegseth implemented the memorandum by issuing orders to federalize 4,000 members of the California National Guard—one in three of all available members of California’s National Guard. C.A. Dkt. 64.1 at SER-17. He deployed them in Los Angeles, along with 700 active-duty Marines. C.A. Dkt. 5.1 at A124-A125. Their original mission was to provide protective services for federal buildings and for approximately 290 ICE agents on removal actions in the field within the Los Angeles region. *See* C.A. Dkt. 57.1 at ER-6-7, ER-54.

The federal government nonetheless began to use members of California’s Guard for operations that had very little—if anything—to do with that mission. For example, in early July, the federal government deployed 80 troops in Humvees and tactical vehicles to Los Angeles’ MacArthur Park for a “show of presence”—that is, to “demonstrat[e] federal reach” in a “high-visibility urban environment.” C.A. Dkt. 126.1 at A-38, 40, 41. Put differently, the federal government deployed the military to scare people at a public park in a dense urban neighborhood. When a senior military commander initially refused to sign off on the operation, a high-ranking official with the Department of Homeland Security “question[ed] [his] loyalty.” *Newsom v. Trump*, No. 25-5553 (9th Cir.), C.A. Dkt. 5.1 at A329 n.4. Federalized Guard units were also sent more than 100 miles away from Los Angeles to assist the DEA in enforcement actions on suspected marijuana farms. *Id.* at A330. And recently,

the federal government transported hundreds of California National Guard forces to Portland and Chicago to police those cities. C.A. Dkt. 136.1 at 8-9.

As the district court recently found following a trial, defendants have also engaged in widespread violations of the Posse Comitatus Act. In the Los Angeles area, troops accompanied civilian immigration agents and other officials, including FBI and DEA agents, on dozens of actions in the field. *Newsom*, No. 25-5553 (9th Cir.), C.A. Dkt. 5.1 at A327-A328. Indeed, Guard troops served as a “force multiplier” (*id.* at A300) on approximately 75% of ICE enforcement and removal operations in the Los Angeles area through mid-July. *Id.* at A275. Troops also cordoned off city streets in support of FBI operations and “set[] up protective perimeters, traffic blockades, crowd control, and the like.” *Id.* at A359; *see* Dep’t of Defense Instr. 3025.21, Encl. 3 § 1.c(1) (longstanding guidance defining prohibited actions under the Posse Comitatus Act to include, among other things, “security functions” and “crowd and traffic control”).

And defendants have repeatedly extended the duration of the California National Guard’s deployment. Initially, the President called the federalization “temporar[y],” C.A. Dkt. 57.1 at ER-45, and the initial federalization orders were set to lapse after 60 days, *id.* at ER-44, 47. In early August, the federal government returned a number of troops to state control, but it kept 300 troops federalized and extended their deployment by 90 days through early November. C.A. Dkt. 126.1 at A-2-3. Just last week, the federalization was

again extended—this time, to February 2026, more than eight months after the original events prompting the federalization in early June.

None of this is exceptional in the federal government’s view. It has taken the position that “no time limit” exists on federalization under Section 12406, C.A. Dkt. 136.1 at 14, and that once a State’s National Guard has been federalized, forces can be deployed anywhere in the country for any reason—whether or not connected in any way to the original basis for invoking Section 12406, *see, e.g.*, C.A. Dkt. 126.1 at A-421-422. The federal government also believes that federalization under Section 12406(3) operates as an exception to the Posse Comitatus Act, thereby giving federalized troops carte blanche to undertake any type of law-enforcement activity, including searches, arrests, and interrogations. *Newsom*, No. 25-5553 (9th Cir.), C.A. Dkt. 5.1 at 13-15. The only apparent reason that federalized Guard units in California have—to date—refrained from carrying out certain types of law-enforcement activities is that senior military leaders disagree with the President’s lawyers about the scope of the Posse Comitatus Act. *See, e.g., id.* at A343-A344.

In response to concerns that the federal government could use its newfound authority to deploy the military to aid many other federal agencies’ law-enforcement efforts—from the IRS to USDA to EPA to ATF to OSHA—the federal government urged courts not to worry because “the parade of horrors . . . threaten[ed] [by the State] has not materialized.” *Newsom*, No. 25-5553 (9th Cir.), C.A. Dkt. 12.1 at 9. It is purely speculative, in the federal

government’s view, to fear that this President or a future President would “us[e] troops in USDA factory inspections or in executing ATF search warrants.” *Id.* But their own military officers do not view that prospect as so fanciful. *See, e.g.*, D.Ct. Dkt. 153-23 at 2 (military operation officer’s email reporting that “IRS may request DoD support over the next 72-96hrs”); *cf. McDonnell v. United States*, 579 U.S. 550, 576 (2016) (refusing to uphold federal government’s authority “on the assumption that the Government will ‘use it responsibly’”).

Moreover, if courts have any questions about these legal positions, the federal government’s answer is: too bad. According to the application before this Court—consistent with the federal government’s filings in cases across the country—the Judiciary has no power to review federalization orders to determine whether they comport with the text of Section 12406. *See, e.g.*, Appl. 19-24. The federal government also argues that States lack a cause of action to bring challenges under both Section 12406 and the Posse Comitatus Act, *see, e.g., id.* at 26-27, even though violations of those statutes have constitutional implications, *see, e.g., infra* pp. 15-16, and injure States in profound ways, *see* App’x 101a-102a. In the case of California, for example, the federalization of 4,000 members of the State’s National Guard deprived the State of approximately 56% of its elite wildfire-fighting task force during the middle of peak wildfire season and approximately 31% of a counterdrug task force assigned to stop the flow of fentanyl across the U.S.-Mexico border. C.A. Dkt.

64.1 at SER-17-18; *see* Br. of Bipartisan Former Governors as Amici Curiae, C.A. Dkt. 69.1 at 10-11 (detailing other critical tasks performed by National Guard forces at the state level).

All told, what the federal government seeks is a standing army, drawn from state militias, deployed at the direction of the President on a nationwide basis, for civilian law enforcement purposes, for an indefinite period of time. None of that can be squared with Section 12406 or the constitutional principles that underlie it. And every day that National Guard troops are federally deployed, important democratic norms are weakened or cast aside. It upsets the important balance between federal and state power and sets a dangerous precedent for future domestic military activity. There is also a risk that our military will be politicized, *see* Br. of Former U.S. Army & Navy Secretaries & Retired Four-Star Admirals & Generals as Amici Curiae, C.A. Dkt. 17.1 at 12-15; that our troops' morale will suffer, *see id.* at 7; and that the federal government's mission will steadily expand, step by step, until military involvement in civilian affairs becomes a new normal, *cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 650-653 (1952) (Jackson, J., concurring) (discussing the dangers of "emergency powers").

II. THE SEVENTH CIRCUIT CORRECTLY RESOLVED THE FEDERAL GOVERNMENT'S REQUEST FOR A STAY

California agrees with Illinois that the Seventh Circuit properly resolved the federal government's request for a full stay of the district court's order. California focuses here on two issues: the justiciability of challenges under

Section 12406 and the federal government’s flawed understanding of that statute’s requirements.

1. The federal government advances the extreme position that the President’s decision to invoke Section 12406 is not subject to any form of judicial review. *See* Appl. 19-26. Every court to consider the question has rejected that argument. *See, e.g.,* App’x 95a-96a; *Newsom v. Trump*, 141 F.4th 1032, 1045-1051 (9th Cir. 2025). That is for good reason: federal courts have a “‘virtually unflagging obligation’” to exercise the jurisdiction given them, *Deakins v. Monaghan*, 484 U.S. 193, 204 (1988), and to “say what the law is,” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *see Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (describing the political question doctrine as a “narrow exception” to that general rule).

The federal government contends that *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827), “long ago established that the President’s exercise of the authority vested in him by Congress to call up the militia is committed to his exclusive discretion by law.” Appl. 20-21. But the government misunderstands that case. To the extent it has any modern precedential force, it stands—at most—for the narrow principle that courts will “refus[e] to review the political departments’ determination of when or whether a war has ended.” *Baker v. Carr*, 369 U.S. 186, 213 (1962). Although *Martin* contains language that could be construed more broadly if taken out of context, “general expressions, in every opinion, are

to be taken in connection with the case in which those expressions are used.” *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821).

Martin addressed whether “a servicemember [could] escape punishment for defying a presidential order” requiring state militiamen to report for duty during the War of 1812. Br. of Const. Accountability Ctr. as Amicus Curiae, C.A. Dkt. 74.1 at 2. As several scholars have recently explained, *Martin*’s refusal to review the President’s order was undoubtedly influenced by the fact that the plaintiff—a member of the militia who refused to report for duty—“was engaged in a collateral attack on his court-martial proceeding for failing to report for duty.” Braver & Dehn, *Deference Due?*, The Volokh Conspiracy (Oct. 14, 2025), <https://tinyurl.com/49kvcs9w>. In stating that “the authority to decide whether the exigency has arisen . . . belongs exclusively to the President,” *Martin*, 25 U.S. at 30, the Court “was referring only to persons within the chain of command over the militia, not to the courts,” Braver & Dehn, *supra*; see also Vladeck, *Bonus 183: Martin v. Mott*, One First (Oct. 16, 2025), <https://tinyurl.com/4btfztpe>.⁴ *Martin* was also a suit for civil damages brought in an era before the development of the qualified-immunity doctrine. See Br. of Const. Accountability Ctr. as Amicus Curiae, C.A. Dkt. 74.1 at 12-

⁴ See also Kastenbergh, *The Limits of Executive Power in Crisis in the Early Republic*, 82 La. L. Rev. 161, 226 (2021) (reading *Martin* to “reinforce” the principle that “officers, as well as the commander in chief, [may] issue orders” to subordinate members of the military “free from judicial interference”).

13. The Court was understandably reluctant to open the door to potentially wide-ranging civil liability for senior executive officials and military officers.

The decision in *Luther v. Borden*, 48 U.S. (7 How.) 1, 44-45 (1849), does not alter the justiciability analysis. *Contra* Appl. 21. *Luther*’s brief analysis of the Militia Act, *see, e.g.*, 48 U.S. (7 How.) at 42-44, was entirely bound up in the Court’s principal holding that the President, not the judiciary, had responsibility for determining which of two competing factions represented the lawful governing authority in Rhode Island, *see id.*; *see also Baker*, 369 U.S. at 218-226 (discussing *Luther*). At the time *Luther* was decided, the relevant portion of the Militia Act authorized the President to federalize the militia only “upon the application of the legislature or of the executive” of the State in which an insurrection had arisen. 48 U.S. at 43. So resolution of the Militia Act question would have required the Court to weigh in on the question that it considered nonjusticiable: “what body of men constitute the legislature, and who is the governor.” *Id.* *Luther* establishes nothing about the reviewability of statutory questions like those presented in this case.

The federal government’s final argument against judicial review is that States lack a cause of action to challenge federalization on ultra vires grounds. *See* Appl. 26-27. In support of that argument, the federal government invokes the recent decision in *NRC v. Texas*, 605 U.S. 665 (2025). But *NRC* merely reaffirmed the high bar to relief on a non-constitutional ultra vires claim where a statute—there, the Hobbs Act—expressly precludes review. *See* 605 U.S. at

681-683. Where plaintiffs proceed on constitutional grounds, they may seek equitable relief without an express cause of action. *See, e.g., Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *Youngstown Sheet & Tube Co.*, 343 U.S. at 589. And here, Illinois’s challenge under Section 12406 is coextensive with a constitutional claim under the Militia Clauses and the Tenth Amendment. *See* App’x 100a-101a. As both the Seventh and Ninth Circuit have recognized, the President has no inherent constitutional authority to federalize a State’s National Guard. *See Newsom*, 141 F.4th at 1045; App’x 101a. Only Congress has that authority. *See* U.S. Const. art. I, § 8, cls. 15-16. So if Illinois is right that the federalization order here is unauthorized by Section 12406, then the President has necessarily acted without congressional authorization, in defiance of both Article I’s Militia Clauses and the Tenth Amendment’s anti-commandeering doctrine. *See generally Printz v. United States*, 521 U.S. 898 (1997).

Even if ultra vires review were unavailable, Illinois’s claims under Section 12406 could proceed under the Administrative Procedure Act. The challenged actions of Secretaries Hegseth and Noem and the Departments of Defense and Homeland Security are final agency actions subject to judicial review on the ground that they are “not in accordance with law.” 5 U.S.C. § 706(2)(A). The APA specifies that agency actions subject to review include exercises of “military authority,” *except* when that authority is “exercised in

the field in time of war or in occupied territory.” 5 U.S.C. § 551(1)(G).⁵ Chicago is plainly not “in the field in time of war or in occupied territory.”

2. The federal government also fails to provide a convincing construction of Section 12406. As the Seventh Circuit correctly recognized, none of the defendants here is “entitled to deference” on the purely legal questions of “what constitutes a ‘rebellion,’ and what it means to be ‘unable with the regular forces to execute the laws.’” App’x 97a-98a; *see generally Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). “These determinations are matters of statutory interpretation, a function that is precisely the business of the judiciary.” App’x 97a-98a (internal quotation marks omitted).

a. Section 12406(2) allows the President to federalize the National Guard when “there is a rebellion or danger of a rebellion against the authority of the Government of the United States.” Dictionary definitions from the late 1800s and early 1900s—the relevant period for understanding what Congress meant when it enacted the language now in Section 12406—show that “rebellion” refers to “open and avowed renunciation of the authority of the government to which one owes obedience, and resistance to its officers and laws, either by levying war, or by aiding others” in doing so. Webster’s Int’l Dictionary of the English Language (1903); *see also* D.Ct. Dkt. 64 at 17-18. That understanding closely tracks the statute’s history: Congress first added “rebellion” to the

⁵ *See Biden v. Texas*, 597 U.S. 785, 810 (2022) (consulting a definition in 5 U.S.C. § 551 when determining the scope of final agency action).

Militia Act in 1861. 12 Stat. 281, 281 (1861). It is not difficult to imagine what lawmakers had in mind when using that term, shortly after the first shots were fired at Fort Sumter. *See generally Biden*, 597 U.S. at 804 (“historical context” can “confirm[] the plain import of [a statute’s] text”).

Relying on secondary and tertiary dictionary definitions of the term, the federal government asserts that “rebellion” means any form of “[o]pen resistance or opposition to an authority or tradition” or “[d]isobedience of a legal command or summons.” Appl. 31 (quoting Black’s Law Dictionary (12th ed. 2024)). But it is not remotely plausible to think that Congress intended to adopt that expansive definition. Those definitions generally refer to rebellions of a “spiritual” or “familial” nature—for example, when a parent says “my teenage son is going through a ‘rebellion’ or a ‘rebellious’ phase.” *See Oxford English Dictionary* (rev. 2009); *see also* D.Ct. Dkt. 64 at 18 n.7. It would not make sense to use “rebellion” that way in the context of a statute describing rebellion “against the authority of the Government of the United States.” 10 U.S.C. § 12406.

The far-reaching consequences of the federal government’s interpretation of “rebellion” also make it an implausible understanding of congressional intent. *Cf. Bond v. United States*, 572 U.S. 844, 860 (2014) (refusing to adopt a “boundless reading” of a statute in light of its “deeply serious consequences”). Construing “rebellion” to mean “open resistance or opposition to an authority or tradition” would make it trivially easy for the President to federalize

National Guard troops. The First Amendment protects the right to openly oppose federal authority through assemblies and protests. *See* App’x 99a. And it is not uncommon for those protected activities to be accompanied by some measure of civil disobedience. *See id.* By the federal government’s logic, every modern President has seen dozens of “rebellions” come and go. “[R]esistance or opposition to an authority” (Appl. 31)—in both lawful and unlawful forms—is conduct that occurs on a daily basis across our Nation. *See, e.g.,* Mayson & Stevenson, *Misdemeanors by the Numbers*, 61 B.C. L. Rev. 971, 999-1000 (2020) (“resisting arrest” is a “common misdemeanor”).

In support of their sweeping view of Section 12406(2), the federal government points to the Whiskey Rebellion. Appl. 32-33. But the Whiskey Rebellion is a perfect illustration of the proper construction of “rebellion” discussed above: it was a “serious military encounter” that posed a major threat to the stability of our early republic. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* 180 (1986). Although it began as “something less than [a] treasonous ‘rebellion,’” *id.*, it ultimately grew into “[t]he single largest example of armed resistance to a law of the United States between the ratification of the Constitution and the Civil War,” *id.* at 5. “Before it was over, some 7,000 western Pennsylvanians advanced against the town of Pittsburgh, threatened its residents, [and] feigned an attack on Fort Pitt and the federal arsenal there[.]” *Id.* at 3; *see also id.* at 188 (“Independence seemed the goal of these 7,000 rebels in arms.”).

The Court should also pay little heed to the federal government’s attempt to depict intervention of the Armed Forces on American soil as commonplace. *See* Appl. 32-33. Such intervention has been “rare”—and historically limited to extraordinary exigencies. Br. of Former U.S. Army & Navy Secretaries & Retired Four-Star Admirals & Generals as Amici Curiae, C.A. Dkt. 17.1 at 13. As explained by a number of high-ranking former military leaders, including Secretaries of the Army and Navy and four-star generals and admirals who have served across ten presidential administrations, intervention of the military in domestic affairs poses several profound risks to the military and our Nation’s democracy. *Id.* at 1-4. Domestic deployment threatens “core national security and disaster relief missions” of both the Guard and active-duty military; it “place[s] deployed personnel in uncommon situations for which they lack appropriate training, thus posing safety concerns for personnel and the public alike”; and it “risk[s] inappropriately politicizing the military, leading to additional risks to recruitment, retention, morale, and cohesion of the force.” *Id.* at 1.

b. The federal government also misconstrues Section 12406(3). That subsection authorizes federalization of the National Guard when “the President is unable with the regular forces to execute the laws of the United States.” 10 U.S.C. § 12406(3). That is a demanding standard. “Unable” generally means “incapable,” “impotent,” or “helpless.” Webster’s New Int’l Dictionary (2d ed. 1936). Accordingly, “any minimal interference with the

execution of laws” is not “enough to justify invoking § 12406(3).” *Newsom*, 141 F.4th at 1051. And the federal government must not merely demonstrate interference with federal law enforcement in the abstract. It must show that “*the regular forces*” are unable to respond to and overcome that interference.

The Seventh Circuit pointed to two possible interpretations of “the regular forces”: (1) “regular” meaning *civilian*, as opposed to military and (2) “regular” meaning *regular armed forces*, as opposed to members of the militia or National Guard. App’x 100a.⁶ Although both are reasonable as a textual and historical matter, *see, e.g.*, App’x 67a-77a, California focuses on the first here. The original Militia Acts of 1792 and 1795 authorized federalization in response to “combinations too powerful to be suppressed by . . . the powers vested in the marshals,” the Nation’s early federal civilian law-enforcement personnel. 1 Stat. 264, 264 (1792); 1 Stat. 424, 424 (1795). To the extent Section 12406(3) was modeled on that provision, it would be logical to conclude that Congress intended for “regular forces” to mean federal civilian personnel.

Under that interpretation, the federal government would be required to show that civilian law-enforcement options were unavailable or infeasible, such that reliance on the National Guard would become necessary. For example, the federal government has acknowledged that law-enforcement agencies, such as the Federal Protective Service and ICE, are capable of

⁶ The court of appeals concluded that it need not “fully resolve” this particular “thorny and complex issue[] of statutory interpretation” because the federal government could not meet either definition of “regular forces.” App’x 100a.

“surg[ing] [agents] to respond to emergency situations” by drawing personnel from nearby cities or from other federal agencies. C.A. Dkt. 136.1 at SA20; *see also id.* at SA11, SA14, SA57-SA58. Indeed, it is “a routine aspect of law enforcement activity” for “one law enforcement office [to] receive[] support from another office.” C.A. Dkt. 126.1 at A-393. Secretary Noem, for example, recently suggested that her department could “send four times the amount” of civilian DHS officials to Portland in response to conditions on the ground there.⁷

The federal government makes no attempt to show that these routine civilian measures would be infeasible alternatives to the historically anomalous and constitutionally extraordinary step of calling in the military to execute the laws. *Cf.* Appl. 27-31. In California’s pending litigation, the federal government recently filed declarations asserting that it would prefer to avoid these alternatives because federalizing the National Guard allows it to “reduce its staffing levels” for federal civilian agents. C.A. Dkt. 136.1 at SA19. The federal government’s declarants have also asserted that drawing on personnel from nearby cities is not a “practical ongoing solution” because of a long-term “drain on [agency] resources.” *Id.* at SA14. But in our constitutional system, the appropriate answer to these long-term budgetary and staffing concerns is for the President to ask Congress to expand those agencies’

⁷ Tanet & Cook, *DHS Secretary Kristi Noem Ends Portland Visit Threatening to Send ‘Four Times’ As Many Federal Officers If Mayor Doesn’t Make Changes*, KGW8 News (Oct. 8, 2025), <https://tinyurl.com/37apsrp6>.

budgets, not to commandeer a State’s National Guard for federal service. *See* U.S. Const. art. I, § 9, cl. 7. For example, the President recently prevailed upon Congress to triple the size of ICE’s budget. *See* Pub. L. No. 119-21, § 100052 (2025). Federalizing the National Guard under Section 12406(3) is a temporary solution for “unusual [or] extreme exigencies,” *Newsom*, 141 F.4th at 1051, not a means to circumvent our ordinary appropriations process.

Rather than meaningfully engage with the reasoning of courts that have recently addressed the scope of Section 12406, the federal government attacks a strawman: it argues that “Section 12406(3) cannot plausibly be read to mean that, so long as *some* amount of execution of the laws remains possible, the statute cannot be invoked, regardless of how much execution of the laws remains thwarted or how much danger federal personnel face during their constrained operations.” Appl. 28-29. But neither the Seventh nor the Ninth Circuit adopted such a narrow understanding of the statute. In California’s case, the Ninth Circuit took a broader understanding of the term “unable,” concluding that Section 12406(3) is satisfied when the ability of “federal officers to execute the laws” is “significantly impeded.” *Newsom*, 141 F.4th at 1052. The Seventh Circuit likewise applied a “significantly impeded” standard. App’x 100a. The problem with the federal government’s arguments is that it has never persuasively shown an inability to respond to conditions in Chicago or Los Angeles with regular *civilian* law-enforcement measures—just as president after president has done for decades in response to the types of

concerns asserted in the application. *See generally* Br. of Former U.S. Army & Navy Secretaries & Retired Four-Star Admirals & Generals as Amici Curiae, C.A. Dkt. 17.1 at 11; Br. of Vet Voice Found. & Retired Senior Military Officers as Amici Curiae, C.A. Dkt. 72.2 at 11-15.

If the Court has any remaining doubt about Section 12406(3), it should construe the statute narrowly to avoid the far-reaching consequences of the federal government's interpretation. An overly expansive construction of Section 12406(3) would not only license an end-run around the Constitution's Appropriations Clause, *see supra* pp. 22-23, but also threaten to upset the constitutional balance of power between the President, Congress, and the States, and undermine longstanding norms against military intrusion into civilian affairs, *see, e.g., Laird*, 408 U.S. at 15. The Court should not lightly conclude that Congress intended those consequences. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 460-461 (1991). Nor should the Court view those consequences as hypothetical or remote in light of the federal government's repeated attempts in recent months to deploy troops for law enforcement purposes in a growing number of cities across our Nation.

CONCLUSION

The application for a stay should be denied.

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