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5
IN THE UNITED STATES DISTRICT COURT
6
FOR THE NORTHERN DISTRICT OF CALIFORNIA

7

8 GAVIN NEWSOM, et al.,

9 Plaintiffs,

10 v.

11 DONALD J. TRUMP, et al.,

12 Defendants.

Case No. 25-cv-04870-CRB

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRANDING ORDER**

13 On June 6, 2025, the federal government initiated immigration raids across the City
14 of Los Angeles. Protests swiftly followed, and some individuals involved in those protests
15 were unruly and even violent. State and local law enforcement responded. The following
16 day, President Trump ordered that members of the California National Guard be
17 federalized, and thereupon assumed control of those forces.

18 At this early stage of the proceedings, the Court must determine whether the
19 President followed the congressionally mandated procedure for his actions. He did not.
20 His actions were illegal—both exceeding the scope of his statutory authority and violating
21 the Tenth Amendment to the United States Constitution. He must therefore return control
22 of the California National Guard to the Governor of the State of California forthwith.

23 **I. BACKGROUND**

24 **A. California National Guard**

25 The California Army National Guard and the California Air National Guard
26 (together, the California National Guard) are part of the organized militia of the State of
27 California and federally recognized units of the reserve components of the U.S. military.
28 Eck Decl. (dkt. 8-3) ¶ 20. Governor Newsom is the commander-in-chief of the California

1 National Guard when it is under state control. Id. ¶ 31; Cal. Const., art. V, § 7. President
2 Trump is the commander-in-chief of the U.S. Armed Forces, including the National Guard
3 when it is under federal control. U.S. Const. art. II § 2, cl. 1. A president can call the
4 National Guard into federal service under Title 10 of the United States Code. Id. ¶ 27.
5 That is what happened here.

6 California has the largest National Guard in the country, with 18,733 members,
7 12,212 of whom are currently available. Eck Decl. ¶¶ 28, 30. The California National
8 Guard is “vital” in carrying out state functions such as “emergency and natural disaster
9 response, cybersecurity, and drug interdiction.” Id. ¶ 31. For instance, 2,500 California
10 National Guard members were activated in response to the destructive fires in Los Angeles
11 County in January 2025. Id. ¶¶ 35–36. Some serve on Taskforce Rattlesnake, the state’s
12 specialized fire combat unit. Id. ¶¶ 14, 39–40. Others serve on the Counterdrug
13 Taskforce, which specializes in stopping fentanyl trafficking at the U.S.-Mexico border.
14 Id. ¶¶ 15, 42–43.

15 **B. ICE Actions and Public Protest**

16 On June 6, 2025, Immigration and Customs Enforcement began carrying out
17 immigration raids in Los Angeles. Olmstead Decl. (dkt. 8-2) ¶ 6. The Associated Press
18 reported that ICE executed search warrants at multiple locations across Los Angeles.
19 Espíritu Decl. (dkt. 8-1) Ex. F (“Federal immigration authorities have been ramping up
20 arrests across the country to fulfill President Donald Trump’s promise of mass
21 deportations.”). Los Angeles Police Chief Jim McDonnell stated that “federal officials did
22 not brief his department, which made it difficult to respond to the mobs of people who
23 began to protest.” See McPhee, LAPD Chief Jim McDonnell Says, ‘Violence I Have Seen
24 Is Disgusting,’ Recounting Attacks on Cops, L.A. Mag. (June 8, 2025),
25 <https://perma.cc/G24N-PZHE>. ICE reportedly targeted “several locations in downtown
26 L.A. and its immediate surroundings” that are “known to have significant migrant
27 populations and labour-intensive industries.” Espíritu Decl. Ex. G. These included two
28 Home Depot stores, a donut store, and a clothing wholesaler. Id. Ultimately, between 70

1 and 80 people were detained, and 44 arrested. Espíritu Decl. Exs. G, H.

2 State and city leaders expressed concern and disapproval. Governor Newsom
3 reportedly stated that the “[c]ontinued chaotic federal sweeps … to meet an arbitrary arrest
4 quota are as reckless as they are cruel.” Espíritu Decl. Ex. D. Mayor Karen Bass told
5 reporters that she received no notice that the raids were to be conducted, and that the raids
6 “sow[] a sense of chaos in our city, and a sense of terror.” Id. And Los Angeles County
7 Supervisor Janice Hahn reportedly said: “They aren’t targeting violent criminals—they are
8 sweeping up hardworking people in our communities just trying to provide for their
9 families. These agents are armed to the teeth and it is clear their goal is to make people
10 afraid and it’s working.” Id.

11 Some members of the public gathered in protest. A group of people assembled at
12 the site of an ICE operation in Los Angeles’s Garment District and tried to prevent ICE
13 from leaving. Santacruz Decl. (dkt. 22-1) ¶ 7; Espíritu Decl. Ex. D. Another one of the
14 primary protests on June 6 took place at the Metropolitan Detention Center. Olmstead
15 Decl. ¶ 6. The protests were explicitly about the immigration raids. See Espíritu Decl. Ex.
16 D (“Friday evening, protesters marched in downtown L.A. condemning Friday’s
17 immigration raids.”). The Governor’s Office of Emergency Services, which was
18 monitoring the protests, was in regular communication with representatives of the Los
19 Angeles Police Department and the Los Angeles County Sheriff’s Department. Olmstead
20 Decl. ¶ 6. Both stated that they did not need additional resources, and LAPD reassigned
21 additional officers to the area. Id.

22 That evening, protesters reportedly marched in downtown Los Angeles. Espíritu
23 Decl. Ex. D. There were about 800 protesters at two sites. Santacruz Decl. ¶¶ 9, 10.
24 Some protesters threw “concrete chunks, bottles of liquid, and other objects at Federal
25 Protective Service officers guarding a parking lot gate; some protesters attempted “to use
26 large rolling commercial dumpsters as a battering ram.” Id. ¶ 11. Officers protected the
27 gate entrance with pepper balls and other nonlethal force, until LAPD arrived and pushed
28 the crowd away. Id. ¶ 13. Some of the protesters used “chairs, dumpsters, and other items

1 as weapons.” Id. ¶ 14. LAPD declared an “unlawful assembly,” and while some
2 individuals resisted, the protesters departed by 11:00 p.m. Id. ¶¶ 16, 17. Two federal
3 buildings were vandalized and sustained minor damage. Id. ¶ 17.

4 On June 7, both the ICE operations and responsive protests continued. Olmstead
5 Decl. ¶ 7. In addition to the protest at the Metropolitan Detention Center, protests also
6 emerged in Paramount and Compton. Id. LASD provided 200 deputies to respond to the
7 Paramount and Compton protests, including a team with specialized training in handling
8 civil unrest. Id. Customs and Border Protection officers arrived from San Diego to assist
9 with immigration enforcement operations. Santacruz Decl. ¶ 18.

10 During the evening hours of June 7, the protest at the Metropolitan Detention
11 Center was “fairly in control,” with some protesters targeting the building. Olmstead Decl.
12 ¶ 9. Federal officers pushed protesters away while LAPD officers moved in front and
13 declared an unlawful assembly; by 2:15 a.m., “most of the protestors had left the area.” Id.
14 In Paramount and Compton, there were about 300 to 400 protesters present. Id. ¶ 10.
15 Some protesters threw rocks and other objects (including a Molotov cocktail), burned a
16 vehicle, looted a gas station, and vandalized property. Id. ¶ 9. There was an extended
17 clash between some protesters and officers, with a crowd boxing in the officers and
18 throwing fireworks, rocks, and mangos at them, and “using shopping carts to barricade the
19 street.” Santacruz Decl. ¶ 20. One officer was briefly trapped inside her law enforcement
20 vehicle when a crowd surrounded it, shook it, and threw stones at it. Id. A DHS fence was
21 damaged, and three government vehicles were damaged. Id. ¶ 21. Local law enforcement
22 brought the situation under control by 4:00 a.m. and LASD was able to demobilize its
23 teams. Olmstead Decl. ¶ 9. About 11 people were arrested for engaging in unlawful
24 behavior at the protests that night. Id. ¶ 10.

25 **C. Federalizing of National Guard and Continued Protest**

26 President Trump intervened in the response to the protests on the evening of June 7,
27 issuing a memorandum to the Secretary of Defense, Attorney General, and Secretary of
28 Homeland Security. See June 7 Memo (Espíritu Decl. Ex. O at 108–09). Although it did

1 not name California, Los Angeles, or any other geographic area, the memo asserted that
2 “[n]umerous incidents of violence and disorder have recently occurred and threaten to
3 continue in response to the enforcement of Federal law by [ICE] and other United States
4 Government personnel.” Id. It continued: “To the extent that protests or acts of violence
5 directly inhibit the execution of the laws, they constitute a form of rebellion against the
6 authority of the Government of the United States.” Id. (emphasis added). The memo
7 explained that due to “these incidents and credible threats of continued violence,”
8 President Trump was calling

9 into Federal service members and units of the National Guard
10 under 10 U.S.C. [§] 12406 to temporarily protect ICE and other
11 United States Government personnel who are performing
12 Federal functions, including enforcement of Federal law, and to
protect Federal property, at locations where protests against
these functions are occurring or are likely to occur based on
current threat assessments and planned operations.

13 Id. President Trump further directed Secretary Hegseth “to coordinate with the Governors
14 of the States and the National Guard Bureau in identifying and ordering into Federal
15 service the appropriate members and units of the National Guard under this authority,”
16 calling for “at least 2,000” National Guard personnel to be on duty “for 60 days or at the
17 discretion of” Secretary Hegseth. Id. (emphasis added). Finally, the memo provided that
18 Secretary Hegseth could “employ any other members of the regular Armed Forces as
19 necessary.” Id.

20 Secretary Hegseth issued an order that same night, attaching the June 7 Memo, and
21 announcing that 2,000 members of the California National Guard were being “called into
22 Federal service effective immediately for a period of 60 days.” See June 7 DOD Order
23 (Espíritu Decl. Ex. P at 111). The top of the order read:

24 **MEMORANDUM FOR ADJUTANT GENERAL OF THE
CALIFORNIA NATIONAL GUARD
THROUGH: THE GOVERNOR OF CALIFORNIA**

25 Id. The order further stated that the Commander of U.S. Northern Command would
26 control the 2,000 National Guard members. Id.

27 Defendants did not notify Governor Newsom of their intent to federalize the

1 California National Guard prior to issuing the June 7 Memo or the June 7 DOD Order.
2 Espíritu Decl. Ex. K (June 8 letter from Sapp to Secretary Hegseth).¹ Governor Newsom
3 only learned of the June 7 DOD Order from the Adjutant General after the Adjutant
4 General received it. Id. The Adjutant General relinquished command to the commander
5 of U.S. Northern Command, and thereafter the commander of U.S. Northern Command,
6 not the Governor, has issued all orders to the federalized National Guard. Espíritu Decl.
7 Ex. J. Responding to these events, Governor Newsom issued a statement that “[t]he
8 federal government is taking over the California National Guard and deploying 2,000
9 soldiers in Los Angeles—not because there is a shortage of law enforcement, but because
10 they want a spectacle.” Espíritu Decl. Ex. Q. On June 8, the New York Times reported
11 that President Trump wrote on social media that he had directed his cabinet officials to
12 “take any actions necessary to ‘liberate Los Angeles from the Migrant Invasion,’” and
13 said, “we’re going to have troops everywhere.” Espíritu Decl. Ex. M.

14 The National Guard troops arrived in Los Angeles on June 8, but “it was not clear
15 what role they were to play or what orders they were provided,” and “there were concerns”
16 that they “did not have the equipment or training necessary to handle the situation.”
17 Espíritu Decl. Ex. R; Olmstead Decl. ¶ 11. Initially that morning, the city was quiet.
18 Espíritu Decl. Ex. R. That afternoon, protesters increased to about 3,500, particularly near
19 the Metropolitan Detention Center, where the National Guard was deployed. Olmstead
20 Decl. ¶ 12. “[M]any of the protestors appeared angry that the National Guard had been
21 federalized and was now present in their city.” Id.; Espíritu Decl. Ex. M (New York Times
22 stating that “aggressive federal response … in turn sparked new protests across the city.”).
23 “The presence of the National Guard seemed to only inflame the protesters further.”
24 Olmstead Decl. ¶ 12.²

25
26 ¹ President Trump called Governor Newsom at some point and purportedly “directed him
27 to take action to stop the violence.” Opp. at 5 & n.4 (citing Colton & Roberts, Trump
28 brings receipts, Fox News (June 10, 2025), <https://perma.cc/EX6D-V8Y5>). No one
suggests that President Trump mentioned the National Guard.

² The LAPD Chief whom Defendants quote as stating that “things have gotten out of
control,” see Opp. (dkt. 25) at 1, n.2, made that comment on the night of June 8.

1 LAPD, LASD, and the California Highway Patrol deployed to the protest area as
2 protesters, blocked Highway 101. Id. ¶ 13. Several blocks away, individuals reportedly
3 vandalized Waymo driverless vehicles. Espíritu Decl. Ex. R. Some people “moved
4 through downtown, setting off commercial-grade fireworks toward federal officers and
5 throwing objects at passing law enforcement vehicles.” Santacruz Decl. ¶ 26. Individuals
6 “lit fires in dumpsters and trash bins[,] looted at least one store,” and vandalized buildings.
7 Id. At least 42 people were arrested in connection with their conduct during the June 8
8 protests. Olmstead Decl. ¶ 14.

9 That same day, Governor Newsom’s office wrote to Secretary Hegseth, stating that
10 the June 7 DOD Order did not comply with the law or even with President Trump’s June 7
11 Memo. Espíritu Decl. Ex. K. The letter argued that “local law enforcement resources are
12 sufficient to maintain order” and that deploying the National Guard without adequate
13 training or orders “risks seriously escalating the situation.” Id. Asserting that the
14 deployment represented “a serious breach of state sovereignty that seems intentionally
15 designed to inflame the situation,” the letter asked Secretary Hegseth to rescind the June 7
16 DOD Order. Id.

17 Instead, on June 9, Secretary Hegseth posted on social media that “approximately
18 700 active-duty U.S. Marines from Camp Pendleton are being deployed to Los Angeles to
19 restore order” and “defend federal law enforcement officers.” Eck Decl. ¶ 18. Secretary
20 Hegseth then issued a second order federalizing another 2,000 National Guard members
21 for 60 days. June 9 DOD Order (Espíritu Decl. Ex. P at 114). Defendants did not consult
22 with Governor Newsom in advance of the June 9 DOD Order. Espíritu Decl. Ex. S. On
23 June 9, a thousand demonstrators gathered, and one person drove by firing paintballs at the
24 FPS inspectors. Santacruz Decl. ¶ 28. The crowd clashed with LAPD officers, injuring
25 five. Id. ¶ 31.

26 Over the course of the protests, state and local law enforcement arrests increased by
27 the day, with over 400 individuals ultimately being arrested in total. Olmstead Supp. Decl.
28

1 (dkt. 39-3) ¶ 14.³ The parties have not introduced any evidence of any protesters carrying
2 firearms, and there is no evidence of any organized (as opposed to sporadic) violence.

3 **D. Procedural History**

4 Plaintiffs Newsom and the State of California bring suit against Defendants Trump,
5 Hegseth, and the DOD, arguing that Defendants' actions exceeded the scope of their
6 authority. See Compl. (dkt. 1). The complaint includes causes of action for: (1) ultra
7 vires, against all Defendants; (2) violation of the Tenth Amendment of the U.S.
8 Constitution, against all Defendants; and (3) violation of the Administrative Procedures
9 Act, against Secretary Hegseth and the Department of Defense. Id. Plaintiffs seek
10 declaratory and injunctive relief. Id. ¶ 107. On June 10, Plaintiffs filed a Motion for a
11 TRO, asking the Court to rein in the President's use of military force in Los Angeles. Mot.
12 (dkt. 8); Reply (dkt. 39). Defendants have opposed the motion, see Opp., and the Court
13 held a hearing on June 12.

14 **II. LEGAL STANDARD**

15 A party seeking a temporary restraining order must establish (1) a likelihood of
16 success on the merits, (2) a likelihood of irreparable harm absent preliminary relief,
17 (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public
18 interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Stuhlbarg Int'l
19 Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001) (standard for
20 temporary restraining order the same as for preliminary injunction). Alternatively, if the
21 party demonstrates that "the balance of hardships tips sharply in [its] favor," it need only
22 show that "serious questions going to the merits were raised" and that the other two Winter
23 elements are satisfied. All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134–35 (9th
24 Cir. 2011) (citation omitted). Either way, success on the merits "is the most important
25 Winter factor." Disney Enters., Inc. v. VidAngel, Inc., 869 F.3d 848, 856 (9th Cir. 2017)
26 (citation omitted). And when the government is a party, the last two Winter factors—the

27
28 ³ LAPD made 29 arrests on June 7. Id. LAPD, LASD, and CHP made at least 41 arrests
on June 8, 135 arrests on June 9, and 297 arrests on June 10. Id.

1 equities and the public interest—merge. E. Bay Sanctuary Covenant v. Biden, 993 F.3d
2 640, 668 (9th Cir. 2021).

3 **III. DISCUSSION**

4 The Court begins with the likelihood of success on the merits and, concluding that
5 Plaintiffs are likely to succeed on at least some of their claims, then proceeds to the
6 remaining Winter factors.

7 **A. Likelihood of Success on the Merits**

8 Plaintiffs bring three claims—an ultra vires claim, a Tenth Amendment claim, and
9 an APA claim—but rely only on the first two for purposes of their motion for a temporary
10 restraining order. Mot. at 7–11, 12–15 (ultra vires), 11–12 (Tenth Amendment). As part
11 of their ultra vires claim, Plaintiffs contend that President Trump exceeded his lawful
12 authority in three ways: First, although he cited 10 U.S.C. § 12406, which permits the
13 President to federalize the National Guard, none of the three statutory conditions for
14 invoking that statute were met. Second, he failed to comply with § 12406’s procedural
15 requirement that any order issued under that statute “shall be issued through the governors
16 of the States.” Third, he federalized the National Guard for an unlawful purpose in
17 violation of the Posse Comitatus Act, 18 U.S.C. § 1385. The Court addresses these three
18 arguments before turning to Plaintiffs’ Tenth Amendment claim.

19 **1. Section 12406’s Conditions for Federalization**

20 Through the Militia Act of 1903, Congress authorized the President to “call into
21 Federal service members and units of the National Guard of any State in such numbers as
22 he considers necessary,” but only if

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

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

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

28 Pub. L. No. 57-33, § 4, 32 Stat. 775, 776 (codified at 10 U.S.C. § 12406). Neither

1 President Trump nor Secretary Hegseth specified by a citation to the statute which of these
2 conditions justified federalizing the National Guard, though President Trump’s
3 memorandum suggests that he relied on the second, the third, or both. June 7 Memo (“To
4 the extent that the protests or acts of violence directly inhibit the execution of the laws,
5 they constitute a form of rebellion against the authority of the Government of the United
6 States.”). Defendants confirm in their opposition brief and at the June 12 hearing that they
7 rely on the second and third conditions.⁴ Opp. at 13–16.

8 Defendants also challenge whether the Court can even properly evaluate whether
9 these conditions were met, asserting that § 12406 reserved this determination to the
10 President’s discretion alone. Id. at 10–13. This presents a preliminary question for the
11 Court to resolve before addressing the merits of the § 12406 conditions for federalizing the
12 National Guard.

13 **a. Justiciability**

14 “It is emphatically the province and duty of the judicial department to say what the
15 law is.” Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). Thus, federal courts
16 have “no more right to decline the exercise of jurisdiction which is given, than to usurp
17 that which is not given.” Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404 (1821). The
18 Supreme Court has recognized only limited exceptions to this general rule—one of which
19 is known as the “political question” doctrine. Zivotofsky ex rel. Zivotofsky v. Clinton, 566
20 U.S. 189, 195 (2012). This doctrine recognizes that certain “[q]uestions, in their nature
21 political, or which are, by the constitution and laws, submitted to the executive, can never
22 be made in this court.” Marbury, 5 U.S. at 170. The political question doctrine is,
23 however, a “narrow exception” to the general rule that “the Judiciary has a responsibility
24 to decide cases properly before it, even those it ‘would gladly avoid.’” Zivotofsky, 566
25 U.S. at 195 (quoting Cohens, 19 U.S. at 404).

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⁴ To be sure, nothing in the June 7 Memo, the June 7 DOD Order, or the June 9 DOD
28 Order remotely suggested that the United States or California had been “invaded or [was]
in danger of invasion by a foreign nation.” 10 U.S.C. § 12406 (emphasis added).

1 Baker v. Carr is the canonical case examining this doctrine. 369 U.S. 186 (1962).
2 In Baker, the Court proposed six ways in which a case might present a political question
3 and thus be unfit for judicial review: (1) if there is “a textually demonstrable constitutional
4 commitment of the issue to a coordinate political department,” (2) if there is “a lack of
5 judicially discoverable and manageable standards for resolving it,” (3) if it would be
6 impossible to decide the issue “without an initial policy determination of a kind clearly for
7 nonjudicial discretion,” (4) if it would be impossible for a court to “undertak[e]
8 independent resolution without expressing lack of the respect due coordinate branches of
9 government,” (5) if there is “an unusual need for unquestioning adherence to a political
10 decision already made,” or (6) if there is “potentiality of embarrassment from multifarious
11 pronouncements by various departments on one question.” Id. at 217. “Unless one of
12 these formulations is inextricable from the case at bar, there should be no dismissal for
13 non-justiciability on the ground of a political question’s presence.” Id.

14 Defendants contend that the third Baker formulation—the existence of a policy
15 question “clearly for nonjudicial discretion”—applies here to render nonjusticiable the
16 question whether § 12406’s conditions for federalization of the National Guard were met.
17 Opp. at 12–13. They rely on the language of § 12406 itself, stating that the statute gives
18 sole and exclusive discretion to the President to determine whether “there is a rebellion or
19 danger of a rebellion against the authority of the Government of the United States” or
20 whether he “is unable with the regular forces to execute the laws of the United States.” Id.
21 at 10–13. Indeed, at the hearing Defendants contended that the President could invoke
22 § 12406 on no evidence whatsoever and remain immune from judicial review. And to be
23 sure, when the “executive possesses a constitutional or legal discretion, … their acts are
24 only politically examinable.” Marbury, 5 U.S. at 166; see also Dalton v. Specter, 511 U.S.
25 462, 477 (1994) (“Where a statute … commits decisionmaking to the discretion of the
26 President, judicial review of the President’s decision is not available.”).

27 Defendants misconstrue the plain language of § 12406, however. The statute
28 permits the President to federalize the National Guard “[w]henever” one of the three

1 enumerated conditions are met, not whenever he determines that one of them is met. 10
2 U.S.C. § 12406. Defendants point to the language providing that “the President may call
3 into Federal service members and units of the National Guard of any state in such numbers
4 as he considers necessary to repel the invasion, suppress the rebellion, or execute those
5 laws.” Id. (emphasis added). But their argument puts the cart before the horse. For the
6 President to exercise his discretion (as to how many National Guard members or units to
7 federalize), there must first be an invasion, rebellion, or inability to execute the laws.
8 Consider, as an analogy, 5 U.S.C. § 3345, which applies “[i]f an officer of an Executive
9 agency … whose appointment to office is required to be made by the President … dies,
10 resigns, or is unable to perform the functions and duties of the office.” Id. § 3345(a). The
11 President’s discretion in what to do next, see id. § 3345(a)(2)–(3), does not mean that the
12 President can unilaterally and without judicial review declare that a vacancy exists in order
13 to fill it. That is classic ipse dixit.

14 Defendants assert that, despite the plain language of the statute, the Supreme
15 Court’s 1827 Martin v. Mott decision compels a different outcome. 25 U.S. (12 Wheat.)
16 19 (1827). Martin arose from a militiaman’s refusal to enter federal service to fight in the
17 War of 1812 after President Madison had ordered the New York militia into federal service
18 pursuant to a predecessor statute to the Militia Act of 1903. See id. at 28. That statute
19 provided that “whenever the United States shall be invaded, or be in imminent danger of
20 invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the
21 United States to call forth such number of the militia of the state, or states, most
22 convenient to the place of danger, or scene of action, as he may judge necessary to repel
23 such invasion.” Act of Feb. 28, 1795, ch. 36, 1 Stat. 424, 424. Martin thus presented the
24 question: “Is the President the sole and exclusive judge whether the exigency has arisen, or
25 is it to be considered as an open question, upon which every officer to whom the orders of
26 the President are addressed, may decide for himself, and equally open to be contested by
27 every militia-man who shall refuse to obey the orders of the President?” 25 U.S. at 29–30.
28 The Supreme Court held “that the authority to decide whether the exigency has arisen,

1 belongs exclusively to the President, and that his decision is conclusive upon all other
2 persons.” Id. at 30. It stated that the President “is necessarily constituted the judge of the
3 existence of the exigency in the first instance, and is bound to act according to his belief of
4 the facts.” Id. at 31. And so the Court concluded that “[w]henever a statute gives a
5 discretionary power to any person, to be exercised by him upon his own opinion of certain
6 facts, it is a sound rule of construction, that the statute constitutes him the sole and
7 exclusive judge of the existence of those facts.” Id. at 31–32.

8 In J.A.V. v. Trump, a challenge to President Trump’s actions under the Alien
9 Enemies Act, the federal government relied on Martin to make a similar argument to the
10 one they make here. --- F. Supp. 3d ----, 2025 WL 1257450 (S.D. Tex. May 1, 2025). The
11 plaintiffs in that case were Venezuelan citizens who alleged that President Trump’s
12 removal of Venezuelan citizens had exceeded the terms of the AEA, which allows the
13 President, in his discretion, to remove certain noncitizens when “any invasion or predatory
14 incursion is perpetrated, attempted, or threatened against the territory of the United States
15 by any foreign nation or government.” Id. at *2, 5; 50 U.S.C. § 21; see also Ludecke v.
16 Watkins, 335 U.S. 160, 164 (1948) (the AEA “confers on the president very great
17 discretionary powers”). President Trump argued there, as he does here, that the political
18 question doctrine shielded his attempt to remove Venezuelan citizens from the United
19 States because “whether the AEA’s preconditions are satisfied is a political question
20 committed to the President’s discretion.” J.A.V., 2025 WL 1257450, at *7. And he cited
21 Martin for the same proposition as he does here. See Opp. to Mot. for Prelim. Inj. at 12,
22 J.A.V., No. 25-cv-72 (filed Apr. 23, 2025), ECF No. 45.

23 Judge Rodriguez rejected President Trump’s attempt to preclude judicial review.
24 He emphasized that “‘questions of interpretation’ fall within the Judiciary’s responsibility”
25 and that this can involve “analyzing whether a government official has impermissibly
26 crossed statutory boundaries” by “determining the meaning of statutory terms and gauging
27 the government’s actions against those determined parameters.” J.A.V., 2025 WL
28 1257450, at *9. Accordingly, he went on to define “invasion” and “predatory incursion”

1 before concluding that President Trump had not adequately established the existence of
2 either. J.A.V., 2025 WL 1257450, at *14–18.

3 The Court agrees with Judge Rodriguez’s thoughtful reasoning in J.A.V. and finds
4 it applicable here. To start, J.A.V. is in line with other recent decisions rebuffing efforts
5 from Defendants to skirt judicial review of their alleged statutory violations. See, e.g.,
6 J.G.G. v. Trump, --- F. Supp. 3d ----, 2025 WL 890401, at *9 (D.D.C. 2025) (“Simply
7 because a legal claim implicates foreign affairs or national security, however, does not
8 mean that the political-question doctrine places it ‘beyond judicial cognizance.’” (citation
9 omitted)). It is also consistent with a long line of precedent recognizing the judiciary’s
10 role in interpreting statutory text. See, e.g., Zivotofsky, 566 U.S. at 196 (determining
11 whether federal officials’ “interpretation of [a] statute is correct” is “a familiar judicial
12 exercise”); Japan Whaling Ass’n v. Am. Cetacean Soc’y, 478 U.S. 221, 230 (1986)
13 (“[O]ne of the Judiciary’s characteristic roles is to interpret statutes, and we cannot shirk
14 this responsibility merely because our decision may have significant political overtones.”);
15 El-Shifa Pharm. Indus. Co. v. United States, 607 F.3d 836, 842 (D.C. Cir. 2010) (“[T]hat a
16 case may involve the conduct of the nation’s foreign affairs does not necessarily prevent a
17 court from determining whether the Executive has exceeded the scope of prescribed
18 statutory authority or failed to obey the prohibition of a statute or treaty.”); Stark v.
19 Wickard, 321 U.S. 288, 310 (1944) (“The responsibility of determining the limits of
20 statutory grants of authority … is a judicial function entrusted to the courts by Congress by
21 the statutes establishing courts and marking their jurisdiction.”). Finally, even though the
22 AEA and § 12406 are different statutes, they both grant the President discretion in some
23 respects while still containing important statutory conditions that must be met for that
24 discretion to be exercised. See Ludecke, 335 U.S. at 164, 171. Accordingly, the Court
25 concludes that § 12406 does not preclude judicial review of whether a rebellion has
26 occurred or is in danger of occurring, or whether the President is unable to execute federal
27 law.

28 To be sure, based on longstanding deference to the President on matters of national

1 security and foreign policy, courts cannot second-guess a President's factual
2 determinations in support of a proclamation under the AEA that an invasion or predatory
3 incursion had occurred or was threatened. J.A.V., 2025 WL 1257450, at *10 (citing
4 Holder v. Humanitarian L. Project, 561 U.S. 1, 34 (2010), Chi. & S. Air Lines v.
5 Waterman S. S. Corp., 333 U.S. 103, 111 (1948), and Martin, 25 U.S. at 31⁵); see also
6 Trump v. Hawaii, 585 U.S. 667, 708 (2018) ("[T]he Executive's evaluation of the
7 underlying facts is entitled to appropriate weight, particularly in the context of litigation
8 involving 'sensitive and weighty interests of national security and foreign affairs.'")
9 (quoting Humanitarian L. Project, 561 U.S. at 33–34)). As discussed below, the Court
10 here—like Judge Rodriguez in J.A.V.—does not question Defendants' factual assertions.
11 The Court considers only whether those factual assertions, if true, constitute a rebellion or
12 make the President unable to execute federal law.

13 That said, the Court points out that this case is not one involving the kind of foreign
14 policy or national security questions that traditionally are left to the President. It instead
15 implicates the President's domestic use of military force, a matter on which the courts can
16 certainly weigh in. As the Supreme Court stated over fifty years ago:

17 The concerns of the Executive and Legislative Branches in
18 response to disclosure of the Army surveillance activities ...
19 reflect a traditional and strong resistance of Americans to any
20 military intrusion into civilian affairs. That tradition has deep
21 roots in our history and found early expression, for example, in
22 the Third Amendment's explicit prohibition against quartering
23 soldiers in private homes without consent and in the
24 constitutional provisions for civilian control of the military.
25 Those prohibitions are not directly presented by this case, but
26 their philosophical underpinnings explain our traditional
27 insistence on limitations on military operations in peacetime.
28 Indeed, when presented with claims of judicially cognizable

24 ⁵ Martin, like other cases that Defendants cite (for example, California v. United States),
25 involved issues of foreign policy and national security not presented in this case. See
26 Martin, 25 U.S. at 31 ("[T]he evidence upon which the President might decide that there is
27 imminent danger of invasion, might be of a nature not constituting strict technical proof, or
28 the disclosure of the evidence might reveal important secrets of state, which the public
interest, and even safety, might imperiously demand to be kept in concealment.");
California v. United States, 104 F.3d 1086, 1091 (9th Cir. 1997) ("In this case, the issue of
protection of the States from invasion implicates foreign policy concerns which have been
constitutionally committed to the political branches.").

injury resulting from military intrusion into the civilian sector, federal courts are fully empowered to consider claims of those asserting such injury; there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied.

Laird v. Tatum, 408 U.S. 1, 15–16 (1972) (emphasis added).⁶ Between the unique concerns raised by federal military intrusion into civilian affairs and the fact that federal officials are not uniquely positioned to ascertain what is happening on the ground (as compared to, say, state and local officials), the Court is not convinced that the judiciary cannot question presidential assertions about domestic activities leading to military action. See Myers v. United States, 272 U.S. 52, 177 (Holmes, J., dissenting) (“The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.”).

At bottom, § 12406 does not reserve to sole presidential discretion the determination of whether a rebellion has or is in danger of occurring or whether the President is unable to execute federal law. Accordingly, the Court now turns to the questions whether (1) “there [was] a rebellion or danger of a rebellion against the authority of the Government of the United States” or (2) “the President [was] unable with the regular forces to execute the laws of the United States.”

b. Rebellion

Section 12406 does not define the term “rebellion,” so the Court must interpret the term “consistent with [its] ‘ordinary meaning at the time Congress enacted the statute.’” Wis. Cent. Ltd. v. United States, 585 U.S. 274, 277 (2018) (cleaned up) (citation omitted). In this endeavor, the Court may turn to contemporary dictionary definitions for insight. See, e.g., *id.* (relying on dictionary definitions of “money”); Lackey v. Stinnie, 145 S. Ct.

⁶ In Laird, the plaintiffs challenged federal military action taken pursuant to the Insurrection Act, which grants certain presidential discretion. Id. at 3 & n.2. The Court did not reject the lawsuit on justiciability grounds, though, but for lack of any injury to the plaintiffs. Id. at 13. Indeed, as quoted above, the Court strongly insisted that judicial review remained available for any claim “of judicially cognizable injury.” Id. at 16.

1 659, 667 (2025) (relying on dictionary definitions of “prevailing party”); City of Los
2 Angeles v. Barr, 941 F.3d 931, 940 (9th Cir. 2019) (“We give Congress’s words their
3 ordinary and everyday meaning, and may consult dictionary definitions to ensure a plain
4 interpretation.”). And where there are multiple dictionary definitions, the Court must
5 apply “the contextually appropriate ordinary meaning, unless there is reason to think
6 otherwise.” Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal
7 Texts 70 (2012). Part of understanding context involves recognizing that statutes “should
8 be construed so that effect is given to all [their] provisions, so that no part will be
9 inoperative or superfluous, void or insignificant.” Hibbs v. Winn, 542 U.S. 88, 101 (2004)
10 (citation omitted).

11 Both parties quote the definition of “rebellion” from the current edition of Black’s
12 Law Dictionary, which is:

- 13 1. Open, organized, and armed resistance to an established
14 government or ruler; esp., an organized attempt to change the
government or leader of a country, usu. through violence.
- 15 2. Open resistance or opposition to an authority or tradition.
- 16 3. Hist. Disobedience of a legal command or summons.

17 Rebellion, Black’s Law Dictionary (12th ed. 2024). The Court’s own research has turned
18 up the following definitions from the late 1800s and early 1900s—the relevant time period
19 for understanding what Congress meant when they passed the Militia Act of 1903:

20 Deliberate, organized resistance, by force and arms, to the laws
21 and operations of the government, committed by a subject.

22 Rebellion, Black’s Law Dictionary (1st ed. 1891).

- 23 1. An open and avowed renunciation of the authority of the
24 government to which one owes allegiance; or the taking of arms
25 traitorously to resist the authority of lawful government; revolt.
26 Rebellion differs from insurrection and from mutiny.
27 Insurrection may be a rising in opposition to a particular act or
law, without a design to renounce wholly all subjection to the
government. Insurrection may be, but is not necessarily,
rebellion. Mutiny is an insurrection of soldiers or seamen against
the authority of their officers.
- 28 2. Open resistance to lawful authority.

1 Rebellion, American Dictionary of the English Language (1900).

2 The taking up of arms traitorously against the government; the
3 forcible opposition and resistance to the laws and process
4 lawfully installed. If the rebellion amounts to treason, it is
5 punished by the laws of the United States with death. If it be a
6 mere resistance of process, it is generally punished by fine and
7 imprisonment.

8 Rebellion, The Cyclopedic Dictionary of Law (1901).

9 1. The act of rebelling; open and avowed renunciation of the
10 authority of the government to which one owes obedience, and
11 resistance to its officers and laws, either by levying war, or by
12 aiding others to so; an organized uprising of subjects for the
13 purpose of coercing or overthrowing their lawful rule or
14 government by force; revolt; insurrection.

15 2. Open resistance to, or defiance of, lawful authority.

16 Rebellion, Webster's International Dictionary of the English Language (1903)

17 Where dictionaries list multiple definitions of “rebellion,” the first definition is the
18 one demanded by context here. The first definition of “rebellion” in each dictionary is
19 political in nature, as opposed to the more open-ended concept of “rebellion” that some
20 dictionaries provide as a secondary definition. Indeed, dictionaries’ examples of the
21 secondary usage of the term never apply in the political arena. See, e.g., Rebellion, Oxford
22 English Dictionary (rev. 2009).⁷ And if there were any room for doubt, the language of
23 § 12406 (requiring that the rebellion be “against the authority of the Government of the
24 United States”) resolves the question in favor of the political definition of “rebellion.”

25 From there, the Court observes that the dictionary definitions from the turn of the
26 century share several key characteristics. First, a rebellion must not only be violent but
27

28 ⁷ The Oxford English Dictionary’s secondary definition of “rebellion” is “[o]pen or
determined defiance of or resistance to any authority, controlling power, or convention; an
instance of this.” Examples of this usage include spiritual rebellion (“The event of this
evening has reconciled me to God and humanity! I had risen in angry rebellion against
providence.” (quoting Brontë, Wuthering Heights, 87 (New York, Harper & Bros. 1858)
(1847))) and familial rebellion (“He had forgotten that he had it, but told me when he saw
it that he remembered it as the first thing that made him begin to rise against his father in a
rebellion which he recognized as righteous.” (quoting Butler, The Way of All Flesh, 178
(New York, E.P. Dutton & Co. 1917) (1903))).

1 also be armed. Second, a rebellion must be organized. Third, a rebellion must be open
2 and avowed. Fourth, a rebellion must be against the government as a whole—often with
3 an aim of overthrowing the government—rather than in opposition to a single law or issue.

4 The protests in Los Angeles fall far short of “rebellion.” Defendants refer
5 repeatedly to “violent rioters,” and “mobs,” see, e.g., Opp. at 1, and so the Court pauses to
6 state that there can be no debate that most protesters demonstrated peacefully.
7 Nonetheless, it is also beyond debate that some individuals used the protests as an excuse
8 for violence and destruction. Some bad actors on June 6 threw “concrete chunks, bottles
9 of liquid, and other objects at … officers,” Santacruz Decl. ¶ 11, and used “chairs,
10 dumpsters, and other items as weapons,” id. ¶ 14. Others threw rocks and other objects,
11 including a Molotov cocktail, on June 7. Olmstead Decl. ¶ 9. A “violent crowd” boxed in
12 officers, threw fireworks, rocks, and mangos, and trapped one officer in her car,
13 surrounding it, shaking it, and throwing stones at it. Santacruz Decl. Ex. 20. Some people
14 on June 8 set off fireworks toward officers and threw objects at their vehicles. Santacruz
15 Decl. ¶ 26. Someone on June 9 fired paintballs, id. ¶ 28, and a crowd injured five LAPD
16 officers, id. ¶ 31.

17 Violence is necessary for a rebellion, but it is not sufficient. Even accepting the
18 questionable premise that people armed with fireworks, rocks, mangoes, concrete, chairs,
19 or bottles of liquid are “armed” in a 1903 sense—the Court is aware of no evidence in the
20 record of actual firearms—there is little evidence of whether the violent protesters’ actions
21 were “open or avowed.” Some presumably engaged violently with officers at close
22 quarters in the daylight, while many others threw items under cover of darkness, protected
23 by a crowd, identities concealed. Certainly, the peaceful protesters were “organized” to
24 some degree, in that people knew generally knew where to go to participate in protests,
25 see, e.g., Espíritu Decl. Ex. F (“Dozens of protesters gathered Friday evening outside a
26 federal detention center in Los Angeles where lawyers said those arrested had been taken,
27 chanting ‘set them free, let them stay!’”), but there is no evidence of organized, as apart
28

1 from sporadic or impromptu, violence.⁸ Nor is there evidence that any of the violent
2 protesters were attempting to overthrow the government as a whole; the evidence is
3 overwhelming that protesters gathered to protest a single issue—the immigration raids.
4 See, e.g., Espíritu Decl. Ex. D (“Friday evening, protesters marched in downtown L.A.
5 condemning Friday’s immigration raids.”). While Defendants have pointed to several
6 instances of violence, they have not identified a violent, armed, organized, open and
7 avowed uprising against the government as a whole. The definition of rebellion is unmet.

8 Moreover, the Court is troubled by the implication inherent in Defendants’
9 argument that protest against the federal government, a core civil liberty protected by the
10 First Amendment, can justify a finding of rebellion. The U.S. Reports are chock-full of
11 language explaining the importance of individuals’ right to speak out against the
12 government—even when doing so is uncomfortable, even when doing so is provocative,
13 even when doing so causes inconvenience. See, e.g., Cohen v. California, 403 U.S. 15,
14 24–25 (1972) (“To many, the immediate consequence of this freedom may often appear to
15 be only verbal tumult, discord, and even offensive utterance. ... That the air may at times
16 seem filled with verbal cacophony is, in this sense not a sign of weakness but of
17 strength.”); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (“But, in our
18 system, undifferentiated fear or apprehension of disturbance is not enough to overcome the
19 right to freedom of expression. Any departure from absolute regimentation may cause
20 trouble. ... Any word spoken ... that deviates from the views of another person may start
21 an argument or cause a disturbance. But our Constitution says we must take this risk.”);
22 Cox v. Louisiana, 379 U.S. 536, 550–51 (rejecting the argument that a conviction for
23 breach of the peace “should be sustained because of fear expressed by some [onlookers]
24 that ‘violence was about to erupt’ because of the demonstration” and explaining “that
25 constitutional rights may not be denied simply because of hostility to their assertion or

26
27 ⁸ To the contrary, the record suggests that the violent individuals might not have been bona
28 fide protesters. See McPhee, supra (“McDonnell said of the most violent protesters ...
‘many come in from other places just to hurt people and cause havoc.’”).

1 exercise” (quoting Watson v. City of Memphis, 373 U.S. 526, 535 (1963)); Texas v.
2 Johnson, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First
3 Amendment, it is that the government may not prohibit the expression of an idea simply
4 because society finds the idea itself offensive or disagreeable.”); Hurley v. Irish-Am. Gay,
5 Lesbian & Bisexual Grp. of Boston, Inc., 515 U.S. 557, 574 (1995) (“[T]he point of all
6 speech protection [] is to shield just those choices of content that in someone’s eyes are
7 misguided, or even hurtful.”).

8 Applying these principles, courts have repeatedly reaffirmed that peaceful protest
9 does not lose its protection merely because some isolated individuals act violently outside
10 the protections of the First Amendment:

11 Moreover, although defendants make much of the fact that some
12 demonstrators had allegedly violated the law, transforming the
13 peaceful demonstration into a potentially disruptive one, the
14 Supreme Court has expressly held that “the right to associate
does not lose all constitutional protection merely because some
members of the group may have participated in conduct or
advocated doctrine that itself is not protected.”

15 Jones v. Parmley, 465 F.3d 46, 57 (2d Cir. 2006) (cleaned up) (quoting NAACP v.
16 Claiborne Hardware Co., 458 U.S. 886, 908 (1982)); see also Black Lives Matter Seattle-
17 King Cnty. v. City of Seattle, 466 F. Supp. 3d 1206, 1213 (W.D. Wash. 2020) (finding that
18 instances of protesters “launch[ing] objects at the police, ranging from rocks, bottles,
19 fireworks, traffic cones, traffic flares, and more,” warranted only “ensur[ing] an adequate
20 police presence” and “arrest[ing] those who engage in such conduct” rather than
21 “suppress[ing] legitimate First Amendment conduct as a prophylactic measure” (quoting
22 Collins v. Jordan, 110 F.3d 1363, 1372 (9th Cir. 1996))); Index Newspapers LLC v. City
23 of Portland, 480 F. Supp. 3d 1120, 1143 (D. Or. 2020) (“The fact that there are some
24 violent offenders [] does not give the Federal Defendants carte blanche to attack journalists
25 and legal observers and infringe their First Amendment rights.”). In short, individuals’
26 right to protest the government is one of the fundamental rights protected by the First
27 Amendment, and just because some stray bad actors go too far does not wipe out that right
28 for everyone. The idea that protesters can so quickly cross the line between protected

1 conduct and “rebellion against the authority of the Government of the United States” is
2 untenable and dangerous.

3 In a short paragraph, Defendants suggest that even if there was no rebellion that
4 would justify federalizing the National Guard, there was still a “danger of a rebellion,”
5 which would satisfy § 12406. Opp. at 16. This argument cannot withstand scrutiny. For
6 starters, President Trump and Secretary Hegseth did not rely on a “danger of a rebellion”
7 when issuing the memorandum and orders that federalized the National Guard under s
8 12406. See June 7 Memo; June 7 Order; June 9 Order.⁹ It is concerning, to say the least,
9 to imagine that the federal executive could unilaterally exercise military force in a
10 domestic context and then be allowed to backfill justifications for doing so, especially
11 considering how wary courts are of after-the-fact justifications even where the stakes are
12 lower. Cf. Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S.
13 29, 50 (1983) (“[C]ourts may not accept appellate counsel’s post hoc rationalizations for
14 agency action.”). But in any event, Defendants do not even explain how the Court should
15 determine whether there is a “danger of a rebellion.” “Rebellion” remains the operative
16 word, and so any difference between a “rebellion” and a “danger of a rebellion” must be a
17 difference of degree, not one of kind, with respect to the conduct of the alleged rebellion.
18 With that in mind, Defendants have still not established a factual basis—again, even
19 assuming their factual assertions to be correct—from which this Court can conclude that
20 there is a danger of an organized, violent, armed uprising with the goal of overthrowing the
21 lawful government of the United States.

22 Accordingly, Defendants do not satisfy the “rebellion” condition.

23 **c. Execution of the Laws**

24 The third condition justifying the federalization of the National Guard, and the
25 second advanced by Defendants, is that “the President [was] unable with the regular forces

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27 ⁹ At the hearing, Defendants contended that President Trump’s use of the phrase “[t]o the
28 extent” in the June 7 Memo means that he relied on the “danger of a rebellion” clause. But
the June 7 Memo states: “To the extent that protests or acts of violence directly inhibit the
execution of the laws, they constitute a form of rebellion,” not a danger of rebellion.

1 to execute the laws of the United States.” 10 U.S.C. § 12406; Opp. at 16–17. Defendants
2 argue that they satisfy this condition because the Los Angeles protests threatened the
3 safety of federal law enforcement personnel and interfered with the sites where ICE agents
4 were enforcing alien removal laws. Opp. at 16. Defendants concede that ICE succeeded
5 in arresting 44 people on June 6, but insist that “that limited success came with the risk of
6 danger,” and that, had the protests not interfered with their operations, ICE “would have
7 been able to carry out additional execution-of-the-laws activity.” Id.

8 Whether ICE could have detained more people in the absence of the protests is mere
9 conjecture—Defendants provide no support for that assertion. Even assuming that
10 Defendants are correct, however, the statute does not allow for the federalizing of the
11 National Guard when the President faces obstacles that cause him to underperform in
12 executing the laws. Nor does the statute allow for the federalizing of the National Guard
13 when the President faces some risk in executing the laws, though of course federal
14 employees should never have to fear danger when performing their jobs. The statute
15 requires that the President be “unable” to execute the laws of the United States. That did
16 not happen here. See Espíritu Decl. Exs. G, H (between 70 and 80 people were detained,
17 and 44 arrested by ICE).

18 A classic example of a president being “unable with the regular forces to execute
19 the laws”—indeed, the only other time in this Country’s history that a president has
20 exclusively relied on § 12406 to federalize the National Guard—is the 1970 Postal Service
21 Strike. See Opp. at 3 (drawing parallel to Postal Service Strike). Frustrated by low pay
22 and poor working conditions, letter carriers voted on March 17, 1970 to strike,
23 “threaten[ing] to bring the nation to a standstill.” Pope, Operation Graphic Hand,
24 Smithsonian Nat’l Postal Museum (Mar. 23, 2017), <https://postalmuseum.si.edu/operation-graphic-hand>. By March 19, 1970, the mail service was “paralyzed,” the areas affected by
25 the strike were growing, and “[b]ills, dividend checks, income-tax returns, advertising
26 brochures, credit cards, bank statements, sales flyers and personal mail lay uncollected in
27 thousands of mail drops.” Bigart, Mail Service Here is Paralyzed by Postal System’s First

1 Strike; Business Beginning to Feel Pinch, N.Y. Times (March 19, 1970),
2 <https://perma.cc/8VYB-CT32>. On March 23, 1970, President Nixon declared a state of
3 national emergency, ordering 25,000 personnel from the National Guard and other military
4 branches into New York City “to get some mail moving.” Pope, supra; see also Bigart,
5 Troops Welcomed as Mail Carriers, N.Y. Times (March 26, 1970), <https://perma.cc/9A9N-PLHD>;
6 Exec. Order No. 11,519, 35 Fed. Reg. 5003 (Mar. 23, 1970). In that case, the mail
7 system was incapacitated—the “regular forces” of letter carriers were on strike, and there
8 was no other way to deliver the mail. In this case, the regular forces were and are still very
9 much on duty. While ICE was not able to detain as many people as Defendants believe it
10 could have, ICE was nonetheless able to execute the federal immigration laws. Indeed,
11 ICE continues to carry out enforcement actions, executing those laws. See Espíritu Supp.
12 Decl. (dkt. 39-1).

13 Accordingly, Defendants do not satisfy the “execution of the laws” condition.

14 **2. Section 12406’s Procedural Requirements**

15 Shortly after enacting the Militia Act of 1903, Congress amended the Act to require
16 that any orders issued under § 12406 be issued “through the governor of the respective
17 State … from which State … such troops may be called.” Militia Act of 1908, Pub. L.
18 No. 60-145, § 3, 35 Stat. 399, 400. Section 12406 maintains this requirement: “Orders for
19 these purposes shall be issued through the governors of the States … .”

20 Plaintiffs assert that President Trump failed to comply with this procedural
21 requirement. They explain that Governor Newsom first learned that President Trump had
22 called 2,000 of California’s National Guard members into federal service when
23 California’s adjutant general forwarded him the June 7 DOD Order. See Espíritu Decl.
24 Ex. K. From that point on, the commander of U.S. Northern Command, not the Governor,
25 has issued all orders to the federalized National Guard. See Espíritu Decl. Ex. J.
26 Similarly, Secretary Hegseth—not Governor Newsom—issued the June 9 order calling
27 another 2,000 National Guard members into federal service. See Espíritu Decl. Ex. S.

28 Defendants assert that they complied with § 12406 because written at the top of the

1 June 7 and June 9 DOD Orders was the label “THROUGH: THE GOVERNOR OF
2 CALIFORNIA.” Opp. at 17. True enough. But an interpretation of § 12406 that permits
3 the President to federalize a state’s National Guard by typing the phrase “Through the
4 Governor of [insert state here]” at the top of a document that the President never sends to
5 the governor strains credibility, especially given that Congress specifically amended the
6 statute to add the requirement that orders “shall be issued through the governors.” See
7 Militia Act of 1908 § 3.

8 Defendants also argue that they complied with this requirement by sending the
9 order to California’s adjutant general, who is tasked with issuing orders “in the name of the
10 Governor.” Opp. at 17 (citing Cal. Mil. & Vet. Code § 163). But § 12406 specifically
11 requires that orders federalizing the National Guard be issued “through the governor of the
12 respective State,” not through a different state official (even one who can issue orders in
13 the governor’s name). Indeed, when Congress has wanted to accommodate other state
14 officials, it has done so expressly. For example, the Secretary of Defense may “order a
15 member of a reserve component under his jurisdiction to active duty” except that members
16 “may not be ordered to active duty … without the consent of the governor or other
17 appropriate authority of the State concerned.” 10 U.S.C. § 12301(d) (emphasis added).
18 And, in fact, § 12406 specifically provides for, “in the case of the District of Columbia,”
19 orders to issue “through the commanding general of the National Guard of the District of
20 Columbia.”

21 As a final point, Plaintiffs emphasize that Defendants did not provide Governor
22 Newsom “an opportunity to provide or withhold his consent” or even “to consult … as to
23 which service members and in what number should be called, and for what purposes and
24 what period of time.” Mot. at 6. Defendants respond that § 12406 says nothing about
25 obtaining a governor’s consent as a prerequisite for federalizing the National Guard. They
26 are correct: section 12406 does not expressly require consent or approval of a governor to
27 federalize that state’s National Guard, unlike similar statutes. Cf. 10 U.S.C. § 12301(d)
28 (allowing the Secretary of Defense to “order a member of a reserve component under his

1 jurisdiction to active duty” only with “the consent of the governor or other appropriate
2 authority of the State concerned” (emphasis added)). That said, the June 7 Memo
3 specifically ordered Secretary Hegseth to “coordinate with the Governors of the States” in
4 the process of calling National Guard members to federal service, and Defendants do not
5 claim to have done so. And in any case, the instant motion does not require the Court to
6 determine whether or how § 12406 would operate if Secretary Hegseth had attempted to
7 issue his orders through Governor Newsom and he had refused, as the President and
8 Secretary circumvented the Governor (and thus, the procedure mandated by statute) from
9 the outset.¹⁰

10 Regardless of whether Defendants gave Governor Newsom an opportunity to
11 consult with them or consent to the federalization of California’s National Guard, they did
12 not issue their orders through him, and thus failed to comply with § 12406.

13 **3. The Posse Comitatus Act**

14 Plaintiffs’ third argument for why President Trump’s federalization of the National
15 Guard exceeds his legal authority rests not on § 12406 but a different statute—the Posse
16 Comitatus Act. First enacted in 1878, the Act prohibits military personnel from acting as a
17 “posse comitatus,” or those “upon whom a sheriff could call for assistance in preventing
18 any type of civil disorder.” United States v. Dreyer, 804 F.3d 1266, 1272 (9th Cir. 2015)
19 (en banc) (citation omitted); Act of June 18, 1878, ch. 263, § 14, 20 Stat. 145, 152. The
20 current version of the Act provides:

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

27 ¹⁰ Where Presidents have federalized the National Guard against a state governor’s wishes,
28 they have used other statutes to do so. See Exec. Order No. 11,207, 30 Fed. Reg. 3743
 (Mar. 23, 1965) (relying on the Insurrection Act, then codified at 10 U.S.C. §§ 332–334,
 and now codified at 10 U.S.C. §§ 252–254). It seems that this would be the proper course
 if a governor refused to issue an order, as forcing a governor to do so would raise serious
 anti-commandeering problems. See Printz v. United States, 521 U.S. 898, 935 (1997).

1 18 U.S.C. § 1385. The Act reflects “‘a traditional and strong resistance of Americans to
2 any military intrusion into civilian affairs’ that ‘has deep roots in our history and found
3 early expression, for example, in the Third Amendment’s explicit prohibition against
4 quartering soldiers in private homes without consent and in the constitutional provisions
5 for civilian control of the military.’” Dreyer, 804 F.3d at 1272 (quoting Laird, 408 U.S. at
6 15).

7 The Posse Comitatus Act does not provide a private cause of action for damages.
8 Black Lives Matter D.C. v. Trump, 544 F. Supp. 3d 15, 40 (D.D.C. 2021), aff’d sub nom.
9 Buchanan v. Barr, 71 F.4th 1003 (D.C. Cir. 2023). But a plaintiff can still bring an ultra
10 vires claim where, as Plaintiffs assert is the case here, an “agency has disregarded a
11 specific and unambiguous statutory directive” or “has violated some specific command of
12 a statute.” Id. at 41 (quoting Griffith v. FLRA, 842 F.2d 487, 493 (D.C. Cir. 1988)). So if
13 Plaintiffs are correct that President Trump and Secretary Hegseth’s federalization of the
14 National Guard requires National Guard members to violate the Posse Comitatus Act, such
15 a violation may provide a basis for their ultra vires claim.

16 At present, Plaintiffs contend that that the federalized National Guard troops and the
17 Marines are “likely” to engage in “active involvement in the execution of the laws” in
18 violation of the Posse Comitatus Act. See Mot. at 14; see also United States v. Khan, 35
19 F.3d 426, 431 (9th Cir. 1994) (quoting United States v. Yunis, 924 F.2d 1086, 1094 (D.C.
20 Cir. 1991)). They concede that there are a number of “supportive activities” in which the
21 military can engage without running afoul of the Act, such as “maintenance and repair,
22 transportation, training facilities, counterdrug and counter-transactional organized crime
23 training, and surveillance support.” Mot. at 15. But Plaintiffs note that the federalized
24 National Guard members will soon provide support during immigration enforcement
25 operations and not only at federal buildings. Id. at 14 (citing Eck Decl. ¶ 19). And they
26 suspect that such support will lead to the military “physically confront[ing], detain[ing], or
27 search[ing] civilians,” which would constitute “executing civil laws.” Id. at 15–16. By the
28 time they filed a reply brief, Plaintiffs asserted that “that threat has already become a

1 reality,” because heavily armed National Guard members have been photographed
2 standing near ICE agents during arrests. Reply (dkt. 38) at 11 (citing Espíritu Reply Decl.
3 Exs. 2, 3). While the sight of an armed National Guard member no doubt has the potential
4 to intimidate, Plaintiffs do not contend that National Guard members have in fact
5 participated in any arrests.

6 Defendants respond that they have not violated the Act, and will not, as the June 7
7 Trump Memo and the June 7 and June 9 DOD Orders do not direct the federalized
8 National Guard members to undertake activities that would violate the Act. See Opp. at
9 20–23; see also Knell Decl. (dkt. 22-4) ¶ 7 (“Since Saturday, June 7, federalized California
10 National Guard personnel have conducted operations in Los Angeles strictly consistent
11 with the directions of the President’s June 7 memorandum . . . They are protecting federal
12 personnel performing official functions as well as property at designated locations.”). Of
13 course, federal officials do not only act through official documents. President Trump
14 reportedly wrote on social media that he had directed his cabinet officials to “take any
15 actions necessary to ‘liberate Los Angeles from the Migrant Invasion,’” and said, “we’re
16 going to have troops everywhere,” which certainly differs from the circumscribed role
17 professed in the opposition brief. See Espíritu Decl. Ex. M; see also id. (“Tom Homan, the
18 president’s border czar, suggested in an interview with NBC News that the administration
19 would arrest anyone, including public officials, who interfered with immigration
20 enforcement activities, which he said would continue in California and across the
21 country.”); Fortinsky, Bondi Says California at ‘Good Point’: ‘We’re Not Scared to Go
22 Further’, The Hill (June 11, 2025), <https://perma.cc/G6HR-Q5M8> (quoting Attorney
23 General Bondi: “We’re not scared to go further. We’re not frightened to do something else
24 if we need to.”); Bowden, Noem Asks Hegseth to Exceed Trump’s Order and Force the
25 Military to Arrest LA Citizens to Protect ICE Agents, The Independent (June 11, 2025)
26 (“DHS chief Kristi Noem wants the US military directly involved in detaining and
27 arresting protesters in Los Angeles, according to a letter sent to Defense Secretary Pete
28 Hegseth.”), <https://perma.cc/XG9F-EQF9>.

1 The Court has already concluded that Defendants exceeded their lawful authority by
2 violating 10 U.S.C. § 12406. The Court therefore need not reach this additional basis for
3 Plaintiffs' ultra vires claim at this early moment in the litigation. When the Court has
4 before it Plaintiffs' motion for a preliminary injunction, the record will be more complete
5 as to any and all military activities, and whether, as Plaintiffs contend, the presence of
6 troops near ICE agents during raids "in dense, urban communities" indeed results in
7 "military forces [being] drawn into a variety of law enforcement activities, such as
8 confronting, interrogating, detaining, or searching civilians perceived as security threats."
9 See Reply at 12. At that point—just a week from now—the parties will be free to make
10 whatever arguments they wish in connection with the Posse Comitatus Act.

11 As of now, the Court only has counsel's speculation of what might happen.

12 **4. Tenth Amendment**

13 Plaintiffs' second claim in their complaint is that President Trump's federalization
14 of the National Guard "infringes on Governor Newsom's role as Commander-in-Chief of
15 the California National Guard and violates the State's sovereign right to control and have
16 available its National Guard in the absence of a lawful invocation of federal power."
17 Compl. ¶ 95. Plaintiffs' argument rests in part on their assertion that President Trump
18 acted ultra vires when he federalized the National Guard, see id. ¶ 100, and in part on their
19 allegation that using National Guard members to "quell" or "prevent" protests is an
20 exercise of police power, which is traditionally reserved to the states, see id. ¶¶ 96–98.

21 Focusing on the first piece of Plaintiffs' argument, Defendants argue that the Tenth
22 Amendment issue "is wholly derivative" of whether President Trump lawfully invoked
23 § 12406. Opp. at 20. And because Defendants assert that they did not violate § 12406,
24 they contend that there is no Tenth Amendment problem. Id.

25 Yet the Court has concluded that Defendants did violate § 12406, so their argument
26 against Plaintiffs' Tenth Amendment claim starts from a flawed premise. And even if that
27 were not the case, Defendants fail to grapple with the second part of Plaintiffs' Tenth
28 Amendment claim—that their use of the National Guard and the Marines comes into

1 conflict with California’s police power. It is well-established that the police power is one
2 of the quintessential powers reserved to the states by the Tenth Amendment. E.g., United
3 States v. Morrison, 529 U.S. 598, 618–19 (2000) (the reservation of police powers to the
4 states is “one of the few principles that has been consistent since the [Constitution] was
5 adopted”); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 203–04 (1824) (“No direct general
6 power over these objects is granted to Congress; and, consequently, they remain subject to
7 State legislation.”).

8 Although Defendants identify some stray violent incidents relating to the protests
9 against ICE raids in Los Angeles, and from there boldly claim that state and local officials
10 were “unable to bring rioters under control,” Opp. at 19–20, it is not the federal
11 government’s place in our constitutional system to take over a state’s police power
12 whenever it is dissatisfied with how vigorously or quickly the state is enforcing its own
13 laws. Quite the contrary, the Founders reserved that power, and others, to the states in the
14 Tenth Amendment. See Patterson v. Kentucky, 97 U.S. 501, 504 (1878) (“Whether the
15 policy thus pursued by the State is wise or unwise, it is not the province of the national
16 authorities to determine. That belongs to each State, under its own sense of duty, and in
17 view of the provisions of its own Constitution.”).

18 Of course, federal authority extends to protecting legitimate federal interests, such
19 as protecting federal personnel and facilities. Plaintiffs do not contest this. See Mot. at 2.
20 As discussed above, the parties vigorously dispute whether the National Guard and the
21 Marines were deployed to Los Angeles merely to protect federal personnel and facilities or
22 to engage in more routine law enforcement, and the Court does not at this point reach any
23 conclusion on this issue. But with respect to the Tenth Amendment claim, that is not the
24 only consideration at play; there is also the fact that the federalization of 4,000 members of
25 California’s National Guard necessarily prevents Governor Newsom, as the commander-
26 in-chief of his state’s National Guard, from deploying them as needed. Had Defendants
27 complied with the substantive and procedural requirements of § 12406, the federal
28 interests reflected by that statute may well override Governor Newsom’s interest in

1 retaining his National Guard members. But they did not. So whether or not the National
2 Guard is exercising illegitimate federal police power in Los Angeles, the unlawful
3 federalization of those members has interfered with the state's legitimate police power, and
4 thus it violates the Tenth Amendment.

5 For the above reasons, the Court concludes that Plaintiffs are likely to succeed on
6 their Tenth Amendment claim.

7 **B. Likelihood of Irreparable Harm**

8 A party seeking preliminary injunctive relief must "demonstrate that irreparable
9 injury is likely in the absence of an injunction." Winter, 555 U.S. at 22 (emphasis in
10 original); see also Michigan v. U.S. Army Corps of Eng'rs, 667 F.3d 765, 788 (7th Cir.
11 2011) (harm need not be certain to occur for injunctive relief to issue). The party must
12 show a "sufficient causal connection" between the defendant's conduct and their
13 anticipated injury. "Irreparable harm is traditionally defined as harm for which there is no
14 adequate legal remedy, such as an award of damages." Ariz. Dream Act Coal. v. Brewer,
15 757 F.3d 1053, 1068 (9th Cir. 2014).

16 Plaintiffs identify two types of harm that they claim to be likely to suffer in the
17 absence of a temporary restraining order. First, they assert that there is a "very high risk of
18 substantial civil unrest as a direct result of Defendants' inflammatory and confrontational
19 deployment of the military in a large, civilian population center." Mot. at 16. Second,
20 they contend that "Defendants' unlawful federalization of 4,000 California National Guard
21 members ... diverts necessary state resources" from addressing serious problems facing
22 California, such as wildfires and drug trafficking. Id. at 17–18. Defendants respond that
23 these harms are "speculative" and "unsubstantiated." Opp. at 26.

24 As for Plaintiffs' first asserted harm, they have established that the continued
25 presence of National Guard members and Marines in Los Angeles risks worsening, not
26 improving, tensions on the ground. "The presence of the National Guard seemed only to
27 inflame the protesters further." Olmstead Decl. ¶ 12. Indeed, local law enforcement
28 arrests jumped after the National Guard was deployed. Olmstead Supp. Decl. ¶ 14 (29

1 arrests on June 7, 41 arrests on June 8, 135 arrests on June 9, and 297 arrests on June 10).
2 Defendants reiterate that civil unrest began before President Trump nationalized the
3 National Guard, Opp. at 26, but that does not address Plaintiffs' point that military
4 presence in a civilian population center will worsen—and has worsened—the situation.
5 And contrary to Defendants' assertion, Plaintiffs have provided evidence backing up their
6 concern, so it is not merely "hypothetical or possible." Id. (citing Doran v. Salem Inn, Inc., 422 U.S. 922, 931 (1975)).
7

8 In fact, it is common sense that President Trump and Secretary Hegseth's unilateral
9 exercise of federal power risks doing more harm than good. That is the very point that
10 Justice Jackson made in his renowned concurrence in Youngstown Sheet & Tube Co. v. Sawyer:

12 The appeal, however, that we declare the existence of inherent
13 powers [out of necessity] to meet an emergency asks us to do
14 what many think would be wise, although it is something the
15 forefathers omitted. They knew what emergencies were, knew
16 the pressures they engender for authoritative action, knew, too,
17 how they afford a ready pretext for usurpation. We may also
18 suspect that they suspected that emergency powers would tend
19 to kindle emergencies.

20 343 U.S. 579, 649–50 (1952) (Jackson, J., concurring) (emphasis added). Indeed, as
21 Justice Jackson explained using examples from Weimar Germany, the French Republic,
22 and World War II–era Great Britain, "emergency powers are consistent with free
23 government only when their control is lodged elsewhere than in the Executive who
24 exercises them." Id. at 651–62. The issue presented in Youngstown (whether the
25 President had implied constitutional authority to seize steel production plants during
26 wartime) is admittedly different than that presented here (whether the President can
27 federalize the National Guard over the objection of a state governor and without evidence
28 of a rebellion). But Justice Jackson's lesson remains poignant: federal overreach risks
instigating the very behavior that the federal government fears. To put a finer point on it,
the federal government cannot be permitted to exceed its bounds and in doing so create the
very emergency conditions that it then relies on to justify federal intervention.

1 Turning now to Plaintiffs' second asserted harm, Plaintiffs explain that California's
2 National Guard provides important state services, including by fighting wildfires, see Eck
3 Decl. ¶¶ 35–36, 39–40, and drug trafficking enforcement, id. ¶¶ 42–43. Plaintiffs have
4 also shown that National Guard members are often relied upon to their fullest capacity and,
5 indeed, are likely to be so relied upon in 2025. Id. ¶¶ 32–33. Defendants respond that
6 "Plaintiffs do not identify any type of exigency that they would direct these resources [to]
7 that approaches the seriousness of the situation in Los Angeles." Opp. at 27. But this
8 overstates the violence in Los Angeles, which even by Defendants' own account is limited
9 to isolated actors and is primarily damage to property, and vastly understates the risks to
10 property and human life caused by wildfires and trafficked drugs like fentanyl.¹¹ Perhaps
11 Defendants simply mean that there is not an immediate (as in today) need for California's
12 National Guard to be deployed, but even that is untrue. As Plaintiffs point out, as of June
13 there were 13 fires over 10 acres, including one that has consumed over 4,200 acres,
14 burning in California. Eck Suppl. Decl. (dkt. 39-2) ¶ 10. And in any case, Defendants'
15 myopic focus on whether there is currently an exigency misunderstands the nature of
16 emergencies, which are inherently unplanned for.

17 The Court finds that Plaintiffs have established that they are likely to suffer at least
18 these two forms of harm in the absence of immediate injunctive relief.

19 **C. Balance of Equities and Public Interest**

20 A party seeking injunctive relief must also demonstrate that the balance of equities
21 tips in its favor, and that an injunction is in the public interest. See Winter, 555 U.S. at 20.
22 "In exercising their sound discretion, courts of equity should pay particular regard for the
23 public consequences in employing the extraordinary remedy of injunction." Id. (quoting
24 Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)). Because the government is a

25
26 ¹¹ Indeed, President Trump has officially recognized that fentanyl trafficking is a "national
27 emergency" and a "public health crisis," Fact Sheet: President Donald J. Trump Proceeds
28 with Tariffs on Imports from Canada and Mexico, White House (Mar. 3, 2025), and called
the January 2025 Los Angeles wildfires a "tragedy [that] affects the entire Nation,"
Emergency Measures to Provide Water Resources in California and Improve Disaster
Response in Certain Areas, White House (Jan. 24, 2025).

1 party, the last two Winter factors merge. E. Bay Sanctuary Covenant, 993 F.3d at 668.

2 The Court begins by observing that significant harm has already occurred.
3 President Trump's June 7 Memo marks the first time that a President has invoked § 12406,
4 lawfully or not, against the wishes of a state governor. Regardless of the outcome of this
5 case or any other, that alone threatens serious injury to the constitutional balance of power
6 between the federal and state governments, and it sets a dangerous precedent for future
7 domestic military activity.¹² There is a reason that § 12406 and other similar statutes, such
8 as the Insurrection Act, apply only in the narrowest and most extreme of circumstances—
9 they jeopardize the delicate federalism that forms the basis of our very system of
10 government. See Youngstown, 343 U.S. at 638 (Jackson, J., concurring) (“Presidential
11 claim to a power at once so conclusive and preclusive must be scrutinized with caution, for
12 what is at stake is the equilibrium established by our constitutional system.”). The
13 continued deployment of federal troops in Los Angeles¹³ for 60 days would further
14 entrench this harm.

15 Moreover, Plaintiffs have shown a likelihood of prevailing in their argument
16 President Trump's invocation of § 12406 was in fact not lawful, both exceeding the scope
17 of his authority and violating the Tenth Amendment. When Plaintiffs establish “a
18 likelihood that Defendants' policy violates the U.S. Constitution, Plaintiffs have also
19 established that both the public interest and the balance of the equities favor [injunctive
20 relief].” See Arizona Dream Act Coalition, 757 F.3d at 1069. Defendants are not harmed
21 by “an injunction that merely ends an unlawful practice or reads a statute as required to

22
23 ¹² Defendants argue that the separation of powers cuts against judicial intervention, see
Opp. at 2, but they focus exclusively on the separation between the Executive and the
24 Judiciary, missing entirely the important balance between federal and state power.
25
26 ¹³ And potentially nationwide, as the June 7 Memo invoking 10 U.S.C. § 12406 does not
name Los Angeles or California or any other geographical area and purports to apply to
“the Governors of the States,” not just California. Indeed, amici from 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
27 Governor of Kansas contend that they “are implicated by the unlimited scope of” the June
28 Memo. See States Amici (dkt. 30-1) at 2. Whether the memo adequately satisfies any of
the conditions of § 12406 as to jurisdictions beyond Los Angeles is not before this Court.

1 avoid constitutional concerns.” See R.I.L.-R v. Johnson, 80 F. Supp. 3d 164, 191 (D.D.C.
2 2015). They may continue to enforce the immigration law, even without the assistance of
3 the National Guard.

4 Defendants no doubt have an “interest in protecting federal agents and property.”
5 See Index Newspapers LLC v. U.S. Marshals Serv., 977 F.3d 817, 831 (9th Cir. 2020).
6 But they have no legitimate interest in doing so beyond the bounds of their authority. See
7 R.I.L-R, 80 F. Supp. 3d at 191. Federal agents and property may actually well be served
8 by de-militarization and a concurring de-escalation of the situation. Regardless, Plaintiffs
9 and the citizens of Los Angeles face a greater harm from the continued unlawful
10 militarization of their city, which not only inflames tensions with protesters, threatening
11 increased hostilities and loss of life, but deprives the state for two months of its own use of
12 thousands of National Guard members to fight fires, combat the fentanyl trade, and
13 perform other critical functions. As discussed above, Defendants’ actions also threaten to
14 chill legitimate First Amendment expression.

15 Accordingly, the Court concludes that Plaintiffs have demonstrated that the balance
16 of equities tips in their favor and that an injunction restraining the President’s use of
17 military force in Los Angeles is in the public interest.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court GRANTS Plaintiffs’ motion for a temporary
20 restraining order.

21

- 22 • Defendants are temporarily ENJOINED from deploying members of the
California National Guard in Los Angeles.
- 23 • Defendants are DIRECTED to return control of the California National Guard to
Governor Newsom.
- 24 • The Court further STAYS this order until noon on June 13, 2025.
- 25 • Plaintiffs are ORDERED to post a nominal bond of \$100 within 24 hours. The
bond shall be filed in the Clerk’s Office and be deposited into the registry of the
26 Court. If said bond is not posted by the aforementioned date and time, this
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1 Order shall be dissolved.

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- Defendants are further ORDERED TO SHOW CAUSE why a preliminary injunction should not issue. A hearing on this order to show cause will be held on **June 20, 2025 at 10 a.m.** Plaintiffs' moving papers shall be filed no later than **June 16, 2025**; Defendants' opposition shall be due no later than **June 18, 2025**, and Plaintiffs' reply shall be due on **June 19, 2025**.

7 **IT IS SO ORDERED.**

8 Dated: June 12, 2025



9 CHARLES R. BREYER
10 United States District Judge

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