No. 25-3727

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GAVIN NEWSOM, *et al.*,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 3:25-cv-04870
The Honorable Charles R. Breyer

MOTION TO VACATE STAY OR, IN THE ALTERNATIVE, FOR INJUNCTION PENDING APPEAL

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October 7, 2025

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INTRODUCTION

Earlier this year, the Court recognized the need for judicial review to serve as a check on abuses by the President and Secretary of Defense when exercising their limited authority to federalize members of the National Guard. Stay Order 21. As the Court explained, "the Constitution authorizes Congress, not the President, to determine when (and how) the militia can be called into actual service of the United States." *Id.* at 20. The Court also recognized that sovereign States have "significant interests . . . implicated" when the President federalizes their Guard troops. *Id.* at 39. Although the Court provisionally determined that defendants "had a colorable basis for" federalizing California's Guard under 10 U.S.C. § 12406(3) in response to certain forms of disorder on June 6-7 in Los Angeles, *id.* at 33, the Court "emphasize[d] . . . that [its] decision addresse[d] only the facts before [it]" in early June, *id.* at 40. On that limited basis, and on the basis of representations by defendants that they needed the Guard to protect personnel and property in Los Angeles, *see id.* at 38-39, the Court agreed to stay an injunction issued by the district court requiring the return of the Guard to state control.

Since that time, the relevant circumstances have changed in fundamental ways. Not long after the Court entered its stay order, defendants began deploying members of the Guard to areas far from Los Angeles on missions that had nothing to do with the original basis for federalizing the Guard. Defendants also issued an

order extending the federalization from its initial 60-day period to 150 days, even while acknowledging that there was little (if any) remaining security risk to federal personnel in Los Angeles. And in recent weeks, defendants have greatly expanded their efforts to deploy the military on the streets of communities across the Nation. Most relevant here, defendants sent about 200 members of California's National Guard—nearly all of the remaining federalized troops—out of California entirely, to Portland, after a separate district court enjoined the federalization of the Oregon National Guard. A-404-405 (*Oregon v. Trump*, No. 25-cv-1756 (D. Or. Oct. 4, 2025), Dkt. 56-1).[1] Defendants also told California they plan to issue yet another order extending the federalization of California's Guard—this time, to January 31.

The ever-expanding mission of California's federalized Guard bears no resemblance to what this Court provisionally upheld in June. And it is causing irreparable harm to California, our Nation's democratic traditions, and the rule of law. The most straightforward way for the Court to address these circumstances would be to vacate the stay entered on June 19. The effect would be to restore the district court's temporary restraining order, thereby requiring the return of the 300 members of the Guard to state control. This Court has authority to vacate a stay when changed circumstances undermine the basis for it. That is the case here: Because most of the Guard is no longer in Los Angeles and the episodes of

[1] All references to "A-##" are to the addendum submitted with this motion.

disorder from early June have long since subsided, defendants could not plausibly show that they would suffer the forms of irreparable harm identified in this Court's prior stay order. *See* Stay Order 38-39. And whatever the public interest may have been on June 19, *see id.* at 39, it would be ill-served by maintaining a stay that has the practical effect of facilitating defendants' efforts to deploy the military on the streets of an increasing number of communities across our Nation. The Oregon district court has temporarily blocked defendants from circumventing its initial order by substituting members of the California National Guard for the Oregon National Guard. *See* A-414-415 (*Oregon*, No. 25-cv-1756 (D. Or. Oct. 5, 2025), Dkt. 68). But defendants are likely to attempt their novel experiment in cross-state deployments again in the near future. Indeed, defendants have already sent some members of California's National Guard to Illinois. A-454.[2]

Alternatively, the Court should issue an injunction to block defendants' unlawful orders extending the federalization of California's Guard through November 2025 and potentially even January of next year. The Court has broad equitable authority to grant relief of that nature. Although such a request would ordinarily be made in the district court in the first instance, the district court has

[2] At A-454, plaintiffs have included a new supplemental declaration from Paul S. Eck, Deputy General Counsel of the California Military Department. All other documents in the addendum were filed in district court, either in this case or in *Oregon v. Trump*, No. 25-cv-1756 (D. Or.).

concluded that it lacks jurisdiction over requests for renewed injunctive relief while the appeal before this Court remains pending. And defendants can no longer show any "colorable basis" under Section 12406 for federalizing members of California's Guard. Stay Order 33. If there were any remaining need for the troops in Los Angeles, defendants would not have sent most of them to Portland. Similarly, if there were any remaining need in Los Angeles, members of the Guard would have been assisting on more than "zero" ICE field operations in the city as of the time that trial was held in this case several weeks ago. A-201. For those reasons, and because the remaining equitable factors strongly support relief, the Court should grant this motion and restore the Guard to state control.[3]

STATEMENT

The legal and procedural background are well known to the Court. *See, e.g.*, Answering Br. 3-13, 16-48. This Statement focuses on certain factual and procedural developments most relevant to the relief requested in this Motion.

1. In June 2025, the State of California and Governor Newsom filed a lawsuit challenging the President's federalization of 4,000 members of California's National Guard and moved for a temporary restraining order. ER-212-233. The district court granted interim relief, enjoining defendants "from deploying

[3] Counsel for defendants have represented that they oppose the motion.

members of the California National Guard" and directing defendants "to return control of the California National Guard to Governor Newsom." ER-37-38.

This Court granted a stay pending appeal, applying a "highly deferential standard of review." Stay Order 33. The Court concluded that defendants had "presented facts" establishing a "colorable basis for invoking" Section 12406(3). *Id.* at 33-34. In the Court's view, defendants had established that protests and other unlawful conduct in early June had "significantly impeded the ability of federal officers to execute the laws," *id.*, including at an ICE building "in downtown Los Angeles," *id.* at 11; in front of federal property "in Paramount, California," *id.*; and at federal buildings near the "Federal Courthouse" in "downtown Los Angeles," *id.* at 13. While the Court credited the "declarations submitted by Defendants" about the interference with federal officers' ability to execute the laws in Los Angeles, *id.* at 33-34, it also emphasized that the President lacks authority to "federalize the National Guard based on no evidence whatsoever," and rejected the argument that "courts would be unable to review a decision that was obviously absurd or made in bad faith." *Id.* at 30-31. Courts may "review the President's determination to ensure that it reflects a colorable assessment of the facts and law within a 'range of honest judgment.'" *Id.* at 31.

2. Between June and August 2025, defendants deployed members of the Guard on missions that had very little—if anything—to do with the circumstances

and security risks discussed in this Court's stay order. For example, federalized Guard units were "sent more than 100 miles away" from Los Angeles to assist the DEA in enforcement actions "on suspected illegal marijuana farms." Harter, *National Guard Troops Deployed to L.A. Were Sent to Riverside County Marijuana Farm Raid*, L.A. Times (June 24, 2025), https://tinyurl.com/7r9xtb7c; *see also* A-83-84. And as part of "Operation Excalibur," defendants 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." A-38, 40, 41. Defendants also substantially reduced the number of federalized troops based on their view that "the lawlessness in Los Angeles is subsiding." A-214.

On August 5, however, defendants issued a new order that deployed 300 federalized members of California's Guard for a period of 90 days, through November 5. The order states that the "mobilization is in response to direction from the President . . . to provide forces to protect federal functions, personnel, and property." A-2. But it provides no other justification for continued federalization. *See id.*; *see also* A-359 (defendants agreeing that August order does not "cite new grounds or interject new considerations" to support continued federalization).

In response, plaintiffs asked the district court to preliminarily enjoin the new federalization order. D.Ct. Dkt. 183. Plaintiffs explained that there was no

colorable basis under Section 12406 to support it. Rather than addressing the motion on the merits, however, the district court concluded that it lacks jurisdiction to rule on the motion while the appeal before this Court remains pending. A-369-372. The district court also observed that plaintiffs could "move for an injunction before the Ninth Circuit" and pledged to "lift its stay and proceed expeditiously" if this Court offered direction that the district court could hear the preliminary injunction motion in the first instance. A-372.

3. On September 28, 2025, Secretary Hegseth issued a memorandum authorizing the deployment and federalization of 200 members of Oregon's National Guard. A-375 (*Oregon*, No. 25-cv-1756 (D. Or. Oct. 4, 2025), Dkt. 56). The State of Oregon and City of Portland filed a lawsuit in the District of Oregon challenging the federalization order, and sought a temporary restraining order.

On Saturday, October 4, the district court granted the requested relief, enjoining defendants "from implementing Defendants' September 28, 2025, Memorandum ordering the federalization and deployment of Oregon National Guard service members to Portland." A-404. The court explained that "it had been months since there was any sustained level of violent or disruptive protest activity in Portland," and that there was substantial evidence that federal law enforcement "*were able* to execute the laws of the United States" in Portland. A-391, 393. The district court also rejected defendants' argument that "occurrences

of violence elsewhere" could support federalization in Portland. A-393. "[V]iolence in a different state . . . do[es] not provide a colorable basis to invoke Section 12406(3)." *Id.* "To accept Defendants' arguments would be to render meaningless the extraordinary requirements of 10 U.S.C. § 12406 by allowing the President to federalize one State's National Guard based on events in a different state or mere speculation about future events." A-393-394; *see* A-394 ("In other words, violence *elsewhere* cannot support troop deployments *here*[.]").

Hours later, the U.S. Army Northern Command communicated to the California Military Department Leadership that they planned to send 200 federalized California National Guard personnel to Portland. A-409 (*Oregon*, No. 25-cv-1756 (D. Or. Oct. 5, 2025), Dkt. 60). By 6:30 a.m. the next day, approximately 100 of those Guardsmen departed Los Angeles for Portland and additional transport was scheduled for later in the day. *Id.* The California Military Department later learned that all 300 federalized California National Guard personnel would be deployed to Portland and that an order extending their federalization through January 31, 2026, would soon be issued. *Id.*[4]

[4] Defendants appear to have changed their minds about sending all 300 troops to Portland—at least for now. *See* A-420 (*Oregon*, No. 25-cv-1756 (D. Or. Oct. 5, 2025)). The 200 troops most recently deployed to Portland remain there. A-454. An additional 15 members of the California National Guard were sent to Portland several days earlier to train members of Oregon's National Guard for their Portland deployment. *Id.* That means 85 members of the Guard remain in Los

(continued…)

Through an amended complaint, the State of California joined Oregon's lawsuit, challenging the order deploying California's Guard to Portland. Together, the two States requested a temporary restraining order to prevent the active deployment of federalized members of California's National Guard in the State of Oregon. Shortly before the hearing on the temporary restraining order, Secretary Hegseth issued a memorandum mobilizing up to 400 members of the Texas National Guard to "perform federal protection missions where needed, including in the cities of Portland and Chicago." A-413 (*Oregon*, No. 25-cv-1756 (D. Or. Oct. 5, 2025), Dkt. 65-1). In response to that order and the motion filed by Oregon and California, the district court entered an order temporarily enjoining defendants "from deploying federalized members of the National Guard in Oregon." A-414. In granting that relief, Judge Immergut stated that "I see [defendants' actions] as direct contravention of . . . the order that this Court [previously] issued." A-434.

ARGUMENT

I. THE COURT SHOULD VACATE THE STAY PENDING APPEAL

To justify vacating a stay, a party must "demonstrate that facts have changed sufficiently since" the issuance of the stay, and that circumstances no longer satisfy the standard for a stay. *Southeast Alaska Conservation Council v. U.S. Army*

Angeles. *Id.* And California has learned that 14 members of the Guard were recently sent from Portland to Illinois to train members of the National Guard deployed in that State. *Id.*

Corps of Engineers, 472 F.3d 1097, 1101 (9th Cir. 2006); *see also Log Cabin Republicans v. United States*, 2011 U.S. App. LEXIS 16310, at *4 (9th Cir. July 22, 2011) (applying standard to vacate stay pending appeal in light of changed circumstances); *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007) (same). Under that standard, a stay is warranted—and can only remain in place—when the applicant has established that it "will be irreparably injured." *Nken v. Holder*, 556 U.S. 418, 426 (2009); *see also NetChoice, LLC v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh, J. concurring) (despite concluding that a challenged law was likely unconstitutional, concurring in denial of application for a stay because applicant had "not sufficiently demonstrated that the balance of harms and equities favors it at this time").[5]

The relevant circumstances have changed in significant ways such that defendants can no longer make any convincing claim of the sort of harms or equities that would justify a continued stay. When this Court issued a stay in June 2025, it relied on disturbances and isolated instances of violence involving federal facilities and personnel in Los Angeles that had occurred before the deployment of the National Guard. *See* Stay Order 38. After reviewing several of those incidents,

[5] The Court also has authority to reconsider its June 19 stay order in light of "[c]hanges in . . . factual circumstances." 9th Cir. R. 27-10; *see Mi Familia Vota v. Fontes*, 111 F.4th 976, 980 (9th Cir. 2024) (vacating motions panel's order staying district court injunction pending appeal).

this Court concluded that "the federal government's interest in preventing incidents like these is significant." *Id.* at 39. While the Court also acknowledged the State's "significant interests" in the "constitutional balance of power between federal and state government," it credited defendants' arguments that "[b]oth irreparable harm and the public interest weigh in favor of Defendants, who have an uncontested interest in the protection of federal agents and property." *Id.* at 38, 39.

Whatever interest the federal government could profess in "the protection of federal agents and property" in Los Angeles at that time, the situation in Los Angeles and defendants' recent actions have undercut any claim to such an interest now. For one, since the Court issued the stay order, the instances of civil unrest that gave rise to the deployment have subsided. "[T]here have only been a few immigration-related protests around the City [of Los Angeles] with often just a few dozen protestors at a time," A-351; the LAPD "has had to deploy far fewer resources in response to immigration-related protest activity, including in and around federal property," A-353; the California Highway Patrol has not seen any large-scale, protest-related activities in the area since June 19—over 100 days ago—and they are unaware of any requests from another law enforcement agency for protest-related assistance, A-346. As early as mid-July, moreover, a Pentagon spokesperson conceded that "the lawlessness in Los Angeles is subsiding." A-214.

Consistent with those substantially changed circumstances on the ground, defendants have deployed the federalized National Guard for only routine law enforcement operations—operations where defendants' own risk assessments concluded that the security risk to federal personnel is "low"—*not* to respond to any extraordinary threats or other circumstances significantly limiting the ability of civilian agents to execute federal law. *E.g.*, A-36, A-88-89. For example, over 300 troops and approximately 50 military vehicles were deployed to accompany law enforcement officers on a raid at a cannabis farm in Mecca, over 140 miles from downtown Los Angeles. A-83-84. Defendants also sent troops to a July 10 operation in Carpinteria, California, despite no evidence that the absence of Guard forces "would result in loss of life or significant property damage to federal personnel." A-89; *see also* A-108-110 (discussing Operation Excalibur).

In recognition of that reality, defendants began to release members of the National Guard from federalized service—with no harm or elevated risk to federal personnel or property. On July 1, defendants released 150 National Guard members, A-236; on July 15 they released an additional 2,000 troops, A-240; and by August 5, defendants maintained a federalized force comprising only 300 members of the National Guard, A-2-3; *see also infra* pp. 17-18 (describing current conditions in Los Angeles in greater detail).

Defendants' recent actions reveal that they do not view even those 300 Guard members to be necessary to protect federal personnel and property in Los Angeles. In response to an order in a separate case temporarily enjoining defendants from federalizing 200 members of the Oregon National Guard, defendants in the early morning hours of October 5 transported 100 members of California's Guard from Los Angeles to Portland. A-409. By the same evening, approximately 200 troops had moved to Portland. A-424. And defendants told California military leaders that they planned to send "all 300 federalized" troops to Portland as well. A-409; *see also* A-454 (some 200 California Guard troops remain in Portland).

Transporting the entirety of the federalized guard, some 800 miles away, cannot be reconciled with defendants' assertions about the harm they would suffer without federalized troops on the ground in the Los Angeles area. In prior proceedings, defendants represented to this Court that federal employees would be exposed "to violence at the hands of rioting mobs in Los Angeles," C.A. Dkt. 5.1 at 20; others would be "violently pummeled with stones," *id.*; and "extensive damage" would be inflicted on federal property, *id.* "The federal government," they stated, would suffer "significant harms" if they could not "prevent[] these extraordinary acts of violence causing both personal injury and property damage." *Id*. Even if those representations were accurate in mid-June, defendants' own actions reveal that they cannot credibly be asserted now.

Meanwhile, the ongoing stay irreparably harms California, the public, and the rule of law. As the State has previously explained, *see* C.A. Dkt. 16.1 at 21-25, C.A. Dkt. 48.1 at 16-18, it suffers a sovereign harm when the federal government federalizes its National Guard, and it plainly suffers harm when its troops are diverted from critical work for the State. *See, e.g.*, ER-75; SER-17-19. And whatever the public interest may have been when this Court first entered the stay, it would be ill-served by maintaining a stay that only emboldened defendants and enabled their efforts to circumvent another federal court's injunction. A-421 (Immergut, J.) ("Aren't defendants simply circumventing my order?").

The public interest would also be ill-served by exposing California and its federalized Guard members to the risk that they will be re-deployed to yet another State, such as Illinois or one of the many other American communities that the President has mentioned as possible targets. *See, e.g.*, A-413. That risk is far from hypothetical, and it could materialize at moment's notice—just as it did when defendants transported hundreds of troops from California to Oregon mere hours after the district court enjoined the Oregon Guard's deployment. Indeed, defendants have already deployed members of both the California and Texas National Guard to Illinois. *Supra* pp. 8-9 & n.4; A-454. And defendants have taken the position that they have authority to send California's Guard anywhere in the country, even though the ongoing federalization and deployment has zero

connection to the original mission in Los Angeles. *See, e.g.*, A-422 (counsel for defendants arguing that "[Section 12406] doesn't limit itself to [the] Guard in the state where—where a problem is").

Vacating the stay, in contrast, would restore the district court's temporary restraining order, thereby "return[ing] control of the California National Guard to Governor Newsom." ER-37-38. That would validate the public's "significant interest[]" in the proper "constitutional balance of power between federal and state government." Stay Order 39. And it would safeguard our Nation's longstanding tradition against "military intrusion into civilian affairs." *Laird v. Tatum*, 408 U.S. 1, 15 (1972); *see also* Br. of Former U.S. Army & Navy Secretaries & Retired Four-Star Admirals & Generals, D.Ct. Dkt. 124-1 at 11 (describing the "bedrock principle of American democracy" that "our military is apolitical").

At a minimum, the Court should vacate its prior stay order in part. *Cf. Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) ("This Court may, in its discretion, tailor a stay so that it operates with respect to only 'some portion of the proceeding.'"). The principal concern expressed by the Court in the June order was the security risk at the time to federal property in Los Angeles. *See, e.g.*, Stay Order 33-34. For the reasons discussed above, there is no longer any basis in fact for that concern. If the Court disagrees, however, it could lift its stay of the district court's temporary restraining order, except to the extent that federalized members

of California's National Guard are needed for and engaged in the protection of federal property in the Los Angeles area. Defendants could then seek to make a "good faith," "honest judgment," Stay Order 31 (emphases omitted), about the number of troops needed for that purpose, if any.

II. ALTERNATIVELY, THE COURT SHOULD ISSUE AN INJUNCTION PENDING APPEAL TO BLOCK DEFENDANTS' PROLONGED, UNLAWFUL FEDERALIZATION OF CALIFORNIA'S NATIONAL GUARD

If the Court declines to vacate its prior stay order, it should grant an injunction blocking defendants' unlawful efforts to prolong the federalization of California's National Guard.[6] The Court has broad authority to issue injunctions while an appeal is pending. *See, e.g.*, *Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). "The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Id.*; *see generally Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, that standard is satisfied:

[6] Specifically, the Court should order defendants to return the remaining 300 federalized members of the California National Guard to state control. At a minimum, for similar reasons to those discussed above, *supra* pp. 15-16, the Court should enjoin defendants from deploying members of the Guard for any activities beyond the protection of federal property in the Los Angeles area.

Defendants' order renewing the federalization for 90 additional days has no basis in Section 12406. And the remaining equitable factors strongly support relief.[7]

1. In early August, defendants issued an order federalizing hundreds of California's National Guard forces beyond the initial 60-day deployment. *Supra* p. 6. And if recent information provided by defendants to California is accurate, 300 members of the Guard are now set to remain under federal control until January 31, 2026, nearly eight months after the events in early June that originally prompted the federalization. *Supra* p. 8. Those actions violate Section 12406, which requires a showing of "invasion" or "rebellion," or that the President is "unable with the regular forces to execute the laws of the United States." As this Court previously recognized, "any minimal interference with the execution of laws" is not "enough to justify invoking § 12406(3)." Stay Order 33. Section 12406(3) also requires the President to identify an "unusual," "extreme" exigency similar in kind to "invasions" or "rebellions." *Id.*

Nothing of the sort has transpired in Los Angeles in recent months. *See supra* p. 11. Protest activity since early June has fallen significantly and recent activity

[7] Although a request for injunctive relief is typically addressed in the first instance at the district-court level, the district court here concluded that it lacks jurisdiction to resolve requests for injunctive relief while this appeal remains pending. *Supra* pp. 6-7. In the district court's view, the proper avenue is filing a motion for injunctive relief before this Court. *See* A-372.

has been limited and almost entirely lawful.[8] Defendants have admitted that the circumstances on the ground in Los Angeles have substantially changed since early June.[9] And on a number of missions where the Guard was deployed in June and July, military leaders determined that there would be a "low" risk to federal personnel in the absence of the Guard's participation. *E.g.*, A-36, 88-89. For instance, during "Operation Excalibur" in Los Angeles' MacArthur Park, *see supra* p. 6, Guard troops were deployed for a mere "show of presence" where there was no indication of any "threat to federal functions." A-40, 42-43.

If there were any doubt about the continued need for the Guard in Los Angeles, defendants resolved it over the weekend by sending hundreds of the remaining federalized units out of Los Angeles—and out of California entirely—to serve some 800 miles away in Portland, Oregon. *Supra* pp. 8-9. There is no "colorable basis" for federalizing the Guard to protect federal law enforcement or property in California, Stay Order 33, when defendants have sent most of those troops to Oregon and expressed their intent to send them all there. *See* A-409, 454;

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[8] A-351 ("there have been only a few immigration-related protests around the City [of Los Angeles] with often just a few dozen protestors at a time."); A-346 (CHP not aware of any large-scale, protest-related activities in the Los Angeles area since June 19, 2025 or any requests for assistance, and have made no arrests resulting from such activities after June 19).

[9] On July 15, a spokesperson for the Department of Defense stated that "lawlessness in Los Angeles is subsiding," A-214, and as of August, the National Guard was assisting on "zero" ICE field operations, A-201.

supra p. 8 & n.2. Even under the "highly deferential standard of review" applied by this Court, which allows for actions "within a 'range of honest judgment,'" Stay Order 31, 33, defendants' efforts to extend the federalization of California's National Guard falls far short. *See id.* at 30-31 (executive actions that are "obviously absurd or made in bad faith" are impermissible).

Elsewhere, defendants have argued that plaintiffs cannot challenge the August federalization order because, in defendants' view, it simply represents a continuation of the original June 7 federalization. *See* A-358-359. But defendants have cited no authority for treating the June 7 federalization as a blank check—that is, an authorization of all future deployments indefinitely, no matter what factual circumstances develop and how much they diverge from the original circumstances that justified federalization. And the fact that defendants attempt to rely on a months-old justification, rather than the current situation on the ground in Los Angeles, merely underscores their inability to satisfy the predicate requirements under Section 12406 with respect to orders extending the federalization. *Cf.* A-393 (Immergut, J.) ("To accept Defendants' arguments would be to render meaningless the extraordinary requirements of 10 U.S.C. § 12406[.]").

2. The equitable factors also strongly favor injunctive relief. Defendants can no longer credibly claim that federalizing California's National Guard is necessary to avert "extraordinary acts of violence causing both personal injury and property

damage" in Los Angeles. C.A. Dkt. 5.1 at 20. If there were any doubt on that point, their stated intention of sending all of the remaining federalized California National Guard members to Oregon—and the reality that 215 members of the Guard were in fact deployed to Oregon—reveals that defendants have no pressing need for troops in Los Angeles. *See supra* p. 8 & n.4, p. 13; A-409, A-454.

At the same time, the continuing and unwarranted federalization of the State's Guard harms California's sovereign interests, intrudes on the State's traditional law enforcement functions, and diverts members of the Guard from performing critical work for the State. *See supra* pp. 14-15; *cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (noting "ongoing and concrete harm to [State's] law enforcement and public safety interests"). Although the number of troops that remain federalized has fallen from the 4,000 that were initially called up, hundreds still are unavailable for "important state services." ER-35. And there is nothing under defendants' understanding of the relevant legal principles that would guard against a sudden upsurge in the "number of National Guard members" that would be "appropriate to deploy" in California and beyond. C.A. Dkt. 5.1 at 15. After all, in defendants' view, such decisions are not subject to "judicial second-guessing" and are "entrusted to the political branches" alone. *Id.*

Defendants' recent actions only exacerbate the harms suffered by the State. At the moment, approximately 200 members of California's Guard are hundreds of

miles away, in another State, hindering their capacity to respond to emergencies within California. *Supra* p. 8 n.4; A-409, 454. Others were routed to Illinois earlier today. A-454. And there is no reason to think that defendants' recent actions will abate any time soon. Defendants take the remarkable position that federalized troops may be "relocat[ed]" anywhere because, in their view, the federalization orders are "not limited in any way to the state" where the troops were initially federalized. A-421. The President has also made no secret of his desire to continue using the Nation's "cities as training grounds for our . . . National Guard."[10] The August order extending federalization thus threatens to allow California's Guard—federalized in response to specific circumstances in Los Angeles four months ago—to be dispersed across the country as part of the President's unprecedented experiment in militarized law enforcement.[11]

None of this serves any interest previously recognized as valid by this Court. The public interest strongly supports relief that would prevent the President from

[10] *See Speech: Donald Trump Addresses Military Leadership in Quantico, Virginia*, Vimeo, at 42:45-43:01 (Sept. 30, 2025), https://vimeo.com/1123254617?fl=pl&fe=sh.

[11] *See, e.g.*, *Illinois v. Trump*, No. 25-cv-12174 (N.D. Ill. Oct. 6, 2025), Dkt. 1 (challenging President's federalization and deployment of troops to Chicago); *see also* Exec. Order 14339, 90 Fed. Reg. 42121-42122 (Aug. 25, 2025) (directing the Secretary of Defense to establish a "standing National Guard quick reaction force" for "rapid nationwide deployment").

abusing the limited authority conferred on him by Congress under Section 12406 to address "unusual and extreme exigencies." Stay Order 33.

CONCLUSION

The Court should vacate the June 19 order entering a stay of the district court's temporary restraining order, or, in the alternative, grant the motion for an injunction pending appeal.

Dated: October 7, 2025

Respectfully submitted,

s/Christopher D. Hu

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Local Rules 27-1(d) and 32-3 because it contains 5,172 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word in Times New Roman 14-point font.