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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 RENEWED  
MOTION FOR PRELIMINARY  
INJUNCTION**

13 The Founders designed our government to be a system of checks and balances.<sup>1</sup>  
14 Defendants, however, make clear that the only check they want is a blank one. Six months  
15 after they first federalized the California National Guard, Defendants still retain control of  
16 approximately 300 Guardsmen, despite no evidence that execution of federal law is  
17 impeded in any way—let alone significantly. What’s more, Defendants have sent  
18 California Guardsmen into other states, effectively creating a national police force made  
19 up of state troops. In response to Plaintiffs’ motion to enjoin this conduct, Defendants take  
20 the position that, after a valid initial federalization, all subsequent re-federalizations are  
21 completely, and forever, unreviewable by the courts. Defendants’ position is contrary to  
22 law. Accordingly, the Court **ENJOINS** Defendants’ federalization of California National  
23 Guard troops.

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26 <sup>1</sup> The Federalist No. 51 (James Madison) (“TO what expedient, then, shall we finally resort, for  
27 maintaining in practice the necessary partition of power among the several departments, as laid  
28 down in the Constitution? The only answer that can be given is, that as all these exterior  
provisions are found to be inadequate, the defect must be supplied, by so contriving the interior  
structure of the government as that its several constituent parts may, by their mutual relations, be  
the means of keeping each other in their proper places.”).

**I. BACKGROUND**

The Court has chronicled the background of this dispute in previous orders, and so will not repeat it in detail here. See Order Granting TRO (dkt. 64); Opinion Granting Injunctive Relief (dkt. 176). Instead, the Court summarizes the circumstances of the temporary restraining order (“TRO”) in this case, recounts the developments that occurred in California and elsewhere during the stay in this case, and outlines the present dispute.

**A. TRO in This Case**

On June 6, 2025, Immigration and Customs Enforcement (“ICE”) began immigration raids across Los Angeles, at locations like Home Depot, a donut shop, and a clothing wholesaler. Opinion Granting Injunctive Relief at 3; Espiritu Decl. Ex. G (dkt. 8-1) at 52. Protests, some unruly, followed. President Trump—despite quick responses from the Los Angeles Police Department (“LAPD”) and the Los Angeles Sheriff’s Department (“LASD”)—responded by federalizing the California National Guard. Opinion Granting Injunctive Relief at 4. He did so by way of a June 7 memorandum invoking Section 12406, in which he stated that the Guardsmen’s “duration of duty shall be for 60 days or at the discretion of the Secretary of Defense.” See June 7 Memo (Espiritu Decl. Ex. O at 108–09). “The memorandum never specifically mentioned Los Angeles or California; to the contrary, it instructed the Secretary of Defense ‘to coordinate with the Governors of the States and the National Guard Bureau in identifying and ordering into Federal service the appropriate members and units of the National Guard.’” Opinion Granting Injunctive Relief at 5 (quoting June 7 Memo at 108). Secretary Hegseth subsequently issued his own memorandum, stating that 2,000 members of the California National Guard would be “called into Federal service effective immediately for a period of 60 days.” June 7 DOD Memo (Trial Ex. 18). Two days later, Secretary Hegseth issued another memorandum federalizing an additional 2,000 members of the California National Guard. June 9 DOD Memo (Trial Ex. 3).

The federalized National Guard deployed in Los Angeles on June 8. Opinion Granting Injunctive Relief at 9. Plaintiffs filed suit the next day, arguing that Defendants’

1 actions exceeded the scope of their authority. See Compl. (dkt. 1). On June 12, this Court  
2 issued a TRO holding that the June federalization did not satisfy Section 12406. See Order  
3 Granting TRO. The Ninth Circuit stayed the TRO pending appeal, articulating a  
4 deferential standard of review that courts in this Circuit must apply to federalization orders  
5 under Section 12406. See *Newsom v. Trump*, 141 F.4th 1032, 1040 (9th Cir. 2025). The  
6 Ninth Circuit recently held a hearing on Defendants' appeal of the TRO; it has not yet  
7 issued a ruling.

8 **B. Events in California Following the TRO**

9 From the "No Kings" protests in mid-June through August, there were "only a few  
10 immigration-related protests around [Los Angeles] with often just a few dozen protestors  
11 at a time." Hurtado Decl. (dkt. 183-5) ¶ 11; see also Duryee Decl. (dkt. 183-4) ¶ 9 ("I am  
12 not aware of any large-scale, protest-related activities in the Los Angeles area since June  
13 19, 2025, and therefore there have been no arrests resulting from such activities occurring  
14 after June 19."); Opp'n (dkt. 214) at 1 ("The deployment has succeeded."). The LAPD  
15 was "well equipped to handle these protests and did so without mutual aid, the National  
16 Guard, or even the Department's own specialized crime suppression units." Hurtado Decl.  
17 ¶ 11.

18 **1. Draw Down of Troops**

19 In a series of orders, Defendants released the majority of federalized members of  
20 the California National Guard. See Hamme Decl. Ex. 5 (dkt. 183-2) at 25 (July 1, 2025  
21 press release: "Task Force 51 releases 150 members of the California National Guard");  
22 Sauter Decl. (dkt. 214-1) at ¶ 5 (On July 30, 2025, Secretary Hegseth directed a draw down  
23 of forces to approximately 300.); Kurland Decl. Ex. A. (dkt. 190-1) ("August 15 Memo")  
24 at 5 (memorializing directive on July 30, 20225 to release 1,350 members of the California  
25 National Guard from federal service).<sup>2</sup> In mid-August, Department of Homeland Security  
26 Secretary Kristi Noem announced that the immigration enforcement mission had

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<sup>2</sup> Secretary Hegseth signed the memo by hand, adding "Thanks Gavin!" August 15 Memo at 5.

1 succeeded: the administration had “Removed the Worst of the Worst Illegal Aliens,”  
 2 arresting “4,481 illegal aliens in the Los Angeles area” since June 6. Hamme Decl. Ex. 8  
 3 (dkt. 183-2) at 37.

4 **2. August Federalization Order**

5 In the midst of that draw down, however, and despite the calm in Los Angeles, on  
 6 August 5, 2025, Defendants issued a new federalization order. That order, issued the day  
 7 before the initial federalization was set to expire, federalized 300 members of the  
 8 California National Guard for 90 days, through November 4, 2025. Strong Decl. Ex. 1  
 9 (dkt. 212-2) (“August 5 Order”) at 2 (calling Guardsmen into service for a “tour length” of  
 10 90 days). The August 5 Order stated in part:

11 [] The Secretary of Defense, pursuant to Title 10, US Code,  
 12 Section 12406, authorizes the mobilization of units and  
 13 members of the National Guard. This mobilization is in  
 14 response to direction from the President of the United States . . .  
 15 to provide forces to protect federal functions, personnel, and  
 16 property.

17 [] This message implements SecDef’s order to call units and  
 18 members of the Army National Guard into federal service. The  
 19 National Guard unit(s) listed . . . below are called into federal  
 20 service under Presidential Reserve Callup (Title 10, USC  
 21 12406). . . .

22 [] The following unit(s) is/are hereby called into federal service  
 23 under the provisions of 10 USC 12406 effective[.]

24 Id. at 1–2. A subsequent letter from Secretary Hegseth on August 15, 2025 confirmed that  
 25 “300 remaining CA NG personnel will remain in Federal service and continue to execute  
 26 the Federal protective mission through November 4, 2025.” Kurland Decl. Ex. B (dkt.  
 27 190-1) at 7.<sup>3</sup>

28 **3. Filing of Motion for Preliminary Injunction**

29 On September 2, 2025, Plaintiffs filed a motion for preliminary injunction,  
 30 challenging the August 5 Order. See First MPI (dkt. 183).<sup>4</sup> This Court stayed that motion,

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31 <sup>3</sup> Secretary Hegseth again added a handwritten “thanks!” to Governor Newsom. Kurland Decl.  
 32 Ex. B at 7.

33 <sup>4</sup> That same day, following a three-day bench trial, this Court granted injunctive relief for

1 explaining: “[t]he complicated and fragmented procedural posture leaves the Court  
2 skeptical of its jurisdiction to consider Plaintiffs’ motion.” Order re: Jurisdiction (dkt.  
3 192) at 1. The Ninth Circuit later clarified that “Plaintiffs’ challenge to Secretary  
4 Hegseth’s August 5 order extending the California National Guard’s federalization through  
5 November 5 is not the subject of this appeal,” and so held that this Court has jurisdiction  
6 over Plaintiffs’ challenge to that order. USCA Order (dkt. 204).

### 7       C.     Events During Stay

8       While the case was stayed before this Court, a series of significant events occurred,  
9 all demonstrating Defendants’ expansive view of President Trump’s powers under Section  
10 12406.

#### 11       1.     Oregon

12       On September 28, 2025, after the Governor of Oregon declined to mobilize  
13 Oregon’s National Guard, Secretary Hegseth called 200 members of the Oregon National  
14 Guard into federal service. Compl. (dkt. 1) ¶¶ 57, 58 in Oregon v. Trump, 3:25-cv-01756-  
15 IM. Secretary Hegseth asserted that the Oregon federalization was a “further  
16 implement[ation]” of the June 7 Memo in this case, which, as noted above, was justified  
17 based on events in Los Angeles but unlimited in its geographic scope. Id. ¶ 58; June 7  
18 Memo.<sup>5</sup> On October 4, 2025, U.S. District Judge Karin J. Immergut granted a TRO in  
19 favor of the State of Oregon and the City of Portland, holding that Defendants’ actions  
20 failed to satisfy Section 12406, and temporarily enjoining the federalization and  
21 deployment of the Oregon National Guard in Portland. See Opinion and Order Granting  
22 Motion for TRO (dkt. 56) in Oregon v. Trump, 3:25-cv-01756-IM (“Portland TRO”). The  
23 next day, Defendants deployed 200 of the 300 remaining federalized members of the  
24 California National Guard to Oregon. Sauter Decl. ¶ 5; Second Mot. for TRO (dkt. 59) at

25  
26       Plaintiffs on their Posse Comitatus Act claim. See Opinion Granting Injunctive Relief at 3. The  
27 Posse Comitatus Act claim is not material to the pending motion.

28       <sup>5</sup> See also Order Granting TRO at 34 n.13 (noting that amici from other states argued in early June  
that they were “impacted by the unlimited scope of the June 7 Memo.”) (quoting States Amici  
(dkt. 30-1) at 2).

1 2 in Oregon v. Trump, 3:25-cv-01756-IM. Defendants also federalized 400 members of  
2 the Texas National Guard to send to Portland and other cities. Marshall Decl. Ex. 1 (dkt.  
3 65-1) in Oregon v. Trump, 3:25-cv-01756-IM. On October 5, Judge Immergut granted a  
4 second TRO, enjoining the deployment of any National Guard members in Oregon.  
5 Second TRO (dkt. 68) in Oregon v. Trump, 3:25-cv-01756-IM (“Second Portland TRO”).

6 Defendants appealed the first TRO but not the second. Although the Ninth Circuit  
7 stayed the first TRO pending appeal, an en banc court has since vacated the panel’s  
8 decision and granted rehearing. See Oregon v. Trump, No. 26-6268 dkt. 61.1; 89.1.<sup>6</sup> In  
9 the interim, Judge Immergut held a trial on the merits, and ultimately granted the plaintiffs  
10 a permanent injunction because “even giving great deference to the President’s  
11 determination, the President did not have a lawful basis to federalize the National Guard  
12 under 10 U.S.C. § 12406.” Findings of Fact and Conclusions of Law (dkt. 146) at 2 in  
13 Oregon v. Trump, 3:25-cv-01756-IM (“Portland FOFCOL”). As of October 31, 2025, 200  
14 federalized California National Guard members remain stationed in Portland “to perform  
15 infrastructure protection.” Eck Decl. (dkt. 212-3) ¶ 9. At the motion hearing in this case,  
16 Defendants suggested that they are in the process of de-federalizing these 200 Guardsmen.

## 17 2. Illinois

18 On October 4, 2025, Defendants again federalized a state’s National Guard over its  
19 governor’s objection. Compl. (dkt. 1) ¶¶ 126–32 in Illinois v. Trump, 1:25-cv-12174.  
20 Secretary Hegseth issued a memo calling up 300 members of the Illinois National Guard to  
21 protect ICE, Federal Protective Service (FPS), other U.S. personnel performing federal  
22 functions, and federal property. Id. ¶ 130. Defendants also stated that federalized Texas  
23 National Guard members would be sent to cities including Chicago. Id. ¶¶ 133–34. And  
24 on October 7, Defendants sent fourteen federalized California National Guard members  
25 from Oregon to Illinois to train the National Guard in that state. Sauter Decl. ¶ 8; Eck  
26 Decl. ¶ 7.<sup>7</sup>

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27  
28<sup>6</sup> The en banc hearing has yet to take place at the time of this Order.

<sup>7</sup> Those individuals returned to Los Angeles by October 30, 2025. Eck Decl. ¶ 8.

1       On October 10, 2025, U.S. District Judge April M. Perry granted a TRO in favor of  
2 the State of Illinois and the City of Chicago, holding that they were likely to succeed in  
3 demonstrating that Defendants' deployment of the National Guard violated Section 12406.  
4 Opinion and Order (dkt. 70) in Illinois v. Trump, 1:25-cv-12174 ("Chicago TRO"). The  
5 Seventh Circuit denied Defendants' motion to stay the TRO pending appeal. Illinois v.  
6 Trump, 155 F.4th 929, 933 (7th Cir. Oct. 16, 2025) ("[T]he facts do not justify the  
7 President's actions in Illinois under § 12406, even giving substantial deference to his  
8 assertions."). The case is currently before the Supreme Court after briefing concluded in  
9 November. See Jason Meisner, Illinois and Trump brief US Supreme Court over  
10 administration's National Guard deployment powers, Chicago Trib. (November 11, 2025  
11 at 4:08 PM CST), <https://perma.cc/9W3Q-372U>.

12       **3.      October Federalization Order**

13       Meanwhile, despite the ongoing calm in Los Angeles, on October 16, 2025, a  
14 couple of weeks before the August 5 Order lapsed, Defendants again federalized 300  
15 members of the California National Guard. Strong Decl. Exs. 4 and 5. Secretary Hegseth  
16 wrote:

17       In response to a request for assistance from the Department of  
18 Homeland Security, and at the direction of the President, I direct  
19 the Secretary of the Army to extend the orders of all remaining  
20 California (CA) National Guard (NG) personnel called into  
21 Federal service under 10 U.S.C. § 12406, from November 4,  
22 2025 to February 2, 2026, and I directed that Commander, U.S.  
23 Northern Command . . . redeploy 200 CA NG personnel to  
24 Oregon. . . .

25       [T]hese individuals will temporarily protect [ICE] and other  
26 U.S. Government personnel who are performing Federal  
27 functions, including personnel enforcing Federal law, and will  
28 protect Federal property.

29       Strong Decl. Ex. 4 ("October 16 Order"); see also Strong Decl. Ex. 5 (Oct. 16, 2025 memo  
30 from Anthony C. Fuscellaro: "These 200 CA NG and 200 TX NG personnel, along with  
31 additional headquarters and support staff, will deploy to Oregon effective immediately to  
32 protect Federal functions, personnel, and property.").

33       As of now, 100 federalized California National Guard members remain "at various

1 locations throughout Los Angeles providing rapid response protection to federal facilities,  
2 functions, and personnel.” Sauter Decl. ¶ 9. They also provide perimeter security at the  
3 Roybal Federal Building in Los Angeles. Id.

4 **D. Pending Motion**

5 On November 4, this Court lifted the stay in accordance with guidance from the  
6 Ninth Circuit, and directed Plaintiffs to file an updated motion that included the relevant  
7 events that transpired during the stay. See Order Lifting Stay (dkt. 208). Briefing is now  
8 complete. See MPI (dkt. 212); Opp’n; Reply (dkt. 215). Plaintiffs challenge two orders  
9 under Section 12406: (1) the August 5 Order federalizing 300 members of the California  
10 National Guard for an additional 90 days, through November 4, 2025, and (2) the October  
11 16 Order federalizing 300 members of the California National Guard through February 2,  
12 2026.

13 **II. LEGAL STANDARD**

14 A preliminary injunction is an “extraordinary remedy that may only be awarded  
15 upon a clear showing that the plaintiff is entitled to such relief.” See Winter v. Natural  
16 Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). The party seeking a preliminary injunction  
17 must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable  
18 harm absent preliminary relief; (3) that the balance of equities tips in the plaintiff’s favor;  
19 and (4) that an injunction is in the public interest. See id. at 20. Alternatively, the moving  
20 party must demonstrate that “serious questions going to the merits were raised and the  
21 balance of hardships tips sharply in the plaintiff’s favor,” and that the other two Winter  
22 elements are met. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir.  
23 2011).

24 **III. DISCUSSION**

25 Plaintiffs argue that they are entitled to a preliminary injunction because they have  
26 satisfied each of the Winter elements. The Court agrees.

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

28 A party seeking a preliminary injunction must establish a likelihood of success on

1 the merits. Winter, 555 U.S. at 20. Plaintiffs argue that they are likely to succeed in  
2 arguing that the subsequent federalization orders are unjustified, because there was no  
3 colorable basis to federalize the National Guard on August 5 or October 16. Defendants  
4 respond that Plaintiffs are unlikely to succeed, because (1) courts lack the authority to  
5 review a president's subsequent federalization orders; (2) Plaintiffs have failed to state an  
6 ultra vires claim; (3) the August 5 and October 16 Orders satisfy the highly deferential  
7 standard of review; and (4) Plaintiffs seek relief that goes beyond the scope of the  
8 complaint. The Court addresses and rejects each of Defendants' arguments.

9 **1. Reviewability**

10 Defendants first argue that the August 5 and October 16 Orders are not subject to  
11 judicial review. But “[i]t is emphatically the province and duty of the judicial department  
12 to say what the law is.” Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).  
13 Deciding whether a party’s “interpretation of [a] statute is correct” is a “familiar judicial  
14 exercise.” Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189, 196 (2012). And every  
15 court to consider whether federalization under Section 12406 is reviewable has answered  
16 in the affirmative. See, e.g., Newsom, 141 F.4th at 1047 (“[W]e disagree with Defendants’  
17 contention that § 12406 completely precludes judicial review of the President’s  
18 determination that a statutory precondition exists.”); Illinois, 155 F.4th at 937 (same).  
19 Undeterred, Defendants justify their recycled arguments by contending that Newsom was  
20 only “controlling” as to the President’s June 7 Memo, and that the Orders now at issue  
21 require different consideration. Opp’n at 4.

22 Defendants’ second run at reviewability also falls flat.

23 **a. Sections 12406 and 12407 on Reviewability**

24 For starters, Defendants concede that “Newsom allows some measure of review of  
25 Section 12406’s prerequisites when Guardsmen are ‘call[ed] into Federal service.’” Opp’n  
26 at 4 (quoting 10 U.S.C. § 12406). That is explicitly what both challenged Orders here do.  
27 August 5 Order (“The National Guard unit(s) . . . are called into federal service under  
28 Presidential Reserve Callup (Title 10, USC 12406.”); October 16 Order (California

1 National Guard personnel were “called into Federal service under 10 U.S.C. § 12406, from  
2 November 4, 2025 to February 2, 2026”). By Defendants’ own admission, then, these  
3 orders are reviewable.

4 Defendants nevertheless attempt to circumvent the scope of Section 12406 by  
5 characterizing the Orders as extensions of federalization, which they argue are outside the  
6 statute’s reach. Opp’n at 4 (“Congress decided against subjecting the continuation of a  
7 mission to further regulation by Section 12406.”). Indeed, at the motion hearing,  
8 Defendants confirmed their position that, after an initial federalization, all extensions of  
9 federalization orders are utterly unreviewable, forever.

10 That is shocking. Adopting Defendants’ interpretation of Section 12406 would  
11 permit a president to create a perpetual police force comprised of state troops, so long as  
12 they were first federalized lawfully. Such a scenario would validate the Founders’  
13 “widespread fear [of] a national standing Army,” which they believed “posed an  
14 intolerable threat to individual liberty and to the sovereignty of the separate States.”  
15 Perpich v. Dep’t of Def., 496 U.S. 334, 340 (1990). Defendants’ argument for a president  
16 to hold unchecked power to control state troops would wholly upend the federalism that is  
17 at the heart of our system of government. See Youngstown Sheet & Tube Co. v. Sawyer,  
18 343 U.S. 579, 638 (1952) (Jackson, J., concurring) (“Presidential claim to a power at once  
19 so conclusive and preclusive must be scrutinized with caution, for what is at stake is the  
20 equilibrium established by our constitutional system.”).

21 The statutory framework repudiates Defendant’s position. As Plaintiffs argue, and  
22 as this Court discusses in greater detail below, Section 12406 “authorizes federalization  
23 only when one of its factual predicates is presently satisfied.” Reply at 1 (emphasis in  
24 original) (citing Portland FOFCOL at 37). Accordingly, each affirmative order authorizing  
25 federalization—whether a subsequent, distinct federalization or what Defendants call an  
26 extension—must comply with Section 12406’s exigency requirements at the time it is  
27 effectuated.

28 Section 12407, the statute regarding the period of federal service, further confirms

1 the judicial authority for reviewability of the Orders.

2 Section 12407 establishes that federalization terminates at the end of a president's  
3 chosen period of service, or sooner. 10 U.S.C. § 12407(a) ("Members and units called  
4 shall serve inside or outside the territory of the United States during the term specified,  
5 unless sooner relieved by the President."). It necessarily follows that an order bringing the  
6 Guard back into service must again go through the President's vehicle for federalization:  
7 Section 12406. Moreover, there are no statutes specifically relating to continuation or  
8 extension; as Defendants admitted at the motion hearing, only Sections 12406 and 12407  
9 apply.

10 The timeline in this case is also illustrative. The President's initial memorandum in  
11 June specified that "the duration of duty shall be for 60 days or at the discretion of the  
12 Secretary of Defense." June 7 Memo. Secretary Hegseth's memorandum carrying out the  
13 President's declaration then specified that the federalization was "for a period of 60 days."  
14 June 7 DOD Memo.<sup>8</sup> Then on August 5, the day before that initial period lapsed,  
15 Secretary Hegseth again called up National Guard troops for a 90-day period starting on  
16 August 8. August 5 Order. And then again, shortly before this new period ended,  
17 Secretary Hegseth issued his October Order for another 90-day period ending on February  
18 2, 2026. October 16 Order. Clearly, Defendants' own conduct demonstrates their  
19 understanding that Sections 12406 and 12407 work in tandem, requiring a re-federalization  
20 when the service period is set to expire.<sup>9</sup> The August 5 Order and the October 16 Order  
21 are properly construed as calling Guardsmen into federal service and are thus reviewable  
22 under Section 12406.<sup>10</sup>

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24 <sup>8</sup> As Defendants argue, it is possible to construe President Trump's June memorandum as not  
25 defining a closed period of service, since it is for 60 days or at Secretary Hegseth's discretion.  
26 June 7 Memo. But Secretary Hegseth's subsequent memorandum forecloses this possibility. See  
27 June 7 DOD Memo; see also 10 U.S.C. § 12407(a) (period of service is specified "in the call").

28 <sup>9</sup> Why else would Defendants continue to issue orders if the June 7 Memo alone was sufficient?

<sup>10</sup> During oral argument in the Ninth Circuit for this case, Judge Bennett raised this exact issue,  
27 asking, "Let's say the President's original call-up had a termination date. Would you agree that  
28 your argument [for nonreviewability] wouldn't apply to a subsequent order of the President  
extending the date?" Oral Argument at 5:27, Newsom v. Trump (No. 25-3727),  
<https://perma.cc/A6Y5-L6LT>.

1       The parties dispute the relevance of Section 12407. Defendants assert that “the  
2 duration of federalized Guardsmen’s service is committed to the President’s discretion.”  
3 Opp’n at 5. During the motion hearing, Defendants insisted that there is no language in  
4 Sections 12406 or 12407—or in the Ninth Circuit’s decision in Newsom—that allows  
5 judicial review for anything but the initial federalization. On the other side, Plaintiffs  
6 argue that Section 12407’s “purpose is to limit the President’s power over the duration of  
7 federalization, not grant him absolute discretion.” Reply at 4 (emphasis in original). In the  
8 Court’s view, Defendants have the better reading. Section 12407 explicitly gives the  
9 President the option to specify a period of service in the call. Nowhere does it prescribe a  
10 maximum period the President may authorize. Further, Defendants correctly point out that  
11 Section 12406’s predecessor statute did have a nine-month maximum service period.  
12 Opp’n at 6 (citing Act of Jan. 21, 1903, ch. 196, § 4, 32 Stat. 775, 776). This language was  
13 removed in a later amendment and remains absent in the current iteration. See Act of May  
14 27, 1908, ch. 204, §§ 3, 4, 35 Stat. 400.

15       But that does not mean that the President’s discretion over the service period is  
16 absolute or that the service period can be infinite.<sup>11</sup> Plaintiffs persuasively point to  
17 legislative history indicating that Congress did not intend for the service period to last  
18 forever—just long enough to address the present emergency. See Reply at 6–7. The  
19 removal of the nine-month limitation was part of an effort to ensure the Guardsmen could  
20 “respond to a call for troops issued by the President under the conditions of emergency.”  
21 H.R. Rep. No. 1067, at 5 (1908). Then-Acting Secretary of War Robert Shaw Oliver made  
22 clear that the limit was “generously waived” with the understanding that Guardsmen would  
23 “render service in any theater of military activity to which they may be called, and to  
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<sup>11</sup> During oral argument in the Ninth Circuit for this case, Judge Miller expressed concern about  
26 this idea, asking if there was “any time limit on how long [the Guardsmen] can stay federalized.”  
27 Oral Argument at 1:20, Newsom v. Trump (No. 25-3727), <https://perma.cc/A6Y5-L6LT>. When  
28 Defendants answered that there was no limit, Judge Miller asked if “the fact that [Section 12406]  
says the President is unable with the regular forces to execute the laws—not, you know, was some  
distant time in the past when he decided to federalize them—doesn’t that suggest that it has to be  
tied to what current conditions are?” Id. at 1:30.

1 continue in such service until the necessity for their employment no longer exists.” *Id.* at 6  
2 (emphasis added).

3 Consequently, if this were a case where the President had neglected to specify a  
4 call-up period, it would still be reviewable under Section 12406’s preconditions. After all,  
5 it is nonsensical to suggest that the law would permit a president to take advantage of an  
6 exigency, omit a call-up period, and then send Guardsmen wherever he wanted for as long  
7 as he wanted. See Youngstown, 343 U.S. at 650 (Jackson, J., concurring) (explaining that  
8 the Founders “knew what emergencies were” and “how they afford a ready pretext for  
9 usurpation,” including how “emergency powers would tend to kindle emergencies.”).  
10 Such a scenario would make a mockery out of the narrow preconditions Congress set forth  
11 in Section 12406 when it delegated its call-up power. See Newsom, 141 F.4th at 1045  
12 (“Congress has delegated some of its power to call forth the militia to the President by  
13 statute, including 10 U.S.C. § 12406, which authorizes the President to ‘call into federal  
14 service members and units of the National Guard of any state’ under specified exigent  
15 circumstances.”).

16 Of course a president is not required to identify a service period when first issuing a  
17 federalization order, because presidents cannot be expected to know at the start of an  
18 exigency how long it will last. But if the exigency is over and the President refuses to  
19 relinquish control over a state’s National Guard, the state may seek court review of  
20 whether Section 12406’s preconditions are still met, with all appropriate deference given  
21 to the President. Regardless, this scenario is not an issue here, where the President and the  
22 Secretary of War did identify periods of service. Those subsequent orders federalizing  
23 troops are reviewable under Sections 12406 and 12407.

24 **b. Other Arguments on Reviewability**

25 Defendants also raise other arguments opposing reviewability, which the Court  
26 briefly addresses here.

27 First, Defendants attempt to characterize Plaintiffs’ motion as being centered on the  
28 quantity of Guardsmen federalized. Opp’n at 4. Because Section 12406 gives the

1 President the discretion to federalize the National Guard “in such numbers as he considers  
2 necessary,” Defendants argue that his management of headcount is unreviewable. 10  
3 U.S.C. § 12406; Opp’n at 4–5. But that is a red herring. Plaintiffs do not dispute the  
4 appropriate “number of federalized Guardsmen,” but instead argue that “the federalization  
5 is wholly unlawful.” Reply at 5.<sup>12</sup>

6 Second, Defendants argue that judicial review poses separation of powers concerns.  
7 They contend that review of the Commander-in-Chief’s on-the-ground decision making  
8 “would inject the Judiciary into the military chain of command” and constitute improper  
9 “micromanagement.” Opp’n at 8. “[C]ourts traditionally have been reluctant to intrude  
10 upon the authority of the Executive in military and national security affairs.” Department  
11 of Navy v. Egan, 484 U.S. 518, 530 (1988). But reluctance does not mean refusal. Courts  
12 have reviewed—albeit cautiously—military actions before. See, e.g., Sterling v.  
13 Constantin, 287 U.S. 378, 401 (1932) (“What are the allowable limits of military  
14 discretion, and whether or not they have been overstepped in a particular case, are judicial  
15 questions.”). And the Judiciary’s willingness to intrude into military affairs is greatest  
16 when the military is deployed domestically. The Supreme Court has emphasized:

17 Indeed, when presented with claims of judicially cognizable  
18 injury resulting from military intrusion into the civilian sector,  
19 federal courts are fully empowered to consider claims of those  
20 asserting such injury; there is nothing in our Nation’s history or  
21 in this Court’s decided cases, including our holding today, that  
22 can properly be seen as giving any indication that actual or  
23 threatened injury by reason of unlawful activities of the military  
24 would go unnoticed or unremedied.

25  
26  
27 Laird v. Tatum, 408 U.S. 1, 15–16 (1972). In Sections 12406 and 12407, Congress has  
28 articulated the necessary preconditions for the President to exercise his delegated power; it  
is then up to the courts to review, with appropriate deference, whether those preconditions  
have been met.

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27 <sup>12</sup> At the hearing, Defendants implied that Plaintiffs are in fact arguing about headcount, as  
28 Plaintiffs want zero federalized Guardsmen. That is too clever by half. Plaintiffs’ core argument  
does not transform into one about headcount merely because it would result in a complete lack of  
Guardsmen in federal service.

1       Finally, Defendants’ argument that reviewability would permit “judicial review on  
2 every day of the mission” is unsupported by the facts. Opp’n at 4. Plaintiffs certainly  
3 have not peppered the Court with frequent challenges to Defendants’ federalizations, and  
4 the Court is not aware that Defendants have faced this issue in their other National Guard  
5 cases, either. Even if Defendants’ fear did come to pass, courts have long been capable of  
6 handling vexatious litigants and meritless actions.

7       The Court determines that both the August 5 and October 16 Orders are reviewable.

8                   **2.       Ultra Vires**

9       Defendants next argue that Plaintiffs are unlikely to succeed because they cannot  
10 meet the high threshold necessary for relief on an ultra vires theory. Opp’n at 11–12. But  
11 as the Court explained previously, “emphasizing the narrowness of the theory of relief  
12 does not answer whether Plaintiffs have asserted a claim that fits within that theory.”  
13 Order Granting Injunctive Relief at 49. An ultra vires claim succeeds only if a plaintiff  
14 can show that “an agency has taken action entirely ‘in excess of its delegated powers and  
15 contrary to a specific prohibition’ in a statute.” NRC v. Texas, 605 U.S. 665, 681 (2025)  
16 (emphasis in original) (citation omitted). Such claims also apply to presidential actions  
17 that extend beyond delegated statutory authority. See Murphy Co. v. Biden, 65 F.4th  
18 1122, 1129–31 (9th Cir. 2023). An ultra vires claim is unavailable “where a statutory  
19 review scheme provides aggrieved persons with an adequate opportunity for judicial  
20 review.” NRC, 605 U.S. at 681.

21       Certainly, Section 12406 represents a delegation by Congress of its authority to call  
22 forth the militia. See Newsom, 141 F.4th at 1045 (“Congress has delegated some of its  
23 power to call forth the militia to the President by statute, including 10 U.S.C. § 12406.”).  
24 If the Ninth Circuit had agreed with Defendants’ contention that there can be no ultra vires  
25 claim based on a president’s violation of Section 12406, it would presumably have said so  
26 when it ruled on Defendants’ motion to stay the Court’s grant of a TRO in June.<sup>13</sup> Instead,  
27

28                   

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<sup>13</sup> The Circuit even referenced the ultra vires claim without raising any such concern. Id. at 1044.

1 it held that alleged violations of Section 12406 are judicially reviewable. See id. at 1047.  
2 “Section 12406 is nothing if not a delegation of authority, and so [the] Court’s analysis of  
3 whether Plaintiffs are likely to succeed on the merits [of their ultra vires claim] will hinge  
4 on the degree to which Defendants’ actions are in violation of Section 12406’s command.”  
5 Chicago TRO at 30 n.13. Accordingly, Plaintiffs can demonstrate that Defendants  
6 exceeded their delegated authority if they can show that Defendants federalized the  
7 National Guard on August 5 and October 16 without satisfying the narrow prerequisites of  
8 Section 12406.<sup>14</sup>

9 **3. Merits**

10 Defendants also argue that Plaintiffs are unlikely to succeed because, even if the  
11 Court can review the August 5 and October 16 Orders, those Orders “easily” satisfy  
12 Section 12406. Opp’n at 9–11. Not so. In rejecting Defendants’ argument that a  
13 president’s determinations under Section 12406 are entirely unreviewable, the Ninth  
14 Circuit instructed that “courts may at least review the President’s determination to ensure  
15 that it reflects a colorable assessment of the facts and law within a ‘range of honest  
16 judgment.’” Newsom, 141 F.4th at 1051 (citation omitted). Even under that “highly  
17 deferential standard of review,” see id. at 1052, Plaintiffs are likely to succeed on the  
18 merits.<sup>15</sup>

19 Section 12406 provides that a president “may call into Federal service members and  
20 units of the National Guard” “[w]henever” one of three preconditions is met: “(1) the  
21 United States . . . is invaded or is in danger of invasion by a foreign nation,” “(2) there is a  
22 rebellion or danger of a rebellion against the authority of the Government of the United  
23 States,” or “(3) the President is unable with the regular forces to execute the laws of the  
24 United States.” 10 U.S.C. § 12406 (emphasis added).

25  
26 <sup>14</sup> Defendants do not assert that Plaintiffs have some other opportunity for judicial review. See  
27 Opp’n at 11 (“[H]ere, the only possible avenue for review is an ultra vires claim.”).

28 <sup>15</sup> At the motion hearing, Defendants asserted that if the Court can review a federalization order  
after the initial federalization, it should apply an even “more deferential” standard of review.  
They provided no support for that position.

1           Of these three preconditions to federalization, Defendants only truly advance one.  
2 Defendants do not argue that there was a foreign invasion (or danger thereof) that justified  
3 federalization. And they make only a passing argument in their briefing—and  
4 perfunctorily asserted at the motion hearing—that there was a rebellion (or danger thereof)  
5 in Los Angeles that justified federalization, see Opp'n at 10 ("including the need to protect  
6 against any risk of rebellion"), id. at 11 ("There remains . . . a danger of a rebellion in  
7 California."). But the suggestion that there was any danger of a rebellion was even more  
8 farfetched in August and October than it was in June, when this Court first rejected it.<sup>16</sup>  
9 As the Court explained then, "[w]hile Defendants have pointed to several instances of  
10 violence, they have not identified a violent, armed, organized, open and avowed uprising  
11 against the government as a whole." Order Granting TRO at 20; see also id. ("Moreover,  
12 the Court is troubled by the implication . . . that protest against the federal government, a  
13 core civil liberty protected by the First Amendment, can justify a finding of rebellion.").<sup>17</sup>  
14 Other courts in recent months have reached a similar understanding. See, e.g., Illinois, 155  
15 F.4th at 939 ("[B]ecause rebellions at least use deliberate, organized violence to resist  
16 governmental authority, the problematic incidents in this record clearly fall within the  
17 considerable daylight between protected speech and rebellion."); Portland FOFCOL at 98–  
18

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19           <sup>16</sup> Defendants made the incredible argument at the motion hearing that there is a current danger of  
20 rebellion in Los Angeles. The evidence they offered was the protests six months ago and the fact  
21 that, on December 1, 2025, a single individual—acting alone and having burned down his own  
22 apartment that morning—threw two unlit Molotov cocktails at a federal building, injuring no one.  
23 See Notice (dkt. 220) Ex. 1. But the exigency of the June protests has long since passed, and the  
24 misconduct of a lone individual hardly represents "deliberate, organized violence to resist  
25 government authority." See Illinois, 155 F.4th at 939. The idea that there is a current danger of  
26 rebellion rings especially hollow in light of Defendants' ongoing draw down of federalized  
27 Guardsmen: if Defendants truly believed that there was such a danger, how could only 100  
28 Guardsmen be the answer?

17           <sup>17</sup> At the motion hearing, Defendants again made the concerning argument that any demonstration  
25 against the policy of the Executive, if organized, can constitute a threat of rebellion. But  
organized protest is not inherently violent, nor is it an "unusual and extreme" exigency. See  
26 Newsom, 141 F.4th at 1051. To the contrary, it is quite common and part of the fabric of our  
nation. Indeed, "[p]ublic demonstrations and protests are clearly protected by the First  
27 Amendment." Index Newspapers LLC v. United States Marshals Serv., 977 F.3d 817, 830 (9th  
28 Cir. 2020). And the "Government is not free to disregard the First Amendment [even] in times of  
crisis." Cf. Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 21 (2020) (Gorsuch, J.,  
concurring).

1 102 (defining rebellion as “an organized group engaged in sustained, armed hostilities for  
2 the purpose of overtaking an instrumentality of government by unlawful or antidemocratic  
3 means”). Defendants point to no evidence that the scattered protesters in Los Angeles in  
4 August or October were organized, collectively armed, or determined to overtake the  
5 federal government.

6 Accordingly, the Court turns to the remaining precondition to federalization, and  
7 the one upon which Defendants primarily rely: that “the President is unable with the  
8 regular forces to execute the laws of the United States.” See Opp’n at 9. Defendants fail  
9 to satisfy two different requirements of that precondition: “is unable” and “regular forces.”

10 **a. “Is Unable”**

11 First, the Court turns to the requirement that the President “is unable” to execute  
12 federal law.

13 **i. The Meaning of “Is Unable”**

14 The Ninth Circuit has already defined “unable” in this context, holding that “unable  
15 . . . to execute the laws” does not actually mean not able to execute the laws. See  
16 Newsom, 141 F.4th at 1051–52 (rejecting the notion that Section 12406 requires that the  
17 president “be completely precluded from executing the relevant laws”).<sup>18</sup> Rather, the  
18 Circuit held, it is enough that the president be “significantly impeded” in executing the  
19 laws. Id. at 1052. But see Newsom v. Trump, 158 F.4th 984, 999 (9th Cir. 2025) (Berzon,  
20 J., regarding the denial of rehearing en banc) (“But § 12406(3) says nothing about  
21 ‘interference’ or ‘significant impediments.’ It requires that the President be ‘unable with  
22 the regular forces to execute the laws’ before he is authorized to call in the National  
23 Guard. . . . ‘Unable’ requires something much closer to complete incapacity than a two-day

24  
25 <sup>18</sup> To be clear, in granting a TRO, this Court held that President Trump had not been “unable” to  
26 execute the laws because ICE had continued to detain and arrest people in Los Angeles despite the  
27 protests, Defendants provided no support for their argument that ICE could have detained more  
28 people in the absence of protests, the statute said “unable to execute the laws” and not “faces  
obstacles that cause him to underperform in executing the laws,” and Defendants’ showing  
compared unfavorably to the Postal Service Strike, when the mail system was “paralyzed.” Order  
Granting TRO at 22–24.

1 minor disruption in a discrete location.” (emphasis in original)); Chicago TRO at 43  
2 (“[T]he Court frankly does not agree that ‘significantly impeded’ is the same thing as  
3 ‘unable.’”); id. at 35 (explaining that “unable” at the time of Section 12406’s enactment  
4 meant “not able”).

5 The Ninth Circuit also explained the term “significantly impeded,” holding that  
6 “any minimal interference with the execution of the laws” is insufficient. Newsom, 141  
7 F.4th at 1051–52. Because invasion and rebellion both involve “unusual and extreme  
8 exigencies,” which would render a president unable to execute some laws, the Ninth  
9 Circuit indicated that the third precondition must mean something similarly unusual and  
10 extreme, or else it would swallow the first two preconditions. Id. The Ninth Circuit  
11 pointed to evidence of violent protests (including protesters throwing “objects at ICE  
12 vehicles trying to complete a law enforcement operation”) on the day before the June 7  
13 federalization as colorably demonstrating an inability to execute the laws. Id. at 1052.

14 The Ninth Circuit did not address the meaning of the word “is” in Section 12406, as  
15 there was no real dispute at the time of the TRO that the protest activity was ongoing. It is  
16 clear to this Court, however, that the word “is” conveys the present tense.<sup>19</sup> See Portland  
17 FOFCOL at 79 (“Section 12406(3) asks whether ‘the President is unable with the regular  
18 forces to execute the laws,’ not whether the President was at some point in the past unable  
19 to do so.” (emphasis in original)); Oregon v. Trump, 157 F.4th 1013, 1046 (9th Cir. 2025)  
20 (vacated opinion) (Graber, J., dissenting) (noting that “use of the present tense clearly  
21 conveys congressional intent that the present state of affairs is the relevant time” and  
22 collecting cases); see also Oral Argument at 1:30, Newsom v. Trump (No. 25-3727),  
23 <https://perma.cc/A6Y5-L6LT> (Judge Miller asking about “the fact that [Section 12406]  
24 says the President is unable . . . not . . . was at . . . some distant time in the past . . . doesn’t  
25 that suggest that it has to be tied to what current conditions are?”).

26 Congress did not say “was unable with the regular forces to execute the laws,” and  
27

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28 <sup>19</sup> The word “whenever” in Section 12406 also communicates a temporal limitation to the present  
moment. See MPI at 12.

1 for good reason: the preconditions in Section 12406 are “specified exigent circumstances.”  
2 See Newsom, 141 F.4th at 1045. Presently existing exigent circumstances, like an  
3 invasion, may demand streamlined responses. See Circumstance, Black’s Law Dictionary  
4 (12th ed. 2024) (defining “exigent circumstances” as “[a] situation that demands unusual  
5 or immediate action and that may allow people to circumvent usual procedures, as when a  
6 neighbor breaks through a window of a burning house to save someone inside.”); cf.  
7 United States v. James Daniel Good Real Property, 510 U.S. 43, 62 (1993) (exigent  
8 circumstances justify exception to Due Process requirements of notice and opportunity to  
9 be heard). Past exigent circumstances do not. See Portland FOFCOL at 79 (“Of course,  
10 an exigency does not exist only at a discrete point in time, but nor is it a ghost that  
11 continues to persist once it has passed.”); see also Oregon, 157 F.4th at 1046 (Graber, J.,  
12 dissenting) (“Nor would it make sense for this narrow statute, which focuses on extreme  
13 and unusual occurrences, to allow the President to call up the National Guard to address an  
14 exigency that no longer exists.”).

15 Defendants reject this emphasis on the present tense, insisting that “past experiences  
16 necessarily inform any analysis of whether, and to what degree, continued federalization is  
17 appropriate moving forward.” Opp’n at 10. True enough. But there must be a colorable  
18 basis to conclude, based on past events, that there was an ongoing inability to execute the  
19 law at the time of federalization. Common sense must guide that inquiry.<sup>20</sup> In order to  
20 assess the facts, the Court must evaluate them holistically. See Newsom, 141 F.4th at  
21 1051 (Courts “review the President’s determination to ensure that it reflects a colorable  
22 assessment of the facts and law within a ‘range of honest judgment.’”). A colorable basis  
23

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24 <sup>20</sup> As Judge Immergut asked, “could the President rely solely on the civil unrest in Portland,  
25 Oregon, in 2020, to justify his deployment of military troops to the Portland ICE facility in 2025?”  
26 Portland FOFCOL at 78; see also Oral Argument at 4:04, Newsom v. Trump (No. 25-3727),  
27 <https://perma.cc/A6Y5-L6LT> (Judge Bennett: “So if . . . for example, this statute were in effect at  
28 the Founding, and President Washington had called up militia to deal with the Whiskey Rebellion,  
notwithstanding the Whiskey Rebellion having gone away, that they could be called up forever  
without judicial review.”); Oregon, 157 F.4th at 1045 (Graber, J., dissenting) (rejecting the  
government’s suggestion that “even if there is complete calm for weeks beforehand, we should  
look further back in time to assess whether a present exigency exists.”).

1 requires evidence linking a past event to a present inability to execute the law, such as the  
2 impact of any intervening events or the lack of attenuation to the time of the call-up. It is  
3 insufficient to simply point to a past event in and of itself.

4 Next, Defendants insist that Section 12406 permits federalization based on ““mere  
5 risk.”” Opp’n at 10 (quoting MPI at 12–13). Defendants asserted to the Ninth Circuit that  
6 “[p]rotests [in Los Angeles] are now less frequent, less violent, and generally pose a less  
7 significant risk to federal personnel and property compared to before the Guard was  
8 deployed[,] [b]ut that risk has not disappeared entirely.” Opp’n to Mot. to Vacate Stay  
9 (dkt. 137) at 5 in Newsom v. Trump, No. 25-3727. They similarly assert here that there is  
10 a “continued threat of harm to federal personnel and property.” Opp’n at 10. The Court  
11 shares Defendants’ concerns about public safety: all citizens in this country deserve to feel  
12 safe, and it is a core function of government to ensure that safety.

13 Yet it is also a core right of the people to be able to gather in protest of their  
14 government and its policies—even when doing so is provocative, and even when doing so  
15 causes inconvenience. See, e.g., Cohen v. California, 403 U.S. 15, 24–25 (1972) (“To  
16 many, the immediate consequence of this freedom may often appear to be only verbal  
17 tumult, discord, and even offensive utterance. . . . That the air may at times seem filled  
18 with verbal cacophony is, in this sense not a sign of weakness but of strength.”); Tinker v.  
19 Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (“But, in our system,  
20 undifferentiated fear or apprehension of disturbance is not enough to overcome the right to  
21 freedom of expression. Any departure from absolute regimentation may cause  
22 trouble. . . Any word spoken . . . that deviates from the views of another person may start  
23 an argument or cause a disturbance. But our Constitution says we must take this risk.”).  
24 Every protest, and indeed any large gathering of people in public, carries with it a risk of  
25 violence, however unlikely. But the specter of a protest that is not a current impediment to  
26 the President’s ability to execute the laws becoming a future impediment is not adequate.  
27 See United States v. Weekley, 24 F.3d 1125, 1125 (9th Cir. 1994) (“A risk is a risk. But a  
28 risk of a risk is not enough of a risk.”). It is profoundly un-American to suggest that

1 people peacefully exercising their fundamental right to protest constitute a risk justifying  
2 the federalization of military forces.<sup>21</sup> Such logic, if accepted, would dangerously water  
3 down this precondition for federalization and run headfirst into the First Amendment. See  
4 Bise v. Int'l Bhd. of Elec. Workers, AFL-CIO Loc. 1969, 618 F.2d 1299, 1304 (9th Cir.  
5 1979) (“First Amendment rights are among the most fragile possessions of a citizen.”  
6 (citation omitted)).

7 Regardless, the applicable standard when reviewing a president’s decision to  
8 federalize the National Guard is not whether there are some threats of harm or risks to  
9 personnel and property. Those considerations are relevant to Section 12406(3) only  
10 insofar as they render the President presently unable to execute the laws. Notably, the first  
11 two preconditions for federalization permit a president to call up the National Guard even  
12 if there is only a danger of an invasion or rebellion. See 10 U.S.C. § 12406(1), (2). The  
13 third precondition, in contrast, does not permit federalization when there is a “danger” that  
14 the president will be unable to execute the laws, but requires a present inability to do so.  
15 See 10 U.S.C. § 12406(3); see also Portland TRO at 22 (“[C]oncern about hypothetical  
16 future conduct does not demonstrate a present inability to execute the laws.”); Portland  
17 FOFCOL at 80 (same); Oregon, 157 F.4th at 1046 (Graber, J., dissenting) (“[T]he text of  
18 subsection three contrasts with the text of the other two subsections in a way that removes  
19 any doubt about the relevant time frame. . . . [S]ubsection three exclusively concerns the  
20 present, not the past and not the future.”). Without a demonstration that the President’s  
21 ability to execute the law is currently being impeded at the time of deployment, he lacks  
22 adequate grounds for federalization under Section 12406(3).

23

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24 <sup>21</sup> See Cox v. State of La., 379 U.S. 559, 574 (1965) (“We reaffirm the repeated holdings of this  
25 Court that our constitutional command of free speech and assembly is basic and fundamental and  
26 encompasses peaceful social protest, so important to the preservation of the freedoms treasured in  
27 a democratic society.”); cf. Snyder v. Phelps, 562 U.S. 443, 460–61 (2011) (“As a Nation we have  
28 chosen a different course—to protect even hurtful speech on public issues to ensure that we do not  
stifle public debate.”); Hon. Thurgood Marshall, Civil Rights And Race Relations: A Seminar 18  
(1966) (“[T]his government was founded on protest.”); Theodore Roosevelt, Jr., Sedition, a Free  
Press and Personal Rule, Kansas City Star, May 7, 1918 (“To announce that there must be no  
criticism of the President, or that we are to stand by the President, right or wrong, is not only  
unpatriotic and servile, but is morally treasonable to the American public.”).

## ii. Application to the August and October Orders

The Court now turns to whether the President’s determination on August 5, 2025 and October 16, 2025 that he “is unable with the regular forces to execute the laws” “reflects a colorable assessment of the facts and law within a ‘range of honest judgment.’” See Newsom, 141 F.4th at 1051 (emphasis added). Plaintiffs contend that “[e]ven if there was a colorable basis to invoke § 12406 in Los Angeles in June, that does not authorize Defendants to keep soldiers deployed there indefinitely.” MPI at 10. Defendants concede that “conditions have now improved,” and even declare that “the federal protection mission has been a success,” yet still insist that “the conditions required for federalization under Section 12406 continue to exist in California.” Opp’n at 9.

The Court notes that Defendants focus on the current state of affairs. See, e.g., id. (“[T]he conditions required for federalization under Section 12406 continue to exist in California.”). But the motion’s focus, and therefore the Court’s focus, is whether the President had a colorable basis for federalization at the time that he issued the challenged Orders, in August and October of 2025. Nevertheless, Defendants point to no evidence currently justifying federalization either. Their assertion that “[t]here remains an inability to execute the laws . . . in California” is not only unsupported, but actually borders on a misrepresentation. See Opp’n at 11.<sup>22</sup>

**August Order.** In August of 2025, the situation in Los Angeles was calm. Defendants, nonetheless, rely on two points to justify the August 5 Order. First, they cite to the declaration of Roger Scharmen, Deputy Regional Director for FPS, see Opp'n at 9 (citing Scharmen Decl. (Opp'n Ex. A)), which mentions the violence at the Roybal

<sup>22</sup> As discussed above, see supra note 16, the December 1 incident fails to demonstrate a current inability to execute federal law. While it no doubt represents an illegal and dangerous act of violence, that lone bad actor does not rise to the level of an “unusual or extreme exigenc[y].” See Newsom, 141 F.4th at 1051. Indeed, in their press release about the incident, the Justice Department states that it was able to manage this incident “immediately” and that the “FBI is investigating this matter with assistance from [FPS], the Bureau of Alcohol, Tobacco, Firearms and Explosives, Homeland Security Investigations, the [LAPD], and the Los Angeles Fire Department.” See Notice Ex. 1. There was no mention of the need for, or involvement of, the California National Guard. Defendants also fail to articulate any federal laws that the brief December 1 incident significantly impeded the President from executing.

1 Building in “early June” and then no other incidents until October, see Scharmen Decl. ¶¶  
2 4–6. Scharmen states that “continuing to the present, protests have continued, albeit in  
3 reduced numbers,” adding that typically there are fewer than 100 protesters, “but protests  
4 that are attended by up to 500 people still occur.” Id. ¶ 5. He also states that “the smaller  
5 protests are for the most part peaceful.” Id. ¶ 6. Second, Defendants point to a July 10  
6 incident in Camarillo, California at a cannabis farm. Opp’n at 10–11. In Camarillo,  
7 federal law enforcement initially requested assistance from the National Guard, then  
8 canceled that request, before coming under attack by a crowd throwing rocks. Id.  
9 Defendants reason that “[m]ilitary decision-makers could reasonably rely upon such  
10 considerations in concluding that a small deployment of Guardsmen is still required.” Id.  
11 at 11.

12 But an incident on July 10, 50 miles from Los Angeles, is not a compelling reason  
13 in and of itself to federalize troops on August 5. Even if there were exigent circumstances  
14 on July 10 in Camarillo, they had passed in the weeks thereafter, when there was no  
15 indication that ICE intended to return to Camarillo, when the National Guard was in fact  
16 assisting on “zero” ICE field operations like the one in Camarillo, see Santacruz Test. on  
17 8/11/2025 (dkt. 162) at 198:5–21, and when Defendants had decided to release most of the  
18 Guardsmen, see Sauter Decl. ¶ 5.

19 Likewise, even if there were exigent circumstances in early June at the Roybal  
20 Building, two months thereafter that exigency had passed, as there were often just a few  
21 dozen protesters, no violent incidents, and no arrests at that location. See Hurtado Decl. ¶  
22 11; see also Scharmen Decl. ¶¶ 4–6; Duryee Decl. ¶ 9. “[A]n exigency [is not] a ghost that  
23 continues to persist once it has passed.” Portland FOFCOL at 79. Defendants reason that  
24 while the unrest in June subsided, that abatement “was due at least in part to the presence  
25 of Guardsmen in Los Angeles.” Opp’n at 10; see also Scharmen Decl. ¶ 5 (crediting “the  
26 presence of the National Guard” for reduction in violence in protests at federal buildings).  
27 But as Plaintiffs respond, “The point of federalization is to abate the exigency, so the  
28 claimed success of the federalization cannot be grounds for finding a further exigency.”

1 See Reply at 8. If federalization justified federalization, it would become a positive  
2 feedback loop that perpetually rationalized federal control of state troops. Defendants'  
3 rank speculation regarding the effects of the Guardsmen's presence is insufficient as  
4 Defendants have been unable to identify even "minimal interference with the execution of  
5 the laws" in August 2025. See Newsom, 141 F.4th at 1052.

6 The Court also rejects Defendants' argument that the risk of future impediments  
7 was enough to federalize the National Guard in August. Even accepting Defendants'  
8 contention that future risk is relevant to Section 12406(3), Defendants have identified no  
9 colorable basis for the August federalization based on such risk. Defendants cannot  
10 credibly assert that the National Guard is necessary to "keep most protests from becoming  
11 violent," when they concede that protests since June now only occur "in reduced  
12 numbers." See Scharmen Decl. ¶¶ 5, 9. The protests around that time specifically had  
13 been small and peaceful. Hurtado Decl. ¶ 12; Scharmen Decl. ¶ 6. Again, peaceful  
14 protests cannot be the sole justification for federalization. See supra pp. 21–22.

15 Moreover, risk must be viewed in the context of what resources are available to  
16 prevent, mediate, or manage it. The risk that a handful of people could overtake a federal  
17 building, for example, looks different if there is just one guard, as opposed to many,  
18 protecting that building. Consequently, it defies the record—and common sense—to  
19 conclude that risks stemming from protests—in August, October, or even present day—  
20 could not have been sufficiently managed without resorting to the National Guard. After  
21 all, local law enforcement like the LAPD, the LASD, and the California Highway Patrol  
22 ("CHP") have not only been willing to manage the protests,<sup>23</sup> but have capably done so  
23 since June.<sup>24</sup> See Hurtado Decl. ¶ 12 (LAPD was "well-equipped" to handle the recent

24 \_\_\_\_\_  
25 <sup>23</sup> Defendants' suggestion at the motion hearing that because Los Angeles is a "sanctuary city," its  
26 law enforcement officers might be unwilling to assist with violence against federal personnel or  
27 property has absolutely no support in the record. As the Court pointed out and Defendants agreed,  
28 many crimes against federal personnel and property would constitute both state and federal crimes  
that state law enforcement would have a sworn duty to address. Nor is there any evidence that  
because Los Angeles is a "sanctuary city," its law enforcement officers are significantly impeding  
ICE's ability to execute the law in Los Angeles.

<sup>24</sup> While not pertinent to the August and October Orders, the LAPD and CHP were more than

1 protests and did so “without mutual aid, the National Guard, or even the Department’s own  
2 specialized crime suppression units.”); Duryee Decl. ¶ 9 (“CHP stands ready to respond to  
3 any future significant protest activities anywhere in California, including in the Los  
4 Angeles area.”). That is even before considering the resources of FPS, other federal civil  
5 law enforcement, or the military.<sup>25</sup> One cannot colorably conclude that these organizations  
6 were so unable to manage the then-existing risk that the National Guard was required to  
7 protect the city’s federal buildings.

8 As this Court can attest, individuals protesting the federal government often gather  
9 outside federal buildings. There is always some risk that a protester will engage in  
10 violence. But, as the Court has explained, if the threat that a protester might engage in  
11 violence outside a federal building was all that it took for the President to federalize the  
12 National Guard, then the narrow preconditions of Section 12406 would be rendered  
13 meaningless. See Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund, 583 U.S. 416, 431 (2018)  
14 (“Congress does not hide elephants in mouseholes.” (internal quotation marks omitted)).

15 Based on a holistic evaluation, there is no colorable basis to conclude that the  
16 President was “significantly impeded” from executing federal law on August 5, 2025.

17 **October Order.** The Court’s analysis of the October 16 Order differs from its  
18 analysis of the August 5 Order in only a few respects.

19 First, and most obvious, October is two months even further removed from the  
20 unrest in June that the Ninth Circuit held satisfied Section 12406(3), making that  
21 justification for federalization that much weaker.

22 Second, Defendants have identified two other incidents that occurred in October,  
23 apparently at the Roybal Building. On October 9, 2025, “a known gang member” verbally

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25 capable of handling the “No Kings” protest in Los Angeles on October 18, 2025, which had  
26 between 75,000 and 100,000 participants. Hurtado Decl. ¶ 13 (only “normal operational  
27 resources” were required to manage the protest); Duryee Decl. ¶ 7 (no “direct deployment of  
28 [CHP] resources” was required for the protest).

<sup>25</sup> The Court holds that the term “regular forces” in Section 12406 refers to the federal military,  
rather than federal civilian forces. See infra pp. 28–30. For purposes of the present analysis,  
however, the Court determines that both kinds of forces would have been able to manage the risk  
stemming from protests in coordination with local law enforcement.

1 threatened (“watch out,” “leave and [let] gangs run this,” “you think I am playing?”) an  
2 FPS Inspector. Opp’n at 9 (citing Scharmen Decl. as evidence that threats have  
3 continued); Scharmen Decl. ¶ 6. That threat did not escalate into any physical violence  
4 and the gang member apparently left on his own. See Scharmen Decl. ¶ 6. The next day,  
5 an immigration protestor shined “a high-power laser” in an FPS officer’s eyes, “causing  
6 eye damage.” Id. ¶ 7. Defendants provide no further information about whether any  
7 National Guard members or law enforcement intervened in those incidents or how long  
8 they lasted. In any case, while it is never acceptable to threaten or injure an FPS officer,  
9 Section 12406(3) does not ask whether there are threats to individual federal employees,  
10 but whether the President is presently unable to execute the laws. See supra p. 22. These  
11 isolated incidents do not show that.<sup>26</sup> Even if the two October incidents were enough to  
12 create a risk that the President would be unable to execute the laws, there is no indication  
13 that local law enforcement, FPS, other federal civil law enforcement, or the military were  
14 incapable of managing that risk.

15 Third, the October 16 Order is based on events in Oregon, not anything occurring in  
16 Los Angeles.<sup>27</sup> See Strong Decl. Exs. 4 & 5. In the same breath that the Order federalized  
17 the Guard, it immediately redeployed 200 federalized National Guards members from  
18 California to Oregon. Id. Indeed, in sending 200 of the 300 remaining federalized  
19 California National Guard members to Oregon, and keeping them there, Defendants  
20 signaled that there was no pressing need for them in Los Angeles. See Eck Decl. ¶ 9 (200  
21 federalized California National Guard members remained in Portland as of 10/31/25).  
22 Judge Immergut held that the events in Oregon did not justify the deployment of the  
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24 <sup>26</sup> Scharmen also declares that “having the National Guard present at the federal facilities that FPS  
25 protects . . . has allowed FPS to reduce its staffing levels.” Scharmen Decl. ¶ 9. He goes on to  
26 explain that “FPS is a small agency with a total of 776 law enforcement officers.” Id. ¶ 11. But  
27 Section 12406(3) does not permit the President to federalize the National Guard to make up for  
28 staffing shortages in other agencies. As discussed elsewhere, the President has many other  
resources available to him. Only if the president is unable with the regular forces to execute the  
law may he federalize the National Guard pursuant to Section 12406(3).

<sup>27</sup> The August 5 Order did not actually reference events in California, but it at least did not  
explicitly concern events in any other state. See Strong Decl. Ex. 1.

1 National Guard there. See generally Portland FOFCOL. Those same events certainly do  
2 not justify federalization in California.

3 Based on a holistic evaluation, there is no colorable basis to conclude that the  
4 President was “significantly impeded” from executing federal law on October 16, 2025.

5 **b. “The Regular Forces”**

6 Next, the Court turns to the requirement that the President “is unable with the  
7 regular forces” to execute federal law.

8 **i. The Meaning of “the Regular Forces”**

9 The Ninth Circuit has not addressed Section 12406(3)’s use of the term “the regular  
10 forces.” See Newsom, 158 F.4th at 1000 (Berzon, J., regarding the denial of rehearing en  
11 banc) (noting that “[t]he panel opinion gives no role whatever to the ‘with regular forces’  
12 requirement.”).<sup>28</sup> In addition, this Court’s order granting a TRO paid the term little  
13 attention, concluding that, “[i]n this case, the regular forces were and are still very much  
14 on duty,” as ICE continued to execute the federal immigration laws in Los Angeles  
15 notwithstanding the protests. Order Granting TRO at 24. To the extent that this Court  
16 assumed that “the regular forces” meant civilian workers or civilian law enforcement, that  
17 assumption might have been in error. A review of materials related to the statutory history  
18 of Section 12406(3) not before the Court at the time of the TRO persuasively demonstrates  
19 that “the regular forces” means the regular forces of the military.

20 When the predecessor to Section 12406(3) was enacted, “regular forces” meant “the  
21 soldiers and officers regularly enlisted with the Army and Navy, as opposed to militiamen  
22 who did not make it their livelihoods to serve their country but instead took up arms only  
23 when called forth in times of national emergency.” Chicago TRO at 35. As Professor  
24 Martin Lederman of Georgetown Law explained, in December of 1901, President  
25 Roosevelt “implored Congress to [establish] a means by which the states’ militia could be

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27 <sup>28</sup> The parties also have not addressed this point in any detail before this Court. See, e.g., MPI at  
28 11 n.4 (asserting in a footnote that it is reasonable to construe “regular forces” as federal law  
enforcement or members of the regular military); see Opp’n (not addressing).

1 enhanced and effectively called into service.” Lederman Br. (dkt. 14) in Trump v. Illinois,  
2 Case No. 25A443 (Oct. 21, 2025) at 9 (quoting Perpich, 496 U.S. at 341). Congress  
3 responded to Roosevelt’s appeal by passing the Dick Act in 1903, which among other  
4 things sought “to establish closer relations and better cooperation between the National  
5 Guard and the Regular Army.” Id. at 9–10 (quoting S. Rep. 57–2129 at 2 (1902)). When  
6 Congress amended the Dick Act in 1908, it was “to ensure that in cases where the use of  
7 the ‘regular forces’ was inadequate to execute federal laws, the President would have to  
8 call upon the National Guard as the initial supplement to the standing army before  
9 deploying any volunteer units.” Id. at 11 (emphasis in original); see also id. at 12 (“The  
10 effect of the law was to prescribe the National Guard as the ‘second line of defense’ . . . as  
11 a supplement to the regular army.” (citation omitted)). Professor Lederman recounted  
12 plentiful references to “Regulars” and “the Regular Army” in the congressional reports  
13 surrounding the 1903 and 1908 legislation, and in the over-hundred years leading up to it.  
14 Id. at 12–14. He concluded that “whenever anyone in one of the three branches discussed  
15 ‘the regular forces’ in relation to the militia, the National Guard or the volunteer forces,  
16 they were referring to those persons serving within the standing U.S. military, particularly  
17 the army.” Id. at 17.<sup>29</sup> Indeed, he asserted that he was “unaware of any counterexamples.”  
18 Id. Unsurprisingly, when asked at the motion hearing whether there is any historical basis  
19 for believing that in 1908, “regular forces” meant anything other than the standing army,  
20 Defendants were unable to point to any.<sup>30</sup>

21 This Court finds this historical review persuasive on the meaning of “the regular  
22 forces.” But this Court is also well aware that the Supreme Court will soon rule on this  
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24 <sup>29</sup> See also Chicago TRO at 36–37 (noting that in McClauthry v. Deming, 186 U.S. 49, 56 (1902),  
25 the Supreme Court distinguished between “the men composing the militia”—i.e., the Guard—and  
26 “the Regular Army”); Lederman Br. at 16–17 (noting, for example, that Secretary of State Luke  
27 Edward Wright distinguished between the militia and the “regular forces” in an annual report to  
28 the President in 1908).

<sup>30</sup> Defendants argued instead that they believe from the context of Section 12406(3) that “regular  
forces” means the authorities normally charged with executing the laws. That reading would be  
more persuasive if the Court interpreted statutory language in a vacuum; here, the statutory history  
makes Congress’s intent clear.

1 issue, and will have the last word. Accordingly, the Court will apply both the “military”  
2 meaning of regular forces and the Court’s earlier understanding of that term.

3 **ii. Application to the August and October Orders**

4 The Court now turns to whether the President’s determination on August 5 and  
5 October 16 that he “is unable with the regular forces to execute the laws” “reflects a  
6 colorable assessment of the facts and law within a ‘range of honest judgment.’” See  
7 Newsom, 141 F.4th at 1051. Even if the evidence that Defendants point to in support of  
8 the August and October Orders represented a significant impediment to executing federal  
9 law in Los Angeles, Defendants do not even attempt to show that the President would have  
10 had any difficulty executing federal law with the assistance of the significant available  
11 military force at his command in California.<sup>31</sup>

12 The Court takes judicial notice that there are 34 military installations in California.  
13 See California Installations, Military OneSource, <https://perma.cc/N5NT-PDW5>. There  
14 were 160,074 active members of the military in California as of June 2025. See DoD  
15 Personnel, Workforce Reports & Publications, Defense Manpower Data Center,  
16 <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>. And there are  
17 7,319 active members of the Army in California. See id. The notion that such a  
18 substantial military force, if otherwise permitted to execute the laws, see 18 U.S.C. § 1385  
19 (Posse Comitatus Act), would have had any difficulty managing the small, ongoing,  
20 peaceful protests in Los Angeles, or the two incidents at the Roybal Building in October,  
21 each involving a single individual, has no merit.

22 Even under this Court’s previous understanding of “the regular forces,” there is no  
23 colorable basis to conclude that civilian law enforcement alone would have had any  
24 difficulty enabling the President to execute federal law in August or October. See Illinois,  
25 155 F.4th at 939–40 (“We need not fully resolve these thorny and complex issues of

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<sup>31</sup> This fact is devastating not only as to the actual evidence that Defendants say demonstrates a  
28 present inability to execute the law, but also as to Defendants’ speculative arguments about future  
risk, like violence only being abated due to the presence of the National Guard.

1 statutory interpretation now, because we conclude that the administration has not met its  
2 burden under either standard.”). As discussed earlier, Plaintiffs submitted evidence that  
3 the LAPD was “well equipped to handle these protests and did so without mutual aid, the  
4 National Guard, or even the Department’s own specialized crime suppression units.”  
5 Hurtado Decl. ¶ 11. And Defendants submitted no contravening evidence suggesting that  
6 civilian law enforcement was inadequate. Defendants’ hypothetical that the FPS “would  
7 not have the resources on hand to respond fully” “if the protests grow in size and become  
8 violent again,” see Scharmen Decl. ¶ 12, does not mean that FPS did not have the  
9 resources available to deal with the altogether manageable circumstances in August and  
10 October, that the President could not employ support beyond FPS, or that local or state law  
11 enforcement would not also have been available to assist.

12 Accordingly, notwithstanding the highly deferential standard of review, Plaintiffs  
13 are likely to succeed in arguing that the August 5 and October 16 Orders fail to meet two  
14 requirements of Section 12406(3)—that the president “is unable” to execute the laws or  
15 that he is unable to do so with “the regular forces.” Because Plaintiffs are likely to succeed  
16 on the merits as to Section 12406, they are also likely to succeed on the merits of their  
17 Tenth Amendment claim. See Bond v. U.S., 564 U.S. 211, 225 (2011) (“[A]ction that  
18 exceeds the National Government’s enumerated powers undermines the sovereign interests  
19 of States.”); see also Newsom, 141 F.4th at 1044 (“[P]arties agree that Plaintiffs’ Tenth  
20 Amendment claim, at this stage, rises and falls with their ultra vires claim based on  
21 § 12406.”).

22 **4. Amendment**

23 Finally, Defendants argue that Plaintiffs are unlikely to succeed because Plaintiffs’  
24 motion seeks relief that goes beyond the scope of the complaint. Opp’n at 12. Defendants  
25 assert that the complaint, which Plaintiffs filed on June 9, made “no mention of any  
26 decisions to extend the federalization,” and so “Plaintiffs must amend their complaint  
27 before the Court could possibly entertain their motion.” Id. This argument is both  
28 impractical—as it would require Plaintiffs to return to court to amend their complaint

1 every time Defendants filed a new federalization order, unnecessarily slowing the  
2 adjudication of these issues—and wrong.

3 Although the complaint predates the August 5 and October 16 Orders, it anticipates  
4 them, asking the Court to declare that the June 7 Memo “and any future orders” that call  
5 the California National Guard “into service under the stated authority of the President’s  
6 use of 10 U.S.C. § 12406 are unauthorized by and contrary to the laws of the United  
7 States.” Compl. at 21. The central claim in the complaint was that Defendants’ June 7  
8 Memo did not satisfy any of the preconditions in Section 12406, see id. ¶ 88, and the  
9 central relief sought in the complaint was the enjoining of the federalization, see id. ¶ 92.  
10 The motion now pending seeks to “enjoin any continued federalization and deployment of  
11 the National Guard troops in and around Los Angeles, and end this unlawful federalization  
12 now,” MPI at 1, and turns entirely on Section 12406, id. at 10. Of course there is a  
13 “sufficient nexus” between the two. See Pacific Radiation Oncology, LLC v. Queen’s  
14 Medical Center, 810 F.3d 631, 636 (9th Cir. 2015). Indeed, it is Defendants who refer to  
15 the June 7 Memo and the August and October Orders as part of one big “mission.” See  
16 Opp’n at 4.<sup>32</sup> Moreover, when this Court expressed caution about proceeding on this  
17 motion, the Ninth Circuit held that the Court had jurisdiction over Plaintiffs’ challenge to  
18 that order, something it presumably would not have done if the motion sought relief  
19 beyond the scope of this case. See USCA Order.

20 Plaintiffs therefore need not have amended the complaint for the Court to entertain  
21 this motion.

## 22       **B.     Irreparable Harm**

23       A party seeking preliminary injunctive relief must “demonstrate that irreparable

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<sup>32</sup> Defendants’ position is that the August 5 and October 16 Orders were not new orders “calling  
26 up” the National Guard but mere continuations of the June 7 Memo. See Opp’n at 2  
(distinguishing these orders, which they characterize as “[t]he continuation decision[s] challenged  
27 here,” from “the initial decision to federalize.”); see also id. at 9 (reiterating “continuation  
28 of . . . valid federalization” characterization). By their own reasoning, then, there is all the more  
“relationship between the injury claimed in the motion for injunctive relief and the conduct  
asserted in the underlying complaint.” See Pacific Radiation Oncology, 810 F.3d at 636.

1 injury is likely in the absence of an injunction.” Winter, 555 U.S. at 22; see also Michigan  
2 v. U.S. Army Corps of Eng’rs, 667 F.3d 765, 788 (7th Cir. 2011) (holding that harm need  
3 not be certain to occur for injunctive relief to issue). The moving party must show a  
4 “sufficient causal connection” between the defendant’s conduct and their anticipated  
5 injury. Perfect 10, Inc. v. Google, Inc., 653 F.3d 976, 982 (9th Cir. 2011). “Irreparable  
6 harm is traditionally defined as harm for which there is no adequate legal remedy, such as  
7 an award of damages.” Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir.  
8 2014).

9 Plaintiffs have demonstrated the likelihood of irreparable harm in the absence of  
10 preliminary injunctive relief based on their “constitutional sovereign harms” under the  
11 Tenth Amendment. Reply at 9; see also Bond, 564 U.S. at 225. Defendants attempt to  
12 frame the harm as “statutory, not constitutional,” because Plaintiffs bring “alleged  
13 violations of a federal statute.” Opp’n at 13. But those statutory violations themselves  
14 give rise to constitutional, sovereign injury as federalization wrests control of the National  
15 Guard from the State. Indeed, the other courts with National Guard cases are in accord.  
16 See, e.g., Illinois, 155 F.4th at 940 (“[T]he administration’s likely violation of Illinois’s  
17 Tenth Amendment rights by deploying Guard troops in the state over the state’s objections  
18 constitutes proof of an irreparable harm.” (cleaned up)); Preliminary Injunction (dkt. 134)  
19 in Oregon v. Trump, 3:25-cv-01756-IM (granting a preliminary injunction based, in part,  
20 on a likelihood of irreparable harm to Oregon’s sovereignty). Because Plaintiffs are likely  
21 to succeed on their constitutional claim, “that showing will almost always demonstrate [the  
22 plaintiff] is suffering irreparable harm as well.” Baird v. Bonta, 81 F.4th 1036, 1042 (9th  
23 Cir. 2023).

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

25 A party seeking injunctive relief must also demonstrate that the balance of equities  
26 tips in its favor, and that an injunction is in the public interest. See Winter, 555 U.S. at 20.  
27 “In exercising their sound discretion, courts of equity should pay particular regard for the  
28 public consequences in employing the extraordinary remedy of injunction.” Id. (quoting

1        Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)). Because the federal  
2        government is a party, the last two Winter factors merge. E. Bay Sanctuary Covenant v.  
3        Biden, 993 F.3d 640, 668 (9th Cir. 2021).

4        The balance of the equities and the public interest tip in Plaintiffs' favor. Because  
5        Plaintiffs have demonstrated a likelihood of success on the merits of their Tenth  
6        Amendment injury claim, their showing "tips the merged third and fourth factors  
7        decisively in [their] favor." Baird, 81 F.4th at 1042. That is because it is "always in the  
8        public interest to prevent the violation of a party's constitutional rights." Riley's Am.  
9        Heritage Farms v. Elsasser, 32 F.4th 707, 731 (9th Cir. 2022) (quoting Melendres v.  
10        Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)). In contrast, the harm of denying Defendants  
11        access to California's National Guard members is minimal given that Defendants "have  
12        adjusted downward the number of federalized Guardsmen" because, as they say, the  
13        "deployment has succeeded." Opp'n at 1.

14        The Court also notes that it is contrary to the public interest to have "militarized  
15        actors unfamiliar with local history and context" roaming the streets. Chicago TRO at 24.  
16        Rather, "the public has a significant interest in having only well-trained law enforcement  
17        officers deployed in their communities and avoiding unnecessary shows of military force  
18        in their neighborhoods." Illinois, 155 F.4th at 940.

#### 19        **IV. CONCLUSION**

20        For the foregoing reasons, the Court GRANTS Plaintiffs' motion for a preliminary  
21        injunction.

22        • Defendants are temporarily ENJOINED from deploying members of the  
23        California National Guard in Los Angeles.<sup>33</sup>  
24        • Defendants are DIRECTED to return control of the California National

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26        <sup>33</sup> Plaintiffs asked the Court at the motion hearing to enjoin any future federalizations based on the  
27        same circumstances. In light of the deference owed the President's determinations under Section  
28        12406 and the Court's recognition that circumstances are always changing, the Court DENIES this  
      request. Plaintiffs may return to this Court to challenge any future federalization order that they  
      believe violates the law.

1 Guard to Governor Newsom.  
2  
3 • The Court STAYS this order until noon on Monday, December 15, 2025.  
4 • Plaintiffs are ORDERED to post a nominal bond of \$100 within 24 hours.  
5 The bond shall be filed in the Clerk's Office and be deposited into the  
6 registry of the Court. If said bond is not posted by the aforementioned date  
and time, this Order shall be dissolved.

7 **IT IS SO ORDERED.**

8 Dated: December 10, 2025

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10 CHARLES R. BREYER  
11 United States District Judge

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