

No. 25-5553

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GAVIN NEWSOM, in his official capacity
as Governor of the State of California;
STATE OF CALIFORNIA,

Plaintiffs-Appellees,

v.

DONALD TRUMP, in his official capacity
as President of the United States; PETE
HEGSETH, in his official capacity as
Secretary of the Department of Defense;
DEPARTMENT OF DEFENSE,

Defendants-Appellants.

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

**BRIEF OF *AMICUS CURIAE* THE CITIES OF LOS ANGELES, CA,
ALAMEDA, CA, ALBANY, NY, ALBUQUERQUE, NM, BALTIMORE, MD,
BEAVERTON, OR, BELL GARDENS, CA, BOSTON, MA, BURLINGTON,
VT, CHICAGO, IL, IOWA CITY, IA, HARTFORD, CT, HUNTINGTON
PARK, CA, LONG BEACH, CA, MADISON, WI, MINNEAPOLIS, MN,
MONTEREY PARK, CA, NEW YORK, NY, OAKLAND, CA,
PITTSBURGH, PA, PORTLAND, OR, PROVIDENCE, RI, ROCHESTER,
NY, SAINT PAUL, MN, SALINAS, CA, SAN DIEGO, CA, SAN JOSE, CA,
SANTA ANA, CA, SANTA MONICA, CA, SEATTLE, WA, AND WEST
HOLLYWOOD, CA; THE COUNTIES OF LOS ANGELES, CA,
BOULDER, CO, SANTA CLARA, CA, AND SONOMA, CA; TACOMA, WA
AND THE UNITED STATES CONFERENCE OF MAYORS
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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INTRODUCTION AND STATEMENT OF INTEREST

For more than a century, the Posse Comitatus Act (PCA) has preserved the strict separation between military power and law enforcement, reflecting the delicate constitutional balance of federalism and the protection of individual liberties. On June 7, 2025, the President deployed the National Guard and Marines to Los Angeles over the objections of state and local governments and in violation of the PCA, purportedly in response to limited protest activities within a small pocket of the city. Upon deployment, federal troops began engaging in law enforcement activities against local residents—turning the military into a domestic police force. The federal government now seeks to turn this erosion of our constitutional framework into dangerous precedent.¹

The district court’s ruling reaffirmed the constitutional and statutory limits on federal military involvement in domestic law enforcement, finding that the federal government’s actions violated the PCA. In its petition to this Court, the federal government provides no basis for overturning the district court’s ruling. Moreover, nothing the administration argued in its request to stay the district court’s order warrants a finding that the government will suffer irreparable harm. Rather, the harm that the Plaintiffs, the City of Los Angeles, the County of Los Angeles, and other

¹ No party or party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money to fund preparation or submission of this brief; and all of the parties consented to the filing.

Amici stand to suffer is irrefutable. As a result of the federal government’s unlawful law enforcement activities, communities are living in fear, unable to engage in the simplest daily tasks—going to work or sending children to school—without considering the risk to their safety and freedom.

The City’s, the County’s, and the State’s economic and social stability are in jeopardy, as the federal government seeks to blur the line between civilian and military authority, a line that is critical to preventing abuse by a centralized power. Although Los Angeles was the first staging ground for this unprecedented assault on fundamental American values, the federal government has said it will not stop there. The President has repeatedly stated that he is going to send troops to other Amici jurisdictions around the country and now, he has ordered the Secretary of Defense to establish the readiness of the National Guard in all 50 States to serve as a “standing National Guard quick reaction force” for civilian law enforcement needs. Exec. Order No. 14339 90 Fed. Reg. 54201 (Aug. 25, 2025).

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Cities of Los Angeles, CA, Alameda, CA, Albany, NY, Albuquerque, NM, Baltimore, MD, Beaverton, OR, Bell Gardens, CA, Boston, MA, Burlington, VT, Chicago, IL, Iowa City, IA, Hartford, CT, Huntington Park, CA, Long Beach, CA, Madison, WI, Minneapolis, MN, Monterey Park, CA, New York, NY, Oakland, CA, Pittsburgh, PA, Portland, OR, Providence, RI, Rochester, NY, Saint Paul, MN, Salinas, CA, San

Diego, CA, San Jose, CA, Santa Ana, CA, Santa Monica, CA, Seattle, WA, Tacoma, WA, and West Hollywood, CA; the Counties of Los Angeles, CA, Boulder, CO, Santa Clara, CA, and Sonoma, CA; and the United States Conference of Mayors (collectively, “Amici”) respectfully submit this brief in support of Plaintiffs-Appellees. Amici respectfully request that this Court deny the federal administration’s motion for stay thus preserving the constitutional balance that the district court’s judgment seeks to preserve.

ARGUMENT

I. The State of California Has Standing to Defend Its Sovereign Authority Over Law Enforcement and to Protect Its Residents from Economic Harm Resulting from Unlawful Military Encroachment.

A. The Federal Government’s Deployment of Military Troops to Los Angeles Infringes Upon Police Power Reserved to Localities

The State of California has declared, as a foundational policy, that state and local shared authority is essential to effective police governance. Pursuant to the California Constitution, the state and its local governments concurrently share policing authority. Cal. Const. Art. X; *see also* N.Y. Const. Art. IX § 2(c); Ore. Const. Art. XI, § 2; Penn. Const. Art. IX, § 2; WA Const. Art. XI § 11. Amici cities and counties, like Los Angeles, retain the ability to perform certain core functions such as the conduct of elections, sanitary functions, and most notably, the “constitution, regulation, and government of the ... police force.” *See* Cal. Const. Art. XI, §5, 7. Indeed, police power is one of the inherent attributes of state

sovereignty. “The United States Constitution, which is a compact between the people and their national government, includes the Tenth Amendment as a reminder that the national government is one of limited authority and those powers that the people did not give to the federal government remain with the states and the people. The police power is one of those authorities and remains central to the functioning of state and local government today.” *See* Brian W. Ohm, *Some Modern Day Musings on the Police Power*, *The Urban Lawyer*, Vol. 47, No. 4 625, 626 (2015).

State and local law enforcement’s proximity to the people encourages transparency and accountability. Amici’s most common law enforcement accountability mechanisms, including oversight boards, data-sharing, and community-centered policing² are all grounded in state and local policy. Historically, states and localities are best positioned to execute the kind of civilian law enforcement—crowd control, security patrol, riot control—that the Department of Defense itself deemed to fall under the PCA. *See Newsom*, 3:25-cv-04870-CRB, ECF No. 176 at 7. Interference with these activities interferes with states and localities’ sovereign rights. *See, e.g., Arizona v. Yellen*, 34 F.4th 841, 851 (9th Cir. 2022) (claims that implicate sovereignty enjoy particular standing consideration).

² *See e.g.* LA County Civilian Oversight Commission (<https://coc.lacounty.gov/>); California Racial Identity and Profiling Act, Cal. Gov. Code §12525.5; Peace Officers: Release of Records, Cal. Penal Code § 832.7 (requiring disclosure of certain officer misconduct).

The use of the military to perform these activities absent a clear exception is an unlawful encroachment on state and local authority.

B. Local Law Enforcement Has the Training and the Capability to Conduct Civilian Law Enforcement Activity

LAPD and the Sheriff's Department responded during the June 6, 2025 ICE raids and similar wide-scale protests in accordance with their jurisdictional authority. While the federal government claimed that Los Angeles was unable to quell demonstrations on its streets, the departments successfully handled the massive No Kings' Day Protests of June 14th, in which over 200,000 people poured onto the streets to exercise their First Amendment rights to protest this Government's actions, without incident. Heather Miller, *No Kings Day attendance: Over 5 million turned out across US, organizers say*, LiveNOW FOX, (June 15, 2025), <https://tinyurl.com/2p7x37b7>. Since that day, there have only been a few immigration-related protests around the City, with often just a few dozen protestors at a time, which LAPD has handled without mutual aid, the National Guard, or even the department's specialized crime suppression units. *See Newsom*, ECF Doc. 183-5 (Hurtado Decl.) at ¶ 11.

Even when the National Guard has been called in at the request of the Governor (which had previously always been the case) and in cooperation with LAPD (which has not occurred), military presence can present challenges. *See Hurtado Decl.* ¶ 14. For example, during the 2020 demonstrations in the wake of

the killing of George Floyd, the LAPD experienced difficulties in maintaining clear communication and unified command with the National Guard, including that their members were unfamiliar with basic principles of arrest, use of force, and domestic policing policy. *Id.* Consistent with the policy behind the PCA, it is vital for local law enforcement to request any deployment by the military, and to have the discretion to determine where, when, and in what capacity they should be deployed. That is because the LAPD, like all of Amici's law enforcement agencies, “relentlessly trains its personnel on the tenets of constitutional policing, use of force, and crowd management and control, as well as historical perspective of the local communities and police relations.” Hurtado Decl. ¶ 17.

This stands in stark contrast with members of the military who are trained to defend the nation from an armed attack and provide for the nation’s defense. The federal government claimed its use of the military in Los Angeles since June was ostensibly to protect immigration agents from protesters, but as appellees have noted, it is increasingly being used as a “force multiplier” for the Government’s civil law enforcement aims - defying agency practice and historical military functions. *See* Opp. To Mot. For Stay Pending Appeal, Doc. 10.1 (Sept. 15, 2025); *see also* Mark Nevitt, *The Military, the Mexican Border, and Posse Comitatus*, Just Security (Nov. 6, 2018) <https://tinyurl.com/433mpf3f>. Deploying the military—trained and armed for combat against external enemies—on domestic soil for domestic law

enforcement without the training, perspective, and the expertise of local police departments, inflames tensions with the public and infringes upon and directly harms Amici's interests. *See, e.g., Yellen* at 34 F.4th at 852. And it sets a dangerous precedent for states and local governments across this nation.

C. The Presence of Armed Forces in Los Angeles Has Had a Chilling Effect on the Region's Economy

The presence of National Guard and active duty military has compounded the fear that many residents live in every day and led residents to stay home rather than participate in the region's economy. *See, e.g., Anna Merlan, As ICE Raids Continue, Part of a Vibrant City Go Empty*, Mother Jones (June 21, 2025) <https://tinyurl.com/3u2eu4km> (describing the "many businesses" that have closed or adjusted their hours since June 6). A fruit and vegetable wholesaler reported that his sales plummeted from approximately \$2,000 a day to just \$300 since the federal immigration enforcement activities began. *See Tim Reid and Kristina Cooke, Immigration Raids in Los Angeles Hit Small Business Owners: "It's worse than COVID," Reuters* (June 17, 2025) <https://tinyurl.com/2u37twss>. His customers are staying home, as are the restaurant supply workers who are scared to travel to the market to pick up supplies, prompting him to describe the neighborhood as "pretty much a ghost town." *Id.*

Amici in the Los Angeles region are losing vital tax revenue from empty or suffering businesses. According to the Migration Policy Institute, "The more

immigration enforcement is indiscriminate and broad, rather than targeted, the more it disrupts the American economy in very real ways.” *Id.* The manner in which the National Guard and military have been deployed—without coordination and seemingly arbitrarily—has been disruptive to the Los Angeles economy, creating a *de facto* lockdown of neighborhoods throughout the region. Residents’ use of public transit, which facilitates commerce and provides revenue for many Amici, has also been severely disrupted. For example, ridership for Los Angeles’s bus and rail system decreased by 1.5 million riders in June of 2025 as compared to the same time last year. Kavish Harjai, *LA Metro Was Down 1.5M this June as Compared to Last. Here are Some Possible Reasons Why*, LAist (July 22, 2025) <https://tinyurl.com/yc7jwxxv>.

In the past two years, business and sales taxes comprised approximately 12.5% of Amici City Los Angeles’s annual revenue budget. The County of Los Angeles anticipates \$91 million in sax tax revenue this year. Those taxes are generally based on gross receipts. Empty businesses do not generate gross receipts—and thus do not pay business taxes or remit sales taxes. These ongoing fiscal losses constitute irreparable harm relevant to standing. *See, e.g., City & Cnty. of San Francisco v. Trump*, 783 F. Supp. 3d 1148, 1186 (N.D. Cal. 2025) (federal government’s actions “plunge[d] the plaintiffs’ budgetary planning into a state of uncertainty, ‘irreparably harm[ing] their budgets and, by extension, their abilities to

govern and provide services to the public”); *California v. Health & Hum. Servs.*, 390 F. Supp. 3d 1061, 1065 (N.D. Cal. 2019) (“unrecoverable costs on the state” cause irreparable harm). The federal government’s unnecessary deployment of military personnel to Los Angeles has contributed to a visible decline in economic activity and Amici expect similar harms to befall other jurisdictions should these deployments be permitted to spread.

II. Federal Military Operations in Los Angeles are Contrary to the Public Interest, as they would be in other Amici jurisdictions.

“The strength of free peoples resides in the local community. Local institutions are to liberty what primary schools are to science; they put it within the people’s reach... Without local institutions, a nation may give itself a free government, but it has not got the spirit of liberty” Alexis De Tocqueville, *Democracy in America* (1835), <https://tinyurl.com/3fym9zb6>. The deployment of the military without regard to, or coordination with, local institutions, has eroded and will continue to erode the liberty of Amici’s local communities.

The massive deployment to MacArthur Park in the City of Los Angeles, i.e. “Operation Excalibur,” is a microcosm of the deleterious effect the militarization of immigration enforcement has had on the community. The militarized invasion of MacArthur Park was met not with rebellion, but with elementary school-aged children at a summer day camp. An 8-year boy who was present at the Park told Los Angeles Mayor Karen Bass he was fearful. *See Troops and Federal Agents*

Briefly Descend On Los Angeles' Macarthur Park in Largely Immigrant Neighborhood, Associated Press (July 7, 2025), <https://tinyurl.com/4jj5fak4>.

Troops pointed guns, not at “rioters,” but at healthcare outreach workers who were working with unhoused individuals, and told them to get out of the Park. *Id.*

Defense officials themselves acknowledged that the size and scope of the National Guard presence looked like a military operation, yet have no explanation for why one was necessary and have expressed no intent to modify tactics in light of a lack of visible threat. *Id.* “Better get used to us now, cause this is going to be normal very soon,” Gregory Bovino told a reporter. “We will go anywhere, anytime we want in Los Angeles.” *See* Melissa Gomez et al., *Heavily armed immigration agents descend on L.A.'s MacArthur Park*, L.A. Times (July 7, 2025) <https://tinyurl.com/arex5drn>. Though the district court distinguished the operations of Task Force 51 with that of ICE, in the minds of the community, Task Force 51 represents a further escalation. A resident living nearby Macarthur Park rushed over when she saw a military-grade helicopter flying over her neighborhood, describing it as “gut-wrenching” to witness the federal show of force in a U.S. city. The Park has remained emptier since. *See* Nigel Duara, *What Its Like to Live Through Los Angeles' Long Deportation Summer*, CalMatters (Aug. 13, 2025) <https://tinyurl.com/2sj8akcj>.

Continued military operations in the region will only further spread fear and corrode services offered by local institutions that comprise the fabric of the Los Angeles—its police departments, social services, recreational programs, schools, and public spaces. Community health clinics have reported a significant increase in no-shows since the ICE raids began. *See, e.g.,* Shreyas Teegala, *Fearing ICE raids, some LA residents skip doctor's visits: "Everybody's life is on pause"*, The Guardian (June 24, 2025), <https://tinyurl.com/2n26zude>. Public school attendance has already declined in districts throughout the region. *See, e.g.,* Calvin Macatantan, *How Los Angeles Students are Meeting the Threat of ICE Raids*, National Education Association (Aug. 20, 2025) <https://tinyurl.com/mvtp4mtb>.

The PCA's prohibition on using the military to perform law enforcement activities recognizes a sentiment articulated by Justice Burger in *Laird v. Tatum*, 408 U.S. 1, 15 (1972), i.e., “a traditional and strong resistance of Americans to any military intrusion into civilian affairs” that “has deep roots in our history and found early expression, for example, in the Third Amendment's explicit prohibition against quartering soldiers in private homes without consent and in the constitutional provisions for civilian control of the military.” The federal government has failed to demonstrate how their use of military personnel overcomes this prohibition, and conversely, how discontinuing the use of military personnel in civilian operations will irreparably harm them. Our civilian population cannot say the same.

CONCLUSION

The deployment of the military for domestic policing not only is a legally unfounded action but it has caused, is causing, and will cause injury to Amici. Every day that military troops in combat gear, carrying assault rifles and trained to kill in war, police in our jurisdictions is a day that sows fear and mistrust in the population. For the reasons stated herein, Amici urge this Court to deny the federal government's request for a stay of the district court's injunction, and respectfully request that this Court affirm the district court's judgment and allow its order to take effect.

DATED: September 18, 2025

Respectfully submitted,

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FOR THE NINTH CIRCUIT**

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