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13  
14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17

18 GAVIN NEWSOM, IN HIS OFFICIAL  
19 CAPACITY AS THE GOVERNOR OF  
20 THE STATE OF CALIFORNIA;  
21 STATE OF CALIFORNIA,

22 Plaintiff,

23 vs.

24 DONALD TRUMP, IN HIS OFFICIAL  
25 CAPACITY AS THE PRESIDENT OF  
THE UNITED STATES; PETE  
HEGSETH, IN HIS OFFICIAL  
CAPACITY AS SECRETARY OF THE  
DEPARTMENT OF DEFENSE; US  
DEPARTMENT OF DEFENSE,

26 Defendant.

27 Case No.: 3:25-cv-04870-CRB

28 AMICUS BRIEF  
ON BEHALF OF  
THE STEADY STATE

29  
30 **BRIEF OF THE STEADY STATE AS *AMICUS CURIAE* IN SUPPORT OF**  
31 **PLAINTIFFS REGARDING THE DOMESTIC DEPLOYMENT OF THE**  
32 **UNITED STATES MILITARY AND THE ENGAGEMENT OF MILITARY**  
33 **PERSONNEL IN CIVILIAN LAW ENFORCEMENT**

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24	Donald J. Trump (@realDonaldTrump), Truth Social, <a href="https://truthtsocial.com/@realDonaldTrump/posts/114664350602686558">https://truthtsocial.com/@realDonaldTrump/posts/114664350602686558</a> (June 11, 2025).....	18
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1	Katrina Kaufman & Joe Walsh, CBS News, <a href="https://www.cbsnews.com/news/general-involved-in-trumps-l-a-military-deployment-testifies-he-didnt-hear-protests-described-as-rebellion-trump/">https://www.cbsnews.com/news/general-involved-in-trumps-l-a-military-deployment-testifies-he-didnt-hear-protests-described-as-rebellion-trump/</a> (Aug. 12, 2025).....	16
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1       Non-party The Steady State, an unincorporated association, is a non-profit,  
 2 advocacy organization comprised of more than 325 former senior U.S. government  
 3 officials who served in positions of responsibility and trust within the Departments  
 4 of State, Defense, Homeland Security, Justice, and in the Intelligence Community,  
 5 on Congressional staff, and at other institutions. The Steady State respectfully  
 6 offers this brief in support of Plaintiffs Governor Gavin Newsom and the State of  
 7 California.

8 **I. INTERESTS OF *AMICUS CURIAE***

9       The collective careers of *Amicus*' members span decades of service across  
 10 Republican and Democratic administrations in the Executive, Legislative, and  
 11 Judicial branches of government. Members have served as ambassadors, foreign  
 12 service officers, intelligence officers, policy advisors, oversight officials,  
 13 prosecutors, and senior defense officials. They have dedicated their professional  
 14 lives to defending American democratic values and the rule of law at home and  
 15 promoting those values abroad. *Amicus* and its members have extensive experience  
 16 balancing national security imperatives with the constitutional and legal  
 17 frameworks that protect individual rights. A key part of the *Amicus* members'  
 18 training and professional ethos is a deep respect for the rule of law as a constraint  
 19 on their activities. They understand how crucial oversight and adherence to laws  
 20 are, and they welcome these constraints to ensure their unique skills are not  
 21 misused by those in power.

22       *Amicus*' members have studied, reported on, and confronted the rise of  
 23 authoritarian regimes across the globe—regimes that frequently misuse military,  
 24 paramilitary, and intelligence elements to violate the law, suppress lawful dissent,  
 25 and consolidate power in a political leader. The members of the Steady State have  
 26 spent most of their careers focused on such threats abroad, dealing with autocracies,  
 27 dictatorships, and tyrannies, as well as regions that have experienced democratic  
 28 backsliding into authoritarianism. Members of the Steady State have served in or

1 worked with the very same military and security elements being deployed in  
 2 California, and elsewhere in the United States, by the Government. They  
 3 understand how dangerous these institutions can be when not constrained by the  
 4 law and directed solely by the whim of a political leader. This gives them a unique  
 5 perspective that should prove useful to the Court and is relevant to the disposition  
 6 of this case. *Amicus*, in its submission, details for the Court how perilous it can be  
 7 to democracy when these institutions are used domestically and outside the bounds  
 8 of the law and for political purposes.

9 **II. ARGUMENT**

10 *Amicus* addresses only the conduct of military personnel during their  
 11 deployment under the direct control of the Commander in Chief. The deployment of  
 12 the National Guard or other uniformed armed forces either (a) under the command  
 13 of state and local authorities, or (b) to provide personnel and technical assistance to  
 14 state and local authorities are not addressed. Our observations on the deployment of  
 15 the U.S. military domestically as indicators of authoritarian intent and deterrents to  
 16 democratic activities relate solely to military forces under presidential control.

17 **A. The Dangers of Military Intervention to Enforce Domestic Policy**

18 In evaluating whether President Trump and his Defense Secretary's actions  
 19 were legal here, this Court's order granting Plaintiff's Motion for Temporary  
 20 Restraining Order naturally cited to Justice Jackson's renowned concurrence in  
 21 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 649-50 (1952) (Jackson, J.,  
 22 concurring). That opinion was no ordinary concurrence. Unanimous Supreme Court  
 23 opinions such as *United States v. Nixon*, 418 U.S. 683 (1974) and *Nixon v.*  
 24 *Administrator of General Services*, 433 U.S. 425, 443 (1977) later embraced Justice  
 25 Jackson's *Youngstown* concurrence, and it was expressly declared authoritative in  
 26 an opinion written by Justice Rehnquist in *Dames & Moore v. Regan*, 453 U.S. 654,  
 27 661-62 (1981).

28

1       “Justice Jackson’s 1952 concurrence in *Youngstown* … is [now considered]  
 2 the founding constitutional text for separation of powers between Congress and the  
 3 president,” Magliocca, *The Untold Story of Robert H. Jackson’s Youngstown*  
 4 *Concurrence*, 50 J. of S. Ct. Hist. No. 1 at 8 (2025), and Chief Justice Rehnquist,  
 5 who had clerked for Justice Jackson when the *Youngstown* concurrence was  
 6 written, later called the opinion “[a] ‘state paper’ of the same order as the best of  
 7 the Federalist Papers, or of John Marshall’s opinions for the Court.” Rehnquist,  
 8 *Robert H. Jackson: A Perspective Twenty-Five Years Later*, 44 Albany L. Rev. 539  
 9 (1980).

10       The Steady State’s members’ collective experiences studying and often  
 11 spending time in a variety of world environments, over the course of many decades,  
 12 reveal that authoritarian regimes historically do not rise so often in sudden bursts as  
 13 much as typically through creeping changes and erosions of democratic protections.  
 14 In our experience, such losses of civil rights and civil liberties increasingly become  
 15 difficult to reverse and eventually reach a point of no return. That is the far more  
 16 typical experience of how authoritarian regimes are born and expand. Because of  
 17 this, even if certain controversial developments in California had not occurred  
 18 during the recent course of this litigation, this Court must ultimately focus not only  
 19 on the potential ends, but also, the means. See *Youngstown*, 343 U.S. at 653 (“I am  
 20 not alarmed that it would plunge us straightaway into dictatorship, but it is at least a  
 21 step in that wrong direction.”) (Jackson, J., concurring).

22       The strength of Justice Jackson’s separation-of-powers analysis in  
 23 *Youngstown* drew not merely from his earlier service as an Assistant Attorney  
 24 General, Solicitor General, and U.S. Attorney General, but even more profoundly  
 25 from his post-World War II role as the United States’ Chief Prosecutor at the  
 26 Nuremberg Trials. There, Jackson confronted, face-to-face and in open court, the  
 27 inner machinery of a regime that had weaponized its military and security apparatus  
 28 to crush lawful dissent, dismantle institutional constraints, and concentrate power in

1 the hands of a single leader. This direct encounter with the legal aftermath of  
 2 authoritarian rule imbued his *Youngstown* concurrence with an urgency and moral  
 3 clarity few judicial writings have ever matched. His warning that “comprehensive  
 4 and undefined presidential powers” carry “grave dangers for the country” was  
 5 informed by the hard proof he presented at Nuremberg that such powers,  
 6 unchecked, can destroy a constitutional democracy from within. *Youngstown Sheet*  
 7 & *Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring).

8 The Steady State’s members have, in their own way, seen many of the same  
 9 truths. Serving in the national security community created by the National Security  
 10 Act of 1947, ch. 343, 61 Stat. 495 (codified as amended in scattered sections of 50  
 11 U.S.C.), an architecture deliberately designed in the shadow of World War II and  
 12 tempered in the Cold War, they have worked in the very institutions whose integrity  
 13 is essential to preserving democratic governance. Like Jackson, their professional  
 14 lives have brought them into direct contact with regimes that deploy military and  
 15 security forces to entrench political power, silence dissent, and bypass the rule of  
 16 law. These experiences—rooted in decades of service as senior U.S. officials,  
 17 intelligence officers, defense leaders, prosecutors, and diplomats—give *Amicus* a  
 18 perspective uniquely suited to assist the Court in understanding the perils Jackson  
 19 warned against and why the constitutional limits he championed remain vital to  
 20 American democracy today.

21 In that same concurrence, Jackson emphasized “the Constitution’s policy that  
 22 Congress, not the Executive, should control utilization of the war power as an  
 23 instrument of domestic policy.” *Youngstown*, 343 U.S. at 644 (Jackson, J.,  
 24 concurring). This principle—grounded in the lessons of Nuremberg and carried  
 25 forward in the design of the postwar national security structure—remains a vital  
 26 safeguard against the misuse of military and security institutions for domestic  
 27 political purposes. It is through that lens, informed by the experience of those who  
 28 have served at the highest levels of that very structure, that The Steady State offers

1 this brief in support of Plaintiffs.

2       As Justice Jackson cogently noted, “[t]he purpose of the Constitution was not  
 3 only to grant power, but to keep it from getting out of hand.” *Id.* at 640. Justice  
 4 Jackson also went out of his way to stress the special risks of a President’s military  
 5 powers being used internally for domestic policies. “Congress has forbidden him to  
 6 use the army for the purpose of executing general laws except when expressly  
 7 authorized by the Constitution or by Act of Congress.” *Id.* at 644-45. While  
 8 conceding that “I should indulge the widest latitude of interpretation to sustain his  
 9 exclusive function to command the instruments of national force, at least when  
 10 turned against the outside world for the security of our society, … when it is turned  
 11 inward, not because of rebellion … it should have no such indulgence.” *Id.* at 645.  
 12 And he made it clear that it is up to the Judicial Branch to preserve this distinction.  
 13 See also *id.* at 642 (Jackson, J., concurring) (warning that “no doctrine that the  
 14 Court could promulgate would seem to me more sinister and alarming than that a  
 15 President whose conduct of foreign affairs is so largely uncontrolled … [that he]  
 16 can vastly enlarge his mastery over the internal affairs of the country”).

17       As this Court noted in its June 12, 2025, order granting Plaintiff’s Motion for  
 18 a Temporary Restraining Order, Jackson’s *Youngstown* opinion specifically cited to  
 19 historical “examples from Weimar Germany, the French Republic, and World  
 20 War II-era Great Britain.” ECF 64. In France and Great Britain, he noted,  
 21 emergency powers given to the Executive in wartime had maintained legislative  
 22 controls, and such “parliamentary control made emergency powers compatible with  
 23 freedom.” *Youngstown*, 343 U.S. at 652. In Germany, by contrast, despite the new  
 24 Weimar Constitution being

25  
 26       ...designed to secure her liberties in the Western tradition, ... the  
 27 President of the Republic, without concurrence of the Reichstag, was  
 28 empowered temporarily to suspend any or all individual rights if  
 public safety and order were seriously disturbed or endangered.” *Id.* at

1                   651 (Jackson, J., concurring). These temporal limits on the exercise of  
 2 such powers proved utterly inadequate to stem the tide: “This proved a  
 3 temptation to every government … and in 13 years suspension of  
 4 rights was invoked on more than 250 occasions. Finally, Hitler  
 5 persuaded President Von Hindenburg to suspend all such rights, and  
 6 they were never restored.” *Id.* at 651 (Jackson, J., concurring).

7                   The Steady State’s members’ own experiences in the ensuing decades only  
 8 reinforce and confirm Justice Jackson’s strong conclusion that “emergency powers  
 9 are consistent with free government only when their control is lodged elsewhere  
 10 than in the Executive who exercises them.” *Id.* at 652 (Jackson, J., concurring).

11                  Justice Jackson stressed “the Constitution’s policy that Congress, not the  
 12 Executive, should control utilization of the war power as an instrument of domestic  
 13 policy.” *Id.* at 644 (Jackson, J., concurring). Consistent with Justice Jackson’s  
 14 analysis in *Youngstown*, not only is there a necessary separation regarding the  
 15 utilization of the war power as an instrument of domestic policy; that separation is a  
 16 foundational tenet of American democracy with its roots in the protections provided  
 17 by the Third, Fourth, Fifth, and Sixth Amendments and exemplified by the  
 18 guardrails established by the Posse Comitatus Act which preclude, “except in cases  
 19 and under circumstances expressly authorized by the Constitution or Act of  
 20 Congress,” military participation in civilian law enforcement.<sup>1</sup>

21                  Congress has, in fact, placed limits on the exercise of those war powers here.  
 22 Congress, through 10 U.S.C. § 12406, allowed a President to federalize the  
 23 National Guard only when one of the statute’s three enumerated conditions was  
 24 met. While not getting to the Government’s assertion that deployment was  
 25 necessary to quell “a rebellion against the authority of the Government of the  
 26 United States,” ECF No. 116 at 32; ECF No. 22 at 9, the Court of Appeals for the

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27                  <sup>1</sup> See Joseph Nunn, *The Posse Comitatus Act Explained*, Brennan Ctr. for Just.  
 28 (Apr. 27, 2022), <https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained>.

1 Ninth Circuit gives great deference to the President’s determination that he was  
 2 “unable with the regular forces to execute the laws of the United States,” following,  
 3 as the Court of Appeals noted, the Government’s presentation of evidence of  
 4 “protestors *interference* with the ability of federal officers to execute the laws.”  
 5 ECF No. 116 at 33 (emphasis added). Similarly, the Posse Comitatus Act precludes  
 6 military participation in civilian law enforcement absent a Constitutional or  
 7 statutory exception, such as the Insurrection Act (which, notably, was not invoked  
 8 here). The Government has consistently taken positions in matters before this Court  
 9 to undermine the Congressional limits on the exercise of war powers to enforce  
 10 domestic law or policy. In opposing Plaintiff’s Motion for a Temporary Restraining  
 11 Order, the Government claimed, in part, that a President’s decision to deploy the  
 12 National Guard is unreviewable; an argument rejected by the Court of Appeals.  
 13 ECF No. 25 at 9-12 and ECF No. 116 at 31.

14 Now, when addressing Plaintiffs’ ultra vires claims related to the Posse  
 15 Comitatus Act, the Government claims that 10 U.S.C. § 12406 provides an  
 16 exception to the Posse Comitatus Act, resulting in a President’s largely unchecked  
 17 authority to order military personnel to engage in civilian law enforcement. See  
 18 ECFs No. 95 at 1 and No. 99 at 2-3. These efforts to frustrate or fully avoid the  
 19 separation of powers regarding deployment of the military and its preclusion from  
 20 engaging in civilian law enforcement activity illustrate and heighten the concerns of  
 21 *Amicus* and its members.

22 If Congress’ limits on executive power in these matters are either degraded or  
 23 declared satisfied almost exclusively on the determinations or linguistic choices of a  
 24 President, this Court would essentially establish the very Weimar Germany  
 25 standard Justice Jackson decried. The challenges Justice Jackson faced may well  
 26 have exceeded those of today, yet he strongly warned courts to reject any paradigm  
 27 where “necessity knows no law.” *Youngstown*, 343 U.S. at 646.

28

1        The Steady State's members' experiences, not only around the world but as  
 2 members of the Executive Branch, in service at some of the very institutions that  
 3 are most subject to abuse (and were the class of "security" institutions that Justice  
 4 Jackson confronted at Nuremberg), lead us to strongly agree with Justice Jackson's  
 5 conclusion that "men have discovered no technique for long preserving free  
 6 government except that the Executive be under the law, and that the law be made  
 7 by parliamentary deliberations." *Id.* at 655 (Jackson, J., concurring). This principle  
 8 grows even more critical day by day as not only does military personnel engage in  
 9 civilian law enforcement in Los Angeles, but now also in Washington, D.C., where  
 10 the President has deployed the National Guard to purportedly "address the epidemic  
 11 of crime." "Restoring Law and Order in the District of Columbia," Presidential  
 12 Memorandum for the Secretary of Defense, August 11, 2025. Not only has the  
 13 President ordered the deployment of the D.C. National Guard, but he has also  
 14 directed the Defense Secretary to "coordinate with State Governors and authorize  
 15 the orders of any additional members of the National Guard to active service, as he  
 16 deems necessary and appropriate, to augment this mission." *Id.* This pointed  
 17 presidential direction suggests that while nominally under the control of state  
 18 governors, the President seeks to enlarge the federal force engaging in civilian law  
 19 enforcement to quash political dissent in jurisdictions governed by members of the  
 20 opposing political party. The President also suggested during a press conference to  
 21 announce the deployment in Washington, D.C., that similar actions may be taken in  
 22 other jurisdictions such as Chicago, and that "Hopefully, L.A. is watching."  
 23 "Trump takes over DC police in extraordinary move, deploys National Guard in  
 24 capital."<sup>2,3</sup>

25        <sup>2</sup> Trevor Hunnicutt & Nandita Bose, Trump Takes Over D.C. Police in  
 26 'Extraordinary' Move, Deploys National Guard to Capital, Reuters (Aug. 11,  
 27 2025), See <https://www.reuters.com/world/us/trump-takes-over-dc-police-extraordinary-move-deploys-national-guard-capital-2025-08-11/>.

28        <sup>3</sup> Even as this brief is drafted, in Washington, D.C., there are armored vehicles on  
 the National Mall, and uniformed troops in the streets. Anne Flaherty & Luke Barr,  
 National Guard troops have begun 24-hour operations in DC: Official, ABC News

1        The U.S. Government's actions demonstrate its belief that the President is  
 2 above the law regarding the domestic deployment of military personnel, a decision  
 3 it asserts is unreviewable and that may act without restriction in service of the  
 4 President. *Amicus* urges this Court to uphold its responsibilities and retain  
 5 America's steady state by granting the relief sought by Plaintiffs. See *Youngstown*,  
 6 343 U.S. at 655 (even if “[s]uch institutions may be destined to pass away … it is  
 7 the duty of the Court to be last, not first, to give them up.”) (Jackson, J. concurring).

8        **B.     Domestic Military Deployment to Suppress Civilian Dissent is a  
 9                   Hallmark and Indicator of Authoritarian Rule**

10      *Amicus* members, as national security, homeland security, and foreign policy  
 11 practitioners, understand the “indicators of autocracy.” Indicators of intent are  
 12 observable facts that are correlated with and tend to show the reasoning behind the  
 13 action. One such indicator of illegitimate use of power is when leaders search for  
 14 reasons to stretch interpretations of the law. Another indicator is magnifying or  
 15 exaggerating events to justify an overreach of power. This occurred as recently as  
 16 December 2024, when South Korean President Yoon Suk Yeol declared martial law  
 17 to counter exaggerated accounts of anti-state activities and threats to national  
 18 security. The legislature was quick to respond by lifting martial law, impeaching  
 19 and removing the president from office to protect its democracy.

20  
 21 (Aug. 14, 2025, 3:34 PM) (“National Guard troops have begun 24-hour operations  
 22 around Washington, D.C., as of Thursday morning, according to a Department of  
 23 Defense official.”) available at <https://abcnews.go.com/Politics/dc-wake-troops-deployed-national-mall/story?id=124629956>. See,  
 24 <https://abcnews.go.com/Politics/dc-wake-troops-deployed-national-mall/story?id=124629956> (“National Guard troops have begun 24-hour operations  
 25 in DC: Official”). Additionally, as an indicator of the true mission of federal  
 26 personnel in Los Angeles, in a video shared on social media by Mr. Newsom’s  
 27 press office shows the agents gathering outside the museum. In the video, Gregory  
 28 Bovino, a Border Patrol chief who is leading the Trump administration’s  
 immigration crackdown in Southern California, says, “We’re here making Los  
 Angeles a safer place, since we don’t have politicians who can do that. We do that  
 ourselves.” See, Laurel Rosenhall, Jesus Jiménez, and Hamed Aleaziz, “Border  
 Patrol Agents Show Up in Force at Newsom Rally,” New York Times (August 14,  
 2025) available at <https://www.nytimes.com/2025/08/14/us/newsom-la-immigration-agents.html>.

1 Authoritarian regimes frequently rely on military force to maintain political  
2 power in the face of civilian dissent. *Amicus* members have directly observed this  
3 phenomenon in countries such as:

- 4 • Russia, where military-style police suppress political protests under the  
5 guise of national security;
- 6 • China, where the People’s Liberation Army has historically been  
7 deployed against student demonstrators, most notably during the  
8 crackdown at the Tiananmen Square massacre;
- 9 • Taiwan, where minor incidents of violence led to a state-run suppression  
10 of anti-government protests and became a pretense for decades of martial  
11 law;
- 12 • Turkey, where domestic military deployments have been used to crush  
13 opposition following attempted coups and mass protests;
- 14 • South Africa, where apartheid security forces repressed political  
15 opponents; after the end of the apartheid government, post-apartheid  
16 reform emphasized oversight to prevent military use for partisan political  
17 agendas;
- 18 • The Philippines, where armed forces are employed in campaigns against  
19 civil society actors under the pretext of anti-drug or anti-terror operations;  
20 and
- 21 • El Salvador, where US-trained military death squads terrorized the  
22 population during the civil war of the 1970s and 1980s. For the past  
23 several years, under the current Bukele administration, the security forces  
24 have been re-politicized and used to support human rights abuses against  
25 the general population.

26 In each of these examples, authoritarian leaders justified their actions as  
27 necessary for public safety, while, in fact, using military force to erode political  
28 freedoms and dismantle or corrode institutional checks on executive power. *Amicus*

1 members have witnessed the slippery slope from such conduct to authoritarian rule  
 2 and are aware that there is eventually a point of no return as a nation moves towards  
 3 autocracy. *Amicus* members further emphasize that in the authoritarian regimes they  
 4 have studied—whether in Moscow, Beijing, Ankara, or Manila—the pattern is not  
 5 one of local leaders requesting help, but of central governments deploying military  
 6 force to override regional or municipal authority.

7 The current use of the military is a further indication of the President’s  
 8 intentions to commandeer the use of all of the nation’s “security services,”  
 9 including the military and federal law enforcement, to eradicate dissent and use  
 10 these “security services” to support authoritarian aims. Shortly after the initial  
 11 deployment in Los Angeles, on June 16, 2025, Secretary of Transportation Sean  
 12 Duffy, stated in a post on X that the Department of Transportation will not “fund  
 13 rogue state actors who refuse to cooperate with federal immigration enforcement.”<sup>4</sup>  
 14 It is this centralized use of force—particularly to suppress dissenting political  
 15 viewpoints—that serves as an early marker of democratic backsliding.

16 These global examples from the experience of *Amicus* members echo loudly  
 17 through the actions of the U.S. Government. In Los Angeles, the stated National  
 18 Guard mission to protect the safety of federal personnel and property is conflated  
 19 by the Government with providing for the “safety of those conducting immigration  
 20 enforcement operations in [the Los Angeles] area of responsibility.” See  
 21 Declaration of Ernesto Santacruz, Jr., dated June 11, 2025, ECF No. 22-1. In fact,  
 22 Mr. Santacruz, the Acting Field Office Director for U.S. Immigration and Customs  
 23 Enforcement in the Los Angeles Area of Responsibility, stated that National Guard  
 24 personnel have served as a “security element” for U.S. Immigration and  
 25 Enforcement officers and agents and other federal law enforcement personnel  
 26 enforcing civil immigration laws by accompanying civilian law enforcement on

27  
 28 <sup>4</sup> Available on-line at <https://x.com/SecDuffy/status/1934659228750188941>; (June 16, 2025 at 1:07 PM).

1 most enforcement operations conducted in the Los Angeles area. See Supplemental  
 2 Declaration of Ernesto Santacruz, Jr., dated June 18, 2025. ECF No. 84-1. While  
 3 Mr. Santacruz believed that additional resources were necessary to ensure the safety  
 4 of federal personnel engaged in immigration enforcement operations, *id.*, there is no  
 5 requirement that such resources be military personnel who are largely untrained in  
 6 the conduct of civilian law enforcement activity placing both the civil rights and  
 7 civil liberties of citizens as well as the safety of all involved, at risk.

8 Further undermining that stated protection mission, Maj. Gen. Scott  
 9 Sherman, who had been deployed as the commanding general of the National  
 10 Guard Task Force in Los Angeles, testified before the Court on August 11, 2025,  
 11 that military personnel could be deployed whenever local law enforcement was  
 12 carrying out an operation because a threat could develop, even if an active threat  
 13 was not assessed at the time of deployment. “General involved in Trump’s L.A.  
 14 military deployment testifies he didn’t hear protests described as ‘rebellion.’”<sup>5</sup> In  
 15 the one instance where Maj. Gen. Sherman testified that he objected to the use of  
 16 military personnel to support an immigration enforcement operation because he  
 17 assessed the threat to federal personnel to be low, a DHS official questioned his  
 18 loyalty to his country. *Id.* National Guard activities in support of civilian law  
 19 enforcement and the President’s domestic agenda, often framed as expressions of  
 20 patriotism, not only raise questions about compliance with the Posse Comitatus Act  
 21 but also echo the concerns of *Amicus* and its members about how authoritarian  
 22 regimes justify military involvement in civilian affairs to suppress dissent and  
 23 opposing political views.

24  
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27 <sup>5</sup> Katrina Kaufman & Joe Walsh, General Involved in Trump’s L.A. Military  
 28 Deployment Testifies He Didn’t Hear Protests Described as Rebellion, CBS News  
 (Aug. 12, 2025), <https://www.cbsnews.com/news/general-involved-in-trumps-l-a-military-deployment-testifies-he-didnt-hear-protests-described-as-rebellion-trump/>.

1                   **C. The Domestic Deployment of Military Forces in Civilian Spaces**  
 2                   **Can Cause Intimidation and Fear**

3                   When a state governor publicly invites federal support—whether in the form  
 4 of National Guard troops under U.S. Code Title 32 control or even Title 10  
 5 forces—it occurs within a framework of democratic accountability to the local  
 6 citizenry. The governor is elected by the state’s residents and is generally attuned to  
 7 their needs, fears, and political culture. Requests for assistance are typically made  
 8 in the context of an urgent public safety concern, such as natural disaster response  
 9 or an utter breakdown in law enforcement capacity—not to stifle political  
 10 expression.

11                  *Amicus* members have observed in both foreign and domestic contexts that  
 12 the legitimacy of military forces depends heavily on their perceived purpose and  
 13 affiliation. When soldiers arrive at the public request of a governor to restore order  
 14 or to provide essential services after a hurricane, wildfire, or highly destructive riot,  
 15 the population tends to see them as supportive, nonpartisan helpers. Precedent  
 16 shows that federalized National Guard and other domestic deployments are ordered  
 17 only after the governor requests relief. Those scenarios are legitimate uses of  
 18 power.

19                  But when heavily armed military personnel arrive uninvited in moments of  
 20 political protest or social unrest—particularly when those protests involve criticism  
 21 of federal policy or federal officials—the public perception is unmistakably  
 22 different. The symbolism of federal uniforms and combat vehicles can evoke fear,  
 23 not reassurance, when involuntarily imposed and unnecessarily deployed  
 24 domestically. People do not need a legal education to know the difference between  
 25 the protection of federal buildings and personnel, and the military performing local  
 26 law enforcement activities against constitutionally protected activity by the public.  
 27 Even in the Government’s response to Plaintiff’s motion, it claims that “...protests  
 28 and acts of violence “constitute a form of rebellion against the authority of the

1 Government of the United States” to the extent they “directly inhibit the execution  
 2 of the laws.”” ECF No. 116 at 13. While local law enforcement and, under certain  
 3 circumstances as provided by statute, the military can and should address acts of  
 4 violence, the conflation of violence with constitutionally protected activity is a  
 5 warning sign that the true intent of the Government’s actions to unilaterally impose  
 6 itself is to eliminate any political opposition to its policies and actions. Further  
 7 amplifying this point is the President’s post on Truth Social, where he labeled  
 8 Governor Newsom as “incompetent” and claimed that lawful protestors had been  
 9 paid and that they were an “out of control mob of agitators, troublemakers, and/or  
 10 insurrectionists.”<sup>6</sup> To add fuel to this fire, the President, on June 12, 2025, told  
 11 military personnel during a 250th Birthday celebration for the Army at Fort Bragg,  
 12 that the Governor and the Mayor of Los Angeles were “engaged in this willful  
 13 attempt to nullify federal law and aid the occupation of the city by criminal  
 14 invaders,” as if to provide an insufficient post hoc justification for the deployment  
 15 of military personnel. “Trump merchandise sold at Fort Bragg for president’s  
 16 speech now under review,” Anne Flaherty, ABC News, (available at  
 17 [https://abcnews.go.com/US/trump-merchandise-sold-army-base-presidents-speech-](https://abcnews.go.com/US/trump-merchandise-sold-army-base-presidents-speech-now/story?id=122764288)  
 18 [now/story?id=122764288](https://abcnews.go.com/US/trump-merchandise-sold-army-base-presidents-speech-now/story?id=122764288)) (June 12, 2025). As stated above, the President’s  
 19 rhetoric was a precursor to his deployment of the National Guard in Washington,  
 20 D.C., and his suggestion that more deployments, in cities run by his political  
 21 opponents, were coming.

22 *Amicus* members have studied how the presence of military personnel—  
 23 armed, uniformed, and trained for combat—transforms the psychology of civilians.  
 24 Unlike local police, military forces are trained to confront external enemies with the  
 25 force necessary to subdue or extinguish the enemy threat, not to engage in  
 26 proportionate, community-based responses to domestic unrest. Such deployments  
 27

28 <sup>6</sup> Donald J. Trump (@realDonaldTrump), Truth Social (June 11, 2025, 6:53 a.m.),  
<https://truthsocial.com/@realDonaldTrump/posts/114664350602686558>.

1 cause fear, escalate tensions, and often provoke further unrest. Their appearance on  
 2 city streets signals that political dissent is an existential threat to the state, not a  
 3 protected right of the people. It emphasizes that conformity and silence are essential  
 4 to living without harm from the government. The ultimate purpose of their presence  
 5 is to instill fear in civilians who do not support the administration.

6 *Amicus* members recall how, during the 1970s in Latin America, militarized  
 7 public spaces helped consolidate military juntas. In Egypt during the Arab Spring,  
 8 the presence of soldiers in public squares cast a pall over efforts at democratic  
 9 reform.

10 **D. The Use of Military Force Against Domestic Protest Undermines  
 11 U.S. Democratic Credibility Abroad**

12 *Amicus* members have long advanced the values of liberty and self-  
 13 governance in their diplomatic, defense, and intelligence careers. *Amicus* members  
 14 were taught to use their skills and authority against Americans only when consistent  
 15 with and constrained by the rule of law and U.S. democratic principles. They are  
 16 gravely concerned that the use of U.S. military force against Americans exercising  
 17 constitutional rights undermines the United States' credibility in advancing all of  
 18 the United States' interests, including championing democracy, overseas.

19 Authoritarian governments have already begun pointing to domestic military  
 20 deployments in the U.S. to justify their own crackdowns. When the United States  
 21 fails to uphold democratic norms at home, it loses both moral authority and  
 22 strategic influence abroad.

23 **III. CONCLUSION**

24 *Amicus* urges the Court to scrutinize with the utmost care any claim of  
 25 executive authority to deploy the military in domestic contexts. The Court has a  
 26 responsibility to scrutinize carefully the meaning of the relevant statutes, as it did  
 27 initially with the Militia Act and does now in assessing the guardrails established  
 28 by the Posse Comitatus Act. *Amicus* asks that the Court execute this duty in view of

1 the historical and experiential information this brief is providing to the Court. The  
2 historical record is replete with examples of regimes that have used such  
3 deployments in pursuit and implementation of authoritarianism. *Amicus* members  
4 have seen firsthand what happens when a country does not observe its  
5 constitutional protections. The United States must not follow that path. The  
6 preservation of democracy demands vigilant resistance to the normalization of  
7 military force in civil society. Based on the foregoing, *Amicus* urges the Court to  
8 uphold its responsibilities and retain America's steady state by granting the relief  
9 sought by Plaintiffs.

10

11 This 18th day of August 2025.

12

Respectfully submitted,

13

/s/ Steven A. Cash

14

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15

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27

28

## CERTIFICATE OF COMPLIANCE

This BRIEF OF THE STEADY STATE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS REGARDING THE DOMESTIC DEPLOYMENT OF THE UNITED STATES MILITARY AND THE ENGAGEMENT OF MILITARY PERSONNEL IN CIVILIAN LAW ENFORCEMENT type size and typeface comply with Fed. R. App. P. 27(d) because this motion has been prepared using proportionately spaced typeface and uses 14-point, Times New Roman font in Microsoft Word.

I understand that a material misrepresentation can result in the Court's striking the motion and imposing sanctions.

This 18th day of August 2025.

*/s/ Steven A. Cash*

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## CERTIFICATE OF SERVICE

3 I hereby certify that a copy of the foregoing BRIEF OF THE STEADY  
4 STATE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS REGARDING  
5 THE DOMESTIC DEPLOYMENT OF THE UNITED STATES MILITARY AND  
6 THE ENGAGEMENT OF MILITARY PERSONNEL IN CIVILIAN LAW  
7 ENFORCEMENT of The Steady State is being served automatically, via the  
8 Court's ECF system, on all counsel of record.

10 This 18th day of August 2025.

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