

No. 25-6268

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

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STATE OF OREGON, *et. al.*,  
*Plaintiffs-Appellees*,

v.

DONALD J. TRUMP, *in his official capacity as President of the United  
States, et al.*,  
*Defendants-Appellants*.

**On Appeal from the United States District Court  
for the District of Oregon**

No. 3:25-cv-01756

The Honorable Karin J. Immergut

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**BRIEF OF *AMICI CURIAE* VET VOICE FOUNDATION AND RETIRED  
SENIOR MILITARY OFFICERS IN SUPPORT OF PLAINTIFFS-  
APPELLEES AND IN OPPOSITION TO STAY PENDING APPEAL**

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## **CORPORATE DISCLOSURE STATEMENT**

1. Pursuant to Rule Fed. R. App. P. 26.1, *amicus curiae* Vet Voice Foundation is a nonprofit corporation. It has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock. The *amici* Retired Senior Military Officers are individuals.

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## IDENTITY AND INTEREST OF AMICI CURIAE<sup>1</sup>

*Amicus curiae*, Vet Voice Foundation (“VVF”), is a veteran-led, non-profit, non-partisan organization representing almost two million veterans, military family members, and their supporters. VVF represents veterans and military families across the political spectrum and across the country. It strives to support them and their interests, including by championing policies and actions that protect our country’s freedoms and advance our national security.

*Amici curiae* retired senior military officers have extensive experience in leadership roles in the U.S. military, expertise in the factors that contribute to a strong and motivated military force, and demonstrated devotion to the strength of the U.S. military as well as to the United States. Abbreviated biographies for these individuals are included here to give a sense of the well-informed perspectives they bring to this case:

**Major General (Ret.) Paul D. Eaton, U.S. Army** served in the U.S. Army for 33 years. General Eaton’s military career includes command of Infantry units from company to brigade levels, as well as serving as Commanding General of the Infantry Center at Fort Benning and Chief of Infantry. From 2003 to 2004, he led

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<sup>1</sup> All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2). As required by Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* provide this statement: no counsel for a party authored this brief in whole or in part. No person other than amici or their counsel made a monetary contribution to this brief’s preparation or submission.

the effort to build the Iraqi Security Forces as Commanding General of the training command in Iraq—establishing the structure and infrastructure for both the Iraqi Armed Forces and Interior Ministry forces. His other operational deployments included Somalia, Bosnia, and Albania. Additional key assignments included service on the Joint Staff, Deputy Commanding General for Transformation and Stryker Unit Development, and as Assistant Professor and head of the French Department at West Point.

**Major General (Ret.) Randy Manner, U.S. Army** served over three decades in the U.S. Army, culminating in senior leadership roles at the Pentagon and overseas. He was Deputy Commanding General of the U.S. 3rd Army in Kuwait, Acting Vice Chief of the National Guard Bureau, and Acting and Deputy Director of the Defense Threat Reduction Agency. His career included facilitating the 2010 withdrawal of U.S. forces from Iraq, supporting efforts to neutralize Russian chemical weapons, overseeing investments in biological defense research on pathogens like Ebola, coordinating military disaster response for U.S. states, and leading red-team assessments of critical Department of Defense systems against cyber and physical threats. His service and leadership were recognized with numerous awards, including the Distinguished Service Medal with Bronze Oak Leaf Cluster, Defense Superior Service Medal with Bronze Oak Leaf Cluster,



Legion of Merit, Bronze Star Medal, and the Meritorious Service Medal with seven Oak Leaf Clusters.

**Major General (Ret.) Linda Singh, Army National Guard** was the first African American and first woman to serve as Maryland's Adjutant General and has dedicated more than 30 years to military service in both enlisted and officer ranks. Commissioned through Officer Candidate School in 1991, she has held staff and command positions at every level, including as commander of the Maryland Army National Guard and director of the Joint Staff, Maryland National Guard. Singh deployed to Kosovo and completed a combat tour in Afghanistan in support of Operation Enduring Freedom. In 2015, she was appointed the state's top military officer, responsible for leading the Maryland Military Department, overseeing the readiness, training, and administration of more than 6,700 service members and managing a budget of over \$314 million. Her numerous decorations include the Distinguished Service Medal, Legion of Merit, Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal, Afghanistan Campaign Medal, Kosovo Campaign Medal, NATO Medal, Maryland Distinguished Service Cross.

**Major General (Ret.) Tammy Smith, U.S. Army** served 35 years in the United States Army, culminating her career at the Pentagon as Military Advisor to the Assistant Secretary of the Army (Manpower and Reserve Affairs), where she

oversaw quality-of-life programs for more than one million soldiers and families across the Active, Guard, and Reserve force. A logistics officer by training, she held command and staff positions worldwide, including deployments in Panama, Costa Rica, Afghanistan, and South Korea, and served as Deputy Commanding General of the Eighth Army. In 2012 she became the military's first openly LGBT general officer, using her platform to advance inclusion and diversity across the force, earning the Secretary of the Army Diversity in Leadership Award. A decorated combat veteran, her honors include the Distinguished Service Medal, Bronze Star Medal, Legion of Merit, and Combat Action Badge, and she was inducted into the Army ROTC Hall of Fame in 2016.

**Brigadier General (Ret.) Steven M. Anderson, U.S. Army** served a 31-year career in the U.S. Army, specializing in logistics across key command and staff assignments in Korea, Iraq, Kuwait, Afghanistan, Germany, Hawaii, and the Pentagon. His most significant role was as Deputy Chief of Staff for Logistics to General David H. Petraeus during the Multi-National Force in Iraq from 2006 to 2007, where he oversaw critical sustainment operations during the height of the conflict. Anderson retired in 2010 and was recognized with numerous awards, including the Distinguished Service Medal with Oak Leaf Cluster and the Bronze Star.

**Rear Admiral (LH) (Ret.) Michael S. Baker, M.D., F.A.C.S.** is a retired general and trauma surgeon and Rear Admiral, U.S. Navy (Ret.), with a distinguished dual career in medicine and military service. Board certified in General Surgery with fellowship training in cardiovascular surgery, he served as a surgery department chair for more than 20 years and was on the clinical faculty at two medical schools. He has published over 100 peer-reviewed articles, lectured widely at national and international conferences, and taught at U.S. military bases around the world. Dr. Baker has completed 5 tours in Ukraine during the current war to teach Advanced Trauma Life Support to doctors and nurses with the International Medical Corps. In the Navy, he specialized in combat casualty care, triage, trauma, operational medicine, and disaster response, retiring after 30 years with three Legions of Merit, the Marine Corps Combat Action Ribbon, and the Combat Craft River Warfare pin.

*Amici* have a strong interest in this case because federalizing the National Guard on the premise of either “rebellion” or inability to enforce federal law, and the deployment of federalized troops within the United States to address civilian disturbances should occur only in extreme and rare circumstances, as prescribed by law. Deployment of these forces domestically where their assistance is not justified can result in a raft of deleterious short and long-term consequences, including damaging civilian trust in the military and undermining the integrity of the military

itself. In particular, domestic deployment for civilian disturbances in circumstances that have been politicized deeply affects morale within the military community and erodes the view of the military as a politically neutral force whose mission is to protect and serve the country and the people in it. The deployment that is the subject of this case is of grave concern to *amici*.

*Amici* submit this brief to ensure that the perspective of veterans, military families, and former high-ranking military leaders—based on their knowledge of, and service in, the military and their strong interest in the integrity and reputation of the military—is represented before this Court.

## SUMMARY OF ARGUMENT

The federalization and deployment of the Oregon National Guard to respond to civil disturbances against the will of the state’s governor should give any supporter of the military and military members pause. Due to strong legal and moral constraints, such actions have occurred rarely in the history of this country, and that must continue to remain the case. It is the role of the judiciary—a vital check on executive authority—to ensure that any orders that federalize the National Guard and deploy the military in the context of domestic disturbances are properly cabined within one of the circumscribed legal provisions that Congress, pursuant to its Article I powers, has permitted. Deferring too greatly to the executive in these matters risks the morale of military troops and the trust of military communities. Furthermore, it gravely undermines the reputation and integrity of the military as an institution, all of which can harm the military’s effectiveness. While the President is the commander-in-chief, all branches of government have a role in ensuring the proper use of the military domestically.

## ARGUMENT

### **I. There is—and Must be—a High Bar for Military Deployment to Respond to Civilian Disturbances**

As the Supreme Court has correctly recognized, “a traditional and strong resistance of Americans to any military intrusion into civilian affairs . . . has deep roots in our history.” *Laird v. Tatum*, 408 U.S. 1, 15 (1972). The laws of our nation

reflect this by, for example, setting a default of prohibiting use of the military for domestic law enforcement except as “expressly authorized by the Constitution or Act of Congress.” 18 U.S.C. § 1385; *see also* 10 U.S.C. § 275.

The law that President Trump has invoked here, 10 U.S.C. § 12406, allows for federalization of the National Guard when at least one of three circumstances exist: 1) when the country has been invaded or is in danger of being invaded by a foreign country; 2) when there is a rebellion against the government, or a danger of such rebellion; or 3) when “the President is unable with the regular forces to execute the laws of the United States.” The predicates on which the law rests— invasion, rebellion, an inability to execute federal law with the vast power of the federal government’s “regular forces”—speak to the high bar that must be met before the threshold of employing the military in the civilian context is utilized.

Recognizing that the United States military is not a domestic law enforcement organization, prior presidents have only rarely—particularly since the advent of modern federal law enforcement capabilities—called upon the military to be deployed within the country’s borders in response to civilian disturbances. Rarer still is to do so over the objection of states’ governors, who have their own authority over law enforcement and the National Guard. As to the specific federal authority invoked here, prior to this year, the National Guard Bureau Historical Services identifies a single instance when a President relied solely on 10 U.S.C. §

12406. That was over fifty years ago, when the Guard was federalized in 1970 during a “wildcat” strike of the United States Postal Service employees in order to deliver mail. Proclamation No. 3972, 35 Fed. Reg. 5001 (Mar. 23, 1970).<sup>2</sup> There are many reasons that such domestic deployments concerning civilian disturbances are rare, not the least of which is the harm to the military and its community.

## **II. Domestic Deployment of the Military Can Lead to Harmful Consequences**

The laws restricting use of the military in regards to domestic civilian disturbances and prior administrations’ rare use of the legal exceptions make clear that troops should only be federalized or deployed in situations where there is a clear and urgent need that cannot be satisfied by local and state law enforcement, and where the deployment squarely fits within a permissible basis granted by Congress. This is for good reason, as deployment of the military within our country’s borders to be used against its population is not only contrary to core American values, but can also be harmful to the reputation, integrity, and morale of the military itself.

### **A. The U.S. Military Must Remain a Nonpartisan Institution**

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<sup>2</sup> National Guard Bureau Historical Services, *Federalizations of the Guard for Domestic Missions through 2025* (June 9, 2025), <https://www.nationalguard.mil/Portals/31/Documents/FEDERALIZATION-OF-GUARD-UP-TO-2025.pdf>.

A foundational precept of the U.S. military is that it is apolitical. Indeed, “the widely held view is that a military that is nonpartisan is able to serve the sovereign American people regardless of party and to defend all Americans regardless of their affiliation. This, in turn, protects and enables the process of American democracy to occur without fear of military intervention to shape or mandate a particular political outcome.”<sup>3</sup> The U.S. Supreme Court has observed that the

military as such is insulated from both the reality and appearance of acting as a handmaiden for partisan political causes or candidates. Such a policy is wholly consistent with the American constitutional tradition of a politically neutral military establishment under civilian control. It is a policy that has been reflected in numerous laws and military regulations throughout our history.

*Greer v. Spock*, 424 U.S. 828, 839 (1976).

Military institutions and experts have repeatedly emphasized that the military must stand as a nonpartisan institution within American society. Each service branch has policies and directives explaining the importance of political nonpartisanship. For example, an Army primer states: “Nonpartisanship assures the public that our Army will always serve the Constitution and our people loyally and

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<sup>3</sup> Kathleen J. McInnis, Cong. Rsch. Serv., IF 11566, *Congress, Civilian Control of the Military, and Nonpartisanship* (June 10, 2020), [https://www.congress.gov/crs\\_external\\_products/IF/PDF/IF11566/IF11566.1.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF11566/IF11566.1.pdf).



responsively.”<sup>4</sup> The Air Force instructs that “members are prohibited from engaging in certain political activities . . . in order to maintain good order and discipline.”<sup>5</sup> And the Navy’s policy states: “U.S. Armed Forces must refrain from any activity or association that could be interpreted as linking the Services with political causes, candidates, or organizations.”<sup>6</sup>

Respected and high-ranking military leaders agree. In 2008, the Chairman of the Joint Chiefs of Staff wrote a letter to all service members stating: “A professional armed force that stays out of the politics that drive the policies it is sworn to enforce is vital to the preservation of the union and to our way of life.”<sup>7</sup> Marine Corps General Joe Dunford, when he was chairman of the Joint Chiefs of Staff, stated that the American people need to see the military “as an apolitical organization that swears an oath to the Constitution of the United States—not an individual, not a party, not a branch of government—the Constitution of the United States.”<sup>8</sup> And in 2020, 612 former officials including from diplomatic and military

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<sup>4</sup> U.S. Dep’t of Army, *The Army: A Primer to Our Profession of Arms* at 12 (May 1, 2025), [https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUB\\_ID=103102](https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUB_ID=103102).

<sup>5</sup> U.S. Dep’t of Air Force, Instr. 51-902, Political Activities By Members of the U.S. Air Force sec. 1 (27 Aug. 2014).

<sup>6</sup> U.S. Dep’t of Navy, Sec’y of Navy Instr. 5720.44C, Department of the Navy Public Affairs Policy and Navy Regulations § 0103(1) (21 Feb. 2012).

<sup>7</sup> Jeremy S. Weber, *Political Speech, the Military, and the Age of Viral Communication*, 69 A.F.L. Rev. 91, 102 (2013).

<sup>8</sup> Jim Garamone, *Active-Duty Personnel Must Remain Apolitical, Nonpartisan, Dunford Says*, U.S. Dep’t of Def. News (Aug. 1, 2016),

backgrounds wrote: “Misuse of the military for political purposes would weaken the fabric of our democracy, denigrate those who serve in uniform to protect and defend the Constitution, and undermine our nation’s strength abroad.”<sup>9</sup>

Moreover, military leaders have recognized that an apolitical military is especially important when it comes to domestic deployments such as this one: “[The] employment of military personnel in support of civilian law enforcement is an extremely delicate matter and one fraught with tremendous peril. When not done thoughtfully, it endangers the apolitical reputation of the military.”<sup>10</sup>

## **B. The Military is Being Deployed Here in a Deeply Political Context**

Unfortunately, the context of the current deployment has been deeply politicized, placing the military in an untenable position. President Trump himself has repeatedly charged the situation with political invective through social media posts, speeches, and press releases, by levying partisan attacks against Oregon’s Governor, a Democrat, making it clear that he is ordering National Guard

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<https://www.defense.gov/News/News-Stories/Article/Article/881624/active-duty-personnel-must-remain-apolitical-nonpartisan-dunford-says/#:~:text=%E2%80%9CImportantly%2C%20as%20an%20institution%2C,it%20in%20a%20recent%20session.>

<sup>9</sup> Amb. Douglas A. Silliman et al., *The Strength of America’s Apolitical Military*, Just Security (June 15, 2020), <https://www.justsecurity.org/70608/the-strength-of-americas-apolitical-military/>.

<sup>10</sup> Ret. Army Gen. Joseph Votel, *An Apolitical Military is Essential to Maintaining Balance Among American Institutions*, Army Times (June 8, 2020), <https://www.armytimes.com/opinion/commentary/2020/06/08/an-apolitical-military-is-essential-to-maintaining-balance-among-american-institutions/>.

deployment despite the wishes of the Governor to the contrary.<sup>11</sup> Indeed, going even beyond Oregon, he has castigated “Radical Democrat Politicians”<sup>12</sup> across the country, blaming them for “unsafe” cities that must be “straighten[ed] [] out” through deployment of the military.<sup>13</sup> He has also drawn a stark contrast between

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<sup>11</sup> See, e.g., Donald Trump (@realDonaldTrump), Truth Social (Oct. 1, 2025, at 13:37 ET), <https://truthsocial.com/@realDonaldTrump/posts/115300121637799728> (“The Governor of Oregon must be living in a ‘Dream World.’ Portland is a NEVER-ENDING DISASTER. Many people have been badly hurt, and even killed. It is run like a Third World Country.”); Press Release, White House, *President Trump Deploys Federal Resources to Crush Violent Radical Left Terrorism in Portland* (Sept. 30, 2025), <https://www.whitehouse.gov/articles/2025/09/president-trump-deploys-federal-resources-to-crush-violent-radical-left-terrorism-in-portland/> (“The Radical Left’s reign of terror in Portland ends now, with President Donald J. Trump mobilizing federal resources to stop Antifa-led hellfire in its tracks. While Democrat politicians deny reality, it’s obvious what’s happening in Portland isn’t protest; it’s premeditated anarchy that has scarred the city for years — leaving officers battered, citizens terrorized, and property defaced.”); The White House, *President Trump Delivers Remarks to the Department of War*, at 45:30 (YouTube, Sept. 30, 2025) (hereinafter Quantico Speech), <https://www.youtube.com/watch?v=gKxWz8dyKfU> (“How about Portland? Portland, Oregon, where it looks like a war zone. And I get a call from the liberal governor. ‘Sir, please don’t come in. We don’t need you.’ I said, ‘well, unless they’re playing false tapes. This looked like World War II. Your place is burning down. I mean, you must be kidding.’ ‘Sir, we have it under control.’ I said, ‘you don’t have it under control, Governor, but I’ll check it, and I’ll call you back.’ I called her back. I said, ‘this place is a nightmare.’ It’s probably, it’s certainly not the biggest, but it’s one of the worst.”).

<sup>12</sup> See, e.g., Donald Trump (@realDonaldTrump), Truth Social (June 15, 2025, at 20:43 ET), <https://truthsocial.com/@realDonaldTrump/posts/114690267066155731> (“Every day, the Brave Men and Women of ICE are subjected to violence, harassment, and even threats from Radical Democrat Politicians.”).

<sup>13</sup> See Quantico Speech, *supra* note 11, at 43:11.

cities led by Democrats and those that are “red,” or Republican-leaning.<sup>14</sup> And he has branded state and local Democrat officials as enemies who “are sick of mind, hate our Country, and actually want to destroy our Inner Cities.”<sup>15</sup>

In one recent particularly disturbing example, on September 30 the President and Secretary of Defense Pete Hegseth gave highly partisan speeches in front of high-ranking military officials flown in from around the world in Quantico, Virginia that included remarks regarding the deployment to American cities. President Trump referred to cities “run by the radical left Democrats” that are “very unsafe places” and stated he had told Secretary Hegseth “we should use some of these dangerous cities as training grounds for our military”<sup>16</sup>

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<sup>14</sup> Rapid Response 47 (@RapidResponse47), X (Aug. 25, 2025, at 13:21 ET), <https://x.com/RapidResponse47/status/1960029828310352355> (“REPORTER: Would you consider sending the National Guard into ‘red’ cities that are also seeing high crime? @POTUS: Sure — but that [sic] aren't that many of them. If you look at the top 25 cities for crime, just about every one of those cities is run by Democrats.”).

<sup>15</sup> Donald Trump (@realDonaldTrump), Truth Social (June 15, 2025, at 20:43 ET), <https://truthsocial.com/@realDonaldTrump/posts/114690267066155731> (“These, and other such Cities, are the core of the Democrat Power Center, where they use Illegal Aliens to expand their Voter Base, cheat in Elections, and grow the Welfare State, robbing good paying Jobs and Benefits from Hardworking American Citizens. These Radical Left Democrats are sick of mind, hate our Country, and actually want to destroy our Inner Cities.”); *see also* Aaron Rupar (@atrupar), X (Oct. 5, 2025, 16:51 ET), <https://x.com/atrupar/status/1974940532410310821> (“Trump to the Navy: ‘We have to take care of this little gnat that’s on our shoulder called the Democrats.’”).

<sup>16</sup> Quantico Speech, *supra* note 11, at 43:11, 44:30.

In another such example earlier this summer, President Trump gave a speech in front of military on June 10 in Fort Bragg, North Carolina, including remarks regarding the federalization of the National Guard in California. During the speech, he attacked California’s Democratic leaders, “goading jeers from a crowd of soldiers positioned behind his podium—blurring the long-standing and sacrosanct line between the military and partisan politics.”<sup>17</sup> The soldiers selected to be behind the President and therefore visible to cameras were reportedly chosen based on, *inter alia*, political leanings.<sup>18</sup> One military commander called the situation “shameful,” and stated, “This has been a bad week for the Army for anyone who cares about us being a neutral institution.”<sup>19</sup> Retired Lieutenant General Russel Honoré agreed: “@POTUS Speech at #FortBragg was inappropriate, criticizing previous administration, and Generals while speaking to troops, I never witnessed that S..t like this in 37 years in Uniform.”<sup>20</sup> To be clear, *amici* take no position on the President’s political attacks in and of themselves, but strenuously disagree with tying those attacks to involvement of the military domestically.

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<sup>17</sup> Konstantin Toropin & Steve Beynon, *Bragg Soldiers Who Cheered Trump's Political Attacks While in Uniform Were Checked for Allegiance, Appearance*, Military.com (June 11, 2025), <https://www.military.com/daily-news/2025/06/11/bragg-soldiers-who-cheered-trumps-political-attacks-while-uniform-were-checked-allegiance-appearance.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Russel L. Honoré (@ltgrusselhonore), X (June 10, 2025, 16:49 ET), <https://x.com/ltgrusselhonore/status/1932540559085678729>.

### **C. This Deployment Will Harm the Military's Reputation and Morale**

The decidedly political context of the current deployment, as described above, can cause significant harm to the military's cohesiveness and reputation, as well as to the morale of the soldiers being deployed. Gallup polling shows that the U.S. Military is the most trusted out of an array of American institutions.<sup>21</sup> But a military that is thrust into aggressive interactions with civilians in a politicized context will, over time, inevitably lose the respect and trust that it currently has among the American people. As General Randy Manner stated, deploying the military domestically in order to police citizens "is the beginning of a divide between our military and our citizens, and that is absolutely detestable."<sup>22</sup>

Recent polling shows that Americans do not generally support the use of the military to police civil disturbances in the way the Oregon National Guard is being called to do, which can increase tensions between the public and the military. For example, less than a quarter of Americans think the President should be able to deploy the National Guard without a state governor's consent. Additionally, 70% say they disagree that President Trump should be able to use the U.S. military to

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<sup>21</sup> *Confidence in Institutions*, Gallup (last visited Oct. 8, 2025), <https://news.gallup.com/poll/1597/confidence-institutions.aspx>.

<sup>22</sup> Chris Hippensteel, *Trump is Expanding the National Guard's Role. Some Former Generals Worry*, N.Y. Times (Sept. 21, 2025), <https://www.nytimes.com/2025/09/21/us/national-guard-crime-washington-cities.html>.

stop Americans from protesting. Over half of Americans strongly disagree with that possibility.<sup>23</sup> This disapproval from fellow Americans can only exacerbate feelings of isolation and low morale for the military deployed.

A politicized military will also struggle to recruit and retain the best talent, regardless of political views. Potential recruits will feel that they may be forced into actions for political motivations, or that their own political views could be a hindrance to their professional success in the military. One professor of civil-military relations observed when discussing the recent deployment of troops in California: “I also worry about a self-perpetuating cycle of some groups worrying that they are not welcome in the military . . . and that in turn causing the military to become less representative and more and more homogenous.”<sup>24</sup> She went on to explain that such homogeneity is harmful to both our democracy and to the military as an institution. First, “democracy is a system in which any party can lose an election . . . what you want is a military that belongs to the whole society and not to a specific group in society.”<sup>25</sup> Additionally, “we know from all kinds of

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<sup>23</sup> *Americans Oppose Nat’l Guard Deployment Without Governors’ Consent*, States United Democracy Center (June 10, 2025), <https://statesunited.org/resources/national-guard-deployment/>.

<sup>24</sup> The Lawfare Podcast, *Lawfare Daily: Civil Military Relations in the Trump Administration*, Lawfare, at 39:00 to 41:30 (Jul. 2, 2025) (conversation with Lindsay P. Cohn), <https://www.lawfaremedia.org/article/lawfare-daily--civil-military-relations-in-the-trump-administration-july-2>.

<sup>25</sup> *Id.*

research on group decision making that homogeneity may be good for, sort of, shallow social cohesion purposes, but it's really not good for producing, sort of, creative, adaptive problem solving.”<sup>26</sup>

As an organization that supports military members and families, and former senior military leaders, *amici* recognize that those who choose to join the National Guard or regular military are primarily driven out of a desire to serve America and their fellow citizens, not to be turned inwards against them. Having to do so harms military morale, which is an essential part of the effectiveness of any military. As General George Marshall once said, “It is not enough to fight. It is the spirit which we bring to the fight that decides the issue. It is morale that wins the victory.”<sup>27</sup>

Here, the President has not just taken aim at state and local officials from another political party; he has also taken aim at the civilians with whom the military may come into contact when domestically deployed. While running for reelection, President Trump first floated using the military against what he called “the enemy within.”<sup>28</sup> He tasked his subordinates with considering how “military

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<sup>26</sup> *Id.*

<sup>27</sup> General George Marshall, Speech at Trinity College (June 15, 1941), in *Papers of George Catlett Marshall*, 1941.

<sup>28</sup> Stephen Groves, *Trump suggests he'll use the military on 'the enemy from within' the U.S. if he's reelected*, PBS News (Oct. 13, 2024), <https://www.pbs.org/newshour/politics/trump-suggests-hell-use-the-military-on-the-enemy-from-within-the-u-s-if-hes-reelected> (“We have some very bad people. We have some sick people, radical left lunatics. And I think they're the big — and



and national security assets” can be used against ordinary crime, and ordered the creation of a “quick reaction force” for “rapid nationwide deployment.”<sup>29</sup> That rhetoric has continued, and even escalated more recently, with President Trump invoking a “war from within” and an “enemy from within” in the recent speech to military officials, and Secretary Hegseth calling for troops to ignore “stupid rules of engagement” when dealing with these “enemies.”<sup>30</sup>

The likely resulting harm to military morale is not only intuitive, but confirmed by experts. One political scientist observed that a “factor contributing to the reluctance of military commanders to become involved in law enforcement activities is the potential damage to morale and discipline that may result.”<sup>31</sup> Another has stated: “Service members are likely to feel significantly more internal conflict about such a role than about a foreign deployment, increasing their risk of

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it should be very easily handled by, if necessary, by National Guard, or if really necessary, by the military, because they can’t let that happen.”).

<sup>29</sup> Exec. Order No. 14288, 90 Fed. Reg. 18765 (April 28, 2025); Exec. Order No. 14339, 90 Fed. Reg. 42121 (Aug. 28, 2025).

<sup>30</sup> Quantico Speech, *supra* note 11, at 43:25, 50:08; Sec’y of War Pete Hegseth, Address to General & Flag Officers at Quantico, Va. (Sept. 30, 2025), <https://www.war.gov/News/Transcripts/Transcript/Article/4318689/> (“We also don’t fight with stupid rules of engagement. We untie the hands of our warfighters to intimidate, demoralize, hunt and kill the enemies of our country. No more politically correct and overbearing rules of engagement. . . .”).

<sup>31</sup> Colonel Charles, J. Dunlap, Jr., *The Police-ization of the Military*, 27 J. Polit. Mil. Sociol. 217, 224 (1999).

moral injury.”<sup>32</sup> And a recent study conducted by the Department of Veterans Affairs found that moral injury—harm from being forced to act against one’s moral beliefs—resulted in increased severity of negative outcomes experienced by military members, such as PTSD, depression, and anxiety.<sup>33</sup>

Troops recently deployed to other cities have expressed confusion and low morale over their assignments. In one report, six members of the National Guard “including infantrymen, officers and two officials in leadership roles — spoke of low morale and deep concern that the deployment may hurt recruitment for the state-based military force for years to come.”<sup>34</sup> Other reports have described the same. “I think we all feel a little bit anxious about what, why, why we’re here,” said Private First Class Andrew Oliveira.<sup>35</sup> Internal documents show veterans and active duty troops view the deployments “with shame and alarm.”<sup>36</sup> A National

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<sup>32</sup> Lindsay P. Cohn, *Domestic Policing Deployment and Public Trust in the Military*, Lawfare (Oct. 10, 2024), <https://www.lawfaremedia.org/article/domestic-policing-deployment-and-public-trust-in-the-military>.

<sup>33</sup> U.S. Dep’t of Veterans Affairs, Veterans Health Admin., Health Systems Research, *Moral Injury and Mental Health Among US Military Service Members and Veterans* (2024), <https://www.hsrd.research.va.gov/publications/esp/moral-injury.pdf>.

<sup>34</sup> Shawn Hubler, *Trump’s National Guard Troops Are Questioning Their Mission in L.A.*, N.Y. Times (Jul. 16, 2025), <https://www.nytimes.com/2025/07/16/us/trump-national-guard-california.html>.

<sup>35</sup> Ken Klippenstein, *Video: Troops Question Los Angeles Deployment*, Substack (Jul 22, 2025), <https://www.kenklippenstein.com/p/video-troops-question-los-angeles>.

<sup>36</sup> Alex Horton, *National Guard documents show public ‘fear,’ veterans’ ‘shame’ over D.C. presence*, Washington Post (Sept. 10, 2025),

Guard member deployed in California recently also touched upon the idea of moral injury: “The moral injuries of this operation, I think, will be enduring . . . This is not what the military of our country was designed to do, at all.”<sup>37</sup> Another National Guard member simply and bluntly described the assignment as “shitty.”<sup>38</sup>

### **III. Courts Have an Essential Role to Play in Ensuring that the Military Operates within the Law**

Congress has limited the circumstances in which the military can be deployed in the domestic setting, and it is “emphatically the province and duty” of the courts to determine whether the congressional requirements have been met. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803). Here, President Trump has stated he has authority to federalize the California Guard under 10 U.S.C. § 12406(2) and (3) and it is the duty of this Court to determine whether the requirements of those provisions have been met in these circumstances.

This is especially so where the circumstances of this deployment are exceptionally troubling. In addition to the politicized context surrounding the deployment as described above, President Trump has claimed authority to

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<https://www.washingtonpost.com/national-security/2025/09/10/national-guard-trump-dc/>.

<sup>37</sup> Hubler, *supra* note 34.

<sup>38</sup> Andrew Gumbel, *Troops and marines deeply troubled by LA deployment: ‘Morale is not great’*, The Guardian (June 12, 2025), <https://www.theguardian.com/us-news/2025/jun/12/los-angeles-national-guard-troops-marines-morale>.

federalize the National Guard without geographical restriction and delegated to the Secretary of Defense the authority to determine when and where to deploy the military domestically in relation to other possible civilian disturbances.<sup>39</sup> President Trump has stated: “We’re gonna have troops everywhere.”<sup>40</sup>

Since President Trump first used 10 U.S.C. §12406 in June 2025 to federalize the National Guard in California, he and the Secretary of Defense have invoked it three more times thus far to federalize the National Guard from Oregon, Illinois, and Texas.<sup>41</sup> He has also deployed or approved National Guard in Title 32 status to Washington, D.C. and Memphis, Tennessee. While these federalizations were initially for 60 days, Secretary Hegseth has extended the federalization of the California National Guard to 150 days, and apparently intends a further extension through at least January 2026. President Trump and those in his administration have also repeatedly made threats to deploy troops to other locations, all of them

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<sup>39</sup> Memorandum on Department of Defense Security for the Protection of Department of Homeland Security Functions, 2025 Daily Comp. Pres. Doc. 672 (June 7, 2025), <https://www.govinfo.gov/app/details/DCPD-202500672>.

<sup>40</sup> Ed Pilkington, *Trump LA protest response risks turning US military into political force, veterans warn*, The Guardian (June 9, 2025), <https://www.theguardian.com/us-news/2025/jun/09/veterans-trump-national-guard-la-protests>.

<sup>41</sup> Significantly, the federalization of the Texas National Guard was done with the Governor of Texas’s approval and for deployment to other, Democratically-controlled, locations. See Alex Nguyen et al., *Greg Abbott authorizes Trump to deploy Texas National Guard to other states*, The Texas Tribune (Oct. 5, 2025), <https://www.texastribune.org/2025/10/05/greg-abbott-trump-texas-national-guard/>.

controlled by Democratic politicians, including New York City, Baltimore, Oakland, and New Orleans.<sup>42</sup> And President Trump has also recently threatened to invoke the Insurrection Act, and claimed that Portland has “insurrectionists all over the place.”<sup>43</sup>

To deploy the military in response to a largely peaceful protest adequately addressed by civilian authorities in a major American city against the wishes of local officials is an escalation with myriad harms, not least to our military members and families, and such executive action requires careful judicial review. In a nation of laws, not military rule, setting a precedent that allows the executive to federalize the National Guard and deploy the military to any protest across the country will severely harm the military as a trusted and nonpartisan institution.

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<sup>42</sup> See Joey Garrison, *President Trump says other US cities could be next as he deploys National Guard to DC*, USA Today (Aug. 11, 2025), <https://www.usatoday.com/story/news/politics/2025/08/11/trump-national-guard-deployment-us-cities-dc/85610923007/>; Reuters, *Trump says he may send US troops to New Orleans, Louisiana to fight crime* (Sept. 3, 2025), <https://www.reuters.com/world/us/trump-says-he-may-send-us-troops-new-orleans-louisiana-fight-crime-2025-09-03/>.

<sup>43</sup> Emily Schmall et al., *Trump's threat to invoke Insurrection Act escalates showdown with Democratic cities*, Reuters (Oct. 7, 2025), <https://www.reuters.com/world/us/trumps-threat-invoke-insurrection-act-escalates-showdown-with-democratic-cities-2025-10-07/>; Anthony Macuk, *Trump again claims Portland is 'burning to the ground,' assails judge for blocking National Guard*, KGW8 (Oct. 5, 2025), <https://www.kgw.com/article/news/politics/national-politics/trump-again-claims-portland-burning-ground-condemns-court-ruling/283-416f5dbd-f47a-4d58-82ac-ae19349d4c76>.

This court should refrain from impeding the common sense temporary restraining order imposed by the District Court. While this federalization of the Oregon National Guard is impermissible on its own terms, the Court also cannot ignore the totality of the surrounding circumstances. These deployments do not represent the use of the military domestically only when strictly necessary. Instead, the President is using the military as a cudgel against political opponents. The harm that that does—to American principles, values, and traditions, as well as to the military itself—must be prevented.

### CONCLUSION

*Amici* VVF and retired senior military officers ask this Court to consider the factors described above in adjudicating Defendant-Appellants' request for a stay, and to affirm the District Court's grant of an order temporarily restraining the federalization of the Oregon National Guard under 10 U.S.C. § 12406.

Dated: October 8, 2025

Respectfully submitted,

/s/ J. Andrew Boyle

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### **CERTIFICATE OF SERVICE**

I, J. Andrew Boyle, hereby certify that on October 8, 2025, I electronically filed the foregoing Brief of *Amici Curiae* Vet Voice Foundation and Retired Senior Military Officers, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

Dated: October 8, 2025

/s/ J. Andrew Boyle

J. Andrew Boyle

*Attorney for Amici Curiae Vet  
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