No. 25-6268

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

v.

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

On Appeal from the United States District Court for the
District of Oregon
No. 3:25-cv-04870

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION, ACLU OF OREGON, ACLU OF SOUTHERN CALIFORNIA, ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO AND IMPERIAL COUNTIES, ACLU OF ALASKA, ACLU OF ARIZONA, ACLU OF HAWAI'I, ACLU OF IDAHO, ACLU OF MONTANA, ACLU OF NEVADA, ACLU OF WASHINGTON, KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, AND RUTHERFORD INSTITUTE IN SUPPORT OF REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* the American Civil Liberties Union and the American Civil Liberties Unions of Oregon, Southern California, Northern California, San Diego and Imperial Counties, Arizona, Alaska, Hawai'i, Idaho, Montana, Nevada, and Washington, the Knight First Amendment Institute at Columbia University, and the Rutherford Institute state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

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TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF AUTHORITIES v

INTERESTS OF *AMICI CURIAE* ix

INTRODUCTION 1

ARGUMENT 4

I. History and tradition demand judicial scrutiny of the President's use of military troops to regulate civilians. 4

II. The President's deployment of troops in response to overwhelmingly lawful political protests puts First Amendment rights at high risk. 7

III. Precedent does not require the Court to extend "especially deferential" review to the President's legal and factual determinations. 11

CONCLUSION 17

CERTIFICATE OF COMPLIANCE 19

TABLE OF AUTHORITIES

Cases

Baker v. Carr,
369 U.S. 186 (1962) 13

Bissonette v. Haig,
776 F.2d 1384 (8th Cir. 1985) 7

Boos v. Barry,
485 U.S. 312 (1988) 10

Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley,
454 U.S. 290 (1981) 9

Collins v. Jordan,
110 F.3d 1363 (9th Cir. 1996) 10, 11, 16

Doe #1 v. Trump,
957 F.3d 1050 (9th Cir. 2020) 14

Doe v. Mckesson,
71 F.4th 278 (5th Cir. 2023) 9

Edwards v. South Carolina,
372 U.S. 229 (1963) 10

Healy v. James,
408 U.S. 169 (1972) 9

Illinois v. Trump,
No. 25-2798, 2025 WL 2937065 (7th Cir. Oct. 16, 2025) 13

Index Newspapers LLC v. U.S. Marshals Serv.,
977 F.3d 817 (9th Cir. 2020) 11

Laird v. Tatum,
408 U.S. 1 (1972) 4

Long Beach Area Peace Network v. City of Long Beach,
574 F.3d 1011 (9th Cir. 2009) 9

Los Angeles Press Club v. Noem,
No. 25-cv-5563 (C.D. Cal. Sept. 10, 2025) 16

Luther v. Borden,
48 U.S. 1 (1849) 12, 13, 14

Martin v. Mott,
25 U.S. 19 (1827) 12, 13

NAACP v. Button,
371 U.S. 415 (1963) 9

NAACP v. Claiborne Hardware Co.,
458 U.S. 886 (1982) 8, 10

Newsom v. Trump,
141 F.4th 1032 (9th Cir. 2025) 3, 11, 14, 17

Newsom v. Trump,
No. 25-cv-4870 (N.D. Cal. Sept. 2, 2025) 16

Oregon v. Trump,
No. 25-6268, 2025 WL 2951371 (9th Cir. Oct. 20, 2025) 3, 4, 11

Perpich v. Dep't of Defense,
496 U.S. 334 (1990) 1, 5

Reid v. Covert,
354 U.S. 1 (1957) 4, 5

Santopietro v. Howell,
73 F.4th 1016 (9th Cir. 2023) 8

Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression & Criminalization of a Generation v. City of Seattle,
550 F.3d 788 (9th Cir. 2008) 9

Snyder v. Phelps,
562 U.S. 443 (2011) 8, 10

Terminiello v. City of Chicago,
337 U.S. 1 (1949) 9

Texas v. Johnson,
491 U.S. 397 (1989).....10

Tinker v. Des Moines Indep. Cmty. Sch. Dist.,
393 U.S. 503 (1969).....10

Vasquez Perdomo v. Noem,
148 F.4th 656 (9th Cir. 2025).....16

Statutes

10 U.S.C. § 12406..... passim

18 U.S.C. § 1385.....7

Other Authorities

Earl Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181 (1962)....5

Gosia Wozniacka, "Federal Agents Knock Down Elderly Couple During Portland Protest," OregonLive (Oct. 4, 2025).....15

James Madison, Address to the Constitutional Convention (1787), *reprinted in* 1 Records of the Federal Convention of 1787 (Max Farrand ed., 1911).....6

John Adams, Adams' Argument for the Defense (1770), *reprinted in* 3 Legal Papers of John Adams 242 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).....5

President Trump Holds Cabinet Meeting, C-SPAN (Aug. 26, 2025).....1

Presidential Memorandum, Department of Defense Security for the Protection of Department of Homeland Security Functions (June 7, 2025).....2, 11

Samuel Adams, Boston Gazette (Oct. 17, 1768).....6

Sara Roth and Kristyna Wentz-Graff, "Portland Protests Enter a New (Inflated) Era," Or. Pub. Broadcasting (Oct. 17, 2025).....16

The Federalist No. 8 (Alexander Hamilton).....6

William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. 605 (2024).....14

William Blackstone, 1 Commentaries on the Laws of England 413 (1765).....5

William Paterson, 1 Records of the Federal Convention of 1787 (Max Farrand ed., 1911) 6

INTERESTS OF *AMICI CURIAE*[1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, nonprofit organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. Its state affiliates are the ACLUs of Oregon, Southern California, Northern California, San Diego and Imperial Counties, Alaska, Arizona, Hawai'i, Idaho, Montana, Nevada, and Washington. The national ACLU and its state affiliates have appeared before this Court as direct counsel and *amicus curiae* in numerous cases involving First Amendment rights, executive powers, and civil liberties.

The Knight First Amendment Institute at Columbia University is a non-partisan, not-for-profit organization that works to defend the freedoms of speech and the press through strategic litigation, research, and public education.

The Rutherford Institute is a nonprofit civil liberties organization which was founded in 1982 by its President, John W. Whitehead, and provides legal assistance at no charge to individuals whose constitutional rights have been violated and educates the public about issues affecting their freedoms.

[1] *Amici* certify that all parties have consented to this brief's timely filing. *Amici* also certify that no person or entity, other than *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

INTRODUCTION

President Trump's pattern of forcibly federalizing National Guard members and deploying them in response to political protest would have shocked this country's Founders. As *amici* explain, the Founders feared and rejected the use of the military to suppress political opposition. They understood that executive power to deploy federal troops against the civilian population could pose "an intolerable threat to individual liberty." *See Perpich v. Dep't of Defense,* 496 U.S. 334, 340 (1990) (describing the 1787 Constitutional Convention as manifesting a "widespread fear" of military encroachment on civil liberties).

Our laws and traditions reflect the Founders' grave concerns. Congress, the courts, and the executive have long treated military deployment to police the American people as a last resort, appropriate only in the rarest and most urgent emergencies. All three branches of government have repeatedly recognized strict limits on the President's authority to call out federal troops against civilians.

President Trump is flouting these constraints. *See, e.g.*, *President Trump Holds Cabinet Meeting*, at 3:12:29–40, C-SPAN (Aug. 26, 2025), https://bit.ly/4mIDTME ("I [have] the right to do anything I want to do. I'm the President of the United States. If I think our country is in danger, and it is in danger in these cities, I can do it."). Since June, he has claimed unreviewable authority to deploy federal troops to American cities, without geographic or temporal limitation,

in response to political protests against federal policies and abuses. *See* Presidential Memorandum, Department of Defense Security for the Protection of Department of Homeland Security Functions (June 7, 2025), https://perma.cc/FUU3-HDNG ("June 7 Presidential Memorandum").

The playbook from Los Angeles, Portland, and Chicago is now familiar: the President orders federal immigration and other law enforcement agents to conduct intrusive and often violent raids against residents in cities he associates with political opposition. He stokes confrontations with state and local officials who are lawfully seeking to safeguard their communities. When residents exercise their First Amendment right to protest the President's actions—overwhelmingly peacefully—federal agents respond with force, including chemical weapons and stun grenades. Even when protests are small and "sedate," as in Portland, the President uses social media and the bully pulpit to paint a fictitious picture of war-like chaos. Seizing on sporadic or isolated instances of unlawful conduct that local officials can address, the President falsely proclaims himself unable to enforce the law, declares that a rebellion is afoot, and seizes command of National Guard troops under 10 U.S.C. § 12406.

This pattern blatantly disregards First Amendment liberties and established legal doctrine. Courts, including this one, have long recognized that political protest—including civil disturbance and disruption—is a fundamental right and

serves a core function in our democracy. Protest is to be expected when the government takes controversial action. Sporadic unlawful conduct, or the mere *possibility* of it, is not "rebellion" and does not render the government unable to enforce the law. The President's military deployment orders, which unmistakably aim to suppress his political opponents' speech, are constitutionally suspect.

Amici urge the Court to grant rehearing and reconsider the high level of deference it affords the President as he daily claims unprecedented power to override federalism, checks and balances, and our nation's foundational rejection of executive use of the military to suppress political opposition and civil liberties. The sharply-divided and expedited preliminary opinion here, *Oregon v. Trump*, No. 25-6268, 2025 WL 2951371, at *1 (9th Cir. Oct. 20, 2025), applied especially deferential standards articulated in an earlier preliminary, expedited panel opinion, *Newsom v. Trump*, 141 F.4th 1032 (9th Cir. 2025). It did so even more deferentially, *see Oregon*, 2025 WL 2951371, at *22–35 (Graber, J., dissenting), and overturned a district court's findings of fact, credibility assessments, and application of law. A member of the Court called for a vote on rehearing en banc. Order, *Oregon v. Trump*, No. 25-6268, Dkt. 34 (Oct. 8, 2025).

Rehearing en banc is necessary because this case presents questions of "exceptional importance." American history and tradition demand robust judicial review of the President's deployment of the military against civilians. The

President's unprecedented actions place the First Amendment rights of people in this Circuit at high risk. And the 19th-century Supreme Court cases on which the Court relied in extending great deference to the President do not control judicial review of the President's actions.

ARGUMENT

I. History and tradition demand judicial scrutiny of the President's use of military troops to regulate civilians.

No President has ever possessed the unilateral and unreviewable authority to federalize National Guard members and deploy them against American civilians on American soil. This nation's history, traditions, and laws demand robust judicial review of the President's actions.

The "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 Founders "envisioned the army as a necessary institution, but one dangerous to liberty if not confined within its essential bounds." *Reid v. Covert*, 354 U.S. 1, 23–24 (1957). This mistrust of a federal military force was based in part on the Founders' knowledge of the past: they "knew that ancient republics had been overthrown by their military leaders" and "were familiar with the history of Seventeenth Century England, where Charles I tried to govern through the army and without Parliament." *Id.* at 24. Since Oliver Cromwell's autocratic use of the military in the 1600s, *see id.* at 25–26, Anglo-American political thought has warned of the "military tyranny that

ensued" from "the executive power . . . being able to oppress," William Blackstone, 1 Commentaries on the Laws of England 413 (1765).

Personal experience, too, convinced the Founders that using a national military force to regulate the people "posed an intolerable threat to individual liberty and to the sovereignty of the separate States." *Perpich*, 496 U.S. at 340. The colonies "had long been subjected to the intemperance of military power." Earl Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181, 183 (1962). "Within their own lives," the Founders "had seen royal governors sometimes resort to military rule," including by deploying British troops to Boston "to support unpopular royal governors and to intimidate the local populace." *Reid*, 354 U.S. at 27; *see also* John Adams, Adams' Argument for the Defense (1770), *reprinted in* 3 Legal Papers of John Adams 242, 266 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965) (stating, after the 1770 Boston Massacre in which British troops killed five American protestors, that "soldiers quartered in a populous town . . . will always occasion two mobs, where they prevent one").

In short, the Founders' political philosophy was shaped by their knowledge that a ruler's control of a standing army posed an ongoing threat to individual civil liberties. *See* Samuel Adams, Boston Gazette (Oct. 17, 1768), https://perma.cc/T46W-CQMS (opposing British Quartering Acts requiring housing of soldiers with civilians because of concern that soldiers enforcing self-made laws

"by the *power of the sword!* . . . always will happen when troops are put under the direction of an *ambitious* or a *covetous* governor!").

It is little wonder that both Federalists and anti-Federalists, fiercely debating the nascent Constitution, agreed on the perils of using a military force to regulate civilians. *See, e.g.*, James Madison, Address to the Constitutional Convention (1787), *reprinted in* 1 Records of the Federal Convention of 1787, at 465 (Max Farrand ed., 1911) ("A standing military force, with an overgrown Executive will not long be safe companions to liberty . . . . Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people."); The Federalist No. 8 (Alexander Hamilton) (in a military state, civilians "are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights"); William Paterson, 1 Records of the Federal Convention of 1787, at 350 (Max Farrand ed., 1911) ("[Y]ou can no more execute civil Regulations by Military Force than you can unite opposite Elements, than you can mingle Fire with Water…"). The Founders reserved police powers to the States in part for these reasons. *See* Br. of Bipartisan Former Governors as *Amici Curiae* in Support of Hearing En Banc, C.A. Dkt. 66 at 7–9.

The Founders' apprehension of a national army deployed within the United States against the civilian population shapes the law of the modern era. Today, the Posse Comitatus Act embodies the nation's profound resistance to using the military

for ordinary policing, criminalizing the use of federal troops "to execute the laws" except when "expressly authorized by the Constitution or Act of Congress." 18 U.S.C. § 1385. The logic of this prohibition is straightforward: "military enforcement of the civil law leaves the protection of vital Fourth and Fifth Amendment rights in the hands of persons who are not trained to uphold these rights. It may also chill the exercise of fundamental rights, such as the rights to speak freely and to vote, and create the atmosphere of fear and hostility which exists in territories occupied by enemy forces." *Bissonette v. Haig*, 776 F.2d 1384, 1387 (8th Cir. 1985) (footnote omitted).

II. The President's deployment of troops in response to overwhelmingly lawful protests puts First Amendment rights at high risk.

Presidents may not, consistent with First Amendment principles, use the military to quell political protests. This is so even when a protest is associated with a measure of unlawful conduct, including vandalism or clashes with law enforcement. If presidents could deploy the military against any assembly that opposed their policies, so long as some quantum of persons engaged—or *might* engage—in sporadic unprotected acts, then the constitutional right to protest would be transformed beyond recognition. Put differently, if Section 12406 meant what President Trump says it means, it would collide inexorably with First Amendment liberties.

Blackletter First Amendment doctrine establishes that in the context of protest, government officials' role is to facilitate protected activity; any government infringement on the right to protest must withstand constitutional scrutiny. *See Snyder v. Phelps*, 562 U.S. 443, 451–58 (2011); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006). Targeting a protest based on the message it expresses is "presumptively unconstitutional." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). And when the government responds to unlawful conduct associated with protest, it "may not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982) (cleaned up).

Thus, in addressing the unprotected conduct of *some* protesters, the government may not suppress the lawful, protected conduct of *other* protesters, even if they are part of the same general demonstration or share the same viewpoint. *See id.* at 908, 916–19; *see also Santopietro v. Howell*, 73 F.4th 1016, 1025 (9th Cir. 2023) (emphasizing that "[a]ssociation for the purpose of engaging in protected activity is itself protected by the First Amendment" and that "'guilt by association alone . . . is an impermissible basis upon which to deny First Amendment rights'") (quoting *Healy v. James*, 408 U.S. 169, 186 (1972)). Instead, "precision of regulation" is demanded when unprotected conduct occurs in the context of

constitutionally protected activity. *Doe v. Mckesson*, 71 F.4th 278, 289–90 (5th Cir. 2023) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)).

Even—and especially—when the President disregards the constitutional protections afforded to protest, the judiciary must not. Political protest plays an essential role in the American system of self-governance. "[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley*, 454 U.S. 290, 294 (1981). Indeed, "the right to speak freely," including the right to protest, is "one of the chief distinctions that sets us apart from totalitarian regimes." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (cleaned up). For, as this Court has recognized, "robust political discourse within a traditional public forum is the lifeblood of a democracy." *Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression & Criminalization of a Generation v. City of Seattle*, 550 F.3d 788, 797 (9th Cir. 2008); *see also Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1021 (9th Cir. 2009) ("Political speech is . . . critical to the functioning of our democratic system.").

Protest serves this core democratic function particularly "when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminiello*, 337 U.S. at 4. Protest "may cause trouble," but "our Constitution says we must take this risk, and our history says that it is this sort of

hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508–09 (1969) (cleaned up). Accordingly, the Supreme Court has repeatedly held that some forms of activity that might otherwise be subject to civil or criminal liability are, in the context of protest, forms of expression protected by the First Amendment. *See, e.g.*, *Snyder*, 562 U.S. at 451; *Texas v. Johnson*, 491 U.S. 397, 411 (1989); *Boos v. Barry*, 485 U.S. 312, 318 (1988); *Claiborne Hardware*, 458 U.S. at 908; *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963).

Critically here, protests "can be expected when the government acts in highly controversial ways." *Collins v. Jordan*, 110 F.3d 1363,1372 (9th Cir. 1996). "The more controversial the occurrence, the more likely people are to demonstrate." *Id.* Of course, the First Amendment's protections do not extend to violence. *Claiborne Hardware*, 458 U.S. at 916. Yet neither the fact nor risk of some unprotected conduct justifies the extreme measure of deploying the military to police civilians. As this Court has made clear, "[t]he generally accepted way of dealing with unlawful conduct that may be intertwined with First Amendment activity is to punish it after it occurs, rather than to prevent the First Amendment activity from occurring in order

to obviate the possible unlawful conduct." *Collins*, 110 F.3d at 1371–72; *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 834 (9th Cir. 2020) (same).

The President's assertion of unfettered discretion to take command of National Guard troops from Oregon, California, and Texas and deploy them in response to weeks of small, "largely sedate" protests in Portland is not only "untethered to the facts," *Oregon v. Trump*, 2025 WL 2817646, at *5, *11 (D. Or. Oct. 4, 2025), but also incompatible with this bedrock constitutional jurisprudence. The President's June 7 Memorandum, and his subsequent implementations of it in Portland, Los Angeles, and Chicago, shows no acknowledgment or understanding of—let alone intent to comply with—established First Amendment law.

III. Precedent does not require the Court to extend "especially deferential" review to the President's legal and factual determinations.

In two preliminary opinions, panels of this Court overturned district court findings and extended "great" deference to the President's conclusion that facts on the ground satisfied Section 12406's predicate conditions. *Newsom*, 141 F.4th at 1047, 1049–51; *Oregon,* 2025 WL 2951371, at *8; *Newsom*, 141 F.4th at 1047, 1049–51; *but see Index Newspapers LLC*, 977 F.3d at 834 ("It is not our role to second-guess the district court's factual findings" that "the majority of the protests have been peaceful" and "the response to protesters on the public streets of Portland is being handled by" state and local officials).

Each panel placed significant weight on two 19th-century Supreme Court opinions: *Martin v. Mott*, 25 U.S. 19 (1827), and *Luther v. Borden*, 48 U.S. 1 (1849). Neither case supports deferring to the President's factual determinations in the circumstances presented by *Newsom* and *Oregon*. Instead, the holdings in both *Martin* and *Luther* turned on justiciability concerns wholly absent here.

The question in *Martin* concerned military discipline. The case arose when the President invoked the Militia Act of 1795, calling the militia into federal service. *Martin*, 25 U.S. at 28. A militia officer refused to report for federal duty and was court martialed. *Id.* Challenging his punishment, the officer contended that he was under no obligation to answer the President's call because no exigency justified the President's invocation of the Militia Act. *Id.* at 30.

The Supreme Court refused to entertain the officer's argument, rooting its decision in the military chain of command. As the Court explained, "[i]f a superior officer has a right to contest the orders of the President upon his own doubts as to the exigency having arisen, it must be equally the right of every inferior officer and soldier." *Id.* The result would be a breakdown of military effectiveness: the Court reasoned that the country would be unable to defend itself if "subordinate officers or soldiers" were continually "pausing to consider whether they ought to obey" their commander's orders. *Id.* Moreover, said the Court, if military personnel could *challenge* the factual bases for the President's orders under the Militia Act in federal

litigation, then military personnel who immediately *obeyed* the same orders could be subject to "ruinous litigation." *Id.* at 30–31. "Such a course would be subversive of all discipline." *Id.*

The Supreme Court's consequentialist reasoning—the heart of its holding in *Martin*—is inapplicable here. Oregon's challenge does not require this Court to elevate a subordinate military officer's judgment over the President's; nor does it otherwise interpose the federal judiciary in the military chain of command. The *Martin* Court's overriding interests—in preserving military discipline and preventing troops from being held civilly liable for prompt obedience to their commanding officers—are not implicated. *See Illinois v. Trump*, No. 25-2798, 2025 WL 2937065, at *5 (7th Cir. Oct. 16, 2025).

Luther is all the more inapt. The question there was whether the longstanding "charter" government of Rhode Island was legitimately in power on a certain date. *Luther*, 48 U.S. at 38. The Supreme Court held that the answer could be supplied only by the political branches, not the judiciary. *Id.* at 39. Specifically, the Court held that "it rests with Congress to decide what government is the established one in a State," *id.* at 42, and that Congress had, in the Militia Act of 1795, provided a limited delegation of its decision-making authority to the President, *id.* at 43.

That holding in *Luther*, which presaged today's political-question doctrine, was decisive. *See Baker v. Carr*, 369 U.S. 186, 211, 218 (1962) (identifying *Luther*

as one of the "representative cases" whose "analytical threads . . . make up the political question doctrine"). As the Court explained, the President had "recognized" the head of Rhode Island's charter government "as the executive power of the State." *Luther*, 48 U.S. at 44. Having concluded that the power to determine the legitimacy of state governments belonged to the political branches, the Court considered itself bound by the President's recognition. *Id.*; *see also* William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. 605, 707 (2024) (explaining *Luther* "held that the question of which government constituted the lawful government of the state was a political question"). The President's decision to recognize Rhode Island's charter government as legitimate was the sole issue in *Luther*; the President neither called out the militia nor concluded that it was appropriate to do so under the Militia Act. *See Luther*, 48 U.S. at 44.

In sum, neither *Martin* nor *Luther* compels this Court's preliminary conclusion that "review of the President's determinations in *this* context is especially deferential." *Newsom*, 141 F.4th at 1047 (emphasis added). To the contrary, "the President's determination that a statutory precondition exists" for the invocation of Section 12406 "is subject to review like certain other factual findings that are preconditions for executive action under a statute." *Id.* (citing *Doe #1 v. Trump*, 957 F.3d 1050, 1066–67 (9th Cir. 2020)).

Robust review of the executive's factfinding is particularly appropriate here because the President has deployed troops in a manner that suppresses core First Amendment activity. Indeed, the President has repeatedly invoked Section 12406 to seize command of National Guard troops *after* inflammatory federal abuses, based on inaccurate portrayals of overwhelmingly peaceful protest activity.

As Oregon and the City of Portland accurately described to the district court, protests at the Portland ICE facility began in June after ICE officials arrested an asylum seeker at immigration court. They were relatively small and almost entirely peaceful. To the extent that anyone present engaged in unlawful conduct, local police intervened; the need to do so was "limited." Opp'n Br., Dkt. 13 at 4–5. Yet the President baselessly claimed that Portland's residents were "living in hell," described the city as "War ravaged," and instructed the Secretary of Defense to use "Troops" with "Full Force." *Id*. at 1, 6. Portland had every reason to fear these provocations. *See, e.g.,* Gosia Wozniacka, "Federal Agents Knock Down Elderly Couple During Portland Protest," OregonLive (Oct. 4, 2025), https://perma.cc/LW2Y-ZLUS (officers' charge pushed 84-year-old Vietnam veteran off his walker; his wife was hit with a projectile, causing concussion). Still, its people exercised their First Amendment rights in a manner that keeps Portland both "weird" and peaceful. Sara Roth and Kristyna Wentz-Graff, "Portland Protests Enter a New

(Inflated) Era," Or. Pub. Broadcasting (Oct. 17, 2025), https://perma.cc/BS85-YXVN.

In Los Angeles, as in Portland, the President manufactured a pretext to make good on his threats to deploy troops: he ordered armed federal law enforcement to begin "Operation At Large" in Southern California, snatching people from churches, carwashes, and ordinary places of business, and spreading fear and horror through families and communities. *See Vasquez Perdomo v. Noem*, 148 F.4th 656, 663–664, 666 (9th Cir. 2025) (describing start of raids on June 6 and federal agents' actions). When, as might be "expected," *Collins*, 110 F.3d at 1372, the people of Los Angeles protested their neighbors' being snatched from workplaces and homes, the President deployed federal agents who used unlawful and violent measures against them, *See Los Angeles Press Club v. Noem*, No. 25-cv-5563 (C.D. Cal. Sept. 10, 2025), Dkt. 55 at 2, 32 (finding federal agents "unleashed crowd control weapons indiscriminately and with surprising savagery" against gatherings in response to immigration raids "that included community leaders, families including children and elderly individuals, and other concerned community members"). The President then pitted military troops against civilians, over the strenuous objections of local and state authorities. That deployment chilled protesters' speech. *See Newsom v. Trump,* No. 25-cv-4870 (N.D. Cal. Sept. 2, 2025), Dkt. 176 at 11 (presence of U.S. Army Task Force, including federalized National Guard troops, "deterred engagement by

the public, especially by those who might have attempted to hinder or protest an arrest by ICE agents").

In Chicago, as in Los Angeles and Portland, the President has sought to deploy troops over the objections of state and local officials, even though "there is no generalized threat of violence against federal employees," and it is "federal agents" who are "routinely using excessive force against journalists gathering the news, clergy praying in public spaces, and peaceful demonstrators in retaliation for their constitutionally protected activities." Br. of *Amici Curiae* Chicago Headline Club at 3–4, *Trump v. Illinois* (2025) (No. 25A443), https://perma.cc/TJN6-SNXM.

Against this backdrop, it is evident that the President is not entitled to great deference. And it is painfully clear that the President's invocations of Section 12406 were neither "conceived in good faith" nor within the "permitted range of honest judgment." *Newsom*, 141 F.4th at 1050–51 (citation omitted). The Court should not—must not—close its eyes to this reality.

CONCLUSION

Amici respectfully urge the Court to grant rehearing and reconsider its highly deferential standard of review of the President's invocations of Section 12406.

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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