

**NOT YET SCHEDULED FOR ORAL ARGUMENT****No. 25-5418**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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DISTRICT OF COLUMBIA,  
*Plaintiff-Appellee,*

v.

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

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On Appeal from the United States District Court  
for the District of Columbia

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**EMERGENCY MOTION FOR ADMINISTRATIVE STAY  
AND FOR STAY PENDING APPEAL (RELIEF REQUESTED BY  
DECEMBER 4, 2025)**

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BRETT A. SHUMATE  
*Assistant Attorney General*

ERIC D. McARTHUR  
*Deputy Assistant Attorney General*

MARK R. FREEMAN  
SHARON SWINGLE  
ANDREW M. BERNIE  
J. KAIN DAY  
*Attorneys, Appellate Staff  
Civil Division, Room 7539  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530  
202-514-3511*

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

### A. Parties and Amici

Plaintiff-appellee is the District of Columbia. Defendants-appellants are Donald J. Trump, in his official capacity as President of the United States; the United States Department of Defense; Peter B. Hegseth, in his official capacity as Secretary of Defense; the United States Army; Daniel P. Driscoll, in his official capacity as Secretary of the Army; the United States Department of Justice; Pamela J. Bondi, in her official capacity as United States Attorney General; the United States Marshals Service; and Gadyaces S. Seralta, in his official capacity as Director of the United States Marshals Service. The following individuals or entities also noticed appearances and/or filed amicus briefs in the district court: Martin Ackerman, Former U.S. Army and Navy Secretaries and Retired Four-Star Admirals and Generals, Law Enforcement Action Partnership, Center for Policing Equity, National Police Accountability Project, Policing Project at New York University School of Law, Washington Lawyers' Committee for Civil Rights and Urban Affairs, NAACP Legal Defense and Educational Fund, Inc., Democracy Forward Foundation, Mia McClain, Allen Chapel AME Church, National African-American Clergy Network, Metropolitan African Methodist Episcopal Church, Christopher Zacharias, Aaron Alexander, Center for Racial Equity and Justice, New Bethel Baptist Church, Barbara Williams-Skinner, Clergy Network, Peace Baptist Church, Emory United

Methodist Church, Religious Nationalism Project, Howard University School of Law Civil Rights Clinic, Shiloh Baptist Church of Washington, D.C., All Souls Church Unitarian, Interfaith Alliance, Sojourners/Sojo Action, Terrance McKinley, America First Legal Foundation, Mike Howell, Constitutional Accountability Center, Steady State, State of Maryland, State of South Carolina, State of West Virginia, State of Alabama, State of Alaska, State of Arkansas, State of Florida, State of Georgia, State of Idaho, State of Indiana, State of Iowa, State of Kansas, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of North Dakota, State of Ohio, State of Oklahoma, State of South Dakota, State of Tennessee, State of Texas, Commonwealth of Virginia, and Oversight Project.

### **B. Rulings Under Review**

The ruling under review (issued by Judge Jia M. Cobb) is an order (and memorandum opinion) granting a preliminary injunction and a section 705 stay.

### **C. Related Cases**

This case has not previously been before this Court or any court other than the district court. Undersigned counsel is unaware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

*/s/ Andrew M. Bernie*  
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ANDREW M. BERNIE

## TABLE OF CONTENTS

	<u>Page</u>
GLOSSARY	
INTRODUCTION .....	1
STATEMENT .....	4
ARGUMENT .....	10
I.    The Government Is Likely to Succeed on Appeal .....	10
II.   The Remaining Factors Support a Stay .....	19
III.  The Court Should Grant an Administrative Stay .....	22
CONCLUSION .....	23
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	
ADDENDUM	

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## TABLE OF AUTHORITIES

<b>Cases:</b>	<b><u>Page(s)</u></b>
<i>Banner v. United States</i> , 428 F.3d 303 (D.C. Cir. 2005) .....	5
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994) .....	19
<i>Perpich v. Department of Def.</i> , 496 U.S. 334 (1990) .....	4
<i>Seegars v. Ashcroft</i> , 297 F. Supp. 2d 201 (D.D.C. 2004), <i>partially reversed on other grounds</i> , 396 F.3d 1248 (D.C. Cir. 2005) .....	12
<i>Starbucks Corp. v. McKinney</i> , 602 U.S. 339 (2024) .....	19
<i>Stirling v. Minasian</i> , 955 F.3d 795 (9th Cir. 2020) .....	4
<b>U.S. Constitution:</b>	
Art. I, § 8, cl. 17 .....	5
<b>Statutes:</b>	
Pub. L. No. 104-321, 110 Stat. 3877 (1996):	
art. I .....	17
art. III(B) .....	17
32 U.S.C. § 502(f) .....	9
32 U.S.C. § 502(f)(1) .....	1, 2
32 U.S.C. § 502(f)(2)(A) .....	1, 2, 10, 16
D.C. Code § 1–201.01 <i>et seq.</i> .....	5
D.C. Code § 1-206.02(b) .....	5

D.C. Code § 1-207.40(a) .....	20
D.C. Code § 5-201 .....	20
D.C. Code § 7-2332 .....	18
D.C. Code § 23-501 .....	20
D.C. Code § 23-581 .....	20
D.C. Code § 49-102 .....	2, 11
D.C. Code § 49-103 .....	15
D.C. Code § 49-301(a) .....	5
D.C. Code § 49-404 .....	2, 11
D.C. Code § 49-409 .....	5, 12
D.C. Code § 49-901 .....	14

### **Executive Materials:**

Exec. Order No. 11485, 34 Fed. Reg. 15411 (Oct. 3, 1969) .....	5, 14
Exec. Order No. 14333, 90 Fed. Reg. 39301 (Aug. 11, 2025) .....	6
<i>Use of the Nat'l Guard to Support Drug Interdiction Efforts in D.C.</i> , 13 Op. OLC 91 (1989) .....	11, 14
Presidential Memorandum, <i>Restoring Law and Order in the District of Columbia</i> (Aug. 11, 2025) .....	6
U.S. Dep't of Justice, <i>Re Authority to use the Nat'l Guard of D.C. to supplement civilian police force activities during a massive demonstration or parade in D.C.</i> (July 30, 1963).....	11

**Other Authorities:**

Gabe Cohen, <i>DC sues Trump administration over National Guard deployment</i> , CNN (Sept. 4, 2025), <a href="https://www.cnn.com/2025/09/04/politics/washington-dc-sues-trump-national-guard">https://www.cnn.com/2025/09/04/politics/washington-dc-sues-trump-national-guard</a> .....	21
<i>D.C. Home Rule</i> , <a href="https://dccouncil.gov/dc-home-rule/">https://dccouncil.gov/dc-home-rule/</a> .....	16
Lawrence Kapp & Barbara Salazar Torreon, Cong. Rsch. Serv., RL30802, <i>Reserve Component Personnel Issues: Questions and Answers</i> (2021).....	10
<i>Martial Law</i> , Black’s Law Dictionary (12th ed. 2024), Westlaw .....	15
Mayor’s Order 2025-090 (Sep. 2, 2025).....	8
Greg Norman, <i>Bowser pushes police recruitment, says DC needs ‘hundreds more’ cops as Trump federal takeover nears end</i> , Fox News (Sept. 3, 2025), <a href="https://www.foxnews.com/politics/bowser-pushes-police-recruitment-says-dc-needs-hundreds-more-cops-trump-federal-takeover-nears-end">https://www.foxnews.com/politics/bowser-pushes-police-recruitment-says-dc-needs-hundreds-more-cops-trump-federal-takeover-nears-end</a> .....	8

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**GLOSSARY**

Emergency Management Assistance Compact	EMAC
Joint Task Force District of Columbia	JTF-DC
Memorandum of Understanding	MOU
DC's Metropolitan Police Department	MPD
Office of Legal Counsel	OLC

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## INTRODUCTION

The President is the Commander-in-Chief of the District of Columbia National Guard. The District of Columbia is a federal enclave under the legislative control of Congress. And under federal law, the National Guard may be deployed to provide “[s]upport of operations or missions undertaken ... at the request of the President or Secretary of Defense.” 32 U.S.C. § 502(f)(1), (2)(A). A district court has nonetheless issued a sweeping preliminary injunction that blocks the President from deploying a *federal* entity to a *federal* enclave consistent with *federal* law—supposedly because the D.C. Mayor did not request it. This is a wholly unjustified incursion into the territory of both the President and Congress. And in the name of vindicating local interests, it threatens to derail a remarkably successful mission that, with the participation and collaboration of D.C. authorities, including the D.C. Mayor, has reduced crime and improved life in our Nation’s capital. This Court should grant a stay pending appeal, or at minimum an administrative stay, by December 4.

President Trump ordered the mobilization of the D.C. National Guard nearly four months ago. The President also directed the Secretary of War to coordinate with States to deploy additional National Guard members to D.C. at federal expense. The results speak for themselves. The deployment has been a part of a broader federal-local effort between federal agencies and the D.C. Mayor’s office to safeguard the

public from violent crime. The success of that coordination is undeniable. Even D.C.'s Mayor has acknowledged that "violent crime in the District has noticeably decreased" since August, "due to the cooperative efforts between District and federal officials," thereby returning D.C. to its proper pride of place and allowing Americans from all walks of life the ability to visit Washington, D.C., without fear for their safety.

This deployment is plainly lawful. The D.C. Guard is a federal entity over which the President serves as Commander-in-Chief. Even without express statutory authorization, he may deploy them to a federal enclave for federal purposes without judicial second-guessing. In any event, the President also has express statutory power: Federal law authorizes both the D.C. Guard and Guard members from other States to provide "[s]upport of operations or missions undertaken ... at the request of the President or Secretary of Defense," which is exactly what deployed Guard members are doing. 32 U.S.C. § 502(f)(1), (2)(A). If that were not enough, the D.C. Code recognizes the Guard's permissible use "to aid the civil authorities in the execution of the laws," D.C. Code § 49-404, and the Commanding General's power to "order out any portion of the National Guard" for any "duties" he "may deem proper," *id.* § 49-102. It is hard to imagine a decision *less* susceptible to judicial overriding than the Commander-in-Chief's directives that are squarely authorized by multiple federal laws.

The district court's contrary analysis does not withstand scrutiny. The court thought that, with narrow exceptions, the President can only deploy the D.C. Guard upon a request from the Mayor or other civil authorities in response to a riot or similar tumult. But the President does not need local consent to deploy a federal entity to a federal enclave consistent with federal law. And the district court's analysis would leave a vacuum whereby *no one* could order the D.C. National Guard to take routine actions traditionally performed by state national guards.

As to other States' Guards, the district court reasoned that Section 502(f) only permits missions that are authorized by the deploying States' laws. But the district court had no basis for concluding (and did not even attempt to demonstrate) that the deployments violate the laws of any deploying State. The district court also appeared to hold that an interstate compact—to which the federal government is not a party, which concerns requests among the States, and which does not purport to be exclusive—divests the President of his express authority to obtain assistance from state National Guards and transfers that power exclusively to the D.C. Mayor. That conclusion is indefensible.

The equitable factors overwhelmingly favor a stay. The injunction impinges on the President's express statutory authority as Commander-in-Chief of the D.C. National Guard and impermissibly second-guesses his successful efforts to address intolerably high crime rates in the Nation's capital. Meanwhile, the only irreparable

harm to D.C. that the district court identified was a supposed “sovereign” injury. But the District is not a sovereign—it is a creation of Congress. And anyway, the federal mission does not detract from D.C.’s limited delegated authority. Guard members are not making arrests, conducting searches and seizures, or deciding whether to arrest, prosecute, or investigate crime; they are merely deterring crime and supporting federal and local law-enforcement as part of the President’s Safe and Beautiful Task Force. The District itself, and the public interest, are thus equally victims of this misguided injunction.<sup>1</sup>

### STATEMENT

**1.a.** Congress has “created the National Guard of the United States, a federal organization comprised of state national guard units and their members.” *Perpich v. Department of Def.*, 496 U.S. 334, 338 (1990) (citation omitted). Guard members may serve on (1) federal active duty under Title 10; (2) state control in support of a federal mission under Title 32; or (3) state active duty. Title 32 authorizes “members [to] provide military support as state National Guard members under state control” while “in the service of the federal government and funded by the federal government.” *Stirling v. Minasian*, 955 F.3d 795, 798 (9th Cir. 2020). Section

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<sup>1</sup> In opposing a preliminary injunction, Defendants asked the district court to stay any preliminary injunction pending appeal, Dkt. 34 at 43-44, and Defendants repeated that request at the hearing, but the court granted only a 21-day administrative stay “to permit orderly proceedings on appeal.” ADD.60-61.

502(f)(2)(A) of Title 32 provides that Guard members may “be ordered to perform training or other duty,” including “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.”

b. The Constitution provides that “[t]he Congress shall have Power ... [t]o exercise exclusive Legislation in all Cases whatsoever, over such District ... as may ... become the Seat of the Government of the United States.” U.S. Const. art. I, § 8, cl. 17 (first ellipsis in original). The National Guard system thus operates differently in D.C. as compared to the States. The President, rather than a local official, is the D.C. Guard’s Commander-in-Chief. D.C. Code § 49-409. And the President appoints and commissions the D.C. Guard’s Commanding General. *Id.* § 49-301(a). The President has delegated command of the D.C. Guard in its militia status to the Secretary of War, who has delegated that responsibility to the Secretary of the Army. *See* Exec. Order No. 11485, §§ 1, 4, 34 Fed. Reg. 15411, 15411 (Oct. 3, 1969).

In 1973, Congress passed and President Nixon signed the Home Rule Act (codified as amended at D.C. Code § 1–201.01 *et seq.*). Under the Act, “a mayor and council elected by residents of the District exercise certain executive and legislative powers delegated by Congress.” *Banner v. United States*, 428 F.3d 303, 305 (D.C. Cir. 2005) (per curiam). But the Act expressly provides that it does not give the D.C. government any “greater authority over ... the National Guard of the District of Columbia” than it had prior to Home Rule. D.C. Code § 1-206.02(b).

**2.a.** On August 11, President Trump issued Executive Order 14333, “Declaring a Crime Emergency in the District of Columbia.” As the Order notes, the District has a higher violent crime, murder, and robbery rate than all 50 States, and also has the Nation’s highest vehicle theft rate. 90 Fed. Reg. 39301 (Aug. 11, 2025). “Violence and crime hamper the recruitment and retention of essential Federal employees, undermine critical functions of Government and thus the well-being of the entire Nation, and erode confidence in the strength of the United States.” *Id.*

**b.** That same day, President Trump directed the Secretary of War to mobilize the D.C. National Guard. *See* Presidential Memorandum, *Restoring Law and Order in the District of Columbia*, § 1 (Aug. 11, 2025). The President further directed the Secretary “to coordinate with State Governors and authorize the orders of any additional members of the National Guard to active service, as he deems necessary and appropriate, to augment this mission.” *Id.* § 2.

Implementing the memorandum, the Secretary of the Army approved the D.C. Guard’s use to “provide critical support to law enforcement efforts in the District of Columbia.” ADD.139. The Commanding General of the Guard then issued Permanent Order 25-223, ordering Guard members to “protect federal property and functions in the District of Columbia and to support federal and District law enforcement.” ADD.141.

The D.C. Guard also executed memoranda of understanding (MOUs) with National Guard units from several States. ADD.142-73. The MOUs provide that deployed units will remain under the control of the sending States, ADD.142-43, and direct that the MOUs be interpreted consistent with federal and state law. ADD.150. State Guard members began arriving on August 16 and, at the time of the preliminary injunction briefing, numbered approximately 1,235. ADD.69.

c. Since deployment, the National Guards have been organized with a Commanding General overseeing the Joint Task Force District of Columbia (JTF-DC). ADD.67. The JTF-DC's mission is to provide support to D.C.'s Metropolitan Police Department (MPD) as well as federal law enforcement in D.C. ADD.68.

Among other extensive coordination with local authorities, there are daily meetings among JTF-DC, the MPD, the Washington Metro Transit Police Department, the Marshals Service, and the U.S. Park Police. ADD.70. The MPD provides JTF-DC with daily information about suspects to be on the lookout for and any relevant planned MPD operations. ADD.70. The MPD also gives JTF-DC daily updates on the location and frequency of reported crime. ADD.70

National Guard members are not permitted to make arrests, conduct searches or seizures, or engage in similar functions. ADD.68-69. They may make temporary detentions until law enforcement arrives but “[t]he decision of whether to arrest an individual, and any investigation of the underlying incident, are solely the

responsibility of the supported law enforcement agency.” ADD.69. When Guard members observe crime, they call 9-1-1, which dispatches MPD forces to the scene. ADD.71. The JTF-DC thus supports the MPD and other law enforcement agencies by acting as a presence to deter crime, reporting crimes they witness, and assisting law enforcement in support missions when requested to do so. ADD.68. Guard members also patrol sites where the Park Police typically patrols, freeing Park Police to partner with MPD off federal property. ADD.82. These additional resources are particularly beneficial given the District’s acknowledged shortage of police officers. As recently as August 28, Mayor Bowser repeated that D.C.’s longstanding goal has been a 4,000-officer force; MPD currently has approximately 3,188 officers.<sup>2</sup>

d. On September 2, 2025, Mayor Bowser issued Mayor’s Order 2025-090. Section I.B.1 of the Order identified “common goals” with the President’s Safe and Beautiful Task Force. As Mayor Bowser highlighted, the close cooperation between the District and Federal Governments has yielded significant progress: “[s]ince August 11, 2025, due to the cooperative efforts between District and federal officials, violent crime in the District has noticeably decreased.” *Id.* § I.E.

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<sup>2</sup> Greg Norman, *Bowser pushes police recruitment, says DC needs ‘hundreds more’ cops as Trump federal takeover nears end*, Fox News (Sept. 3, 2025), <https://www.foxnews.com/politics/bowser-pushes-police-recruitment-says-dc-needs-hundreds-more-cops-trump-federal-takeover-nears-end>.

**3.a.** Two days after this statement, the D.C. Attorney General filed this action. ADD.87. On September 9, he sought a preliminary injunction that would bar Defendants from deploying National Guard troops “to conduct law enforcement in the District of Columbia without the express consent of the Mayor.” ADD.84. Following discovery and supplemental briefing, the district court held a hearing on the preliminary injunction motion (and Defendants’ motion to dismiss) on October 24.

**b.** On November 20, the district court granted a preliminary injunction. The court did not base its decision on any factual findings, but instead concluded that the deployments were contrary to law in two respects. As to the D.C. Guard, the Court held that their deployment must be specifically authorized by Title 49 of the D.C. Code but was not. ADD.21-37. As to the state Guards, the district court concluded that any deployment must be authorized by state law and that there was no state-law basis for the deployments. ADD.42. And the district court appeared to conclude that, notwithstanding 32 U.S.C. § 502(f), any request for assistance from States to deploy National Guard members to D.C. could only be made under the Emergency Management Assistance Compact (EMAC)—a compact to which the federal government is not a party—and only by the District’s Mayor. ADD.47-50

## ARGUMENT

### I. The Government Is Likely to Succeed on Appeal.

1. The deployment of the D.C. and state National Guards is lawful.

a. The basis for the deployments is straightforward. All the National Guard units are operating in Title 32 status. Title 32 authorizes National Guard members to “be ordered to perform training or other duty,” which may include “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.” 32 U.S.C. § 502(f), (f)(2)(A). Section 502 thus authorizes the President or Secretary to request National Guard units to support a federal mission, which necessarily includes operations in D.C. And nothing in this language limits the type of missions that the President and Secretary of Defense can request.

This provision has been “frequently used.” Lawrence Kapp & Barbara Salazar Torreon, Cong. Rsch. Serv., RL30802, *Reserve Component Personnel Issues: Questions and Answers* 20 (2021). National Guard members were deployed to provide airport security after 9/11; assist with the response to Hurricanes Katrina and Rita in 2005; support border security missions in 2006-2008, 2010-2016, and 2018-2020; support COVID-19 response efforts across the country; and respond to civil disturbances in Washington, D.C. in 2020-2021. *Id.*

In addition, the D.C. Code recognizes the D.C. Guard's use "to aid the civil authorities in the execution of the laws." D.C. Code § 49-404; *Use of the Nat'l Guard to Support Drug Interdiction Efforts in the D.C.*, 13 Op. OLC 91, 97 (1989) (concluding that Sections 49-404 and 49-102 both authorize the D.C. Guard to engage in law enforcement activity). Section 49-102—which provides that the Commanding General "may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper," D.C. Code § 49-102—likewise confers such authority. The phrase "other duties, as he may deem proper" provides broad authority to order out the Guard.

The Executive Branch, moreover, has so interpreted these provisions for decades. In 1963, OLC concluded that Section 49-102 authorized "the President to request or urge the commanding general to use the National Guard in support of activities of the District of Columbia police whenever he feels that the welfare, safety, or interest of the public would be served thereby." *See Re Authority to use the National Guard of the District of Columbia to supplement civilian police force activities during a massive demonstration or parade in the District of Columbia* 3 (July 30, 1963). OLC has consistently adhered to that analysis, explaining more recently that "[t]he authorization to order out the Guard for 'other duties, as he may deem proper' has long been viewed as broad enough to include law enforcement activities." *Use of the Nat'l Guard*, 13 Op. O.L.C. at 93.

**b.** The district court's contrary analysis is wrong.

**i.** As to the D.C. Guard, the district court held that its deployment was not specifically authorized by statute, which the court read as permitting the President to deploy the Guard only for the purposes set forth in D.C. Code § 49-102 (and reading that provision's broad reference to "other duties" not to mean what it says), and for the purposes set forth in section 49-103 only upon request from "the civil authorities" (which the court apparently read as limited to local government officials). ADD.21-37.

Initially, the district court's analysis is untenable on its face. If the district court were right that the President's status as Commander-in-Chief, D.C. Code § 49-409, "is only a designation of command" supplying no freestanding authority, ADD.21, and that the President's only powers to use the Guard are those identified in Sections 49-102 and 49-103 (as narrowly construed by the district court), the D.C. Guard would be unable to perform many of the tasks traditionally performed by National Guards, such as responding to natural disasters like hurricanes, floods, and wildfires. None of these ordinary uses is spelled out in Title 49 of the D.C. Code.

Facial implausibility aside, the district court's analysis is incorrect. For starters, the President does not need express statutory authorization to order the D.C. Guard to undertake the limited mission here. The D.C. Guard is a *federal entity*. *Seegars v. Ashcroft*, 297 F. Supp. 2d 201, 241 (D.D.C. 2004), *partially reversed on*

*other grounds*, 396 F.3d 1248 (D.C. Cir. 2005). The D.C. Code is federal law. And the violent crime problem in D.C. is not simply a local concern, but also endangers federal property and officials. The President, as the Commander in Chief of the D.C. Guard, does not need express statutory authority to utilize those federal forces at his command in support of federal interests.

In concluding otherwise, the district court noted that the President stands in a relation to the D.C. Guard analogous to that of a Governor and a state Guard, and further noted that many state provisions both identify the Governor as Commander-in-Chief and separately spell out the Governor's authority. ADD.22. But to the extent those state provisions are instructive, they underscore that Governors' Commander-in-Chief authorities broadly encompass the power to execute the laws. *See* ADD.25.

Even assuming express statutory authority to deploy the D.C. Guard were needed, moreover, that authority need not be delineated in *Title 49*. As the district court noted, the D.C. National Guard is deployed in a Title 32 status. ADD.20. The D.C. Guard were ordered to duty under Section 502(f)(2)(A). ADD.141. And Section 502(f)(2)(A) clearly authorizes this mission: The D.C. Guard is providing “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.”

But Title 49 provides that express authority as well. As to Section 49-102, the district court read “other duties” as limited to exercises similar to drills, inspections, escorts, and parades. ADD.22. Even under that narrow construction, the district court’s conclusion was erroneous. The Guard’s activities—primarily serving simply *as a presence* at highly trafficked areas, while not making arrests, investigating crimes, or taking similar actions—is not different in kind from, for example, providing escorts.

In any event, the district court’s narrow reading is at odds with the plain text of Section 49-102 as well as section 49-404 and the history of Title 49. As OLC explained, reading “other duties” broadly, consistent with its normal meaning, “is especially appropriate in light of section [49-404] of the Code, which makes it clear that the National Guard, acting as militia, may be ‘called ... to aid the civil authorities in the execution of the laws.’” *Use of the National Guard*, 13 Op. O.L.C. at 93 (ellipsis in original). Another provision of the Code similarly contemplates the Guard being called in aid of the civil authorities in cases other than riots and related breaches of the peace. D.C. Code § 49-901 (“riot, tumult, breach of the peace, or whenever called in aid of the civil authorities”). In addition, a 1969 Executive Order predating the Home Rule Act provides that the Secretary of Defense may order out the D.C. National Guard “to aid the civil authorities of the District of Columbia.” Exec. Order No. 11485 § 1, 34 Fed. Reg. 15411. That underscores that, prior to the

Home Rule Act, the President's authority was well understood to encompass ordering out the Guard to aid the civil authorities. And Congress made clear in Section 1-206.02(b) that the Home Rule Act does not displace that preexisting authority.

The district court also reasoned that any power to “aid” the civil authorities under Section 49-404 “is best read as hinging upon a request by a civil authority under section 49-103.” ADD.32 (emphasis omitted). But “civil authority” is not synonymous with local D.C. government (as is clear from Section 49-103, which allows for requests by federal, not just local, officials). Civil authority in this context simply means civilian officials (as contrasted with the military). *See Martial Law*, Black's Law Dictionary (12th ed. 2024), Westlaw (“The law by which during wartime the army, instead of civil authority, governs the country.”). The President *is himself* part of the District's civil authority.

In any event, Section 49-103 merely provides a procedural mechanism for the Mayor and two specified federal officials to request the D.C. Guard's assistance under specified circumstances—and it provides that, upon such a request, the President is obligated to respond, though the specifics of the response are left to his discretion. D.C. Code § 49-103. It does not impliedly restrict the President's authority under Section 49-404. The reason the Mayor *must make* a request is because the Guard is a federal entity over which D.C. officials have no control.

Nothing in this provision divests the President of his authority over the D.C. National Guard and the Home Rule Act expressly directs otherwise.

Finally, in concluding that the Mayor's consent is necessary, the district court also reasoned that, prior to 1975, district commissioners "needed to call upon the President before the DCNG could be deployed for the enforcement of the laws." ADD.34. But the prior statute the district court invoked simply authorized the commissioners to call on the President for assistance; it did not suggest a request was *required*. In any event, any authority held by the D.C. government before 1975 was not authority *independent* of the President (because the President appointed those individuals). *See* D.C. Home Rule, <https://dccouncil.gov/dc-home-rule/>.

**ii.** The district court's conclusion that the deployment of state National Guards was contrary to law fares no better. The district court reasoned that 32 U.S.C. § 502(f)(2)(A) "is best understood to encompass operations or missions requested by the President that are authorized under state law." ADD.42. By "state law," the district court appears to have meant the law of the deploying state (and the D.C. Code of course is not "state law"). *See* ADD.47-48.

If that is what the district court meant, its analysis is baffling. Defendants never contended that Section 502(f)(2)(A) purports to allow state governors to violate state law. There was thus no briefing on what the relevant state laws permit. The States that agreed to the MOUs presumably determined that the deployments

comported with state law (and as noted above, the MOUs direct that they are to be interpreted consistent with state law). And even if the district court were right that deployments violate the law of the deploying State, the remedy, if any, would be a suit against the State and its Governor.

By contrast, if the district court meant that the deployment of out-of-state National Guards is unlawful because the D.C. Guard's activities are unlawful, that claim fails for the reasons stated above.

Relatedly, the district court appeared to suggest that a request for assistance from state Guards could only come in the form of a request by the Mayor under the EMAC. ADD.48-50. But the EMAC plainly has no relevance to the legality of the requests and resulting deployments here. The EMAC is an interstate compact among the 50 States, D.C., Puerto Rico, and all U.S. Territorial possessions. Pub. L. No. 104-321, 110 Stat. 3877 (1996), art. I. Congress approved the compact but the federal government is not a party to it. The EMAC provides a procedure for signatory States to request assistance from other signatory States, *id.* Art. III(B), but those general provisions are not specific to D.C., do not refer to the Mayor, and are not even limited to National Guard assistance.

In any event, the EMAC is general authority given to the several States (as well as the District, Puerto Rico, and U.S. territories) to obtain assistance *from each other*. Title 32 expressly authorizes the President to authorize use of the National

Guard for a federal purpose and at federal expense. Nothing in the EMAC's language suggests that it is the sole mechanism for obtaining assistance from States, and there is no evidence that Congress thought that either its approval of the Compact or its authorization for the Mayor to execute it divested the President of his express statutory authority to request assistance from state National Guards and placed that responsibility solely in the hands of a local official with no Guard-related responsibilities.

Finally, even if the EMAC were the exclusive mechanism for obtaining assistance, the appropriate authority to make that request would be the President, not the D.C. Mayor. Contrary to the district court, federal law does not “give[] the Mayor power to submit requests under the compact.” ADD.49 (citing only D.C. Code § 7-2332, which merely gives the Mayor authority to execute the compact).

c. Defendants' position does not create “implausible results.” ADD.50. The district court emphasized that the President can only federalize the Guard under Title 10 in specified circumstances, “limited by equally strong restraints,” ADD.54, and suggested that permitting deployments here pursuant to Title 32 undermines those restraints. But unlike National Guard members federalized under Title 10, Guard members in a Title 32 status remain under the command and control of the deploying State, are subject to the deploying State's laws, and are deployed with the consent of the State.

Relatedly, the district court contended that upholding the deployment would mean that States could, at the request of the President, deploy troops to other States without the *receiving State's* consent. ADD.54-55. This is a strawman; Defendants never made any such contention. Nor is that an implication of Defendants' argument. D.C. is not a State, and neither the Home Rule Act nor any other source of law provides the Mayor with any authority to veto the deployment of state Guards in response to the President's request.

## **II. The Remaining Factors Support a Stay.**

The remaining equitable factors favor the government.

1. D.C. will not suffer harm from a stay. Although D.C. attempted to demonstrate concrete harms from the deployment—such as harm to its economy—its showing was flimsy and not even the district court accepted it. The sole basis for the district court's irreparable-harm analysis was its conclusion that the District suffered a sovereign injury because the Guard's deployment supposedly "usurp[s] the District's rights to home rule." ADD.57. But that analysis simply conflates the merits with irreparable harm. The legal violations the district court found—based on the Home Rule Act and a purported lack of authority—are statutory, not constitutional. *See Dalton v. Specter*, 511 U.S. 462, 473 (1994). And alleged violations of a federal statute do not give rise to any presumption of irreparable harm. *See Starbucks Corp. v. McKinney*, 602 U.S. 339, 345-48 (2024).

Nor did the district court identify any concrete sense in which the deployment affects the D.C. government's exercise of delegated powers. The district court contended that "[u]nder D.C. law, the powers to 'preserve the public peace,' 'prevent crime and arrest offenders,' and 'enforce and obey all laws' are reserved to the local elected representatives of the District." ADD.58. But for starters, those powers are at best highly qualified. The D.C. government does not have exclusive law enforcement jurisdiction. The Park Police can make arrests on the same terms as the MPD. D.C. Code § 5-201. The Marshals Service can make arrests for crimes committed in their presence. *Id.* §§ 23-501, 23-581. And if the President determines that emergency conditions require use of the MPD "for federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate." *Id.* § 1-207.40(a).

In any event, the Guard is not "infring[ing] upon the District's right to govern itself and to make its own decisions on key elements of home rule, including how to best deter crime." ADD.58. As discussed above, Guard members are not making arrests, conducting searches and seizures, or making decisions on whether to arrest, prosecute, or investigate crime. Much of their activities consist of providing a presence in certain areas, thus freeing up the District's undermanned police to conduct law enforcement; and MPD is helping facilitate the Guard's efforts.

The district court also framed the injury as undermining the District's supposed right to determine "when to call for emergency assistance from other states." ADD.58. But that is just another way of saying that the D.C. government disagrees (albeit inconsistently<sup>3</sup>) with the deployment decision. That does not constitute irreparable harm and is certainly not a basis for denying a stay.

2. On the other side of the ledger, the injunction impinges on the President's authority as Commander in Chief of the D.C. National Guard and enjoins deployments that are expressly authorized by statute. The injunction also impermissibly second-guesses the President's judgments that crime rates in D.C. are unacceptably high and that Guard deployment would improve conditions (a judgment with which the District's Mayor previously agreed). And in practical terms the injunction nullifies agreements carefully negotiated between the Executive Branch and the executive authorities of several States.

### III. The Court Should Grant An Administrative Stay.

Defendants request an immediate administrative stay. As the district court acknowledged in granting a 21-day administrative stay, ADD.60-61, the injunction

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<sup>3</sup> Mayor Bowser was informed of this action the morning it was filed and "repeatedly declined to endorse the lawsuit." Gabe Cohen, *DC sues Trump administration over National Guard deployment*, CNN (Sept. 4, 2025), <https://www.cnn.com/2025/09/04/politics/washington-dc-sues-trump-national-guard>. Mayor Bowser stated only subsequently that she does not support the Guard's continued deployment. Dkt. 70 at 1-2.

would require halting the deployment of over 2,000 members of the National Guard, including more than 1,000 Guard members who have been deployed out-of-state. That relief—in addition to being extraordinarily disruptive—would alter the status quo as it has existed for approximately four months.

In addition, D.C. waited nearly a month to seek a preliminary injunction, and then substantially delayed resolution of its preliminary injunction motion to seek discovery (which proved irrelevant to the district court's decision). These circumstances underscore that a full stay is warranted but, at the very least, D.C. cannot plausibly contend that an injunction must go into effect before this motion is even resolved.

Defendants respectfully request that the Court issue a decision on Defendants' request for an administrative stay by December 4, to allow Defendants to seek relief from the Supreme Court if a stay is denied.

## CONCLUSION

The Court should grant an immediate administrative stay by December 4 and should grant a stay pending appeal.

Respectfully submitted,

BRETT A. SHUMATE

*Assistant Attorney General*

ERIC D. McARTHUR

*Deputy Assistant Attorney General*

MARK R. FREEMAN

SHARON SWINGLE

J. KAIN DAY

*/s/ Andrew M. Bernie*

ANDREW M. BERNIE

*Attorneys, Appellate Staff*

*Civil Division, Room 7264*

*U.S. Department of Justice*

*950 Pennsylvania Avenue NW*

*Washington, D.C. 20530*

*(202) 514-3411*

*andrew.bernie@usdoj.gov*

NOVEMBER 2025

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 5,141 words. The motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 2016 in proportionally spaced 14-point Times New Roman typeface.

*/s/ Andrew M. Bernie*

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Andrew M. Bernie

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*/s/Andrew M. Bernie*  
\_\_\_\_\_  
ANDREW M. BERNIE

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