

Memorandum: Preparing for Federal Agents at Election Sites

October 2026

This memo is in response to the rise in interest in and use of federal agents, including immigration agents and National Guard or military officers, during elections.

Important note

This memo is for information purposes only. It is not intended to be legal advice or to create an attorney-client relationship.

If you have questions about your particular circumstances, please contact [Public Rights Project](#) or consult your own legal counsel.

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1. Executive Summary

This memorandum provides operational guidance for election officials and their government counsels in the event that agents from Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), or National Guard or other federal troops (collectively, “federal actors”) appear at or near polling places, election offices, ballot dropboxes, or any other area in which election administration or voting occurs (collectively, “election sites”). This memorandum analyzes when the potential activity of federal actors crosses the line into unlawful interference with election administration or voters’ rights, and sets out the operational tools available to local election officials and their counsel should they wish to limit or prohibit these agents’ presence at election sites.¹

¹ This memorandum does not focus on how jurisdictions might litigate claims related to these issues. PRP plans to address these issues in a forthcoming memorandum.

2. Introduction

Recent federal activity suggests a heightened risk that federal law enforcement personnel could be present at or near polling sites, creating new legal and operational challenges for local election officials and their attorneys.

Since the start of the second Trump Administration, President Trump and the Department of Homeland Security (DHS) have significantly ramped up immigration enforcement across the country, ushering in an unprecedented era of aggressive, violent enforcement tactics.² Over the last two years, administration officials have threatened to send agents to election sites on numerous occasions.³ At the same time, The Department of Justice (DOJ) and the Department of Homeland Security (DHS) have increasingly made purported voter fraud a top priority.⁴

Similarly, beginning in 2025 and continuing to the present in some cities, the Trump Administration has utilized federal armed forces, including federalized National Guard troops, to engage in law enforcement-related missions.⁵ Members of the administration have, at various times, hinted that the National Guard could be deployed in connection with the 2026 midterm elections.⁶ It is important that local election officials and their attorneys have the tools at their disposal to quickly, thoughtfully, and strategically respond if such an incident should arise.

3. Federal Immigration Enforcement

This memorandum contemplates several different scenarios involving threatened or actual immigration activity near election sites, including empty threats to send ICE agents to polling locations and actual immigration agent activity at polling locations.

3.1. Background

Since the start of the second Trump Administration, the administration's mass deportation agenda has become deeply intertwined with its position on election administration, suggesting that these

² Kaleah Haddock and Diana Roy, *ICE and Deportations: How Trump is Reshaping Immigration Enforcement*, Council on Foreign Relations (Feb. 27, 2026), <https://www.cfr.org/articles/ice-and-deportations-how-trump-reshaping-immigration-enforcement>. The administration's whole-of-government approach reached a violent and tragic new phase when federal agents fatally shot two U.S. citizens during Operation Metro Surge in Minneapolis, Minnesota in January 2026.

³ See *infra* Part III(A).

⁴ Priscilla Alvarez, Tierney Sneed, and Gabe Cohen, *Exclusive: DHS plans to launch voter fraud investigation surge Tuesday*, CNN (Aug. 31, 2026), <https://www.cnn.com/2026/08/31/politics/homeland-security-voter-fraud-investigations>.

⁵ See *infra* Part IV(A)(3).

⁶ See *infra* Part IV(A)(2).

priorities will continue to converge until the midterm election.⁷ Though an official from DHS stated in September that the agency has no plans to target polling locations during the 2026 midterm election,⁸ the administration has equivocated on numerous occasions when asked the same or similar questions. In February of this year, Press Secretary Karoline Leavitt stated that she “could not guarantee” that ICE agents would not be at polling locations on Election Day.⁹ In May of this year, President Trump stated that he could not rule out that his administration would be sending ICE agents to polling locations.¹⁰ And on September 2, 2026, Secretary of Homeland Security Toood Blanche stated, “I am not sure of the uproar of the risk of having a Border Patrol or an ICE agent at a polling location . . . And so what’s the risk?”¹¹

ICE agents have already appeared at or near polling locations during late 2025 and 2026 primary and special elections, including in Miami, Florida;¹² Syracuse, New York;¹³ San Antonio, Texas;¹⁴ Simi Valley, California;¹⁵ and Los Angeles, California.¹⁶

⁷ For example, DOJ has conducted nationwide efforts to procure states’ voter rolls in order to conduct citizenship checks. The President’s Executive Order from March 2026 directs the Attorney General to investigate and withhold federal funding from election officials who fail to comply with citizen-only voter registration laws. And former Attorney General Pam Bondi sent Minnesota Governor Tim Walz a letter during Operation Metro Surge demanding the state’s voter rolls in exchange for ICE ending the “chaos” in the Minneapolis area.

⁸ Ryan Mancini, *ICE has no plans to ‘sweep polling locations’ for noncitizens, Homan says*, The Hill (Sept. 24, 2026), <https://thehill.com/homenews/administration/6087947-tom-homan-ice-midterm-polls/>.

⁹ Khaleda Rahman, *Karoline Leavitt Refuses To Rule Out Using ICE In Elections*, Newsweek (Feb 6, 2026), <https://www.newsweek.com/karoline-leavitt-refuses-to-rule-out-using-ice-agents-midterm-elections-11474855>.

¹⁰ Matthew Kupfer, *‘Anything necessary’: Trump won’t rule out sending troops to polls*, Democracy Docket (May 12, 2026), <https://www.democracymarket.com/news-alerts/anything-necessary-trump-wont-rule-out-sending-troops-to-polls/>.

¹¹ Yunior Rivas, *DHS chief says ICE could make arrests at polling places — ignoring federal ban on armed agents at voting sites*, Democracy Docket (Sep. 2, 2026), <https://www.democracymarket.com/news-alerts/dhs-chief-says-ice-could-make-arrests-at-polling-places-ignoring-federal-ban/>.

¹² According to reports from partner organizations, on August 3, 2026, the first day of early voting in Florida’s primary, ICE agents were near an early voting location in Little Haiti.

¹³ In June 2026, two ICE agents delivered a warning notice to a poll worker at a voting site in Syracuse, New York, as she was helping carry out the state’s primary elections. The notice related to the poll worker’s social media posts about an immigration agent in Minneapolis. Jacob Knutson, *ICE agents confront New York poll worker during voting, as state prosecutors review incident*, Democracy Docket (Jun 25, 2026), <https://www.democracymarket.com/news-alerts/ice-agents-poll-worker-syracuse-new-york-polling-site-primary-elections/>.

¹⁴ In May 2026, ICE Agents swarmed a vehicle in the parking lot of a polling location. Upon receiving reports of ICE activity, the county sheriff asked the ICE agents to leave the location, and the agents complied. Michael Karlis, *ICE conducts enforcement action at San Antonio voting location, witnesses say*, San Antonio Current (May 20, 2026), <https://www.sacurrent.com/news/san-antonio-news/ice-conducts-enforcement-action-at-san-antonio-voting-location-witnesses-say/>.

¹⁵ During California’s June 2026 primary election, reports circulated that ICE agents appeared at a polling location in Simi Valley, located in Ventura County. A poll worker who was also a member of a grassroots immigration organization notified park rangers about the presence of ICE at the polling location (which was located in a park), and local law enforcement asked ICE to leave the polling location. ICE complied. Wes Woods II, *ICE presence near Simi polling site raises voter intimidation concerns*, Ventura County Star (Jun. 6, 2026), <https://www.vcstar.com/story/news/politics/elections/2026/06/06/report-of-ice-agents-at-simi-valley-polling-place-sparks-questions/90412425007/>.

¹⁶ On November 4, 2025, ICE deployed agents out of Dodger Stadium in Los Angeles on the day of the California’s 2025 Special Redistricting Election. Grassroots groups also observed and reported ICE activity near polling locations in Chavez Ravine. The deployment did not appear to be directed at polling locations. See, *Gov. Newsom response to ICE*

To prepare for possible activity from federal immigration agents, it is helpful to understand the mechanics of how the different agencies that manage immigration agencies operate.

3.1.1. DHS sets overall policy priorities for

Congress delegated the responsibilities for immigration enforcement to immigration officers under the Immigration and Nationality Act¹⁷ and the Homeland Security Act of 2002.¹⁸ The Department of Homeland Security (DHS) is a cabinet-level department that sets overall policy priorities for homeland security, including immigration enforcement, border security, disaster response, and cybersecurity.¹⁹ It is currently headed by the Secretary of Homeland Security, Markwayne Mullin.²⁰ ICE and CBP are sub-agencies within DHS.²¹

DHS has no direct role in the administration or oversight of elections. In fact, its only clear role relates to election cybersecurity. In 2017, DHS designated election infrastructure (voter registration databases, voting machines, polling places, election IT systems) as critical infrastructure, similar to how it treats the power grid or water systems.²² This designation gives states access to DHS cybersecurity resources.²³ However, DHS, through its sub-agency, Homeland Security Investigations (HSI), has broad legal authority to pursue a wide range of federal criminal cases.²⁴ Those agents may exercise the full range of powers granted to immigration officers under 8 U.S.C. § 1357, including the ability to make felony arrests for federal offenses committed in their presence, or any federal felony for which the officer has reasonable grounds to believe that the person being arrested has committed a felony.²⁵

In theory, this means that ICE's immigration team or its HSI team, along with CBP officers, could attempt to arrest individuals that it claims committed voter fraud (a felony violation) or those who aided and abetted in that action (like election officials who helped register these individuals to vote), pursuant to 18 U.S.C. § 2. This has not yet happened. Though the position that election

sighting at Dodger Stadium on Election Day, Spectrum News (Nov. 4, 2025), <https://spectrumlocalnews.com/ca/california/politics/2025/11/04/newsom-ice-at-dodger-stadium-election-day>.

¹⁷ 8 U.S.C. § 1101 *et seq.*

¹⁸ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

¹⁹ *The Department of Homeland Security: A Primer*, [Congress.gov](https://www.congress.gov) (March 21, 2023), <https://www.congress.gov/crs-product/R47446>.

²⁰ *Markwayne Mullin*, Homeland Security (Updated March 25, 2026), <https://www.dhs.gov/markwayne-mullin>.

²¹ [Congress.gov](https://www.congress.gov), *supra* note 18.

²² Eric Fischer, *The Designation of Election Systems as Critical Infrastructure*, Congressional Research Service (July 6, 2018), available at <https://www.hsdl.org/document/813099>.

²³ *Id.*

²⁴ Jillian Snider, *Understanding Federal Law Enforcement in the United States Part 3—U.S. Immigration and Customs Enforcement*, R Street Institute (Mar. 31, 2026), <https://www.rstreet.org/commentary/understanding-federal-law-enforcement-in-the-united-states-part-3-u-s-immigration-and-customs-enforcement/>.

²⁵ See 8 U.S.C. § 1357 (defining the powers of immigration officers); see also 8 CFR § 1.2 (designating immigration agents who work on investigations as “immigration officers”).

officials aided and abetted voter fraud in this scenario is legally dubious, it is possible that the administration may take this position.

3.1.2. CBP agents patrol the border, conduct roving patrols, and operate immigration checkpoints.

United States Customs and Border Protection²⁶ is a federal agency within DHS that is responsible for regulating and facilitating international trade, collecting import duties, as well as enforcing U.S. regulations, including trade, customs, and immigration.²⁷ The United States Border Patrol is a part of CBP.²⁸ Border Patrol agents (CBP agents) are responsible for:

- Patrolling the border;
- Conducting roving patrols within the 100-air miles radius of any external boundary of the United States;²⁹ and
- Operating immigration checkpoints along the interior of the United States at both major roads (“permanent checkpoints”) and secondary roads (“tactical checkpoints”) as part of its enforcement strategy.³⁰

²⁶ CBP derives its customs authority from Title 19 and its immigration authority from Title 8. The enforcement sections relevant for the purpose of this memorandum include:

- **8 U.S.C. § 1357**, which provides the main grant of arrest, interrogation, search, and border-patrol powers to immigration officers (CBP and ICE agents are both embraced by the “immigration officer” title, as defined in 8 U.S.C. § 1101 (a)(18).
- **19 U.S.C. § 482** authorizes customs officers to stop, search, and examine — without a warrant — any “vehicle, beast, or person” on which they suspect there is merchandise subject to duty or unlawfully introduced into the United States, and to seize such merchandise for trial (customs searches).
- **19 U.S.C. § 1461** authorizes customs officers to inspect baggage from any “contiguous country.”
- **19 U.S.C. § 1581** authorizes customs officers to board any vessel at any time and at any place in the United States or within customs waters, examine the manifest and other documents, and search the vessel and every part thereof, any person on board, and any cargo.
- **19 U.S.C. § 1589a** authorizes customs officers to execute and serve any order, subpoena, summons, or process, make an arrest without a warrant for “any offense against the United States committed in the officer’s presence or for a felony, cognizable under the laws of the United States committed outside the officer’s presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony[.]”

²⁷ *About CBP*, U.S. Customs and Border Protection, <https://www.cbp.gov/about>.

²⁸ *Id.*

²⁹ Without a warrant, CBP agents can board vehicles and vessels and search for people without immigration documentation “within a reasonable distance from any external boundary of the United States.” The federal government defines a “reasonable distance” as 100 air miles from any external boundary of the U.S. Combining this federal regulation and the federal law regarding warrantless vehicle searches, CBP claims authority to board a bus or train without a warrant anywhere within this 100-mile zone. These “external boundaries” include international land borders but also the entire U.S. coastline. According to the 2020 census, roughly two-thirds of Americans — more than 213 million people — live inside what CBP defines as the 100-mile border zone. This area encompasses most of the country’s 10 largest cities, including New York City, Los Angeles, and Chicago. A few states, such as Florida, fall completely within this zone, meaning their entire populations are affected. *100 Mile Border Zone*, ACLU (Updated June 8, 2026), <https://www.aclu.org/know-your-rights/border-zone>.

³⁰ *Id.*

CBP used to focus its activities at the “front door” of the United States, whereas ICE traditionally focused its activities on individuals already inside the U.S. border. However, since the start of the Trump administration, the roles of CBP and ICE have blurred to the point that there is no meaningful distinction between the agencies’ activities in practice. Reports from partners in cities in which ICE and CBP have “surged” suggest that CBP officers are typically more physically aggressive than their ICE counterparts.

3.1.3. ICE conducts enforcement and removal operations and homeland security investigations.

Immigration and Customs Enforcement is a federal agency within DHS that conducts two main activities:

- Enforcement and removal operations, including identifying, arresting, detaining, and deporting individuals who are unlawfully present or subject to removal in the United States; and
- Homeland security investigations, including investigating transnational criminal organizations and global drug supply networks.³¹

In practice, ICE agents working on enforcement and removal or investigations may be deployed simultaneously. For example, during Operation Metro Surge, DHS sent agents both to conduct enforcement and removal operations and *also* to investigate allegations of fraud in Minnesota.³² Homeland security investigations are likely unrelated to any issue of election administration or voting. However, the administration has already made claims connecting the two, stating that “election security is national security[.]”³³

3.1.4. Local law enforcement agencies that have 287(g) agreements with DHS can perform specified functions of immigration officers.

ICE’s 287(g) Program delegates to state and local law enforcement officers the authority to perform specified immigration officer functions under ICE’s direction and oversight.³⁴ Government counsels should determine whether their jurisdiction has a 287(g) agreement in place. As of October 2, 2026, ICE has signed 2,617 Memorandums of Agreement for 287(g) programs

³¹ *Enforcement and Removal Operations*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/ero>.

³² DHS sent 1,000 CBP officers and 2,000 ICE officers to the Minneapolis area. Maneed Aleaziz and Madeleine Ngo, *Trump Officials Are Sending 1,000 More Immigration Officers to Minnesota*, N.Y. Times (Jan. 12, 2026), <https://www.nytimes.com/2026/01/12/us/politics/border-patrol-minnesota-surge.html>.

³³ Press Release, Homeland Security, *DHS Secretary Markwayne Mullin Sends Letters to Secretaries of State Warning About Non-Citizens on Voter Rolls*, (Jul. 17, 2026), <https://www.dhs.gov/news/2026/07/17/dhs-secretary-markwayne-mullin-sends-letters-secretaries-state-warning-about-non>.

³⁴ *ICE’s 287(g) Program*, U.S. Immigration and Customs Enforcement, (Updated Sep. 30, 2026), <https://www.ice.gov/identify-and-arrest/287g>. This website includes a list of all jurisdictions with current 287(g) agreements.

covering 39 states and two U.S. Territories.³⁵ To see if your jurisdiction participates in a 287(g) agreement, click on the “View 287(g) Participating Agencies” button on the ICE website here: <https://www.ice.gov/identify-and-arrest/287g>.

3.2. Factors to consider when evaluating potential election-related immigration activity

While any jurisdiction may be a target for immigration activity during election season, certain factors may make it more likely that immigration agents will target your jurisdiction during the voting period:

- Your jurisdiction has large immigrant or mixed-status populations.
- Your jurisdiction has received requests for documents from DOJ or third-party groups or threats of litigation regarding noncitizen voters appearing on your voter rolls.
- Your jurisdiction has a 287(g) agreement with DHS.
- Your jurisdiction will have a congressional election that is high-stakes, followed nationally, or a toss-up during this midterm cycle. (See [here](#) for the “toss-up” races in the upcoming midterms.)
- Your jurisdiction has sanctuary policies in place. (See [here](#) for the DOJ’s recent list of sanctuary jurisdictions.)
- Your jurisdiction has existing infrastructure for ICE or CBP, such as detention facilities, located near election sites.

4. National Guard and Federal Troops

4.1. Legal and Factual Background

In order to understand the concerns that this memo seeks to address, it is important to provide certain legal and factual context.

4.1.1. National Guard statuses

To start, it is important to understand how the modern American military forces function. They are split between the Active-Duty military personnel, serving in the Army, Air Force, Navy, Marine

³⁵ *Id.*

Corps, Coast Guard, and Space Force, the Reserves, and the National Guard.³⁶ The National Guard may operate in one of three different statuses:

- **State Active Duty status:** National Guard forces perform state missions with state funding and operate under the command and control of the state's governor.³⁷
- **Title 32 (hybrid") status:** National Guard forces perform activities specified by Congress or the federal government and are paid with federal funds, but as a legal matter they remain under the command and control of the state governor.³⁸ Under 32 U.S.C. § 502(f)(2)(A), the state guard may be asked to act in "[s]upport of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense." In other words, the President can ask that the state guard be available for a mission, and the funding for the units is federal, but the guard remains under control of the state.
- **Title 10 ("federalized") status:** National Guard forces temporarily become a part of the federal armed forces and operate under the command and control of the president until returned to state status.³⁹

4.1.2. Stated threats to deploy the National Guard to the polls since 2020

The possibility of federal troop deployment in connection with the upcoming election is not merely speculative. As explained further below, the second Trump administration has repeatedly demonstrated its willingness to deploy National Guard troops within American cities.

President Trump and members of his administration have repeatedly refused to rule out federal troop deployment during an election. Following his loss in the 2020 election, some of Trump's advisors suggested that he command the National Guard to seize voting machines.⁴⁰ When asked about this in January of 2026, Trump stated, "Well, I should have."⁴¹ Again in May 2026, when asked if he would consider sending National Guard troops or ICE to the polls in November, Trump responded, "I'd do anything necessary to make sure we have honest elections. We have

³⁶ See Morgan Thomas, *Military 101: Understanding the Differences between Active Duty, National Guard and Reserves*, Council of State Gov'ts (Dec. 19, 2023), <https://www.csg.org/2023/12/19/military-101-understanding-the-differences-between-active-duty-national-guard-and-reserves/>.

³⁷ *National Guard Bureau Fact Sheet*, National Guard, <https://www.nationalguard.mil/Portals/31/Resources/Fact%20Sheets/NGB-Fact-Sheet-Duty-Status-Reference-FINAL.pdf>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Dareh Gregorian, *Trump draft executive order would have authorized National Guard to seize voting machines*, CNBC (Updated Jan. 21, 2022), <https://www.cnbc.com/2022/01/21/trump-draft-executive-order-would-have-authorized-national-guard-to-seize-voting-machines.html>.

⁴¹ Anna Betts, *Trump regrets not seizing voting machines after 2020 election loss*, The Guardian (Jan. 12 2026), <https://www.theguardian.com/us-news/2026/jan/12/trump-voting-machines-election-2020>.

to have honest elections.”⁴² In April 2026, during a hearing in front of the House Armed Services Committee, Secretary of Defense Pete Hegseth similarly refused to commit that he would not obey an order to deploy troops to polling locations.⁴³

The Chairman of the Joint Chiefs has committed that “[t]he Joint Force has no plans to send Federal military personnel or Federalized members of the National Guard to polling places during the 2026 elections” and that “the Joint Force has no plans to use such personnel to seize ballots, voting machines, or other election-related material” in the upcoming November 2026 midterm elections.⁴⁴ However, this individual may not have the final word, and local election officials, their attorneys, and other public officials therefore should be prepared for the possibility that National Guard or other federal troops will be deployed in connection with the 2026 midterm elections.

4.1.3. National Guard deployments during the second Trump Administration

Beginning in the summer of 2025 and continuing into 2026, the second Trump Administration significantly ramped up efforts to deploy National Guard troops in American cities. In Washington, D.C.; Los Angeles; Portland, Oregon; Chicago, Illinois, and elsewhere, the Trump Administration deployed National Guard troops, over the objections of state and local officials, to engage in various activities related to supposed domestic unrest, often in the context of ICE deployments in those cities.

These deployments, and ensuing litigation, generally demonstrated that the President does not have unreviewable authority to deploy federal troops, that courts would consider whether the statutory preconditions of the authorities invoked were met, and that factual evidence played a large role in this determination. These experiences provide valuable context for potential future deployments.

⁴² Joseph Konig, *Trump Says 'I'd Do Anything Necessary' When Asked If He'll Send ICE and National Guard to Voting Locations*, People (May 12, 2026), <https://people.com/trump-comments-on-ice-national-guard-at-voting-locations-11973393>.

⁴³ Tom Latchem, *Pentagon Pete Offers a Chilling Response to Midterms Question*, Daily Beast (Apr. 30, 2026), <https://www.thedailybeast.com/pentagon-pete-hegseths-chilling-response-to-midterms-question/>.

⁴⁴ Letter: Chairman of the Joint Chiefs of Staff Letter to Sen. Elissa Slotkin (Aug. 18, 2026), https://www.slotkin.senate.gov/wp-content/uploads/2026/08/Caine_Response_8_28.pdf.

4.1.3.1. Deployments in Los Angeles, California; Portland, Oregon; and Chicago, Illinois

In 2025, President Trump federalized National Guard troops in Los Angeles, California; Portland, Oregon; and Chicago, Illinois.⁴⁵ The deployments were authorized under 10 U.S.C. § 12406, which permits the President, under specified circumstances, to call National Guard units into federal service.⁴⁶ President Trump invoked the statute on the grounds that protests associated with federal immigration-enforcement operations in each city satisfied two of § 12406’s statutory predicates: that there was a “rebellion or danger of a rebellion against the authority of the Government of the United States” and that the President was “unable with the regular forces to execute the laws of the United States.”⁴⁷ In California, President Trump also deployed 700 United States Marines, who were deployed not under Title 10 status, but rather based on claims of inherent Article II authority.⁴⁸

In each case, the affected states opposed the deployments and filed suit, challenging the federalization on multiple grounds.⁴⁹ Among other arguments, the states contended that the statutory predicates for federalization had not been satisfied, that the deployments violated the Posse Comitatus Act and principles of state sovereignty, and that the federalization orders had not been issued “through the governor” as required by § 12406.⁵⁰ The resulting litigation produced substantial factual records concerning conditions on the ground, with states and local jurisdictions submitting evidence regarding the nature and extent of protests and other activity. The courts also considered the degree of deference owed to the President in determining whether the statutory predicates for federalization had been satisfied.⁵¹

The Chicago litigation was the first of these cases to reach the Supreme Court. On December 23, 2025, the Court effectively blocked the deployment, concluding that the government had “failed

⁴⁵ Presidential Memorandum, Department of Defense Security for the Protection of Department of Homeland Security Personnel and Property (June 7, 2025), <https://www.govinfo.gov/content/pkg/DCPD-202500672/pdf/DCPD-202500672.pdf> (immediately following this Memorandum Secretary of Defense Hegseth issued a Memoranda entitled “Calling Members of the California National Guard into Federal Service”); Memorandum for the Adjutant General, Oregon National Guard through: The Governor of Oregon, Secretary of Defense (Sep. 29, 2025), <https://perma.cc/Z7MQ-NRQQ>; Department of War Security for the Protection of Federal Personnel and Property in Illinois, Presidential Memorandum (Oct. 4, 2025), <https://www.whitehouse.gov/presidential-actions/2025/10/department-of-war-security-for-the-protection-of-federal-personnel-and-property-in-illinois>; Elizabeth Gotein, *What to Know About the Los Angeles Military Deployment*, Brennan Center (June 20, 2025), <https://www.brennancenter.org/our-work/research-reports/what-know-about-los-angeles-military-deployment>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ In Oregon and Illinois, the cities of Portland and Chicago joined the lawsuits, while the city of Los Angeles did not join the California lawsuit.

⁵⁰ See, e.g., *Newsom v. Trump*, 3:25-cv-04870 Compl. Decl. and Inj. Relief (N.D. Cal. Jun. 9, 2025), https://cand.uscourts.gov/sites/default/files/wp-content/uploads/Newsom-v-Trump_Complaint.pdf.

⁵¹ See, e.g., *State of Oregon v. Trump*, 158 F.4th 943 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/10/20/25-6268.pdf>.

to identify a source of authority that would allow the military to execute the laws” in Illinois and emphasizing the exceptional nature of using federal military forces for domestic law enforcement.⁵² Following the Court’s decision, the Trump Administration rescinded the relevant deployment orders in each of the cities, and the resulting litigation concluded in the ensuing months.⁵³

4.1.3.2. Memphis, Tennessee and New Orleans, Louisiana: Title 32 Hybrid Deployments

In New Orleans, Louisiana and Memphis, Tennessee, National Guard troops have been deployed to assist with law enforcement but have remained under the control of the states’ Republican governors. As election officials and attorneys prepare for the election, they should consider the likelihood that their governor would coordinate with attempts to utilize their state’s national guard.

Memphis, TN. In September 2025, President Trump created the Memphis Safe Task Force, consisting of 31 federal, state, and local agencies.⁵⁴ President Trump also instructed the Secretary of War to “make available National Guard units of Tennessee to support public safety and law enforcement operations.”⁵⁵ The Attorney General and the Secretary of Homeland Security were directed to “request such National Guard support as necessary and appropriate” to support the Task Force.⁵⁶ Secretary of Defense Hegseth requested under Title 32 of the United States Code that Tennessee Governor Bill Lee send the Tennessee National Guard to Memphis to support the Task Force.⁵⁷ Governor Lee mobilized the National Guard consistent with state law.⁵⁸ A number of state legislators and officials won a preliminary injunction at the state trial court but the decision

⁵² See *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025).

⁵³ See, e.g., Melody Gutierrez and James Queally, *Trump pulls back National Guard from L.A. and other cities, Newsom claims win*, L.A. Times (Dec. 31, 2025), <https://www.latimes.com/politics/story/2025-12-31/trump-administration-retreats-in-newsom-lawsuit-over-national-guard-deployment?utm;> 100 Oregon National Guard soldiers return home after Portland deployment attempt, KPTV (Jan. 16, 2026), <https://www.kptv.com/2026/01/16/100-oregon-national-guard-soldiers-return-home-after-portland-deployment-attempt/>; Matt Masterson, *Judge Dismisses Lawsuit Challenging National Guard Deployment in Illinois Months After Troops Removed*, WTTW (Apr. 20, 2026), https://news.wttw.com/2026/04/20/judge-dismisses-lawsuit-challenging-national-guard-deployment-illinois-months-after

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⁵⁴ *Restoring Law and Order in Memphis*, Presidential Memorandum (Sept. 15, 2025), <https://www.whitehouse.gov/presidential-actions/2025/09/restoring-law-and-order-in-memphis/>.

⁵⁵ *Id.* at Sec. 3(a).

⁵⁶ *Id.*

⁵⁷ Letter to Gov. Bill Lee from Secretary of Defense Pete Hegseth (Sept. 23, 2025), <https://wreg.com/wp-content/uploads/sites/18/2025/11/SECRETARY-OF-WAR-MEMO-September-15.pdf>.

⁵⁸ Tenn. Code Ann. § 58-1-106(a).

was reversed on appeal, based on a lack of standing.⁵⁹ National Guard troops remain deployed in the city under hybrid status.⁶⁰

New Orleans. In New Orleans, National Guard troops were deployed for eight months—from December 2025 to August 2026—to assist with law enforcement.⁶¹ They remained under Title 32 status, meaning they were under control of the governor.⁶² The deployment was requested by Louisiana Governor Jeff Landry and authorized by President Trump.⁶³

4.1.3.3. Washington, D.C.: Unique Status and Ongoing Deployment of D.C. National Guard and Out-of-State Troops⁶⁴

The deployment of National Guard troops in Washington, D.C. began on August 11, 2025 and is currently ongoing.⁶⁵ In Washington, D.C., National Guard troops are directly under the control of the President, and therefore are not subject to the Posse Comitatus Act.⁶⁶ Many of the troops deployed in Washington, D.C. are state troops from other states, deployed under Title 32 Status.⁶⁷

4.2. Legal authorities to federalize National Guard troops or engage military domestically

To begin: as with efforts to deploy ICE or CBP to the polls, **any efforts to send National Guard or other troops to the polls are unlawful**, as described in Section V below. However, understanding the statutory and constitutional authorities the federal government may invoke will help jurisdictions identify potential legal challenges and operational responses.

⁵⁹ *Harris v. Lee*, No. 25-1461-I, Order on Plaintiffs' Motion for Temporary Injunction (Chan. Ct. 20th Jud. Dist., Davidson Cnty., Tenn. Nov. 17, 2025), <https://tennesseelookout.com/wp-content/uploads/2025/11/National-Guard-injunction.pdf>.

⁶⁰ Deja Davis, Alex Coleman, Katelyn Barker, *National Guard still in Memphis, governor says after mayor says they are leaving*, WREG3 (Updated Aug. 29, 2026), <https://wreg.com/news/local/national-guard-no-longer-working-with-mstf-mayor-harris/>.

⁶¹ Capt. Peter Drasutis, *Louisiana National Guard Concludes Operation NOLA Safe*, National Guard, (Aug. 25, 2026), <https://www.nationalguard.mil/News/Article-View/Article/4582008/louisiana-national-guard-concludes-operation-nola-safe/>.

⁶² Press Release: Gov. Jeff Landry Announces Extension of Louisiana National Guard Security Mission in New Orleans (Mar. 2, 2026), <https://gov.louisiana.gov/news/5069>.

⁶³ *Louisiana governor asks for national guard deployment to New Orleans*, The Guardian (Sep. 30, 2025), <https://www.theguardian.com/us-news/2025/sep/30/jeff-landry-national-guard-new-orleans-louisiana>.

⁶⁴ Because PRP does not engage in election assistance in Washington, D.C. this memo does not provide a deep dive into the legal and operational questions that might impact election officials in Washington, D.C. If requested, PRP can provide analysis related to Washington, D.C. elections.

⁶⁵ Kat Lansdorf, *Trump's National Guard deployment in D.C. has been extended until 2029*, NPR (Jul. 14, 2026), <https://www.npr.org/2026/07/14/nx-s1-5892498/national-guard-deployment-dc-2029>.

⁶⁶ See About Us, District of Columbia National Guard, <https://dc.ng.mil/about-us/>.

⁶⁷ See *Understanding the National Guard*, Protect Democracy (Nov. 26, 2025), <https://protectdemocracy.org/work/understanding-national-guard>.

4.2.1. Baseline Rule: The Posse Comitatus Act’s general prohibition on the military performing civilian law enforcement

The Posse Comitatus Act (“PCA”) serves as the baseline rule barring use of the military or National Guard for law enforcement. The criminal statute states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.⁶⁸

The law, following longstanding American tradition, simply means that members of the military may not participate in civilian law enforcement unless doing so is expressly authorized by a statute or the Constitution. Only if a statutory or Constitutional exception exists, like those described in the following sections, can the National Guard, or other military forces be used for domestic law enforcement. In other words, the below statutes are exceptions to the PCA.

4.2.2. 10 U.S.C. § 12406: Presidential authority to call the National Guard into federal service

One exception to the PCA is 10 U.S.C § 12406, which allows the President to federalize a state’s National Guard troops under Title 10 status. This statute, which was the stated authority for the deployments in Los Angeles, Chicago, and Portland, states in full:

Whenever—

- (1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;
- (2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or
- (3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

⁶⁸ 18 U.S.C. § 1385.

The statute sets forth three categories of preconditions that would allow the president to federalize the National Guard: (1) Invasion or danger of invasion by a foreign nation, (2) rebellion or danger of rebellion, and (3) when the president cannot “execute the laws” using the military forces that are regularly at his command.

In the aforementioned examples, President Trump argued in litigation that the protests in American cities satisfied conditions (2) and (3), because the protests amounted to rebellions or danger of rebellions, and because the protests were so severe that President Trump could not successfully execute laws related to immigration enforcement.⁶⁹ The administration also argued that a president’s determination that these preconditions are met was unreviewable, or alternatively that the president should be afforded significant deference in determining whether the conditions have been met.⁷⁰ No federal court agreed that they lack the authority to determine whether the statute’s conditions are met.⁷¹ While the Supreme Court did not explicitly state that it has authority to determine whether the conditions of the statute are met, it did indeed interpret the meaning of 12406(3), making clear that invocations under the statute are reviewable.⁷²

4.2.2.1. Necessary preconditions that would allow federalization of the National Guard

4.2.2.1.1. Invasion or Danger of Invasion

Although the administration has not previously invoked 10 U.S.C. § 12406(1), involving an invasion or danger of invasion by a foreign power, local election officials and their attorneys should be aware of this precondition. The government may argue, for example, that widespread illegal voting by undocumented immigrants constitutes an “invasion” of the United States. Officials have previously described mass immigration as an “invasion.”⁷³ For purposes of Section 12406, it is important to note that “invasion” is a legal term with “judicially discoverable and manageable standards.”⁷⁴ Analyzing various dictionary definitions and interpretations of “invasion” in other cases, one court explained that the term “invasion” “refer[s] to an armed, hostile, organized force entering an area to conquer or plunder.”⁷⁵

⁶⁹ See *supra* Sec. IV(A)(3)(a)-(c).

⁷⁰ Elizabeth Gotein, *Trump v. Illinois: A Narrow Supreme Court Decision with Broad Implications*, Brennan Center (Jan. 9, 2026), <https://www.brennancenter.org/our-work/analysis-opinion/trump-v-illinois-narrow-supreme-court-decision-broad-implications-0>.

⁷¹ *Id.*

⁷² See *Trump v. Illinois*, 146 S. Ct. 432 (2025).

⁷³ See, e.g., Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua, 90 Fed. Reg. 13,987 (Mar. 20, 2025).

⁷⁴ *Baker v. Carr*, 369 U.S. 186, 217 (1962).

⁷⁵ *United States v. Texas*, 695 F. Supp. 3d 814, 841 (W.D. Tex. 2024).

4.2.2.1.2. Rebellion or Danger of Rebellion

“Rebellion,” like “invasion,” is a term that courts must interpret “consistent with [its] ordinary meaning at the time Congress enacted the statute.”⁷⁶ Considering the term in the context of this statute, the Northern District of California explained:

The Court observes that the dictionary definitions from the turn of the century share several key characteristics. First, a rebellion must not only be violent but also be armed. Second, a rebellion must be organized. Third, a rebellion must be open and avowed. Fourth, a rebellion must be against the government as a whole—often with an aim of overthrowing the government—rather than in opposition to a single law or issue.⁷⁷

Any litigation involving the term “rebellion” would likely involve determining whether the factual scenario meets the legal definition, which requires that a rebellion be (1) violent and armed, (2) organized, (3) open and avowed, and (4) against the government as a whole.

4.2.2.1.3. Unable with regular forces to execute the laws of the United States

In past litigation involving National Guard deployment, the Trump Administration relied most heavily on Section 12406(3), arguing that protests in American cities left the administration unable to execute laws related to immigration enforcement. Although courts considered different aspects of Section 12406(3), including the meaning of “unable,” the meaning of “execute the laws of the United States,” and the meaning of “regular forces,” in *Trump v. Illinois*, the Supreme Court provided its binding ruling on the meaning of this term.⁷⁸ Referring to the meaning of the language “unable with the regular forces,” the Supreme Court explained that this term “likely refers to the regular forces of the United States military.”⁷⁹ In other words, “the statute requires an assessment of the military’s ability to execute the laws” and therefore “applies only where the military could legally execute the laws.”⁸⁰ This means the President “must have statutory or constitutional authority to execute the laws with the regular military and must be ‘unable’ with those forces to perform that function.”⁸¹

Practically speaking, under *Trump v. Illinois*, in order to invoke Section 12406(3), the President must invoke some other legal authority to deploy the federal military first, and then demonstrate that he is *still* unable to effectively execute the law.

⁷⁶ *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (cleaned up).

⁷⁷ *Newsom v. Trump*, 786 F. Supp. 3d 1235, 1253 (N.D. Cal. 2025).

⁷⁸ See generally 146 S. Ct. 432 (2025).

⁷⁹ *Id.* at 434.

⁸⁰ *Id.*

⁸¹ *Id.*

4.2.2.2. Deference to the President

In determining whether the preconditions of 10 U.S.C. 12406 are met, no court has agreed with the President's argument that he is entitled to unlimited deference. However, courts have disagreed about the proper level of deference to be given to the president's determination. The Ninth Circuit, in appeals from the Oregon and California cases, granted President Trump a high level of deference and ultimately agreed with his determination that the statute's predicate conditions were met.⁸²

4.2.2.3. "Through the Governor" Provision

10 U.S.C. § 12406 includes a provision that "[o]rders for these purposes shall be issued through the governors of the States."⁸³ States have argued that this requires more than just a statement that the National Guard is being deployed through the state, but rather some actual compliance by the state governor.⁸⁴ No court has accepted this argument. In *Newsom v. Trump*, the Ninth Circuit explained that the administration's actions in California "likely met the procedural requirement because the federalization order was issued through an agent of the Governor in the Governor's name."⁸⁵ There, the order was issued through the State Adjutant General who "is chief of staff to the Governor, subordinate only to the Governor and is the commander of all state military forces" and the Adjutant General's duties include "issu[ing] all orders in the name of the Governor."⁸⁶ As such, a governor's refusal to comply with the president's directive under 10 U.S.C. § 12406 is likely not a sufficient bar to use of this statute.

4.2.3. The Insurrection Act: Limited authority for domestic use of federal military forces

The Insurrection Act (10 U.S.C. §§ 251-55) represents another exception to the PCA, meaning when its conditions are met, the president may deploy the military or federalized National Guard to engage in law enforcement. The Act has not been invoked since 1992, and it has been used sparingly throughout American history, generally to respond to moments of severe violence.⁸⁷ Although the Insurrection Act has not been litigated, following the litigation concerning invocations of 10 U.S.C. § 12406, there is reason to believe that courts, including the Supreme Court, would not view the president's invocations of the Insurrection Act as solely within his

⁸² *Newsom v. Trump*, 141 F.4th 1032, 1040 (9th Cir. 2025) ("under longstanding precedent interpreting the statutory predecessor to § 12406, our review of that decision must be highly deferential."); *Oregon v. Trump*, 157 F.4th 1013, 1026 (9th Cir.), reh'g en banc granted, opinion vacated, 159 F.4th 1159 (9th Cir. 2025), and reh'g en banc granted, opinion vacated, 165 F.4th 1158 (9th Cir. 2025) (restating the *Newsom* standard).

⁸³ 10 U.S.C. § 12406.

⁸⁴ See, e.g., *Newsom, et al. v. Trump, et al.*, 3:25-cv-04870, Complaint (Jun. 9, 2025) https://cand.uscourts.gov/sites/default/files/wp-content/uploads/Newsom-v-Trump_Complaint.pdf.

⁸⁵ *Newsom v. Trump*, 141 F.4th 1032, 1052 (9th Cir. 2025).

⁸⁶ *Id.* (citing CAL. MIL. & VET. CODE § 160, 163).

⁸⁷ *The Insurrection Act, explained*, Protect Democracy (Nov. 26, 2025) <https://protectdemocracy.org/work/insurrection-act-explained/>.

discretion and outside of the court's review.⁸⁸ The litigation regarding past National Guard deployments demonstrates that courts are interested in hearing about the factual circumstances and on the ground conditions that the president claims require the deployment. As such, jurisdictions should consider gathering evidence to support any argument that the statutory conditions of the Insurrection Act have not been met.

4.2.3.1. 10 U.S.C. § 251⁸⁹

The first section of the Insurrection Act applies only when a state's governor or legislature requests that the President federalize the state's National Guard troops to respond to an insurrection in the state. It remains unclear if a court can determine whether the predicate condition, "[w]henver there is an insurrection in any State against its government," is met.⁹⁰

4.2.3.2. 10 U.S.C. § 252

This provision of the Insurrection Act allows the president to use federalized National Guard forces and other federal armed forces inside a state, without the state's consent, when certain conditions prevent the federal government from enforcing federal law through ordinary judicial processes. The section states in full:

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.⁹¹

Section 252 differs from Section 251 in that it allows the president to take action without the state's consent or request. However, it is likely that the president's determination that the predicate conditions of Section 252 are met, like his determinations that preconditions under 10 U.S.C. § 12406 are met, would be subject to judicial review. If such determination is reviewable, the federal government would need to demonstrate that the various predicate conditions of the statute, including "unlawful obstructions, combinations, or assemblages, or rebellion against the

⁸⁸ Elizabeth Gotein, *Trump v. Illinois: A Narrow Supreme Court Decision with Broad Implications*, Brennan Center (Jan. 9, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/trump-v-illinois-narrow-supreme-court-decision-broad-implications-0>.

⁸⁹ ("Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.").

⁹⁰ *Id.* Please reach out to Public Rights Project for additional support if you are concerned that your government will affirmatively request federalized National Guard support during the upcoming election: elections@publicrightspj.org

⁹¹ 10 U.S.C. § 252.

authority of the United States,” have impacted the president’s ability to enforce the laws through ordinary judicial process.⁹² “Enforce the laws” in Section 252, like “execute the laws” in Section 12406, has a particular meaning that a Court would have to interpret.⁹³

4.2.3.3. 10 U.S.C. § 253

10 U.S.C. § 253 authorizes the President to use the armed forces or federalized National Guard to suppress certain forms of insurrection, domestic violence, unlawful combinations, or conspiracies that interfere with the enforcement of federal law or deprive persons of federally protected rights. The section states in full:

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it-

- (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
- (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.⁹⁴

This section, like the others, would likely be subject to judicial review to determine if the predicate conditions have been met. Notably, this section allows the president to call upon not only the militia (National Guard) but also any members of the armed forces, which would include members of the Army, Navy, and other military units. Like Section 252, this section does not require a state’s consent.

For purposes of election administration, while President Trump has not raised the prospect of invoking this provision, it is possible that he might argue that actions taken by the states are failing to protect the rights and privileges of those states’ citizens to vote in the elections, and

⁹² *Id.*

⁹³ Laura A. Dickinson, *How the Insurrection Act (Properly Understood) Limits Domestic Deployments of the U.S. Military*, Lawfare (Sept. 12, 2024), [https://www.lawfaremedia.org/article/how-the-insurrection-act-\(properly-understood\)-limits-domestic-deployments-of-the-u.s.-military](https://www.lawfaremedia.org/article/how-the-insurrection-act-(properly-understood)-limits-domestic-deployments-of-the-u.s.-military).

⁹⁴ 10 U.S.C. § 253.

therefore the use of federal troops is necessary. Alternatively, he may argue that allowing an unlawful election to go forward impeded the execution of law or course of justice. Most important for local election officials and attorneys is to understand the statutory conditions and how one might challenge an invocation of Section 253(1) or (2) if necessary.

4.2.4. 10 U.S.C. Chapter 15: Military Support for Civilian Law Enforcement Agencies

Chapter 15 of Title 10 of the U.S. Code (which includes the 1981 Military Cooperation With Civilian Law Enforcement Agencies Act and other authorities) authorizes a range of federal military assistance to law enforcement agencies, **but does not authorize direct participation in core law enforcement activities.**⁹⁵ These provisions are likely not particularly relevant for the upcoming election, but are included here for awareness.⁹⁶

4.2.5. Inherent Article II Authority

The Trump Administration has argued at various times that it has inherent Article II authority to take all actions necessary to take care that laws are executed, including laws related to fair elections.⁹⁷ However, while Article II § 2, cl. 1 (the “Commander in Chief Clause”) states that “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States,” it does not actually provide the president with authority to deploy the Guard absent some other exception, only to command them once deployed.⁹⁸

The DOJ has long asserted that the president has Article II authority to protect federal resources using the military, also known as the protective power.⁹⁹ President Trump therefore may attempt to assert independent authority to deploy federal armed forces under inherent Article II authority. If used to execute the law, there is a strong argument that this would violate the Posse Comitatus Act. However, the federal government might argue that Article II authority trumps all statutes and that the PCA is actually unconstitutional. The administration has already begun pushing theories

⁹⁵ See 10 U.S.C. § 275 (prohibiting use under this chapter for use of military “in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law”).

⁹⁶ See 10 U.S.C. § 272 (allowing the Secretary of Defense to make available any military equipment, base facility, or research facility to any federal, state, or local civilian law enforcement official for law enforcement purposes); 10 U.S.C. § 273 (allowing military personnel to provide training to federal, state, and local civilian law enforcement officials in the operation and maintenance of equipment, and to provide expert advice); 10 U.S.C. § 274 (allowing military personnel to maintain equipment on behalf of federal, state, and local civilian law enforcement, and to operate such equipment in specified situations and for specified purposes); 10 U.S.C. § 284 (authorizing certain types of military support for counterdrug activities or activities to counter transnational organized crime of any federal agency or any state, local, tribal, or foreign law enforcement agency).

⁹⁷ Nick Bednar, *The Meaning of Article II and 'Executive Power' to Trump*, LawFare (Mar. 20, 2025), <https://www.lawfaremedia.org/article/the-meaning-of-article-ii-and-'executive-power'-to-trump>.

⁹⁸ *Newsom v. Trump*, 141 F.4th 1032 (9th Cir. 2025).

⁹⁹ See 1 Supp. Op. OLC 343 (1971) (W. Rehnquist).

about how to create its own exemptions to the PCA.¹⁰⁰ Ultimately, any argument for the president's inherent authority under Article II should only be accepted and maintained if the authority falls within the "conclusive and preclusive" sphere of authority.¹⁰¹

5. General Prohibitions on Federal Agents' Conduct at Polls

Election officials and their counsels should familiarize themselves with the legal prohibitions on immigration or federal troop activity at election sites. These laws fall into three categories: (1) federal prohibitions, (2) state prohibitions, and (3) prohibitions via local ordinance. Though it is unclear whether immigration agents will be familiar with these prohibitions, having a clear understanding of the law will allow local election officials, counsels, and local law enforcement to analyze and quickly respond to any potential action by federal agents.

5.1. Federal Prohibitions

There are certain federal criminal laws on the books that prohibit the kind of conduct contemplated by this memorandum.

5.1.1. Criminal Law

5.1.1.1. 18 U.S.C. § 592: Prohibiting armed men at the polls¹⁰²

18 U.S.C. § 592 is a federal law that prohibits the ordering of federal civil or military officers or "armed men" to the polls. If ICE agents or federal troops are armed (which is typical), their deployment to election sites would be illegal under 18 U.S.C. § 592. If ICE agents are unarmed, this provision would not apply. **If this provision applies to your situation, you may use the fact that agents are violating 18 U.S.C. § 592 as grounds to ask the agents to leave the election site.**

However, there are two caveats. First, there are no clear requirements regarding how far the prohibition on armed men or officers extends around an election site. The closer the armed agents are to the election site, the more likely they are to be violating federal law. Second, the

¹⁰⁰ Cris Mirasola, *OLC's Dangerous, and Wrong, Opinion About the Posse Comitatus Act*, LawFare (Aug. 24, 2026), <https://www.lawfaremedia.org/article/olc-s-dangerous--and-wrong--opinion-about-the-posse-comitatus-act>.

¹⁰¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638, (1952) (J. Jackson, concurring).

¹⁰² 18 U.S.C. § 592 states that "[w]hoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States. This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote."

DOJ has the sole authority to enforce 18 U.S.C. § 592. If the administration sends ICE agents to election sites, it is unlikely that the DOJ would proactively enforce Section 592 in the courts.

5.1.1.2. 18 U.S.C. § 594: Prohibiting voter intimidation in a federal election¹⁰³

This provision imposes fines or imprisonment for up to a year on anyone—including ICE agents—who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote[.]” **If immigration agents’ or troops’ actions could be interpreted as intimidating to voters, you may use the fact that actors are violating 18 U.S.C. § 594 as grounds to ask the agents to leave the election site.**

5.1.1.3. 18 U.S.C. § 593: Prohibiting members of the Armed Forces from interfering in elections¹⁰⁴

This section is specifically relevant to any National Guard or federal troop deployment. The statute criminalizes certain actions by members of the armed forces, including “prevent[ing] or attempt[ing] to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage” and “interfer[ing] in any manner with an election officer’s discharge of his duties.”

¹⁰³ 18 U.S.C. § 594 states that “[w]hoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.”

¹⁰⁴ Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or
Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer’s discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district. 18 U.S.C. § 593.

5.1.1.4. 18 U.S.C. § 595: Prohibiting administrative employees' use of official authority to interfere in an election¹⁰⁵

This provision imposes a fine or imprisonment for up to a year on anyone “employed in any administrative position by the United States, or by a department or agency thereof . . . in connection with any activity financed in whole or in part by . . . any department or agency [who] uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate” for federal office. Generalized immigration enforcement near a polling location will not qualify—only activity that has a connection to the election of a candidate for federal office would qualify, based on the wording of the provision. However, this claim has never been used to regulate conduct in the elections context.

5.1.1.5. 18 U.S.C. § 245(b)(1)(A): Prohibiting voter intimidation and election interference¹⁰⁶

This provision imposes fines or imprisonment up to a year for anyone “whether or not acting under color of law,” who intimidates, interferes with, or attempts to intimidate or interfere with any person because that person is voting or qualifying to vote, or acting as a poll watcher or election official. However, note that this provision limits the statute’s reach by requiring any prosecution under this provision be certified by the United States Attorney General.¹⁰⁷ **Thus, it is unlikely that this statute will be enforced in this election cycle, because it requires approval by the Department of Justice.**

¹⁰⁵ 18 U.S.C. § 595 states that “[w]hoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.”

¹⁰⁶ 18 U.S.C. § 245(b)(1)(A) states that “(b)Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1)any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A)voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election[.]”

¹⁰⁷ Id. § 245(a)(1) (“No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the [United States] Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.”).

5.1.1.6. 52 U.S.C. § 20511(1): Prohibiting intimidation of voters or anyone assisting voters¹⁰⁸

This provision imposes fines or up to five years' imprisonment on anyone, including an election official, who, in any election for federal office, knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for (A) registering to vote, or voting, or attempting to register or vote or (B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote. Note that this provision protects not only voters, but also those "aiding" any person to vote, which may include election officials.

5.1.2. Civil Law

In addition to criminal prohibitions, federal law provides for civil protections regarding federal agents at the polls.

5.1.2.1. 52 U.S.C. § 10307(b): Prohibiting intimidation of voters or anyone assisting voters¹⁰⁹

This provision, also known as Section 11(b) of the Voting Rights Act, prohibits intimidation, threats, or coercion of anyone voting or aiding someone in voting. It applies to both voters and election officials—if either group is intimidated, threatened, or coerced by federal agents, this provision prohibits that conduct. 52 U.S.C. § 10101(b)¹¹⁰ provides for the same, but only covers voter intimidation, not intimidation of those aiding others in voting.

¹⁰⁸ 52 U.S.C. 20511 states that "[a] person, including an election official, who in any election for Federal office-
(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for-
(A) registering to vote, or voting, or attempting to register or vote;
(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or
(C) exercising any right under this chapter; or
(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by-
(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or
(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held, shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both."

¹⁰⁹ 52 U.S.C. § 10307(b) states that "[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of title 42.

¹¹⁰ 52 U.S.C. § 10101(b), governing "[i]ntimidation, threats, or coercion," states: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate."

5.2. State Prohibitions

Many states also ban various actions at election sites, such as police officers being present,¹¹¹ firearms being carried,¹¹² intimidation and interference with voting or election administration,¹¹³ or certain activities occurring within the electioneering zone.¹¹⁴ Those state law prohibitions may apply equally to activity by immigration agents or federal troops. In addition, some states have recently passed laws that expressly prohibit immigration agents from appearing at polling locations, or prohibit immigration activity at state-owned buildings.¹¹⁵

[Reach out to the Public Rights Project](#) for the most recent information on whether your state has passed such legislation.

5.3. Local Ordinances

Some jurisdictions have also passed ordinances establishing “ICE-free zones” on county or city-owned or controlled property within the jurisdiction; these ordinances prohibit specific immigration enforcement activity such as operations bases, detention, or processing on public property.¹¹⁶ Some ordinances also allow private property holders to prohibit immigration officer access to property not open to the general public.¹¹⁷ Note that “ICE-free zone” policies do not wholly prohibit ICE or CBP from accessing property open to the public but essentially prohibit

¹¹¹ See, e.g., 25 Pa. Stat. § 3047 (no police officer within 100 feet, with exceptions); Mass. Gen. Laws ch. 54, § 69 (prohibiting anyone but the election officials, town clerks, or voters from being behind the “guard rail” during the process of an election).

¹¹² See, e.g., Va. Code Ann. § 24.2-604 (no firearms in 100-foot prohibited area, with exceptions); Ariz. Rev. Stat. § 13-3102(A)(11) (prohibiting entering an election site carrying a deadly weapon); Cal. Penal Code § 171b (weapons in local public buildings, like polling places); Ga. Code Ann. § 21-2-413(f) (prohibiting peace officers from entering the enclosed voting space unless there for the “preservation of order”); S.C. Code Ann. § 23-31-215(M)(3); Md. Code Ann., Crim. Law § 4-111(d); N.Y. Penal Law § 265.01-e(2)(q); Neb. Rev. Stat. § 28-1202.01; Miss. Code Ann. § 45-9-101(13).

¹¹³ See, e.g., Mass. Gen. Laws ch. 56, §§ 29–31, 46–49; Ariz. Rev. Stat. § 16-1018; N.C. Gen. Stat. § 163-166.4(a) (buffer-zone harassment/hindrance); Ark. Code Ann. § 5-71-207 (threatening behavior)

¹¹⁴ Ala. Code §§ 17-9-50, 17-17-17 (30 ft.); Alaska Stat. §§ 15.15.170, 15.56.016 (200 ft.); Ariz. Rev. Stat. § 16-515 (75 ft.); Conn. Gen. Stat. § 9-236; D.C. Code § 1-1001.10(b)(2)(A) (50 ft.); 15 Del. Code §§ 3166, 4942, 5162 (50 ft.); 10 ILCS 5/17-29 (100 ft.); N.C. Gen. Stat. § 163-166.4 (25–50 ft. buffer zone); Nev. Rev. Stat. §§ 293.361, 293.740 (100 ft.)

¹¹⁵ See, e.g., R.I. Pub. Laws. ch. 187 ([Rhode Island](#) amending the state’s General Laws to ban ICE agents from appearing within 200 feet of polling locations); N.M. Stat. Ann. §§ 1-1-29, 1-1-30, 1-12-5, 1-20-3 to -20 ([New Mexico](#) amended sections of the state’s election code to ban armed federal personnel from appearing within 50 feet of an election site); Conn. Pub. Act. No. 26-42 (2026); ([Connecticut](#) bans immigration agents from conducting “activity” within 250 feet of polling locations without a court order or permission from the Attorney General or Secretary of State).

¹¹⁶ Jurisdictions that have passed or are currently pursuing these policies include [Alameda County, California](#); [Asheville, North Carolina](#); [Aurora, Illinois](#); [Berkeley and San Jose, California](#); [Chicago](#); [Denver, Colorado](#); [Evanston, Illinois](#); [Los Angeles County](#) and the [City of Los Angeles](#); [Minneapolis and Saint Paul, Minnesota](#); [New York City](#); [New Jersey](#); [Oakland, California](#); [Pinole, California](#); [Providence, Rhode Island](#); [San Francisco](#); [Santa Clara County, California](#); [Seattle](#); [Spokane](#) and [Everett, Washington](#); and [Worcester, Massachusetts](#). Sam Feineh, “ICE-Free Zones” Explained: How Cities and Counties Are Working Together to Resist ICE, Vera Institute (Mar. 9, 2026), <https://www.vera.org/news-spotlights/ice-free-zones-explained>.

¹¹⁷ Chicago, IL., Exec. Order No. 2025-8 “Prohibiting the Use of City Parking Lots, Vacant Lots, and Garages for Civil Immigration Enforcement Staging Areas, Processing Locations, or Operations Bases” (Oct. 6, 2025), <https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/1/reports/EXECUTIVE%20ORDER%202025-8.pdf?VersionId=4IyaMv4OpR2Vltis6BTY0JVIGOkYqqrW#page=2>.

large scale raids or immigration operations.¹¹⁸ When federal agents are in possession of judicial warrants signed by court judges (as opposed to “administrative” warrants issued by ICE or CBP), federal agents typically can access city-owned or controlled property not open to the public.¹¹⁹ If your jurisdiction has such an ordinance, it gives counsels, election officials, and local law enforcement one more practical bases for insisting that immigration agents leave the election site. .

6. Best Practices When Encountering Federal Agents at Election Sites

Local election officials and their counsels¹²⁰ should preemptively plan for federal agents at election sites. A number of planning and response best practices are outlined below.

6.1. Assessing scenario severity and urgency of response

The severity of the situation, and the corresponding urgency of your response, will hinge on several factors, including (1) the proximity of the agents or troops to election sites, (2) the impact of the activity on voters and election administrators, (3) when the activity occurs in the election cycle, (4) the legal status of the location where the activity occurs, (5) the scale of the activity, and (6) whether federal actors are intentionally deployed to an election site.¹²¹

¹¹⁸ See Feineh, *supra* note 116.

¹¹⁹ *Id.*

¹²⁰ Recognizing that different states and localities use different terminology, in this section, “local election official” refers to the election official with authority over his or her election jurisdiction. This might include a Municipal Clerk, County Elections Director, or City Elections Director, for example. “Counsel” refers to the attorney or attorneys with authority in a given election jurisdiction. This might include a City Counsel, City Attorney, County Counsel, or County Attorney, for example.

¹²¹ Federal immigration agents may appear in plain clothes at election sites. They have done so across the country. See Minyvonne Burke, *ICE agents in plainclothes handcuff man at Las Vegas airport, shocking onlookers*, NBC News (Jul. 17, 2026), <https://www.nbcnews.com/news/us-news/ice-agents-plainclothes-handcuff-man-las-vegas-airport-shocking-onlook-rcna-587970>, (ICE agents in plain clothes in Las Vegas, Nevada); Tara Campbell, *Video shows ICE agents in plain clothes detaining Ukrainian woman at SFO*, ABC7 Eyewitness News (Jul. 23, 2026), <https://abc7news.com/post/video-shows-ice-agents-detaining-ukrainian-woman-san-francisco-international-airport/19565435/>, (ICE agents in plain clothes in San Francisco, California); Jazmine Ulloa, Miriam Jordan, Luis Ferré-Sadurní and David Ovalle, *A Quiet ICE Surge That Unfolded ‘Everywhere All at Once’ This Summer*, N.Y. Times (Sep. 25, 2026), <https://www.nytimes.com/2026/09/25/us/ice-surge-immigration-arrests.html>, (ICE agents in plain clothes in Harrison, New Jersey).

6.2. Advanced Planning

6.2.1. Pre-Planning Steps

All jurisdictions should take the following steps to prepare for the possibility of immigration agents appearing at an election site in your jurisdiction:

- ☐ **Coordinate with your local law enforcement.** Law enforcement agencies should be alert to any possible threats and should be prepared to respond as needed.
 - ☐ This kind of response has already occurred: during recent primary elections in San Antonio, Texas,¹²² and Simi Valley, California,¹²³ where local law enforcement responded to reports of ICE agents near polling locations and ensured they left, allowing voters to proceed without feeling intimidated.
- ☐ **Coordinate with local nonprofit groups conducting poll watching or rapid response to voters.** Groups in your area may already have set up poll watching or rapid response networks. Counties can coordinate with these groups so that the groups can serve as trusted messengers, amplifying accurate information and communicating voting alternatives when appropriate and available.
- ☐ **Identify polling locations, dropboxes, and election offices (collectively, “polling locations”) within your jurisdiction where federal officers might be deployed.**
 - ☐ Polling locations in areas with large populations of undocumented people, locations that provide services to undocumented people in addition to election administration, and locations that are well-known to the public are all possible targets.
 - ☐ **Create a list of each polling location and the point-person for your local election officials and counsel at each location.**
 - This point-person should be the lead volunteer or staff person at each location who will be prepared to call the local election official if federal agents arrive at or near a polling location.
 - Ensure that all officials keep lines of communication open. In particular, decide the method for communicating between each polling place, local election official, and counsel.
 - Ensure that relevant contact information is circulated to key stakeholders.
- ☐ **Understand the key legal reasons why federal deployment at the polls is unlawful.**
 - ☐ Those authorities include:

¹²² See *supra* note 14.

¹²³ See *supra* note 15.

- **18 U.S.C. § 592**, a federal criminal law that prohibits military, naval, or civil officials of the United States government from deploying or stationing troops or armed men at any place where a general or special election is being held, unless the force is necessary to repel armed enemies of the United States. ICE agents are often armed, so they would fall within the embrace of this prohibition.¹²⁴
- **52 U.S.C. § 10307(b)**, which prohibits any person “whether acting under color of law or otherwise” from intimidating, threatening, or coercing anyone who is voting or helping someone to vote.¹²⁵
- ☐ Review specific authority in your state’s election code that prohibits law enforcement, intimidation, carrying weapons, or unauthorized individuals at polling locations.
- ☐ **Train elections staff and volunteers to respond to a potential ICE agent or federal troop deployment.**
 - ☐ Incorporate federal interference response into training materials. Public Rights Project can work with you to update poll worker training materials. Reach out to us at elections@publicrightspj.org for support.
 - ☐ **Train your staff not to escalate:** Train your poll workers to direct any communication with ICE agents or federal troops to the designated point-person at each election site.
 - ☐ Ensure that the point-person at each location has specialized training regarding what to do if federal actors are deployed at polling locations.
 - ☐ See Appendix B for a Sample Script for Poll Workers Interacting with Federal Agents.
 - ☐ See [poll worker training resources](#) prepared by the Center for Civic Design, Public Rights Project, Election Security Exchange, and The Elections Group.
- ☐ **Communicate with state and local authorities in advance of the election.**
 - ☐ Understand the key authorities in your state who may play a role in responding. These may include:
 - Governor
 - State Attorney General
 - Secretary of State or State Election Administrator equivalent
 - Local police chief or command

¹²⁴ See *infra* Part V(A)(1)(a).

¹²⁵ See *infra* Part V(A)(2)(a).

- Local sheriff
 - Local county prosecutors
- ☐ Communicate with these individuals and understand whether they may be friendly to a federal attempt to interfere in your jurisdiction.
- ☐ Identify a point-person in each relevant office and ensure everyone has necessary contact information.
- ☐ **Emphasize to voters that your jurisdiction is prepared.**
 - ☐ As part of your regular public communications, assure voters that your jurisdiction is prepared and the election is safe and secure. You don't need to identify specific threats; simply emphasize that election administrators are prepared and ready.
- ☐ **Government counsel should identify outside counsel (such as Public Rights Project's Election Protection Hub) who can provide legal support in the event of a deployment.**

Although city and county attorneys can prepare for a potential legal response, it will be useful to engage with outside counsel who have the time and resources to spend on this issue.

 - ☐ **Prepare draft legal pleadings that can serve as a template in case there is a need to get an emergency order from a court to remove ICE agents or federal troops from the polls.**

Public Rights Project can work with you to develop jurisdiction-specific template draft pleadings. Reach out to a staff attorney or elections@publicrightsproject.org for more information.
- ☐ **Document all steps your jurisdiction has taken during this preparatory stage and share with your jurisdiction's lawyer if needed.**

6.2.2. If Plans to Deploy Federal Actors at or Near An Election Site Are Announced

If the federal government chooses to deploy federal actors to election sites in a jurisdiction, it is possible that some federal entity will first issue an order directing the deployment. This may provide a short window to make any last-minute preparations.

- ☐ **At each step, the local election official, county attorneys, and others involved in the response should document their actions and the actions of the administration.** It is important to establish a record that can later be used in reviews, audits, and litigation. This documentation can also be used to undermine potential false narratives.

- ☐ **Reiterate to staff that they should follow their training.** Train your poll workers to direct any communication with ICE agents to the point-person identified at the polling location.
- ☐ **Communicate with the pre-identified state authorities about their plans to respond to the deployment.**
 - Understand if statewide officials intend to get involved. Coordinate response in terms of:
 - Legal strategy to prevent deployment.
 - Mobilization of state or local law enforcement to protect polling locations.
 - Communication with other jurisdictions who may be facing the same response.
- ☐ **Identify the stated authorities, if any, that the federal government is utilizing to deploy ICE agents.**
- ☐ **Consider issuing a public announcement that deployment of ICE agents to the polls is explicitly unlawful if the agents (a) are armed, and (b) are very close to or inside a polling place.**
 - Per 18 U.S.C. § 592 and other authorities discussed above, it is unlawful to deploy ICE agents to polling locations.
 - Public Rights Project can provide strategic communications support to help you determine whether a statement should be issued and/or draft a statement as needed. Reach out to us at elections@publicrightsproject.org for support.
 - See Appendix A for a Sample Holding Statement.
- ☐ **If the deployment is sufficiently imminent, consider initiating litigation.**
 - Coordinate with state government and outside counsel when appropriate.
 - Determine if other litigation by advocacy groups is likely to occur, and determine if the county wants to support such efforts (via a declaration, or other means), or whether the county wants to file on its own. Be wary that civil service election administrators may want to consider the appearance of partisanship if aligning with specific advocacy groups for litigation purposes.
 - Consider seeking an emergency restraining order blocking the federal government from taking the announced action.

6.2.3. If Federal Actors Arrive Unannounced at or Near an Election Site

Federal actors may arrive at the polls either announced or unannounced. Your focus should be taking whatever steps are necessary to ensure a free and fair election.

- ☐ **Local election officials should contact local counsel to determine next steps.**
 - Public Rights Project is ready to support county counsel in the event that federal actors arrive at a polling place. Reach out to us at elections@publicrightsproject.org for support.
- ☐ **Flag any specific asks or requests from federal actors.**
 - Take notes of your conversations with federal actors and share those notes with your jurisdiction's attorney whenever possible.
 - Familiarize yourself with the laws governing audio and video recording in your state and jurisdiction. Thirty-eight states allow for a party to video or audio-record an interaction if one party being recorded consents,¹²⁶ but some of those states or jurisdictions within those states may also independently restrict recording inside a polling place. Other states allow video or audio recordings only if all parties to the recording consent. If your state is a one-party consent state, it may be legal to audio- or video-record the conversation, especially if that conversation is occurring outside of an election site.
- ☐ **The point-person at the polling location should immediately report any federal agents' arrival to the election office.** All other election workers should not speak to ICE or other federal actors. Poll workers should document any interaction with federal agents. See Appendix C for a Sample Election Incident Report Form.
- ☐ **If the federal actors refuse to leave, the local election official and counsel should consider asking local law enforcement to step in and request that the agents leave.** Federal actors may be more willing to grant the requests of local law enforcement officers, who may appear to the agents to be less connected to the election administration process in your jurisdiction. In certain states, ICE is required to visibly display identification while on duty.¹²⁷

¹²⁶ Those states and jurisdictions are: Alabama, Alaska, Arizona, Arkansas, Colorado, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming. Yan Mellata, *Call Recording Laws by State: 2026 Compliance Guide for AI Receptionists*, NextPhone (Updated Sep. 22, 2026), <https://www.getnextphone.com/blog/call-recording-laws-by-state>.

¹²⁷ See Washington (requiring all peace officers, including ICE agents, to be “reasonably identifiable by the officer's clearly displayed name or other information on the officer's uniform that members of the public can see and the agency can use to identify the officer”), Oregon (requiring “a law enforcement agency operating within this state” to “ensure

- ☐ **If the federal actors refuse to leave, counsel should consider seeking an emergency temporary retraining order barring federal actors from polling locations.**
 - Such an order will require declarations from individuals at the polling location who witnessed federal officers' activity. Work with your counsel to identify those declarants.

Conclusion

The presence or deployment of federal officers, including ICE, CBP, or National Guard personnel at or near polling locations would present significant legal and operational concerns for election officials and their attorneys. Election officials and their attorneys should understand the legal and factual context for any such deployment. This memorandum explains that any deployment of federal officers to the polls would be unlawful and provides local officials with operational guidance about actions that can be taken right now and during a deployment.

that, while on duty and actively engaged in official law enforcement activities, each law enforcement officer wears a uniform clearly and visibly displaying: (a) The last name of the officer or a unique identifying number associated with the officer in an agency record; (b) The name of the employing agency; and (c) An officially issued badge.”); Maryland (prohibiting “state, local, out-of-state, and federal law enforcement from “wear[ing] face coverings while performing their duties in the State, unless authorized by the policy. All such officers must also wear and, upon request, verbally disclose their identification consistent with the Commission’s uniform policy, unless an exception applies.”); New Jersey (requiring every law enforcement officer to provide sufficient identification prior to detaining or arresting an individual. “A law enforcement officer shall be deemed to have provided sufficient identification if the officer, prior to detaining or arresting an individual, satisfies one of the following conditions: (1) the officer is dressed in a department-issued uniform bearing the agency insignia; (2) the officer demonstrates a department-issued identification card bearing the officer’s photograph and identifying information; (3) the officer demonstrates a badge, tag, label, or other department-issued identification which identifies the officer by number; or (4) the officer verbally discloses, in a clear and audible manner, the officer’s name and the official name of the law enforcement agency by which the officer is employed.”); Virginia (requires “a law-enforcement officer, while engaged in the performance of his official duties,” to “visibly display (i) a badge or insignia bearing such law-enforcement officer’s name or other individual identifier unique to that particular law-enforcement officer and (ii) the name of the law-enforcement agency that employs such law-enforcement officer.”); and New York (requiring that “[a]ny uniformed law enforcement officer while interacting with the public in the performance of their duties shall visibly display: (a) the name of the agency or department employing such officer; and (b) at least one form of identification of the officer’s name, badge number, or shield number.”).

Appendix A - Example Holding Statement

Tips

- Stick to facts. Do not include speculation
- If relevant, address early on whether voting is affected or will continue as usual
- Include a clear statement of core values

Suggested information to include:

- Brief description of incident, with time and location
- Information on any changes to voting or if it will proceed as normal
- Describe who is taking what steps to address the situation
- Information about how public updates will be provided, if applicable
- Contact details for press inquiries and for other agencies and departments for inquiries unrelated to the election office (e.g., police department contact information for witness accounts)

Template

Around [TIME] our office received reports of [SHORT DESCRIPTION OF THE INCIDENT AND LOCATION]. We are working to determine the extent of the situation and will provide more details as we confirm what happened.

[ADD INFORMATION ON ANY CHANGES TO VOTING OR IF IT WILL PROCEED AS NORMAL]

[DESCRIBE WHO IS TAKING WHAT STEPS TO AMELIORATE THE SITUATION , E.G., ELECTION OFFICIAL CALLS WITH POLL WORKERS OR LAW ENFORCEMENT INVESTIGATION]. We are committed to ensuring that the success of this election, and the safety and well-being of voters and poll workers our priority.

We will provide further updates [DESCRIPTION OF UPDATE METHOD, E.G., WEBSITE, SOCIAL MEDIA, ETC.].

[OPTIONAL: CONTACT DETAILS IF SEEKING WITNESSES ACCOUNTS; CONTACT FOR PRESS AND OTHER INQUIRIES.]

Example statement

Around 1:30 p.m., our office received reports of a group of ten federal immigration agents appearing inside the polling place at Maintown City Hall, seeking information about noncitizen voters. We are working to determine the extent of the situation and provide more details as we confirm what happened. Voting at this location remains open and unaffected.

My office is speaking with other poll workers on site and communicating with law enforcement officials about possible next steps. We are committed to ensuring the success of this election, and the safety of voters and poll workers is our priority. We will publish prompt updates if there are any changes to voting at this location on our website.

Voters who may have witnessed this incident may contact the Maintown Police Department at 555-5555 to report what they saw. For press inquiries, contact [name, title, email].

To find the voting location nearest you and to check the latest updates, visit our website, at [\[yoursite.elections.gov\]](#).

Appendix B - Sample Script for Poll Workers

Interacting with Federal Agents

Below is a training aid for local election officials and poll workers. Adapt these scripts to your jurisdiction's state law, election procedures, and designated points of contact.

If federal immigration agents approach you while at an election site, seek admission to your place of work, or ask you to disclose information, please follow these guidelines and read to them the statement in the blue box below. Always remember to refer back to this code of conduct:

- **Stay calm & professional.** Do not obstruct or interfere, and be courteous and non-confrontational
- **Do not debate legal authority at the polling place.** If access or authority is unclear, escalate to the designated election office contact.
- **Do not improvise.** Follow the jurisdiction's established procedures for federal election observers and observers.
- **Keep voters first.** Prioritize voter access, ballot secrecy, privacy, and uninterrupted election administration.
- **Document incidents.** Record observable facts, including what was said or done, who was involved, when it occurred, and how it affected voting or election administration.
- **Escalate when necessary.** Follow the established chain of command and contact the election office or other designated authority when a situation cannot be resolved.

STEP 1: If there is a request from a federal immigration agent to enter a polling location, search county property, or disclose information, **contact the lead election worker at your polling location immediately.** Calmly direct all questions from federal immigration agents to the lead election worker at your polling location.

STEP 2: The lead election worker at the polling location should be the only person interacting with agents. Next, the official should read the following script to the agents:

"I want to cooperate with any lawful orders. My top priorities are to follow the law and ensure that voters do not feel intimidated while they are voting. My instructions require me to get a copy of any paperwork that you have related to your appearance here, as well as your full credentials, including name, agency, and badge number. I will share this information with my point of contact at our Government Counsel's Office so that the county may lawfully assist you as soon as possible.

In the meantime, I would ask you to please step outside of the electioneering zone, which extends 100 feet around the polling location and out of the view of voters so

that voting may continue uninterrupted. Someone from the county will be here shortly to assist you.”

STEP 3: The lead election worker should next make note of the following information (remember the acronym “SALUTE”):

- **S** - Size. Note the number of agents and other people present, including the poll worker team, voters, or others in the polling place.
- **A** - Activity. Describe what agents said, what they did, such as making an arrest or questioning someone.
- **L** - Location. Where, exactly, did they go in the polling place or area around it.
- **U** - Uniforms. Describe any vests, patches, or agency labels on their clothing. It can be difficult to identify immigration enforcement by appearance alone.
- **T** - Time. Record the time when the incident started, as well as the time of any key activities.
- **E** - Equipment. List any vehicles, dogs, weapons, or other gear they have with them.

STEP 4: The lead election worker at the polling location should immediately contact the Registrar of Voters, XXXXXX at XXX-XXX-XXXX, who will then coordinate with county officials. The lead election worker should share factual information with the ROV so that he can coordinate an appropriate response and avoid spreading misinformation.

STEP 5: Finally, the lead election worker should complete a polling place incident form to create a written record of what happened.

Remember, ICE agents are legally barred from polling locations.

Federal law prohibits ICE agents from being present at election sites. It is illegal:

- To station “troops or armed men” where elections are held, *18 U.S.C. § 592*
- For members of the military to interfere with elections, *18 U.S.C. § 593*
- For civilian federal employees to use their position to interfere in elections, *18 U.S.C. § 595*
- To intimidate anyone aiding a voter (including election workers), *52 U.S.C. § 20511*

California law also prohibits ICE agents from being present at polling places. It is illegal:

- For a “uniformed peace officer, private guard, or security personnel” (or anyone wearing the uniform) to be stationed at or near an election site without written authorization of the appropriate city or county elections official, *Cal. Elec. Code § 18544 (a)*.
- This section does not apply to peace officers conducting official business or at the polling place to cast their vote, nor to security personnel hired by the election official, *Cal. Elec. Code § 18544 (a)*.
- To interfere with the officers holding an election or conducting a canvass, or with voters’ right to vote, *Cal. Elec. Code § 18502*).

Key Reminders for Poll Workers

Important: *These scripts are examples for training purposes. They should be adapted to applicable state and local law, court orders, and jurisdiction-specific procedures. A poll worker should not make independent legal determinations about a federal election observer’s authority.*

Appendix C - Sample Election Incident Report Form

Election Incident Report Form

DATE, TIME, AND REPORTER

DATE: _____ NUMBER OF PAGES ATTACHED: _____ (Write "0" if none)

REPORTER FULL NAME: _____

REPORTER ROLE/TITLE: _____

NAME OF POLLING PLACE OR EARLY VOTING LOCATION: _____

ADDRESS: _____

APPROXIMATE INCIDENT START TIME: _____ APPROX. END TIME: _____
(If start time is unknown, put "Unknown"; if incident did not end, put "None").

LIST PEOPLE INVOLVED

List every person who participated in, was affected by, or may have information about the incident. Use an attachment if more space is needed.

NAME (if unknown, use "John Doe 1," "Jane Doe 2," etc.)	ROLE (e.g., Election Judge, Witness, Challenger, etc.)	CONTACT INFO (phone number or or email address, if available; <i>do not</i> include voter data)

DESCRIBE THE INCIDENT

Describe the incident using specific, observable facts. Attach additional pages as needed; number each page and record the total number attached at the top of the form.

Describe the events in chronological order, including:

- **Who, what, when, and where:** Identify everyone involved or affected, the date and times, and the specific location or locations (for example, at the voter-registration table, ballot next to the tabulator, or within 100 feet of the polling place to the south of the entrance).
- **What was said or done:** Quote exact words when reasonably remembered. Describe any touching, blocking, following, threats, pressure, directions, or other interference, including how it occurred. State how many times the conduct occurred, if repeated.
- **Connections or communications:** Record observable facts such as people arriving together, communicating before or during the incident, sharing transportation, being related, representing the same organization, or referring to another person's instructions.
- **Effect on voting and operations:** State how many voters may have been affected and how (for example, the length of any delay, whether anyone left without voting, or whether a voter or election official was injured or otherwise affected).
- **Election-official response:** State how many officials responded or were consulted, what duties they were pulled away from and for how long.
- **Materials or equipment:** Describe whether an unauthorized person touched, moved, viewed, or accessed ballots, poll books, voter information, voting equipment, or other election materials.
- **Resolution:** Describe all actions taken, including additional warnings, instructions, requests to leave, involuntary removal from the polling place, or other responses.

Avoid legal or conclusory statements such as “they committed fraud,” “the workers conspired,” or “the voter was intimidated.” Instead, describe the facts supporting the concern.

Example of a good, detailed report:

At approximately 10:15 a.m., a person wearing a blue campaign shirt stood about two feet from the entrance to the check-in table and told three voters, ‘If you vote for them, we will know.’ The person repeated the statement twice after the precinct judge instructed the person to move outside the restricted area. One voter left the line without checking in. Two poll workers spent approximately 12 minutes addressing the conduct and were unavailable for check-in duties. The precinct head pollworker called the county election office at 10:31 a.m. and summarized the incident for [name/title].

DESCRIBE THE INCIDENT

ESCALATED COMMUNICATION

Log the times, people, and means of communication with election officials outside the polling place.

TIME	NAMES OF PEOPLE INVOLVED	METHOD AND SUMMARY OF COMMUNICATION (e.g., by phone, in person, by text)

CERTIFICATION

I certify under penalty of perjury that the contents of this report are true and correct to the best of my personal knowledge.

Reporter signature: _____

Printed name/title: _____

REVIEW

Precinct head pollworker or supervisor:

Signature: _____

Printed name/title: _____
