



When State Resistance Meets the Constitution: Supremacy, Executive Power, and the Architecture of Executing Federal Law

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I. Introduction and Framework for Federal Supremacy

This primer addresses a contingency in which a state directs its executive officers or National Guard personnel, acting under state authority, to physically obstruct, deter, or prevent federal immigration officers and other federal law enforcement personnel from executing valid federal processes and carrying out federal statutory duties within the state. Its purpose is to provide a legally grounded framework for recognizing the constitutional limits of state power, protecting federal officers, and restoring the continuous execution of federal law through a sequenced set of judicial, statutory, and executive responses.¹

The Constitution permits states to decline compelled participation and commandeering in federal enforcement, but it does not permit states to impede, burden, or control the operations of federal law or federal officers; therefore, this primer draws a bright operational line between lawful noncooperation and unlawful obstruction and frames federal action around rapid record-building, immediate judicial relief, and calibrated use of statutory authorities when physical interference threatens federal execution.²

The president's core constitutional authority is the duty to take care that the laws be faithfully executed, which supports using DOJ, DHS, and other executive tools to ensure that federal officers can execute valid federal process, supported by the Supremacy Clause's command that valid federal law may not be subordinated to

¹ U.S. CONST. art. VI, cl. 2.; *see* *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819); *see* *United States v. Peters*, 9 U.S. (5 Cranch) 115, 136–37 (1809).

² *See* *Printz v. United States*, 521 U.S. 898, 935 (1997); *see* *New York v. United States*, 505 U.S. 144, 161–62 (1992); *see* *Ableman v. Booth*, 62 U.S. (21 How.) 506, 523 (1859); *see* *McCulloch*, 17 U.S. (4 Wheat) at 436.

states.³ The principal statutory tools addressed here include the Insurrection Act, which authorizes domestic use of militia and armed forces under specified elements; 18 U.S.C. § 372 to criminalize obstruction and conspiracy; and Title 10 authority to call the National Guard into federal service when necessary to execute federal law.⁴

Federal litigation and officer protection fit within the broader legal architecture that prevents states from controlling federal execution of laws, including federal officer immunity and removal of state civil or criminal actions against federal officers into federal court.⁵ These authorities support a structured federal response that centers on judicial enforcement of supremacy, protects federal officers and functions through targeted legal and statutory measures, and authorizes escalation to extraordinary executive powers only when sustained and organized obstruction makes the ordinary execution of federal law impracticable.

II. Constitutional Foundations of Federal Supremacy and Officer Protection

A. The Supremacy Clause and Government Immunity

The Supremacy Clause makes the Constitution and laws of the United States made pursuant to it the supreme law of the land, binding state judges even in contrary state laws.⁶ Under longstanding supremacy principles, states lack power to “retard, impede, burden, or control the operations” of constitutional federal laws and federal authorities.⁷ State measures that attempt to nullify federal law or to interpose state authority as a veto over federal rights and duties have been rejected in the strongest terms, including in contexts where state officials attempted to resist binding federal constitutional interpretation and federal court orders.⁸ State courts in particular cannot use the state judicial process to interfere with federal custody or to override federal authority executed by federal officers.⁹ Relatedly, states lack the authority to issue writs of habeas corpus to challenge those in federal detention.¹⁰

³ U.S. CONST. art. II, § 3; *Id.* art. VI, cl. 2.; *see* *McCulloch*, 17 U.S. (4 Wheat.) at 436; *see also* *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

⁴ 18 U.S.C. § 372; 10 U.S.C. §§ 251–54; *Id.* § 12406.

⁵ *In re Neagle*, 135 U.S. 1, 75–76 (1890); *Tennessee v. Davis*, 100 U.S. 257, 263–64 (1880); 28 U.S.C. § 1442(a)(1).

⁶ U.S. CONST. art. VI, cl. 2.

⁷ *McCulloch*, 17 U.S. (4 Wheat.) at 436.

⁸ *Cooper*, 358 U.S. at 18.

⁹ *Ableman*, 62 U.S. at 523.

¹⁰ *Tarble’s Case*, 80 U.S. 397, 411–12 (1872).

B. The Noncooperation/Obstruction Distinction

A governor's attempt to use the National Guard under state command to block federal officers or prevent execution of federal process directly implicates these supremacy and immunity principles because it is not noncooperation but affirmative obstruction.¹¹ The federal government can nationalize the guard to prevent an obstructionist seizure of the guard by a rogue governor and can also invoke federal officer immunity when federal officers act within the scope of federal duties.¹² The doctrinal theme is simple: The state may withhold assistance, but the state may not block, punish, or physically obstruct federal officers carrying out federal law.¹³

III. State Resistance Theories

A. Nullification in Theory and Constitutional Rejection

Nullification, as the term was used in the early republic, is the claim that a state, as a sovereign party to the constitutional compact, may judge a federal act “unauthorized” and treat it as void within the state, with “a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument” asserted as the “rightful remedy.”¹⁴ During the nineteenth-century Nullification Crisis, South Carolina operationalized that theory by declaring the federal tariff acts “null, void, and no law, nor binding upon this State, its officers or citizens” and by purporting to negate judicial proceedings enforcing them.¹⁵ But the Supreme Court's supremacy cases foreclose nullification in practice by holding that a state cannot annul federal judicial authority or impede the execution of federal law, including that a state “cannot annul the judgments” of federal courts and cannot “retard, impede, burden, or in any manner control” federal operations.¹⁶ The Supreme Court later confirmed, in categorical terms, that any state theory permitting the nullification of federal law or federal constitutional interpretation is

¹¹ See *McCulloch*, 17 U.S. (4 Wheat.) at 436.

¹² 10 U.S.C. § 12406; *In re Neagle*, 135 U.S. at 75–76; see also Bryan Godar, *Explainer: Can States Prosecute Federal Officials?*, STATE DEMOCRACY RESEARCH INITIATIVE (July 17, 2025), <https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2025/07/State-Enforcement-Explainer-Formatted-7.17.25.pdf>.

¹³ *McCulloch*, 17 U.S. (4 Wheat.) at 436.

¹⁴ Thomas Jefferson, *Kentucky Resolutions of 1798 and 1799* (Dec. 3, 1799), reprinted in 4 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 540–41 (2d ed. 1836).

¹⁵ South Carolina Convention, *Ordinance to Nullify Certain Acts of the Congress of the United States* (Nov. 24, 1832).

¹⁶ *McCulloch*, 17 U.S. (4 Wheat.) at 436; see also *Ableman*, 62 U.S. at 523; see also *United States v. Peters*, 9 U.S. at 136–37.

incompatible with the Supremacy Clause and therefore constitutionally impermissible.¹⁷

Under current constitutional doctrine, no recognized legal pathway exists by which nullification may be invoked as an operative authority by a state. A state directive to obstruct ICE on the theory that federal immigration enforcement is unconstitutional is functionally a nullification attempt because it asserts a state veto over federal execution, and the directive would itself be unconstitutional under current treatment of the theory.

B. Interposition as Political Protest, not Legal Authority

Interposition in the tradition of the *Virginia and Kentucky Resolutions* is best framed, for present purposes, as political protest and coordinated advocacy aimed at repeal or correction through constitutional processes, not as unilateral operational resistance to federal enforcement like nullification.¹⁸

James Madison described interposition as a collective political response by the states, acting through constitutional means, to express opposition to unconstitutional federal action and to seek redress through elections, amendments, or coordinated political pressure, not as a legal power to suspend or obstruct the execution of federal law.¹⁹ Madison expressly distinguished between a state's right to "declare" its constitutional opinion and any asserted authority to give such declarations operative legal effect against federal law, rejecting the notion that state declarations could bind the federal government or invalidate federal acts.²⁰

Madison later reaffirmed this distinction during the Nullification Crisis, explaining that the *Virginia Resolutions* never contemplated a power in a single state to arrest the execution of federal law and that such a doctrine would be incompatible with the Constitution and destructive of the union.²¹ He reiterated that position after South Carolina's Ordinance of Nullification, stating that treating federal law as void

¹⁷ Cooper, 358 U.S. at 18.

¹⁸ Christian G. Fritz, *Interposition and the Heresy of Nullification: James Madison and the Exercise of Sovereign Constitutional Powers*, HERITAGE FOUND. (Feb. 21, 2012), https://static.heritage.org/2012/pdf/fp41.pdf?_gl=1*sf3t6k*_gcl_au*NDg1ODcwNjEwLjE3NjgyNDA0MTU.*_ga*MTQwMDg4NDM0MS4xNzY4MjQwNDE2*_ga_W14BT6YQ87*czE3Njg0OTYxNDAkbzc kZzAkdDE3Njg0OTYxNDAkajYwJGwwJGgw.

¹⁹ James Madison, *Report on the Virginia Resolutions* (Jan. 7, 1800), reprinted in 4 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 546–47 (2d ed. 1836).

²⁰ *Id.*

²¹ James Madison, *Letter to Edward Everett* (Aug. 28, 1830), reprinted in 9 *The Writings of James Madison* (Gaillard Hunt ed. 1910).

by state authority was a “fatal inlet to anarchy” and not a legitimate form of interposition.²² Accordingly, under Madison’s own understanding, interposition consisted of political protest and constitutional advocacy rather than unilateral executive or military resistance to federal enforcement, a view later reflected in Supreme Court decisions rejecting state efforts to obstruct federal law.²³

If states style their conduct as interposition, the federal rebuttal is that interposition, as historically defended, is a political process, not physical interference, and therefore they cannot justify deploying state forces or using state authorities to obstruct federal officers or federal authority.²⁴ Even if state or local executive officials assert a coequal or supraconstitutional duty to defend constitutional or natural rights against allegedly unlawful federal action in regard to immigration enforcement, that claim would rest on an assertion of independent constitutional judgment rather than any recognized legal authority to suspend or physically interdict the execution of federal law enforcement.

C. Natural Rights and the High Bar for Extraordinary State Action

This paper does not foreclose the proposition that states may, in the most extraordinary circumstances, assert a role in constitutional contestation where fundamental constitutional or natural rights are plausibly at stake and directly threatened and all ordinary channels of redress have been exhausted; it concludes only that no such circumstance is presented here and that the threshold for any such assertion of state authority is not remotely met in the context of opposition to federal immigration enforcement.²⁵ The constitutional structure permits states to litigate, legislate, and create test cases that present concrete controversies for judicial resolution, thereby invoking the federal courts’ role as the authoritative forum for constitutional disputes.²⁶ The threshold for any claim of extraordinary state action is necessarily high because the Constitution vests supremacy in federal law and denies states any general power to suspend, override, or physically resist the execution of federal authority.²⁷ The Constitution further withholds from states the powers of war and independent coercive action against the United States,

²² James Madison, *Notes on Nullification* (1835), reprinted in 9 *The Writings of James Madison* (Gaillard Hunt ed. 1910).

²³ See Cooper, 358 U.S. at 18; see also Ableman, 62 U.S. at 506.

²⁴ *Id.*

²⁵ U.S. CONST. art. III, § 2; *Id.* art. I, § 10, cl. 3.

²⁶ *Id.* art. III, § 2.

²⁷ *Id.* art. VI, cl. 2.

permitting only narrow emergency exceptions tied to actual invasion or imminent danger.²⁸

Within this framework, the paper distinguishes between claims grounded in fundamental constitutional liberties and claims directed at federal policy judgments within the national government's sovereign authority.²⁹ There is no recognized natural or constitutional right to remain in the United States in violation of valid federal immigration law, and the Constitution assigns to the national government the power to define the terms of entry and presence within the national polity.³⁰ Accordingly, resistance to federal immigration enforcement does not rest on the same constitutional footing as claims framed as defenses of core constitutional liberties and cannot be elevated into a natural-rights justification for obstructing the execution of federal law.

IV. The State Playbook: Lawful Friction and Unlawful Escalation

A governor or state or local official seeking to resist federal immigration enforcement while maintaining the appearance of constitutional legitimacy will typically frame the state's posture in the language of noncooperation and state sovereignty while operationally creating conditions that increase the cost, delay, or risk of federal action. On the noncooperation end of the spectrum, this posture takes the form of statewide sanctuary regimes and executive directives limiting state and local participation in federal enforcement, including restrictions on compliance with ICE detainers, limits on information sharing, and withdrawal from formal cooperation agreements with federal law enforcement. At the other end of the spectrum, resistance shifts from refusal to assist into affirmative interference, including the use of state law enforcement or National Guard personnel, acting under state command, to block access to persons, facilities, or federal property; to detain or threaten federal officers; or otherwise to impede the execution of valid federal process, as well as the provision of material or logistical support to or coordination with outside activist groups or organized efforts aimed at obstructing federal operations. While obstructionists would present these actions in the language of interposition, nullification, or invasion, in substance, they operate as direct physical interference with the execution of federal law.

²⁸ *Id.* art. I, § 10, cl. 3.

²⁹ *Id.* art. I, § 8.

³⁰ *Id.*; *Id.* art. II, § 3.

It is important to separate noncooperation from obstruction.³¹ Anti-commandeering doctrine bars Congress from compelling state executive officers to administer federal regulatory programs, which supports the state’s ability to refuse affirmative assistance.³² But anti-commandeering does not create a state power to interfere with federal officers, nor does it permit the use of state force to stop federal law from being executed.

V. The Invasion Theory and Its Constitutional Limits

A state’s invocation of invasion in the constitutional sense must be grounded in the text and original meaning of the Guarantee Clause and related structural provisions, which contemplate protection against an external hostile incursion such that the federal government owes a duty to protect against actual invasion and may contemplate state “self-help” only where the federal government has demonstrably failed to fulfill that duty; in the context of unlawful cross-border entry, we have argued that sustained mass unlawful entry across an international boundary can qualify as an invasion triggering state authority to repel it, provided the incursion is truly foreign-sourced and the federal government forsakes its Article IV obligation to protect the states, as reflected in proposals urging states to act to repel invasions under Article I, Section 10 and the Guarantee Clause when the federal government refuses to act.³³ Even in that strongest articulation, however, the lawful invasion concept does not extend to treating the United States’ acting through its own officers pursuant to valid federal process in enforcing immigration law as an invasion, and it cannot serve as a basis to obstruct federal officers executing those laws; calling immigration enforcement an invasion collapses the distinction between an external hostile threat and domestic sovereign execution of federal authority and would invert the Constitution’s supremacy structure.³⁴

A. Textual Structure of Articles I and IV

The relevant constitutional texts use “invasion” in the context of protection against invasion and, in Article I’s Compact Clause, as a narrow exception allowing a state to engage in war if actually invaded or in imminent danger that will not admit of

³¹ See *Printz*, 521 U.S. at 935; see also *New York*, 505 U.S. at 161–62.

³² *Id.*

³³ Jeff Clark & Ken Cuccinelli, *Primer: Federal Law Does Not Criminalize the Conduct of State Officials When They Act to Repel an Invasion*, CTR. FOR RENEWING AM. (July 16, 2022), <https://americarenewing.com/issues/primer-federal-law-does-not-criminalize-the-conduct-of-state-officials-when-they-act-to-repel-an-invasion/>.

³⁴ U.S. CONST. art. VI, cl. 2.; *Id.* art. I, § 10, cl. 3.; *Id.* art. IV, § 4.

delay by requesting consent of Congress.³⁵ The Guarantee Clause similarly provides that the United States shall protect each state against invasion and, upon application, against domestic violence.³⁶

If a state or local official invokes invasion, the legal elements he or she will likely claim are: (1) an incursion into the state by an external force, (2) a threat to public safety or the republican form of government, (3) urgency such that delay is not tolerable, and (4) a state defensive authority triggered by the federal government's failure to protect.³⁷

B. Original Public Meaning of “Invasion”

While modern invasion arguments have been advanced by border states to characterize large-scale unlawful entry across an international boundary as a form of invasion triggering Article I and Article IV authorities, that theory presupposes a foreign source of the threat and cannot be transposed to treat domestic federal officers lawfully executing federal law within a state as an invasion of state sovereignty.³⁸

A state's claim that federal officers executing federal law within a state are invaders is structurally incompatible with supremacy because it recasts lawful federal execution as foreign hostility and would imply a state war power against the United States.³⁹ But the core federal rebuttal is that “invasion” in Articles I and IV concerns external hostile incursion against which the United States owes protection, not the routine enforcement of federal law by domestic federal officers acting under federal authority.⁴⁰ According to the original public meaning of “invasion” at the time the Compact Clause was written, an “invasion” required both physical *entry* into the territory and *enmity* against that political community, meaning hostile intent or actual hostile conduct, a definition that cannot encompass federal officers lawfully executing domestic law under federal authority within a state.⁴¹

³⁵ *Id.* art. I, § 10, cl. 3.

³⁶ *Id.* art. IV, § 4.

³⁷ *Id.* art. I, § 10, cl. 3; *Id.* art. IV, § 4.

³⁸ See Clark & Cuccinelli, *supra* note 33.

³⁹ See *McCulloch*, 17 U.S. (4 Wheat.) at 436; see *Cooper*, 358 U.S. at 18; see also *Ableman*, 62 U.S. at 506.

⁴⁰ U.S. CONST. art. I, § 10, cl. 3; *Id.* art. IV, § 4.

⁴¹ Joshua S. Treviño, *The Meaning of Invasion Under the Compact Clause of the U.S. Constitution* 5–7 (TEX. PUB. POLY FOUND., Nov. 2022) (explaining that under the Constitution, invasion required ingress paired with hostile intent or enmity).

C. Political Question Doctrine

The federal response should also note that questions regarding the Guarantee Clause and related questions regarding invasion and domestic violence historically present political question features and are not a clean litigation vehicle for a state seeking to enjoin federal action.⁴² *Luther v. Borden* recognizes that in contexts of domestic violence and competing authority, the political branches necessarily make threshold determinations to perform Article IV duties.⁴³ That line of cases undermines rather than supports a state's claim of unilateral, judicially enforceable authority to treat federal officers as invaders.⁴⁴

VI. States Operational Resistance

A. Sanctuary and Noncooperation

States seeking to frustrate federal immigration enforcement typically try to stay on the noncooperation side of the line while publicly framing their posture in constitutional language that sounds like interposition and operationally creating friction that raises the cost of federal action. The most common noncooperation tactics include statewide sanctuary statutes and executive directives restricting state and local compliance with ICE detainers, limiting notification of release dates, limiting transfers to ICE custody, restricting collection or sharing of immigration status information, and restricting use of state resources for federal immigration enforcement.⁴⁵ An example of weaponized noncooperation is California's S.B. 54, which limits the ability of state and local resources to assist federal immigration enforcement and aims to frustrate ICE operations near schools, hospitals, and courthouses.⁴⁶ California characterized this action as a noncooperation measure limiting the use of state and local resources for federal immigration enforcement, but the federal government challenged its actions as unconstitutional obstruction of federal operations under supremacy and intergovernmental immunity principles.⁴⁷ Although the courts, in that posture, declined to treat S.B. 54 as an affirmative interference with federal enforcement, the litigation itself underscores how closely such measures can approach the boundary between permissible refusal to assist and impermissible control of federal execution.

⁴² *Luther v. Borden*, 48 U.S. 1, 42 (1849).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ State Map on Immigration Enforcement 2024, IMMIGRANT LEGAL RES. CTR. (Nov. 8, 2024), <https://www.ilrc.org/state-map-immigration-enforcement-2024>.

⁴⁶ S.B. 54, 2017–2018 Leg., Reg. Sess. (Cal. 2017).

⁴⁷ *United States v. California*, 921 F.3d 865 (9th Cir. 2019), cert. denied, 140 S. Ct. 1564 (2020).

States may also attempt to eliminate or restrict local 287(g) agreements to limit or reduce state and local law enforcement’s ability to collaborate with ICE.⁴⁸

B. Accountability Litigation and Legal Pressure

A second category of state resistance is accountability litigation and state-law leverage designed to chill federal operations. Recent reporting indicates that some Democratic officials are exploring or endorsing state-court causes of action aimed at allowing residents to sue ICE agents for alleged federal constitutional violations, with the stated goal of increasing personal exposure and deterrence.⁴⁹ Governors and state attorneys general also may file federal suits seeking declaratory or injunctive relief against “surge” enforcement operations on theories resounding from Tenth Amendment occupation or invasion rhetoric, with Minnesota being one such example.⁵⁰ Where politically salient incidents occur, states may seek temporary restraining orders against categories of federal tactics, sometimes using Fourth Amendment narratives tied to particular arrests rather than claiming a general veto over federal enforcement.⁵¹

C. Escalation into Physical Obstruction

A third category of state resistance is escalation into unlawful conduct, which is the factual predicate of this primer. That escalation occurs when state officers or National Guard personnel, acting under state command, physically block federal officers, detain or threaten federal officers, seize federal property, or otherwise “retard, impede, burden, or in any manner control” federal execution of the law.⁵² States may attempt to dress that escalation in the language of interposition, but the operational hallmark of unlawful conduct is coercive interference rather than mere refusal to assist. A state may also attempt a rhetorical inversion by calling federal officers invaders, but that move fails on its own terms because invasion in the constitutional structure presupposes an external hostile incursion and cannot

⁴⁸ Ian Round, *MD lawmakers and sheriffs weigh limits on ICE partnerships*, DAILY RECORD (Jan. 5, 2026), <https://thedailyrecord.com/2026/01/05/287g-ice-agreements-immigration-rights-retaliation/>.

⁴⁹ Tim Craig, *New York Governor Will Push for State Lawsuits Against ICE Agents*, WASH. POST (Jan. 13, 2026),

<https://www.washingtonpost.com/nation/2026/01/13/new-york-governor-hochul-ice-lawsuits/>.

⁵⁰ Jason Lalljee, *How Minnesota, Illinois Are Trying to Use the 10th Amendment to Block ICE*, AXIOS (Jan. 14, 2026), <https://www.axios.com/2026/01/14/10th-amendment-ice-trump-illinois-minnesota>.

⁵¹ John Lochner, *Judge Orders Release of Liberian Man Arrested in Minneapolis by Agents with a Battering Ram*, AP NEWS (Jan. 16, 2026),

<https://www.nbcnews.com/news/us-news/judge-orders-release-liberian-man-arrested-minneapolis-ages-nts-batterin-rcna254401>.

⁵² McCulloch, 17 U.S. (4 Wheat.) at 436.

coherently be applied to domestic federal officers executing federal law under federal authority.⁵³

VII. Federal Response

The federal objective is to restore the ability of federal officers to execute the law safely and continuously while keeping the dispute inside courts and ordinary federal law enforcement channels for as long as possible.⁵⁴ The federal response could allow the state's anti-commandeering prerogative not to administer federal immigration enforcement, which could strengthen the credibility of the supremacy claim once the state crosses into obstruction.⁵⁵ The federal response could then draw a bright operational line: State noncooperation is permitted, but state interference is not permitted.

Consistent with that response framework, recent federal practice illustrates how criminal statutes may be invoked against state and local officials whose actions or rhetoric impede federal officers' performance of their duties. In January 2026, DOJ served grand jury subpoenas on Minnesota's Governor Tim Walz, Attorney General Keith Ellison, and the mayors of Minneapolis and St. Paul as part of a criminal investigation into whether their statements and official actions in response to a major federal immigration enforcement operation may constitute a conspiracy to obstruct or impede federal law enforcement.⁵⁶ The basis for the criminal conduct is a federal obstruction and conspiracy statute, 18 U.S.C. § 372, which criminalizes any conspiracy to prevent, by force, intimidation, or threat, a federal officer from discharging any duty of their office, along with related obstruction provisions.⁵⁷ The subpoenas underscore that federal authorities may view certain coordinated official actions or public statements by state actors as potentially rising to criminal interference with federal execution of law, even where political advocacy is intertwined with official duties.

⁵³ U.S. CONST. art. I, § 10, cl. 3; *Id.* art. IV, § 4; see Clark & Cuccinelli, *supra* note 33; see also Treviño, *supra* note 41.

⁵⁴ U.S. CONST. art. II, § 3.

⁵⁵ Printz, 521 U.S. at 935.

⁵⁶ Yuniur Rivas, *DOJ Opens Criminal Probe Targeting Minnesota Governor, Minneapolis Mayor over ICE Operations*, DEMOCRACY DOCKET (Jan. 16, 2026), <https://www.democracydocket.com/news-alerts/doj-opens-criminal-probe-targeting-minnesota/>.

⁵⁷ 18 U.S.C. § 372.

A. Record-Building and Pre-Litigation Notice

The first federal step is record-building, objective clarification, and pre-litigation notice that is written for a judge.⁵⁸ DOJ can send a formal notice to the governor, attorney general, and heads of state law enforcement identifying specific incidents of obstruction and demanding immediate cessation of conduct that controls federal execution before interposition, nullification, or invasion escalation. DHS and DOJ can preserve body camera footage, logs, written orders, and communications showing knowledge and intent because later criminal and injunction standards will turn on willfulness and on whether federal officers were performing official duties.⁵⁹

B. Supremacy-Based Civil Injunctions

The second step is rapid federal civil litigation for declaratory and injunctive relief in federal district courts against the specific officials directing or carrying out obstruction.⁶⁰ The core legal theory is supremacy and intergovernmental immunity: States cannot “retard, impede, burden, or in any manner control” lawful federal operations, and state process cannot be used to defeat federal authority.⁶¹ The requested relief can be narrow and conduct-specific, prohibiting physical blockades, threats, detention of federal officers, and interference with execution of federal process while expressly disclaiming any attempt to commandeer the state to assist federal enforcement.⁶² If the state files its own suit seeking to enjoin ICE activity using invasion or sovereignty rhetoric, DOJ can force the case back to the supremacy question: whether a state may physically obstruct federal execution, which the Supreme Court’s supremacy line forecloses against any potential federalism imbroglio that might involve the Tenth Amendment.⁶³

C. Targeted Criminal Enforcement and Officer Immunity

The third step is targeted criminal enforcement when state actors cross from policy disagreement into force, intimidation, or obstruction.⁶⁴ If state personnel forcibly assault, resist, oppose, impede, intimidate, or interfere with federal officers performing official duties, 18 U.S.C. § 111 is the baseline federal tool, and it applies regardless of state office.⁶⁵ Where conduct involves obstruction of service or

⁵⁸ Ableman, 62 U.S. at 523.

⁵⁹ 18 U.S.C. § 111(a).

⁶⁰ U.S. CONST. art. VI, cl. 2.

⁶¹ *Id.*; see McCulloch, 17 U.S. (4 Wheat.) at 436; see also Cooper, 358 U.S. at 18.

⁶² See Printz, 521 U.S. at 935; see also McCulloch, 17 U.S. (4 Wheat.) at 436.

⁶³ Cooper, 358 U.S. at 18; see also Lalljee, *supra* note 50.

⁶⁴ 18 U.S.C. § 111(a).

⁶⁵ *Id.*

execution of federal process, 18 U.S.C. § 1501 may apply on the facts.⁶⁶ If state officials attempt to prosecute federal officers in state court for acts within the scope of federal duties, the federal response should rely on the removal of federal officers and supremacy-based defenses rather than reciprocal escalation.⁶⁷ The removal of federal officers is designed to prevent state fora from controlling federal execution where federal interests are implicated.⁶⁸ Further, the theory that state officers can “repel an invasion” purports to shield state or local officers from arrest or prosecution when they physically obstruct, detain, threaten, or otherwise interfere with federal officers executing federal law, and such conduct remains subject to ordinary federal criminal enforcement.⁶⁹

D. Protective Deployments and *Posse Comitatus* Boundaries

The fourth step is protective deployments that stay within the limits of *posse comitatus* unless and until a statutory exception is invoked.⁷⁰ The Trump administration has already legally authorized the National Guard and federal law enforcement in multiple cities across the United States to carry out this mission.⁷¹ The practical goal is to preserve federal mobility, secure federal facilities, and prevent state seizures or blockades while maintaining civilian control and minimizing escalation.⁷²

E. National Guard Federalization Under Title 10

The fifth step is federalization of the National Guard under Title 10 when necessary to execute federal law and protect federal execution from being defeated by state command.⁷³ Title 10 authorizes calling the guard into federal service in specified circumstances, including when necessary to execute federal laws, and that pathway becomes primary if the state is using guard forces as the instrument of obstruction.⁷⁴ Once federalized, guard forces operate under federal command, which can neutralize the governor’s ability to use the guard as a state obstruction tool

⁶⁶ *Id.* § 1501.

⁶⁷ 28 U.S.C. § 1442(a)(1); *In re Neagle*, 135 U.S. at 75–76.

⁶⁸ 28 U.S.C. § 1442(a)(1).

⁶⁹ *See Clark & Cuccinelli*, *supra* note 33.

⁷⁰ 18 U.S.C. § 1385.

⁷¹ Benjamin Osborne, *On the President’s Lawful Authority to Deploy the National Guard to American Cities*, *CTR. FOR RENEWING AM.* (Oct. 3, 2025), <https://americarenewing.com/issues/on-the-presidents-lawful-authority-to-deploy-the-national-guard-to-american-cities/>.

⁷² *Id.*

⁷³ 10 U.S.C. § 12406.

⁷⁴ *Id.*

while still allowing the mission to be framed as protection of federal functions rather than generalized law enforcement.⁷⁵ The Supreme Court has recognized Congress's authority to structure guard service under federal control in ways that are not subject to gubernatorial veto once the guard is in the relevant federal status.⁷⁶

VIII. State Defenses Framed and Federal Authority Answered

States will likely argue *Printz's* anti-commandeering doctrine and claim they are merely refusing to participate in federal immigration enforcement.⁷⁷ The federal rebuttal is that anti-commandeering protects refusal to assist but does not authorize affirmative obstruction, and physical interference is exactly what supremacy forbids.⁷⁸ States will likely argue police powers and “generally applicable” regulations of federal operations such as facility access rules or operational restrictions framed as civil rights protections.⁷⁹ The federal rebuttal is that even generally applicable measures are unconstitutional as applied when they function to control or impede federal execution because states cannot burden federal operations in a way that defeats federal law.⁸⁰ States might argue interposition as a state right to protect residents from unconstitutional federal action.⁸¹ The federal rebuttal is that interposition in Madison's account is political and constitutional advocacy, not a legal power to suspend federal law by force, and the Supreme Court has rejected state obstruction of federal execution and authority.⁸² States might argue nullification by asserting that the state may treat federal immigration enforcement as unauthorized and therefore void within the state.⁸³ The federal rebuttal is that nullification is constitutionally impermissible because the Supremacy Clause and the judicial power foreclose a state veto over federal execution.⁸⁴ States might argue invasion and claim that federal officers are invaders of state sovereignty.⁸⁵ The federal rebuttal is that “invasion” in Articles I and IV

⁷⁵ *Id.*

⁷⁶ *Perpich v. Dep't of Def.*, 496 U.S. 334 (1990).

⁷⁷ *Printz*, 521 U.S. at 935.

⁷⁸ *See McCulloch*, 17 U.S. (4 Wheat.) at 436; *see also Cooper*, 358 U.S. at 18.

⁷⁹ U.S. CONST. amend. X.

⁸⁰ *See McCulloch*, 17 U.S. (4 Wheat.) at 436; *see also Cooper*, 358 U.S. at 18.

⁸¹ *See James Madison, Report on the Virginia Resolutions*, *supra* note 19.

⁸² *See McCulloch*, 17 U.S. (4 Wheat.) at 436; *see Cooper*, 358 U.S. at 18; *see also Ableman*, 62 U.S. at 523.

⁸³ *See Thomas Jefferson, Kentucky Resolutions of 1798 and 1799*, *supra* note 14.

⁸⁴ U.S. CONST. art. VI, cl. 2.; *see McCulloch*, 17 U.S. (4 Wheat.) at 436; *see also Cooper*, 358 U.S. at 18; *see also Ableman*, 62 U.S. at 523; *see also United States v. Peters*, 9 U.S. at 136–37.

⁸⁵ U.S. CONST. art. I, § 10, cl. 3; *Id.* art. IV, § 4.

concerns external hostile incursion and the federal duty to protect, not domestic federal law enforcement executing federal law under federal authority.⁸⁶

IX. The Insurrection Act

A. Statutory Triggers and Presidential Authority

The Insurrection Act provides for statutory exceptions to posse comitatus that can authorize use of militia and armed forces domestically under specified elements.⁸⁷

Section 251 applies when there is an insurrection in a state against its government and the president acts upon the request of the state legislature or the governor if the legislature cannot be convened.⁸⁸ Section 251 is unlikely in the scenario where the governor is the obstructing actor because it requires state initiation rather than federal initiative.⁸⁹

Section 252 applies when the president considers that “unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States” make it impracticable to enforce federal laws by the ordinary course of judicial proceedings.⁹⁰ The key elements for § 252 invocation are therefore unlawful obstruction and impracticability to enforce the law by ordinary judicial means, which is what may happen should a governor obstruct execution of federal law.⁹¹ For purposes of § 252, “the ordinary course of judicial proceedings” refers to the full continuum of lawful enforcement and keeping the peace, including investigation, arrest, service of process, custody, transport, prosecution, and execution of judgments, not merely the formal availability of courts or the ability to conduct hearings in isolation.⁹² Where organized obstruction prevents federal officers from safely executing warrants, maintaining custody, transporting defendants, or enforcing court orders, federal law cannot be said to be enforceable through the ordinary course of judicial proceedings, even if courts remain nominally open.

Section 253 applies when insurrection, domestic violence, unlawful combination, or conspiracy hinders execution of state or federal law so that a class of people is deprived of constitutional rights and the state is unable, fails, or refuses to protect those rights, or when those conditions oppose or obstruct execution of federal law or

⁸⁶ *Id.*; see Clark & Cuccinelli, *supra* note 33; see also Treviño, *supra* note 41.

⁸⁷ 10 U.S.C. §§ 251–54.

⁸⁸ *Id.* § 251.

⁸⁹ *Id.*

⁹⁰ *Id.* § 252.

⁹¹ *Id.*

⁹² *Id.*

impede the course of justice.⁹³ The operative elements for § 253 in this scenario would be organized opposition that obstructs federal law or impedes federal justice coupled with state inability, failure, or refusal to protect the relevant rights or to allow execution of the law.⁹⁴

Section 254 imposes a procedural prerequisite: Whenever the president considers it necessary to use the militia or armed forces under the Insurrection Act, the president must issue a proclamation ordering the insurgents or obstructers to disperse and retire peaceably within a limited time.⁹⁵

B. Demystifying Institutional Norms

Debate over the Insurrection Act frequently shifts from statutory text and constitutional structure to the role of institutional norms against the domestic use of military forces in law enforcement. The statute itself does not condition presidential authority on the absence of such norms but on the president's determination that the statutory predicates have been met "as he considers necessary."⁹⁶

Critics may argue that courts should second-guess the factual basis for invocation as a means of enforcing restraint. But that position is not grounded in the text of the act, which frames the decision to act as an executive assessment of conditions on the ground rather than a justiciable threshold to be litigated before deployment.⁹⁷ Historical practice reflects this structure. In 1992, the president issued a proclamation and executive order invoking the Insurrection Act and federalizing forces based on his own determination that domestic violence and unlawful obstruction had rendered ordinary enforcement impracticable rather than deferring to unwritten norms as any kind of limiting principle.⁹⁸

Within this paper's framework, norms are treated as nothing more than prudential considerations that may inform the exercise of discretion but do not displace or override any affirmative legal authority on behalf of the executive. The constitutional structure and statutory design assign responsibility for the decision

⁹³ *Id.* § 253.

⁹⁴ *Id.*

⁹⁵ *Id.* § 254.

⁹⁶ *Id.* § 253.

⁹⁷ *Id.* §§ 251–53.

⁹⁸ Proclamation No. 6427, 57 Fed. Reg. 19,359 (May 1, 1992); Exec. Order No. 12,804, 57 Fed. Reg. 19,361 (May 1, 1992).

to invoke the act to the political branches and do not subject them to any preconceived norm.⁹⁹

X. Conclusion: Constitutional Order and the Preservation of Federal Execution of the Laws

The constitutional equilibrium resolves political disagreement over federal immigration policy through litigation, legislation, and elections, not through the deployment of state force against federal execution.¹⁰⁰ The supremacy cases establish that the legitimacy of federal law does not depend on state acquiescence and that physical obstruction, whether styled as nullification, interposition, or invasion, falls outside the lawful scope of state authority.¹⁰¹

The constitutional design instead channels conflict into judicial determination and political accountability, preserving national uniformity of law while respecting the states' right to withhold voluntary participation.¹⁰² Within that framework, the executive's role is to ensure that federal courts and federal officers can perform their functions without coercion or interference, employing National Guard federalization and Insurrection Act authorities when organized resistance has displaced the ordinary operation of law.¹⁰³

⁹⁹ U.S. CONST. art. II, § 3; 10 U.S.C. § 254.

¹⁰⁰ See *Printz*, 521 U.S. at 935; see *New York*, 505 U.S. at 161–62.

¹⁰¹ See *McCulloch*, 17 U.S. (4 Wheat.) at 436; see also *Cooper v. Aaron*, 358 U.S. at 18; see also *Ableman*, 62 U.S. at 523; see also *United States v. Peters*, 9 U.S. at 136–37.

¹⁰² U.S. CONST. art. III, § 2; see *New York*, 505 U.S. at 161–62.

¹⁰³ U.S. CONST. art. II, § 3. *Id.* VI, cl. 2.; see *McCulloch*, 17 U.S. (4 Wheat.) at 436; see also *Cooper*, 358 U.S. at 18; see also *United States v. Peters*, 9 U.S. at 136–37; see also *Ableman*, 62 U.S. at 523; see also *In re Neagle*, 135 U.S. at 75–76; see also *Tennessee*, 100 U.S. at 263–64; see also *New York*, 505 U.S. at 161–62; see also *Luther*, 48 U.S. at 42; see also *Printz*, 521 U.S. at 935; 28 U.S.C. § 1442(a)(1); 10 U.S.C. §§ 251–54; *Id.* § 12406.