

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Applicants,

v.

STATE OF ILLINOIS AND CITY OF CHICAGO,
Respondents.

On Emergency Application to Stay the Order Issued by the
United States District Court for the Northern District of Illinois
and Request for an Immediate Administrative Stay

**BRIEF OF THE STATES OF MARYLAND AND WASHINGTON, 18 OTHER
STATES, THREE GOVERNOR'S OFFICES, AND THE DISTRICT OF
COLUMBIA AS AMICI CURIAE SUPPORTING RESPONDENTS**

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INTERESTS OF AMICI CURIAE¹

The Amici States are 20 States, three Governor’s Offices, and the District of Columbia, all of which have strong interests in preventing the unlawful deployment of the National Guard in their respective jurisdictions.²

First, the Amici States’ sovereign interests are implicated by the recent National Guard deployments across the country, in accordance with the nearly boundless theory of presidential authority advanced in the stay application.

Second, the States have an interest in ensuring that their National Guard units are available to perform the essential services that they usually provide to the States and for which they are specially trained, such as responding to disasters. These are services that Amici States cannot replace.

Third, the States have an interest in protecting public safety and combating violence—sovereign police powers constitutionally reserved to the States. Defendants’ actions exacerbate these challenges in the name of addressing them.

Fourth, the States have an interest in maintaining and promoting a free and open society in which the lawful exercise of First Amendment rights is not chilled by the presence of military forces deployed against protesters in our cities and towns.

¹ No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

² Amici States are Maryland, Washington, Arizona, Colorado, Connecticut, Delaware, Hawai’i, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Wisconsin; the District of Columbia; and the Governors of Kansas, Kentucky, and Pennsylvania.

Each State has an interest in protecting its citizens’ constitutional rights to freedom of expression and assembly—rights that are threatened by the unjustified use of domestic military force, whether in Illinois or in any of the Amici States.

SUMMARY OF ARGUMENT

In the stay application, the President has asserted a boundless power far out of step with our Nation’s laws and tradition: the power to federalize and deploy unlimited numbers of National Guard troops at his whim and without any judicial review. This Court should not endorse such a power, especially not on the emergency docket.

In the past few months, the Administration has sent or attempted to send National Guard members into one community after another: in California, the District of Columbia, Oregon, and now Illinois. These deployments have ballooned in scope and duration. California National Guard members who were federalized in June for the ostensible purpose of responding to protests in Los Angeles have now, four months later, been sent to Oregon and Illinois to support the Administration’s unlawful efforts to engage in civilian law enforcement reserved to the States and to suppress freedom of speech and association.

Amici States are gravely concerned that their sovereignty, authority, and communities may be threatened as well, and this concern is well-founded. On September 30, 2025, President Trump made plain his desire to “use some of these dangerous cities,” namely “the ones that are run by the radical left Democrats,” as “training

grounds for our military National Guard.”³ In the same speech, President Trump declared, “[W]e’re going to straighten them out one by one,” adding that “we’re going into Chicago very soon.” *Id.* One week later, the President ordered the deployment of hundreds of federalized soldiers into Chicago.

The threat posed to the sovereignty of Amici States and our structure of federalism is immense. The President’s desire to use American cities as military “training grounds,” to address crime, or to quash protests does not permit the use of armed military troops to accomplish these ends. The Constitution “divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” *New York v. United States*, 505 U.S. 144, 187 (1992). The district court correctly found that the circumstances in Chicago come nowhere close to the type of emergency that would support the domestic deployment of federal military troops. *See* App. 67a-77a. And the Seventh Circuit rightly concluded that the district court’s factual findings were not clearly erroneous and that the facts do not justify the President’s actions in Illinois. App. 87a, 97a-101a.⁴ This Court should similarly hold and thus should help safeguard the sovereign authority of Amici States and the very foundations of our Republic.

³ Donald J. Trump, President of the United States, Remarks to the Department of War (Sept. 30, 2025), <https://tinyurl.com/bddkuc5c>.

⁴ The Seventh Circuit administratively stayed the portion of the district court’s Order enjoining the federalization of the Illinois National Guard, App. 85a, and later continued this partial stay, App. 103a.

ARGUMENT

I. FEAR OF MILITARY RULE COMPELLED THE FRAMERS TO EMBED STATE CONTROL OF THE MILITIAS IN THE CONSTITUTION.

“Civilian rule is basic to our system of government.” *Bissonette v. Haig*, 776 F.2d 1384, 1387 (8th Cir. 1985), *on reh’g*, 800 F.2d 812 (8th Cir. 1986), *aff’d*, 485 U.S. 264 (1988). Civilian authority is necessary to uphold our liberties because the “use of military forces to seize civilians can expose civilian government to the threat of military rule and the suspension of constitutional liberties.” *Id.* Military force may also threaten “vital Fourth and Fifth Amendment rights,” “chill the exercise” of the rights to “speak freely and to vote,” and “create the atmosphere of fear and hostility which exists in territories occupied by enemy forces.” *Id.* Accordingly, “a traditional and strong resistance of Americans to any military intrusion into civilian affairs . . . has deep roots in our history.” *Laird v. Tatum*, 408 U.S. 1, 15 (1972). President Trump’s unconstitutional deployment of federalized National Guard troops threatens this tradition and the freedoms it protects.

Since the birth of the Republic, our leaders recognized that standing armies represent an inherent threat to liberty. And they understood that, in peacetime, militias must not be deployed without the consent of the local populace, except in extraordinary circumstances. One of the Founders’ “well-established purpose[s]” was to keep the military subordinate to civil authority. *Reid v. Covert*, 354 U.S. 1, 30 (1957) (plurality opinion); *see also Duncan v. Kahanamoku*, 327 U.S. 304, 320 (1946). Indeed, the deployment of British soldiers in the colonies galvanized a revolution; starting in 1768, King George III had quartered British troops in Boston “to

intimidate the local populace.” *Reid*, 354 U.S. at 27. The Founders thus embraced a commitment to civilian control, even as they faced down a war.

The Continental Congress stated in 1774 that “keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.” *Declaration and Resolves of the First Continental Congress*, Yale L. Sch.: Avalon Project (Oct. 14, 1774), <https://tinyurl.com/v2ntbfj7>; see also William S. Fields & David T. Hardy, *The Militia and the Constitution: A Legal History*, 136 Mil. L. Rev. 1, 26 (1992) (explaining that several early state declarations of rights agreed that “standing armies are dangerous to liberty, and ought not to be raised or kept up, without legislative consent”). And in drafting the Articles of Confederation, the Continental Congress placed primary reliance on state militias to provide security in emergencies, while eschewing a role for federal troops.⁵ It further provided that each State’s militia was limited to those functions needed for the “defense” of the State.

Later, in drafting the Constitution, the Framers recognized that an army, while “a necessary institution,” was also “dangerous to liberty if not confined within its essential bounds.” *Reid*, 354 U.S. at 24. The Constitution reflects this delicate balance, particularly with respect to state militias: States retain the authority to appoint officers and train the militia, and Congress holds the power to “call[] forth the Militia” only in specified circumstances, namely, “to execute the Laws of the Union, suppress Insurrections and repel Invasions.” U.S. Const. art. I, § 8, cl. 15; see

⁵ Articles of Confederation of 1781, art. VI, para. 4.

Houston v. Moore, 18 U.S. (5 Wheat.) 1, 50 (1820) (opinion of Story, J.) (“It is almost too plain for argument, that the power here given to Congress over the militia, is of a limited nature, and confined to the objects specified in these clauses; and that in all other respects, and for all other purposes, the militia are subject to the control and government of the State authorities.”). Accordingly, the President holds the role of “Commander in Chief of . . . the Militia of the several States,” but only “when called into the actual Service of the United States.” U.S. Const. art. II, § 2, cl. 1.

Consistent with this careful division of power, the President possesses limited authority to call up the state militias. In the early 20th century, Congress created the modern National Guard as the successor to the state militia and clarified the circumstances under which the National Guard may be federalized and deployed. *See Perpich v. Department of Def.*, 496 U.S. 334, 342 (1990). As the House Report accompanying the new law explained, the National Guard was “never designed to be a militia of the United States”; thus, the President could not call up the National Guard at his pleasure but only in specific enumerated “contingencies.”⁶ The House Report emphasized that “[i]t was the hereditary fear of standing armies, as a menace to liberty in time of peace, which led the framers of the Constitution to provide that the militia should always remain a militia of the States.” *See id.*

⁶ Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 Harv. L. Rev. 181, 195 n.74 (1940) (quoting H.R. Rep. No. 1094, 57th Cong., 1st Sess., at 22–23 (1902)).

II. DEFENDANTS' ACTIONS VIOLATE FOUNDATIONAL PRINCIPLES OF FEDERALISM.

Since 1792, the President has used federalized militia in domestic law enforcement only as “a last resort” when needed to quell an insurrection, when necessary to enforce a federal court order, or when state and local law enforcement are unable to enforce the law.⁷ Thus, federalized militia or National Guard was called to respond to armed, violent uprisings like the Whiskey Rebellion in 1794, the refusal to comply with desegregation orders in Little Rock in 1957, and the Los Angeles riots in 1992 following mob violence that ultimately “left at least 45 people dead, about 2,000 people injured and caused more than \$550 million in property damage in the city of Los Angeles alone.”⁸ And even when Presidents have deployed the National Guard, they have acknowledged the inherent limits of the Guard’s authority, stressing that National Guard personnel are not “used to relieve local and state authorities of their primary duty to preserve the peace and order of the community” (as President Eisenhower put it in 1957), but may be used, for example, to supplement state resources in preventing unrest “at the request of the Governor and the Mayor” (as President Bush

⁷ Mary C. Lawton, Memorandum from Antonin Scalia to the Deputy Att’y Gen. Re: L. Relating to Civ. Disturbances (Jan. 6, 1975), <https://perma.cc/B628-5ANM>.

⁸ Leslie Berger, *A City in Crisis: Days of Devastation in the City*, L.A. Times (May 3, 1992), <https://tinyurl.com/yc6ykp3>.

explained in 1992).⁹ Observing these limits is vital to preserving state sovereignty and safeguarding the rights of the people.

President Trump’s invocation of 10 U.S.C. § 12406 to deploy armed, federalized National Guard soldiers and entangle them in everyday civilian law enforcement activities like responding to small-scale protests—over the objection of Illinois’s Governor—is a stunning break from law and tradition. Section 12406 is a rarely invoked law that allows federal activation of the Guard only in response to an “invasion,” “rebellion,” or the President’s inability to execute the federal laws. In fact, when debating the Constitution, Alexander Hamilton thought it “preposterous” that militia would ever be forcibly deployed to another jurisdiction to impose a President’s will. *The Federalist No. 29* (Alexander Hamilton) (rejecting the “exaggerated and improbable suggestions” that federally controlled militia “of Virginia are to be dragged from their homes five or six hundred miles, to tame the republican contumacy of Massachusetts”).¹⁰

Alexander Hamilton understandably trusted that the Constitution, and the guarantees of federalism therein, would protect the States “in a manner consistent

⁹ President Dwight D. Eisenhower, *Radio and Television Address to the American People on the Situation in Little Rock*, The American Presidency Project (Sept. 24, 1957), <https://tinyurl.com/yzer647h>; President George Bush, *Address to the Nation on the Civil Disturbances in Los Angeles, California*, The American Presidency Project (May 1, 1992), <https://tinyurl.com/55mx5ch3>.

¹⁰ As the district court put it, “not even the Founding Father most ardently in favor of a strong federal government believed that one state’s militia could be sent to another state for the purposes of political retribution.” App. 34a.

with their status as residuary sovereigns and joint participants in the governance of the Nation.” *Alden v. Maine*, 527 U.S. 706, 748 (1999). After all, “[i]n the tension between federal and state power lies the promise of liberty.” *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991). Defendants’ attempts to deploy National Guard members to Chicago shatter the constitutional balance between state and federal authority.

Federal courts are important arbiters of that balance. *See, e.g., id.* at 460–61. Defendants, however, assert that courts have no role in evaluating the Administration’s shifting and expanding misuse of federalized National Guard. *See* App. 19–27. No cited case, however, provides that a court may not review a federal intrusion into core areas of state concern. *See Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 28–33 (1827) (addressing a matter of military discipline during a declared war with a foreign nation); *Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849) (dealing with recognition of disputed state governments). Instead, “the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.” *Sterling v. Constantin*, 287 U.S. 378, 401 (1932).

The past months exemplify the concentration of power that the Founders feared. For example, the Administration initially purported to justify its federalization of California National Guard elements as a response to protests in Los Angeles in June. But federalized California National Guard members were soon deployed to assist drug enforcement raids more than 140 miles away. *See* Motion to Vacate Stay or, in the Alternative, for Injunction Pending Appeal at 12, *Newsom v. Trump*, No. 25-3727 (9th Cir. Oct. 7, 2025). Now, months after the Los Angeles protests, even the

United States avers that any justification for their deployment has faded. *See* App. 10, 36. Yet hundreds of California National Guard members remain in federalized status, and the Administration has sent many of these members to support broad operations in Oregon, with some sent to conduct training in Illinois. *See* D. Ct. Doc. 63, at 8 (Oct. 9, 2025), No. 1:25-cv-12174 (N.D. Ill.).

Similarly, in the District of Columbia, the Administration first deployed approximately 800 D.C. National Guard members in August. Soon, thousands of National Guard troops from eight States and the District were out in force on D.C. streets. And the deployments have been extended through at least the end of November.¹¹

Before the district court, Defendants set forth a nearly boundless interpretation of § 12406 purportedly allowing their deployment of federalized soldiers to Illinois: that the National Guard may be federalized whenever “there was *any* repeated or ongoing violation of federal law in a community.” App. 75a. They persist here, asserting that § 12406 is triggered even where the record establishes consistent enforcement of federal law, so long as the President “conclude[s] that much enforcement has been thwarted.” App. 30. As a matter of text, however, § 12406 codifies the *rare* circumstances in which the National Guard may be activated and deployed by the President, such as when he “is unable with the regular forces to execute the laws of the United States.” 10 U.S.C. § 12406(3). These questions involve factual

¹¹ Anne Flaherty, *Army Extends Orders for DC National Guard Through Nov. 30: Officials*, ABC News (Sept. 4, 2025), <https://tinyurl.com/3auek2ss>.

determinations the Court reviews for clear error. *See* App. 43a (determining that Defendants’ declarations were not credible). Here, the district court found that, as a matter of fact, Defendants had not shown that they were “unable” or “significantly impeded” from enforcing federal laws. App. 71a, 76a. Defendants say that federal authorities “could do more” to enforce the laws, App. 30, but that is not enough to trigger § 12406.

Allowing the President to commandeer state National Guards and use them at his whim would fundamentally upset the balance of power between States and the federal government.¹² This Court should decline Defendants’ invitation to take such an unprecedented and drastic step.

III. DEPLOYMENT OF THE NATIONAL GUARD INFRINGES ON THE SOVEREIGNTY AND POLICE POWERS RESERVED TO STATES.

The Constitution establishes a federal government of limited, enumerated powers, and a general police power is not among them. Rather, it is the States that enjoy “great latitude under their police powers to legislate as ‘to the protection of the lives, limbs, health, comfort, and quiet of all persons.’” *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) (citation omitted). As this Court recently explained, the “ability to protect the people, property, and economic activity within its borders” is a “fundamental aspect of a State’s sovereign power.” *New York v. New Jersey*, 143 S. Ct. 918, 925 (2023).

¹² *Accord Printz v. United States*, 521 U.S. 898, 922 (1997) (“The power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States.”).

Accordingly, Defendants’ deployment of federalized National Guard soldiers infringes on Illinois’s sovereignty and its ability to enforce state laws. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982) (explaining that States have a sovereign interest in “the exercise of sovereign power over individuals and entities within the relevant jurisdiction” and that “this involves the power to create and enforce a legal code, both civil and criminal”).

The States’ experience confirms that respecting local control of law enforcement makes policing more effective and safer for all involved. “Local agencies are responsive to their local communities in a way that federal agencies,” and certainly federalized soldiers, “are not.”¹³ State and local law enforcement are more familiar with the laws they are enforcing. Their training and practices, such as rules of engagement and policies on use of force, are often tailored to local needs. Local police officers have built relationships with community members, understand relevant interests, and have greater knowledge of the geography, conditions, and people. By contrast, Defendants appear to view National Guard members, from anywhere in the country, as interchangeable and available to be deployed as federal law enforcement with minimal notice and training.¹⁴ As the district court properly concluded, “the significance of the public’s interest in having only well-trained law enforcement

¹³ Police Exec. Res. Forum, *MPD Leaders Should Remain in Charge of Their Police Department* (Aug. 16, 2025), <https://tinyurl.com/3wn4f4z9>.

¹⁴ In the district court, Defendants stated that even if the Court enjoined specific mobilization orders, Defendants would “have the right to send anybody from any other state tomorrow.” App. 32a, Tr. 120:18-20.

officers deployed in their communities and avoiding unnecessary shows of military force in their neighborhoods cannot be overstated.” App. 83a; *accord* App. 102a.

Moreover, National Guard units are not a natural fit for law enforcement missions. National Guard basic training is geared toward preparing a fighting force. *See* Army National Guard, *Basic Training Phases*, <https://tinyurl.com/23n4kveh> (last visited Oct. 20, 2025) (basic training for Army National Guard); U.S. Air Force, *Basic Military Training*, <https://tinyurl.com/4wy75u4z> (last visited Oct. 20, 2025) (basic training common to active-duty U.S. Air Force and Air National Guard). Indeed, the National Guard, when under federal control, is directly answerable to the Department of Defense, which Secretary Hegseth recently characterized as focused on “[m]aximum lethality, not tepid legality; violent effect, not politically correct.”¹⁵ It is therefore unsurprising that the deployment of federalized soldiers escalates community tensions and harms state economies.¹⁶ As the district court observed, putting federalized troops on city streets can sow chaos and fear, and “is likely to lead to civil unrest, requiring deployment of state and local resources to maintain order.” App. 82a. And tourists, consumers, workers, and businesses are all chilled when the military patrols our communities. The Constitution and other governing law protect

¹⁵ U.S. Dep’t of Def., *Trump Renames DOD to Department of War* (Sept. 5, 2025), <https://tinyurl.com/ymy9w5zw>.

¹⁶ *See, e.g.*, The Examination of Doctor Benjamin Franklin, Before an August Assembly, Relating to the Repeal of the Stamp Act, &c. (Feb. 13, 1766) (“Suppose a military force sent into America They will not find a rebellion; they may indeed make one.”), <https://tinyurl.com/577emuzh>.

Illinois and all other States from these injuries that result when “lethal” soldiers are sent into American communities.

President Trump has deployed the National Guard as domestic law enforcement four times in as many months—in California, the District of Columbia, Oregon, and now Illinois. He describes this as part of how he will “handle” “the enemy from within.”¹⁷ Unless Defendants are checked by the rule of law, the President will, in his own words, send the military to yet more cities in Amici States “one by one” to “straighten them out.”¹⁸ The States accordingly urge this Court to deny Defendants’ motion, and thereby protect the sovereignty of the States and the civil liberties of all Americans.

CONCLUSION

The motion should be denied.

¹⁷ Donald J. Trump, President of the United States, Remarks to the Department of War (Sept. 30, 2025), <https://tinyurl.com/bddkuc5c>.

¹⁸ *Id.*

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