

Nos. 25A326

In the Supreme Court of the United States

Donald Trump, et al.,
Applicants,
v.
Illinois, et al.,
Respondents.

ON APPLICATION FOR APPLICATION TO STAY THE JUDGMENT AND FOR AN
ADMINISTRATIVE STAY

BRIEF AMICUS CURIAE OF THE
NATIONAL IMMIGRANT JUSTICE CENTER
IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICUS CURIAE

The *National Immigrant Justice Center* (NIJC) is a Chicago-based nonprofit legal services organization. NIJC's legal staff and its network of approximately 2000 pro bono attorneys represent noncitizens and their families in removal proceedings and other immigration-related matters.¹ NIJC believes that noncitizens and asylum-seekers have human rights inherent in their status as human beings. Thousands of Americans volunteer with NIJC every year, motivated by a shared belief that noncitizens should be given a fair day in court. NIJC staff and pro bono attorneys have worked with noncitizens at the Broadview facility for many years, and can fill in some background details regarding these matters.

SUMMARY OF THE AMICUS ARGUMENT

In the past eight months, the federal government has repeatedly called upon the Court to intervene in the normal course of litigation below. Here, again, it argues that a lower court decision intruded on its authority. The lower court injunction here arose from extraordinary and unusual executive action which stretches federal executive authority to the breaking point, and beyond. Amicus writes to make three points.

Amicus represents detained noncitizens in the greater Chicago area, most of whom pass at some point through the Broadview Service Staging Area ("Broadview"), the facility repeatedly discussed by the Applicants. Applicants can confirm that the Applicants continue to use the Broadview facility; indeed, they use it more than ever before. It is currently overcrowded to the point that NIJC clients report not being fed and not even having room to sleep on the ground. The Broadview facility is small, two-story building on less than an acre of land, which in normal times processes approximately 10 detainees per day. The Applicants have federalized

700 national guard troops. Applicants do not state that these troops would be used at that facility; and it seems evident that most of them would not primarily work at Broadview. They would almost certainly be out in Chicago communities, suburbs, and neighborhoods, where they would become a second face of immigration enforcement.

Amicus explains the current state of immigration enforcement in Illinois, the situation into which troops would be inserted. Seeking to remove noncitizens living amongst the general populace, immigration agencies have employed a variety of techniques, some of doubtful legality, to sweep up putative or potential noncitizens. The federal government disclaims any areas of sanctuary, it has sent groups of agents down prime commercial thoroughfares and into popular parks, expressly detaining people based on how they look. This is happening in the full view of thousands of people, many of whom feel the agency is going too far, or is inappropriately targeted at individuals who are their neighbors, friends, or classmates. Concerned citizens often witness these interactions, which may appear abusive or unfair; and because they happen in public places, Americans often witness them while assembled together with friends, neighbors, and family members. They sometimes speak out in disagreement. This is not a freak minority opinion; polling data suggests that a majority of Americans disagree with the way immigration enforcement is happening. The federal government's immigration enforcement strategy seems designed to attract this sort of attention. This is the context in which the President seeks to send American troops into American neighborhoods. Seen in this light, deployment of troops is not mere law enforcement. It seems designed as intimidation, seeking to suppress disagreement with the President's enforcement strategy. It may succeed for a time in

¹ Pursuant to Rule 37.6, Amicus affirms that no counsel for a party authored this brief in whole or in part and that no person other than Amicus and its counsel made a monetary contribution to its preparation or submission.

making people fear to speak out. The consequences either way will be profound. If using American troops against political opponents does not feel like government of the people, by the people, and for the people, that is because it is not.

The Court has now received numerous requests from the federal government to lift lower court injunctions and restraining orders based on lower court findings that federal authorities are likely exceeding their authority. The Court should deny the application; but if it is inclined to grant, it should not do so without explaining the basis for its reasoning. Allowing apparently unlawful federal action to go forward undermines important values in American society, particularly a shared belief in the rule of law. Amicus understands the inclination to avoid analysis which would tend to “lock in” the Court without full briefing and argument; but it appears that the Court considers its stay decisions to lock in those judgments for the lower courts and for the Court itself. It is therefore preferable to give public-facing reasons, particularly in an area so important for the nation as the stationing of troops in American neighborhoods.

ARGUMENT

I. The Broadview Service Staging Area Is Operating at Capacity and Beyond.

It has been suggested that protests have prevented full use of the Broadview Service Staging Area (BSSA). Amicus represents Chicago-area immigrant detainees, and has long experience with that facility. Until recently, the facility was always a short-term staging facility, processing an average of less than 10 detainees per day. DHS Broadview PREA Report (Sept. 11, 2018), https://www.ice.gov/doclib/foia/prea_audit/broadviewServiceStagingArea_Sep10-2018_Sep11-2018.pdf. It was generally used as a transfer point between different county jails; detainees were not even kept there overnight.

In recent months, ICE began using the Broadview facility to hold detainees for longer periods of time. The facility was never designed for overnight use, so it lacks amenities such as

showers. NIJC clients report that the facility is overcrowded to the point that they do not receive regular meals, cannot contact their attorneys, and must sleep on the ground. A google maps view of the facility is reprinted below:



For many years, individuals and groups have periodically prayed or protested outside the Broadview facility. An informal group has been praying a weekly rosary outside Broadview for 19 years. App 6a. Larger protests have occurred recently, in response to increased immigration enforcement. Throughout any such protests, NIJC clients have continued to be processed at Broadview and detained there for days at a time. At no point has the facility ceased to operate or ceased to hold detainees.

The Broadview facility is located in a low-density industrial area in a suburb of Chicago. As is evident from the google maps photograph above, the parking lot holds approximately 30 cars or vans. As noted by the District Court, after protests, ICE requested assistance in the form of “approximately 100 Department of War personnel.” App. 9a. The Secretary of Defense ultimately federalized 700 members of the national guard (300 from Illinois and 400 from

Texas). There would seem to be no practical utility from having 700 national guard troops around that single building in a remote suburban area; that number of troops could hardly fit in that area, standing back to back. Even 100 troops would be wildly disproportionate to protests and prayer groups that normally total 20-30 people. The Applicants make no effort to address the divergence between the rationales given in this Court and courts below, and what executive branch has done and seeks to do. The sevenfold increase in the number of troops bolsters the state's claim that the use of troops is pretextual, a claim which was already strong in light of the President's longstanding and frequently expressed desire to send in the guard for other purposes, and his comments as it was happening in this case. App. 46a-47a (collecting Presidential comments).

II. Operations of ICE in the Chicago Area Have Increased and Expanded in Scope.

As has been widely reported by the media, far from slowing down, ICE has been beefing up its operations in the greater Chicago area in a project termed Operation Midway Blitz. At a basic level, the scope of additional immigration arrests in the area put the lie to the suggestion that troops are needed in order to permit the enforcement of immigration law. But Amicus believes that the scope of these activities is relevant for three other purposes.

A. The meaning of “unable... to execute the laws”

The authority invoked by the President is 10 U.S.C. § 12406, which permits the President to call up the national guard on three bases: (a) danger of “invasion” by a foreign government; (b) “a rebellion or danger of a rebellion against the authority of the Government of the United States”; and (3) “the President is unable with the regular forces to execute the laws of the United States.” The President invoked only the last clause in calling out the national guard.

The parties differ in their understanding of the last clause. The meaning of the clause is illuminated by the familiar canon of *noscitur a sociis*. Under that canon, a word is “given more

precise content by the neighboring words with which it is associated.” *United States v. Williams*, 553 U.S. 285, 294 (2008). That is, the President’s inability to execute the laws should be understood not to apply to any inability to execute one of the tens of thousands of federal laws; but it must be akin to the situation that would exist if the country were invaded by a foreign power, or if there were a rebellion or danger of a rebellion. *See also* Act of May 2, 1792, ch. 28, §§ 1-2, 1 Stat. 264 (allowing use of militia where the enforcement is opposed “by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act.”).

Similarly, the canon of *ejusdem generis* provides that “a general or collective term at the end of a list of specific items” – in this case, a general reference to enforcing the laws, following specific instances of invasion and rebellion – is typically “controlled and defined by reference to’ the specific classes ... that precede it.” *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (internal citations omitted). This canon “track[s] the common sense intuition that Congress would not ordinarily introduce a general term that renders meaningless the specific text that accompanies it.” *Fischer v. United States*, 603 U.S. 480, 487 (2024). If the reference to the inability to execute the laws were read as broadly as the words might allow, it would encompass all cases of invasion and rebellion, rendering those provisions a nullity.

The statute covers circumstances where the executive cannot enforce the law, in ways akin to rebellion or invasion.

B. Current enforcement tactics in Chicago focus on arresting noncitizens in neighborhoods, towns, and suburbs, meaning that troops would likely be in those communities.

Apparently seeking to convey a message that there is no “safe” space for a noncitizen, even in cities far removed from an international border, the Applicants have sought to bring immigration enforcement to all parts of the state, not only those parts more traditionally

associated with immigrant communities. It is the agency's prerogative to take this approach. This is why newspapers carried iconic photographs of masked, armed, camouflaged ICE agents walking down Michigan Avenue.



This presumably achieves some governmental objectives. Such tactics also bring immigration enforcement into direct contact with broad swaths of the population, as immigration agents ask some people they encounter for identification.

The immigration agent in charge of this effort, Gregory Bovino, explains that agents apply various factors to deciding who to detain or arrest, including “obviously, the particular characteristics of an individual, how they look. How do they look compared to, say, you?” Chip Mitchell, *Feds march into Downtown Chicago; top border agent says people are arrested based partly on ‘how they look’* Chicago Sun-Times (Sept. 28, 2025). When ICE agents swept through downtown, news reports noted that some bystanders shouted at ICE agents, while others offered support. *Id.* A prominent story from that day arose when immigration agents approached a family whose children were playing in the fountains at Millenium Park; the family had been

paroled into the country, but they were detained and arrested anyway. Molly Devore, *Family Taken By Feds Downtown Separated In Detention Centers: 'They're Locking Up Children,'* Block Club Chicago (Sept. 30, 2025).



That particular arrest was allegedly unlawful, *see Chavez Alvarez v. Noem*, No. 1:25-cv-11853 (N.D.Ill.), but even if the arrest had been carried out in full compliance with statutes and regulations governing warrantless arrests, the very public nature of the arrest is notable. That immigration arrest occurred in full public view, before other families out for a Sunday in the park.

Whatever the wisdom or efficacy of these tactics, they naturally and unavoidably result in direct interactions not only with noncitizens amenable to removal, but with the public at large. Another news story reports that a crowd of onlookers was drawn to observe after ICE agents pursued and rammed a car, causing it to crash. Mary Norkol, Anthony Vazquez and Kade Heather, *Feds Ram SUV After Chase Down Residential Street in Chicago, Then Tear-gas Crowd* (Chicago Sun-Times) (Oct. 15, 2025). In the ensuing commotion, someone threw something at

Border Patrol agents, leading them to deploy tear gas on a crowd that included children and the elderly. Reporters interviewed Juanita Garnica, whose 15-year old son, an American citizen, was detained by ICE for five hours, held incommunicado by Border Patrol agents in a garage, and ultimately released. *Id.*

Given the ubiquitous presence of smart phones, other community members have frequently recorded interactions with ICE which appear to them to be abusive or improper. This can also lead to problems, though. For instance, onlookers observed an ICE agent detaining Ms. Debbie Brockman:



Anna Betts, Chicago TV producer's arrest in Ice raid 'alarming and horrifying', lawyers say, The Guardian (Oct. 14, 2025). Mrs. Brockman apparently filed an arrest in her neighborhood and asked the ICE officer whether he had a warrant of arrest; she ended up detained herself. She was eventually released without charges, but these are the scenes that are playing out across

Chicago neighborhoods. (Video of the arrest, filmed on a smart phone, can be found here: <https://x.com/jbogoblue/status/1976650676920013241>.)

C. Granting the application would involve national guard troops in such arrests.

Given the number of national guard troops mobilized, the minimal need for them at Broadview, and the President's various statements about his goals for National Guard troops, it is likely that the federal government will use national guard troops to support enforcement actions in Chicago neighborhoods, suburbs, and communities.

The Court need not ignore the degree to that National Guard involvement would bump up against the posse comitatus statute, which prohibits active-duty soldiers from acting "to execute the laws." 18 U.S.C. § 1385. After all, the Militia Clause grants authority over the militia to Congress, which has authorized the President to call out the National Guard only in specific circumstances. Congressional statutes should be interpreted harmoniously where possible: if § 1385 precludes involvement of federalized national guard troops, § 12406 should be understood to provide similarly.

More importantly, as explained above, the President's proclamation to send American troops into American neighborhoods should be understood in light of the considerations above. Sending in troops seems designed as intimidation, aiming to suppress disagreement with the President's enforcement strategy. It may succeed by making some people fear to speak out. It may provoke a more strenuous response by political opponents. Indeed, it may do both, intimidating some people from exercising their right to nonviolent disagreement, while causing others to believe that the end of American democracy is approaching. Either way, the consequences will likely be profound. If using American troops against political opponents does not feel like something done by a government of the people, by the people, and for the people, that is because it is not.

Amicus handles thousands of asylum claims every year for noncitizens from foreign countries. Many countries (e.g., Venezuela) were once prosperous and democratic, but are now sources of external migration as their citizens flee repression or civil conflict. Those situations tend to develop over time, step by step. It is a common observation that polarization is increasing in society. American institutions remain comparatively strong, but America has no birthright immunity from civil conflict. Sending troops into American neighborhoods runs risks of misunderstandings and heightened tension, with rhetoric liable to cast one side or the other as anti-American or neofascist. Use of the military in such a context not only risks exacerbating conflict in Illinois, it risks undermining the sense of the American military as a unifying national institution. That is to say, the stakes for the public interest are high and call for caution and care.

III. If the Court Grants a Stay, It Should Explain Its Reasoning.

In case after case in recent months, the Court has granted the executive leeway to act in ways that lower courts found to have been unlawful. In several cases, the Court has declined to explain precisely why it disagreed with lower courts.

The Government paints this as evidence that lower courts are unfair to it, or too quick to enjoin executive action. That is ironic, as it seems more likely that the Court is bending over backwards to try to avoid interbranch conflict.

Here, yet again, the executive has adopted a novel argument and seeks the Court's support to immediately implement its view. It argues that the militia clause isn't limited to enforcing the law in contexts similar to insurrection or invasion, *see* U.S. Const. Art. I, § 8, Cl. 15, but can be invoked whenever the president wishes to "enforce the law" in some way. It argues that courts may not review executive action, though the executive is merely employing authority granted it by Congress in a statute that contains no jurisdiction-stripping provisions.

Given the thousands of federal statutes and the various ways of enforcing them, the Government's view is a recipe for permanent military involvement in enforcing favored laws against political opponents. Today, the government claims to be focused on immigration law; tomorrow, the President intends to use the military to enforce "order" in urban areas. A future administration may employ military means to advance, or hinder, access to abortion, freedom from discrimination of one sort or another, and untold other points. Once the military is called out to achieve one political goal, it is not likely that the opposing political party will abstain from using such a tool if political power changes hands after future elections.

But even if future political majorities were to reject military law enforcement as contrary to American democratic traditions, that would also have consequences. Such future majorities might question how this Court, charged with protecting the law and the rights of the citizenry, permitted involvement of the military in such civilian matters. That danger would be particularly grave if the Court acted without providing a robust assessment of its legality. Amicus understands the Court's hesitation to opine precipitously on complex legal matters, in ways that can lock in the Court. It appears to Amicus that the Court's actions in granting or denying a stay have a locking-in effect regardless of whether reasoning is given, since the Court expects future stay decisions to be consistent with whatever the Court decides now.

In short, there are also institutional dangers in permitting apparently unlawful governmental actions, particularly when they are directed against democratic disagreement. The Court should summarily deny the motion. But if the Court is inclined to grant relief, it should do so, if at all, after full briefing and argument.

CONCLUSION

The Court should reject the stay application.

Respectfully Submitted:

Date: October 21, 2025

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