

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 Application for a Stay of the Order Issued by the
United States District Court for the Northern District of Illinois

**BRIEF OF *AMICI CURIAE* NATIONAL SECURITY LEADERS
FOR AMERICA IN SUPPORT OF RESPONDENTS STATE OF
ILLINOIS AND CITY OF CHICAGO**

SAURISH APPLEBY-BHATTACHARJEE
Counsel of Record
GEOFFREY PIPOLY
Bryan Cave Leighton Paisner LLP
161 North Clark Street, # 4300
Chicago, Illinois 60601
saurish@bclplaw.com
Tel. (312) 602-5004

JEAN-CLAUDE ANDRÉ
Bryan Cave Leighton Paisner LLP
120 Broadway, Suite 300
Santa Monica, CA 90401

DANIEL C. SCHWARTZ
CHARLES TOMPKINS
Bryan Cave Leighton Paisner LLP
1155 F St NW
Washington, DC 20004

Attorneys for NATIONAL SECURITY LEADERS FOR AMERICA

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iii
INTERESTS OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. The National Guard Developed as a Community-Based Force in the Absence of a Standing Army	4
II. Historical National Guard Deployments Show That President Trump’s Federalization of the Illinois Guard Is a Dangerous Outlier	5
A. The Civil Rights Era: Presidents Deployed the National Guard Without Governors’ Consent Only to Protect Important Constitutional Rights Amid State Defiance.....	5
B. The Modern Era: From 1967 Until 2025, All Decisions to Federalize the National Guard Have Been Made at the Request of or in Cooperation with State Governors.....	7
III. The Federalization of the National Guard Contravenes the Plain Text of § 12406 and Is Contrary to the Best Interests of the National Guard, Illinois, and the Nation	9
A. President Trump Improperly Federalized the Illinois National Guard	10
1. Because There Is No Ongoing “Rebellion” or “Danger of Rebellion,” the President Could Not Lawfully Federalize the Illinois Guard Under 10 U.S.C. § 12406(2).....	11
2. Because He Was Not <i>Unable</i> to Execute the Laws of the United States, the President Could Not Lawfully Federalize the National Guard Under 10 U.S.C. § 12406(3)	14
B. Strict Compliance with Subsection 12406(3)’s Language Is Especially Important Because of the Negative Impact of President Trump’s Deployment on the National Guard, Illinois, and the Nation.....	21
C. President Trump’s Deployment Diverted the National Guard from Its Core Duties Without Proper Training or Instruction.....	21

D.	President Trump’s Deployment Undermined Public Trust in the Federal Government and Its Military.....	24
CONCLUSION.....		25

TABLE OF AUTHORITIES

	Page
Cases	
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	16
<i>Bissonette v. Haig</i> , 776 F.2d 1384 (8th Cir. 1985), <i>aff'd</i> , 485 U.S. 264 (1988)	21
<i>Bostock v. Clayton Cnty, Ga.</i> , 590 U.S. 644 (2020).....	15
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024).....	11
<i>Martin v. Mott</i> , 25 U.S. (12 Wheat.) 19 (1827).....	19, 20
<i>Newsom v. Trump</i> , 786 F. Supp. 3d 1235 (N.D. Cal. 2025)	12, 14, 19
<i>U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Village at Lakeridge, LLC</i> , 583 U.S. 387 (2018).....	13
<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	19
Constitutional Provisions	
U.S. Const. art. I, § 8, cl. 15.....	2, 4, 10
U.S. Const. art. II, § 2	2, 4
Statutes and Rules	
10 U.S.C. § 251	16, 17
10 U.S.C. § 252.....	18
10 U.S.C. § 12406.....	2, 9, 10, 11, 14, 16, 19, 20
10 U.S.C. § 12406(1)	19, 20
10 U.S.C. § 12406(2)	9, 11, 19

10 U.S.C. § 12406(3)	9, 14, 15, 16, 18, 19, 20, 21
18 U.S.C. § 1385	15, 16, 22

Other Authorities

Attorney General Raoul Files Lawsuit Against Trump Administration to Stop Unlawful Deployment of National Guard, <i>Office of The Illinois Attorney General</i> (Oct. 6, 2025); https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-files-lawsuit-against-trump-administration-to-stop-unlawful-deployment-of-national-guard (last accessed Nov. 6, 2025)	25
Michael Belis, <i>History of 22nd Infantry Regiment: “Regulars by God,”</i> available at https://22ndinfantry.org/regimental-history (last accessed Nov. 6, 2025)	15
Cal. Guard, <i>California Army National Guard</i> , Cal. Military Dep’t, https://calguard.ca.gov/army/ (last visited Nov. 6, 2025)	4
Elizabeth Castillo, <i>Six Things: The role of California’s National Guard in protests</i> , Cal Matters (June 3, 2020), https://calmatters.org/justice/2020/06/california-national-guard-role-protests-explained/ (last visited Nov. 6, 2025)	4
<i>Chronology of the Integration of the University of Mississippi</i> , John F. Kennedy Presidential Libr. & Museum, https://microsites.jfklibrary.org/olemiss/chronology/ (last visited Nov. 6, 2025)	6
Robert W. Coakley, <i>The Role of Federal Military Forces in Domestic Disorders 1789-1878</i> , at 12 (1988), https://tinyurl.com/566cb2cm (last visited Nov. 6, 2025)	4
<i>De-escalation Policies and Training</i> , Council on Crim. Just. (Mar. 2021), https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/de-escalation_training.9f4b662e97c2.pdf (last accessed Nov. 6, 2025)	23
Directive OPS-046, Use of Force and Intermediate Weapons, <i>Illinois State Police</i> (June 17, 2022), https://isp.illinois.gov/StaticFiles/docs/DepartmentDirectives/OPS-046%20DIR.pdf (last accessed Nov. 6, 2025)	23
David E. Engdahl, <i>Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders</i> , 57 IOWA L. REV. 1 (1971)	17
Exec. Order No. 11053, Providing Assistance for the Removal of Unlawful Obstructions of Justice in the State of Mississippi, 27 Fed. Reg. 9693 (Sept. 30, 1962)	6
Edison Forman & Rebecca Lullo, <i>Understanding Domestic National Guard Missions, Protect Democracy</i> (Aug. 5, 2024)	4, 22, 23

Sarah Fortinsky, <i>Chicago mayor: National Guard deployment ‘illegal, unconstitutional ... dangerous’</i> , The Hill (Oct. 7, 2025), https://thehill.com/homenews/state-watch/5543562-chicago-mayor-opposes-trump-national-guard/ (last accessed Nov. 6, 2025)	25
Elizabeth Goitein, <i>What to Know About the Los Angeles Military Deployment</i> , Brennan Ctr. for Just. (June 20, 2025), https://www.brennancenter.org/our-work/research-reports/what-know-about-los-angeles-military-deployment (last accessed Nov. 6, 2025)	22
<i>Governor Barnett’s Declaration to the People of Mississippi</i> , John F. Kennedy Presidential Libr. & Museum, https://microsites.jfklibrary.org/olemiss/controversy/doc2.html (last visited Nov. 6, 2025).....	6
Gov’t Petition for Writ of Mandamus, <i>In re Kristi Noem, et al.</i> , No. 25-2936 (7th Cir.), Dkt. 1-1, at 7 n.3 (Oct. 29, 2025).....	13
<i>Hurricane Katrina: The Role of the Governors in Managing the Catastrophe</i> , Hearing Before the S. Comm. on Homeland Security & Governmental Affairs, 109th Cong. 27–30 (2006) (testimony of Kathleen Blanco).....	8
Kiki Intarasuwan & Caitlin Yilek, <i>Former defense secretary’s concern about the National Guard in L.A. is “loss of life like we saw in 1970”</i> , CBS News (June 11, 2025), https://www.cbsnews.com/news/chuck-hagel-defense-secretary-national-guard-la-reaction/ (last accessed Nov. 6, 2025)	23
Lyndon B. Johnson & Richard J. Daley, <i>Conversation of Apr. 6, 1968</i> , in Lyndon B. Johnson and Civil Rights, vol. 2, ed. Kent B. Germany (Univ. of Va. Press 2014), Presidential Recordings Digital Edition, http://prde.upress.virginia.edu/conversations/4005994 (last accessed Nov. 6, 2025)	8
<i>LBJ sends federal troops to Alabama to protect a civil rights march</i> , History (Nov. 24, 2009), https://www.history.com/this-day-in-history/march-20/lbj-sends-federal-troops-to-alabama (last visited Nov. 6, 2025)	6
Gen. Joseph Lengyel et al., <i>Statement of Principles on Domestic Deployment of the National Guard</i> , Count Every Hero, https://counteveryhero.org/wp-content/uploads/2024/07/CEH-Deployment-Principles.pdf (last visited Nov. 6, 2025)	21, 22, 23, 24
Capt. Wayne Minami, <i>Baltimore Riot Was Maryland Air Guard’s Largest Mobilization</i> , 175th Wing Pub. Affs. (Feb. 22, 2010), https://www.175wg.af.mil/News/Features/Display/Article/448514/baltimore-riot-was-maryland-air-guards-largest-mobilization/ (last accessed Nov. 6, 2025).....	8
Nat’l Archives, <i>Executive Order 10730: Desegregation of Central High School (1957)</i> , https://www.archives.gov/milestone-documents/executive-order-10730 (last visited Nov. 6, 2025).....	5

National Guard Bureau, <i>How We Began</i> , The National Guard, https://www.nationalguard.mil/About-the-Guard/How-We-Began/ (last visited Nov. 6, 2025)	4, 6
Joseph Nunn, <i>The Posse Comitatus Act Explained</i> , Brennan Ctr. for Just. (Oct. 14, 2021), https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained (last accessed, October 14, 2025)	7
Fintan O’Toole, <i>A Show of Force</i> , N.Y. Rev. of Books (July 24, 2025), https://www.nybooks.com/articles/2025/07/24/a-show-of-force-fintan-otoole/ (last accessed Nov. 6, 2025)	24
Presidential Memorandum, <i>Department of Defense Security for the Protection of Department of Homeland Security Functions</i> (June 7, 2025), D. Ct. Doc. 62-1 at 19	3, 10
Presidential Memorandum, <i>Department of War Security for the Protection of Federal Personnel and Property in Illinois</i> (Oct. 4, 2025), D. Ct. Doc. 62-1 at 16	2, 10
Governor Pritzker Statement on the Illinois National Guard, <i>Office of the Governor</i> (Oct. 4, 2025), https://gov-pritzker-newsroom.prezly.com/governor-pritzker-statement-on-the-illinois-national-guard (last accessed Nov. 6, 2025)	25
Dave Roos, <i>7 Times Presidents Have Activated US Troops on American Soil</i> , History (June 11, 2025), https://www.history.com/articles/national-guard-federal-troops-deployments (last visited Nov. 6, 2025)	6, 8
Anshu Siripurapu & Noah Berman, <i>What Does the U.S. National Guard Do?</i> , Council on Foreign Relations (June 10, 2025)	4, 6
<i>Troops in Los Angeles can detain but not arrest individuals, military official says</i> , Reuters (June 11, 2025), https://www.reuters.com/world/us/troops-los-angeles-can-temporarily-detain-individuals-no-arrest-authorities-2025-06-11/ (last accessed Nov. 6, 2025)	23
<i>University of Alabama desegregated</i> , History (Feb. 9, 2010), https://www.history.com/this-day-in-history/june-11/university-of-alabama-desegregated (last visited Nov. 6, 2025)	6
Use of Force and Deadly Force Model Policy, Use of Force and Deadly Force Policy, <i>Cook County Sheriff’s Office</i> (Aug. 17, 2020), https://cms7files1.revize.com/cookcountymn/CCSO%20Policies.pdf (last accessed Nov. 6, 2025)	23

INTERESTS OF *AMICI CURIAE*

Amicus curiae National Security Leaders for America (“NSL4A”)¹ is a volunteer organization with over 1,300 bipartisan members. Members include retired generals, admirals, and other command service officers, ambassadors, diplomats, and former federal government employees who served in Senior Executive Service positions in areas relating to United States national security, intelligence, public service, and diplomacy. NSL4A’s mission is to preserve democratic norms, protect constitutional freedoms, and ensure that both civilian and military service remain non-politicized and operating in the best interest of American democracy and nonpartisanship.

NSL4A’s members also include former National Guard command position-holders around the country. This experience gives NSL4A particular expertise to assist the Court in understanding the laws and regulations controlling the very limited circumstances under which the President may federalize National Guard units away from their state governors and deploy them for federal use; and functions for which the President may, and may not, use federalized National Guard troops.

INTRODUCTION AND SUMMARY OF ARGUMENT

The National Guard has served a unique role in United States history. First formed in the original colonies, the Militia (as it was then known) served under the command of colonial governors. Although much of the colonial Militia fought under General George Washington during the Revolutionary War, that required specific action of the Continental Congress and consent by colonial governors.

The Constitution’s Framers understood the reluctance of the new country’s citizens to accept a national federal army, due in large part to the British occupation army’s excesses.

¹ No counsel for a party authored this brief in whole or in part, and no one other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund this brief’s preparation or submission.

Although Article II of the Constitution makes the President commander in chief of the armed forces—including the Militia “when called into the actual Service of the United States” (U.S. Const. art. II, § 2)—Congress alone has the authority to determine under what circumstances the Militia may be “call[ed] forth ... to execute the Laws of the Union.” U.S. Const. art. I, § 8, cl. 15.

Because uninvited federalization of the National Guard severely impacts states’ welfare and governors’ responsibilities, Congress strictly controlled the President’s ability to federalize the National Guard without the relevant governor’s invitation or consent. Under 10 U.S.C. § 12406, there are three such circumstances: “whenever (1) the United States ... 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.”

When, as here, the President seeks to federalize the National Guard of a state against its governor’s wishes, particularly given the negative impact doing so has on the Guard’s readiness, he must establish that section 12406’s conditions have been met. On the record developed before the district court, the President has failed to make this showing.

ARGUMENT

On October 4, 2025, acting on authority from President Trump, the Secretary of Defense—against Illinois Governor J.B. Pritzker’s wishes—federalized 300 Illinois National Guard Troops, who are now stationed at bases in the Chicagoland area along with 400 Texas National Guard Troops. Purporting to justify the deployment, the President claimed “[f]ederal facilities in Illinois *** have come under coordinated assault by violent groups intent on obstructing Federal law enforcement activities” and that “these violent activities appear to be increasing[.]”² Earlier this

² Presidential Memorandum, *Department of War Security for the Protection of Federal Personnel and Property in Illinois* (Oct. 4, 2025), D. Ct. Doc. 62-1 at 16 (the “October 4 Memorandum”).

year, the President articulated his belief that “[t]o the extent that protests or acts of violence directly inhibit the execution of laws,” he viewed them as “a form of rebellion against the authority of the Government of the United States.”³ And now, in his stay application, the President expressly claims that there is a “rebellion” afoot in Illinois.⁴

The district court issued a temporary restraining order in favor of the Illinois plaintiffs. The Seventh Circuit stayed the district court’s order barring President Trump’s federalization of the Illinois National Guard but kept in place the district court’s order prohibiting the deployment of Illinois and Texas National Guard troops within Illinois. In issuing its partial stay, the Seventh Circuit correctly deferred to the district court’s well-supported factual findings, while avoiding “thorny and complex issues of statutory interpretation”⁵ that need not be resolved by way of a stay application. The President now asks that this Court stay the district court’s October 9 temporary restraining order in its entirety.

Even though National Guard troops may not be deployed at this time, the activation of the Illinois National Guard and the insertion of Guard troops from another state, all against the wishes of Illinois’s Governor, conflict with the plain language of section 12406, and undermine the Guard’s purpose and mission, Illinois’s sovereignty, and the traditional role of the Guard. The President’s actions also jeopardize the National Guard’s ability to carry out important state goals and diminish public trust in the Guard.

This Court should deny the application for a stay.

³ Presidential Memorandum, *Department of Defense Security for the Protection of Department of Homeland Security Functions* (June 7, 2025), D. Ct. Doc. 62-1 at 19 (the “June 7 Memorandum”).

⁴ Stay Appl. 4.

⁵ App. 100a.

I. The National Guard Developed as a Community-Based Force in the Absence of a Standing Army

The National Guard traces its origins to the colonial era, when militias were formed to defend and secure early settlements.⁶ What is now known as the National Guard sprang from this first organization of militia regiments in North America.

In the American Revolution's wake, the Constitution's Framers strongly opposed the notion of a standing army or a presidentially controlled militia.⁷ So, in contrast to his Article II authority to act as commander in chief of the armed forces, the President commands the Militia only "when called into the actual Service of the United States." U.S. Const. art. II, § 2. Congress enumerates when the Militia could be "call[ed] forth" to execute federal laws. U.S. Const. art. I, § 8, cl. 15.

Today, National Guard units continue to operate primarily as state militias while increasingly operating with U.S. military components overseas.⁸ Guard members are not full-time soldiers, but rather community members leading civilian lives until called upon to serve.⁹

As a "community-based land force,"¹⁰ the National Guard's primary purpose is to serve American communities domestically.¹¹ The Guard has always been comprised of state and local militias dedicated to serving the American people and their communities in times of crisis. Remaining nonpartisan is crucial to National Guard members' ability to serve their communities and retain public trust.

⁶ National Guard Bureau, *How We Began*, The National Guard, <https://www.nationalguard.mil/About-the-Guard/How-We-Began/> (last visited Nov. 6, 2025).

⁷ Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders 1789-1878*, at 12 (1988), <https://tinyurl.com/566cb2cm> (last visited Nov. 6, 2025).

⁸ Edison Forman & Rebecca Lullo, *Understanding Domestic National Guard Missions*, Protect Democracy (Aug. 5, 2024); Anshu Siripurapu & Noah Berman, *What Does the U.S. National Guard Do?*, Council on Foreign Relations (June 10, 2025).

⁹ Elizabeth Castillo, *Six Things: The role of California's National Guard in protests*, Cal Matters (June 3, 2020), <https://calmatters.org/justice/2020/06/california-national-guard-role-protests-explained/> (last visited Nov. 6, 2025).

¹⁰ Cal. Guard, *California Army National Guard*, Cal. Military Dep't, <https://calguard.ca.gov/army/> (last visited Nov. 6, 2025).

¹¹ Forman & Lullo, *supra* note 8.

II. Historical National Guard Deployments Show That President Trump’s Federalization of the Illinois Guard Is a Dangerous Outlier

A. The Civil Rights Era: Presidents Deployed the National Guard Without Governors’ Consent Only to Protect Important Constitutional Rights Amid State Defiance

Following the end of Jim Crow laws and *de jure* racial segregation, presidents called upon the National Guard to defend the constitutional rights of citizens against state governments unwilling to recognize those rights. “Presidents rarely federalize a state or territory’s guard without the consent of the governor.”¹² Such decisions occurred only where governors were actively impeding the exercise of citizens’ constitutional rights in violation of federal law.

The first example occurred in 1957, when then-governor of Arkansas, Orval Faubus, activated the state National Guard in defiance of a federal court order to prevent nine black students—the “Little Rock Nine”—from entering Central High. After discussions with President Eisenhower, Governor Faubus agreed to respect the desegregation order and promised to use the Arkansas National Guard to protect the Little Rock Nine. But Governor Faubus instead withdrew the Guard, and an angry mob prevented the court-ordered integration. Given Governor Faubus’s defiance of federal law, Arkansas Congressman Brooks Hays and Little Rock Mayor Woodrow Mann asked the President for help.¹³ With Executive Order 10730, President Eisenhower placed the Arkansas National Guard under federal control and sent 1,000 U.S. Army paratroopers to assist in restoring order to Little Rock.¹⁴

Presidents federalized the National Guard several more times during the Civil Rights Era when federal court orders could not be enforced by civilian law enforcement.¹⁵ For instance, in

¹² Siripurapu & Berman, *supra* note 8.

¹³ Nat’l Archives, *Executive Order 10730: Desegregation of Central High School (1957)*, <https://www.archives.gov/milestone-documents/executive-order-10730> (last visited Nov. 6, 2025).

¹⁴ *Id.*

¹⁵ NGB Pub. Affairs, *supra* note 6.

1962, President John F. Kennedy called up the Mississippi National Guard after the University of Mississippi refused to desegregate and enroll James Meredith in violation of a court order.¹⁶ Before federalizing the Mississippi Guard, President Kennedy requested assurances from Governor Ross Barnett that the court order would be followed.¹⁷ Governor Barnett instead publicly announced he would “do everything in [his] power to prevent integration in [Mississippi] schools.”¹⁸ Because of Governor Barnett’s refusal to comply with the law, President Kennedy issued Executive Order 11053, federalizing the Mississippi Guard to allow desegregation to continue unimpeded.¹⁹

The following June, President Kennedy federalized the Alabama National Guard to help integrate the University of Alabama against the obstructionist efforts of Governor George Wallace, who, like the governors of Arkansas and Mississippi, actively opposed integration.²⁰

Finally, in March 1965, President Lyndon B. Johnson federalized the Alabama National Guard after Alabama State Troopers attacked civil rights activists during a three-day march from Selma to Montgomery.²¹ Like the previous Civil Rights Era federalizations, President Johnson’s decision came only after a federal court ordered that the protestors be allowed to proceed protected by civilian law enforcement, and Governor Wallace refused to provide such protection.²² In other words, federalizing and deploying the National Guard was necessary because federal law could not be executed using civilian law enforcement.

¹⁶ Siripurapu & Berman, *supra* note 8.

¹⁷ *Chronology of the Integration of the University of Mississippi*, John F. Kennedy Presidential Libr. & Museum, <https://microsites.jfklibrary.org/olemiss/chronology/> (last visited Nov. 6, 2025).

¹⁸ *Governor Barnett’s Declaration to the People of Mississippi*, John F. Kennedy Presidential Libr. & Museum, <https://microsites.jfklibrary.org/olemiss/controversy/doc2.html> (last visited Nov. 6, 2025).

¹⁹ Exec. Order No. 11053, Providing Assistance for the Removal of Unlawful Obstructions of Justice in the State of Mississippi, 27 Fed. Reg. 9693 (Sept. 30, 1962).

²⁰ *University of Alabama desegregated*, HISTORY (Feb. 9, 2010), <https://www.history.com/this-day-in-history/june-11/university-of-alabama-desegregated> (last visited Nov. 6, 2025).

²¹ Dave Roos, *7 Times Presidents Have Activated US Troops on American Soil*, HISTORY (June 11, 2025), <https://www.history.com/articles/national-guard-federal-troops-deployments> (last visited Nov. 6, 2025).

²² *LBJ sends federal troops to Alabama to protect a civil rights march*, HISTORY (Nov. 24, 2009), <https://www.history.com/this-day-in-history/march-20/lbj-sends-federal-troops-to-alabama> (last visited Nov. 6, 2025).

Since President Johnson's 1965 decision to federalize the National Guard to protect civil-rights activists from state-sanctioned violence, no president had again federalized the Guard against a governor's wishes until President Trump's actions this year, in California, Illinois, and Oregon.²³ The historical examples of federalization lacking a governor's approval share a common thread: they were implemented to protect individuals' constitutional rights only *after* the President first attempted to gain the cooperation of state governors. In each case, it was clear that federal law could not be executed using civilian law enforcement because the governors involved openly opposed enforcement of the relevant federal court orders protecting persons' civil rights. That is not the situation here, and the President's efforts to force federalized National Guard troops on the governor and people of Illinois set a dangerous precedent. Left unchecked, the President's actions may invite broader and more frequent presidential control over state National Guard forces than the Framers contemplated, or the law permits.

B. The Modern Era: From 1967 Until July 2025, All Decisions to Federalize the National Guard Have Been Made at the Request of or in Cooperation with State Governors

From 1967 until this year, although the National Guard was federalized and deployed several times to quell violent, widespread riots in U.S. cities, these actions occurred only at the request of or in cooperation with state governors.

In 1967, when Detroit experienced rampant rioting and violence sparked by racial tensions, police brutality, and unemployment, Michigan Governor George Romney and Detroit Mayor Jerome Cavanagh acknowledged their inability to restore order using civilian law enforcement and formally requested federal assistance. In response, President Johnson federalized the Michigan

²³ Joseph Nunn, *The Posse Comitatus Act Explained*, Brennan Ctr. for Just. (Oct. 14, 2021), <https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained> (last accessed, October 14, 2025).

National Guard to help quell the chaos that resulted in 43 dead, 342 wounded, and more than 1,400 buildings destroyed.²⁴

The following year, after Dr. Martin Luther King, Jr.’s assassination, President Johnson federalized National Guard troops in Washington, D.C. (where the President has unique, direct control over the Guard), and in Baltimore and Chicago at the request of Maryland’s governor²⁵ and Chicago’s mayor.²⁶

In 1992, California Governor Pete Wilson requested that President George H. W. Bush federalize the National Guard to respond to riots across Los Angeles following the acquittal of four LAPD officers on criminal charges relating to the video-recorded beating of Rodney King. In that instance, “[t]housands of people poured into the streets—smashing windows, looting stores, and tossing Molotov cocktails.”²⁷ Ultimately, more than 60 people died during the riots, and property damage totaled over \$1 billion—validating President Bush’s mobilization of the California National Guard only after Governor Wilson and Los Angeles’s mayor requested assistance.²⁸

In contrast, in 2005, President George W. Bush declined to federalize the National Guard in Louisiana after Hurricane Katrina because the governor of Louisiana opposed federalization.²⁹

* * *

Viewed against this historical context, President Trump’s decision to federalize the Illinois National Guard (and to deploy Texas National Guard troops to Illinois) is an outlier, analogous

²⁴ Roos, *supra* note 21.

²⁵ Capt. Wayde Minami, *Baltimore Riot Was Maryland Air Guard’s Largest Mobilization*, 175th Wing Pub. Affs. (Feb. 22, 2010), <https://www.175wg.ang.af.mil/News/Features/Display/Article/448514/baltimore-riot-was-maryland-air-guards-largest-mobilization/> (last accessed Nov. 6, 2025).

²⁶ Lyndon B. Johnson & Richard J. Daley, *Conversation of Apr. 6, 1968*, in Lyndon B. Johnson and Civil Rights, vol. 2, ed. Kent B. Germany (Univ. of Va. Press 2014), Presidential Recordings Digital Edition, <http://prde.upress.virginia.edu/conversations/4005994> (last accessed Nov. 6, 2025).

²⁷ Roos, *supra* note 21.

²⁸ Roos, *supra* note 21.

²⁹ *Hurricane Katrina: The Role of the Governors in Managing the Catastrophe*, Hearing Before the S. Comm. on Homeland Security & Governmental Affairs, 109th Cong. 27–30 (2006) (testimony of Kathleen Blanco).

only to his own federalization of the California National Guard in July 2025, and the Oregon National Guard in October 2025, over the objections of those states' governors. Like the district court in this case, federal judges in California and Oregon found that the President's rationale for federalizing the Guard was unsupported by the facts on the ground. Indeed, unlike deployments during the Civil Rights Era that saw local and state governments' outright refusal to enforce applicable civil rights law, or the more recent federalizations to quell widespread, violent riots after governors admitted their own states' resources were overwhelmed, President Trump's federalization of and effort to deploy National Guard troops in Illinois exceeds his authority under 10 U.S.C. § 12406 and the Constitution. These actions by the President and demonstrate a consistent pattern of overreaching the limited authority granted by Congress to the President under section 12406.

III. The Federalization of the National Guard Contravenes the Plain Text of § 12406 and Is Contrary to the Best Interests of the National Guard, Illinois, and the Nation

In seeking a stay of the district court's order, the President contends that he lawfully exercised his statutory authority under both: (i) 10 U.S.C. § 12406(2), which permits the President to call into federal service the National Guard of any state whenever "there is a rebellion or danger of a rebellion against the authority of the Government of the United States"; and (ii) 10 U.S.C. § 12406(3), which permits the President to federalize the National Guard whenever he is "unable with the regular forces to execute the laws of the United States."³⁰ The district court temporarily restrained federalization of the Guard, finding that the President had failed to establish either requirement of the statute. The Seventh Circuit agreed, concluding "that the administration has not shown a likelihood of success on the merits" based on the record developed before the district

³⁰ See Stay Appl. 4.

court.³¹ Even so, balancing the harms “in case of a judicial error,” the Seventh Circuit allowed the President’s continued federalization of Illinois Guard troops but kept in place the injunction against deploying those troops, along with National Guard troops sent from Texas, to Chicago and elsewhere “within Illinois.”³²

As explained below, the President’s authority to federalize Illinois’s National Guard troops is strictly limited by section 12406, and his failure to first meet one or more of the statute’s requirements is unlawful and weakens the effectiveness of the National Guard. The President’s federalization of the Illinois National Guard, and concurrent federalization and deployment to Illinois of Guard troops from Texas, also undercuts the sovereignty of Illinois to use its critical resources as its governor deems necessary and to prevent an uninvited occupation of forces from another state. By employing the National Guard not where and when they are needed, the President threatens great harm to the nation and its constitutional principles.

A. President Trump Improperly Federalized the Illinois National Guard

The power to call forth militias to “execute the Laws of the Union, suppress Insurrections and repel Invasions” is not an inherent Article II power of a president. It belongs, first and foremost, to Congress, exercising its powers under Article I of the Constitution.³³ Under 10 U.S.C. § 12406, the statute President Trump invokes here,³⁴ he may call the National Guard into federal service without a governor’s invitation or consent only in the rare and specific circumstances of “invasion,” “rebellion,” or the inability to execute the laws using “regular forces.” The plain text of section 12406, with its legislative history and Congress’s limited delegation of its authority to

³¹ App. 102a; *id.* at 94a–95a (“We conclude, at this preliminary stage and given the district court’s factual findings, that the federal government does not appear likely to succeed on [the merits].”).

³² App. 94a, 103a.

³³ See U.S. Const. art. I, § 8, cl. 15.

³⁴ See June 7 Memorandum, D. Ct. Doc. 62-1 at 19; October 4 Memorandum, D. Ct. Doc. 62-1 at 17.

the Executive Branch, requires a narrow statutory application and, when challenged, putting the President to his proof.

1. Because There Is No Ongoing “Rebellion” or “Danger of Rebellion,” the President Could Not Lawfully Federalize the Illinois Guard Under 10 U.S.C. § 12406(2)

The President failed, before the district court, to establish under 10 U.S.C. § 12406(2) that there “is a rebellion or danger of rebellion against the authority of the Government of the United States.” And the President now argues that: (i) he has the power to define what “rebellion” means in section 12406(2) without being “second-guess[ed]” by any court; and (ii) there is evidence of “violent and forceful opposition to the lawful authority of the federal government” in the Chicagoland area, which the district court and Seventh Circuit “largely ignored[.]”³⁵ This Court should reject both contentions.

As the district court rightly noted, the President is “entitled to a certain amount of deference on the question of whether the facts constitute the predicates laid out in Section 12406,” including whether a rebellion existed.³⁶ Yet this Court should not defer to the President’s determination of “what constitutes a rebellion” in the first place, a matter of “statutory interpretation ... committed to the courts.”³⁷ Accordingly, the President’s “view that ‘[t]o the extent that protests or acts of violence directly inhibit the execution of the laws, they constitute a form of rebellion against the authority of the Government of the United States’”³⁸ does not inform, much less control, what the term “rebellion” means in section 12406(2).

The district court defined “rebellion” as “a deliberate, organized resistance, openly and avowedly opposing the laws and authority of the government as a whole by means of armed

³⁵ Stay Appl. 33–34.

³⁶ App. 64a–65a.

³⁷ *Id.* at 64a (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024)).

³⁸ Stay Appl. 34.

opposition and violence.”³⁹ The Seventh Circuit “substantially agree[d]” with that interpretation and aptly noted: “Political opposition is not rebellion,” and there is “considerable daylight between protected speech and rebellion.”⁴⁰ The President asks this Court to reject that commonsensical distinction and contends: “Under that approach, anything short of civil war is unlikely to clear the ‘very high threshold’ that the lower courts perceived” would constitute rebellion.⁴¹ So arguing, the President sets up a strawman.

Here, the activities that the President classifies as “rebellion” were largely peaceful, constitutionally protected protests against actions taken by Immigration and Customs Enforcement (“ICE”) and Customs and Border Patrol (“CBP”) agents as part of an “immigration enforcement campaign dubbed ‘Operation Midway Blitz’” that began in “September 2025.”⁴² These include protests through September and October 2025 outside an ICE processing center in Broadview, Illinois, at which federal agents “regularly deploy[ed] tear gas to disperse the crowd” or “st[oo]d on top of the building to shoot balls of pepper spray at protestors from above.”⁴³ At these protests, crowd control was provided by officials from the Illinois State Police, Broadview Police, Cook County Sheriff’s Office, and myriad other state and local law enforcement agencies in Illinois.⁴⁴ Where appropriate, a small subset of protestors were arrested for battery or aggravated battery.⁴⁵

The President, for his part, rehashes his selective narrative of “mass violent resistance to the enforcement of federal law *** throughout the country,” including supposed “violence [that]

³⁹ App. 66a (citing *Newsom v. Trump*, 786 F. Supp. 3d 1235, 1251–53 (N.D. Cal. 2025)).

⁴⁰ *Id.* at 99a.

⁴¹ Stay Appl. 31 (citing App. 66a).

⁴² *Id.* at 36a.

⁴³ *Id.* at 37a–39a.

⁴⁴ *Id.*

⁴⁵ *Id.* Further, as the district court noted, federal grand juries “have refused to return an indictment against at least three [arrested] individuals, which equates to a finding of a lack of probable cause that any crime occurred,” rendering the President’s continuing assertions of rampant lawlessness in and around Chicago overblown at best, and misleading at worst. *Id.* at 43a.

has focused on a DHS facility in Broadview, west of downtown Chicago.”⁴⁶ Tellingly, the President’s stay application omits any mention of the district court’s express finding that the federal government’s version of the facts was “not reliable,” or its determination that “the facts set forth in [the federal government’s] affidavits are impossible to align with the perspectives of state and local law enforcement presented by Plaintiffs,” which the district court found more credible.⁴⁷ This Court should find no basis for second-guessing those determinations given the “well-settled rule” that “factual findings are reviewable only for clear error—in other words, with a serious thumb on the scale for the [district] court.”⁴⁸

“[E]ven after affording great deference to the President’s evaluation of the circumstances,” the Seventh Circuit held—relying on the district court’s rigorous factual findings—that there was “insufficient evidence of a rebellion or danger of rebellion in Illinois.”⁴⁹ This Court should follow suit, particularly where the federal government advances diametrically opposed narratives depending on its audience. Before this Court, it contends that federal officers in Chicago are overwhelmed by protestors-turned-rebels. Yet elsewhere (in a different case before the Seventh Circuit), the federal government confesses that “[s]ince October 3 [one day before the President issued his October 4 Memorandum], increased coordination with local law-enforcement officers has reduced the need for federal officers to engage with protestors at Broadview.”⁵⁰

In short, this Court should affirm the district court’s finding that the President failed to prove any “rebellion” exists in Chicago. The Seventh Circuit got it right: “The spirited, sustained,

⁴⁶ Stay Appl. 6–7.

⁴⁷ App. 43a–44a; *see also id.* at 13a–14a (“While I do not doubt that there have been acts of vandalism, civil disobedience, and even some assaults on federal agents, I simply cannot credit Defendants’ declarations to the extent that they contradict state and local law enforcements’ assessments. That is in large part due to the growing body of independent and objective evidence that DHS’s perceptions of events are simply unreliable.”).

⁴⁸ *U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Village at Lakeridge, LLC*, 583 U.S. 387, 394 (2018).

⁴⁹ App. 99a.

⁵⁰ *See* Gov’t Petition for Writ of Mandamus, *In re Kristi Noem, et al.*, No. 25-2936 (7th Cir.), Dkt. 1-1, at 7 n.3 (Oct. 29, 2025).

and occasionally violent actions of demonstrators in protest of the federal government’s immigration policies and actions, without more, does not give rise to a danger of rebellion against the government’s authority.”⁵¹ And this Court should reject the federal government’s invitation to blindly defer to presidential proclamations by fiat that a “rebellion” is afoot simply because select groups of citizen-protestors voice opposition to the President’s immigration enforcement tactics—almost always lawfully, with those few “who are obstructing, assaulting, or doing violence” facing swift consequences at the capable hands of federal, state, and local law enforcement.⁵²

2. Because He Was Not *Unable* to Execute the Laws of the United States, the President Could Not Lawfully Federalize the National Guard Under 10 U.S.C. § 12406(3)

To federalize the National Guard under section 12406(3), the President must demonstrate that he is “*unable* with the *regular forces* to execute the laws of the United States.”⁵³

Interpreting section 12406(3) raises a threshold question: what does “regular forces” mean? The district court—relying on “historical sources” including “numerous statutes from the early 1800s through when section 12406(3) was enacted,” past court opinions distinguishing “regular forces” from the “militia,” and “the statutory context surrounding Section 12406”—concluded that “regular forces” means enlisted, active-duty military soldiers and officers.⁵⁴ Another court, the Ninth Circuit, appears to interpret “regular forces” as meaning “federal officers.”⁵⁵ And the President, in turn, contends that “‘regular forces’ who are engaged in ‘execut[ing] the law’” is a label “that naturally refers to federal law enforcement personnel.”⁵⁶

⁵¹ App. 99a.

⁵² *Id.* at 44a.

⁵³ 10 U.S.C. § 12406(3) (emphasis added).

⁵⁴ App. 67a–71a.

⁵⁵ *Newsom v. Trump*, 141 F.4th 1032, 1052 (9th Cir. 2025).

⁵⁶ Stay Appl. 30 n.4 (citing 10 U.S.C. § 12406(3), 18 U.S.C. § 1385).

“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”⁵⁷ For NSL4A’s members who formerly served in the active-duty military or National Guard, the term “regular forces” is widely understood as referring to enlisted or commissioned, active-duty military personnel. Indeed, the word “regulars” has a storied history with the 22nd Infantry Regiment, which traces its lineage to the War of 1812.⁵⁸ On July 5, 1814, the 22nd was part of General Winfield Scott’s Brigade. Because of a shortage of blue cloth, the 22nd went into battle against the British and Canadians at Chippewa wearing gray-colored uniforms commonly worn by most American militias at the time.⁵⁹ Spotting their gray jackets, the British commander, Major General Phineas Riall, mistook the 22nd for local militia members and expected to rout them.⁶⁰ Yet as the 22nd and other units of the Brigade advanced “through artillery and musket fire with unwavering military precision, General Riall corrected his mistake with the cry ‘*Those are regulars, by God.*’”⁶¹ Since then, “*Regulars, by God*” has become the 22nd’s unofficial motto.⁶²

For NSL4A and its retired service members, the “ordinary public meaning” of “regular forces” refers—as the district court concluded—to the full-time military forces of the United States, contrasted with the part-time National Guard. Yet, as the federal government correctly notes, the “[m]ilitary forces *** do not regularly ‘execute the law.’”⁶³ And interpreting “regular forces” in section 12406(3) as referring only to the standing military risks nullifying a separate act of Congress by requiring the President to show that he is “unable with the [military]” to do

⁵⁷ *Bostock v. Clayton Cnty, Ga.*, 590 U.S. 644, 654 (2020).

⁵⁸ Michael Belis, *History of 22nd Infantry Regiment: “Regulars by God,”* available at <https://22ndinfantry.org/regimental-history> (last accessed Nov. 6, 2025).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* (emphasis added).

⁶² *Id.*

⁶³ Stay Appl. 30 n.4 (citing 10 U.S.C. § 12406(3), 18 U.S.C. § 1385).

something—“execut[ing] the laws of the United States”—that the military cannot lawfully do under the Posse Comitatus Act, 18 U.S.C. § 1385.⁶⁴ Against this backdrop, answering what “regular forces” means raises what the Seventh Circuit justifiably deemed “thorny and complex issues of statutory interpretation.”⁶⁵ This Court simply need not resolve such issues at this juncture given the President’s remaining (and insurmountable) hurdle: establishing, on the record below, that he is “*unable* with the regular forces”—whatever they may be—“to execute the laws of the United States.”⁶⁶

The inability to execute federal law is the prerequisite. Facing even occasionally violent public opposition is not enough, particularly where (as the factual record before the district court establishes) federal, state, and local civilian law enforcement have been able to control that opposition. The statute makes clear that the President’s *inability* is what is required. The intent of the Framers, the distribution of powers between Congress and the President, and the history of the Presidential use of this extraordinary power, make clear that section 12406(3) should be strictly construed to ensure compliance with the statute’s plain text, purpose, and separation of powers. History, again, is instructive.

On the heels of the American Revolution, Congress passed the Calling Forth Act of 1792, authorizing the President to “call forth” the militia under certain circumstances.⁶⁷ Under Section I of the Act, the Second Congress delegated to the President the power to “call forth such number of the militia of the state or states” “in case of an insurrection in any state *** [*but only*] on application of the legislature of such state, or of the executive.”⁶⁸ This language persists today,

⁶⁴ *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010) (“[T]he canon against interpreting any statutory provision in a manner that would render another provision superfluous *** applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.”).

⁶⁵ App. 100a.

⁶⁶ 10 U.S.C. § 12406(3) (emphasis added).

⁶⁷ Calling Forth Act of 1792, ch. 28, § 1, 1 Stat. 264, 264; *cf.* 10 U.S.C. § 12406.

⁶⁸ Calling Forth Act of 1792 § 1, 1 Stat. at 264.

codified at 10 U.S.C. § 251.⁶⁹ Section II of the Act also permitted the President to call forth the militia without the request of the state “whenever the laws of the United States shall *be opposed* or the execution thereof *obstructed*.”⁷⁰ But that authority could only be exercised after a court first recognized that prerequisite conditions for its invocation had been met. Further, the President had to issue a proclamation ordering “insurgents” to “disperse” prior to mobilization.⁷¹

Significantly, the Calling Forth Act of 1792, in cases of insurrection and obstruction of federal law, did not allow the President to act alone. Both sections of the Act required action either from the state legislature or the federal judiciary. These limitations reflect Congress’s intent—from its earliest days—to limit a president’s authority to call forth state militias. Indeed, the very notion of granting this authority to the Executive Branch *at all* was contested.⁷²

Over the ensuing 200 years, Congress made multiple changes to Section II of the 1792 Calling Forth Act and, after the Civil War, those changes narrowed the President’s authority.⁷³

On the eve of the Civil War, Congress passed the Militia Act of 1861, amending Section II to specify when the President could mobilize the militia to enforce federal law. No longer was it necessary for the President to show that the laws of the United States were “*opposed*, or the execution thereof *obstructed*”; the President could call forth the militia when “it shall become

⁶⁹ *Id.*; see also 10 U.S.C. § 251 (“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”).

⁷⁰ Calling Forth Act of 1792 § 2, 1 Stat. at 264 (emphasis added).

⁷¹ Calling Forth Act of 1792 § 3, 1 Stat. at 264.

⁷² David E. Engdahl, *Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders*, 57 IOWA L. REV. 1, 60 (1971) (“From the record of the House debate, it appears that the representatives were not troubled over the use of the militia in circumstances so grave as invasion or outright insurrection; but they were deeply concerned over the prospect of troops being used in common civilian situations ‘to execute the laws of the Union.’”).

⁷³ The Militia Act of 1792 had a three-year expiration date, upon which time the Militia Act of 1795 was enacted, permanently replacing the former but maintaining the “opposed” and “obstructed” language seen in Section II. See Militia Act of 1795, ch. 36, § 2, 1 Stat. 424, 424. Additionally, Congress enacted the Insurrection Act of 1807 not to amend the 1795 Act, but rather to supplement it by allowing the President to call forth, “in all cases of insurrection, or obstruction to the laws,” and in addition to state militias, “such part of the land or naval force of the United States.” See Insurrection Act of 1807, ch. 39, 2 Stat. 443, 443.

impracticable, in the judgment of the President of the United States, to enforce *** the laws of the United States[.]”⁷⁴ But the Civil War was a unique era in American history, and Congress did not vest the President with such broad discretion to federalize the National Guard in perpetuity.

Quite to the contrary, in the Militia Act of 1903,⁷⁵ Congress made clear that the President’s judgment, alone, no longer controlled when the National Guard could be federalized. Instead, Congress substituted for the phrase, “in the judgment of the President,” the objective requirement that the President be “unable” to execute the laws using regular forces.⁷⁶ Congress has since retained this narrower language through subsequent revisions, confirming its intent that the President be held to an exacting, objective factual standard when justifying a decision to federalize the National Guard.⁷⁷

Despite the plain text and the history of this limited delegation, the federal government argues “[the statute] is better read to authorize the President to call up the National Guard when he is unable to ensure *to his satisfaction* the faithful execution of federal laws[.]”⁷⁸ That argument assumes that the President’s judgment continues to be controlling. It is not; that contention simply cannot be squared with what the statute now says. And the federal government’s strained interpretation conflicts with the separation of powers and Congress’s effort to limit the Executive’s authority to deploy the military domestically, a direct reflection of such separation.⁷⁹ Requiring the President to satisfy an objective, fact-bound showing of his inability to execute federal law—rather

⁷⁴ Suppression of the Rebellion Act of 1861, ch. 25, § 1, 12 Stat. 281, 281 (emphasis added) (current version codified at 10 U.S.C. § 252).

⁷⁵ The Militia Act of 1903, ch. 196, § 4, 32 Stat. 775, 776.

⁷⁶ *Id.* (when “the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof, it shall be lawful for the President to call forth . . . the militia”).

⁷⁷ See 35 Stat. 399, 400 (1908); 108 Stat. 2663, 2994 (1994).

⁷⁸ D. Ct. Doc. 62 at 25 (emphasis added); see also Stay Appl. 20–21 (“[T]he President’s exercise of the authority vested in him by Congress to call up the militia is committed to his exclusive discretion by law.”).

⁷⁹ Calling Forth Act of 1792 § 1, 1 Stat. at 264; cf. 10 U.S.C. § 12406(3).

than leaving it to President’s “own satisfaction” whether he is unable to enforce the law—is also consistent with the remainder of section 12406.

Subsections (1) and (2), for example, require an “invasion” or “rebellion” before the President can federalize the National Guard. Allowing President Trump to circumvent those preconditions whenever he is “unable to his own satisfaction” to enforce federal immigration policies defeats Congress’s purpose of stripping the relevant statutes of prior language that made the President’s judgment controlling.⁸⁰ As such, the President’s “judgment” or “satisfaction” about whether federal laws may be executed with “regular forces” neither supplants nor precludes a judicial determination of whether the factual predicates in section 12406(3) have been met.

The district court correctly ruled that on the record before it, “there has been no showing that the civil power has failed,” where the “agitators who have violated the law by attacking federal authorities have been arrested.”⁸¹ As it admits, the federal government was able to execute the laws without activating the National Guard, documenting numerous arrests made by federal agents in response to unlawful activity by specific individuals.⁸² There is no basis to conclude that the President has been unable to enforce the laws of the United States in the normal course.

In this regard, the government’s continuing reliance on *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827)—as conferring on the President carte blanche to federalize the National Guard without any objective review by the courts—is misplaced.⁸³ There, Mr. Mott, a private in the New York state militia, was court martialed for refusing to serve during the War of 1812. At issue was whether Mr. Mott could be tried for disobeying orders because he believed President Madison unlawfully

⁸⁰ See *United States v. Williams*, 553 U.S. 285, 294 (2008) (“[A] word is given more precise content by the neighboring words with which it is associated.”).

⁸¹ App. 73a.

⁸² Opp. to Mot. for Temporary Restraining Order and Preliminary Injunction, D. Ct. Doc. 62 at 9.

⁸³ See *Newsom v. Trump*, 141 F.4th 1032, 1050 (9th Cir. 2025) (“*Martin* does not compel us to accept the federal government’s position that the President could federalize the National Guard based on no evidence whatsoever, and that courts would be unable to review a decision that was obviously absurd or made in bad faith.”).

exercised his authority under the Militia Act of 1795. This Court deferred to President Madison’s judgment that there was an “invasion” under the 1795 Act and ruled that his “decision [that there was an invasion justifying federalizing the militia] is conclusive upon all other persons.”⁸⁴ *Martin* grew out of a true emergency: Great Britain, a global superpower, had invaded the nascent United States. In that extraordinary historic context, this Court assessed whether one militiaman’s beliefs could override a presidential judgment that an existential threat to the nation existed. And *Martin*, critically, did not address a president’s ability to enforce the law domestically.

The federal government insists, relying on this antiquated decision, that this Court must blindly defer to the President’s determination that he cannot execute the laws of the United States in Chicago with “regular forces.” Much has changed, however, since 1827. Most significantly, the Militia Act of 1903 (the predecessor to section 12406) stripped the President of the ability to call up the National Guard based on his own subjective judgment that he was unable to execute the laws. Under section 12406, determining whether the objective, fact-bound precondition of a presidential “[inability] *** to execute the laws of the United States” has been established is squarely subject to judicial review.

Martin is also not controlling because the present case involves section 12406(3), which is conditional on the inability to execute law, unlike section 12406(1), which is not. Here, Illinois plaintiffs contend the National Guard is not necessary to execute the laws of the United States, contrary to the President’s view. The district court weighed and considered the federal government’s and Illinois plaintiffs’ competing factual presentations, and ultimately concluded—on the record before it—that the President was not “unable” to execute the laws despite the

⁸⁴ *Martin*, 25 U.S. at 30.

sporadic criminal acts of a few “agitators” amidst the (far larger) group of protestors exercising their rights to “observ[e,] question[,], and criticiz[e]” their government.⁸⁵

B. Strict Compliance with Subsection 12406(3)’s Language Is Especially Important Because of the Negative Impact of President Trump’s Deployment on the National Guard, Illinois, and the Nation

President Trump’s unlawful deployment of the National Guard in the Chicagoland area misappropriates limited state resources. This has real consequences. By abusing the power to federalize the Guard, the President has harmed Illinois and its citizens by redirecting critical resources away from other needs and undermining the public trust in the National Guard.

Domestic deployment of the National Guard requires judicious consideration of “what is best for the nation, the states, and the Guard.”⁸⁶ The President’s deployment of National Guard troops in the Chicagoland area entirely failed to account for these factors. That misuse undermines the role of the National Guard, deters recruitment, and ultimately weakens a vital component of our national defense, leaving the country less prepared to respond to both domestic crises and foreign threats.

C. President Trump’s Deployment Diverted the National Guard from Its Core Duties Without Proper Training or Instruction

As the Eight Circuit declared in 1985, “[t]he interest in limiting military involvement in civilian affairs has a long tradition beginning with the Declaration of Independence and contained in the Constitution, certain Acts of Congress, and decisions of the Supreme Court.”⁸⁷ In deciding the propriety of deploying the National Guard domestically, both the Executive and courts reviewing the Executive’s actions should consider the National Guard’s preparedness for the

⁸⁵ App. 43a–44a, 73a.

⁸⁶ Gen. Joseph Lengyel et al., *Statement of Principles on Domestic Deployment of the National Guard*, Count Every Hero, <https://counteveryhero.org/wp-content/uploads/2024/07/CEH-Deployment-Principles.pdf> (last visited Nov. 6, 2025).

⁸⁷ *Bissonette v. Haig*, 776 F.2d 1384, 1387 (8th Cir. 1985), *aff’d*, 485 U.S. 264 (1988).

particular mission, as well as its ability to maintain readiness in case of emerging crises.⁸⁸ Collaboration with governors, who possess critical insight into the preparedness and readiness of units, is a crucial part of this analysis.

Preparedness. President Trump deployed the National Guard in the Chicago area without sufficient instructions, training, or preparation. Elements of preparedness, in addition to adequate training, include having the appropriate equipment and resources, and a clear objective, timeline, chain of command, and instructions for use of force,⁸⁹ all of which were lacking here.

Per President Trump’s October 4 deployment memorandum, the National Guard “may perform those military protective activities that the Secretary of [Defense] determines are reasonably necessary to ensure the execution of Federal law in Illinois, and to protect Federal property in Illinois.”⁹⁰ The memorandum does nothing to clarify what is meant by “reasonably necessary” to protect federal property or ICE agents enforcing immigration laws, and neither President Trump nor his administration has publicly specified the full range of actions or amount of force that deployed Guardsmen are authorized to take in service of that stated purpose.⁹¹ The lines are, at best, blurred between what constitutes protection and law enforcement functions, especially when the underlying functions of ICE are to implement enforcement measures.⁹²

Compounding the confusion over the President’s vague directive, the National Guard has not received extensive training on protective and enforcement activities in the face of civil unrest. According to the Council on Criminal Justice, de-escalation training is one of the most effective

⁸⁸ See Forman & Lullo, *supra* note 8; see also Siripurapu & Berman, *supra* note 8; Gen. Joseph Lengyel et al., *supra* note 87.

⁸⁹ Gen. Joseph Lengyel et al., *supra* note 87.

⁹⁰ App. 78a (quoting October 4 Memorandum, D. Ct. Doc. 62-1 at 16).

⁹¹ *Id.*; see also Elizabeth Goitein, *What to Know About the Los Angeles Military Deployment*, Brennan Ctr. for Just. (June 20, 2025), <https://www.brennancenter.org/our-work/research-reports/what-know-about-los-angeles-military-deployment> (last accessed Nov. 6, 2025).

⁹² Should such protection measures bleed into law enforcement measures, they would violate the Posse Comitatus Act. See 18 U.S.C. § 1385.

methods of quelling civil unrest, something Illinois state and local law enforcement officers are specifically trained to do.⁹³ The military, by contrast, does not focus on de-escalation training. In fact, according to reports, the National Guard received only two days of training on how to handle civil disturbances before being deployed in Los Angeles as part of the President’s federalization of Guard troops there.⁹⁴

In the absence of clearly defined instructions and specialized training, deploying the National Guard into a politically charged and potentially volatile situation—as in Chicago and neighboring areas—poses serious risks both to members of the Guard and the public. As former Defense Secretary Chuck Hagel warned, such deployments can lead to tragic outcomes, recalling the 1970 Kent State shootings when improperly trained National Guard troops shot and killed unarmed students in Ohio.⁹⁵

Readiness. President Trump’s deployment also detracted from the National Guard’s readiness, diverting it from its primary mission.⁹⁶ “Our leaders should treat the Guard as a last resort and a resource with limits on its capacity.”⁹⁷

In addition to depleting resources, inappropriate deployments can negatively affect recruitment and retention for the National Guard and the military. “Most Guard members have

⁹³ *De-escalation Policies and Training*, Council on Crim. Just. (Mar. 2021), https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/de-escalation_training.9f4b662e97c2.pdf (last accessed Nov. 6, 2025); *see also* Directive OPS-046, Use of Force and Intermediate Weapons, *Illinois State Police* (June 17, 2022), <https://isp.illinois.gov/StaticFiles/docs/DepartmentDirectives/OPS-046%20DIR.pdf> (last accessed Nov. 6, 2025); Use of Force and Deadly Force Model Policy, Use of Force and Deadly Force Policy, *Cook County Sheriff’s Office* (Aug. 17, 2020), <https://cms7files1.revize.com/cookcountymn/CCSO%20Policies.pdf> (last accessed Nov. 6, 2025).

⁹⁴ *Troops in Los Angeles can detain but not arrest individuals, military official says*, Reuters (June 11, 2025), <https://www.reuters.com/world/us/troops-los-angeles-can-temporarily-detain-individuals-no-arrest-authorities-2025-06-11/> (last accessed Nov. 6, 2025).

⁹⁵ Kiki Intarasuwan & Caitlin Yilek, *Former defense secretary’s concern about the National Guard in L.A. is “loss of life like we saw in 1970”*, CBS News (June 11, 2025), <https://www.cbsnews.com/news/chuck-hagel-defense-secretary-national-guard-la-reaction/> (last accessed Nov. 6, 2025).

⁹⁶ Gen. Joseph Lengyel et al., *supra* note 87.

⁹⁷ Forman & Lullo, *supra* note 8.

families and civilian lives that they must put on hold when deployed.”⁹⁸ Unlike active-duty personnel, Guard members must navigate the complexities of two careers. As such, excessive and unnecessary deployments like the President’s “seriously impair retention and exacerbate recruitment shortfalls within the National Guard,”⁹⁹ further detracting from its readiness. These harms to recruitment and retention will negatively impact the National Guard’s ability to respond to domestic and international emergencies for the foreseeable future.

D. President Trump’s Deployment Undermined Public Trust in the Federal Government and Its Military

Beyond preparedness and readiness, decisionmakers must also consider whether deployment will negatively impact public trust in the National Guard.¹⁰⁰ Because the National Guard is an apolitical institution, “[i]f some Americans come to associate the Guard with a political faction they oppose, it could weaken the Guard’s ability to respond to emergencies affecting those communities.”¹⁰¹

Using the Guard to “protect” immigration enforcement officers inextricably entangles it with the act of immigration enforcement, a heavily politicized and debated subject throughout the country, and particularly in Chicago. Indeed, Governor Pritzker, Illinois Attorney General Kwame Raoul, and Chicago Mayor Brandon Johnson have each publicly condemned the deployment,

⁹⁸ Gen. Joseph Lengyel et al., *supra* note 87.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*; *see also id.* (“Americans trust that when you call out the National Guard, you call out America and that when the National Guard arrives, their situation will improve. No deployment of the National Guard should break that trust. Indeed, were that trust to erode, it would dramatically weaken the ability of the Guard to respond to domestic emergencies.”); *see also* Fintan O’Toole, *A Show of Force*, N.Y. Rev. of Books (July 24, 2025), <https://www.nybooks.com/articles/2025/07/24/a-show-of-force-fintan-otoole/> (last accessed Nov. 6, 2025) (“Politicizing the military means dismantling its self-image as an institution that transcends partisan divisions, is broadly representative of the US population, and owes its primary loyalty not to the president but to the Constitution.... Trump’s deployment of troops in Los Angeles ... had no military purpose. It can best be thought of as a counterdemonstration.”).

calling it an overreach of federal authority and a politically motivated move designed to escalate tensions rather than restore order.¹⁰²

The deployment has also had a polarizing effect within the National Guard and the communities it was ostensibly sent to protect. Unorthodox deployments, especially those perceived as politically motivated or lacking clear operational necessity, can erode trust in leadership and diminish the sense of purpose and pride that sustains Guard service. Broad opposition to the deployment of the National Guard undermines public trust and again deters recruitment and re-enlistment,¹⁰³ ultimately weakening a vital component of our national defense and leaving states and the country less prepared to respond to true (rather than imagined or exaggerated) threats. These consequences will be felt not just for the duration of the deployment, but for years to come.

CONCLUSION

For the above reasons, the Court should deny the application for a stay.

¹⁰² Governor Pritzker Statement on the Illinois National Guard, *Office of the Governor* (Oct. 4, 2025), <https://gov-pritzker-newsroom.prezly.com/governor-pritzker-statement-on-the-illinois-national-guard> (last accessed Nov. 6, 2025); Attorney General Raoul Files Lawsuit Against Trump Administration to Stop Unlawful Deployment of National Guard, *Office of The Illinois Attorney General* (Oct. 6, 2025); <https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-files-lawsuit-against-trump-administration-to-stop-unlawful-deployment-of-national-guard> (last accessed Nov. 6, 2025); Sarah Fortinsky, *Chicago mayor: National Guard deployment 'illegal, unconstitutional ... dangerous'*, THE HILL (Oct. 7, 2025), <https://thehill.com/homenews/state-watch/5543562-chicago-mayor-opposes-trump-national-guard/> (last accessed Nov. 6, 2025).

¹⁰³ *Id.*

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

/s/ Saurish Appleby-Bhattacharjee

SAURISH APPLEBY-BHATTACHARJEE

Counsel of Record

GEOFFREY PIPOLY

Bryan Cave Leighton Paisner LLP

161 North Clark Street, # 4300

Chicago, Illinois 60601

saush@bclplaw.com

Tel. (312) 602-5004

JEAN-CLAUDE ANDRÉ

Bryan Cave Leighton Paisner LLP

120 Broadway, Suite 300

Santa Monica, CA 90401

DANIEL C. SCHWARTZ

CHARLES TOMPKINS

Bryan Cave Leighton Paisner LLP

1155 F St NW

Washington, DC 20004

Attorneys for

NATIONAL SECURITY LEADERS FOR AMERICA

DATED: November 10, 2025