



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

November 17, 2025

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Donald J. Trump, President of the United States, et al. v. State of Illinois and City of Chicago, No. 25A443

Dear Mr. Harris:

Pursuant to the Court's October 29, 2025, order, the government files this letter reply brief.

Respondents have now taken the position that the term "the regular forces" in 10 U.S.C. 12406(3) refers to the standing military, notwithstanding their having agreed below with the government that the term instead refers to civilian law-enforcement personnel. Although respondents invoke a wide range of sources and contexts where phrases like "the regular forces" do refer to the standing military, their newfound position contradicts the particular text, structure, and history of Section 12406.

That provision does not use the term "the regular forces" in isolation, but rather to describe certain federal personnel with whom the President is "unable * * * to execute the laws," thereby allowing him to call up the National Guard instead. 10 U.S.C. 12406(3). In this unique context, the members of the standing military are a clear misfit for "the regular forces," given that they generally do not and often cannot execute the laws, as respondents emphasize. Respondents try to justify this mismatch by asserting that Congress wanted to limit Section 12406(3) to the extreme circumstances where the standing military is authorized to execute the laws yet nevertheless is unable to do so. But that is not what the provision says. And reading it that way would divorce it from the Constitution's Militia Clause and the 1792 and 1795 Militia Acts, all of which authorized the militia to be called up to execute the laws in cases of domestic disturbances without regard to whether the standing military could do so too. Nor do respondents provide any explanation for why Congress would require the standing military to be the first line of defense for civil law enforcement, but not for invasions and rebellions—despite the standing military being far better suited for the latter than the former. Respondents likewise get backwards the history of Section 12406(3). While correctly conceding that the Framers viewed the militia as the first line of defense to execute the laws in cases of domestic disturbances—given their fears of a standing army—respondents observe that the militia had fallen into disarray in the decades following the Civil War and preceding the Dick Act. But the whole point of the Dick Act was to revitalize the militia, and respondents identify nothing suggesting that Congress wished to newly subordinate the revived militia to the standing military, contrary to both constitutional tradition and common sense.

In all events, Respondents fail to justify the injunction below even assuming that “unable with the regular forces” refers to the standing military. At the outset, they ignore that this interpretation of Section 12406(3) would underscore why the President’s determination to call up the National Guard is unreviewable under *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827), and its progeny: courts have neither the constitutional authority nor the institutional competence to second-guess the President’s judgment about whether the standing military is more urgently needed elsewhere or is less well-suited than the National Guard to quell a domestic disturbance. To be sure, respondents assert that the President never made such a judgment at all, but that disregards the plain language of the President’s determination and the presumption of regularity he is afforded. Respondents also contend that the President could not have made a valid determination, because he purportedly may not deploy the standing military to Illinois in these circumstances in light of the Posse Comitatus Act. Of course, if that were true, it would mean he *was* “unable with [the standing military] to execute the laws,” 10 U.S.C. 12406(3), and respondents cannot write into the statute an additional condition that the National Guard may be deployed only if it would have been lawful to deploy the standing military too. More fundamentally, though, respondents are wrong that the standing military cannot be deployed to Illinois in the current circumstances. Given the violent, organized resistance to federal immigration enforcement, deploying the standing military falls squarely within the President’s well-established authority to use troops to protect federal personnel and property, pursuant to his inherent Article II authority and (potentially) the Insurrection Act as well. That being so, respondents provide no basis to countermand the President’s military judgment that National Guardsmen are better suited than the Marines to perform that function on the streets of Chicago.

Respondents fare no better in alternatively arguing that, wholly apart from the questions on which this Court requested supplemental briefing, recent events demonstrate that the government is not suffering irreparable harm warranting a stay. Although the government agreed to an extension of the temporary restraining order, it did so to preempt the entry of a substitute preliminary injunction that could have hindered this Court’s review of the stay application. And while respondents contend that conditions have temporarily improved near the Broadview facility, they ignore that conditions for federal immigration agents on the streets of Chicago remain dangerous and chaotic. While this stay application has been pending, violent assailants have fired shots at DHS agents, thrown bricks and concrete at barricaded agents, and rammed into their vehicles with trucks—all while five-figure bounties remain placed on the agents’ heads by violent gangs and transnational cartels. Meanwhile, state and local officials continue to fan the flames by maligning DHS agents as lawless thugs serving a tyrant. Their message is clear: no form of immigration enforcement is acceptable in Illinois, and no form of violence against immigration agents is off-limits. DHS officers thus operate in a climate of constant fear for their lives and safety, which significantly impedes their enforcement of the law.

In sum, the President was not required to leave DHS agents to fend for themselves in Illinois while state and local officials incite their attackers and the police drag their feet in responding to life-threatening emergencies. Although the President could send in active-duty soldiers, he acted well within his discretion in determining that National Guardsmen were the more appropriate forces to deploy—and regardless, Section 12406(3) does not require him to make that determination and would not subject him to judicial review even if it did. This Court should stay the district court’s injunction.

ARGUMENT

I. Respondents Fail To Establish That “The Regular Forces” Referred To In 10 U.S.C. 12406(3) Are The Standing Military Rather Than The Civilian Forces Who Regularly “Execute The Laws” At Issue But Are “Unable” To Do So

Respondents argue (Supp. Br. 3) that the “clear textual meaning” of “the regular forces” in Section 12406(3) is “the professional military.” Of course, as they admit in a footnote (Supp. Br. 3 n.1), not only did they previously fail to argue this, but they affirmatively argued the opposite, agreeing with the government in district court that “the term ‘the regular forces’ means civilian law enforcement personnel.” See C.A. Stay App. A346. Although this Court may still consider respondents’ belated contention, their flip-flop belies the purported clarity of their newfound position and also illustrates that the government’s position is the more plausible one. At bottom, respondents’ arguments fundamentally misconstrue the specific context of Section 12406.

A. Respondents misconstrue the text and structure of Section 12406

1. Respondents and their amici show that, in other contexts, “the regular forces” (and cognate terms) *can*, and often do, refer to the standing military, exhaustively citing various dictionaries, speeches, reports, statutes, legislative history, and judicial decisions. See Supp. Br. 3-7; Lederman Br. 8-17; Lederman Supp. Br. 6-14. But this Court’s supplemental-briefing order is “not asking an abstract question about the meaning of” the term “the regular forces” in isolation. *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 596 (2004). Rather, it is “seeking the meaning of [a] whole phrase”—“unable with the regular forces to execute the laws”—“where it occurs in” Section 12406(3). *Ibid.*; see *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006) (recognizing that the “meaning” of a term in a statute often “depends on the context in and purpose for which it is used”). Here, uprooting the meaning of “the regular forces” from unrelated contexts and injecting it into Section 12406(3) does more violence to the immediate context than the statute can bear. “Ultimately, context determines meaning,” and this Court “do[es] not force term-of-art definitions into contexts where they plainly do not fit and produce nonsense.” *Johnson v. United States*, 559 U.S. 133, 139-140 (2010) (quoting *Gonzales v. Oregon*, 546 U.S. 243, 282 (2006) (Scalia, J., dissenting)). Thus, the Court will “not assume that a statutory word is used as a term of art where that meaning does not fit.” *Id.* at 139.

On the context-specific question presented here, respondents and their amici fall short. They do not identify any examples besides Section 12406(3) and its predecessors where the term “the regular forces” is used in connection with the phrase “to execute the laws,” let alone “unable to execute the laws.” And with at most one exception (see p. 6, *infra*), they do not identify any legislative history suggesting that, in amending the Dick Act in 1908, Congress intended to refer to the standing military when specifically mentioning “the regular forces” with whom the President is “unable to execute the laws.” See Act of May 27, 1908, ch. 204, § 3, 35 Stat. 400 (amending Act of Jan. 21, 1903, ch. 196, § 4, 32 Stat. 776).

That is unsurprising, because the standing military is a poor fit for “the regular forces” in Section 12406(3) given the role that term plays in the phrase “unable with the regular forces to execute the laws.” The term refers to a sub-set of federal personnel and asks whether the President is able to execute the laws with them, obviating the need to call up the National Guard. As the

government has explained (Supp. Br. 3), it would be unnatural for the specified personnel to be the members of the standing military, because they are generally *prohibited* from executing the laws under the Posse Comitatus Act, subject to limited exceptions such as the Insurrection Act and the President’s Article II authority to protect federal personnel and property. Accordingly, the far more natural referents in this specific context are the civilian forces with whom the President regularly executes the laws being obstructed. Contrary to respondents’ suggestion (Supp. Br. 4), that also explains why the provision uses the definite article “the” before “regular forces”: the provision does not ask whether the President is able to execute the laws at issue with any and all federal personnel, but only whether he is able to do so with the particular personnel who regularly execute those laws.

2. Doubtless recognizing the glaring mismatch between the standing military and the ability to execute the laws, respondents try (Supp. Br. 5) to turn it to their advantage. Emphasizing that Section 12406(1) and Section 12406(2) cover the “dire exigences” of invasion and rebellion, respondents assert that Section 12406(3) should be limited to a “similar[ly]” dire circumstance—namely, the extreme scenario “when the military could be deployed for civilian law enforcement purposes” under an exception to the Posse Comitatus Act but is unavailable to use. Supp. Br. 5; see Supp. Br. 11 (“[T]he President may federalize and deploy the National Guard under section 12406(3) only in circumstances where it would be lawful to deploy military forces for the purposes of executing federal law, but when he is unable to do so with the full-time forces of the United States military.”). There are three fatal flaws with this argument.

First, it attempts to rewrite Section 12406(3). The provision says “Whenever * * * the President *is unable* with the regular forces to execute the laws of the United States,” 10 U.S.C. 12406(3) (emphasis added), *not* “Whenever * * * the regular forces **are authorized** to execute the laws of the United States but the President is unable to deploy them,” or anything like that. Under the language Congress enacted, the only condition is that the President is “unable with the regular forces to execute the laws.” So if “the regular forces” is construed to mean the standing military, then the “unable” condition would be *satisfied* when the standing military is *prohibited* by the Posse Comitatus Act from executing the laws, as the statute does not distinguish between legal inability and factual inability—indeed, that is why respondents’ newfound construction of the term is so incongruous. Nor can respondents evade the incongruity by observing (Supp. Br. 14) that the federalized National Guard is “subject to the laws and regulations governing” the standing military. 10 U.S.C. 12405. While the Posse Comitatus Act is such a law, its bar on “execut[ing] the laws” is inapplicable when “expressly authorized by * * * Act of Congress,” 18 U.S.C. 1385, and Section 12406 expressly authorizes the federalized National Guard to “execute those laws” that “the President is unable with the regular forces to execute,” 10 U.S.C. 12406.

Second, respondents mischaracterize the relationship between clauses (1), (2), and (3) of Section 12406. As they later acknowledge (Supp. Br. 7-9), Section 12406’s three clauses authorizing the President to federalize the National Guard—for invasions, rebellions, and inability to execute the laws—parallel the three circumstances where the Constitution’s Militia Clause authorizes Congress to provide for the calling forth of the militia and where the 1792 and 1795 Militia Acts authorized the President to do so. And as respondents admit (Supp. Br. 8), neither the Militia Clause nor those Militia Acts conditioned the President’s ability to call forth the militia in any of those circumstances on the standing military’s being unavailable, let alone legally authorized but factually unavailable. To the contrary, consistent with the Framers’ fears of a

standing army, only later did Congress authorize the President to deploy the standing army *at all* in those circumstances. See also Gov’t Supp. Br. 4-6. Nor do respondents demonstrate that Congress, in enacting and amending the Dick Act a century later, sought to subordinate the militia to the standing military when keeping the peace domestically, see pp. 6-7, *infra*—much less only when addressing obstructions to the execution of the laws, not invasions or rebellions.

Third, and relatedly, respondents offer no theory (Supp. Br. 5) for why Congress would have included an “unable with the regular forces” condition *only* in clause (3), *not* in clauses (1) and (2), if it viewed all three clauses as addressing “similar” “dire exigencies” and believed “the regular forces” were the standing military. As the government has explained (Supp. Br. 3-4), that would be entirely backwards because, compared to the National Guard, the standing military is far better suited to addressing invasions and rebellions than domestic obstructions to civil law enforcement. One of respondents’ amici tries to explain the inexplicable, speculating that “[i]t is very unlikely that a President would ever call forth the National Guard but *not* the regular armed forces to repel an invasion or to suppress an actual rebellion,” and hypothesizing that “it would be quite reasonable for Congress to have assumed that in such dire exigent circumstances the President should be able to use both types of armed forces in the first instance.” Lederman Supp. Br. 24. Tellingly, amicus identifies no support for either of these propositions in the Dick Act’s legislative history, which his briefs otherwise have invoked extensively. The lack of support is predictable, because these rationalizations make no sense. On the view of amicus and respondents, if the President would usually exhaust the standing military before turning to the National Guard in cases of invasion or rebellion, that would support imposing the “unable with the regular forces” condition across the board, not omitting it from the first two clauses merely because it would typically be satisfied. Likewise, it is far from evident that invasions and rebellions are invariably more dire than domestic obstructions to civil law enforcement, which might support an inference that Congress concluded that the President should have unrestricted discretion to choose between equally available soldiers and Guardsmen when putting down an invasion or rebellion, but should be required to use the soldiers rather than the Guardsmen when restoring civil law enforcement. After all, there could be an invasion or rebellion by a small number of armed combatants in a localized area, whereas there could be a nationwide obstruction of critical federal laws.

All that being said, and contrary to respondents’ suggestion, the government is not contending that Section 12406(3) should be construed so broadly as to sweep beyond dire exigencies. We agree that federal execution of the laws at issue must be “significantly impeded,” and that “minimal interference” is insufficient. See *Newsom v. Trump*, 141 F.4th 1032, 1051-1052 (9th Cir. 2025) (per curiam). For present purposes, though, the key point is this: where, as here, a covered obstruction to the execution of the laws exists, nothing in the text or structure of Section 12406(3) suggests that the President must first determine that the standing military is legally authorized to address the problem but factually unable to do so. Rather, it suffices that the President is “unable * * * to execute the laws” with the civilian law-enforcement forces who “regular[ly]” execute those laws. 10 U.S.C. 12406(3).

B. Respondents misunderstand the history of Section 12406

As noted, respondents and their amici concede that the Framers and early Congresses treated the militia as the first line of defense to quell domestic obstructions of civil law enforcement, while viewing a standing army as the feared last resort. See Supp. Br. 8; Lederman

Supp. Br. 20. They claim, however, that after the Civil War, norms flipped in favor of the standing military, and that the Dick Act codified that new preference. See *ibid.* To the contrary, the problem with the militia post-Civil War was that it was disorganized, undisciplined, and under-equipped. See Gov’t Supp. Br. 6; Lederman Supp. Br. 21. The central goal of the Dick Act was to solve that problem by modernizing and strengthening the militia. See Gov’t Supp. Br. 6-7; Lederman Br. 8-9. There is ample evidence that, in revitalizing the National Guard, Congress adhered to the traditional view that the militia rather than a standing army was the preferred means to address domestic violence. See Gov’t Supp. Br. 7.

Neither respondents nor their amici identify any clear evidence supporting their counterintuitive position that, having revitalized the National Guard, the Dick Act nevertheless newly subordinated it to the standing military—let alone only for execution of the laws, not for invasions and rebellions. The closest they come is a recommendation to Congress by the Secretary of War, a year-plus before the Dick Act’s passage, that “the National Guard of the several States be *treated as a first reserve*, to be called into the service of the United States to execute the laws of the Union, suppress insurrections, and repel invasions.” Lederman Supp. Br. 13-14 (emphasis added). But the Secretary did not explicitly recommend that the National Guard would be a “first reserve” for *the regular armed forces* with respect to *executing federal law* (which the regular armed forces generally did not execute at all, given the Posse Comitatus Act). And anyway, Congress did not adopt wholesale the “first reserve” recommendation. Like Section 12406 today, the Dick Act allowed the President to call up the National Guard in response to invasions or rebellions *regardless of whether* he was unable to use the standing military. See Act of Jan. 21, 1903, ch. 196, § 4, 32 Stat. 776. As for the President’s inability to execute the laws, the Dick Act did not include the term “the regular forces”; rather, it allowed him to call up the National Guard “whenever * * * [he] is unable, with the other forces at his command, to execute the laws.” *Ibid.* In this context, that language naturally refers to civilian law-enforcement forces. In any event, in the 1908 amendments to the Dick Act, Congress changed that language, without explanation, to “the regular forces at his command”—which is most naturally read in context to refer to the civilian forces who regularly execute the laws at issue, see pp. 3-5, *supra*—while adding a separate proviso that the President could not use any volunteer military force unless his military needs could not be met by the regular military forces and the federalized militia. See Act of May 27, 1908, ch. 204, §§ 3, 4, 35 Stat. 400-401. And then, in 1956, Congress removed the “at his command” language when recodifying the provision, see Act of Aug. 10, 1956, 70A Stat. 199, 525, further weakening any suggestion that “the regular forces” referred to the standing military. All told, the statutory history falls far short of the “more explicit” indication that courts expect in order to hold that Congress intended to “impinge on a tradition”—like the Framers’ preference for the militia over the standing military to address domestic violence—that is “so well grounded in history and reason.” *Nixon v. Fitzgerald*, 457 U.S. 731, 745 (1982).

Although respondents and their amici emphasize the dearth of examples of Presidents calling up the National Guard to execute the laws under Section 12406(3) or its predecessors, the limited practice does not reflect a perceived obligation to use the standing military first. Presidents have continued to use the standing military to execute the laws “only as a last resort” “when no other solution seem[ed] possible” (including in some cases because the state militia was itself part of the problem). See *Use of Marshals, Troops, and Other Federal Personnel for Law Enforcement in Mississippi*, 1 Supp. Op. O.L.C. 493, 497 (1964). Tellingly, neither respondents nor their amici identify a single example where a President has deployed the standing military to execute the laws

even though the National Guard would have been able to handle the mission. And regardless, their position is refuted by President Nixon’s Executive Order authorizing the use of the National Guard during the 1970 postal strike, which did not direct the Secretary of Defense to use the National Guard to deliver the mail only insofar as the standing military proved unable to do so. See Gov’t Supp. Br. 7-8. Likewise, here, President Trump acted lawfully in calling up the National Guard to respond to the violence against federal immigration agents in Illinois whether or not the standing military would be able to calm the streets of Chicago.

II. Respondents Fail To Justify The Injunction Regardless Of How The Term “Unable With The Regular Forces” Is Interpreted

As a threshold matter, respondents treat as given (Supp. Br. 10) that courts may review whether the President properly invoked Section 12406(3) if “the regular forces” means the standing military. But they disregard that judicial review of the President’s decision to call up the National Guard would be especially improper under *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827), and its progeny insofar as that required second-guessing the President’s military judgment about *which* armed forces to deploy. See Gov’t Supp. Br. 8-10. Regardless, neither of respondents’ objections to the President’s decision has any merit.

First, respondents claim (Supp. Br. 11) that the President “has not shown any inability to execute federal law with the military” or “even attempted to do so.” But the President is not an administrative agency required to make a written showing. Gov’t Supp. Br. 9. He satisfied the statute by “determin[ing] that the regular forces of the United States are not sufficient to ensure the laws of the United States are faithfully executed.” D. Ct. Doc. 62-1, at 16 (Oct. 8, 2025). The “presumption of regularity” requires respondents to adduce “clear evidence” that the President did *not* consider the standing military in making that determination (if such consideration were required). Gov’t Supp. Br. 9. Respondents have not carried that burden. They merely observe (Supp. Br. 11) that the President called out the National Guard to “protect ICE, FPS, and other United States Government personnel.” But that in no way means that the President deemed only those personnel to be the “regular forces” with whom he was “unable to execute the laws,” to the exclusion of the standing military. Indeed, given that the President *did* deploy the Marines to Los Angeles earlier this summer, there is every reason to think that he likewise considered their ability to assist here and simply reached the military judgment that they were less suited than Guardsmen to address the conditions in Chicago. See Gov’t Supp. Br. 12.

Second, respondents claim (Supp. Br. 12) that “the President would not have the authority to deploy the military to Illinois” in light of the Posse Comitatus Act. But again, even if that were true, it would *confirm* that the President was “unable” to execute the laws with the standing military, because respondents’ attempt to distinguish between legal inability and practical inability (Supp. Br. 11) has no basis in the text of Section 12406(3). See p. 4, *supra*.

Moreover, respondents are wrong that the Posse Comitatus Act applies here. As Chief Justice Rehnquist explained when he was the head of OLC, it is well established that, while “the Posse Comitatus Act applies to the use of troops to perform essentially law enforcement duties,” it “does not impair the President’s inherent authority to use troops for the protection of federal property and federal functions.” *Authority to Use Troops to Prevent Interference With Federal Employees by Mayday Demonstrations and Consequent Impairment of Government Functions*,

1 Supp. Op. O.L.C. 343, 343 (1971). For example, *In re Neagle*, 135 U.S. 1 (1890), held that the President’s constitutional duty to “take care that the laws be faithfully executed” includes the inherent “right[],” even absent any statutory authorization, to provide “protection” to federal officers—there, by directing a federal marshal to protect a Supreme Court justice riding circuit. *Id.* at 63-64. In so holding, the Court emphasized that no one “can doubt the authority of the President,” if “the mails of the United States * * * are liable to be robbed and the mail carriers assaulted and murdered,” “to make an order for the protection of the mail and of the persons and lives of its carriers, * * * whether it be by soldiers of the army or by marshals of the United States, with a *posse comitatus* properly armed and equipped.” *Id.* at 65; accord *In re Debs*, 158 U.S. 564, 582 (1895). When the military provides such protection to those who enforce the laws, it is not itself “execut[ing] the laws” within the meaning of the Posse Comitatus Act, and it is “expressly authorized by the Constitution” regardless. 18 U.S.C. 1385.

Moreover, the Insurrection Act may well expressly authorize the military to protect DHS agents in Illinois. The President could potentially determine that the violent, organized resistance to federal immigration enforcement is “an[] insurrection, domestic violence, unlawful combination, or conspiracy” that “opposes or obstructs the execution of the laws of the United States,” 10 U.S.C. 253(2), and is also an “unlawful obstruction[], combination[], or assemblance[], or rebellion against the authority of the United States” that “make[s] it impracticable to enforce the laws of the United States in [Illinois] by the ordinary course of judicial proceedings,” 10 U.S.C. 252. See Appl. 31-34 (explaining why the President permissibly called up the National Guard under Section 12406(2) based on “a rebellion or danger of a rebellion against the authority of the Government of the United States”). Respondents claim (Supp. Br. 12-13) that OLC has interpreted the Insurrection Act to apply only where “state authorities are either directly involved, by acting or failing to act, in denials of federal rights of a dimension requiring federal military action, or are so helpless in the face of private violence that the private activity has taken on the character of state action.” Setting aside whether such state action is present here (see pp. 9-10, *infra*), it is not required in this context. OLC was considering the use of troops to halt violence against private civil-rights workers, where the “constitutional basis” for federal intervention was “the Fourteenth Amendment,” which is “directed against ‘state action’ and does not normally apply to the acts of private persons.” *Use of Marshals, Troops, and Other Federal Personnel for Law Enforcement in Mississippi*, 1 Supp. Op. O.L.C. at 496-497. OLC itself made clear that a state-action finding was unnecessary where troops instead were enforcing “a federal court order” and thus “defend[ing] the authority and integrity of the federal courts under the Supremacy Clause of the Constitution.” *Id.* at 497. Likewise, state action is unnecessary under the Insurrection Act where troops are protecting federal personnel and property from violent, organized attacks. But this Court need not decide that issue here, because the President has not invoked the Insurrection Act and possesses inherent Article II authority regardless.

Once their Posse Comitatus Act objection is rejected, respondents have no other basis for second-guessing the President’s presumed determination that he was “unable” to execute the laws in Illinois. Although they insist (Supp. Br. 12) that “the President continues to execute federal law, including federal immigration law, unabated in Illinois,” the government has explained the flaw in that argument: while DHS agents remain able to execute the laws to some extent, their efforts to do so are both significantly impeded and unduly dangerous without armed protection from the violent resistance they are incessantly facing. See Appl. 27-31. And respondents do not even try to dispute that Guardsmen are better suited than active-duty soldiers to provide such

protection on the streets of Chicago. See Gov’t Supp. Br. 10-12. Accordingly, even if “the regular forces” means the standing military, the President permissibly invoked Section 12406(3).

III. Respondents’ Alternative Arguments For Denying A Stay Also Fail

Respondents finally contend (Supp. Br. 14) that, since the original briefing concluded, the government’s “own statements and conduct have further underscored that conditions in Illinois do not warrant invocation of section 12406 or emergency relief by this Court.” But respondents grossly mischaracterize recent events.

To begin, respondents suggest (Supp. Br. 14-15) that the government’s assertions of irreparable harm are belied by the fact that the government agreed to an extension of the temporary restraining order through final judgment. But if the TRO had not been extended, it would have been inevitably replaced by an equivalent preliminary injunction, which could potentially have delayed or complicated this Court’s review of the pending application (and which also would not have been covered by the partial stay of the TRO that the Seventh Circuit had previously granted). The government acted prudently to ensure this Court’s prompt review, which is why its proposal was expressly made “without prejudice to Defendant’s continued pursuit of appellate relief and subject to any relief granted on appeal.” D. Ct. Doc. 96 (Oct. 22, 2025).

Respondents also quote (Supp. Br. 15) the government’s acknowledgment that, at the Broadview facility, “increased coordination with local law-enforcement officers has reduced the need for federal officers to engage with protestors.” But respondents ignore the continued need for armed protection elsewhere in the Chicago area, where violent resistance has persisted. For example, on October 14, members of a crowd surrounding DHS agents threw concrete and other projectiles, damaged the tires and windows of several vehicles, and threatened severe bodily harm, culminating in injuries to several agents. *Chi. Headline Club v. Noem*, No. 25-cv-12173, Doc. 173-2, at ¶¶ 48, 52-56 (Oct. 31, 2025). On October 22, a pickup truck appeared to attempt “to ram [DHS] vehicles head-on,” but collided with another vehicle instead. *Id.* ¶ 60. The next day, “a big box truck attempted to ram into agents,” while a crowd at the next intersection over “blocked in” agents and threw rocks and other projectiles at them, hitting one agent in his helmet. *Id.* ¶¶ 64-66. Worst of all, on November 9, while DHS agents were “boxed” in “by a hostile crowd,” they “came under direct gunfire” from a driver who “immediately fled the scene,” after which other “[a]ttackers began throwing bricks * * * from a roof”; and once a “convoy” of DHS vehicles was eventually able to break free, it was repeatedly “rammed” by vehicles driven by additional assailants. Press Release, DHS (Nov. 9, 2025), <https://www.dhs.gov/news/2025/11/09/border-patrol-agents-face-shots-fired-vehicle-rammings-bricks-thrown-chicago>. This violence unfolds, moreover, as powerful criminal cartels have offered hefty bounties for the murder or kidnapping of federal agents enforcing federal immigration law. See Appl. 10 n.1. The danger to the lives and safety of DHS officers is as acute and alarming as ever.

Fueling these fires, the vitriolic incitement of such violence by state and local officials has also continued. As the government previously observed, the Governor of Illinois has described DHS agents as Nazi troopers (“acting like jack-booted thugs”), while the Mayor of Chicago maligned them as a “rogue, reckless group of heavily armed and masked individuals roaming through our city.” See Appl. 11. Since then, the Mayor has doubled down, calling on “all of us

throughout this country to push back fiercely against this tyrant,”¹ which recalls his earlier invitation for Chicagoans to “build greater resistance” because the federal government purportedly was “call[ing] for a rematch” of “the Civil War.”² Such incendiary rhetoric imperils the safety of DHS agents and belies the district court’s credulous finding (Supp. Br. 14) that “state and local police * * * are ready, willing, and able to keep the peace as [DHS] continues its operations in Chicago.” In fact, a recent recording has surfaced showing that Chicago Police Department leadership issued a directive for officers not to respond to a request for assistance from immigration agents swarmed by a large crowd.³

Notably, protecting DHS agents while they move through the streets of Chicago is a mission for which Guardsmen are particularly better suited than active-duty soldiers. See Gov’t Supp. Br. 12. Moreover, even as to the Broadview facility, respondents are misleadingly spinning the situation. The state and local police did not increase their presence there to protect DHS agents from violence. They did so purportedly “to protect the health and safety of all individuals, including nearby Broadview residents and businesses, and enable the peaceful expression of First Amendment rights,” while emphasizing that they would in no way “assist * * * enforcement of federal immigration statutes.”⁴ It is thus entirely possible that state and local police will leave DHS agents at Broadview to fend for themselves if this Court allows the injunction against the deployment of the National Guard to remain in effect.

CONCLUSION

For those reasons, and those the government provided in its application, reply, and supplemental brief, the Court should stay the district court’s order of October 9, 2025.

Sincerely,

D. John Sauer
Solicitor General

cc: See Attached Service List

¹ Interview with Mayor Brandon Johnson, at 4:06–4:29 (Oct. 11, 2025), <https://www.youtube.com/watch?v=M9LXmBvK5hM>.

² Mayor Brandon Johnson, Remarks at Signing of Exec. Order No. 2025-8, at 9:13-9:31 (Oct. 6, 2025), https://www.youtube.com/watch?v=67g_BySnkaY.

³ Casey He, *Chicago Police Told to Hold Back After Border Patrol Shooting in Brighton Park, Body-Camera Footage Shows*, Chi. Sun-Times, Nov. 14, 2025, <https://chicago.suntimes.com/immigration/2025/11/14/chicago-police-border-patrol-shooting-brighton-park-body-camera-footage-immigration>.

⁴ Press Release, Ill. State Police (Oct. 2, 2025), <https://isp.illinois.gov/Media/PressReleaseFile/2269>.

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