No. 25A443

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Defendants-Applicants,

v.

STATE OF ILLINOIS and THE CITY OF CHICAGO,
Plaintiffs-Respondents.

To The Honorable Amy Coney Barrett, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit

RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

In early October, applicants federalized several hundred members of various state National Guards under 10 U.S.C. § 12406 and deployed them into the State of Illinois over the State's objection. The district court entered a 14-day temporary restraining order to maintain the status quo while considering the complex legal and factual issues presented by the deployment, and—at applicants' request—the Seventh Circuit promptly reviewed that order and stayed it in part. Applicants now seek further relief from this Court, but cannot show that such extraordinary relief is warranted. At the threshold, it is unlikely that the Court will grant certiorari to review a partially stayed TRO that will expire in three days. And there is no division of authority among the circuits on any of the legal questions presented by the application; on the contrary, the Seventh Circuit's decision is fully consistent with an opinion of the Ninth Circuit issued earlier this summer—the only other court of appeals to have ever addressed the complex and novel issues presented by the non-consensual deployment of a State's National Guard.

Regardless, the Seventh Circuit was also correct that applicants had not shown, at this early stage, that invocation of section 12406 was warranted. In reaching that decision, the court largely applied the legal rules that applicants themselves sought—it both employed applicants' preferred interpretation of section 12406's preconditions and afforded "a great level of deference to the President" in assessing whether those preconditions were met. Applicants' objections to the Seventh Circuit's application of that deferential review to the facts found by the district court amount to a request for

error correction of the kind this Court regularly declines—a request made even more unusual by the highly preliminary nature of the proceedings below. Regardless, the courts below did not err: As the Seventh Circuit explained, the record amply supports the district court's careful factual determinations and credibility assessments, made on the record after an hours-long hearing into evolving facts.

Finally, the equities tilt heavily in the State's favor. The Framers carefully apportioned responsibility over the "militia"—today, the National Guard—between the federal government and the States, granting the federal government the authority to call up the militia only for specific purposes and at specific times. Although the district court concluded that those unusual circumstances were not present in Illinois, and so enjoined the federalization and deployment of the National Guard at the TRO stage, the Seventh Circuit's decision partially staying that order—and permitting federalization—both safeguards the careful balance of power struck by the Constitution and affords the federal government appropriate solicitude while this fast-moving case proceeds in the lower courts. Applicants' contrary arguments rest on mischaracterizations of the factual record or the lower courts' views of the legal principles. As the district court found, state and local law enforcement officers have handled isolated protest activities in Illinois, and there is no credible evidence to the contrary. The Court should decline applicants' request to unsettle the equitable judgment reflected in the Seventh Circuit's order and to take the dramatic step of permitting deployment of National Guard troops over Illinois's objection for the handful of days the TRO currently remains in effect.

STATEMENT OF THE CASE

A. "Operation Midway Blitz"

On September 8, the Department of Homeland Security ("DHS") announced "Operation Midway Blitz," an effort to ramp up immigration-related arrests and deportations in and around Chicago, Illinois. Doc. 13-12.[1] Within two weeks, DHS announced that the operation had yielded over 500 arrests.[2] DHS touted its arrest numbers again in another press release, declaring that it "remain[ed] undeterred."[3] Within a month, DHS announced it had made over 1,000 arrests and that "Operation Midway Blitz is making Illinois safe again." Doc. 13-13.

B. Protests at the Broadview ICE facility

For years, small groups of protesters, including a weekly prayer vigil, have peacefully demonstrated outside the ICE facility in Broadview, a suburb of about 8,000 people located twelve miles west of Chicago. Doc. 13-5 at 1-2; Doc. 13-6 at 2. Since Operation Midway Blitz began, the demonstrations have grown in size, Doc. 13-5 at 4, but have generally featured fewer than 50 people and have largely remained peaceful, *id.* at 4, 12; Doc. 13-6 at 2-3. Though some protesters have tried to stand or sit in the facility's driveway, ICE personnel have removed them, enabling

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[1] The application is cited as "Appl. __" and its appendix as "Appx. __." Citations to the district court docket are identified by the docket number and page number, "Doc. __ at __." The Seventh Circuit docket is cited as "7th Cir. Doc. __ at __."

[2] CBS News Chicago, *Nearly 550 arrested during Chicago area immigration crackdown so far, official says*, https://cbsn.ws/3KXFqk2 (Sept. 19, 2025).

[3] DHS, *DHS arrests more than 800 illegal aliens including worst of the worst criminals in Operation Midway Blitz despite sanctuary politicians and violent riots*, https://bit.ly/49b3xFN (Oct. 1, 2025).

vehicles to enter and exit the facility. Doc. 13-5 at 4.

During these protests, Broadview's police department has responded to every call for service it received from ICE. *Id.* at 10. Additionally, the Illinois State Police, which has extensive experience controlling crowds and a long history of successful cooperation with their federal law enforcement partners, has provided logistical support and responded to each of the three requests for assistance it received from DHS. Doc. 13-15 at 4-10, 11-13. Though the State Police has not been asked to assist in protecting federal facilities in recent years, they stand ready to respond to requests for assistance from their federal partners, as they have done before. *Id.* at 10-11.

On September 26, ICE agents deployed tear gas and pepper spray on a group of about 100 to 150 protesters outside the facility. Doc. 13-5 at 8. Broadview's police department requested assistance from Illinois's law enforcement mutual aid network, prompting the Illinois State Police and several other local police departments to send support. *Id.* at 8-9. To ensure public safety, the combined law enforcement team closed three blocks of a nearby street for about three hours in the morning and another two hours that night. *Id.* at 9. The same day, DHS issued a request (which was not acted upon) to the Department of War for "100 DoW personnel" to "integrate with federal law enforcement operations, serving in direct support of federal facility protection, access control, and crowd control measures." Doc. 13-2 at 15-16.

The next day, which featured only a small crowd of quiet protesters closely monitored by local police, federal agents told Broadview Police to prepare for a "shitshow"—specifically, that they intended to increase ICE's presence in Broadview

and escalate their use of chemical agents on the protesters. Doc. 13-5 at 9. Throughout the rest of the day and into the evening, agents pushed the protesters up the street and deployed tear gas and pepper balls. *Id.* at 9-10. Following that incident, 11 protesters were arrested, *id.* at 10, but only five were charged with crimes, and federal grand juries declined to indict at least three of those five.[4]

On October 2, Broadview Police, the Illinois State Police, and other state and local agencies announced a Unified Command to ensure public safety and order around the facility. Doc. 13-5 at 11. The next day, the Unified Command established protest areas on the sidewalks outside the facility, which allowed for the peaceful exercise of First Amendment rights, and created an access lane for ICE and emergency vehicles. *Id.* at 12-13. The Command also deployed officers onsite to direct protesters to the designated areas and maintain safety by ensuring separation between the protesters and traffic. *Id.* The crowd of protesters peaked at about 200 people, and any protesters who resisted the Unified Command's attempts to maintain the designated protest areas were detained, and if necessary, arrested. *Id.* at 12, 14. As state and local law enforcement managed the protester response that day, they made five arrests for charges related to disobeying or resisting law enforcement. *Id.*; Doc. 13-15.

The following day, October 4, there were about 30 protesters outside the ICE

[4] Jason Meisner, *Charges dropped against couple in Broadview immigration protest after federal grand jury refuses to indict*, Chi. Trib., https://bit.ly/48yJSiZ (Oct. 8, 2025); Angie Leventis Lourgos, *Prosecutors drop charges against Oak Park man with intellectual disabilities arrested at Broadview protest*, Chi. Trib., https://bit.ly/48EsqJT (Oct. 9, 2025).

facility at Broadview. Doc. 63-2 at 10. When ICE requested assistance from the State Police, state and local authorities appeared within 10 minutes and contained the scene without federal intervention. *Id.* at 10-11. By that night, there were no protesters left, and state and local authorities had secured and emptied the area. Doc. 63-2 at 11. On October 5, state and local authorities arrived at the Broadview facility early in the afternoon as a few dozen protesters demonstrated in one of the designated protest areas. *Id.* By evening, the area was again empty and secure. *Id.*

The same weekend, specifically on October 4, the Chicago Police Department ("CPD") responded to reports of a shooting and a collision involving a vehicle driven by federal agents in Chicago. Doc. 63-3 at 3-4. They located a woman who reported being shot by federal agents, had her transported to a hospital, and preserved the scene to turn over to federal authorities. *Id.* Later, when federal agents requested further CPD assistance to respond to a crowd that had gathered there, CPD diverted additional units to meet up with the officers who were already on the scene. *Id.* at 4. They established a perimeter and placed themselves between the protesters and the federal agents, and within a few hours, the crowd had dispersed. *Id.* At no point did CPD leadership instruct officers to refuse to help federal agents. *Id.* at 5.

Following the weekend's events, ICE's Chicago field office director emailed a State Police official to echo "kudos from one of [his] onsite managers" at Broadview, who had asked to "pass along the effectiveness of this Unified Command" from the "perspective" of personnel at the facility. Doc. 63-2 at 10. The onsite manager stated that "support from this unified command" and "communication with their on-site

incident commander" had been "great." *Id.* at 11. He added that it was "clear" the State Police were "the difference maker in this scenario," that ICE was "grateful for their leadership," and that he hoped to "keep it up for the long-haul." *Id.*

C. National Guard troops are federalized and deployed into Illinois

Also on October 4, the same day as the protests referenced in ICE's email to the State Police, the federal National Guard Bureau chief sent a memorandum to Illinois's Adjutant General (the Commander of the Illinois National Guard, see 20 ILCS 1805/14), threatening to federalize Illinois's National Guard under Title 10 of the U.S. Code unless, within two hours, the State deployed troops in what is known as "Title 32" status—that is, a status funded by the federal government to support a federal mission at the President's request but remaining under command of their governor. Doc. 13-2 at 5-6, 21; see Doc. 13-22 at 2-3. The Governor declined, citing the lack of public safety need or emergency. Doc. 13-2 at 6.

Shortly thereafter, Secretary Hegseth issued a memorandum providing for the federalization of "at least 300 National Guard personnel . . . to protect [ICE], Federal Protective Service, and other U.S. Government personnel who are performing Federal functions, including the enforcement of Federal law, and to protect Federal property, at locations where violent demonstrations against these functions are occurring or are likely to occur based on current threat assessments and planned operations." Doc. 13-3. The memorandum cited an October 4 directive from the President. *Id.* On October 5, the Adjutant General received a second memorandum issued by Secretary Hegseth federalizing members of the Texas National Guard under Title 10 for use in Illinois. Doc. 13-2 at 7; Doc. 13-4.

On October 6, the White House placed a "memorandum" on its website in which the President invoked section 12406 to federalize "at least" 300 Illinois National Guard members under Title 10 "until the Governor of Illinois consents" to a Title 32 mobilization. Doc. 63-5. The memorandum did not reference any specific statutory basis for a section 12406 deployment, asserting instead that unspecified incidents, "as well as the credible threat of continued violence, impede the execution of the laws of the United States." *Id.* As to scope, the President stated that "the deployed National Guard personnel may perform those protective activities that the Secretary of War determines are reasonably necessary to ensure the execution of Federal law in Illinois, and to protect Federal property in Illinois." *Id.* Applicants submitted an identical memorandum (dated October 4, 2025) in the district court. Doc. 62-1 at 16.

On October 7, Texas National Guard and California National Guard personnel arrived in Illinois, and on October 8, the Illinois National Guard personnel prepared to mobilize. Doc. 62-3 at 2-3.

D. The district court temporarily enjoins the federalization and deployment of the National Guard in Illinois

On October 6, the State of Illinois and City of Chicago ("State") filed suit and sought temporary injunctive relief on their claims that applicants' actions were *ultra vires* in violation of section 12406 and the Posse Comitatus Act and unconstitutional under the Tenth Amendment. Docs. 1, 13. On October 9, the district court issued a TRO—lasting 14 days—that enjoined the "federalization and deployment of the National Guard of the United States within Illinois." Appx. 1-2.

The following day, the district court issued a written order concluding that the

State had presented a justiciable matter and shown a likelihood of success on the merits of its section 12406 and Tenth Amendment claims. *Id.* at 34-84. In reaching this conclusion, the court made factual findings based on the evidence submitted by the parties. *Id.* at 36-47. The court considered the State's declarations, which included one from Broadview's police chief and another from the State Police's head of strategic planning, both of which attested that the Broadview protests were generally small and peaceful, that the ICE facility managed to operate without substantial interruption, and that they consistently responded to federal authorities' requests for assistance and secured the area when needed. Docs. 13-5, 13-15. The district court also considered declarations from ICE's Chicago Field Office Director and a Customs and Border Patrol ("CBP") official, who attested to assaults on federal agents and vandalism of federal property during the protests, described instances where protesters obstructed vehicles from entering and exiting the facility, and characterized state and local authorities' assistance as inadequate. Docs. 62-2, 62-4. And the court considered a declaration from an Army representative who provided answers to questions the district court raised about the logistics of the planned deployments. See Doc. 62-3; Doc. 30. As the court observed, applicants "report[ed] significantly more violence" than state and local law enforcement did, and their accounts of the facts were "impossible to align." Appx. 42-43.

Thus, the district court determined it had to make "credibility assessment[s]" to resolve the conflicts, and it ultimately found applicants' declarations to contain "unreliable" information. *Id.* at 43-44. For example, the court noted the ICE and

CBP declarants who characterized the protests as violent had relied on the fact that certain protesters were arrested and federally charged during the September 27 protests but omitted that the charges were dropped because grand juries declined to indict them. *Id.* The court found these omissions reflected a "potential lack of candor" by the declarants and "call[ed] into question their ability to accurately assess the facts." Appx. 43. The court also noted the Army declaration inaccurately attested that federalized National Guard personnel were requested to secure the federal courthouse and retracted that statement only after the district court questioned applicants' counsel about it at oral argument on the motion. *Id.* at 44; see Doc. 65-1. As the court explained, these three declarations—from applicants' only witnesses with firsthand knowledge of the relevant "events in Illinois"—all "contain[ed] unreliable information." Appx. 44.

Turning to the merits, the district court rejected applicants' threshold contention that *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827), rendered the President's invocation of section 12406 unreviewable. Appx. 57-63. As the court explained, *Martin* concerned a delinquent militiaman's attempt to challenge his court martial by arguing that the British Empire's invasion during the War of 1812 was an insufficient exigency to federalize the militia under section 12406's predecessor statute, not a sovereign State's challenge to an imminent domestic deployment within its borders over its governor's objection. *Id.* at 60-63. Still, the district court held that applicants were entitled to "deference" regarding whether any of section 12406's factual predicates was met. *Id.* at 64. Even extending applicants that deference,

however, the district court concluded no predicate was met. *Id.* at 65-77.

First, the district court concluded that section 12406(2) did not apply because there was no "reasonable support for a conclusion" that a "rebellion" or danger thereof existed in Illinois. *Id.* at 67. Though the court acknowledged there was "opposition (indeed, sometimes violent) to a particular federal agency and the laws it is charged with enforcing," it explained that this protest activity evinced no "broader opposition to the authority of the federal government" and so was not a "rebellion." *Id.*

Second, the district court concluded section 12406(3) did not apply because the President was not "unable" to execute the laws with the "regular forces." *Id.* at 67-77. It noted the Ninth Circuit previously defined the statutory term "unable" as "significantly impeded," and though it expressed some skepticism about that definition, it nonetheless found the State "likely to succeed on the merits even were the Ninth Circuit standard applied." *Id.* at 76; see *Newsom v. Trump*, 141 F.4th 1032, 1052 (9th Cir. 2025) (*Newsom II*). The district court acknowledged evidence of "protests, some of which . . . included acts of violence," as well as evidence of "property destruction" and "discrete groups who . . . attempted to impede DHS agents." Appx. 76. But throughout this protest activity, the court explained, the evidence showed "[a]ll federal facilities have remained open," any disruptions were "of limited duration and swiftly controlled by authorities," and "federal officials have seen huge increases in arrests and deportations." *Id.*

As to the other claims, the district court concluded that the State was likely to succeed on its Tenth Amendment claim for many of the same reasons it was likely to

succeed on its section 12406 claim, and it declined to address the Posse Comitatus Act. *Id.* at 77-81. The court further determined that the State demonstrated irreparable harm and that the balance of the equities and public interest favored entry of a TRO. *Id.* at 81-84.

The TRO expires at the end of a 14-day period, on October 23 at 11:59 p.m. *Id.* at 1. On October 22, the district court will conduct a hearing to determine whether the order should be extended for an additional 14 days (consistent with Federal Rule of Civil Procedure 65(b)(2)). *Id.* at 2. The district court did not enter a preliminary injunction and did not apply the TRO to the President. *Id.* at 1, 36.

E. The Seventh Circuit enters a partial stay of the district court's TRO

Applicants appealed and sought both a stay of the district court's TRO pending appeal and an immediate administrative stay. 7th Cir. Doc. 6. The next day, the Seventh Circuit granted an administrative stay as to the "federalization of the National Guard" but not as to the "deployment of the National Guard." Appx. 85. In other words, the Guard members in Illinois were not required "to return to their home states," but applicants remained enjoined from deploying them within the State. *Id.*

On October 16, the Seventh Circuit granted the motion in part, continuing to stay the portion of the district court's order enjoining applicants from federalizing the National Guard but declining to stay the portion enjoining applicants from deploying the Guard. *Id.* at 102-103.[5] As the court explained, "at this preliminary stage," the

[5] The court acknowledged that TROs ordinarily are not appealable but reviewed the order because it bore "sufficient hallmarks of a preliminary injunction." Appx. 93-94.

district court's findings were not clearly erroneous, and based on those findings, "even giving substantial deference to [the President's] assertions," no precondition for invoking section 12406 was met. *Id.* at 87.

Like the Ninth Circuit and the district court, see *Newsom II*, 141 F.4th at 1050-1051; Appx. 57-63, the Seventh Circuit rejected applicants' argument that the President's invocation of section 12406 was unreviewable, observing that "[n]othing in the text" of that statute "makes the President the sole judge of whether [its] preconditions exist," Appx. 95-96. As for *Martin*, the court explained that decision did not concern whether *a court* can review the President's determination to federalize the militia but rather whether "subordinate militiamen" can challenge that determination. *Id.* at 96. It noted *Martin*'s "context," specifically that the United States was "at war with the most powerful empire on earth," which had "actually invaded" the country. *Id.* at 95. It thus viewed *Martin's* language as a reaction to the prospect of a legal regime where any low-ranking officer could "make his own determination whether an imminent threat of invasion existed" and "refuse to obey the President's orders," not a sweeping prohibition against judicial review of domestic deployments. *Id.* at 95-96.

Accordingly, following the Ninth Circuit's reasoning in *Newsom II*, 141 F.4th at 1047, the Seventh Circuit concluded that the President's "decision to federalize and deploy the National Guard" under section 12406 was reviewable. Appx. 96. It also agreed with the Ninth Circuit that the President was entitled to "'a great level of deference'" as to "whether one of the statutory predicates exists." *Id.* (quoting

Newsom II, 141 F.4th at 1048). But even extending such deference, the Seventh Circuit held that the district court did not err in finding section 12406's preconditions not met. *Id.* at 97.

Regarding section 12406(2), the Seventh Circuit tentatively defined rebellion to require "deliberate, organized violence to resist governmental authority," noting the sharp distinction between "protest" and "rebellion." *Id.* at 99. Applying that definition to the district court's factual findings, "even after affording great deference to the President's evaluation of the circumstances," the Seventh Circuit concluded that "[t]he spirited, sustained, and occasionally violent actions of demonstrators in protest of the federal government's immigration policies and actions, without more, [did] not give rise to a danger of rebellion against the government's authority." *Id.*

Turning to section 12406(3), the court again "appl[ied] great deference to the administration's view of the facts," but held that, even with this deference, there was "insufficient evidence that protest activity in Illinois has significantly impeded the ability of federal officers to execute federal immigration laws." *Id.* at 100. Rather, "[f]ederal facilities," including Broadview's ICE facility, "have remained open despite regular demonstrations," and the "sporadic disruptions" were "quickly contained by local, state, and federal authorities." *Id.* Meanwhile, "immigration arrests and deportations have proceeded apace in Illinois over the past year, and the administration has been proclaiming the success of its current efforts to enforce immigration laws in the Chicago area." *Id.* Thus, whether the Ninth Circuit's definition of "unable" as "significantly impeded," see *Newsom II*, 141 F.4th at 1052,

or the district court's definition of that term as "being incapable" applied, applicants failed to show the President was unable to execute federal law in Illinois, Appx. 100.

As for the remaining stay factors, the Seventh Circuit reasoned that although applicants had a strong interest in protecting federal agents and property, the evidence showed they have succeeded in doing so without the National Guard's intervention. *Id.* at 101. By contrast, applicants' violation of Illinois's sovereignty by deploying federalized troops within its borders over its governor's objection would constitute an irreparable harm, only exacerbated by the fact some of the troops would be from another State's National Guard. *Id.* at 101-102. The court further explained that the public had a "significant interest in having only well-trained law enforcement officers deployed in their communities and avoiding unnecessary shows of military force in their neighborhoods, except when absolutely necessary and justified by law." *Id.* at 102. It found the harm of temporarily permitting National Guard troops to remain under federal command "relatively minimal" at present, though it acknowledged that harm could magnify if circumstances arise in which the State "needs its Guard members who have been commandeered by the federal government to assist with state matters." *Id.*

The court thus held, "[t]he administration remains barred from deploying the National Guard of the United States in Illinois," but the Guard members in Illinois are not required to return home. *Id.* at 102-103. The court stressed that its "conclusions [were] preliminary . . . based on . . . the limited record before the district court" and are subject to change as subsequent events unfold. *Id.* at 102.

The parties are scheduled to appear for a hearing in the district court on October 22 to address whether the TRO should be extended for an additional 14-day period. Appx. 2. On October 17, the district court ordered the parties to meet and confer in advance of the hearing regarding an expedited discovery schedule, additional briefing, and whether an early settlement conference would be appropriate. Doc. 85.

ARGUMENT

The application for a stay should be denied. A party seeking a stay pending the filing and disposition of a certiorari petition must demonstrate a "reasonable probability" that this Court will grant certiorari; a strong showing that it is likely to succeed on the merits; and that irreparable harm will "result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010); *Nken v. Holder*, 556 U.S. 418, 434 (2009). In close cases, the Court will also balance the equities and consider the public interest. *Hollingsworth*, 558 U.S. at 190. In addition to satisfying the traditional stay factors, in other words, the party seeking a stay must show that the Court is likely to exercise its discretion to grant review, lest a party force a "merits preview" unnecessarily and "on a short fuse without benefit of full briefing and oral argument." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring). Because the Seventh Circuit has already "denied [a] motion for a stay," applicants face an "especially heavy burden" here. *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers).

Applicants have not met this heightened standard, for several reasons. To start, it is unlikely the Court will grant certiorari to review a 14-day TRO that has

been partially stayed and that will expire, by its own terms, in three days. Furthermore, the Seventh Circuit's decision entering a partial stay is fully consistent with the Ninth Circuit's decision in *Newsom*—the only other court of appeals opinion to have addressed the questions presented by the application—and thus does not create any division of authority among the circuits. Threshold issues aside, this Court should deny applicants' motion for the additional reason that they have not shown a strong likelihood of success on the merits. On the contrary, the Seventh Circuit's decision—which respected the district court's factual findings while applying a standard highly deferential to the President, as applicants sought—properly determined that applicants had not shown, at this preliminary stage, that invocation of section 12406 was warranted. Finally, applicants have not established that they will suffer irreparable harm or that the equitable factors tip in their favor.

I. Applicants Have Not Shown A Reasonable Probability That This Court Will Grant Certiorari.

Applicants have not shown, as they must, that there is a reasonable probability the Court will grant certiorari in this case. Indeed, the Court is highly *unlikely* to grant review because there is no circuit split on any question presented and because the procedural posture—with three days remaining on a 14-day TRO and significant further factual and legal development imminent in the courts below—makes this an exceedingly poor vehicle in which to review any significant legal question.

To begin, there is no division of authority on any question presented by the stay application. Only the Seventh and Ninth Circuits have addressed the legal questions implicated by the federalization and deployment of the National Guard

and, as the Seventh Circuit itself observed, those two courts did not disagree on any aspect of the legal analysis. On the contrary, the Seventh Circuit agreed with the Ninth Circuit's articulation of the governing legal standard, including as to applicants' two lead arguments—*i.e.*, their contentions that "the President's federalization of the Guard under § 12406 is not judicially reviewable at all" and that "the factual predicates of § 12406(2) and (3) are satisfied in light of the deference due the President's decision to federalize the Guard." Appx. 94.

As to the first, the Seventh Circuit joined the Ninth Circuit in concluding that the President's invocation of section 12406 is subject to judicial review. Appx. 96; *Newsom II*, 141 F.4th at 1050-1051. In reaching that conclusion, as detailed further below, *infra* Section II.A., both courts held that *Martin* likely does not foreclose review. Appx. 95-96; *Newsom II*, 141 F.4th at 1050-1051. Both courts explained that, "unlike in *Dalton* [*v. Specter*, 511 U.S. 462 (1994)], 'the statute here enumerates three predicate conditions for the President's decision to call forth the National Guard,'" without any provision designating "the President the sole judge of whether these preconditions exist." Appx. 96 (quoting *Newsom II*, 141 F.4th at 1047). Accordingly, "the President's decision to federalize and deploy the National Guard under the statute is reviewable." *Id.*; *Newsom II*, 141 F.4th at 1050-1051.

As to the second, the Seventh Circuit agreed with the Ninth Circuit "that the President should be granted 'a great level of deference' on the question of whether one of the statutory predicates exists." Appx. 96 (quoting *Newsom II*, 141 F.4th at 1048). To be sure, the Seventh Circuit reached a different conclusion under that

standard than did the Ninth Circuit, but that is because the conditions in Illinois differ from the conditions in California, as does the evidence presented by the parties—not because the Seventh Circuit applied a different legal standard. Contra Appl. 35. Applicants suggest that there is a division of authority over the proper reading of section 12406's third predicate (*i.e.*, that the President is "unable with the regular forces to execute the laws of the United States"), Appl. 30, but that is not correct: The Seventh Circuit expressly declined to resolve that legal question because it held that applicants could not prevail under their preferred reading of section 12406, Appx. 100, which is the same standard applied by the Ninth Circuit. And to the extent applicants suggest that there is a division of authority based on a disagreement between the district court and the Ninth Circuit, that would hardly warrant the Court's intervention. See S. Ct. R. 10(a) (certiorari warranted only as to disagreements among the "federal court[s] of appeals").

The procedural posture of this appeal also makes this a uniquely poor vehicle for the resolution of any legal question. As noted, this appeal arises from a 14-day TRO that will expire in *three days*. And even if the court were to extend the TRO, that extension, too, would be temporary—limited to 14 days, see Fed. R. Civ. P. 65(b)(2)—and would be entered for the purpose of permitting the parties to develop the evidentiary record for a preliminary-injunction hearing. As discussed below, *infra* Section II, this case presents complex questions of law and fact that will benefit from a developed evidentiary record and fulsome briefing. Indeed, even the Seventh Circuit recognized that the district court's factual findings, though not "clearly

erroneous," were also "necessarily preliminary and tentative," and that its own conclusions were "preliminary and based on [its] own review of the limited record before the district court." Appx. 97; see also *id.* at 87 (referencing the "preliminary stage"); *id.* at 94 (same); *id.* at 96 (same); *id.* at 98 (same); *id.* at 101 (noting the court's "preliminary assessment"); *id.* at 102 ("The issues presented are necessarily fact bound, and it is possible that events could transpire that satisfy one of 12406's factual predicates."). The Seventh Circuit, for its part, declined to "fully resolve" certain "thorny and complex issues of statutory interpretation" because it was not necessary to do so to decide the stay motion. *Id.* at 100.

There is thus no reasonable probability that the Court would grant certiorari in this case at this juncture, and so no reasonable argument for a stay pending the filing and disposition of a petition for certiorari. If anything, this case underscores the reasons that this Court traditionally *denies* certiorari when a case is in an interlocutory posture, even when it presents a significant legal question. *E.g.*, *Abbott v. Veasey*, 580 U.S. 1104, 1104-1105 (2017) (Roberts, C.J., statement respecting denial of certiorari); *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945 (2012) (Alito, J., statement respecting denial of certiorari); *Wrotten v. New York*, 560 U.S. 959, 960 (2010) (Sotomayor, J., statement respecting denial of certiorari); *Va. Mil. Inst. v. United States*, 113 S. Ct. 2431, 2431-2432 (1993) (Scalia, J., statement respecting denial of certiorari). The complex issues presented by this case warrant additional legal and factual development by the lower courts, both in this case and others.

Applicants do not meaningfully address any of this. Instead, they principally

argue that the Seventh Circuit erred in its legal analysis, but this Court does not grant review to correct lower courts' errors. See S. Ct. R. 10. The application should be denied on this basis alone.

II. Applicants Have Not Shown A Strong Likelihood of Success On The Merits.

A. Applicants' actions are subject to judicial review.

The Seventh Circuit joined the Ninth Circuit in rejecting applicants' assertion that the President's invocation of section 12406 is categorically immune from judicial review. Appx. 95-96; *Newsom II*, 141 F.4th at 1050-1051. Those decisions were correct, and applicants have not shown a significant likelihood of persuading this Court to reach a different conclusion.

This Court has long recognized that "the Judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012) (cleaned up); see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) ("The judicial role is to interpret the act of Congress" (cleaned up)). Furthermore, "federal courts are fully empowered to consider" claims "resulting from military intrusion into the civilian sector." *Laird v. Tatum*, 408 U.S. 1, 15-16 (1972); see generally *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (invalidating presidential seizure of steel mills during the Korean War). There are numerous indications that the questions presented here—the scope and application of section 12406—fall within this duty.

First, the "text of the statute" itself supports the conclusion reached by the Seventh and Ninth Circuits. *Van Buren v. United States*, 593 U.S. 374, 381 (2021). Section 12406 provides in relevant part:

> Whenever—
>
> > (1) the United States, or any of the Commonwealths or possessions, 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;
>
> the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. . . .

As the Seventh and Ninth Circuits recognized, the statute's plain text and structure "enumerate[ ] three predicate conditions for the President's decision to call forth the National Guard." Appx. 96 (quoting *Newsom II*, 141 F.4th at 1047). And "[n]othing in the text . . . makes the President the sole judge of whether these preconditions exist." *Id.* Indeed, even applicants concede that section 12406 "does not expressly state that it is the President who determines whether the specified criteria are met." Appl. 24. Accordingly, the Seventh and Ninth Circuits rightly distinguished this case from *Dalton*, which held that judicial review "is not available *when the statute in question* commits the decision to the discretion of the President." 511 U.S. at 474 (emphasis added). Applying these principles to the text of section 12406, "[i]t follows that the President's decision to federalize and deploy the National Guard under the statute is reviewable." Appx. 96; accord *Newsom II*, 141 F.4th at 1046-1047.

In resisting that straightforward interpretation of section 12406, applicants ask the Court to adopt the same strained reading of *Martin* that the Seventh and Ninth Circuits rejected. Appx. 95-96; *Newsom II*, 141 F.4th at 1046-1050. That case did not address the judicial reviewability of presidential determinations, and the relevant statute concerned foreign invasions, not domestic use of the military to enforce federal law. *Martin* arose out of the War of 1812, which President Madison deemed to be an "invasion" under the Militia Act of 1795, a statutory precursor to section 12406. *Martin*, 25 U.S. at 20-21.[6] Jacob Mott, a member of the New York militia, refused to report for duty and was court-martialed and fined. *Id.* at 21-22. Mott then sued Martin, a federal marshal who had seized Mott's property to pay the fine, arguing that President Madison had exceeded his authority in federalizing the state militia. *Id.* at 23. In essence, Mott claimed that his court-martial conviction was invalid because the war with Great Britain was not an "invasion."

The narrow question before the Court in *Martin*, then, was: "Is the President the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question, upon which every officer to whom the orders of the President are addressed, may decide for himself, and equally open to be contested by every militia-man who shall refuse to obey the orders of the President?" *Id.* at 29-30.

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[6] The statutory precursor was the Militia Act of 1795, which provided "that whenever the United States shall be *invaded*, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the State or States most convenient to the place of danger, or scene of action, as he may judge necessary to repel such *invasion*, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper." *Martin*, 25 U.S. at 29 (emphases added).

Unsurprisingly, the Court reasoned that subordinate officers and militiamen may not decide for themselves whether an "invasion" has occurred: "Such a course would be subversive of all discipline, and expose the best disposed officers to the chances of ruinous litigation." *Id.* at 30-31. The Court was also troubled by the possibility that in suits for damages, like Mott's, "the existence of the exigency . . . and thus the legality of the orders of the President would depend, not on his own judgment of the facts, but upon the finding of those facts upon the proofs submitted to a jury." *Id.* at 33; see also *Luther v. Borden*, 48 U.S. 1, 43-44 (1849) (expressing similar concern that trespass suits could force courts to choose which of two rival state governments was legitimate). While *Martin* reaffirmed the importance of obedience to the Commander in Chief *within* the military, the opinion says nothing about the relationship between the President and the courts. See *Zivotofsky*, 566 U.S. at 206 n.1 (Sotomayor, J., and Breyer, J., concurring in part and concurring in the judgment) (*Martin* rested on need for militia members' "prompt and unhesitating obedience" to Presidential orders).

Thus, *Martin* in no way "established" for all time that the President's authority to federalize the National Guard is "committed to his exclusive discretion by law," and applicants' argument otherwise overreads that decision. Appl. 20-21. Applicants principally rely on the Court's statement that "the authority to decide whether the exigency has arisen[ ] belongs exclusively to the President, and that his decision is conclusive upon all other persons." *Martin*, 25 U.S. at 30. In context, however, that language merely refers to "subordinate officers" and "soldiers" in the military chain of command. *Id.*; *cf. Cohens v. Virginia*, 19 U.S. 264, 399 (1821) ("general expressions,

in every opinion, are to be taken in connection with the case in which those expressions are used"). Contrary to applicants' suggestion, "elected state officials" exercising state sovereignty are categorically different from subordinate militiamen defying orders from their Commander in Chief. Appl. 23; see *Printz v. United States*, 521 U.S. 898, 918-919 (1997) ("Although the States surrendered many of their powers to the new Federal Government, they retained 'a residuary and inviolable sovereignty.'") (quoting Federalist No. 39, at 245 (J. Madison)).

The War of 1812 also entailed "vastly different" facts than the record below. Appx. 61. As the Seventh Circuit recognized, "the most powerful empire on earth . . . had actually invaded the United States and was sacking its capital city in August 1814." *Id.* at 95. And unlike *Martin*, "the modern version of the foreign invasion prong of section 12406 is not at issue; the only relevant circumstances are purely domestic." *Id.* at 62. "Here, by contrast, the question is whether courts, not subordinate militiamen, may review . . . whether political protests have become violent to the extent that they constitute a rebellion or that the administration is 'unable' to execute federal law with the 'regular forces' available to it." *Id.* at 96. Accordingly, *Martin* does not "directly control[ ]" whether the President's determinations under section 12406 are judicially reviewable. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023); see Appx. 96; *Newsom II*, 141 F.4th at 1050.

Applicants alternatively gesture at the President's "inherent Article II authority" to protect "federal property and federal functions." Appl. 23 (quoting *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)). Whatever the scope of that inherent authority may be, it does not overcome the fact that Article I expressly vests the power to "call[ ] forth the Militia" in Congress—not the President. U.S. Const. art. I, § 8, cl. 15; accord *Newsom II*, 141 F.4th at 1046 ("The source of the President's power to federalize the National Guard is statutory, not constitutional.").

Finally, applicants' observation that the President is not subject to the Administrative Procedure Act is irrelevant for purposes of resolving the application. Appl. 26 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 800-801 (1992)). Neither the district court nor the Seventh Circuit considered the State's APA claims in ruling on the TRO, so those claims are not presently before the Court. Moreover, *NRC v. Texas*, 605 U.S. 665 (2025), sheds no light on the availability of *ultra vires* review here; the plaintiffs in that case, unlike the State, "had an alternative path to judicial review," *id*. at 682, yet applicants' own theory is that judicial review is not available.

B. Applicants have not shown a strong likelihood of success under section 12406.

In litigation, applicants have claimed authority under the second and third predicates of section 12406: rebellion and inability to execute federal law. Doc. 62 at 22-27. But as the Seventh Circuit rightly concluded, based on the record before it, applicants are unlikely to succeed on the merits of that claim. Appx. 98. The court reached this decision, moreover, by accepting applicants' preferred legal standard—specifically, it afforded "a great level of deference to the President," and assumed that the President need only show that he faces a substantial impediment to the

enforcement of federal law, as opposed to a complete inability to execute it. *Id.* at 96.

1. There is no basis for claiming the President is "unable" to "execute" federal law in Illinois.

Applicants likewise have not shown a significant probability of succeeding on their theory that the President "is unable with the regular forces to execute the laws of the United States." 10 U.S.C. § 12406(3). Below, the Seventh Circuit was presented with several competing definitions of this statutory predicate, and it elected to apply the same legal standard as the Ninth Circuit, which is also the one that applicants prefer.

Relevant here, the district court "concluded that the definition of 'unable' is 'not having sufficient power or ability; being incapable.'" Appx. 100; *id.* at 68. Applicants, however, urged the court to "accept the Ninth Circuit's reading"—that is, to "interpret[ ] 'unable' to mean that the federal government was 'significantly impeded'" in its ability to enforce federal law. *Id.* at 100. Given the preliminary and expedited nature of the proceedings, the Seventh Circuit determined that it need not "fully resolve these thorny and complex issues of statutory interpretation now," since "the administration has not met its burden under either standard." *Id.* In other words, the court concluded, "[e]ven applying great deference to the administration's view of the facts, under the facts as found by the district court, there is insufficient evidence that protest activity in Illinois has significantly impeded the ability of federal officers to execute federal immigration laws." *Id.*

The Seventh Circuit was correct. At no stage have applicants satisfied this statutory precondition, even under their preferred standard. Applicants claim a

"substantial interfer[ence] with DHS's ability to enforce federal immigration law in the Chicago area." Appl. 28. But as the lower courts found, there is no credible evidence that would support such a conclusion, even affording all deference to the President, applying the "significantly impeding" standard, and considering the justifications offered by applicants in litigation. Appx. 76, 100-101. Instead, the evidence shows that federal facilities in Illinois remain open, the individuals "who have violated the law by attacking federal authorities have been arrested," and enforcement of immigration law in Illinois has only *increased* in recent weeks. *Id.* at 73, 76; see also *id.* at 100; Doc. 13-13.

To start, no protest activity in Illinois has rendered the President unable to execute federal law. As the lower courts recognized, the Broadview protests, which have been ongoing for months, have drawn only small groups and never hindered the continued operation of the ICE facility there. Appx. 36-37, 76, 88. To be sure, certain protestors attempted to block vehicles from entering and exiting the facility's parking lot, *id.* at 36-37, but federal agents have consistently succeeded in creating a path for the vehicles—even at the protests' apex—and ICE detainees have continued to be brought in and out, Doc. 13-5 at 4. And the size of the protests outside the facility during the relevant period did not exceed a few hundred people. *E.g.*, Appx. 36.

Furthermore, as explained, *supra* pp. 5-7, the Unified Command (comprised of state and local authorities) has responded quickly to federal requests for assistance at the Broadview facility; created a designated areas for protests, as well as an access lane for federal agents to enter and exit the facility; and detained and, as necessary,

arrested those who resisted attempts to maintain those designated areas. And contrary to applicants' litigation position, Appl. 2, the state and local efforts were deemed "great" and "effective[ ]" by the on-site federal officials at the Broadview facility, Doc. 63-2 at 10-11; see also *id.* (echoing "kudos" and expressing gratitude "for [the State Police's] leadership"). Broadview's police department responded to every call for service it received from ICE during the protests, Doc. 13-5 at 10, and the State Police responded to each of DHS's three requests for assistance, Doc. 13-15 at 13. It is thus simply not the case, as applicants now suggest, that deployment of the National Guard was warranted because of the State's "tepid" response. Appl. 11.

The isolated, unconnected incidents occurring elsewhere in the Chicago area likewise do not support federalizing the Guard under section 12406(3), as the lower courts correctly concluded. Appx. 76, 100. As the district court found, the record contained evidence of "property destruction" and "discrete groups who have attempted to impede DHS agents" but also "significant evidence" that DHS has nonetheless managed to "carry out its mission." *Id.* "All federal facilities have remained open" and, "[t]o the extent there have been disruptions, they have been of limited duration and swiftly controlled by authorities." *Id.*; see also *id.* at 99.

For example, applicants rely heavily on an incident described by ICE's former Chicago Field Office Director Hott where a CBP vehicle was "boxed in" by civilian vehicles in Chicago, which led to a spontaneous protest. Doc. 62-2 at 7-8. While certainly unlawful and dangerous, this incident was isolated, resolved by law enforcement, and ended with the perpetrators being apprehended. *Id.* Indeed, CPD

officers were securing the scene approximately two hours before federal agents requested assistance, diverted additional resources to the scene when asked, and placed themselves between the protesters and CBP. Doc. 63-3 at 3-5. Similarly, as applicants recognize, the "alleged leader of the Latin Kings gang in Chicago" who placed "a bounty" on a federal agent is now "being prosecuted." Appl. 28. And, as noted, individuals who cross the line between peaceful protest and unlawful conduct in Broadview are being detained and arrested by local authorities. Appx. 99.

The record also contains substantial evidence—credited by the lower courts—that these "sporadic disruptions" have not prevented "immigration arrests and deportations [from] proceed[ing] apace in Illinois over the past year." *Id.* at 100. In fact, "the administration has been proclaiming the success of its current efforts to enforce immigration laws in the Chicago area," touting the number of arrests and detentions it made during Operation Midway Blitz and declaring that it remains "undeterred" throughout the protests. *Id.*; *supra* p. 3.

Applicants contend that they would prevail under a proper application of section 12406(3). But in doing so, they largely misstate the lower courts' reasoning and holdings. For instance, applicants assert that the district court wrongly interpreted section 12406(3) "to mean that, so long as *some* amount of execution of the laws remains possible, the statute cannot be invoked." Appl. 28-29. According to applicants, the lower courts should have applied the Ninth Circuit's significant-impediment approach. *Id.* But the district court expressly determined that, although it did not share the same view as the Ninth Circuit, it "would still find that Plaintiffs

are likely to succeed on the merits even were the Ninth Circuit standard applied." Appx. 76. And, though not mentioned by applicants, the Seventh Circuit likewise concluded that the defendants could not succeed under that standard, as discussed.

Similarly, applicants assert that the lower courts should have afforded more deference to the President's determination that section 12406(3) was satisfied. Appl. 27-28. But, as just explained, the Seventh Circuit afforded "a great level of deference" to the President, Appx. 96, as did the district court, *id.* at 64-65. And as even the Ninth Circuit's highly deferential standard acknowledges, the President's factual determination may be reviewed "to ensure that it reflects a colorable assessment of the facts and law within a 'range of honest judgment.'" *Newsom II*, 141 F.4th at 1051 (quoting *Sterling v. Constantin*, 287 U.S. 378, 399 (1932)).

Here, the district court made a "credibility assessment" that applicants' declarations were "unreliable," citing numerous and varied flaws. Appx. 43-44. The Seventh Circuit, in turn, appropriately determined that "[e]ven giving great deference to the administration's determinations, the district court's contrary factual findings—which, at this expedited phase of the case, are necessarily preliminary and tentative—are not clearly erroneous." *Id.* at 97. Indeed, the Seventh Circuit explained, "the district court provided substantial and specific reasons for crediting the plaintiffs' declarations over the administration's, and the record includes ample support for that decision." *Id.*

For example, two of applicants' declarations "refer to arrests made on September 27, 2025 of individuals who were carrying weapons and assaulting federal

agents," but "neither declaration discloses that federal grand juries have refused to return an indictment against at least three of those individuals, which equates to a finding of a lack of probable cause that any crime occurred." Appx. 43. Additionally, one of these declarants is Director Hott, who, as noted above, described an incident involving a CBP vehicle "boxed in" by civilian vehicles in Chicago. Doc. 62-2 at 7-8. Applicants rely heavily on Director Hott's description of this incident in their application. See Appl. 7-9, 27-28, 36. But in another matter involving "Operation Midway Blitz," the federal government filed a motion seeking to waive Director Hott's appearance because he had "no responsibility for CBP agents, nor detailed knowledge of their operations and conduct" regarding two other "incidents" involving CBP agents in Chicago. See Emergency Mot. Modify Proc. for Hr'g on Oct. 20, 2025, *Chi. Headline Club v. Noem*, No. 1:25-cv-12173, Doc. 55 at 2 (N.D. Ill. Oct. 17, 2025). The government's inconsistent positions about the extent of Director Hott's knowledge about CBP agents and operations—in motions filed on the same day—only underscores the district court's credibility concerns.

Additionally, as the Seventh Circuit reiterated, "[s]ome of what [applicants'] declarants complain about is, while aggravating, insulting, or unpleasant, also Constitutionally protected." Appx. 42 (citing examples of protestors exercising First and Second Amendment rights); *id.* at 43-44 (noting "troubling trend of [applicants'] declarants equating protests with riots and a lack of appreciation for the wide spectrum that exists between citizens who are observing, questioning, and criticizing their government, and those who are obstructing, assaulting, or doing violence").

Applicants have no meaningful response to these points, and certainly nothing that shows the determinations were clearly erroneous. In fact, applicants do not even attempt to rebut that much of the activity the declarants complained about was constitutionally protected. Appl. 27-28, 37-38. And as to the indictment, applicants speculate that the grand juries got it wrong in each of those cases. *Id*. at 38 ("a grand jury's decision not to indict a person accused of assaulting a federal officer is hardly proof that the assault did not occur"). All told, the Seventh Circuit rightly respected the district court's factual findings.

2. There is no "rebellion" or "danger of a rebellion" in Illinois.

Furthermore, the Seventh Circuit properly rejected applicants' litigation position that there is a "rebellion" or "danger of a rebellion" in Illinois. Appx. 98-100; see also *id*. at 67. All courts to have addressed this issue agree that to satisfy this statutory predicate, applicants need to show "a deliberate, organized resistance, openly and avowedly opposing the laws and authority of the government as a whole by means of armed opposition and violence." *Id.* at 67; *id.* at 98-100; *Newsom v. Trump*, 786 F. Supp. 3d 1235, 1251-1253 (N.D. Cal. 2025) ("*Newsom I*"); *Oregon v. Trump*, No. 3:25-cv-1756-IM, 2025 WL 2817646 at *13 (D. Or. Oct. 4, 2025), *rev'd by* No. 25-6268, Doc. 61.1 (9th Cir. Oct. 20, 2025). This definition is drawn from a review of numerous dictionaries ranging from the turn of the twentieth century (when Congress passed the Militia Act) to the current edition of Black's Law Dictionary. See, *e.g.*, Rebellion, Black's Law Dictionary (12th ed. 2024) ("Open, organized, and armed resistance to an established government or ruler; esp., an organized attempt

to change the government or leader of a country, usu. through violence."); Rebellion, Black's Law Dictionary (1st ed. 1891) ("Deliberate, organized resistance, by force and arms, to the laws and operations of the government, committed by a subject."); Rebellion, Webster's International Dictionary of the English Language (1903) ("The act of rebelling; open and avowed renunciation of the authority of the government to which one owes obedience, and resistance to its officers and laws, either by levying war, or by aiding others to so; an organized uprising of subjects for the purpose of coercing or overthrowing their lawful rule or government by force; revolt; insurrection."); Rebellion, The Cyclopedic Dictionary of Law (1901) ("The taking up of arms traitorously against the government; the forcible opposition and resistance to the laws and process lawfully installed. . . . If it be a mere resistance of process, it is generally punished by fine and imprisonment."); Rebellion, American Dictionary of the English Language (1900) ("An open and avowed renunciation of the authority of the government to which one owes allegiance; or the taking of arms traitorously to resist the authority of lawful government; revolt. . . .").

As even applicants appear to admit, they cannot satisfy this standard. Appl. 32-34. Indeed, as the district court found, "[t]he unrest [applicants] complain of has consisted entirely of opposition (indeed, sometimes violent) to a particular federal agency and the laws it is charged with enforcing." Appx. 67. "That is not opposition to the authority of the government as a whole," and applicants "have offered no explanation supporting the notion that widespread opposition to immigration enforcement constitutes the makings of a broader opposition to the authority of the

federal government." *Id.*; *id.* at 42 (no evidence that any "acts of violence have been linked to a common organization, group, or conspiracy").

Applicants instead urge the Court to adopt a different standard—specifically, one that includes "other forms of violent resistance to lawful authority, including to the enforcement of particular laws." Appl. 31. They point to President Washington's use of the militia during the Whiskey Rebellion in support of this expansive standard. *Id.* at 32. But the statute used during the Whiskey Rebellion did not mention "rebellion" as grounds for calling forth the militia. Act of May 2, 1792, ch. 28, §§ 1-2, 1 Stat. 264 (allowing militia to be called when United States was "invaded" or "the laws of the United States shall be opposed, or the execution thereof obstructed . . . by combinations too powerful to be suppressed by the ordinary course of judicial proceedings"). And even if the statute had included "rebellion," the armed, organized, avowed insurrection of the Whiskey Rebellion provides no support for a more expansive standard that would encompass the facts in this case.

Applicants also do not cite any "contextually appropriate" definition in support of that standard. Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 70 (2012). To be sure, as applicants note, the dictionaries referenced above have secondary and tertiary definitions that are broader in scope—for example, defining rebellion as the "'forcible opposition and resistance to the laws and process lawfully issued.'" Appl. 32 (quoting Rebellion, The Cyclopedic Dictionary of Law (1901)). But those are not relevant to the statutory context here, which requires that the rebellion be "against the authority of the

Government of the United States." 10 U.S.C. 12406(2).

Whereas the definition adopted by the courts is appropriately "political in nature," the definitions suggested by applicants reflect the secondary, "more open-ended concept of 'rebellion'" that applies in a wider range of contexts. *Newsom I*, 786 F. Supp. 3d at 1252; *id.* at 1252 & n.7 (noting examples of usage in the "Oxford English Dictionary's secondary definition of 'rebellion' . . . include spiritual rebellion . . . and familial rebellion," and "never apply in the political arena"). As one example, the entry for "rebellion" in the Cyclopedic Dictionary of Law confirms that there is a material distinction between "taking up of arms traitorously against the government" and "the forcible opposition and resistance to the laws and process lawfully installed," since the former "amounts to treason," and the latter "is generally punished by fine and imprisonment." Rebellion, The Cyclopedic Dictionary of Law (1901).

For its part, the Seventh Circuit recognized this critical distinction, "emphasiz[ing] that the critical analysis of a 'rebellion' centers on the nature of the resistance to governmental authority." Appx. 99. Accordingly, "[p]olitical opposition is not rebellion," and "[a] protest does not become a rebellion merely because the protestors advocate for myriad legal or policy changes, are well organized, call for significant changes to the structure of the U.S. government, use civil disobedience as a form of protest, or exercise their Second Amendment right to carry firearms as the law currently allows." *Id.* Furthermore, a protest does not "become a rebellion merely because of sporadic and isolated incidents of unlawful activity or even violence committed by rogue participants in the protest." *Id.* And "because rebellions at least

use deliberate, organized violence to resist governmental authority, the problematic incidents in this record clearly fall within the considerable daylight between protected speech and rebellion." *Id.*

C. Applicants have not shown a likelihood of success on the State's Tenth Amendment claim.

Additionally, the lower courts correctly determined that the State was likely to succeed on their Tenth Amendment claim because "by federalizing the Illinois National Guard, [applicants] usurped Illinois's right to control its own National Guard forces." Appx. 80, 101. Indeed, for many of the same reasons just discussed, applicants' actions encroach directly upon the foremost of reserved powers, "the police power, which the Founders denied the National Government and reposed in the States." *United States v. Morrison*, 529 U.S. 598, 618 (2000).

Furthermore, applicants violated the Tenth Amendment independently of their violation of section 12406. "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Printz*, 521 U.S. at 935. But applicants attempt to do just that, including by offering the State an impermissibly coercive "choice": either deploy National Guard troops under state control to carry out the federal government's civil immigration priorities, or accept occupation by federal troops. In fact, the President made the coercive choice explicit when he stated on October 4 that he was calling the Illinois National Guard into service "until the Governor of Illinois consents to a federally-funded mobilization, under Title 32" to assist federal law

enforcement with the "deportation and removal" of immigrants. Doc. 13-2. This "choice" lacks a "critical alternative," since the State either must commit state personnel to federal priorities, or have its personnel taken over to pursue those priorities. *New York v. United States*, 505 U.S. 144, 176-177 (1992). Such coercion is independently unconstitutional.

III. No Critical Or Exigent Circumstances Exist That Would Warrant A Stay Pending Further Review.

Applicants cannot seriously argue that they face irreparable harm absent a stay. The district court's order expires in three days by its own terms; the Seventh Circuit has partially stayed it already; and, as the district court found, the federal government "has been able to protect federal property and personnel without the National Guard's help." Appx. 101. By contrast, the unlawful deployment of military force in Illinois would irreparably harm the State in multiple ways, and the equitable factors strongly favor the State.

Both lower courts correctly found that the State, not the federal government, will be irreparably harmed absent an injunction. First, the planned deployment would infringe on Illinois's sovereign interests in regulating and overseeing its own law enforcement activities. See *Tennessee v. Dep't of Educ.*, 104 F.4th 577, 613 (6th Cir. 2024) (sovereign injuries "constitute irreparable harm"). Similarly, it would usurp the State's police powers under the Tenth Amendment. Appx. 101-102. Illinois' sovereign right to commit its law enforcement resources where it sees fit is the type of "intangible and unquantifiable interest[ ]" that courts recognize as irreparable. *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); *Kentucky v.*

Biden, 23 F.4th 585, 611 n.19 (6th Cir. 2022). As the Seventh Circuit observed, "the deployment of National Guard members from Texas—an incursion on Illinois' sovereignty—makes the constitutional injury especially significant." Appx. at 102. The State likewise faces "ongoing and concrete harm[s]" to its law enforcement and public safety interests. *Maryland v. King*, 567 U.S. 1301, 1303 (2012). As the district court found, the unnecessary deployment of military troops, untrained for local policing, will escalate tensions and undermine the ordinary law enforcement activities of state and local entities, which would need to divert resources to maintain safety and order. Appx. 83-84.

The courts below also correctly concluded that both the equities and public interest strongly favor the State. The State seeks to protect its sovereignty, retain control over local policing, and protect the basic structure of American federalism from unprecedented intrusion. See *Laird*, 408 U.S. at 15. In contrast, applicants have not shown that the equitable calculus requires a stay of the district court's TRO—which, again, expires in three days. Applicants complain that the TRO prevents them from addressing "violent resistance" in the Chicago area, Appl. 35, but as the district court found, applicants remain able to enforce federal law, including federal immigration law, with "as many federal law enforcement officers as they believe appropriate to advance their mission." Appx. 83. In doing so those officers have encountered only "sporadic disruptions . . . quickly contained by local, state, and federal authorities." *Id.* at 100.

Indeed, any intrusion on "federal interests," Appl. 36, imposed by the 14-day

TRO has been ameliorated by the Seventh Circuit's own order granting applicants a partial stay. That order, which permitted the National Guard to remain federalized but temporarily prohibits the deployment of National Guard members in Chicago, acknowledges the federal interests in this space while imposing a temporary freeze of the status quo while this fast-moving and complex litigation proceeds. The Court should not disturb the Seventh Circuit's equitable judgment for the handful of days during which the TRO remains in place, and should deny the application.

CONCLUSION

For these reasons, the application should be denied.

Respectfully submitted,

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