No. 25A443

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

STATE OF ILLINOIS AND CITY OF CHICAGO

REPLY IN SUPPORT OF APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

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The President called up members of the National Guard to Illinois to protect federal personnel and property from violent resistance against the enforcement of federal immigration laws. As summarized in the application (at 6-11), DHS officials have explained in sworn declarations that, among other things: (1) outside the Broadview facility, rioters have physically assaulted federal officers, thrown projectiles at them, and obstructed vehicles so that confederates could slash the tires; (2) elsewhere in Chicago, a multi-car convoy ambushed and rammed into a DHS vehicle and tried to run over one of the occupants, while criminal gangs and transnational cartels have placed five-figure bounties on the heads of DHS personnel; (3) state and local officials have not only failed to provide sufficient assistance to restrain and deter such violence, but fanned the flames of hostility by slandering DHS agents as rogue vigilantes and jackbooted thugs; (4) DHS has been forced to divert resources from its primary immigration-enforcement mission to ensure the safety of its personnel and property; and (5) all this is occurring against the backdrop of similar violence in other cities,

including riots in Los Angeles and Portland as well as a lethal attack on an ICE facility in Dallas. The President thus acted well within his statutory and constitutional authority by federalizing and deploying the National Guard in Illinois based on the determinations that he "is unable with the regular forces to execute the laws of the United States" and that "there is a rebellion or danger of a rebellion against the authority of the Government of the United States." 10 U.S.C. 12406(2), (3).

Respondents argue (Opp. 2) that the courts below properly enjoined the deployment based on "careful factual determinations and credibility assessments." This outlandish argument illustrates the wisdom of this Court's holding in *Martin* v. *Mott*, 25 U.S. (12 Wheat.) 19, 29-30 (1827), that the President's decision to call up the militia is not judicially reviewable at all. Respondents' efforts to limit *Martin* to its facts are foreclosed by the controlling reasoning in that seminal precedent and its progeny. And if any judicial review were somehow permitted, it would be akin to highly deferential rational-basis review, under which the President's determinations should be upheld if there is any plausible basis for them, cf. *Trump* v. *Hawaii*, 585 U.S. 667, 704 (2018)—not the type of second-guessing, judgment-substituting, effective-retrial of the factual basis that the lower courts here engaged in. Given that the President possesses both inherent authority as Commander in Chief and delegated authority from Congress to call up the militia, his judgment is entitled to "the strongest of presumptions and the widest latitude of judicial interpretation." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring in the judgment).

As the Ninth Circuit held in staying a similar injunction against the deployment of the National Guard in Los Angeles, the President's decision, if reviewable at all, must be upheld where "it reflects a colorable assessment of the facts and law

within a range of honest judgment." *Newsom* v. *Trump*, 141 F.4th 1032, 1051 (2025) (per curiam) (quotation marks omitted). And the Ninth Circuit reaffirmed just yesterday, in staying a similar injunction against the deployment of the National Guard in Portland, that that "highly deferential standard" bars a court from "substitut[ing] its own assessment of the facts for the President's assessment of the facts." *Oregon* v. *Trump*, No. 25-6268, 2025 WL 2951371, at *9 (Oct. 20, 2025). The stark conflict between the Ninth and Seventh Circuits underscores the need for this Court to stay the order below.

That is so even though, as respondents emphasize repeatedly, the order below is a time-limited TRO—albeit one that is likely to be extended by the district court. This Court has not hesitated to grant emergency stays of TROs that improperly interfere with the prerogatives of the Executive Branch. Such relief is amply warranted for this TRO, which threatens the President's control over both military affairs and immigration enforcement, while imperiling the safety of DHS personnel and property. Every day this improper TRO remains in effect imposes grievous and irreparable harm on the Executive, and this Court should not tolerate attempts by lower courts and litigants to delay its review through the use of preliminary injunctions issued in the guise of time-limited TROs.

ARGUMENT

I. THE FEDERAL GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. The Determination Whether To Call Up The National Guard Is Committed Exclusively To The President's Discretion

1. Respondents unpersuasively try (Opp. 23-26) to limit *Martin*'s holding that courts cannot review the President's decision to call up the militia. To begin, respondents contend that *Martin* is cabined to situations where "subordinate officers and militiamen" challenge the President's statutory determinations. Opp. 24. But

Martin announced a broader rule: the President is "the sole and exclusive judge [of] whether the exigency has arisen," and "his decision is conclusive upon all other persons." 25 U.S. at 29-30. While respondents try to dismiss this as loose language (Opp. 24-25), it is implausible that the Court would have inadvertently used such sweeping language in this sensitive area. Moreover, respondents themselves identify the legal reasoning in *Martin* that supports the broader rule the Court adopted: wholly apart from concerns about military discipline, "[t]he 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 proofs submitted to a jury.'" Opp. 24 (alterations omitted) (quoting *Martin*, 25 U.S. at 33). It is just as troubling that, in suits for injunctions, like this one, the legality of the President's orders would depend upon proofs submitted to a court, rather than the President's "own judgment." Indeed, it is arguably more troubling, because an injunction thwarts the President from taking the necessary military action at all, whereas a damages award against the federal government at worst indirectly deters the President from doing so.

Respondents also attempt to limit *Martin* to the British invasion of the United States during the War of 1812. Opp. 25. That, however, makes even less sense. Not only did the Court decline to narrow its opinion in that manner either, but there was no reason to hold that the President's decision was *unreviewable* only because it was *obviously correct*. In other words, the whole point of resting on unreviewability rather than the merits, even where the merits were clear, was to preclude review in future cases where the merits may seem less clear to courts.

Subsequent precedent confirms this broad reading of *Martin*. In *Luther* v. *Borden*, 48 U.S. (7 How.) 1, 44 (1849), the Court analyzed a different part of the law at

issue in *Martin* (*i.e.*, one not involving an invasion), in a different context (*i.e.*, involving an armed dispute between different domestic factions claiming to be the legitimate government of Rhode Island), and yet reaffirmed that the President's decision whether to call out the militia "must * * * be respected and enforced in * * * judicial tribunals." *Luther* thus confirms that *Martin* does not turn on "the challenger seeking review," contra Appx. 61a, or the existence of a foreign invasion, contra Appx. 95a. Accord *Oregon*, 2025 WL 2951371, at *17 (R. Nelson, J., concurring) ("*Martin* and *Luther* categorically hold that the President's decision in this area is absolute."). And that is how those cases have traditionally been understood. For instance, a report prepared by the Department of War for the Senate in 1903—the same year Congress reformed the National Guard, see *Perpich* v. *Department of Defense*, 496 U.S. 334, 342 (1990)—cited *Martin* and *Luther* as establishing that "[t]he President is the sole judge of the exigency" in determining whether a domestic disturbance justifies federalizing state militia. Frederick T. Wilson, *Federal Aid In Domestic Disturbances: 1787-1903*, S. Doc. No. 57-209, at 257 & n.a (2d Sess.).

Further undermining respondents' position is this Court's description of *Martin* outside the military context. For example, one of the leading political-question cases, *Baker* v. *Carr*, 369 U.S. 186 (1962), described *Martin* as involving a "political determination" where "the need for finality" was "[d]ominant." *Id.* at 213; see *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 660 (1892) (invoking *Martin* to support the holding that Congress may make executive officials "the sole and exclusive judge[s] of the existence of" facts that would permit an alien to enter the United States). Indeed, even in cases where the Court has reviewed executive action, it has distinguished *Martin* as involving "action which, appropriately belonging to the executive province, is not the subject of judicial review." *Panama Ref. Co.* v. *Ryan*, 293 U.S.

388, 432 & n.15 (1935).

2. Respondents fare no better in arguing (Opp. 22) that Section 12406 does not *expressly* provide that the President's decision is committed to his exclusive discretion and conclusive on the courts. For starters, the statute in *Martin* also did not contain such express language, see Act of Feb. 28, 1795, ch. 36, § 1, 1 Stat. 424, and yet *Martin* held that "the true construction" of the statute was that it conferred "a discretionary power * * * to be exercised by [the President] upon his own opinion of certain facts," 25 U.S. at 31-32. Furthermore, *Martin*'s rationale for that construction equally applies here: The power to call up the militia "is confided to the Executive of the Union, to him who is, by the constitution, 'the commander in chief of the militia, when called into the actual service of the United States,' whose duty it is to 'take care that the laws be faithfully executed,' and whose responsibility for an honest discharge of his official obligations is secured by the highest sanctions." *Id.* at 31. In other words, because "[i]t would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches directly responsible," *Gilligan* v. *Morgan*, 413 U.S. 1, 10 (1973), the statute should be understood as implicitly vesting the determination in the President's discretion, rather than implicitly allowing judicial second-guessing. See *United States* v. *George S. Bush & Co., Inc.*, 310 U.S. 371, 380 (1940) (treating *Martin* as a case "where Congress has authorized [the President] to take some specified legislative action *when in his judgment* that action is necessary or appropriate" (emphasis added)). Accordingly, construed in light of precedent and the Constitution, the text of Section 12406 confers upon the President "discretion" that "is not a matter for [judicial] review." *Dalton* v. *Specter*, 511 U.S. 462, 476 (1994).

Indeed, respondents provide no reason to believe that courts can, or should,

second-guess the President's conclusion that there is an actual or threatened invasion, 10 U.S.C. 12406(1), or rebellion, 10 U.S.C. 12406(2), or that he is "unable with the regular forces to execute the laws of the United States," 10 U.S.C. 12406(3). Judicial inquiry into such matters involves an "area of governmental activity in which the courts have less competence" than the political branches. *Gilligan*, 413 U.S. at 10. For example, respondents argue that the evidence shows "that DHS has * * * managed to carry out its mission" in enforcing immigration law. Opp. 29 (quotation marks omitted). They also point to the number of "immigration arrests and deportations" in Illinois to argue that the predicate for federalizing the Illinois and Texas National Guard had not occurred. Opp. 30 (quotation marks omitted). But their argument "that the Executive Branch has made a[] []sufficient number of arrests [and] brought a[] []sufficient number of" enforcement actions is doubly problematic: it "run[s] up against the Executive's Article II authority to enforce federal law," and "courts generally lack meaningful standards for assessing the propriety of enforcement choices." *United States* v. *Texas*, 599 U.S. 670, 678-679 (2023).

In sum, this case falls in the heartland of unreviewable presidential discretion. Respondents claim that "there was nothing in the conditions at the time" President Trump federalized the Illinois and Texas National Guards that "justified" doing so; "indeed, the contention goes further and assails the motives which it is asserted induced the exercise of the power." *Dakota Cent. Tel. Co.* v. *South Dakota ex rel. Payne*, 250 U.S. 163, 184 (1919). "But as the contention at best concerns not a want of power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power." *Ibid.*

B. The President Lawfully Invoked Section 12406

If the President's determination is reviewable at all, such review must be ex-

tremely deferential, as the Ninth Circuit has recently held in staying injunctions against the deployment of the National Guard in Los Angeles and Portland to address similar violent resistance to federal immigration enforcement. The President's decision must be upheld, at the very least, where "it reflects a colorable assessment of the facts and law within a range of honest judgment." *Newsom*, 141 F.4th at 1051 (quotation marks omitted). And "this highly deferential standard" prohibits district courts from either conducting their "own evaluation of the level of violence necessary to impact the execution of federal laws" or substituting their "own assessment of the facts for the President's assessment of the facts." *Oregon*, 2025 WL 2951371, at *9-10. Under that standard, the President's deployment of the National Guard in Chicago fell well within the authority vested in him by Section 12406's provisions regarding both inability to execute the laws, Appl. 27-31, and the danger of rebellion, Appl. 31-34.

1. Respondents claim (Opp. 27-28) that the Seventh Circuit applied the federal government's "preferred standard" for whether the regular forces are "unable" to execute the laws under Section 12406(3), merely because that court found that DHS was not "significantly impeded" in enforcing federal immigration laws—the standard articulated by the Ninth Circuit in *Newsom*, 141 F.4th at 1052. But in construing that standard, the Seventh Circuit applied "de novo" review, holding that "the President" is *not* "entitled to deference" on "the meaning of the statute." Appx. 97a-98a. Unlike the Ninth Circuit, therefore, the Seventh Circuit failed to defer to the President's "colorable assessment of the facts *and law*." *Newsom*, 141 F.4th at 1051 (emphasis added).

In particular, the Seventh Circuit held that DHS is not "significantly impeded" in enforcing federal immigration laws because "immigration arrests and deportations

have proceeded apace in Illinois," "[f]ederal facilities * * * have remained open," and violent resistance has been "quickly contained by local, state, and federal authorities." Appx. 100a. But none of that remotely means that immigration enforcement has not been "significantly impeded" by the violence. Respondents completely ignore that DHS agents would be able to engage in *greater enforcement* of the immigration laws if they were not operating under the threat of assaults and obstruction, and that they are currently bearing *unacceptable risks* to their safety while doing their jobs. See Appl. 30. The President's determination that this constitutes a "significant impediment" to regular law enforcement is correct and at the very least "colorable." *Newsom*, 141 F.4th at 1051. Respondents likewise ignore that DHS has managed to achieve the results it has only by undertaking an extraordinary diversion of personnel to perform protective functions. See Appl. 10, 28. As the Ninth Circuit held in rejecting a similar error in Portland, by "discounting that the surge of [protective] officers was inherently irregular," and fixating on what that irregular surge facilitated, "the district court afforded no deference to the President's determination that he could not execute federal laws with regular forces." *Oregon*, 2025 WL 2951371, at *12.

Respondents also improperly try to dismiss the violence DHS has faced. Most notably, they double down (Opp. 31) on the lower courts' decision to deem the DHS declarants "unreliable" based on a "credibility assessment." But when "court[s] substitute[] [their] own determination of the relevant facts and circumstances," that is the precise opposite of "reviewing the President's determination with great deference." *Oregon*, 2025 WL 2951371, at *11. All the more so here given the baseless nature of the adverse credibility findings. For instance, respondents continue to emphasize (Opp. 31-32) that grand juries declined to indict on some of the assaults of federal agents highlighted in the declarations—notwithstanding that the declara-

tions did not even suggest otherwise; that the district court itself admitted assaults have occurred, Appx. 43a; and that there is an obvious risk of grand-jury nullification in some cases when state and local leaders publicly malign DHS officers as "jack-booted thugs" and a "rogue, reckless group of heavily armed and masked" vigilantes, Appl. 11. Indeed, respondents even try (Opp. 32) to impeach one of the declarants based on representations made in *another* case that the district court here *never relied on*. See Appx. 43a-44a.

Likewise, respondents minimize much of the violence that the lower courts largely ignored. They describe (Opp. 29-30) the coordinated ambush that rammed a DHS vehicle and tried to run over one of its occupants as an "isolated" incident "resolved by law enforcement." And they treat (Opp. 30) "[s]imilarly" the "bounty" placed on the head of a senior DHS official by an alleged leader of a Chicago gang. But as the Ninth Circuit recognized, "[t]he President can, and should, consider the totality of the circumstances," and it is error for courts to "discount[]" evidence they deem less relevant. *Oregon*, 2025 WL 2951371, at *10. That is especially so where, as here, the events in Chicago are not occurring in a vacuum, as violent riots have occurred in Los Angeles and Portland, a shooter tried to murder federal agents in Dallas, and Mexican cartels are offering bounties on DHS personnel. Appl. 6-7, 10 n.1.

Finally, respondents assert (Opp. 29) that local law-enforcement officials "responded to every call for service [they] received." In addition to being legally irrelevant for the reasons discussed, that assertion is factually belied by the record. For example, when a crowd of approximately 200 rioters surrounded DHS agents after their vehicle was ambushed and rammed, the Chicago police took more than an hour to respond, in part because, as a screenshot of an internal dispatch shows, they were initially ordered not to respond by the Chief of Patrol. D. Ct. Doc. 62-2, at 7-8, 10-11

(Oct. 8, 2025) (Hott Decl. ¶¶ 20, 28). Likewise, after "ICE officers made three separate phone calls to police for assistance" on a day "when rioters threw rocks near the [Broadview] facility's gates and damaged twelve vehicles," the "Broadview Police Department informed officers that it would get back to them but never responded." *Id.* ¶ 29.

2. Respondents contend that a rebellion under Section 12406(2) must oppose "the laws and authority of the government *as a whole*." Opp. 33 (emphasis added). But while they cite (Opp. 33-34) various dictionary definitions in support, they admit (Opp. 35) that other dictionaries define the term broadly enough to reach opposition to "particular laws." And their attempt (*ibid.*) to use "statutory context" to resolve the issue gets things backwards. After all, they do not dispute that one of the earliest and most famous uses of the militia to put down a rebellion—the Whiskey Rebellion—involved violent protests based on political opposition to the collection of a particular federal excise tax. Appl. 32. They observe (Opp. 35) that the statute invoked there did not use the term "rebellion," but provide no response to the point that later-enacted military statutes referring to a "rebellion" were obviously intended "to cover this original historical precedent of violent opposition limited to particular federal laws—precisely what is occurring here," Appl. 32-33.

Respondents thus retreat (Opp. 35) to the position that the violent opposition to federal immigration enforcement in Chicago is not sufficiently "organized" and "avowed" to constitute a rebellion. Once again, however, that fails to defer to the President's "colorable assessment of the facts and law." *Newsom*, 141 F.4th at 1051. Given the various coordinated assaults on DHS agents, the threats posed by criminal gangs, and the climate of violence in cities across the country, the President had ample basis for determining that there is at minimum a "danger" of rebellion, 10 U.S.C.

12406(2), and respondents cannot "substitute[] [their] own determination" for the President's given the "great deference" he is due, *Oregon*, 2025 WL 2951371, at *11.

C. Respondents' Tenth Amendment Claim Is Derivative Of Their Meritless Statutory Claim

As the court of appeals recognized, respondents' Tenth Amendment claim "rises and falls with the statutory claim." Appx. 100a. Respondents nevertheless contend (Opp. 37) that the federal government "violated the Tenth Amendment independently of [its purported] violation of [S]ection 12406," by using the threat of federalization of the Illinois National Guard to "coerc[e]" the State to itself deploy its guardsmen to protect federal personnel and property involved in federal immigration enforcement. But if the President had the authority under Section 12406 to federalize the Illinois National Guard, then his offering not to exercise that valid federal authority if the State chooses to provide assistance itself is a form of cooperative federalism permitted by the Tenth Amendment. See *Printz* v. *United States*, 521 U.S. 898, 926 (1997) (reaffirming that where the federal government can validly preempt state law, it may instead condition non-preemption on the states' taking actions that cannot be commandeered under the Tenth Amendment).

II. THE OTHER FACTORS SUPPORT RELIEF FROM THE DISTRICT COURT'S ORDER

A. The Issues Warrant This Court's Review

Respondents do not seriously dispute that whether a district court may enjoin the President from calling up the National Guard to put down violent resistance to federal law enforcement presents exceptionally important questions that would warrant this Court's review even in the absence of a circuit split. See Appl. 34-35. And regardless, there is a circuit split, because respondents are incorrect (Opp. 17-18) that "the Seventh and Ninth Circuits * * * did not disagree on any aspect of the legal

analysis." As noted, whereas the Ninth Circuit in *Newsom* deferred to the President's "colorable assessment of the facts *and law*," 141 F.4th at 1051 (emphasis added), the Seventh Circuit held that "the President" is not "entitled to deference" on "the meaning of the statute," Appx. 97a, which in turn affected how it construed the "significantly impeded" standard for assessing whether the regular forces are "unable" to execute the laws under Section 12406(3), Appx. 100a; see pp. 8-9, *supra*. Moreover, the Ninth Circuit in *Oregon* held that it was "error" for "the district court [to] substitute[] its own determination of the relevant facts and circumstances," 2025 WL 2951371, at *11, but the Seventh Circuit concluded that it was "not clearly erroneous" for the district court to "credit[] the plaintiffs' declarations over the administration's," Appx. 97a; see pp. 9-10, *supra*.

Nor can Respondents evade this Court's review by emphasizing (Opp. 19) that the order below is a TRO that is currently scheduled to expire two days from now, on October 23. As respondents acknowledge, the district court will hold a hearing tomorrow on whether to extend the TRO for at least another 14 days, Opp. 16, and the court has requested that the parties confer as to whether to extend the TRO "beyond 14 additional days," D. Ct. Doc. 85 (Oct. 17, 2025). This Court has granted emergency relief from TROs in this procedural posture. See *Department of Educ.* v. *California*, 604 U.S. 650 (2025) (per curiam); *Trump* v. *J.G.G.*, 604 U.S. 670 (2025) (per curiam). That is warranted here *a fortiori*, where every day that passes is another where a federal district judge has usurped control of military forces from the Commander in Chief, imperiled the safety of federal personnel and property, and undermined the enforcement of federal immigration laws. Allowing this egregious order to evade review would invite district courts to try to insulate their preliminary injunctions from this Court's immediate review, by granting a 14-day TRO, extending it for another

14-day period, and only then issuing a preliminary injunction, which would require the federal government to restart the process for seeking a stay pending appeal in the lower courts. That "is a guarantee of anarchy." *Luther*, 48 U.S. at 43.

B. The Equities Warrant A Stay

Respondents repeat many of the errors above in arguing that the TRO does not irreparably harm the federal government. *First*, respondents contend that the TRO will expire two days from now, Opp. 38-40, but they ignore the serious harms that the TRO imposes every day it remains in effect as well as the significant likelihood that the TRO will be extended, and then followed by an equally harmful preliminary injunction, absent a stay by this Court. *Second*, respondents contend that "the Seventh Circuit has partially stayed [the TRO] already," Opp. 38; see Opp. 40, but they disregard that allowing the Guardsmen to be federalized, while continuing to bar them from being deployed in Illinois, nullifies the chief purpose of the President's order and does nothing to ensure the safety of the federal personnel and property that the Guardsmen were federalized to protect. *Third*, respondents contend that the district court found that the federal government "has been able" to perform those protective functions "without the National Guard's help," Opp. 38; see Opp. 39, but that improperly substitutes the court's factual assessment for the President's.

Conversely, respondents identify no cognizable harms from staying the TRO. The harms to their asserted "sovereign interests" (Opp. 38) all depend on the federal government's lacking the sovereign authority to deploy the National Guard in Illinois (especially since, as they themselves emphasize, the Seventh Circuit's partial stay means that they are already being deprived of their own use of the federalized Guardsmen). And as for respondents' concerns that "the unnecessary deployment of military troops * * * will escalate tensions," Opp. 39, they fail to address the govern-

ment's showing that this rioters' veto is both legally meritless and factually baseless, Appl. 39-40.

CONCLUSION

This Court should stay the district court's order of October 9, 2025. And it should grant an immediate administrative stay if necessary for further consideration of the application.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

OCTOBER 2025