OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 10, 2025

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, NE
Washington, DC 20543-0001

Re: *Trump v. Illinois*, No. 25A443

Dear Mr. Harris:

On October 29, 2025, the Court directed the parties to file supplemental letter briefs addressing "[w]hether the term 'regular forces' refers to the regular forces of the United States military, and, if so, how that interpretation affects the operation of 10 U.S.C. § 12406(3)." The answer to the first part of the Court's question is yes, in light of the relevant statutory text and context, as well as the history of section 12406(3). This means that to rely on section 12406(3) to federalize and deploy the National Guard in Illinois over the Governor's objection, the President must have been unable to execute federal law with the regular forces of the United States military. Because applicants have not shown that the President was so unable—and, indeed, cannot possibly show that the extraordinary conditions for domestic military deployment are present here—applicants cannot show a likelihood of success on the merits, and the application should be denied.

To begin, the plain text of the term "the regular forces" in 12406(3) refers to the full-time, professional military. This is the meaning contemporaneous dictionary definitions and this Court's cases attributed to it when Congress first used the term in the early twentieth century, and that same meaning persisted when Congress passed section 12406(3) in its current form in 1994. This interpretation, moreover, best harmonizes section 12406(3) with sections 12406(1) and (2) and is most consistent with how Congress uses the words "regular" and "forces" throughout the rest of Title 10 and elsewhere in the United States Code. Furthermore, the history of section 12406(3) confirms this interpretation. This history shows that beginning in the Founding era, Congress's practice was to delegate its calling-forth authority to the President only in a narrow range of circumstances and that, when given the

choice, presidents exercised that authority by using the military before the militia in response to domestic emergencies. When Congress enacted the statutory precursor to section 12406 in 1903, it was with the understanding that federalized members of the Guard would continue to serve as a supplement to the professional military in the rare circumstances where the President was authorized to use the military domestically, including when unable to execute federal law.

Because "the regular forces" refers to the full-time, professional military, the President may federalize and deploy the National Guard under section 12406(3) only in circumstances where he is unable to execute federal law with the military. These circumstances are not met here. The President has not attempted to execute the laws with the regular forces in Illinois, let alone shown that he faces an inability to do so. Nor could the President even plausibly argue that the predicate conditions for domestic military deployment are met here. As the Office of Legal Counsel has explained, absent a request for assistance by a State, the President may deploy the military domestically only in the narrowest of circumstances. Not only has the President not attempted to satisfy this exacting standard, he could not do so.

Finally, applicants could not prevail even if "the regular forces" referred to federal civilian law enforcement for the reasons detailed in respondents' brief opposing the stay application. And since that brief was filed, applicants' statements and conduct have further underscored that they are not entitled to emergency relief. Applicants themselves proposed and obtained from the district court an extension of the temporary restraining order through the resolution of the merits in this case, and the federal government has confirmed through statements in a related case that it no longer requires an increased federal presence near the federal detention facility that is central to the request for emergency relief. Applicants thus are not entitled to a stay regardless of how the term "regular forces" in section 12406(3) is interpreted.

ARGUMENT

I. The term "the regular forces" refers to the regular forces of the United States military.

Statutory interpretation begins with the text. *Thompson v. United States*, 604 U.S. 408, 413 (2025). If the relevant text is indeterminate, examining its role within the broader statutory scheme can confirm a particular interpretation, as can "[c]ontext from the time of enactment." *Id.* at 415. Bare "policy argument[s]," by contrast, cannot displace the meaning revealed by a "statute's text and context." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018). Here, all the standard tools of statutory

interpretation yield the same conclusion: the phrase "the regular forces" in section 12406 refers to the full-time, professional military.[1]

A. The plain text of section 12406(3), as well as the broader statutory context, shows that the term "the regular forces" refers to the professional military.

Section 12406(3) authorizes the President to federalize and deploy the National Guard when he "is unable with the regular forces to execute the laws of the United States." Contemporaneous dictionary definitions make clear that Congress understood "the regular forces" to refer specifically to the full-time personnel of the United States military. That reading, moreover, best harmonizes section 12406(3) with its neighboring subsections and is most consistent with how Congress uses the words "regular" and "forces" throughout the rest of Title 10 and elsewhere in the United States Code.

1. Congress's use of the term "the regular forces" has a clear textual meaning: "forces" refers to an aggregation of military personnel, and the modifier "regular" restricts the word "forces" to full-time service members. Congress's use of the definite article, "the," further confirms that Congress meant to identify a specific entity—the professional military—as opposed to other, undefined entities.

To start, dictionary definitions show that the word "forces" had a settled meaning during the relevant time periods. See *Delaware v. Pennsylvania*, 598 U.S. 115, 127-128 (2023) (looking to "contemporaneous dictionaries" to define statutory term). When Congress first used the term "the regular forces" to delegate to the President the power to call forth the National Guard, 35 Stat. 399 (1908); *infra* Section I.B, "forces" meant "[t]he military and naval power of the country." *Forces*, Black's Law Dictionary (1st ed. 1891); see also *Forces*, Bouvier's Law Dictionary (8th ed. 1914) ("The military and naval resources of a country."). That same meaning persisted when Congress passed section 12406(3) in its current form, 108 Stat. 2994 (1994); see *Forces*, Black's Law Dictionary (6th ed. 1990) ("The military and naval power of the country."); see also *Force*, Dep't of Def. Dictionary of Mil. & Associated

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[1] At the hearing on the temporary restraining order, counsel for the State asserted that the term "the regular forces" means civilian law enforcement personnel. 7th Cir. Doc. 6 at A346. The district court rejected that position, concluding that "the regular forces" likely means the professional military. Appx. 70-71. In its filings before this Court, the State did not take a position on the meaning of that term. Resp. 27-33. Upon receipt of the Court's supplemental briefing order, undersigned counsel conducted additional statutory, contextual, and historical research into the meaning of "the regular forces" and has concluded that it is properly defined as the regular forces of the United States military. This Court may resolve the application on any ground presented by the record, including those not initially presented by the parties. See, *e.g.*, *Greenlaw v. United States*, 554 U.S. 237, 250 n.5 (2008).

Terms (June 2025) ("[a]n aggregation of military personnel, weapon systems, equipment, capabilities, and necessary support, or combination thereof").

The words "regular forces" together have likewise been used to describe the military's full-time personnel—and often to distinguish the military from the "militia," the "reserves," or other non-full-time personnel. Again, dictionary definitions illustrate the point. See, *e.g.*, *Regular forces*, Bouvier's Law Dictionary (student's ed. 1928) (defining "regular forces" as "those persons who are impressed with military character by the national authority, to such, in short, as constitute the regular army and navy, (now include the aviation forces)"); *Reserve forces*, A Dictionary of English Law (1st ed. 1923) (defining "reserve forces" as "men who have served in the regular forces . . . on the expiration of their service with the regular forces"). That accords with how this Court used the term "the regular forces" around the time Congress first introduced it with respect to the National Guard, *McClaughry v. Deming*, 186 U.S. 49, 56 (1902) (noting Founders recognized a "substantial difference between the regular forces and the militia"), as well as how this Court used it closer to when Congress enacted the current section 12406(3), see *Gilligan v. Morgan*, 413 U.S. 1, 7 (1973) (National Guard is a "reserve component" of the armed forces "available with regular forces in time of war").

This interpretation of "the regular forces" is supported by the statutory definition of "regular" in Title 10. 10 U.S.C. § 101(b)(12). Here, Congress provided a definition of "regular" that applies to "military personnel": "The term regular, with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade of office in a regular component of an armed force." *Id.* The "armed forces," in turn, are defined as the six service branches: the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard. *Id.* § 101(a)(4). In other words, Congress defined "regular" military personnel as individuals who serve in the full-time components of the armed forces. See *Dep't of Agric. Rural Dev. Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) ("When Congress takes the trouble to define the terms it uses, a court must respect its definitions as virtually conclusive.") (cleaned up).

Finally, that "the regular forces" means the professional military is confirmed by Congress's use of the definite article, which "indicate[s] that a following noun . . . is definite or has been previously specified by context." *Nielsen v. Preap*, 586 U.S. 392, 407 (2019) (cleaned up); *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 767 (2023) ("the registration statement" references a "particular registration statement," not just "any registration statement"). And Congress's use of both a "definite article" and "plural number" provides an even greater indication that it intended a precise, fixed definition. See *Rapanos v. United States*, 547 U.S. 715, 732 (2006) (plurality op.) ("[t]he use of the definite article ('the') and the plural number ('waters') shows plainly that [the statute] does not refer to water in general"). Reading "the regular forces" as the "particular" forces comprising the full-time personnel of the six service branches thus would be consistent with Congress's ordinary usage.

2. Other components of section 12406's text—specifically, the other two preconditions under which the President may federalize the National Guard—further solidify that "the regular forces" means full-time military personnel. The "familiar interpretive canon *noscitur a sociis*" teaches that "a word is known by the company it keeps," and it is "often wisely applied" to avoid giving "unintended breadth to the Acts of Congress." *Dubin v. United States*, 599 U.S. 110, 124-125 (2023) (cleaned up); accord *Fischer v. United States*, 603 U.S. 480, 486 (2024).

The other two preconditions under which Congress has authorized the President to federalize members of the National Guard are two of the most dire exigencies the United States could face: an invasion by a hostile foreign nation and a domestic rebellion. 10 U.S.C. §§ 12406(1)-(2). Interpreting the third precondition as being met only in such circumstances as when the military could be deployed for civilian law enforcement purposes—for instance, when state authorities defy a federal court order or sanction private violence, see *infra* Section II, would treat section 12406(3) "in a similar manner to its companions" concerning invasions and rebellions. *Dubin*, 599 U.S. at 126. By contrast, adopting applicants' interpretation of section 12406(3) as conferring authority on the President to federalize the National Guard when any federal civilian law enforcement is "greatly impeded" in executing certain federal laws, see Appl. 30, would render section 12406(3) so broad, and thus "so unlike" its two neighboring subsections, that "it would be implausible" to assume Congress intended such an expansive delegation, see *Fischer*, 603 U.S. at 488. The "traditional and strong resistance of Americans to any military intrusion into civilian affairs," see *Laird v. Tatum*, 408 U.S. 1, 15 (1972); *infra* Section II.2, further weighs heavily in favor of treating section 12406(3) as a companion to sections 12406(1) and (2), rather than as a grant of authority so vast as to eclipse them.

3. Interpreting the words "the regular forces" in their "context and with a view to their place in the overall statutory scheme," *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 608 (2019), further confirms that this term refers to the United States military's full-time personnel. Congress "generally uses a particular word with a consistent meaning in a given context." *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (cleaned up). In Title 10 and elsewhere, Congress consistently and frequently uses the words "regular" and "forces" to refer to the military or its full-time personnel and to distinguish those forces from supplementary reserve forces like the National Guard.

Congress uses the word "forces"—on its own—throughout Title 10 to refer to the military's full-time and reserve personnel. For instance, the Army and Navy are formally defined to include "combat and service forces." 10 U.S.C. §§ 7062(b), 8062(a). The Secretary of the Army is tasked with dividing the Army into "commands, forces, and organizations." *Id.* § 7074(a). The secretaries of the military departments assign "forces" to commands, *id.* § 162(a)(1), and the commander of each combatant command is responsible for organizing and employing the assigned "forces," *id.* § 164(c)(1)(C)-(D). Congress likewise describes the service branch

reserves and the National Guard as "forces." See, *e.g.*, *id.* § 10171(c)(1) ("forces" of Army Reserve); *id.* at § 10502(c)(1) ("non-federalized National Guard forces").[2]

When it comes to "regular," however, Congress consistently uses that term to describe the full-time military, and usually to distinguish the military from the National Guard or other reserve components. This is particularly true when "regular" and "forces" appear in close proximity. As one example, Title 10 refers to the "regular component" of the "forces" by contrasting it with the "reserve components," which are the Army and Air National Guards and each service branch's reserves. 10 U.S.C. §§ 10101, 10102. Title 10's other uses of "regular" reinforce confirm that Congress uses it to refer to the military as distinguished from the reserves.[3] For instance, two sections contrast the "Regulars" with the "Reserves." *Id.* § 10209 (setting forth administration of laws "applying to both Regulars and Reserves"); *id.* § 9404 (both "Regulars" and "Reserves" of Air Force may be detailed for training and instruction). Still others contrast the "Regular" service branches with the National Guard and reserve forces of those branches. See, *e.g.*, *id.* § 12405 (federalized National Guard members subject to laws governing Army and Air Force "except those applicable only to members of the Regular Army and Regular Air Force"); *id.* § 7062(c)(1) ("Regular Army" separate component from "Army National Guard" and "Army Reserve"). And yet more sections contrast the "regular components" with the "reserve components." See, *e.g.*, *id.* § 12314 (active-duty member of "reserve component" may be detailed or assigned to any duty authorized for members of the "regular component" of the same armed force); *id.* § 10145(d) (distinguishing members of "reserve component" from those of "regular component").

Moreover, in drawing this contrast between the "Regulars" and the "Reserves," Congress made clear that, at the "times the national security may require," the purpose of the National Guard is to supplement the military. *Id.* § 10102. Indeed,

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[2] By contrast, Congress rarely uses the word "forces" to describe "federal law enforcement personnel." Cf. Appl. 30 n.4. For example, the statutes governing the Federal Bureau of Investigation, 28 U.S.C. §§ 531-540d, use the term "force" in a single section. 28 U.S.C. § 540C(b)(1) (Director "may establish a permanent police force"). Those governing Immigration and Customs Enforcement, 6 U.S.C. §§ 251-258, also use the term in only one section. 6 U.S.C. § 258(c)(2) (human trafficking "task force" and child sexual exploitation "task force"). And the statutes governing the United States Marshals Service, 28 U.S.C. §§ 561-569, Customs and Border Protection, 6 U.S.C. §§ 211-226, and Bureau of Alcohol, Tobacco, Firearms, and Explosives, 28 U.S.C. §§ 599A-599B, do not use the term "forces" at all.

[3] Congress also uses "regular" to refer to the military throughout title 32, which specifically governs the National Guard. See, *e.g.*, 32 U.S.C. § 105(a) (officers of "Regular" Army or Air Force may be detailed for inspections of their National Guard counterparts); *id.* § 315(a) (commissioned officers of "Regular" Army or Air Force may be detailed to duty with their National Guard counterparts).

when describing the "purpose of each reserve component," Title 10 details the components' ability "to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components." *Id.* Specifically, whenever Congress "determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces," Congress or the President may order to active duty "the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force." *Id.* § 10103.

To be sure, Congress's precise phrasing—"Regulars," "Regular Army," "regular components," "regular forces"—varies slightly. The statutes governing the military are among the oldest on the books, see *McClaughry*, 186 U.S. at 54-55, and Congress frequently has updated and recodified them over this country's history. It is thus inevitable that Congress "use[s] different words to denote the same concept." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012). But these usages consistently serve to distinguish full-time members of the military from the reserve components, as well as to make clear that the purpose of those reserve components is to supplement the full-time military personnel.

In sum, interpreting "the regular forces" in section 12406(3) as referring to full-time military personnel is not only the best reading of the relevant text, but is also consistent with, and supported by, the broader statutory context. Moreover, these statutes make clear that the purpose of the National Guard is, in general, to supplement the professional military rather than to serve as a force of first resort.

B. The history of section 12406(3) confirms that the term "the regular forces" refers to the professional military.

The history of section 12406(3) confirms what the statutory text makes clear: "the regular forces" means full-time service members of the United States military. Section 12406(3) was enacted in 1994, but derives from a materially identical provision enacted in the early twentieth century that was introduced as part of the Militia Act of 1903 ("Dick Act"), Jan. 21, 1903, ch. 196, 32 Stat. 775, and then amended in 1908 ("1908 Amendments"), 35 Stat. 399. The Dick Act and the 1908 Amendments, in turn, were built upon a series of congressional and presidential practices dating to the Founding. This history shows that Congress's practice was to delegate its calling-forth authority to the President only in a narrow range of circumstances. And when Congress extended this delegation to the modern-day National Guard, it was with the understanding that federalized members of the Guard would serve as a supplement to the professional military in the rare circumstances where the President was authorized to use the military domestically to enforce federal law.

To begin, the Constitution vests the power to provide for the calling forth the Militia in Congress, not the President. Art. I, § 8, cl. 15. Under the Calling Forth Clause, "Congress shall have Power . . . [t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Congress initially delegated its calling-forth power with respect to state militias in the Calling Forth Act of 1792, 1 Stat. 264 ("1792 Act"). The 1792 Act contained separate delegations for "insurrection[s]" and "invasion[s]" (Section 1) and "caus[ing] the laws to be duly executed" (Section 2). Relevant here, the latter delegation applied only in narrow circumstances: when "the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings . . . ." *Id.* Three years later, Congress replaced the 1792 Act with the Militia Act of 1795, 1 Stat. 424 ("1795 Act"), which maintained the same substantive delegations of the calling-forth power for invasions, insurrections, and execution of federal law.

Congress first delegated its calling-forth power with respect to the military in the Insurrection Act of 1807, 2 Stat. 443 ("1807 Act"), which authorized domestic use of the military only "where it is lawful for the President of the United States to call forth the militia." It was not until 1861, when Congress enacted the Suppression of Rebellion Act of 1861, 12 Stat. 281 ("1861 Act"), that the President was authorized to deploy the militia *and* the "land and naval forces of the United States." However, the 1861 Act—which is the statutory precursor to the modern Insurrection Act, *infra* Section II.2—did not expand the President's underlying calling-forth authority; rather, Congress provided such authority when, "by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President of the United States, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory of the United States." 12 Stat. 281.

Once Congress delegated its calling-forth power with respect to both state militias and the military, however, presidents "nearly always chose to use regulars," rather than the militia, to address domestic emergencies. Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders 1789-1878,* at 347 (2011). In fact, "by the end of Reconstruction[,] the whole idea of using [the] militia as the principal federal force in handling domestic disorders had become passe." *Id.* As a result, "[a]fter 1865, no president federalized the National Guard for use in a domestic disorder for nearly a century." Clayton D. Laurie & Ronald H. Cole, *The Role of Military Forces in Domestic Disorders 1877-1945*, at 187 n.18 (1997).

In 1903, Congress enacted the Dick Act, which transformed the disparate state militias into the modern National Guard. Indeed, in the years preceding the Dick Act, President Roosevelt had advocated for modernizing the state militias, arguing that "[t]he organization and armament of the National Guard of the several States . . . should be made identical with those provided for the regular forces." *Perpich v.*

Department of Def., 496 U.S. 334, 341-342 n.10 (1990) (quoting First Annual Message to Congress, Dec. 3, 1901, 14 Messages and Papers of the Presidents 6672); see also Laurie & Cole, *supra*, at 186 ("state troops, as then configured, were unable to adequately support the Regular Army" during the Spanish-American War). To that end, the Dick Act "recognized the guard as the nation's organized militia and primary reserve in time of war." Laurie & Cole, *supra*, at 186; see also 32 Stat. 775. It further provided that "the militia, when called into the actual service of the United States, shall be subject to the same Rules and Articles of War as the regular troops of the United States." 32 Stat. 776.

The Dick Act also "codified the presidential practice, operative since 1866, of using regular troops instead of federalized guardsmen to suppress domestic disorders" in extreme circumstances. Laurie & Cole, *supra*, at 187. In other words, by establishing the National Guard, Congress refined, rather than expanded, the scope of its prior delegations of the calling-forth power to the President. Section 4 of the 1903 Act, which is the precursor to section 12406(3), provided in relevant part that whenever "the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof, it shall be lawful for the President to call forth" the National Guard. 32 Stat. 776. The phrase "other forces at his command" referred to the other military forces under the control of the Commander in Chief. See Art. II, § 2, cl. 1 ("The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."). And although Congress did not use the term "the regular forces" in section 4, it is clear from elsewhere in the 1903 Act that Congress understood the term "regular" to refer to the military as distinct from the newly recognized National Guard. See Dick Act, §§ 3, 9, 10, 14, 15, 16, 18, 32 Stat. 775-778 (using the terms "Regular Army" or "regular troops").

When Congress amended the Dick Act in 1908, it replaced the phrase "the other forces at his command" with "the regular forces at his command," so that the Act provided: "whenever . . . the President is unable with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of the militia . . . ." 1908 Amendments, sec. 3, § 4, 35 Stat. 400. With this substitution, Congress made explicit that "the other forces" referred to in section 4 of the 1903 Act were "the regular forces," *e.g.*, the full-time military service members that Congress had elsewhere in the 1903 Act described as "regular." Congress also confirmed, in this provision and others, that, for "military needs . . . arising from the necessity to execute the laws of the Union," federalized members of the National Guard would serve a supplement to full-time military service members (and would themselves be supplemented by "volunteers") in the event of a domestic emergency. 1908 Amendments, sec. 4, § 5, 35 Stat. 400; see 60 S. Rep. 630 at 3-4 (statement of Robert Shaw Oliver, Assistant Secretary of War) (explaining that the armed forces include "[f]irst, the Regular Army, a small body, carefully trained, always subject to the orders of the President; second, the National Guard, a large body, moderately trained, subject to the orders of the President on certain occasions

(that is, during war, insurrection, invasion, etc.)," and then "a third body—the volunteers").

This statutory language remained the same until 1956, when Congress created Title 10. See Pub. L. No. 84-1028 (Aug. 10, 1956). In doing so, Congress did not change the meaning of the Dick Act's calling-forth provision; rather, the words "at his command" were "omitted as surplusage," 70A Stat. 199, 512 (Historical and Revision Notes), so that the provision stated: whenever "the President is unable with the regular forces to execute the laws of the United States," he may federalize the Army National Guard and the Air National Guard. 10 U.S.C. §§ 3500(3), 8500(3) (1956). That Congress deemed these words surplusage confirms that Congress understood that the term "the regular forces" refers—just like "the regular forces at his command"—to the President's authority as Commander in Chief over full-time service members of the United States military.

Finally, when Congress enacted section 12406 in 1994, it preserved the existing statutory scheme with respect to the delegation of Congress's calling-forth power to the President in all material respects. *Compare* 10 U.S.C. §§ 3500, 8500 (1956) (Air National Guard and Army National Guard), *with* 10 U.S.C. § 12406 (1994). In particular, the text of section 12406(3) today is identical to the text of the corresponding subsections of Title 10 in 1956 and, as noted, substantively identical to the Dick Act and its 1908 Amendments. See 10 U.S.C. §§ 3500(3), 8500(3) (1956). And, as explained, the history of section 12406(3) confirms both that the term "the regular forces" means the military, and also that Congress enacted section 12406(3) based on the understanding that presidents would rely on the military in the first instance to enforce federal law in the rare event of a domestic emergency.

II. Section 12406(3) requires the President to demonstrate an inability to execute the laws with the professional military before federalizing the National Guard, and he has not done so here.

Because "the regular forces" refers to the regular forces of the United States military, the stay application should be denied because applicants have not shown that the President is unable with the full-time military to execute the laws of the United States. On the contrary, the President has not even attempted to execute the laws with the regular forces in Illinois, let alone shown that he faces an inability to do so. And even if the President had made such an attempt (which, again, he has not), the predicate conditions for military deployment are not satisfied. Accordingly, applicants cannot show that the statutory prerequisites for section 12406(3) are met.

1. Section 12406(3) outlines the circumstances under which the President may invoke his calling-forth authority to execute the laws of the United States with federalized National Guard troops. Specifically, the President may do so "[w]henever . . . [he] is unable with the regular forces to execute the laws of the United States." 10 U.S.C. § 12406(3). If "the regular forces" refers to the regular forces of

the United States military (and, as explained in Part I, that is the best reading of the term), then the President may federalize and deploy the National Guard under section 12406(3) only in circumstances where it would be lawful to deploy military forces for the purposes of executing federal law, but when he is unable to do so with the full-time forces of the United States military.

This order of operations—utilizing full-time, professional military troops before turning to the National Guard—accords with the broader statutory scheme outlined in Title 10, as well as history and past practice. *Supra* Section I. Indeed, as explained, the 1903 statutory precursor to section 12406 codified the longstanding presidential practice of deploying the military, and not the militia, in the rare circumstances where doing so was warranted to execute federal law. *Supra* Section I.B. And the current statutory scheme follows this approach: beyond the plain text of section 12406(3), Congress describes the "purpose" of reserve components as, "in time of war or national emergency, . . . to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components." 10 U.S.C. § 10102; see also *id.* § 10103 (outlining "policy for order into Federal service" as "the regular components of the ground and air forces" supplemented by "units of other reserve components"); *supra* Section I.A.

In addition to setting forth this order of operations, section 12406(3) requires that the President be "unable" to execute federal law with the regular forces. "Unable" is not defined by section 12406(3), but contemporaneous dictionary definitions confirm that the term means "not having sufficient power or ability," or "not able." *E.g.*, Universal Dictionary of the English Language Vol. 4 at 4900 (1900) ("Not able; not having sufficient power or ability; not equal to any task; incapable."); Noah Webster, A Dictionary of the English Language at 454 (1868) ("Not able; not having sufficient strength, knowledge, skill, or the like."); William Dwight Whitney, The Century Dictionary Vol. VIII at 6578 (1895) ("1. Not able. 2. Lacking in ability; incapable."); Webster's Third New International Dictionary (3d ed. 1993) ("not able" "incapable"); Oxford English Dictionary (2d 1989) ("not able, not having ability or power, to do or perform . . . something specified"). Applicants cannot satisfy this standard because the President has not shown any inability to execute federal law with the military. In fact, he has not even attempted to do so. Instead, the President explained in his October 4, 2025 memorandum that the National Guard was called forth in order to supplement civilian personnel "who are executing Federal law in the State of Illinois." Doc. 62-1 (identifying "ICE, FPS, and other United States Government personnel").

Even if "unable" were interpreted more broadly, the President could not satisfy it. For example, in litigation arising out of the federalization and deployment of the National Guard to Oregon, the government asserted that, in its view, the President would be "unable" to execute the laws with the regular forces if he were to determine that, after weighing the respective capabilities of the military and the National Guard to address the particular circumstances presented, he "would be unable to execute

the laws within the meaning of § 12406 without the National Guard." *Oregon v. Trump*, No. 3:25-cv-01756, Doc. 131 at 9 (D. Or. Nov. 1, 2025). But even affording the President such discretion under this standard (which, again, should not apply), applicants could not meet it here. On the contrary, as both lower courts recognized, the President continues to execute federal law, including federal immigration law, unabated in Illinois. Appx. 73; Appx. 100. And regardless, there is no evidence in the record that the President has undertaken this assessment in Illinois.

2. And even if the President had attempted to show an inability to execute federal law with the military, it is plain that, under any definition of "unable," the President would not have the authority to deploy the military to Illinois for law enforcement purposes. The Posse Comitatus Act, 18 U.S.C. § 1385, forbids the use of "any part" of the federal armed forces "as a posse comitatus or otherwise to execute the laws" except where "expressly authorized by the Constitution or Act of Congress." *Id.*; see also 10 U.S.C. § 275. That restriction reflects "the deeply rooted and ancient opposition in this country to the extension of military control over civilians." *Reid v. Covert*, 354 U.S. 1, 33 (1957). Indeed, at the Founding, the potential misuse of the military against the States and the people was one of the Framers' central concerns. *E.g.*, David Luban, *On the Commander in Chief Power*, 81 S. Cal. L. Rev. 477, 518-519 (2008); Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1495-1499 (1987). Delegates to the Constitutional Convention, for example, identified "large standing armies" as "the greatest danger to liberty," 2 *The Records of the Federal Convention of 1787*, at 388 (Max Farrand ed., 1911), and worried that excessive federal control over state militias would lead to "[d]espotism," *id.* at 385; 1 *id.* at 165 (expressing fear that the federal government could use militias to "enslave the States"). The Posse Comitatus Act guards against those dangers.

No statute or constitutional provision "expressly authorize[s]" the use of the military for law enforcement here. Section 12406 itself does not do so: it authorizes the President to federalize National Guard members when he "is unable with the regular forces to execute the laws of the United States," but it says nothing about the circumstances under which the President may attempt to "execute the laws" with those "regular forces." 10 U.S.C. § 12406(3). In other words, as explained, section 12406 specifies when the President may federalize the National Guard and outlines the order in which the President may call upon different military assets, but does not address the predicate question of when he may deploy the military at all.

The Insurrection Act, 10 U.S.C. §§ 251-254, also does not apply.[4] As the Office of Legal Counsel ("OLC") has explained, that Act "ha[s] always been interpreted as requiring . . . that state authorities are either directly involved, by acting or failing to act, in denials of federal rights of a dimension requiring federal military action, or are so helpless in the face of private violence that the private activity has taken on

[4] See, *e.g.*, Zoë Richards, *Trump Floats Invoking the Insurrection Act*, NBC News (Oct. 6, 2025), http://bit.ly/49D3tio.

the character of state action." Use of Marshals, Troops, and Other Federal Personnel for Law Enforcement in Mississippi, 1 Supp. Op. O.L.C. 493, 497 (1964) ("OLC Op."). Thus, OLC further explained, "where no court order is involved," the President may invoke the Act only if "those engaging in violence are either acting with the approval of state authorities or have, like the Klan in the 1870s, taken over effective control of the area involved." *Id.*

That narrow reading is consistent with the Insurrection Act's text, which carefully defines the circumstances under which the President may deploy the military domestically. Absent a request for assistance by a State, see 10 U.S.C. § 251, the Act applies in only one of two circumstances. First, it applies where "unlawful obstructions, combinations, or assemblages, or rebellion against [federal] authority . . . make it impracticable to enforce [federal] law[] . . . by the ordinary course of judicial proceedings." *Id.* § 252. And second, it applies where "insurrection, domestic violence, unlawful combination, or conspiracy" either (1) "opposes or obstructs the execution of [federal] law[] or impedes the course of justice under [federal] law[]," or (2) "so hinders the execution of the laws" that individuals are deprived of their constitutional rights, and the State is "unable, fail[s], or refuse[s] to protect th[ose] right[s]." *Id.* § 253. Each of these provisions requires coordinated opposition to the enforcement of federal law (such as an "insurrection" or "rebellion") and carefully defined consequences (like the deprivation of constitutional rights). See *id.* §§ 252-53. Buttressing this point, Congress further required that, "[w]henever the President" invokes the Insurrection Act, he must "by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time." *Id.* § 254. This requirement, too, makes clear the need for a coordinated "insurgen[cy]," and limits the Act's reach by mandating that the President seek to deescalate the situation "peaceably." *Id.* The text of the Insurrection Act thus supports OLC's narrow interpretation.

That interpretation is also consistent with historical practice. "[T]he use of military force to execute the laws has traditionally been regarded with disfavor—as a course of action that can be lawfully and properly pursued only as a last resort." OLC Op., *supra*, at 497; accord *id.* ("To use the troops only when no other solution seems possible has been the most frequent presidential practice . . . ." (quoting Bennett Milton Rich, *The Presidents and Civil Disorder* 219 (1941))). Rather, "[t]he policy has always been to preserve, not to displace, the civil authority." Rich, *supra*, at 215; *accord* Coakley, *supra* at 348 ("The[] principles established by Washington—military subordination to civilian authority in enforcing the laws and quelling domestic disorder and the use of minimum force—became abiding principles in the use of federal military force in the internal affairs of the republic."). This history, too, underscores the Act's limited scope.

OLC's interpretation of the Insurrection Act makes clear that the President could not invoke the statute here. The "state authorities are [n]either directly involved . . . in denials of federal rights . . . [n]or . . . so helpless in the face of private

violence that the private activity has taken on the character of state action." OLC Op., *supra*, at 497. On the contrary, as the district court found, "state and local police have indicated that they are ready, willing, and able to keep the peace as ICE continues its operations in Chicago." Appx. 83. Indeed, the President himself acknowledged last month that "it hasn't been necessary" to invoke the Act. Richards, *supra*.

The fact that the President will often, as here, be forbidden from deploying the military domestically for law-enforcement purposes does not change the fact that the term "the regular forces" refers to the professional military. The Posse Comitatus Act applies equally to the regular armed forces and federalized members of the National Guard, see 10 U.S.C. § 12405, and there is no reason to believe Congress would have intended to create an exception from that Act for federalized National Guard members but not for regular troops.[5] Quite the opposite: as discussed, both historical and practical considerations explain Congress's decision to require that the President turn to the regular military before calling the National Guard into federal service. That the President will rarely be able to do so simply reaffirms the "traditional and strong" norm against "any military intrusion into civilian affairs." *Laird*, 408 U.S. at 15.

III. In any event, applicants cannot prevail on their stay application under an alternative interpretation of "the regular forces."

Finally, regardless of the meaning of "the regular forces," applicants are not entitled to a stay. As detailed in the State's response brief, which asserted that the applicants could not succeed even under their preferred interpretation of section 12406(3), applicants have not shown that the President is unable to execute the laws with civilian law enforcement. *E.g.*, Resp. 26-33; see also Appx. 100 (Seventh Circuit assessing stay application under applicants' preferred standard). And since the time that brief was filed, applicants' own statements and conduct have further underscored that conditions in Illinois do not warrant invocation of section 12406 or emergency relief by this Court.

For instance, notwithstanding their claims in the emergency application that an immediate stay of the temporary restraining order was necessary in light of "the pressing risk of violence" to prevent the "endanger[ment of] federal personnel and property," Appl. 6, applicants have since sought (and obtained) an indefinite

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[5] The Posse Comitatus Act, however, does not apply to members of the National Guard who remain under state control. 32 C.F.R. § 182.2(d). Notwithstanding the foregoing discussion of order of operations as between the military and the federalized National Guard, a State's Governor may use the National Guard to perform civilian law enforcement duties as he deems necessary. It is only when National Guard troops are federalized, and thus a component of the military, that the scope of the National Guard's activities is restricted by the Posse Comitatus Act.

extension of that same TRO, Doc. 96 ("Defendants propose an extension of the TRO until a final decision on the merits is reached."). Similarly, the federal government has confirmed through statements in another case arising out of immigration enforcement efforts in Illinois that it no longer requires an increased federal presence near the Broadview facility. *In re Kristi Noem*, No. 25-2936, Doc. 1-1 at 7 n.2 (7th Cir. Oct. 29, 2025) ("Since October 3, increased coordination with local law-enforcement officers has reduced the need for federal officers to engage with protestors at [the] Broadview [detention facility]."). Those efforts, moreover, have continued unabated: nearly 3,000 individuals have now been arrested in connection with Operation Midway Blitz.[6]

For these reasons and those outlined in the State's response, applicants have not shown that a stay is warranted.

Sincerely,

MARY B. RICHARDSON-LOWRY
Corporation Counsel of the City of Chicago
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE M. LOOSE
Chief Assistant Corporation Counsel
ELIZABETH M. TISHER
Assistant Corporation Counsel
City of Chicago Department of Law
2 North LaSalle Street, Suite 580
Chicago, Illinois 60602
312-744-3564
myriam.kasper@cityofchicago.org

*Counsel of Record

KWAME RAOUL
Illinois Attorney General
JANE ELINOR NOTZ*
Solicitor General
SARAH A. HUNGER
ALEX HEMMER
Deputy Solicitors General
MATTHEW J. FREILICH
R. SAM HORAN
AKANKSHA SHAH
EMILY A. VERNON
BRIANNA YANG
Assistant Attorneys General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376
Jane.Notz@ilag.gov

[6] *E.g.*, Jasmine Minor, et al., *Nearly 3K Arrested in Chicago Immigration Crackdown, CBP Chief Bovino Says Ahead of Testimony*, ABC7 Chicago (Oct. 27, 2025), https://bit.ly/4oXhn3A.