No. 25-2798

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

STATE OF ILLINOIS, et al.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States,* et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois, No. 1:25-cv-12174 (Perry, J.)

BRIEF FOR DEFENDANTS-APPELLANTS

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INTRODUCTION

In the last few months, the Chicago area has seen a sharp increase in violent protests aimed at thwarting the enforcement of federal law. Organized agitators have assaulted federal law enforcement officers with fireworks, bottles, rocks, and tear gas. They have followed federal officers, confronted officers at their homes, and offered bounties for the murder of senior immigration officials. Agitators have run government vehicles off the road, blockaded entries and exits from federal buildings, and damaged federal property. In one incident, ten vehicles surrounded a government vehicle, and when the federal officers exited that vehicle, an assailant, who was later found with a handgun, attempted to run them down with her vehicle. To address these incidents, federal law enforcement officers have been forced away from their regular responsibilities to work 12-hour shifts guarding federal personnel and property.

Because federal law enforcement officers in the Chicago area are stretched beyond their means, the President activated the National Guard to help protect federal personnel and property there. Under 10 U.S.C. § 12406, the President is authorized to call up members of the

National Guard into federal service when "there is a rebellion or danger of a rebellion against the authority of the Government of the United States" or "the President is unable with the regular forces to execute the laws of the United States." 10 U.S.C. § 12406(2)-(3). Both conditions apply here: there is at least a danger of rebellion in the Chicago area, and mob violence has prevented federal officers from enforcing federal law.

The district court disagreed, entering an extraordinary order enjoining the President's federalization and deployment of the National Guard in Illinois. The district court had no sound basis for inserting itself into the military chain of command, and its order was flawed in multiple respects.

First, the district court erred in second-guessing the President's judgment that Section 12406's statutory conditions were satisfied. Nearly 200 years ago, the Supreme Court made clear that these judgment calls are for the President to make and that his determinations are conclusive upon all persons. *See Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827). This includes the courts—not just subordinate military officers. *See Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849). The President alone

is authorized to evaluate whether the facts and law justify action under Section 12406.

Second, even if the President's decision were reviewable, the record amply supports the President's federalization decision here. Any such review must be highly deferential—both because plaintiffs assert a nonstatutory *ultra vires* claim and because the President is afforded great deference when exercising his statutory authority to respond to exigent circumstances and ensure national security. At most, the President's decision can be reviewed to determine whether the President had a colorable basis to federalize and deploy members of the National Guard. Applied here, the facts more than adequately support the President's decision, both with respect to enforcement of the laws (Section 12406(3)) and at least a danger of rebellion (Section 12406(2)). When ongoing violence, threats of violence, and harassment targeted at obstructing the enforcement of federal immigration laws have stretched the regular forces beyond their capacity and left them unable to adequately enforce the laws, the President can call up the Guard in response to the most acute dangers and the most significant drain on federal enforcement resources.

Third, the district court erred in weighing the equities. The court's order improperly impinges on the Commander in Chief's supervision of military operations, countermands a military directive to officers in the field, and puts federal officers (and others) in harm's way. These concrete harms far outweigh plaintiffs' speculation about inflamed tensions. Accordingly, plaintiffs cannot carry their burden of demonstrating that the equitable factors favor injunctive relief. This Court should vacate the district court's order.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. §§ 1331, 1361. Plaintiffs purported to raise claims related to the Tenth Amendment, the Take Care Clause, the Militia Clause, principles of equal sovereignty and separation of powers in the U.S. Constitution; 10 U.S.C. §§ 275, 12406; and the Administrative Procedure Act.

On October 9, 2025, the district court entered a putative temporary restraining order, barring defendants' federalization and deployment of the National Guard within Illinois. SA1-2. The same day, defendants noticed an appeal from that order. GA237-38. On October 23, 2025, the district court extended its temporary restraining order through final

judgment but stayed the portion of that injunction that barred federalization. GA360-61.

This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1). As a panel of this Court already concluded, the putative temporary restraining order has "sufficient hallmarks of a preliminary injunction." *Illinois v. Trump*, No. 25-2798, 2025 WL 2937065, at *4 (7th Cir. Oct. 16, 2025) (per curiam). The district court issued the order, along with a comprehensive opinion, after an adversarial hearing and extensive briefing through which the federal government strongly challenged the basis for the order. The order also threatens to inflict irreparable harm by exposing federal property and officials to a grave threat of lawless mob violence and by exposing lawful federal immigration enforcement efforts to the likelihood of active interference and obstruction, thus warranting immediate review. Since the stay panel's decision, and by the consent of the parties, the district court has also extended its order well beyond the 28-day limit on temporary restraining orders.

STATEMENT OF THE ISSUE

Whether the district court erred when it enjoined the President's federalization and deployment of National Guard troops to protect federal personnel and property in the Chicago area.

PERTINENT STATUTES

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Legal Background

1. The Constitution authorizes Congress to raise and support a national Army and to organize "the Militia." *See* U.S. Const. art. I, § 8, cl. 15. Exercising that authority, Congress has "created the National Guard of the United States, a federal organization comprised of state national guard units and their members." *Perpich v. Department of Def.*, 496 U.S. 334, 338 (1990) (quotation marks omitted). The National Guard is composed of both the State National Guard, under the command of the several States, and the National Guard of the United States, a federal entity under the federal chain of command, *see* 10 U.S.C. § 10101. Once called into federal service, "members of the National Guard . . . lose their status as members of the state militia during their period of active duty," *Perpich*, 496 U.S. at 347, become federal soldiers, 10 U.S.C. § 10106, and

serve under the President as Commander in Chief, *see* U.S. Const. art. II, § 2, cl. 1.

2. Congress has granted the President authorities under which he may call forth National Guardsmen, including 10 U.S.C. § 12406, which authorizes the President to federalize Guardsmen if certain conditions are met. As relevant here, the second and third conditions provide:

> Whenever . . . (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 . . . suppress the rebellion, or execute those laws.

Id.

B. Factual Background

1. Throughout the summer, U.S. Immigration and Customs Enforcement (ICE) saw a sharp increase in violent protests and attempts to impede its duties of enforcing the Nation's immigration laws. *See* GA208. In Los Angeles, violent mobs attacked federal officers with concrete chunks and commercial-grade fireworks and used dumpsters as battering rams to breach federal buildings. *See Newsom v. Trump*, 141 F.4th 1032, 1041 (9th Cir. 2025) (per curiam). In Portland, agitators assaulted federal officers with rocks, bricks, and incendiary devices,

followed federal officers to their homes, and threatened to kill them on social media. GA213-17. In late September, a man opened fire on an ICE field office in Dallas, killing two detainees and injuring another. GA217-18.

The level of violence directed at immigration officials in Chicago has been the highest that a 23-year federal law enforcement veteran has seen and at points has eclipsed the violence in other cities. GA223, GA227-28. Federal officers have been physically attacked and seriously injured: one officer had his beard ripped from his face, and others have been hospitalized for injuries like torn ACLs. GA192-196, GA207. While driving, federal officers have been followed by groups of vehicles and rammed by other drivers. GA225-27. One officer was followed to his home and aggressively confronted. GA196. His home was later broken into, and his service weapon was stolen from the safe in his car. GA196. Officers have received death threats on social media. GA193, GA196, GA207, GA228-29. And local gang members placed a $10,000 bounty on the life of a senior immigration officer. GA207, GA225.

The violence escalated throughout September and into October. In early October, for example, ten vehicles surrounded and boxed in a

government vehicle carrying U.S. Customs and Border Protection (CBP) agents while driving on a public road. GA226. Two drivers rammed the government vehicle on both sides, and when the federal officers exited the vehicle, one of the assailants drove her vehicle directly at one of the officers. GA226. Faced with an imminent threat of death or serious bodily injury, the officer was forced to discharge his firearm, striking the driver, who fled the scene and was later found to be in possession of a handgun. GA226. Approximately 200 rioters then converged near the scene, and over the next four hours, rioters attacked the officers, throwing objects, including glass bottles, at them. GA226. CBP diverted other officers to assist, but those officers were also attacked and rammed by vehicles while they were driving to the scene. GA195. And later that same day, ICE officers were surrounded by rioters who slashed their vehicle's tires, forcing the officers to abandon the vehicle for their own safety. GA195-96.

ICE's facility located a few miles outside of Chicago, known as the Broadview Processing Center, has been a focal point of unrest. GA198-206. Federal personnel have been punched, hit, and assaulted with potentially blinding lasers and devices that risk causing permanent

hearing loss. GA199, GA203, GA206. Rioters have launched fireworks and thrown bottles, rocks, and tear gas at officers stationed outside the building. GA203-206. Rioters have blocked, swarmed, and slashed the tires on vehicles entering or leaving the facility—all while the federal employees are trapped inside. GA199. They have organized themselves offsite and transported in new rioters armed with shields, protective padding, and gas masks. GA206. More than thirty ICE officers have been injured during these assaults, GA207, and loaded handguns have later been discovered in the possession of several arrested individuals, GA206, GA214, GA216-18. Even "employees of nearby businesses, mistak[en] . . . for ICE employees," have been accosted and their personal vehicles vandalized. GA200.

Federal law enforcement officers have been diverted from their regular responsibilities to protect federal personnel and property in Chicago. GA207-08, GA227. ICE has mandated 12-hour duty shifts for officers providing security to the Broadview facility and has been forced to redeploy personnel from around the country and across different ICE components, significantly impeding those officers' ordinary law enforcement missions. GA202-03, GA207. ICE has also solicited

assistance from other DHS components as well as other federal agencies, undermining those agencies' own law-enforcement efforts. GA223, GA227, GA229. And while federal officers have attempted to contact local police for assistance, the local police have often failed to respond to calls for assistance or their response has been delayed. GA197-98, GA225-26.

2. Based on this escalating violence in the Chicago area, DHS requested assistance from the Department of War (DoW) to safeguard federal personnel, facilities, and operations. *See* GA165-66, GA171-72. The President, in turn, judged that Section 12406's conditions were satisfied and called forth members of the National Guard to protect federal personnel and property in the region. GA177-78. The President explained that "[f]ederal facilities in Illinois, including those directly supporting [ICE] and the Federal Protective Services (FPS), have come under coordinated assault by violent groups intent on obstructing Federal law enforcement activities." GA177. "These groups have sought to impede the deportation and removal of criminal aliens through violent demonstrations, intimidation, and sabotage of Federal operations." GA177. And the "violent activities," the President observed, "appear[ed]

to be increasing . . . , particularly in and around the city of Chicago." GA177.

The President determined that "these incidents, as well as the credible threat of continued violence, impede the execution of the laws of the United States" and that "the regular forces of the United States are not sufficient to ensure the laws of the United States are faithfully executed." GA177. The President accordingly "call[ed] into Federal service at least 300 members of the Illinois National Guard" to "protect ICE, FPS, and other United States Government personnel who are executing Federal law in the State of Illinois, and Federal property in the State of Illinois." GA178. Pursuant to the President's directive, the Secretary of War mobilized 300 Illinois Guard members, GA185, and then mobilized up to 400 members of the Texas National Guard, GA187.

3. The President's conclusions and the DoW directives were consistent with the assessments the President made when federalizing National Guard members to protect federal officials from the mob violence in Los Angeles and Portland. *See* GA180-81. The Ninth Circuit has stayed a district court order enjoining that Los Angeles deployment, concluding that the President likely acted lawfully in invoking Section

12406. *See Newsom*, 141 F.4th at 1040-41. And a panel of the Ninth Circuit stayed a district court order enjoying the deployment of Guardsmen to Portland.[1]

C. Prior Proceedings

1. On October 6, 2025, the State of Illinois and the City of Chicago sued the President, the Secretary of War, and other federal officials and agencies involved in the mobilization and deployment of the National Guard in Illinois. GA4-6. The plaintiffs principally assert that the President's federalization and deployment of National Guardsmen in response to violence in Chicago was *ultra vires* and failed to satisfy the criteria specified in Section 12406. GA53-54. Plaintiffs also purport to raise claims under the Tenth Amendment; the Militia Clause; the Take Care clause; principles of state sovereignty and separation of powers in the U.S. Constitution; and the Administrative Procedure Act. GA55-67. Separately, the plaintiffs assert that using federal Armed Forces, including the National Guard, for "protest management or the

[1] The en banc Ninth Circuit vacated this stay and granted rehearing, but the temporary restraining order on appeal in that case subsequently expired and has been superseded by a final judgment.

suppression of violent crime or property damage" would violate the Posse Comitatus Act (PCA). GA54-55; *see* 18 U.S.C. § 1385.

The plaintiffs moved for a temporary restraining order on the same day that they filed their complaint. GA70-128. At a status hearing later that day, the district court set an expedited briefing schedule and scheduled a hearing for October 9 on the plaintiffs' request for injunctive relief.

2. At the conclusion of the October 9 hearing, the court issued an oral ruling, to be followed by a written opinion, and entered an injunction. *See* SA1-2 (order); GA239-359 (transcript). The court's October 9 order enjoins the federal defendants (with the exception of the President) from "ordering the federalization and deployment of the National Guard of the United States within Illinois." SA1.

In the court's written opinion, which largely tracks its oral ruling, the district court concluded that plaintiffs are likely to succeed on the merits. SA3-53. While the district court mused on issues that might relate to the PCA, *see* SA46-49, it declined to reach a decision on plaintiffs' PCA claim, SA49. Instead, the district court based its injunction only on Section 12406, and it recognized that plaintiffs' Tenth

Amendment claim rises and falls with plaintiffs' Section 12406 arguments. SA49-50.

On the merits, the district court first made what it called a "credibility assessment" between the plaintiffs' and defendants' declarants. SA12-13. The court ultimately concluded that "Defendants' declarants' *perceptions* are not reliable," SA13 (emphasis added), but it did not resolve any specific factual dispute between the parties or conclude that any fact set forth in defendants' final declarations was not true. *See* SA12-13. Rather, the court questioned the federal declarants' "candor" and "ability to accurately *assess* the facts," relying entirely on extra-record materials. SA12 (emphasis added). Setting aside its purported credibility finding, the district court seemed to acknowledge that defendants' declarants describe "organized, repeated, violent, and increasingly hostile attacks on ICE agents, their personal property, and ICE property." *See* SA36 n.14.

Next, the district court concluded that plaintiffs are likely to succeed on their Section 12406 claim. The court began by holding the President's federalization decision is subject to judicial review, attempting to distinguish *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827),

based on the specific facts in that case and subsequent precedent on the scope of judicial review. SA28-31. The court also concluded that the President is not entitled to deference as to the meaning of the text in Section 12406 or the application that text to the facts. *See* SA33. The court purported to give defendants a "certain amount of deference on the question of whether the facts constitute the predicates laid out in Section 12406." SA33. And it characterized the applicable standard as requiring "a substantially reasonable picture justifying the Executive's position." SA34.

Addressing Section 12406(2), the district court concluded plaintiffs are likely to succeed in showing that no "rebellion" or "danger of rebellion" justified federalizing and deploying National Guardsmen in Illinois. It construed "rebellion" narrowly, limiting the term to 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." SA34-35. Applying that definition here, the district court reasoned the violence in Illinois could not constitute even a danger of rebellion because the violence was "entirely [in] opposition" to a specific

agency (DHS) and the laws that agency enforces, rather than the government as a whole. SA36.

Likewise, the district court concluded that plaintiffs are likely to succeed in showing that Section 12406(3) did not justify the President's federalization and deployment decision. It construed the phrase "unable . . . to execute the laws" as requiring a complete failure of "the civil power" of government. SA42. Based on that interpretation, the district court concluded that Section 12406(3) could not support the President's decision because at least some law enforcement was still possible in Illinois when the National Guard was federalized and deployed. SA42. In addition, the court construed "regular forces" to mean the standing military forces. SA37-40. Thus, according to the district court, the President was required to deploy the standing military to Illinois before calling up Guardsmen, and his failure to do so precluded reliance on Section 12406(3). SA40.

In the alternative, the district court concluded that law enforcement in the Chicago area had not been "significantly impeded" by the violent protests there. SA45 (quotation marks omitted). It did so without discussing or expressly deferring to defendants' assessment of

the relevant facts. In the district court's opinion, because federal facilities remained open and immigration arrests and deportations were on the rise, "the factual conditions necessary" to invoke Section 12406(3) "simply do not exist." SA45.

Finally, the district court concluded that the equitable factors favored an injunction. The court started by addressing irreparable injury, finding that plaintiffs would suffer two distinct harms absent an injunction. First, according to the district court, any violation of the Tenth Amendment constitutes irreparable injury to plaintiffs' sovereign interests. SA51. Second, the district court speculated that deployment of the National Guard would lead to further civil unrest, thereby taxing state resources. SA51-52. On the balance of hardships and the public interest, the court characterized the harm to defendants as "*de minimis*" without addressing the ongoing threats to federal personnel and property. SA52-53.

3. On October 11, 2025, a panel of this Court granted in part and denied in part the federal government's emergency request for an administrative stay. Dkt. 8. The panel stayed the portion of the district court's October 9 injunction that had enjoined the federalization of the

National Guard in Illinois, but it declined to stay the portion of the injunction forbidding the deployment of federalized National Guard troops within Illinois. *Id.* As a result, the Guardsmen remain under federal command but cannot perform the protective mission the President ordered.

On October 16, 2025, a panel of this Court granted in part and denied in part the federal government's motion for a stay pending appeal on the same terms—*i.e.*, allowing the federalization to proceed during litigation but not the deployment. *Illinois v. Trump*, No. 25-2798, 2025 WL 2937065 (7th Cir. Oct. 16, 2025) (per curiam). The panel agreed that the district court's October 9 order is an appealable injunction. *Id.* at *4. On the merits, however, the panel held that the government is not likely to succeed on appeal in showing that the President's federalization order was lawful under Section 12406(2) or (3). *Id.* at *4-7. As for the equities, the panel acknowledged that "the federal government has a strong interest in the protection of its agents and property," but it nonetheless declined to permit the President to deploy the federalized National Guard to safeguard federal personnel and property during the ongoing litigation. *Id.* at *7.

On October 21, 2025, the government filed a stay application with the Supreme Court—seeking both an administrative stay and a stay pending appeal of the district court's injunction. That Court has requested additional briefing on the meaning of the "regular forces" but has not yet issued a decision.

On October 23, 2025, the district court extended its temporary restraining order through final judgment but, consistent with the panel's stay decision, stayed the portion of its order that would otherwise enjoin federalization of the National Guard. GA360-61.

SUMMARY OF ARGUMENT

Section 12406 authorizes the President to call forth National Guard members "in such numbers as he considers necessary" whenever "there is a rebellion or danger of a rebellion against the authority of the Government of the United States" or "the President is unable with the regular forces to execute the laws of the United States." 10 U.S.C. § 12406(2)-(3).

In the face of violent protests and unrest targeted at preventing enforcement of federal immigration laws, the President invoked Section 12406 and called up members of the National Guard to protect federal

personnel and property in Illinois. That order was consistent with the President's statutory authority under 10 U.S.C. § 12406 and with the Tenth Amendment. The district court concluded otherwise only by second-guessing the President's discretion—something courts lack the competence and authority to do. The district court's order should be vacated.

I.A. As a threshold matter, the President's decision to federalize the Guard is not subject to judicial review. The Supreme Court long ago established that the President's exercise of the authority vested in him by Congress to call up the militia is committed to his exclusive discretion by law. *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827). That rule applies to the courts, just as much as it applied to the militiaman in *Martin*. *See Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849). Congress enacted Section 12406 against the backdrop of these decisions and is presumed to have incorporated that settled judicial construction.

B. In all events, review of the President's decision to federalize and deploy the National Guard must be highly deferential. Plaintiffs raise a nonstatutory *ultra vires* claim, and even assuming that vehicle is available to challenge the President's actions, *ultra vires* claims must be

"strictly limited." *NRC v. Texas*, 605 U.S. 665, 681 (2025). What is more, as the Ninth Circuit recently explained, the President is entitled to great deference when exercising his statutory authority to call forth the National Guard in response to exigent circumstances. *Newsom v. Trump*, 141 F.4th 1032, 1048 (9th Cir. 2025). At most, review should be limited to considering only whether the President's decision "reflects a colorable assessment of the facts and law within a range of honest judgment." *Id.* at 1051 (quotation marks omitted).

Applied here, the President's decision was amply justified. The level of violence directed at immigration officials in Chicago at times has been the highest that a 23-year federal law enforcement veteran has seen. GA223, GA227-28. That violence has required reallocating law enforcement officers to protect federal personnel and property, draining resources that would otherwise go to enforcing the federal immigration laws. GA207-08, GA227. This evidence more than supports the President's determinations under Sections 12406(2) and (3). When ongoing violence, threats of violence, and harassment targeted at obstructing the enforcement of federal immigration laws have stretched the regular forces beyond their capacity and left them unable to

adequately enforce the laws, the President can call up the Guard in response to the most acute dangers and the most significant drain on federal enforcement resources.

The district court ignored or minimized this evidence—without any legally justifiable basis. Chiefly, the district court built its analysis on a deeply flawed understanding of the statutory text. The phrase "unable with the regular forces to execute the laws," as used in Section 12406(3), does not require a complete failure of civil law—such that any modicum of enforcement capacity prevents calling forth the Guard. That standard would render Section 12406(3) a virtual nullity. And the phrase "regular forces" cannot refer to the standing military forces. It would be illogical and contrary to the plain text if Section 12406(3) required the President to enforce the laws with the standing military forces before calling up National Guardsmen. Finally, the "rebellion or danger of rebellion" referred to in Section 12406(2) does not require opposition to the government as a whole, a point which history and longstanding practice confirm.

In addition to misinterpreting the text, the court performed its own assessment of the facts, which is inconsistent with the highly deferential

review afforded to the President's federalization and deployment decisions. SA45. The district court also categorically disregarded defendants' evidence—purporting to make "credibility" determinations that were based on extra-record materials and an unsupported distrust of the federal declarants.

II. The equitable factors also strongly favor the federal government, and the district court erred in concluding otherwise. Indeed, the Court could vacate the injunction without any consideration of the merits because plaintiffs failed to show irreparable harm. The federalization of Guardsmen solely for protection of federal officials and property does not itself qualify as irreparable harm warranting an injunction. Plaintiffs provided no evidence that this modest and time-limited deployment is likely to have any effect on any state function. And plaintiffs' professed concerns about inflaming tensions (which the district court accepted) are implausible. Finally, even if plaintiffs had demonstrated some harm, any such harm is far outweighed by the federal government's need to protect ICE agents and other federal personnel seeking to do their jobs and to protect federal property from targeted harm.

STANDARD OF REVIEW

This Court reviews the district court's grant of an injunction for abuse of discretion, but questions of law are reviewed de novo. *C.Y. Wholesale, Inc. v. Holcomb*, 965 F.3d 541, 545 (7th Cir. 2020). To secure a preliminary injunction, plaintiffs were required to show that they (1) were "likely to succeed on the merits," (2) were "likely to suffer irreparable harm in the absence of preliminary relief," (3) that "the balance of equities tip[ped] in [their] favor," and (4) that "an injunction [was] in the public interest." *Id.*

ARGUMENT

The Constitution authorizes Congress to "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." U.S. Const. art. I, § 8, cl. 15. In Section 12406, Congress empowered the President to "call into Federal service" members of the National Guard "[w]henever," *inter alia*, "there is a rebellion or danger of a rebellion against the authority of the Government of the United States" or "the President is unable with the regular forces to execute the laws of the United States." 10 U.S.C. § 12406(2)-(3). The President judged that

those conditions were satisfied in Chicago, and there is no lawful basis for plaintiffs or the district court to override that judgment.

I. The President Lawfully Federalized National Guardsmen to Protect Federal Personnel and Property in the Chicago Area

The district court erred when it concluded that plaintiffs are likely to succeed on the merits. The President's invocation of 10 U.S.C. § 12406 was lawful and consistent with a long historical tradition, tracing back to President Washington's response to the Whiskey Rebellion, of relying on the militia to assist in responding to violent resistance to federal law enforcement. Most fundamentally, the decision whether to call up the National Guard to protect federal personnel and federal property is for the President to make—not the plaintiffs or a federal district court. And regardless, the district court's cramped construction of Section 12406 and its disregard for the sworn declarations of federal officials are indefensible.

A. The Decision Whether to Call Up the National Guard Is Committed Exclusively to the President

As a threshold matter, both the statutory language and historical tradition make clear that the President's decision whether to federalize

the Guard is not subject to second-guessing by plaintiffs or a federal district court.

1. The Supreme Court long ago established that the President's exercise of the authority vested in him by Congress to call up the militia is committed to his exclusive discretion by law. During the War of 1812, there was much debate over who was entitled to make the exigency determination necessary to call forth the militia. 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1205, at 89-90 & 90 n.3 (1833), https://perma.cc/9WHM-Y6VA ("*Commentaries*") (collecting cases). Courts in Connecticut and Massachusetts even held that "the governors of the states to whom orders were addressed by the President to call forth the militia . . . were entitled to judge for themselves whether the exigency had arisen and were not bound by the opinion or orders of the President." *Id.* (punctuation and capitalization altered). But in *Martin* v. *Mott*, 25 U.S. (12 Wheat.) 19 (1827), the Supreme Court rejected that notion.

In *Martin*, a member of the militia of New York had challenged the penalties imposed on him by a court martial after he refused to comply with orders to report for federal service as part of the War of 1812. *See*

Martin, 25 U.S. at 20-23 (statement of the case). President Madison had called the state militia into federal service pursuant to a 1795 law providing "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." *Id.* at 29 (opinion of the Court) (quotation marks omitted). This Court refused to entertain the contention that the President had misjudged the danger of such an invasion, explaining that "the authority to decide whether the exigency has arisen[] belongs exclusively to the President," whose decision "is conclusive upon all other persons." *Id.* at 30.

That conclusion, the Court explained, "necessarily results from the nature of the power itself." *Martin*, 25 U.S. at 30. To be effective, the President's authority to call up the militia must receive "unhesitating obedience" from his military subordinates, consistent with "command of a military nature." *Id.* The Court also emphasized that the 1795 law "confided" the power to call up the militia "to the Executive of the Union"

as Commander in Chief and thus "necessarily constituted" the President himself as "the judge of the existence of the exigency in the first instance." *Id.* at 31; *accord Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849) (asking rhetorically whether, "[a]fter the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right," and observing that extending the judicial power so far would be "a guarantee of anarchy"); *see also*, *e.g.*, *Morgan v. Rhodes*, 456 F.2d 608, 610 (6th Cir. 1972) (observing that, although plaintiffs have sought to challenge "[e]xecutive decisions to call out military force . . . a number of times in the history of the Republic," in "no instance" have "the courts . . . sought to substitute judicial judgment for the constitutionally empowered judgment of the executive"), *rev'd on other grounds*, *Gilligan v. Morgan,* 413 U.S. 1, 6-12 (1973).

Those same principles apply here. At bottom, the plaintiffs seek to use this suit to second-guess the President's judgment that recent and repeated acts of violence targeting federal facilities and personnel in Illinois warrant calling up the National Guard—including because the violence has left the President sufficiently "unable" to ensure faithful

"execut[ion]" of federal law. 10 U.S.C. § 12406(3). Like the 1795 law at issue in *Martin*, Section 12406 makes clear that Congress has granted "the authority to decide whether" the statutory prerequisites are satisfied "exclusively to the President." *Martin*, 25 U.S. at 30. That prevents plaintiffs and the courts from questioning the President's decision making. *Luther*, 48 U.S. at 43.

Importantly, the relevant language in Section 12406 is materially indistinguishable from the statute that was at issue in *Martin*. *Compare* 10 U.S.C. § 12406 ("whenever" one of three exigencies exists "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" address that exigency), *with* Act of Feb. 28, 1795, 1 Stat. 424 ("whenever the United States shall be invaded, or be in imminent danger of invasion . . . it shall be lawful for the President of the United States to call forth such number of the militia of the State or States . . . as he may judge necessary to" address that invasion). Thus, when Congress enacted the language that now exists in Section 12406, it was legislating with the decision in *Martin* as a backdrop. *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 700 (2022) ("This Court generally assumes that, when Congress

enacts statutes, it is aware of this Court's relevant precedents."). And its enactment is presumed to bring along with it the established meaning of the statutory language—namely that the President's decision to federalize and deploy National Guard members is unreviewable. *See id.* at 700-01.

The Supreme Court's decision in *Sterling v. Constantin,* 287 U.S. 378 (1932), only confirms that the President's judgment is not reviewable. There, a federal court had enjoined a state agency from implementing orders to limit oil production during a boom; the Governor of Texas had declared martial law in parts of the State during the litigation and had responded to the injunction by ordering the state militia to shut down oil wells operating in violation of production limits; and the federal court then enjoined the Governor's orders. *See* 287 U.S. at 387-391, 396-397. This Court upheld the lower court's determination that the Governor's orders establishing production controls were reviewable and were unconstitutional. *Id.* at 398, 404.

In doing so, however, the Court in *Sterling* emphasized that when "the [E]xecutive is appropriately vested with the discretion to determine whether an exigency requiring military aid for that purpose has arisen,"

the executive's "decision to that effect is conclusive." 287 U.S. at 399. And the Court attributed that proposition to *Martin*, which it cited and quoted approvingly. *See id.* The exercise of judicial review in *Sterling* itself did not violate that principle, the Court explained, because the case concerned the lawfulness of the Governor's production controls—not the Governor's antecedent decision to call up the militia in the face of what the Governor found to be an insurrection in the State. *See id.* at 401-402 ("Fundamentally, the question here is not of the power of the Governor to proclaim that a state of insurrection, or tumult, or riot, or breach of the peace exists, and that it is necessary to call military force to the aid of the civil power." "The question before us is simply with respect to the Governor's attempt to regulate by executive order the lawful use of complainants' properties in the production of oil.").

2. The district court and stay panel attempted to narrow *Martin* in two ways, neither of which holds water.

The district court first understood *Martin* to have turned on the identity of the plaintiff—a militiaman challenging the federalization—and on the fact that the case involved a "foreign invasion" rather than a "purely domestic" controversy. SA31-32. The stay panel agreed,

stressing the historical context of the British invasion. *Illinois v. Trump*, No. 25-2798, 2025 WL 2937065, at *5 (7th Cir. Oct. 16, 2025) (per curiam). But nothing about the rationale of this Court's decision should be limited to those particular facts.

To start, *Martin* expressly 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. Wholly apart from military discipline, the Court was concerned that "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" the judicial factfinder. *Id.* at 33.

Nor is there a basis for distinguishing between militiamen and their state-officer superiors. In *Martin*, the Court reasoned that "[i]f a superior officer has a right to contest the orders of the President upon his own doubts as to the exigency having arisen, it must be equally the right of every inferior officer and soldier." *Martin*, 25 U.S. at 30. Allowing that course of conduct would be "subversive of all discipline," so the President's decision must be conclusive on *all* persons. *See id.* at 31.

Given this language, it is clearly wrong to read *Martin* to apply to challenges brought by Guardsmen but not to apply to challenges brought by their superior officers, like the state officials here. After all, when state actors serve as "commander in chief of the [state] militia," they must be "subject" to "the orders of him who is made commander in chief of all the militia of the Union." *See Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 40 (1820) (Johnson, J., concurring).

Moreover, the *Martin* Court grounded its decision in the "nature of the power" at issue, meaning the President's authority to call the militia into federal service under his command—an authority that would be substantially undermined if "subordinate officers or soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the facts upon which the commander in chief exercises the right to demand their services." *Martin*, 25 U.S. at 30. Those concerns apply equally where, as here, the President calls up the National Guard to address violent unrest in a State, and elected state officials ask a court to reweigh "the evidence of the facts upon which the commander in chief exercise[d]" his authority. *Id.*

For similar reasons, the foreign invasion at issue in *Martin* is no point of distinction. First, the Court's analysis did not turn on the specific factual predicate necessary for the President to call forth the militia. *See Martin*, 25 U.S. at 29-31. Rather, the Court focused on the President's power and role in responding to exigent circumstances—whether that be an invasion, a rebellion, or an inability to enforce the laws. *See id.* And there is no reason to think the President would have unreviewable discretion for some decisions under Section 12406, *e.g.*, calling forth the militia in response to an invasion, while lacking similar discretion for other bases on which Guardsmen might be federalized. The text of the statute draws no such distinction. Nor did Joseph Story, *Martin*'s author, when he discussed whether the President is the "sole and exclusive" judge of the required exigency. *Commentaries* § 1205, at 89-90; *see also id.* § 1204, at 88-89 (noting Congress provided "like provisions" for all the bases on which the militia might be called forth). Even if there were some doubt, the Supreme Court itself applied *Martin* in the context of an entirely domestic dispute. *See Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849).

Separate from the facts at issue in *Martin*, the district court next understood modern developments in the political question doctrine as supporting reviewability of the President's federalization decision. SA31. But this misunderstands the relevant issue here. *Martin* stands for the proposition that, when Congress enacts a statute giving the President unreviewable discretion, courts lack authority to review decisions under that statute. It is that proposition, not the political question doctrine, that controls. And nothing in the Supreme Court's more recent decisions undermines that rule or its application here. The Supreme Court has continued to rely on *Martin* for the proposition that "calling up of [the] militia" is nonjusticiable, *see, e.g.*, *Baker v. Carr*, 369 U.S. 186, 213 (1962), and even outside the military context, the Court has repeatedly emphasized that "[h]ow the President chooses to exercise the discretion Congress has granted him is not a matter for [judicial] review." *Dalton v. Specter*, 511 U.S. 462, 476 (1994).

The district court and stay panel attempted to draw a distinction between the statutory text at issue in *Dalton* and the relevant text here. SA28; *Illinois*, 2025 WL 2937065, at *5. But that argument is irrelevant. The Supreme Court has already decided in *Martin* that language

indistinguishable from Section 12406 committed to the President's discretion any decision to federalize Guardsmen. Analogies to *Dalton*, or even this Court's disagreement with the outcome in *Martin*, do nothing to alter that conclusion.

B. The President's Invocation of Section 12406 Was a Lawful Response to Violent Threats to Federal Personnel and Property

Even if the President's determination to call up the Illinois National Guard were subject to review, the President acted well within the authority vested in him by Section 12406's provisions regarding both inability to execute the laws and the danger of rebellion.

1. The President's decision to call up Guardsmen, at minimum, must be entitled to "highly deferential" review. *Newsom v. Trump*, 141 F.4th 1032, 1040 (9th Cir. 2025). As even the district court recognized, the President enjoys broad discretion on matters of national security, particularly when exigent circumstances are involved. SA33-34; *see also Trump v. Hawaii*, 585 U.S. 667, 704 (2018). And federalization of the Guard is just such a circumstance. The President's power to command the militia "in times of insurrection and invasion" is a "natural incident[] to the duties of superintending the common defence, and of watching over

the *internal peace of the confederacy*." *Martin*, 25 U.S. at 30 (emphasis added) (quotation marks omitted). Accordingly, the President must be given wide latitude when invoking Section 12406—assuming such a decision is reviewable at all.

What is more, the nature of plaintiffs' claim demands great deference. Plaintiffs raise a nonstatutory *ultra vires* claim against the President's federalization decision. SA32, GA53. Even assuming that actions of the President could be reviewed on such a basis, *cf. Dalton*, 511 U.S. at 474, the Supreme Court has recently reiterated that nonstatutory *ultra vires* review must be "strictly limited" in order to prevent plaintiffs from circumventing the limitations Congress enacted in the APA and other modern judicial-review statutes, *NRC v. Texas*, 605 U.S. 665, 681 (2025). *Ultra vires* review is "a Hail Mary pass" that "rarely succeeds." *Id.* at 681-82 (quotation marks omitted). So any *ultra vires* review of federalization decisions must be especially circumscribed. To prevail, plaintiffs must prove that defendants acted "entirely in excess of [their] delegated powers and contrary to a *specific prohibition* in a statute." *Id.* at 681 (quotation marks omitted). A mere violation of law will not do. *See id.*

Thus, assuming judicial review is available, courts must limit their analysis to considering whether the President made a "colorable assessment of the facts and law within a range of honest judgment." *See Newsom*, 141 F.4th at 1051 (quotation marks omitted).

While purporting to give deference to defendants' decision, the district court nevertheless reasoned that defendants must identify "some of the facts upon which [they] base[] [their] conclusions" and offer "explanations which paint a substantially reasonable picture justifying the Executive's position." SA34. It also refused to defer to the President's colorable assessment of the law, SA33, creating a conflict with the Ninth Circuit's decision in *Newsom*, 141 F.4th at 1051. That apparently heightened standard was legal error. SA34. The President is entitled to great deference on both the facts and the law, and his decision need not be "reasonable"—just colorable. To the extent the district court applied rational-basis review, relying primarily on *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), that standard does not apply to plaintiffs *ultra vires* claims. There may be ways in which rational-basis review and "colorable" basis review under *Newsom* are similar, but those standards are not identical. And even if rational-basis review did apply, such

review requires upholding government action so long as there is a plausible basis for that action. *See Trump v. Hawaii*, 585 U.S. 667, 704 (2018); *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

2. Applied here, the President had a colorable basis in fact and law for federalizing the National Guardsmen in Illinois. The President reasonably determined that recent incidents of violence directed against DHS personnel and facilities in Illinois "impede the execution of the laws of the United States," and that "the regular forces of the United States are not sufficient to ensure the laws of the United States are faithfully executed, including in Chicago." GA177. Those judgments fully satisfied the third condition specified in Section 12406.

As the President explained in the October 4 memorandum, "[f]ederal facilities in Illinois . . . have come under coordinated assault by violent groups intent on obstructing Federal law enforcement activities." GA177. Federal officers in the Chicago area have been repeatedly assaulted and threatened. GA193, GA196, GA203, 207, GA228-29. Agitators have perpetrated coordinated ambushes of federal agents; attacked them with moving vehicles; thrown rocks, bottles, pepper spray, and other objects at them; shot fireworks at them, which can burn and

cause blindness and other significant injury when detonated at close range; and injured and hospitalized them. GA194, GA203-05, GA223-25. Rioters have also damaged federal buildings, rammed and vandalized federal vehicles, and blocked federal officers from entering or exiting the Broadview facility. GA192, GA199-204, GA223-25. An alleged leader of the Latin Kings gang in Chicago is being prosecuted for placing a bounty of $10,000 on the murder of a Border Patrol Chief. GA196, GA225. Indeed, the district court even seemed to recognize that defendants' declarants described "organized, repeated, violent, and increasingly hostile attacks on ICE agents, their personal property, and ICE property." *See* SA36.

Plaintiffs' own evidence confirms the dire situation in Chicago. One of plaintiffs' declarants described protests at Broadview with hundreds of people, GA133, and protests occurring "almost around the clock," GA133. Another declarant confirmed that on October 4, there was a collision involving a government vehicle at one location and that a large crowd formed at another location and threw objects at law enforcement. *See* GA234-35. Plaintiffs likewise acknowledged that protesters have impeded ICE operations by unlawfully blocking their vehicles from

entering and exiting an ICE building, GA91, and that protesters have attempted to break through lines of law enforcement officers, GA95.

These activities have substantially interfered with DHS's ability to enforce federal law in the Chicago area, including both federal immigration laws and federal laws protecting federal personnel and property. *See*, *e.g.*, GA207-08, GA219. Federal law enforcement officers have been diverted from their regular law enforcement responsibilities to protect federal personnel and property in Chicago. GA207-08, GA227. ICE has mandated 12-hour duty shifts for officers providing security to the Broadview facility and has been forced to redeploy personnel from around the country and across different ICE components, significantly impeding those officers' ordinary law enforcement missions. GA202-03, GA207-08. ICE has also solicited assistance from other DHS components as well as other federal agencies, undermining those agencies' own law-enforcement efforts. GA223, GA227, GA229.

Accordingly, the President was well within his authority to determine that repeated acts of violence in Illinois warranted invoking Section 12406. Violence and the threat of violence have both directly impeded DHS enforcement operations and rendered DHS unable to

enforce the federal laws that protect federal personnel and property. As a result, DHS has been forced to divert even more officers and resources away from law enforcement activities and towards the protection of federal buildings and personnel—exacerbating the problem.

To be sure, federal officers and agents have continued to attempt to accomplish their duties to the best of their ability in the face of coordinated violence and obstructive crowds. But that is not the relevant legal standard. Immigration enforcement in Chicago would be far more effective if DHS were not facing coordinated, prolonged, violent assault. And DHS would be far better situated to protect federal persons and property if it were not subject to constant threats of violence. The President, therefore, was well within his authority to federalize and deploy National Guardsmen to Illinois.

3. The district court disagreed, concluding that the President lacked any basis for invoking Section 12406(3). In reaching this conclusion, the district court misinterpreted the relevant statutory text and substituted its own judgment for that of the President.

First, the district court built its analysis on a deeply flawed understanding of Section 12406(3).

Contrary to the district court's view, Section 12406(3) cannot plausibly be read to require a complete failure of "the civil power" of the United States. The district court's own analysis belies any such conclusion. Historically, the militia could "only be called forth when the forces of obstruction were 'too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals.'" SA42 (quoting Act of Feb. 28, 1795, 1 Stat. 424). But Congress removed that requirement in the modern statutory text, thereby doing away with any requirement that the "civil power" fail before the militia may be deployed. *See* 10 U.S.C. § 12406(3). So the district court's heavy reliance on the fact that "federal facilities remain open" is without basis. *E.g.*, SA45.

Nor does Section 12406(3) require the President to be "completely precluded from executing the relevant laws" before he may call up the National Guard. *See Newsom*, 141 F.4th at 1051. *But see* SA37. To read the statute in that way would render Section 12406(3) a virtual nullity, in contravention of the "cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019)

(quotation marks omitted). Plaintiffs' reading would also be impossible to square with historical practice, including President Nixon's decision to call up the National Guard in 1970 in response to a postal strike. 35 Fed. Reg. 5003, 5003 (Mar. 24, 1970). That strike was initially localized: some postal employees continued to work, and some mail service continued. *See Nation: The Strike That Stunned the Country*, TIME (Mar. 30, 1970), https://time.com/archive/6875290/nation-the-strike-that-stunned-the-country/. Under the district court's flawed interpretation, the President could not have called up the Guard until delivery of all mail nationwide became completely impossible.

The district court viewed its all-or-nothing construction of Section 12406(3) as supported by dictionaries defining "unable" to mean "[n]ot able." SA37. The court understood those definitions to connote a "binary approach: ability or not, capability or not." SA37. But "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989), and the phrase "execut[ing] the laws" lacks any analogous binary connotation, 10 U.S.C. § 12406(3). That phrase instead echoes the constitutional language authorizing Congress to provide for

the calling forth of the militia to "execute the Laws of the Union," U.S. Const. art. I, § 8, cl. 15, as well as to the President's authority to "take Care that the Laws be faithfully executed," *id.*, art. II, § 3. Consistent with those background authorities and read as a whole, Section 12406(3) authorizes the President to call up the National Guard when he is unable to ensure the faithful execution of federal laws by those who regularly enforce the laws. He need not wait until all law-execution is impossible.

Separately, the district court misconstrued the "regular forces" in Section 12406 as limited to the standing military forces. *See* SA37. Section 12406(3) authorizes the President to call up the National Guard when he is "unable . . . to execute the laws," and "with the regular forces" qualifies that condition. Instead of asking whether the President is unable to execute the laws with the use of any and all federal officers and employees, the provision focuses on whether the President is unable to execute the laws "with the regular forces" in particular. Put differently, the term refers to a subset of federal actors—"the regular forces"—and asks whether the President is able to "execute the laws" with them, obviating the need to call up the National Guard. In this context, "regular forces" most naturally refers to the specific civilian forces that

regularly execute the laws at issue that are currently being obstructed. It is their inability to execute the laws that requires the use of the National Guard.

By contrast, it is unnatural in this context to construe "regular forces" to refer to the standing military. After all, the standing military does not "regular[ly]" "execute the laws." 10 U.S.C. § 12406(3). Indeed, under the PCA, the standing military is generally prohibited from "execut[ing] the laws," unless "expressly authorized by the Constitution or [an] Act of Congress." 18 U.S.C. § 1385. To be sure, the standing military can sometimes execute the laws under other federal statutes, such as the Insurrection Act. *See*, *e.g.*, 10 U.S.C. §§ 252, 253. And the standing military also can sometimes facilitate the execution of the laws pursuant to the President's Article II authority "to use troops for the protection of federal property and federal functions." *Authority to Use Troops to Prevent Interference With Federal Employees by Mayday Demonstrations and Consequent Impairment of Government Functions*, 1 Supp. Op. O.L.C. 343, 343-44, 343 (1971). Nevertheless, it would be odd for Congress to condition the President's ability to call up the National Guard to execute the obstructed laws on whether he is unable to execute

those laws with the standing military, given that the standing military typically cannot do so, in part due to another law passed by Congress.

The structure of Section 12406 underscores that "regular forces" refers to the civilian law-enforcement officers who regularly execute the obstructed laws. Unlike clause (3), clauses (1) and (2)—which authorize the President to call up the National Guard to address invasions and rebellions—do not impose a condition that he must first determine he is "unable" to address those threats "with the regular forces." This would be illogical under plaintiffs' interpretation, but makes perfect sense under defendants' interpretation. It makes perfect sense that the "regular forces" condition is included only in clause (3) if those forces refer only to the civilian law-enforcement officers who regularly execute the obstructed laws at issue. Civilian law-enforcement officers are typically ill-suited to respond to invasions or rebellions. By contrast, it would make no sense that the "regular forces" condition is included only in clause (3) if those forces refer to the standing military. After all, the standing military is far better suited to address invasions and rebellions than obstructions to civil law enforcement.

Moreover, this Nation has a longstanding norm favoring the use of the militia over the standing army to ensure the execution of the laws during domestic disturbances. That preference has its roots in the "widespread fear" at the Founding "that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States." *Perpich v. Department of Def.*, 496 U.S. 334, 340 (1990). Because of "[t]he sentiment . . . strongly disfavor[ing] standing armies[,] the common view [at the Founding] was that adequate defense of country and laws could be secured through the Militia—civilians primarily, soldiers on occasion." *United States v. Miller*, 307 U.S. 174, 179 (1939).

This view is echoed in the Constitution, which expressly allows the militia to execute the laws, while remaining silent as to the standing military's ability to do so. *See* U.S. Const. art. I, § 8, cl. 15. As James Madison explained, giving the federal government authority to call up the state militia was a "safe" option compared to reliance on the standing military. *See* 10 *The Documentary History of the Ratification of the Constitution* 1301 (John P. Kaminski & Gaspare J. Saladino eds., 1993). This is also how Joseph Story defended the Militia Clause. "[I]f the militia could not be called in aid" of civil authorities in cases of violent

opposition to the laws, then "it would be absolutely indispensable to the common safety to keep up a strong regular force in time of peace." *Commentaries* § 1196, at 81-82.

Given this historical preference for use of the militia to quell domestic disturbances, it would be anomalous to read Section 12406 as requiring deployment of the standing military before the militia could be called forth. And there is no basis to conclude that Congress broke from this historical tradition when it first used the words "regular forces" in the statutory predecessor to 10 U.S.C. § 12406(3). *See* Act of May 27, 1908, ch. 204, § 3, 35 Stat. 400 (amending Act of Jan. 21, 1903, ch. 196, § 4, 32 Stat. 776). This legislation sought to build on an earlier law meant to strengthen and modernize the militia, not to subordinate it to the standing army. *See Perpich*, 496 U.S. at 341-342; H.R. Rep. No. 57-1094 (1902) (noting the bill "would result in greatly improving the efficiency of the National Guard as the second line of the country's defense in time of war"); H.R. Rep. No. 60-1067 (1908) (noting that was also a purpose of the 1908 amendments to the law).

Post-enactment practice also confirms the meaning of "regular forces." In 1970, President Nixon found that a postal-worker strike was

"preventing the execution of" the postal laws and authorized the Secretary of Defense to call up the National Guard "to execute" those laws. 35 Fed. Reg. at 5003. In doing so, he invoked the statutory authority now codified at 10 U.S.C. § 12406(3). *See id.* (citing 10 U.S.C. §§ 3500, 3800 (1964)). And in finding that he was "unable solely with the regular forces" to execute the postal laws, he was clearly referring to the postal workers rather than the standing military. *See id.* After all, he also authorized the Secretary of Defense to use the standing military as necessary; he did not say that the standing military alone would be unable to solve the problem; and he did not direct that the National Guard could be used only insofar as the standing military proved insufficient. *See id.* Indeed, Presidents have traditionally used the standing military to execute the laws "only as a last resort" "when no other solution seem[ed] possible." *Use of Marshals, Troops, and Other Federal Personnel for Law Enforcement in Mississippi*, 1 Supp. Op. O.L.C. 493, 497 (1964) (quotation marks omitted).

In all events, the district court erred even if the "regular forces" in Section 12406(3) refers to the standing military. In calling up the National Guard in Illinois, the President "determined that the regular

forces of the United States are not sufficient to ensure the laws of the United States are faithfully executed." GA177 (quotation marks omitted). That determination did not specify who "the regular forces" were, much less exclude the standing military from consideration. *See* GA177. And the President had a colorable basis for concluding that use of the standing military, rather than the National Guard, would significantly impede execution of the laws, thereby justifying federalization under the standard announced in *Newsom*, 141 F.4th at 1052. Normally, "[w]hen the President exercises an authority confided to him by law, the presumption is[] that it is exercised in pursuance of law." *E.g.*, *Martin*, 25 U.S. at 32-33. There is no reason to depart from that presumption here.

There is especially no reason for such a departure since there was ample basis in the record for such a determination. DHS agents are facing violent resistance on the streets of Illinois—including ambushes where their vehicles are rammed by trucks and dangerous projectiles are thrown at them, potentially motivated by bounties placed on their heads by local gangs and transnational cartels. *See supra*, pp. 7-13. Compared to the standing military, whose primary function is to fight wars and kill

our enemies abroad, National Guardsmen, who are civilians temporarily called up to serve, have deep experience in deescalating domestic disturbances among their fellow citizens. In fact, one of respondents' own witnesses, a retired Army general, stated that soldiers in the standing army have "an aggressive mindset" because their "mission" is to "destroy the enemy," not "try to prevent confrontation and reduce the use of lethal force." GA154. Likewise, given the strident opposition of state and local political leaders, who are actively campaigning for DHS to leave Illinois and have compared federal agents to roving bands of violent criminals and Nazi troopers, *see* GA228, the President could reasonably have determined that deploying the standing military would result in even more strident resistance, resulting in even more tepid support from state and local police, *see* GA228.

Second, in addition to misunderstanding the statutory text, the district court did not give the President's federalization decision the deference it is owed.

Nowhere is this more apparent than in the district court's so-called "credibility" determination, discounting the testimony from all of defendants' declarants. The district court did not observe and assess the

declarants' testimony, nor did it resolve any specific factual dispute between the parties or conclude that any fact set forth in defendants' final declarations was not true. *See* SA12-13. Rather, the court questioned the federal declarants' "candor" and "ability to accurately *assess* the facts." SA12 (emphasis added). It ultimately concluded that the declarants' "perceptions are not reliable." SA13. But the court did so without articulating or applying any deference on whether those perceptions were at least colorable—the relevant standard. Indeed, it applied deferential review only to the "facts of this case as the [district] [c]ourt [had] found them." SA34. That was error. The district court was also required to defer to defendants' understanding of the basic facts, and its failure to do so amounts to substituting its judgment for that of the President.

Worse still, the district court based its "credibility" determination on extra-record materials that do nothing to undermine defendants' declarations. The court appears to have conducted its own investigation—based on evidence admittedly "outside of the record." GA340. The court proceeded to decide that nothing DHS or ICE officials said in their declarations could be credited because two grand juries have

failed to return indictments against violent, armed protestors[2] and other courts have issued preliminary rulings in legal proceedings wholly unrelated to the President's federalization decisions. SA12; GA339-41. That is the very definition of an abuse of discretion, and it is clear evidence the district court abdicated its responsibility to defer to the President.

That abdication crops up other places in the district court's opinion as well. Most notably, the district court concluded that "the factual conditions necessary" to invoke Section 12406(3) "simply do not exist." But it did so without considering defendants' evidence and based only on the Court's own characterization of the situation on the ground. SA45 (characterizing the disruptions as "of limited duration" and "swiftly controlled"). That is far from the deferential review required under the statutory text.

4. The President's action under Section 12406 was independently warranted under the provision authorizing him to call the

[2] There is, of course, an obvious risk of grand-jury nullification in some cases when state and local leaders publicly malign DHS officers as "jackbooted thugs" and a "rogue, reckless group of heavily armed and masked" vigilantes. GA228.

National Guard into federal service when "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). The district court erred in concluding otherwise.

The district court understood the term "rebellion" to "mean 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," *see* SA35, and the stay panel "substantially agree[d]," *Illinois*, 2025 WL 2937065, at *6. Under that approach, anything short of civil war is unlikely to clear the "very high threshold" that the district court perceived. SA35.

But the term "rebellion" is properly read to encompass the violent resistance to lawful enforcement of federal immigration law occurring in Illinois. Black's Law Dictionary defines rebellion to include "[o]pen resistance or opposition to an authority or tradition" and "[d]isobedience of a legal command or summons." *See Rebellion*, Black's Law Dictionary (12th ed. 2024). The same understanding prevailed in 1903, when Congress first enacted what is now Section 12406. *See* 32 Stat. at 776 (authorizing the President to call forth the state militias into active

federal service in the case of, among other things, "rebellion against the authority of the Government of the United States"). Dictionaries from the 1890s and 1900s define "rebellion" to focus on deliberate resistance to the government's laws and authority. *See Rebellion*, Black's Law Dictionary (1st ed. 1891) ("Deliberate, organized resistance, by force and arms, to the laws or operations of the government, committed by a subject."); *Rebellion*, An American Dictionary of the English Language (1900) ("Open resistance to lawful authority."); *Rebellion*, The Cyclopedic Dictionary of Law (1901) ("[T]he forcible opposition and resistance to the laws and process lawfully issued"); *Rebellion*, Webster's International Dictionary of the English Language (1903) ("Open resistance to, or defiance of, lawful authority.").

Congress plainly used "rebellion" in its broader sense in Section 12406. Otherwise, the provision would fail to encompass numerous instances, both before and after its initial enactment in 1903, in which the President has called the militia into federal service to address open defiance of federal authority in situations that fell short of organized efforts to overthrow the government.

Most famously, President Washington called up the militia to assist in suppressing the Whiskey Rebellion—a violent protest in western Pennsylvania targeted at tax assessors attempting to collect a federal excise tax on distilled whiskey. *See* Jennifer K. Elsea, Cong. Rsch. Serv., R42659, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law* 8 (2018) (CRS Report). President Washington took that action under a 1792 statute that did not by its terms refer to "rebellion." *See id.*; *see also* Act of May 2, 1792, ch. 28, §§ 1-2, 1 Stat. 264, 264. But when Congress later enacted statutes referring to a "rebellion," those statutes plainly extended to cover this original historical precedent of violent opposition limited to a particular federal law—precisely what occurred in Illinois, and what the district court and plaintiffs' flawed reading would not cover.

The Whiskey Rebellion, moreover, is only one example of a range of civil disorders that members of the militia and other federal military forces have long been called upon to address. Throughout the early years of the republic, Presidents routinely called out troops to suppress opposition to other federal revenue laws. *See* CRS Report 9-12. In the late 1800s and early 1900s, states frequently requested assistance from

federal troops to address violence stemming from labor disputes and miners' strikes. *See* CRS Report 13-14, 35-37. And Presidents Eisenhower and Johnson used the federalized National Guard to ensure the enforcement of federal civil rights laws and to protect civil rights advocates in the 1950s and 1960s. *See* CRS Report 37-38.

The events around Chicago exhibit many of the same features as these historical precedents—violent and forceful opposition to the lawful authority of the federal government in its enforcement of particular federal laws. *See supra*, pp. 7-13. Moreover, the statutory text makes clear that Section 12406(2) empowers the President to act when there is a "danger of a rebellion," even if a "rebellion" has not yet materialized. 10 U.S.C. § 12406(2). And the President had ample basis to find that the danger of a rebellion was present. *See supra*, pp. 7-13. To the extent the district court believed that the President was required to make some form of express written declaration of a "rebellion brewing" in Illinois before relying on Section 12406(2), the court was mistaken. SA36. Nothing in Section 12406 requires such a written finding, and the court identified no other provision purporting to require one. But in all events, the President *has* determined that violent resistance impeding law enforcement is a

form of rebellion, and that determination by its terms would cover the situation in Illinois. *See* GA180-81.

II. Plaintiffs Did Not Establish the Equitable Factors for Injunctive Relief

The district court's order should be vacated for the independent reason that plaintiffs did not show that the remaining stay factors warrant the "extraordinary relief of an injunction." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010).

1. Plaintiffs did not establish irreparable harm. That itself requires vacatur of the injunction. *See International Ass'n of Fire Fighters, Loc. 365 v. City of E. Chicago*, 56 F.4th 437, 446 (7th Cir. 2022) (holding irreparable harm is a "threshold" requirement). Initially, plaintiffs' claim of irreparable harm is implausible given the limited size and scope of the federalization. Only 300 members of the Illinois National Guard were called into federal service. That is approximately *eight percent* of the number of Guardsmen that were federalized and deployed to the Los Angeles area in June—in addition to approximately 700 Marines that deployed in Los Angeles. And even as to that much larger federalization and deployment, the Ninth Circuit held that "[b]oth irreparable harm and the public interest weigh in favor of [d]efendants,"

Newsom, 141 F.4th at 1054. The 300 Illinois National Guard members federalized also amounts to less than *three percent* of the Illinois National Guard. *See* GA159. The district court identified two supposed types of irreparable harms warranting an injunction here. Neither withstands scrutiny.

First, the district court held that plaintiffs will necessarily suffer a constitutional injury due to defendants' alleged Tenth Amendment violation. But as the district court recognized, the Tenth Amendment analysis here is entirely derivative of the question of whether Section 12406 authorizes the federalization and deployment. *Dalton*, 511 U.S. at 473 ("claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims"). Plaintiffs' claim is therefore fundamentally statutory, not constitutional, and alleged violations of a federal statute do not give rise to any presumption of irreparable harm. *See Starbucks Corp. v. McKinney*, 602 U.S. 339, 345-48 (2024). Nor can plaintiffs logically complain about the federalization and deployment of Texas Guard members, since plaintiffs lack any sovereign interest in the *federal status* of the Texas Guard—the only question at issue in this appeal.

Second, the district court found irreparable harm based on claims that the Guard's presence will purportedly lead to increased protests, supposedly requiring additional state resources. SA51-52. First of all, reliance on any such "harm" is improper because the argument is not based on anything the Guard will do, but on the theory that people the Guard does not control will protest the Guard's presence. A rioter's veto is unacceptable even when directed to constrain private activity; it certainly is not a valid basis for enjoining the President's acts in protection of federal officials and property. In any event, the court's prediction of how violent rioters will react to the presence of organized, lawful, armed force is implausible. Similar predictions by California officials were proven wrong in practice. Indeed, California recently sought to vacate the stay of the district court's injunction of the Los Angeles federalization and deployment, in part by arguing that "the California Highway Patrol has not seen any large-scale, protest-related activities in the area since June 19." *See* Motion at 11, *Newsom v. Trump*, No. 25-3727 (9th Cir. Oct. 7, 2025), ECF No. 126.1.

2. The federal government's significant interest in protecting federal personnel and property far outweighs any speculative harms

plaintiffs identified. The federal government has "an uncontested interest in the protection of federal agents and property and the faithful execution of law" and threats directed at federal personnel and property harm that interest. *Newsom,* 141 F.4th at 1054. The government also suffers irreparable harm when federal immigration officials are prevented from safely and successfully enforcing the law. That some individuals have protested peacefully, and that officers have been able to continue with some enforcement of the laws, does not diminish the threat posed by the agitators who have attacked and threatened federal personnel and property. Nor does it diminish the harms that follow from the substantial impediment to law enforcement that mob violence has created in the Chicago area. As explained above, the level of violence directed at immigration officials in Chicago has been the highest that a 23-year federal law enforcement veteran has seen and at points has eclipsed the violence in other cities. GA223, GA227-28. Federal officers have been physically attacked and seriously injured: one officer had his beard ripped from his face, and others have been hospitalized for injuries like torn ACLs. GA192-196, GA207. While driving, federal officers have been followed by groups of vehicles and

rammed by other drivers. GA225-27. ICE's facility located a few miles outside of Chicago, known as the Broadview Processing Center, has been a focal point of unrest—creating a significant risk of damage to federal property as well. GA198-206. Plaintiffs' speculative harms cannot outweigh the harm that would befall federal persons and property if the district court's injunction were affirmed.

CONCLUSION

The Court should vacate the district court's injunction.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Circuit Rule 32 because it contains 12,437 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ J. Kain Day
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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system on all counsel of record.

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CERTIFICATE OF RULE 30 COMPLIANCE

The appendix and short appendix include the materials required by Circuit Rule 30(a) and (b).

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