

No. 25A443

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, et al., Applicants

v.

STATE OF ILLINOIS AND THE CITY OF CHICAGO., Respondents.

On Application To Stay the Order Issued By The United States District Court For
The Northern District of Illinois And Request For An Immediate Administrative
Stay

**BRIEF AMICUS CURIAE OF COREY J. BIAZZO, ESQ.
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS¹

Amicus is a practicing civil litigation attorney, author and active duty U.S. Navy veteran, who has deployed abroad in service of this country and conducted extensive legal research and continuing legal education on constitutional law, as an attorney, including prior briefings before this Court. He has represented clients in cases involving federal and state constitutional provisions including *Hallandale Plaza, LLC v. New Tropical Car Wash, LLC*, 335 So.3d 712 (Fla. 4th DCA 2022), where the court reversed a trial court decision on due-process grounds.

SUMMARY OF ARGUMENT

President Donald J. Trump’s attempt to federalize the Illinois National Guard and deploy additional forces from Texas and other States into Illinois and the city of Chicago, seemingly for impermissible and impractical political purposes, such as intimidation of political opponents, local residents or political theater is unlawful, unconstitutional, and contrary to the plain text of 10 U.S.C. § 12406. The United States Department of Justice cannot satisfy the requirements for a stay because it cannot demonstrate a likelihood of success on the merits.

Section 12406 authorizes federalization of State National Guard units only in cases of invasion, rebellion, or inability to execute the laws with the regular forces. None of these conditions exist or ever existed in Illinois or within the City of Chicago. Civil law enforcement remains fully capable. By attempting to send Texas and other States’ National Guard units into Illinois without Congressional or State consent, the President asserts a power neither the Constitution nor any statute confers.

This case fits squarely within *Youngstown Sheet Tube Co. v. Sawyer*, 26 A.L.R.2d 1378, 343 U.S. 579, 96 L.Ed. 1153, 72 S.Ct. 863 (1952) Category Three: the President acts against Congress’s express will. The Posse Comitatus Act and Tenth Amendment of the U.S. Constitution bar the military from performing civilian law

¹ No counsel for any party authored this brief in whole or in part, and no person or entity, other than Biazzo has contributed money that was intended to fund preparing or submitting the brief.

enforcement functions. And the Founders explicitly rejected the use of standing armies to govern the civilian population.

Finally, the attempted erroneous domestic misuse of the U.S. military by President Trump is highly offensive to the longstanding and deeply rooted American traditions of liberty and highly disrespectful to the members of our apolitical armed forces. These courageous men and women likely did not join our fully volunteer military to serve as political pawns to satisfy one zealot politician in light of the U.S. military's obligation to serve to all Americans in accordance with the laws and Constitution of the United States, which each member of the U.S. military is legally and oath bound to protect and defend.

The motion for stay should be denied.

ARGUMENT

I. The President Lacks Statutory and Constitutional Authority to Federalize the Illinois or Other States' National Guard under 10 U.S.C. §12406

Section 12406 limits Presidential authority to federalize and domestically deploy units of the U.S. National Guard to three narrow conditions: (1) invasion; (2) rebellion; or (3) inability with the regular forces to execute the laws. None is present in Illinois or within the City of Chicago. As Judge April Perry found, and as the Seventh Circuit affirmed, routine protests do not constitute a rebellion and federal law continues to be executed without interruption.

The President's federalization of units from other States—most notably the Texas National Guard—exceeds even those limits. The Militia Clauses authorize Congress to call forth the militia “to execute the Laws of the Union, suppress Insurrections, and repel Invasions.” Art. I, § 8, cls. 15-16. They do not authorize the President to deploy one State's militia into another without consent.

To permit such action would invert the dual nature of the National Guard as both a State and Federal force. Each Governor is commander-in-chief of his or her State's Guard except when lawfully federalized. *Perpich v. Dep't of Defense*, 496 U.S. 334, 340 (1990). Federalizing Texas troops for occupation of Illinois violates that principle and commandeers the sovereignty of two States at once.

Such cross-state deployment is unprecedented in modern law. Congress has never authorized the President to use one State's militia to impose federal order within another. The statute's silence is dispositive; *Youngstown* teaches that where Congress has spoken or withheld power, the President may not fill the void with his own will.

II. *Youngstown Controls: The President Is Acting at His Lowest Ebb*

In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), this Court rejected President Harry S. Truman’s assertion of inherent authority to seize the steel industry during the Korean War. Justice Jackson’s concurring opinion provides the controlling framework. When the President acts against Congress’s express will, “his power is at its lowest ebb.” *Id.* At 637 (Jackson, J., concurring).

Here, Congress has set precise conditions for militia federalization and forbids domestic law enforcement by the armed forces. The President has disregarded both. No law authorizes him to federalize Illinois troops for crowd control or to send Texas soldiers into Chicago. This case therefore presents an even starker exercise of forbidden power than *Youngstown* itself.

The Constitution vests Congress—not the President—with authority to determine when the militia is called forth. Art. I § 8. By declaring a domestic emergency where none exists and appropriating the militia of multiple States to his own purposes, the President has placed himself beyond law. That is the very definition of what the Framers feared in executive power.

III. *The Posse Comitatus Act and Tenth Amendment Forbid Domestic Military Policing and Cross-State Deployments*

Once federalized, National Guard members become part of the regular forces under Title 10. The Posse Comitatus Act, 18 U.S.C. § 1385, prohibits the Army, the Navy, the Marine Corps, the Air Force, or the Space Force from executing civil laws except where Congress has explicitly authorized it. No such authorization exists here.

Using military personnel for “crowd control,” “facility protection,” or “access control” within the City of Chicago or within the State of Illinois is civilian law enforcement by another name. Deploying Texas’ or other states’ troops to perform these tasks is an even greater affront to the Constitution. The Tenth Amendment reserves to the States the police power to maintain order within their territories. To force Illinois to accept foreign troops against its Governor’s will is to override that sovereignty entirely.

As *Sterling v. Constantin*, 287 U.S. 378 (1932), held, the courts do not defer to a Governor—or a President—when a claimed “military necessity” invades civilian rights. If that is true for a State, it is doubly true for the Executive Branch when it invades a State.

IV. The Framers' Design and Founders Warning Against Standing Armies Reinforce the Unconstitutionality of This Domestic Military Deployment

The Founders viewed standing armies in peacetime as a hallmark of tyranny. The Declaration of Independence listed as a central grievance that King George III “Kept among us, in times of peace, Standing Armies without the Consent of our Legislatures.” That lesson informed the Militia Clauses and the Third Amendment of the U.S. Constitution.

James Madison wrote in Federalist No. 39 that “the States retain a residuary and inviolable sovereignty.” In Federalist No. 46, he described the State militias as “the ultimate guardians of their own liberties.” Alexander Hamilton in Federalist No. 29 emphasized that the militia “ought to be under the immediate control of the States.”

Allowing the President to use Texas or other States’ National Guard units to occupy Illinois and/or Chicago would nullify those principles. It would replace the federal system with a unitary command structure under the Executive—precisely what the Revolution and Constitution sought to prevent. The Framers created federalism to divide power; this application of § 12406 would consolidate it in one man.

V. The Equitable and Public-Interest Factors Weigh Decisively Against a Stay

A stay is an extraordinary remedy requiring a strong showing of likely success on the merits and irreparable harm. *Nken v. Holder*, 556 U.S. 418 (2009). The Department of Justice shows neither. The alleged harm is the temporary inability to carry out an unlawful order. The real harm is to the Constitution itself if that order proceeds.

Public interest and the balance of equities favor upholding the district court’s injunction. Preventing unauthorized military occupation of a State preserves civilian authority and the rule of law. As Justice Scalia observed, “our structural, mechanistic Constitution—pitting ambition against ambition—makes the Bill of Rights a living guarantee.” *Scalia Speaks* 163 (2017). Our Constitution’s intent and tradition should be upheld in this matter.

VI. Conclusion

The President’s claimed authority to federalize the Illinois National Guard—and to deploy units from Texas and other States into Illinois—finds no support in the Constitution or the laws of the United States.

10 U.S.C. § 12406 provides no textual basis for domestic occupation absent invasion, rebellion, or an inability to execute the laws with the regular forces. The

Posse Comitatus Act forbids using the military for civilian law enforcement. The Tenth Amendment reserves to the States the power to preserve order within their borders.

These principles reflect the lessons of our Founding. The Framers knew that standing armies quartered among the people erode liberty. They designed a federal system where State militias would serve as checks on national power—not as instruments of executive coercion against the States themselves.

To approve such action now would discard that wisdom and dissolve the very boundaries that preserve our Republic. The Constitution demands that the Court reaffirm those boundaries and reject executive efforts to circumvent them. Further, it is important that the honorable men and women in the apolitical U.S. military be kept out of hyper-partisan abuses of power and violations of U.S. law and the U.S. Constitution.

Finally, on at least four occasions members of this Court have articulated the vital principle that no person, including the President, is above the law. See *United States v. Burr*, 25 F. Cas. 30, 34 (C.C. Va. 1807) (No. 14,692d); *United States v. Nixon*, 418 U.S. 683, 713 (1974); *Clinton v. Jones*, 520 U.S. 681 (1997); *Trump v. Vance*, 140 S. Ct. 2412, 2431 (2020); *Trump v. United States*, 144 S.Ct. 2312, 219 L.Ed.2d 991 (U.S. 2024).

For these reasons, the Department of Justice’s Motion for Stay should be denied.

Respectfully submitted,

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