
In The Supreme Court of the United States

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT
OF THE UNITED STATES, ET AL.,
Applicants,

v.

STATE OF ILLINOIS, ET AL.,
Respondents.

On Emergency Application for Stay Pending Appeal
From the United States Court of Appeals for the Seventh Circuit

**AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE
IN SUPPORT OF APPLICANTS**

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INTEREST OF AMICUS¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including the President’s authority as commander in chief. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); or for amici, *e.g.*, *Trump v. United States*, 603 U.S. 593 (2024); *Trump v. Hawaii*, 585 U.S. 667 (2018); and *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571 (2017). The ACLJ has a strong interest in defending the constitutional separation of powers and ensuring that each branch of government operates within its proper sphere of authority. The ACLJ is particularly concerned here with preserving the President’s fundamental authority and responsibility to supervise executive officers.

INTRODUCTION

This case presents a question as old as the Republic itself: who decides when federal law cannot be executed and federal forces must be called forth to restore order? The answer, settled nearly two centuries ago and reaffirmed by this Court ever since, is the President alone.

The district court’s preliminary injunction represents an extraordinary judicial intrusion into the President’s constitutional authority as Commander in Chief and

¹ Pursuant to Supreme Court Rule 37.6, amicus curiae state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. This brief has been filed within the time allocated by this Court’s order.

his statutory responsibility to ensure faithful execution of the laws. By second-guessing the President’s determination that regular forces were insufficient for domestic law enforcement, the court below ventured into terrain this Court has repeatedly marked as beyond judicial competence. The injunction not only disrupts ongoing military operations but fundamentally misapprehends both the text of 10 U.S.C. § 12406(3) and the structural constitutional principles that animate it.

The statute’s language is clear: the President may federalize the National Guard when he is “unable with the regular forces to execute the laws.” Respondents would have this Court read “unable” to mean “exhausted”—requiring the President to deploy every available active-duty service member before calling up the Guard. But that interpretation faces a fundamental obstacle: the Posse Comitatus Act generally prohibits using active-duty military forces for domestic law enforcement. The President is therefore “unable with the regular forces” not because those forces have been consumed elsewhere, but because federal law forbids their deployment for the very mission at hand. Section 12406(3) exists precisely to fill this gap—authorizing Guard federalization when regular military forces cannot lawfully be used.

This construction finds powerful support in two centuries of unbroken practice. From President Washington’s response to the Whiskey Rebellion through President Adams’s suppression of Fries’s Rebellion and beyond, the calling-forth power has been understood to authorize military intervention when civilian law enforcement is inadequate to execute federal law. No President has ever been required to exhaust the standing Army before invoking militia authority. The threshold has always been

whether federal officials can safely perform their duties—not whether every last soldier has been committed to the task.

More fundamentally, this Court held long ago that such determinations belong exclusively to the President. In *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827), this Court confronted a militiaman who refused to answer the President’s call, arguing that courts could review whether the statutory prerequisites had been satisfied. The Court unanimously rejected that claim, holding that “the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons.” *Id.* at 30. Twenty-two years later, in *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849), the Court reaffirmed that presidential militia determinations present political questions beyond judicial review.

The separation of powers does not permit federal courts to superintend military deployments or countermand the President’s operational judgments. The district court’s contrary conclusion threatens to unravel the constitutional structure. If any federal judge can enjoin military deployments by questioning the President’s factual determinations, military operations become subject to the whims of conflicting district court orders. Unity of command dissolves into judicial chaos. And the President—accountable to the electorate for his decisions in war and peace—finds his constitutional authorities shackled by courts wielding equitable powers never intended to reach so far.

Respondents ask this Court to overturn nearly two centuries of settled law and practice. They seek judicial authority to examine the President’s military judgments,

demand justification for his operational decisions, and enjoin deployments the President deems necessary to protect federal personnel from violent attack. This Court should decline the invitation. The stay should issue, the injunction should be vacated, and the question of whether the President properly invoked § 12406(3) should be recognized for what *Martin* and *Luther* held it to be: a political question committed to the President’s discretion.

ARGUMENT

I. THE PRESIDENT’S CONSTITUTIONAL AND STATUTORY AUTHORITY TO FEDERALIZE THE NATIONAL GUARD IS BEYOND JUDICIAL REVIEW.

The power to call forth and govern the militia lies with the President, not the courts and certainly not plaintiffs with differing policy goals. The President lawfully invoked 10 U.S.C. § 12406(3) to protect federal personnel from sustained violent attacks. This Court’s question about “regular forces” is dispositive. While that term may include active-duty military, the Posse Comitatus Act prohibits them from ordinarily engaging in domestic law enforcement. The President is therefore “unable with the regular forces” to execute many federal laws—not because such forces have been exhausted, but because they cannot lawfully be deployed. Section 12406(3) authorizes Guard federalization to fill this gap. Two centuries of practice confirm this understanding. And twice this Court has held that presidential militia determinations are unreviewable: *Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 30 (1827); *Luther v. Borden*, 48 U.S. (7 How.) 1, 43 (1849). Those decisions establish the outcome here.

A. 10 U.S.C. § 12406(3) CANNOT REQUIRE THE USE OF THE ACTIVE-DUTY MILITARY FOR DOMESTIC LAW ENFORCEMENT DUE TO THE POSSE COMITATUS ACT.

This Court has directed the parties to address whether the term “regular forces” in 10 U.S.C. § 12406(3) refers to the regular forces of the United States military, and if so, how that interpretation affects the operation of the statute. When the two questions are asked together, the answer is straightforward. To the extent “regular forces” is interpreted to mean the standing, active-duty military, this interpretation, far from rendering the statute inoperable, explains precisely how and why § 12406(3) functions as Congress intended. Section 12406(3) provides:

Whenever . . . 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 execute those laws.

10 U.S.C. § 12406(3).

Parties and amici have argued that “regular forces” is naturally and necessarily read as referring to active-duty military, and amicus concedes that “regular forces” is a term that has been used to describe the active-duty military. *Perpich v. Dep’t of Def.*, 496 U.S. 334, 341-42 (1990) (quoting First Annual Message to Congress, Dec. 3, 1901, 14 Messages and Papers of the Presidents 6672). But this interpretation—far from creating problems—*explains precisely why § 12406(3) operates as Congress intended*. Because the Posse Comitatus Act prohibits using those forces for domestic law enforcement, the President is “unable with the regular forces” to execute many federal laws, necessitating Guard federalization.

Understanding how “regular forces” operates within § 12406(3) requires

examining a critical constraint: the Posse Comitatus Act. 18 U.S.C. § 1385 prohibits anyone from willfully using any part of “the Army, the Navy, the Marine Corps, the Air Force, or the Space Force . . . to execute the laws,” “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.” This statute, on its face, prohibits the use of the regular forces of the United States from engaging in law enforcement. To use the military for such a purpose, therefore, the President must be able to properly invoke an express statutory authority. Otherwise, the standard armed forces of the United States are not one of the President’s law enforcement tools.

While the Act contains exceptions for situations “expressly authorized by the Constitution or Act of Congress,” those exceptions are narrowly construed, nor does a party claim that an exception applies here. When the Guard is federalized under § 12406, it becomes part of the active military in certain respects, and can perform security missions under federal command. But critically, § 12406 does not authorize deployment of regular Army, Navy, Air Force, or Marine Corps personnel for civilian law enforcement. Those expressly identified forces remain constrained by Posse Comitatus. This creates the essential dynamic that makes § 12406(3) operational: The President may be “unable with the regular forces to execute the laws” precisely because Posse Comitatus ordinarily prohibits using the listed military forces for law enforcement. These forces may be “regular forces” in many senses; they exist and they are capable. But they cannot lawfully be deployed for the civilian law enforcement mission. When federal law prohibits deploying regular forces for a particular mission,

the President is “unable with” those forces to accomplish that mission—regardless of how many divisions sit idle at Fort Bragg. A President facing violent resistance to immigration enforcement cannot lawfully and ordinarily deploy the 82nd Airborne to arrest immigration violators, no matter how many paratroopers are available. The Posse Comitatus Act forbids it. The President is therefore “unable with the regular forces” to execute immigration laws in that circumstance.

The statutory phrase is “unable with the regular forces,” not “unable because all regular forces have been exhausted.” This distinction is fundamental to understanding how the statute operates. When federal law prevents regular forces from being deployed for a particular mission, the President is “unable with” those forces to accomplish that mission—regardless of whether the forces theoretically exist elsewhere. It means that regular forces, in their ordinary capacity and subject to legal and practical constraints, cannot adequately address the domestic emergency. When that condition is satisfied, the President may invoke § 12406 to federalize the Guard.

If “unable” were to mean “exhausted,” then the President would have to deploy regular forces before federalizing the Guard. But the Posse Comitatus Act expressly prohibits deploying those forces for the mission at hand; hence, the President cannot exhaust them—he cannot lawfully use them at all. Respondents’ interpretation would thus require the President to do what federal law forbids as a prerequisite to invoking his statutory authority. That makes no sense.

B. THE HISTORICAL TRADITION OF THE MILITIA ACTS DEMONSTRATES THAT PRESIDENTS HAVE BROAD AUTHORITY TO FEDERALIZE THE NATIONAL GUARD.

History reinforces this understanding of the plain text. For more than two centuries, Presidents, as discussed below, have federalized militia forces to execute federal law when civilian enforcement proved inadequate—without first exhausting the standing Army. This unbroken practice confirms that “unable with the regular forces” has never meant after exhausting every last soldier. Presidents have invoked militia authority when civilian law enforcement proved inadequate—regardless of whether the regular Army had been committed. Section 12406 stands at the end of a long statutory lineage extending to the Founding Era. *See Oregon v. Trump*, 2025 U.S. App. LEXIS 27248, *49 (9th Cir. Oct. 20, 2025) (Nelson, J., concurring). The statutory history of militia authorizations set the stage for this practice.

The Militia Act of 1792, enacted by the First Congress and signed by President Washington, stated:

[t]hat whenever the laws of the United States shall be opposed or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, the same being notified to the President of the United States, by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia to suppress such combinations, and to cause the laws to be duly executed.

Act of May 2, 1792, ch. 28, § 2, 1 Stat. 264.

This statute implemented the Militia Clause and represented the Founding generation’s considered judgment about when federal military intervention in domestic affairs was appropriate. Understanding the historical application of this

statute and its successors illuminates the proper interpretation of § 12406 and demonstrates that the President’s invocation of the statute in this case falls squarely within established practice.

The Militia Clause grants Congress power “[t]o 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. This provision reflected the Framers’ understanding that the militia—composed of citizen-soldiers who retained their civilian lives and occupations—would serve as a critical resource for domestic emergencies. The First Congress acted quickly to implement the Militia Clause. Congress first delegated its constitutional “calling forth” power to the President in the Militia Act of 1792, *see* ch. 28, §§ 1-2, 1 Stat. 264, 264 (repealed 1795). Congress renewed that delegation in the Militia Act of 1795, *see* ch. 36, § 1, 1 Stat. 424, 424. The 1795 Act was a precursor to the Militia Act of 1903, *see* Pub. L. No. 57-33, §§ 1, 4, 32 Stat. 775, 775-76, which is a precursor to § 12406.

The Militia Act of 1792 authorized presidential deployment of militia forces when federal law could not be executed through ordinary judicial proceedings. Significantly, the statute did not require proof that every other resource had been exhausted. It required only a determination that combinations opposed or obstructed federal law and were “too powerful to be suppressed by the ordinary course of judicial proceedings.” Act of May 2, 1792, ch. 28, § 2, 1 Stat. 264.

The 1792 Act was soon tested. In 1791, Congress enacted a federal excise tax on distilled spirits to help pay Revolutionary War debts. *See* AKHIL REED AMAR, THE

WORDS THAT MADE US 382-85 (2021). Farmers in western Pennsylvania, who distilled excess grain into whiskey, viewed the tax as oppressive and unfair. *Id.* Rather than seeking redress through the political process, they responded with violence. *Id.* at 382. Tax collectors were tarred and feathered. An armed force of several thousand protesters assembled and marched on Pittsburgh, threatening to burn the city. *Id.* Federal officials could not safely perform their duties. The federal excise law could not be executed in western Pennsylvania.

President Washington concluded that the situation required militia intervention. In August 1794, he issued a proclamation invoking the Militia Act and calling up approximately 13,000 militia members from Pennsylvania, New Jersey, Maryland, and Virginia. Washington personally led this force into western Pennsylvania, and the show of overwhelming federal power quickly dispersed the rebels without significant bloodshed. *Id.*

This Whiskey Rebellion established critical precedents that remain relevant today. First, militia deployment was appropriate even though the violence was localized to a specific region and directed at enforcement of a single federal law (the whiskey tax) rather than at the government as a whole. Second, the President's determination that militia forces were necessary was not questioned by Congress, the courts, or contemporary commentators. Washington did not have to prove that every marshal and federal judge had been assaulted, or that federal authority had completely collapsed, before invoking militia authority. He determined that federal officials could not safely execute the whiskey tax laws, and that determination was

accepted as within his discretion. Third, no one suggested that Washington was required to deploy all available regular Army forces before calling up the militia. Washington did not first commit every soldier before invoking militia authority. The militia was understood as an appropriate resource for domestic disturbances even when regular forces existed.

Fries's Rebellion in 1799 reinforced these lessons. In response to a federal property tax enacted to fund potential war with France, farmers in eastern Pennsylvania intimidated tax assessors and prevented them from performing their duties. Frederic D. O'Brien, *The Fries Rebellion*, AMERICAN HERITAGE (Apr. 1999), <https://perma.cc/H8EF-CN4S>. In the most serious incident, John Fries led a group that freed tax resisters from federal custody. *Id.* The federal marshals could not contain the violence in this geographic area and ensure federal law was faithfully executed. *Oregon v. Trump*, 2025 U.S. App. LEXIS 27248, *53. "All in all, this unrest never exceeded more than 150 men." *Id.* at *52. President Adams invoked militia authority and deployed 500 federal troops to restore order. *Id.* at *53. The deployment was successful—federal authority was restored without significant bloodshed, and the tax laws could again be executed.

Fries's Rebellion demonstrates that militia authority extends to relatively small-scale disturbances when those disturbances prevent execution of federal law. The rebels numbered no more than 150 scattered across several counties. Yet no one questioned Adams's authority to deploy federal troops. The critical fact was that federal officials could not safely execute the tax laws—not the scale of the rebellion

or the number of rebels involved.

These historical precedents are directly applicable to the present case. In both the Whiskey Rebellion and Fries's Rebellion, citizens used violence and intimidation to prevent federal officials from executing federal laws they opposed. Federal tax collectors in the 1790s faced the same kinds of threats that ICE officers face today: physical assault, property destruction, and threats to their families. The fact that modern protesters might be characterized by some as "activists" rather than "rebels" does not change the fundamental reality that federal officials cannot safely perform their duties in the face of organized violent resistance.

Judge Nelson's concurring opinion in *Oregon v. Trump* properly recognized these parallels:

President Trump's September 28 deployment falls within the history and tradition of the early Militia Acts. Individuals within a group of about 200 people have engaged in violent activity in opposition to a single set of laws that carry out federal immigration enforcement. Rather than try to enact political change through the ballot box, they have assaulted the federal officers in Portland who enforce those laws and other Americans who disagree with them on the wisdom of those laws. They tried to burn down a federal building and forced that building to close for three weeks.

Oregon, 2025 U.S. App. LEXIS 27248, *54-55 (Nelson, J., concurring).

If Presidents Washington and Adams properly invoked militia authority to suppress violent resistance to federal tax collection, then President Trump properly invoked § 12406(3) to protect federal immigration facilities and personnel from violent attacks designed to prevent execution of federal immigration laws.

C. **PRESIDENTIAL DETERMINATIONS UNDER THE MILITIA ACTS ARE UNREVIEWABLE.**

This Court has twice held that presidential determinations under the Militia Acts are conclusive and unreviewable. *Martin v. Mott*, 25 U.S. 19 (1827); *Luther v. Borden*, 48 U.S. 1 (1849). Under those two cases, whether the President has lawfully invoked § 12406 presents a political question the courts cannot review. The Constitution assigns to Congress and the President the power to determine when to call the National Guard to federal service, and that determination is not reviewable in court. Once Congress has authorized the President to call forth the militia when certain exigencies are present, this Court has emphasized that “the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons.” *Martin*, 25 U.S. at 30.

In *Martin*, 25 U.S. 19, this Court addressed the scope of judicial review of presidential decisions under the Militia Act of 1795. The case arose during the War of 1812, when President Madison invoked the Militia Act to call up state militias for national defense. Jacob Mott, a private in the New York militia, refused to report for duty. *See* 25 U.S. at 28. He was court-martialed and fined, and the State seized his property to satisfy the debt. *Id.* Mott then brought an action for replevin in state court, arguing that the seizure was illegal because President Madison’s order federalizing the militia was invalid. *See id.*

The lower court agreed with Mott, holding that courts could review whether the President had correctly determined that an invasion or imminent danger of invasion existed. This Court reversed. Writing for a unanimous Court, Justice Story

cut to the heart of the matter. The Militia Act gave Congress's calling-forth power to the President "[when] the exigency" requiring militia intervention "has arisen." *Id.* at 29. That delegation raised a fundamental question: "by whom is the exigency to be judged of and decided?" *Id.* at 29-30.

The answer could not be left to individual officers or militiamen. If every person subject to militia orders could decide for himself whether the statutory conditions were satisfied, military operations would become impossible. Neither could the answer be left to courts. Judicial review of whether an invasion threatened would paralyze the national defense. The Court answered that question by stating that "the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons." *Id.* at 30.

This conclusion rested on two foundations. First, the nature of the power itself. Military operations "upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union" require immediate response. *Id.* "[E]very delay, and every obstacle to an efficient and immediate compliance, necessarily tend to jeopardize the public interests." *Id.* Courts cannot review such decisions without undermining their effectiveness.

Second, the statutory text. The Court explained that "the language of the act of 1795" supported its "conclusion drawn from the nature of the [delegated] power itself." *Id.* at 31. The Court followed the "sound rule of construction" that "[w]henver a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, . . . the statute constitutes him the sole and exclusive

judge of the existence of those facts.” *Id.* at 31-32 (emphasis added). The Militia Act of 1795 authorized the President to call forth the militia when he may judge necessary. That language committed the determination to presidential discretion. “The law does not provide for any appeal from the judgment of the President, or for any right in subordinate officers to review his decision, and in effect defeat it.” *Id.* at 31.

Martin thus established a categorical rule: When Congress authorizes the President to deploy the national guard based on his determination that specified conditions exist, that determination is unreviewable. Courts have no authority to second-guess whether the President correctly assessed the facts or properly invoked his statutory authority. Justice Story explained that this allocation of authority was essential to the constitutional scheme and concluded that the President alone must make this determination:

We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress.

Id. at 30.

Twenty-two years later, the Supreme Court reaffirmed *Martin* in *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849). *Luther* arose from the Dorr Rebellion in Rhode Island, a conflict between competing claimants to state governmental authority. President Tyler determined that the charter government was the legitimate government and authorized use of militia if necessary to suppress the rebellion. *Id.*

at 43. Plaintiffs argued that courts could review whether the charter government was in fact the lawful government and whether President Tyler properly determined that a rebellion existed. *Id.* Chief Justice Taney, writing for the Court, held that both determinations were unreviewable political questions.

On the militia question, the Court relied squarely on *Martin*. The Militia Act of 1795 gave “the power of deciding whether the exigency had arisen . . . to the President.” *Id.* The Court made the implication clear:

After 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? . . . If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order.

Id.

Luther confirmed that *Martin*’s principle applies with equal force to domestic disturbances. Whether the threat comes from foreign invasion or domestic insurrection, the President’s determination that militia intervention is necessary remains unreviewable. Courts cannot inquire into the factual basis for that determination or substitute their judgment for his. “[T]he power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President.” *Id.*

Section 12406 descends in a straight line from the Militia Acts of 1792 and 1795 that *Martin* and *Luther* interpreted. The statutory language is materially identical. The Militia Act of 1795 authorized the President to call forth the militia “as he may judge necessary.” *Martin*, 25 U.S. at 31. Section 12406 authorizes the

President to call the Guard “in such numbers as he considers necessary.” 10 U.S.C. § 12406(3). Both statutes commit the determination to presidential discretion.

The question here is the same question *Martin* answered: Who decides whether the statutory prerequisites for federalizing the Guard have been satisfied? *Martin* held that decision “belongs exclusively to the President.” 25 U.S. at 30. That answer has not changed. Respondents cannot distinguish these precedents. They might argue that *Martin* involved foreign invasion while this case involves domestic law enforcement. But *Luther* forecloses that distinction. *Luther* involved purely domestic turmoil—a political dispute within Rhode Island—yet the Court held that the President’s militia determination was unreviewable. The source of the threat does not matter.

Respondents might argue that *Martin* and *Luther* are outdated relics from an era when judicial review was less developed. But this Court has repeatedly reaffirmed their continuing validity. *Zivotofsky v. Clinton*, 566 U.S. 189, 206 & 206 n.1 (2012) (Sotomayor, J., concurring in part and concurring in the judgment) (citing *Luther* and in a footnote citing *Martin* for the proposition that “courts are particularly ill suited to intervening in exigent disputes necessitating unusual need for ‘attributing finality to the action of the political departments.’” (quoting *Coleman v. Miller*, 307 U.S. 433, 454 (1939))); *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007) (citing *Luther*); *Clinton v. Jones*, 520 U.S. 681, 700 n.34 (1997) (citing *Luther*). This Court’s conclusion is clear: “*Martin* and *Luther* categorically hold that the President’s decision in this area is absolute.” *Oregon v. Trump*, 2025 U.S. App. LEXIS 27248, *46 (9th Cir. Oct. 20, 2025)

(Nelson, J., concurring). Indeed, Congress has repeatedly reenacted § 12406's predecessor statutes without disturbing the *Martin/Luther* framework. That legislative acquiescence confirms that presidential militia determinations remain unreviewable. Congress knows how to provide for judicial review when it wants courts involved. It has not done so here. Whether the President has lawfully invoked § 12406 is a political question the courts cannot review.

D. THE POLITICAL QUESTION DOCTRINE BARS JUDICIAL REVIEW OF MILITARY AND FOREIGN AFFAIRS DECISIONS.

Even apart from *Martin* and *Luther*, the political question doctrine bars judicial review of the President's § 12406 determination. In *Baker v. Carr*, this Court identified several factors indicating the presence of a political question, including:

[1] A textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. 186, 217 (1962).

These factors weigh in favor of finding a political question here. The Constitution textually commits militia authority to Congress, which has delegated that authority to the President. U.S. Const. art. I, § 8, cl. 15. Congress exercised that power by enacting § 12406, which provides that “the President may call into Federal service members and units of the National Guard . . . in such numbers as he considers necessary.” 10 U.S.C. § 12406(3) (emphasis added). That language commits the

decision to the President’s judgment, not judicial review.

Second, no judicially discoverable and manageable standards exist for determining when “the President is unable with the regular forces to execute the laws.” How many troops must be committed? What level of risk to federal personnel is acceptable? When do surge deployments become unsustainable? These questions require assessment of military capabilities, threat levels, resource allocation, and operational readiness—matters within executive expertise, not judicial competence. Courts lack the tools, the information, and the institutional capacity to make such judgments.

Third, deciding whether regular forces are sufficient requires policy determinations clearly for executive discretion. Should the President prioritize protecting federal immigration officers in Chicago over other missions? How should limited military resources be allocated among competing demands? What operational risks are acceptable? These are quintessential executive policy judgments.

Fourth, once the President has determined that Guard deployment is necessary and orders that deployment, an unusual need exists for unquestioning adherence to that decision. Military operations require unity of command and prompt execution. Judicial intervention disrupts operations, undermines military discipline, and creates confusion in the chain of command. As this Court recognized in *Martin*, “every delay, and every obstacle to an efficient and immediate compliance, necessarily tend to jeopardize the public interests.” 25 U.S. at 30.

Fifth, multiple courts issuing conflicting orders regarding troop deployments

creates the potential for embarrassment and chaos. The district court here enjoined federalization. But other district courts in other circuits might reach different conclusions. The result would be a patchwork of conflicting judicial orders, each purporting to superintend military operations within their geographic jurisdictions. The President would face the impossible task of complying with contradictory court orders while maintaining effective command and control.

These factors reinforce what *Martin* and *Luther* established: military deployment decisions are committed to the political branches, and courts lack the competence and authority to review them. The political question doctrine independently bars the relief Respondents seek. Military affairs present political questions. In *Gilligan v. Morgan*, 413 U.S. 1 (1973), the Court held that judicial supervision of National Guard training and operations was inappropriate:

[I]t is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the Legislative and Executive Branches.

Id. at 10. The President must assess threats, evaluate capabilities, and make judgments about acceptable levels of risk. Requiring him to justify those judgments to courts—particularly during ongoing emergencies—undermines executive authority and endangers personnel and operations.

CONCLUSION

For the foregoing reasons, Amicus Curiae the American Center for Law and Justice respectfully asks this Court to issue a stay of the District Court's preliminary injunction.

Respectfully submitted,

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