

Case Summary: *Donald J. Trump, President of the United States, et al. v. Illinois, et al.* (Docket No. 25A443), 25A443 (U.S. Dec. 23, 2025)

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Following the inauguration of President Donald Trump in his second term in office, the federal government has largely increased immigration-enforcement activities throughout the United States, with the stated focus of deporting and removing undocumented immigrants. Within Chicago, federal immigration-enforcement efforts have encountered significant resistance.¹ According to the Government, federal officers have been obstructed, threatened, and assaulted in pursuit of their official duties.² Moreover, the Government alleges that an Immigration Customs and Enforcement processing center located in Broadview, Illinois has been the site of frequent violent protests that have impeded its efforts in enforcing federal immigration laws.³

In response to this backlash, on October 4, 2025, President Donald Trump called 300 members of the Illinois National Guard (“Guard”) into active federal service to protect federal personnel and property in Illinois, specifically in areas in

¹ *Trump v. Illinois*, No. 25A443, slip op. at 1 (U.S. 2025).

² *Id.*

³ *Id.*

and around Chicago.⁴ The following day members of the Texas National Guard were also federalized and sent to Chicago.⁵ In calling forth the Guard the Government relied on 10 U. S. C. §12406(3), a statute which purportedly empowers the President to federalize members of the Guard if “unable with the regular forces to execute the laws of the United States.”⁶

In response to Trump’s federalization of these troops, the United States District Court for the Northern District of Illinois entered a temporary restraining order barring the federalization and deployment of the Guard in Illinois.⁷ The U.S. Department of Justice (US DOJ) immediately sought appellate review at the Seventh Circuit. The Seventh Circuit denied any sort of relief for the executive branch, largely in part for the Government’s justification for stay permitting the Guard to remain federalized.⁸ The US DOJ then sought review of the 7th Circuit and lower court rulings before the U.S. Supreme Court, seeking a stay to the District Court’s order on an emergency basis.⁹ During the Court’s review process, the parties were instructed to file supplemental briefs on the meaning of the term “regular forces” in §12406(3).¹⁰ The Government posited that the term refers to civilian law enforcement officers, such as those employed by the Immigration Customs and Enforcement Agency.¹¹ The State of Illinois maintained that the term

⁴ *Id.* at 2.

⁵ *Id.*

⁶ 10 U.S.C. § 12406(3).

⁷ *Trump v. Illinois*, No. 25A443, slip op. at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2–3.

refers to regular forces of the United States military.¹²

In a 6-3 decision, Chief Justice Roberts, Justice Sotomayor, Justice Kagan, Justice Barrett, Justice Jackson, and Justice Kavanaugh, in a “per curiam” order on the emergency docket, concluded that the term “regular forces” likely refers to the regular forces in the United States military.¹³ This interpretation implies that to call the National Guard into active federal service the President must be unable with the regular military to execute the laws of the United States.¹⁴ The contention with this implication is twofold.¹⁵ First, the statute requires an assessment of the military’s ability to execute laws; it likely would only apply to when the military was the only actor who could execute such laws.¹⁶ Such a circumstance is rare, as defined by the Posse Comitatus Act, the military is prohibited from “executing the laws” “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.”¹⁷ 18 U. S. C. §1385.¹⁸ Concerning the second leg of this issue, the Government has yet to put forth a source of authority that would constitute the execution of these laws in Illinois.¹⁹ The President has not invoked a statute that provides an exception to the Posse Comitatus Act, instead exclusively relying on inherent constitutional authority.²⁰ However, in line with the

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (per curiam).

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ 18 U.S.C. § 1385.

¹⁹ *Trump v. Illinois*, No. 25A443, slip op. at 4.

²⁰ *Id.*

longstanding view of the Executive Branch, an executive order does not constitute “executing the laws.”²¹ With this interpretation, the Government has not in this instance provided sufficient evidence to prove its burden to show that §12406(3) permits the President to federalize the Guard in the exercise of inherent authority to protect federal personnel and property in Illinois.²²

Justice Kavanaugh concurs in judgment through the lens of narrowing the grounds for which the judgment is denied.²³ In agreeing with the definition of regular forces as stated in the majority opinion, there is a further emphasis on the President’s determination of the statute.²⁴ On the current record, there is yet to be any sort of determination that the Government is “unable” with the U.S. military, as distinct from federal civilian law enforcement officers to ensure execution of federal law in Illinois.²⁵ Kavanaugh posits that the Court need not decide more, for the further analysis put forth could lead to potentially significant implications for further crises that the Court cannot foresee.²⁶ Before the Court addresses far-reaching statutory questions they must at least invite further briefing or an oral argument.²⁷

Justice Alito, with whom Justice Thomas joins, delivers a lengthy and rather scathing dissent concerning the unnecessary departure from standard practice onto

²¹ *Id.* at 4–5.

²² *Id.* at 5.

²³ Kavanaugh, J., concurring in judgment, *Trump v. Illinois*, No. 25A443, slip op. at 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1–2.

²⁷ *Id.* at 2.

which there is no relevant legal precedent nor comprehensive briefing for.²⁸ Within the lower courts, the parties had agreed upon this definition that “regular forces” means civil federal law enforcement with the State of Illinois distinctly adopting this viewpoint in the District Court.²⁹ It was only within the argument before the Supreme Court in which this definition changes, contrary to their position below, that “regular forces” means the military.³⁰ In accepting this eleventh hour argument, the Court has significantly departed from past precedent in which even if the Justices had doubts over the interpretation of the phrase “regular forces” it could assume for the sake of the argument that the parties interpretation was correct.³¹ Secondly Justice Alito posits that the interpretation of “regular forces” is practically implausible.³² If the term “regular forces” means federal civilian law enforcement officers, that would mean the President would have to determine that immigration laws would have to put on hold every other law enforcement agency in the country, including every member of the FBI, Secret Service, postal service, deputy marshal, would have to prove their incapability of dealing with the situation at hand.³³ Instead, there must be an emphasis on how “unable” is interpreted within our day-to-day context.³⁴ A person may say he or she is “unable” to perform a duty simply because the adverse consequences of performing that act would be

²⁸ Alito, J., dissenting, *Trump v. Illinois*, No. 25A443, slip op. at 1.

²⁹ *Id.*

³⁰ *Id.* at 1–2.

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.* at 3.

³⁴ *Id.*

unacceptable.³⁵ This exceedingly high standard for how we define the most basic words in our legal jargon, sets an impossible standard for the Government to function within any sort of execution, if the Court is termed it with such a binary approach.³⁶

Justice Gorsuch dissents under the open-ended questions the Court's interpretation leaves for how the National Guard and U.S. Military may play in domestic law enforcement.³⁷ The conclusion given forth by the Court leaves a looming question over when, if ever, may the federal government deploy the professional military for domestic law enforcement purposes consistent with the Constitution.³⁸ In taking a more cautious approach, Justice Gorsuch decides this application narrowly based on *United States v. Sineneng-Smith*, 590 U. S. 371, 375 (2020).³⁹ Within this briefing the Court decided §12406(3) permits the President to call up and deploy the National Guard when he is unable to execute federal law with civilian federal law enforcement officials.⁴⁰ Offering no opinion beyond that, Justice Gorsuch cautions making weighty decisions before another case in which the facts are properly preserved arises.⁴¹

Moving forward, *Trump v. Illinois* has undoubtedly set a unique standard in how future cases will interpret the executive branch's deployment of the National

³⁵ *Id.*

³⁶ *Id.* at 3–4.

³⁷ Gorsuch, J., dissenting, *Trump v. Illinois*, No. 25A443, slip op. at 1.

³⁸ *Id.*

³⁹ *Id.* (citing *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020)).

⁴⁰ *Id.*

⁴¹ *Id.* at 1–2.

Guard.⁴² Through grounding its reasoning in a strict textualist reading of 10 U. S. C. §12406(3), the Court signaled a recalibration in how they balance presidential discretion and statutory constraint.⁴³ Shifting from the acceptance of broad assertions of emergency or generalized threats, the Court insisted the Government must fulfill their burden of proving a source of legitimate authority.⁴⁴ In doing so, the Court effectively narrowed the space in which Presidents may invoke military enforcement for domestic purposes, demanding a more legally rigorous justification for federalization.⁴⁵

⁴² *Trump v. Illinois*, No. 25A443 (U.S. 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*