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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 ANTHROPIC PBC,  
19 Plaintiff,  
20 v.  
21 U.S DEPARTMENT OF WAR, et al.,  
22 Defendants.  
23

Case No. 3:26-cv-01996

**BRIEF OF *AMICUS CURIAE*  
AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Judge: Hon. Rita F. Lin  
Ctm: 15, 18th Floor  
Date: March 24, 2026  
Time: 1:30 P.M.

**TABLE OF CONTENTS**

1

2 INTRODUCTION AND INTEREST OF AMICUS CURIAE..... - 1 -

3 ARGUMENT ..... - 2 -

4 I. This Administration Systematically Retaliates Against Political Dissenters and

5 Opponents in Violation of the First Amendment. .... - 2 -

6 II. Courts Should Not Allow the Government’s Pretextual Invocation of “National

7 Security” to Shield Unconstitutional Retaliation Against Protected Speech. .... - 5 -

8 A. Courts must ensure the national security “label” is not abused. .... - 5 -

9 B. The record establishes unconstitutional retaliatory motives. .... - 9 -

10 C. The presumption of regularity should not apply. .... - 10 -

11 III. Judicial Scrutiny Is Necessary to Preserve Critical Free Speech. .... - 14 -

12 CONCLUSION ..... - 15 -

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

		Page(s)
1		
2		
3	<b>Cases</b>	
4	<i>Allen v. Iranon</i> ,	
5	283 F.3d 1070 (9th Cir. 2002).....	3
6	<i>Allen v. Scribner</i> ,	
7	812 F.2d 426 (9th Cir.), amended, 828 F.2d 1445 (9th Cir. 1987) .....	10
8	<i>Am. Acad. of Pediatrics v. U.S. Dep’t of Health &amp; Hum. Servs.</i> ,	
9	___ F.Supp.3d ___, 2026 WL 80796 (D.D.C. Jan. 11, 2026).....	5
10	<i>Am. Assoc. of Univ. Professors v. Trump</i> ,	
11	___ F.Supp.3d ___, 2025 WL 3187762 (N.D. Cal. Nov. 14, 2025) .....	4
12	<i>Am. Assoc. of Univ. Profs. v. Rubio</i> ,	
13	802 F.Supp.3d 120 (D. Mass. 2025).....	2, 4, 5
14	<i>Am. Fed’n of Gov’t Emps., AFL-CIO v. Noem</i> ,	
15	785 F.Supp.3d 833 (W.D. Wash. 2025) .....	3, 5, 8
16	<i>Am. Fed’n of Gov’t Emps., AFL-CIO v. Reagan</i> ,	
17	870 F.2d 723 (D.C. Cir. 1989) .....	11
18	<i>Am. Fed’n of Gov’t Emps., AFL-CIO v. Trump</i> ,	
19	792 F.Supp.3d 985 (N.D. Cal. 2025).....	3
20	<i>Am. Fed’n of Gov’t Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.</i> ,	
21	799 F.Supp.3d 967 (N.D. Cal. 2025).....	12
22	<i>Am. Fed’n of Gov’t Emps. Loc. 2305 v. U.S. Dep’t of Veterans Affs.</i> ,	
23	No. 1:25-cv-00583-MRD-PAS, ECF No. 30 (D.R.I. Mar. 13, 2026) .....	3
24	<i>Am. Foreign Serv. Ass’n v. Trump</i> ,	
25	783 F.Supp.3d 248 (D.D.C. 2025) .....	3
26	<i>Ariz. Students’ Ass’n v. Ariz. Bd. of Regents</i> ,	
27	824 F.3d 858 (9th Cir. 2016).....	3
28	<i>Associated Press v. Budowich</i> ,	
	780 F.Supp.3d 32 (D.D.C. 2025) .....	4
	<i>Baker v. Carr</i> ,	
	369 U.S. 186 (1962) .....	2
	<i>Bd. of Govs. of Fed. Rsrv. Sys. v. United States (In re Grand Jury Subpoenas)</i> ,	
	No. 1:26-mc-00012-JEB, ECF No. 23 (D.D.C. Mar. 13, 2026) .....	4

1 *Boumediene v. Bush*,  
553 U.S. 723 (2008) ..... 7

2 *Chastleton Corp. v. Sinclair*,  
3 264 U.S. 543, 547-48 (1924)..... 2

4 *Cole v. Young*,  
5 351 U.S. 536 (1956) ..... 6, 7, 8

6 *Conley v. United States*,  
5 F.4th 781 (7th Cir. 2021)..... 10

7 *Cruz v. Bondi*,  
8 146 F.4th 730 (9th Cir. 2015)..... 10

9 *Dep’t of Com. v. New York*,  
10 588 U.S. 752 (2019) ..... 9, 10, 11

11 *Fed. Educ. Ass’n v. Trump*,  
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25, 2025)..... 3, 11

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14 548 U.S. 557 (2006) ..... 7

15 *Hamdi v. Rumsfeld*,  
542 U.S. 507 (2004) (plurality opinion)..... 7

16 *Hartman v. Moore*,  
17 547 U.S. 250 (2006) ..... 9

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561 U.S. 1 (2010) ..... 7, 8

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20 784 F Supp.3d at 102..... 9

21 *Jenner & Block LLP v. U.S. Dep.*  
22 *t of Justice*, 784 F.Supp.3d 76, 93-99 (D.D.C. 2025)..... 4

23 *Kelly v. Hegseth*,  
\_\_ F.Supp.3d \_\_, 2026 WL 391777 (D.D.C. Feb. 12, 2026) ..... 4

24 *Korematsu v. United States*,  
25 323 U.S. 214 (1944) ..... 6

26 *Marrazzo v. Kennedy Jr.*,  
27 Case No. 8:25-cv-04144 (D. Md.)..... 4

28

1 *Media Matters for America v. Fed. Trade Comm’n*,  
 805 F.Supp.3d 105 (D.D.C. 2025), *stay denied pending appeal*, 2025 WL 2988966 (D.C. Cir. Oct.  
 2 23, 2025)..... 4

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 4 472 U.S. 511, 523 (1985))..... 6

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 403 U.S. 713 (1971) (Black, J. concurring) ..... 7

6 *Nat’l Council of Nonprofits v. Off. of Mgmt. and Budget*,  
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8 *Nat’l Treasury Emps. Union v. Vought*,  
 9 774 F.Supp.3d 1 (D.D.C. 2025) ..... 3, 11, 12

10 *National Treasury Employees v. Trump*,  
 780 F.Supp.3d 237 (D.D.C. 2025), *stay granted*, 2025 WL 1441563 (May 16, 2025) ..... 1, 3, 11

11 *O’Brien v. Welty*,  
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13 *People’s Mojahedin Org. of Iran v. U.S. Dep’t of State*,  
 14 182 F.3d 17 (D.C. Cir. 1999) ..... 8

15 *Perkins Coie LLP v. U.S. Dep’t of Just.*,  
 783 F.Supp.3d 105 (D.D.C. 2025) ..... 4, 9, 12

16 *Pinard v. Clatskanie Sch. Dist. 6J*,  
 17 467 F.3d 755, 770 (9th Cir. 2006)),..... 2

18 *President & Fellows of Harvard Coll. v. HHS*,  
 798 F.Supp.3d 77 (D. Mass. 2025)..... 4, 5

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 20 788 F.Supp.3d 182 (D. Mass. 2025)..... 4, 12

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 22 317 U.S. 1 (1942) ..... 6

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 758 F.3d 296 (D.C. Cir. 2014) ..... 8

24 *Rattigan v. Holder*,  
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26 *In re Search of One Device and Two Individuals under Rule 41*,  
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28 *Soranno’s Gasco, Inc. v. Morgan*,  
 874 F.2d 1310 (9th Cir. 1989)..... 10

1 *Susman Godfrey LLP v. Exec. Off. of President,*  
789 F.Supp.3d 15 (D.D.C. June 27, 2025) ..... 3, 5, 8, 9

2 *In the Matter of the Search of the Real Property and Premises of Hannah Natanson,*  
3 2026 WL 510727 (E.D. Va. Feb. 24, 2026) ..... 13

4 *Trump v. Hawaii,*  
5 585 U.S. 667 (2018) ..... 6, 7, 10

6 *United States v. Chemical Found., Inc.,*  
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8 *United States v. Comey,*  
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10 *United States v. Gaffney,*  
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12 *United States v. Robel,*  
13 389 U.S. 258 (1967) ..... 7

14 *United States v. U.S. Dist. Ct. for E. Dist. of Mich., S. Div.,*  
15 407 U.S. 297 (1972) ..... 5

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18 *Exec. Off. of the President,* 2025 WL 2105262 (D.D.C. June 26, 2025) ..... 4, 9

19 *Zaid v. Exec. Off. of Pres.,*  
20 \_\_\_ F.Supp.3d \_\_\_, 2025 WL 3724884 (D.D.C. Dec. 23, 2025)..... 5, 9

21 *Ziglar v. Abbassi,*  
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23 **Statutes**

24 10 U.S.C. §§111-13 ..... 1

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1 As an organization dedicated to advocacy for its members and the American public they serve,  
2 AFGE has a concrete institutional interest in how courts evaluate First Amendment retaliation claims  
3 when the government invokes a purported national security justification, and a responsibility to ensure  
4 that the Court understands the broader implications of allowing retaliation against First Amendment  
5 activity to go unchecked.

6 AFGE also represents Department of War employees who are directly affected by the challenged  
7 action. The Secretary of War's supply chain risk designation does not only affect Anthropic, but  
8 threatens to disrupt artificial intelligence ("AI") systems integrated into ongoing military operations,  
9 with direct consequences for civilian defense workers whom AFGE represents.

## 10 ARGUMENT

11 This case presents the latest chapter in the Trump administration's concerted campaign to wield  
12 the power of the executive branch against its purported enemies. It calls, once again, for the courts to  
13 serve as the "major bulwark" of our constitutional right to free speech against the government's  
14 retribution campaigns. *Am. Assoc. of Univ. Profs. v. Rubio*, 802 F.Supp.3d 120, 197-98 (D. Mass. 2025)  
15 ("*AAUP*"). The "Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the  
16 law depends upon the truth of what is declared." *Baker v. Carr*, 369 U.S. 186, 214 (1962) (quoting  
17 *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924)). If courts permit the government to evade  
18 First Amendment scrutiny by simply invoking national security, the First Amendment's protections  
19 against retaliation will become meaningless and the government will have free rein to silence its critics  
20 as long as it can conceive of a pretextual justification.

### 21 **I. This Administration Systematically Retaliates Against Political Dissenters and** 22 **Opponents in Violation of the First Amendment.**

23 The government's retaliatory actions against Anthropic must not be viewed in isolation.  
24 Anthropic is only the latest target in the Trump administration's long-running, concerted campaign to  
25 abuse the power of the executive branch to punish and suppress political dissent and opposition and  
26 coerce submission to the Trump administration's preferred views.

27 To establish that constitutionally protected activity "was a substantial or motivating factor in the  
28 defendant's conduct," *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016) (quoting *Pinard v. Clatskanie*

1 *Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006)), plaintiffs may present both direct and circumstantial  
 2 evidence, including evidence that the “defendant’s purported reasons for its conduct are pretextual or  
 3 false,” *Ariz. Students’ Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 870 (9th Cir. 2016). Such  
 4 circumstantial evidence can include evidence of a “pattern of ... retaliatory [conduct].” *Allen v. Iranon*,  
 5 283 F.3d 1070, 1079 (9th Cir. 2002).

6 The Trump administration’s well-documented pattern of retaliatory conduct against perceived  
 7 adversaries and dissidents is strong additional evidence of Defendants’ retaliatory motive against  
 8 Anthropoc and undercuts any suggestion that the government “would have taken the same action even in  
 9 the absence of the protected conduct.” *O’Brien*, 818 F.3d at 932. And further, it highlights the critical  
 10 importance of the judicial role in protecting individual rights against governmental abuses.

11 By some counts, the administration’s unprecedented “campaign of retribution” has already  
 12 targeted more than 470 individuals and institutions.<sup>4</sup> The administration’s targets have included labor  
 13 unions that filed lawsuits challenging the Trump administration’s policies,<sup>5</sup> federal employees who  
 14 criticized the government,<sup>6</sup> law firms that represented Trump’s political adversaries,<sup>7</sup> universities that

15 \_\_\_\_\_  
 16 <sup>4</sup> See, e.g., Peter Eisler, Ned Parker, Linda So & Joseph Tanfani, *Trump’s campaign of retribution: At*  
 17 *least 470 targets and counting*, Reuters (Nov. 26, 2025), [https://www.reuters.com/investigates/special-](https://www.reuters.com/investigates/special-report/usa-trump-retribution-tracker/)  
 18 *report/usa-trump-retribution-tracker/*; Sam Levine, *‘Who will stand up and oppose it?’: Trump’s*  
 19 *relentless campaign of retribution in his second term*, The Guardian (Jan. 21, 2026),  
 20 <https://www.theguardian.com/us-news/2026/jan/21/trump-retribution-campaign> (Trump has “pursued a  
 21 campaign of retribution unlike any other president in US history,” delivering on his campaign promise to  
 22 “those who have been wronged and betrayed: I am your retribution”).

23 <sup>5</sup> See, e.g., *Am. Fed’n of Gov’t Emps. Loc. 2305 v. U.S. Dep’t of Veterans Affs.*, No. 1:25-cv-00583-  
 24 MRD-PAS, ECF No. 30, at 12-19 (D.R.I. Mar. 13, 2026) (enjoining cancellation of VA employees’  
 25 collective bargaining agreement upon finding AFGE likely to succeed on its First Amendment  
 26 retaliation claim); *Am. Fed’n of Gov’t Emps., AFL-CIO v. Noem*, 785 F.Supp.3d 833 (W.D. Wash. 2025)  
 27 (same, as to TSA employees’ collective bargaining agreements); *Am. Fed’n of Gov’t Emps., AFL-CIO v.*  
 28 *Trump*, 792 F.Supp.3d 985 (N.D. Cal. 2025) (First Amendment retaliation claim by federal employee  
 union challenging Executive Order 4251, which excludes numerous agencies and subdivisions from  
 longstanding collective bargaining requirements), *stayed*, 148 F.4th 648 (9th Cir. 2025), *vacated*,  
 F.4th \_\_\_, 2026 WL 534591 (9th Cir. Feb. 26, 2026); *Am. Foreign Serv. Ass’n v. Trump*, 783 F.Supp.3d  
 248 (D.D.C. 2025), *stayed*, 2025 WL 1742853 (D.C. Cir. Jun. 20, 2025); *Nat’l Treasury Emps. Union*,  
 780 F.Supp.3d 237; *Fed. Educ. Ass’n v. Trump*, 795 F.Supp.3d 74 (D.D.C. 2025), *stay denied pending*  
*appeal*, 2025 WL 2738626 (D.C. Cir. Sept. 25, 2025).

<sup>6</sup> See, e.g., Maxine Joselow, *FEMA suspends staff who signed a letter criticizing Trump*, N.Y. Times  
 (Aug. 26, 2025), [https://www.nytimes.com/2025/08/26/climate/fema-suspends-staff-who-criticized-](https://www.nytimes.com/2025/08/26/climate/fema-suspends-staff-who-criticized-trump-cuts.html)  
*trump-cuts.html*; Kanishka Singh, *US EPA fires some employees who signed letter criticizing Trump*  
*administration*, Reuters (Aug. 29, 2025), [https://www.reuters.com/legal/litigation/us-epa-fires-some-](https://www.reuters.com/legal/litigation/us-epa-fires-some-employees-who-signed-letter-criticizing-trump-administration-2025-08-29/)  
*employees-who-signed-letter-criticizing-trump-administration-2025-08-29/*.

<sup>7</sup> See, e.g., *Susman Godfrey LLP v. Exec. Off. of President*, 789 F.Supp.3d 15, 41-48 (D.D.C. June 27,

1 hosted viewpoints the administration deems too “left” or “woke,”<sup>8</sup> news outlets and media companies  
 2 that hosted disfavored speech,<sup>9</sup> political opponents,<sup>10</sup> student activists,<sup>11</sup> and countless others who have  
 3 had the courage to exercise their constitutionally protected rights and voice their disagreement with the  
 4 current administration’s policies and demands (or associate with those who do so). The government’s  
 5 punitive retaliation has taken wide-ranging forms, including actual and threatened revocation of  
 6 collective bargaining rights,<sup>12</sup> firings and suspensions,<sup>13</sup> prosecutions and investigations,<sup>14</sup> termination

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 10  
 11 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of President*, 784 F.Supp.3d 127, 150-52  
 12 (D.D.C. 2025) (“*WilmerHale*”), amended sub nom. *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec.  
 13 Off. of the President*, 2025 WL 2105262 (D.D.C. June 26, 2025); *Jenner & Block LLP v. U.S. Dep’t of  
 14 Justice*, 784 F.Supp.3d 76, 93-99 (D.D.C. 2025); *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F.Supp.3d  
 15 105, 150-65 (D.D.C. 2025).

16 <sup>8</sup> See, e.g., *Am. Assoc. of Univ. Professors v. Trump*, \_\_\_ F.Supp.3d \_\_\_, 2025 WL 3187762, at \*14-15  
 17 (N.D. Cal. Nov. 14, 2025); *President & Fellows of Harvard Coll. v. HHS*, 798 F.Supp.3d 77, 117-23 (D.  
 18 Mass. 2025); *President & Fellows of Harvard Coll. v. U.S. Dep’t of Homeland Sec.*, 788 F.Supp.3d 182,  
 19 201-05 (D. Mass. 2025).

20 <sup>9</sup> See, e.g., *Media Matters for America v. Fed. Trade Comm’n*, 805 F.Supp.3d 105, 111-12, 129-37  
 21 (D.D.C. 2025) (enjoining civil investigative demand issued to media watchdog organization likely in  
 22 retaliation for publication of disfavored speech), *stay denied pending appeal*, 2025 WL 2988966 (D.C.  
 23 Cir. Oct. 23, 2025); *Kimmel returns to air as President threatens legal action*, N.Y. Times (Oct. 9,  
 24 2025), <https://www.nytimes.com/live/2025/09/23/us/trump-news>; see also, e.g., *Associated Press v.  
 25 Budowich*, 780 F.Supp.3d 32, 39 (D.D.C. 2025) (enjoining public officials from barring Associated  
 26 Press from press room after it continued to refer to the Gulf of Mexico as such on First Amendment  
 27 retaliation grounds).

28 <sup>10</sup> See, e.g., *Bd. of Govs. of Fed. Rsrv. Sys. v. United States (In re Grand Jury Subpoenas)*, No. 1:26-  
 mc-00012-JEB, ECF No. 23, at 2 (D.D.C. Mar. 13, 2026) (finding that “the D.C. U.S. Attorney’s Office  
 has recently opened a criminal investigation into [Jerome] Powell” and issued subpoenas with the  
 “purpose [] to harass and pressure Powell either to yield to the President or to resign and make way for a  
 Fed Chair who will”); Joyce Vance, *Comey Indictment Shows Danger of Subservient Prosecutors*,  
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 indictment-shows-danger-subservient-prosecutors](https://www.brennancenter.org/our-work/analysis-opinion/comey-indictment-shows-danger-subservient-prosecutors); Jonah E. Bromwich & Michael S. Schmidt, *Letitia  
 James Case Shows Ruthlessness of Justice Dep’t in Trump’s Grip*, N.Y. Times (Oct. 24, 2025),  
<https://www.nytimes.com/2025/10/24/nyregion/trump-james-shame-campaign.html>.

<sup>11</sup> See, e.g., *AAUP*, 802 F.Supp.3d at 135-72, 181-89, 197.

<sup>12</sup> See, e.g., *supra* note 5.

<sup>13</sup> See *supra* note 6; see also, e.g., *Marrazzo v. Kennedy Jr.*, Case No. 8:25-cv-04144 (D. Md.) (former  
 National Institutes of Health director allegedly terminated in retaliation for raising objections to new  
 NIH policies).

<sup>14</sup> See *supra* note 10; see also, e.g., *Kelly v. Hegseth*, \_\_\_ F.Supp.3d \_\_\_, 2026 WL 391777, at \*8-11  
 (D.D.C. Feb. 12, 2026) (Senator Mark Kelly likely to succeed on First Amendment claim that Secretary  
 Hegseth’s censures and threats of criminal prosecution were in retaliation for voicing disfavored  
 opinions on military action and policy).

1 of funding and government contracts,<sup>15</sup> revocation of security details and security clearances,<sup>16</sup> and other  
2 retaliatory and coercive sanctions and threats.

3 In many of these cases, as here, the Trump administration has invoked “national security” or  
4 some other facially legitimate and neutral government interest (such as enforcement of federal civil  
5 rights laws) as the purported justification for the challenged actions. But numerous courts have deemed  
6 the government’s asserted justifications to be pretextual (or likely so) and have found the government’s  
7 conduct to be retaliatory or likely so, in violation of the First Amendment. *See, e.g., AFGE*, 785  
8 F.Supp.3d at 859-60, 862-63; *Susman Godfrey*, 789 F.Supp.3d at 45-48; *Harvard*, 798 F.Supp.3d at 136  
9 (“[A] review of the administrative record makes it difficult to conclude anything other than that  
10 Defendants used antisemitism as a smokescreen for a targeted, ideologically-motivated assault on this  
11 country’s premier universities ....”); *see infra* at 8-9. These courts have served as a critical bulwark  
12 against “[t]he President’s palpable misunderstanding that the government simply cannot seek retribution  
13 for speech he disdains ....” *AAUP*, 802 F.Supp.3d at 197.

## 14 II. Courts Should Not Allow the Government’s Pretextual Invocation of “National 15 Security” to Shield Unconstitutional Retaliation Against Protected Speech.

### 16 A. Courts must ensure the national security “label” is not abused.

17 The government’s far-ranging and far-flung invocation of “national security” as justification to  
18 retaliate against labor unions, law firms, individuals, universities, and (now) AI companies that are  
19 unwilling to bend to its every demand presents precisely the “danger of abuse” about which the Supreme  
20 Court has long warned. *United States v. U.S. Dist. Ct. for E. Dist. of Mich., S. Div.*, 407 U.S. 297, 314  
21 (1972) (describing the concern that “the President, on his motion, could declare—name your favorite

22 <sup>15</sup> *See supra* notes 7, 8; *see also, e.g., Am. Acad. of Pediatrics v. U.S. Dep’t of Health & Hum. Servs.*,  
23      F.Supp.3d     , 2026 WL 80796, \*15-21 (D.D.C. Jan. 11, 2026) (professional organization for  
24 pediatric medicine likely to succeed on First Amendment claim that HHS terminated its grants in  
retaliation for organization’s vaccine advocacy).

25 <sup>16</sup> *See supra* note 7; *see also, e.g., Zaid v. Exec. Off. of Pres.*,      F.Supp.3d     , 2025 WL 3724884, at  
26 \*7-8 (D.D.C. Dec. 23, 2025) (attorney who previously represented whistleblowers against the federal  
27 government likely to succeed on First Amendment claim that government’s revocation of his security  
28 clearance was retaliatory); Rebecca Rosman, *Trump revokes classified access for Joe Biden, Hillary  
Clinton and others*, NPR (Mar. 22, 2025), <https://www.npr.org/2025/03/22/nx-s1-5337218/trump-revokes-security-clearances-biden-clinton>; Eric Tucker, Aamer Madhani & Matthew Lee, *Trump  
administration revokes security clearances of 37 current and former government officials*, Associated  
Press (Aug. 19, 2025), <https://apnews.com/article/trump-security-clearances-revoked-ad7f95a22ad9277452d2de995b70619>.

1 poison—draft dodgers, Black Muslims, the Ku Klux Klan, or civil rights activists to be a clear and  
2 present danger to the structure or existence of the Government” (quoting 114 Cong. Rec. 14750)).  
3 “There are limitations, of course, on the power of the Executive under Article II of the Constitution and  
4 in the powers authorized by congressional enactments, even with respect to matters of national security  
5 .... And national-security concerns must not become a talisman used to ward off inconvenient claims—a  
6 ‘label’ used to ‘cover a multitude of sins.’” *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017) (quoting  
7 *Mitchell v. Forsyth*, 472 U.S. 511, 523 (1985)).

8         Given this potential for (and actual) abuse, courts must closely scrutinize the national security  
9 label. *See Ex parte Quirin*, 317 U.S. 1, 19 (1942) (“[T]he duty which rests on the courts, in time of war  
10 as well as in time of peace, [is] to preserve unimpaired the constitutional safeguards of civil liberty....”).  
11 The judicial branch is competent and indeed well positioned to employ the same type of inquiry that  
12 courts regularly adopt in order to test parties’ claims, including by considering extrinsic evidence of  
13 motive, the over- or under-inclusivity of the scope of an action, and the evidence (or lack thereof)  
14 underlying the government’s asserted justification. *See Cole v. Young*, 351 U.S. 536, 557 n.20 (1956)  
15 (“When the President expressly confines his action to the limits of statutory authority, the validity of the  
16 action must be determined solely by the congressional limitations which the President sought to  
17 respect ....”).

18         Even in times of emergency and war, courts have recognized that they must perform their role of  
19 protecting fundamental rights rather than blindly defer to purported national security rationales. Indeed,  
20 in one of the most extreme national security deference cases, *Korematsu v. United States*, 323 U.S. 214  
21 (1944)—now deemed “gravely wrong the day it was decided,” *Trump v. Hawaii*, 585 U.S. 667, 710  
22 (2018)—the Court did not abdicate review entirely, instead relying upon later-debunked “evidence of  
23 disloyalty” to support the government’s national security rationale, *Korematsu*, 323 U.S. at 223.<sup>17</sup>  
24 During the post-9/11 era, as the country faced a period of heightened and difficult-to-ascertain security

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26 <sup>17</sup> It has subsequently been revealed that in defending the internment order the Solicitor General failed  
27 to disclose to the courts, including the Supreme Court, “a key intelligence report that undermined the  
28 rationale behind the internment ... despite warnings from Department of Justice attorneys that failing to  
alert the Court ‘might approximate the suppression of evidence.’” Neal Katyal, *Confession of Error: The Solicitor General’s Mistakes During the Japanese-American Internment Cases* (Apr. 7, 2017),  
<https://www.justice.gov/archives/opa/blog/confession-error-solicitor-generals-mistakes-during-japanese-american-internment-cases>.

1 threats, the Supreme Court nonetheless carved out constitutional limits, making clear that deference to  
2 the government’s national security judgments does not mean abdication of judicial review. *See Hamdi*  
3 *v. Rumsfeld*, 542 U.S. 507, 509 (2004) (plurality opinion) (“We have long since made clear that a state  
4 of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.”);  
5 *Hamdan v. Rumsfeld*, 548 U.S. 557, 567 (2006); *Boumediene v. Bush*, 553 U.S. 723, 732–33 (2008).

6 And even in recent cases in which the Supreme Court has sided with the government, the Court  
7 has nonetheless reaffirmed that “[o]ur precedents, old and new, make clear that concerns of national  
8 security and foreign relations do not warrant abdication of the judicial role.” *Holder v. Humanitarian L.*  
9 *Project*, 561 U.S. 1, 34 (2010). The Court has looked to whether the government has presented  
10 “persuasive evidence” that “adequately substantiate[s] their determination,” *id.* at 36, “legitimate  
11 grounding in national security concerns,” and “a legitimate national security interest,” *Trump v. Hawaii*,  
12 585 U.S. at 706, 708. Invocation of a national security rationale alone does not require courts to  
13 overlook or set to the side contradictory evidence.

14 This principle carries special force where, as here, national security is invoked to justify  
15 restrictions on First Amendment rights. “The word ‘security’ is a broad, vague generality whose  
16 contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.”  
17 *N.Y. Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J. concurring). As the Court in  
18 *United States v. Robel*, 389 U.S. 258, 264 (1967), explained:

19 Yet, this concept of ‘national defense’ cannot be deemed an end in itself, justifying any  
20 exercise of [] power designed to promote such a goal. Implicit in the term ‘national  
21 defense’ is the notion of defending those values and ideals which set this Nation apart.  
22 For almost two centuries, our country has taken singular pride in the democratic ideals  
23 enshrined in its Constitution, and the most cherished of those ideals have found  
24 expression in the First Amendment. It would indeed be ironic if, in the name of national  
25 defense, we would sanction the subversion of one of those liberties . . . which makes the  
26 defense of the Nation worthwhile.

27 Courts “do not defer to the Government’s reading of the First Amendment, even when [national security  
28 and foreign relations] interests are at stake.” *Holder*, 561 U.S. at 34.

The judiciary thus has an Article III duty to scrutinize the bases and boundaries of national  
security claims. In *Cole*, the Court considered the federal government’s firing of an employee  
purportedly “in the interest of the national security of the United States.” 351 U.S. at 538. The Court

1 first interpreted and defined the term “national security,” and then found that the government failed to  
2 determine that the petitioner’s position was affected by “national security” as defined, holding that the  
3 petitioner’s removal was improper. *Id.* at 543. Similarly, in *Holder*, while acknowledging that the case  
4 “implicate[d] sensitive and weighty interests of national security and foreign affairs,” the Court  
5 evaluated the record evidence, including affidavits of the executive branch’s conclusions, the  
6 executive’s “evaluation of the facts,” and “specific findings” by Congress in upholding the material-  
7 support statutes for designated foreign terrorist organizations. 561 U.S. at 29, 33-34. Similarly, courts  
8 have refused to abdicate their judicial responsibility and have scrutinized due process concerns,  
9 constitutional claims, and compliance with statutory criteria even over the government’s protests that  
10 national security renders its claims unreviewable. *See Ralls Corp. v. Comm. on Foreign Inv. in U.S.*,  
11 758 F.3d 296, 313 (D.C. Cir. 2014) (holding that national security deference does not foreclose judicial  
12 review of a due process claim stemming from divestment orders pursuant to the Defense Production  
13 Act); *Rattigan v. Holder*, 689 F.3d 764, 770 (D.C. Cir. 2012) (holding that FBI employee’s claim that  
14 officials retaliated against him for his discrimination complaints in violation of Title VII was  
15 reviewable, although the resulting security clearance investigation was not); *People’s Mojahedin Org. of*  
16 *Iran v. U.S. Dep’t of State*, 182 F.3d 17, 23-24 (D.C. Cir. 1999) (holding that the court could review  
17 certain statutory criteria for foreign terrorist organization designations while deferring on one national  
18 security assessment criterion).

19 District courts across the nation have applied these principles by giving serious judicial scrutiny  
20 to the Trump administration’s national security invocations—in many cases, finding them hollow. In  
21 *AFGE v. Noem*, for example, the district court found “strong evidence” that Secretary Noem’s decision  
22 to end collective bargaining and rescind existing collective bargaining agreement was “to punish AFGE  
23 and its members because AFGE has chosen to push back against the Trump Administration’s attacks to  
24 federal employment in the courts,” and that the government’s “threadbare” assertion of a “national  
25 security” justification “exposes the retaliatory nature of the decision.” 785 F.Supp.3d at 858-60, 862-63.  
26 In *Susman Godfrey*, the district court likewise found that the government “rest[ed its defense] only on a  
27 threadbare invocation of ‘the national security and other interests of the United States’” and “offer[ed]  
28 no evidence to remotely support the idea that there is any interest (national-security-related or

1 otherwise.” 789 F.Supp.3d at 47. Similarly, in *WilmerHale*, the court found that “[o]ther than a  
2 passing reference to WilmerHale’s involvement in election and immigration litigation, the Order does  
3 not explain how WilmerHale’s conduct has threatened national security .... This is not a legitimate  
4 Government interest, and the Order’s unsupported assertion of national security will not save it!” 784  
5 F.Supp.3d at 157; *see also Jenner & Block*, 784 F Supp.3d at 102 (“The speech-based justification  
6 doesn’t even feign at national security, nor do the defendants articulate a cogent argument that it does.”).  
7 In *Perkins Coie LLP*, the district court found that the national security justifications for various  
8 provisions of the executive order were contradicted by the President’s Truth Social posts and were  
9 neither “credible” nor “plausible.” 783 F.Supp.3d at 158-59. The court in *Zaid* found the government’s  
10 national security claims were “not credible or supported by the record,” and instead found that the  
11 President’s remarks, timing, and other retaliatory decisions proved that “Zaid’s representation of  
12 whistleblowers and other clients adverse to the government was the sole reason for summarily revoking  
13 his security clearance.” 2025 WL 3724884 (D.D.C. Dec. 23, 2025), at \*8.

14 The same result follows here. Where the government has provided no such “legitimate  
15 grounding” for its designation of Anthropic as a national security risk and, in fact, continues to use  
16 Anthropic’s products and services after the designation, the national security label is exposed as  
17 precisely the kind of pretextual cover the courts have consistently refused to credit. It does not preclude  
18 judicial review. Rather, it invites it.

19 **B. The record establishes unconstitutional retaliatory motives.**

20 The Court need not look beyond the face of the February 27 Presidential Directive and  
21 Secretarial Order to find the government’s true unconstitutional, retaliatory motive: punishing Anthropic  
22 for its “Silicon Valley ideology,” commitment to their Terms of Service, stated positions on mass  
23 domestic surveillance and fully autonomous weapons, and refusal to bend to the government’s demands.  
24 ECF 1, Exs. 1-2. The government has supplied its own “contemporaneous explanation” and “stated  
25 reasons”—and they are unconstitutional on their face. *Dep’t of Com. v. New York*, 588 U.S. 752, 780-81  
26 (2019). Protected expression and refusal to capitulate to government pressure are precisely the kind of  
27 motivating factors that establish a First Amendment retaliation claim. *See Hartman v. Moore*, 547 U.S.  
28 250, 256 (2006) (“[T]he law is settled that as a general matter the First Amendment prohibits

1 government officials from subjecting an individual to retaliatory actions ... for speaking out.”).

2 Even if the government had expressly invoked *only* a national security rationale, the Court may  
3 “look behind the face” of an order to consider whether the policy is a result of unconstitutional grounds.  
4 *Trump v. Hawaii*, 585 U.S. at 704. And here the “story . . . does not match the explanation.” *Dep’t of*  
5 *Com.*, 588 U.S. at 784. The “disconnect between the decision made and the explanation given” is stark:  
6 among many reasons, the government provided no credible, reasoned national security explanation for  
7 Anthropic’s designation as a supply-chain risk; Anthropic is not an “adversary” of the United States by  
8 any definition; the order covers contracts with all entities doing business with the U.S. military, not just  
9 national security settings; and the Department of War continues to use Anthropic’s products and services  
10 after designating the company a national security risk—precisely the kind of internal inconsistency that  
11 exposes a stated rationale as pretextual and warrants searching inquiry. *See id.* at 785.<sup>18</sup>

### 12 C. The presumption of regularity should not apply.

13 “[T]he presumption of regularity,” which directs “courts [to] presume that [public officials] have  
14 properly discharged their official duties,” *United States v. Chemical Found., Inc.*, 272 U.S. 1, 14-15  
15 (1926)), is a “general working principle” that ordinarily applies when courts review the actions of public  
16 officials and agencies, *Cruz v. Bondi*, 146 F.4th 730, 739 (9th Cir. 2015). But that presumption has  
17 always been rebuttable in the face of “clear evidence to the contrary.” *Chemical Foundation*, 272 U.S.  
18 at 14-15; *see also Conley v. United States*, 5 F.4th 781, 791 (7th Cir. 2021) (presumption is “an analytic  
19 tool,” not a “rubberstamp”). And it is well established that courts may consider all record evidence of  
20 the motivations behind government actions. *Cruz*, 146 F.3d at 740. In particular, the Supreme Court  
21 has instructed that courts may “look behind the face” of challenged statements to evaluate whether the  
22 stated rationale is defensible. *Trump v. Hawaii*, 585 U.S. at 704. Thus, for example, in *Department of*

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23 <sup>18</sup> The pretextual nature of Defendants’ purported justifications also rebuts any argument that  
24 Defendants “would have taken the same action even in the absence of the protected conduct.” *O’Brien*,  
25 818 F.3d at 932. Even if the challenged actions were authorized by statute (which they were not, *see*  
26 ECF 6 at 15-19), the relevant question in a First Amendment retaliation claim is not whether Defendants  
27 “could” have taken the same adverse actions, but rather whether the defendants “would have reached the  
28 same decision in the absence of the protected conduct.” *Soranno’s Gasco, Inc. v. Morgan*, 874 F.2d  
1310, 1315 (9th Cir. 1989) (first emphasis in original; second emphasis added) (reversing summary  
judgment where there were triable issues of fact as to whether government’s suspension of regulated  
entity’s permit was due to plaintiff’s exercise of First Amendment rights, notwithstanding assertion of  
government’s authority to suspend permit); *see Allen v. Scribner*, 812 F.2d 426, 435 (9th Cir.), *amended*,  
828 F.2d 1445 (9th Cir. 1987) (similar).

1 *Commerce*, the Supreme Court declined to “ignore the disconnect between the decision made and the  
2 explanation given” and advised that “deferential” review does not mean that courts should “exhibit a  
3 naiveté from which ordinary citizens are free.” 588 U.S. at 785 (internal quotation omitted).

4 Anthropic has submitted “clear evidence” that contradicts the federal government’s rationale—  
5 including, but not limited to, direct evidence of bad faith, circumstantial evidence of pretext, under-  
6 inclusiveness, and departure from normal procedures. *Chemical Found.*, 272 U.S. at 14-15; *see* ECF 6  
7 at 12-19; *supra* at 10.

8 Moreover, while the Court need not reach this issue, this administration’s consistent disregard of  
9 statutory and constitutional constraints, and repeated invocation of pretextual bases for retaliatory  
10 actions, should render the presumption of regularity no longer applicable as a general matter. For  
11 example, in a decision enjoining the executive order that stripped federal employees of representation,  
12 the district court observed that, although “[g]enerations of presidential administrations and public  
13 officials have validated this underlying premise ... the President of the United States may have forfeited  
14 the right to such a presumption of regularity.” *Fed. Educ. Ass’n*, 795 F.Supp.3d at 90-92.<sup>19</sup> The district  
15 court cited more than 25 circuit and district court decisions (as of August 2025) that held the Trump  
16 administration’s “brazen” and “blatantly unconstitutional” actions, “hallucinat[ory]” statutory  
17 interpretation, “perfect lawlessness,” procedural irregularities, and pretextual explanations rendered the  
18 continued presumption unsupportable. *Id.* at 90-91 (internal quotations omitted).

19 The conclusion that this administration has lost the presumption of regularity is far from an  
20 outlier. Less than two weeks after President Trump’s 2025 inauguration, in rejecting the federal  
21 government’s assertion that its rescission of an unlawful memorandum mooted the case, a court wrote  
22 that “Defendants’ plea for a presumption of good faith rings hollow when their own actions contradict  
23 their representations.” *Nat’l Council of Nonprofits v. Off. of Mgmt. and Budget*, 763 F.Supp.3d 36, 50  
24 (D.D.C. 2025). Months later, the court that enjoined the Trump administration’s numerous retaliatory  
25 acts (including its suspension of hundreds of millions of grant funds) against Harvard for its protected

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26 <sup>19</sup> In 1989, the “familiar presumption of regularity” proved “decisive” in the D.C. Circuit’s rejection of  
27 a challenge to a previous executive order removing collective bargaining rights from certain  
28 subdivisions of the U.S. Marshals Service. *Am. Fed’n of Gov’t Emps., AFL-CIO v. Reagan*, 870 F.2d  
723, 727 (D.C. Cir. 1989). In this more recent case, however, the district court found the presumption  
had been rebutted by the plaintiff’s evidence. *Nat’l Treasury Emps. Union*, 780 F.Supp.3d at 254.

1 activities announced that “the Court will not apply any presumption of regularity to conduct that is so  
 2 unusual and therefore irregular on its face.” *Harvard*, 788 F.Supp.3d at 205. At a hearing over the  
 3 potential removal of Kilmar Abrego Garcia, another court told the federal government, “You have taken  
 4 the presumption of regularity and you’ve destroyed it ....”<sup>20</sup> Decrying the federal government’s  
 5 misleading statements in declarations, another wrote, “the Court is left with little confidence that the  
 6 defense can be trusted to tell the truth about anything.” *Nat’l Treasury Emps. Union v. Vought*, 774  
 7 F.Supp.3d 1, 57 (D.D.C. 2025).<sup>21</sup> And in the first case testing President Trump’s executive order  
 8 targeting a law firm, the court warned that the federal government’s noncompliance with injunctive  
 9 relief “raised some concern about the general presumption by courts ‘that executive officials will act in  
 10 good faith.’” *Perkins Coie*, 783 F.Supp.3d at 134 n.21. In a case brought by AFGE challenging the  
 11 mass termination of federal probationary employees—on the false pretextual ground of poor  
 12 performance—this Court similarly acknowledged the presumption of regularity but called the federal  
 13 government’s administrative record “a sham” that “does not facilitate judicial review: It frustrates it.”  
 14 *Am. Fed’n of Gov’t Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, 799 F.Supp.3d 967, 979 (N.D. Cal.  
 15 2025).

16 Judicial skepticism about the regularity of official acts has extended to criminal cases, a context  
 17 in which the government typically enjoys even greater deference. In a recent decision denying the  
 18 federal government’s request to seal, the court rejected “[t]he government[’s] conten[tion] that courts  
 19 must be highly deferential to the government’s determination that unsealing would impede its  
 20 investigation,” commenting:

21 Blind deference to the government? That is no longer a thing. Trust that had been earned  
 22 over generations has been lost in weeks. Numerous career prosecutors have had to resign  
 23 instead of taking actions that they believe violated their oath of office, or worse, were  
 24 fired for upholding that oath.

25 <sup>20</sup> Alan Feuer & Minh Kim, *Judge Signals She Will Protect Abrego Garcia From Hasty Second*  
 26 *Deportation*, N.Y. Times (July 11, 2025), <https://www.nytimes.com/2025/07/11/us/politics/abrego-garcia-deportation-judge-protection-trump.html#:~:text=A%20frustrated%20federal%20judge%20signaled,month%20to%20face%20criminal%20charges>.

27 <sup>21</sup> D.C. Circuit panels initially granted an emergency stay pending appeal, 2025 WL 1721068, and then  
 28 vacated an injunction, 149 F.4th 762. The D.C. Circuit then granted rehearing en banc, 2025 WL 3659406, vacating the panel’s judgment pending rehearing.

1 *In re Search of One Device and Two Individuals under Rule 41*, 784 F.Supp.3d 234, 244 & n.10 (D.D.C.  
 2 2025). As the same judge wrote in another case, “the irregular is now the regular” in “these . . .  
 3 ‘unprecedented’ times” such that presumptions of regularity and good faith no longer apply. *United*  
 4 *States v. Gaffney*, 2025 WL 2910986, at \*5 n.7 (D.D.C. Oct. 14, 2025) (citations omitted). Granting in  
 5 part a journalist’s motion for return of her property that had been seized in a search, a magistrate judge  
 6 denounced the federal government’s failure to disclose governing authority when it sought the original  
 7 search warrant, invoking the presumption of regularity but lamenting that “[t]he government’s conduct  
 8 has disturbed that baseline posture of deference.” *In the Matter of the Search of the Real Property and*  
 9 *Premises of Hannah Natanson*, 2026 WL 510727, at \*5-6 (E.D. Va. Feb. 24, 2026). Even in the context  
 10 of grand jury proceedings entitled to “a strong presumption of regularity,” that presumption has been  
 11 “call[ed] into question” by “unusual” and unexplained departures from regular procedures. *United*  
 12 *States v. Comey*, \_\_\_ F.Supp.3d \_\_\_, 2025 WL 3202693, at \*3, \*9 (E.D. Va. Nov. 17, 2025).

13 Indeed, a multi-author article published in fall 2025 collected over 150 cases illustrating courts’  
 14 expressions of concern about or refusal to grant the presumption of regularity, reporting that such cases  
 15 fell into three categories:

- 16 1. Courts’ concerns over noncompliance with judicial orders (26 cases)
- 17 2. Courts’ distrust of government information and representations (over 60 cases)
- 18 3. Courts’ findings of “arbitrary and capricious” administrative action (68 cases)[.]<sup>22</sup>

19 And since that article’s last update in November 2025, courts have continued to express such skepticism  
 20 and to comment on the administration’s defiance of precedent, contravention of the obligation of candor  
 21 and honesty, and unlawfulness. *See supra* at 11-13. Thus, even if the federal government were  
 22 ordinarily entitled to the presumption of regularity, this is not an ordinary administration and that  
 23 presumption should no longer be applied by this Court.

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 25  
 26 <sup>22</sup> Ryan Goodman, Siven Watt, Audrey Balliette, Margaret Lin, Michael Pusic, & Jeremy Venook, *The*  
 27 *“Presumption of Regularity in Trump Administration Litigation*, Just Security (Nov. 20, 2025),  
 28 <https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/>; *see also*  
 Walter Olson, *Do the Feds Still Merit the Court’s Presumption of Regularity?*, Cato at Liberty (Jan. 8,  
 2026), <https://www.cato.org/blog/should-feds-today-benefit-presumption-regularity-court>; Alan Z.  
 Rozenshtein, *What Happens When Courts Can’t Trust the Executive Branch?*, Lawfare (Apr. 10, 2025),  
<https://www.lawfaremedia.org/article/what-happens-when-courts-can-t-trust-the-executive-branch>.

### III. Judicial Scrutiny Is Necessary to Preserve Critical Free Speech.

Given the Trump administration's unprecedented use of government coercion to retaliate against perceived political foes, and its easy willingness to use false pretenses including national security as justification, the judicial role in protecting free speech and other fundamental rights is of paramount importance. Because the government can almost always invoke a false rationale such as national security, the courts must look beyond the government's unsubstantiated national security claims and consider their actual, and often blatant, motives—or risk complete evisceration of the First Amendment's protections.

In the AI space, allowing Defendants' retaliatory acts to remain in effect would threaten free and unrestrained dialogue among not only Anthropic officials and employees but among all those working in the sector at this critical moment of rapid AI development and deployment. Only the AI companies and the government are privy to matters of AI deployment and contracts with the government. If the government can hamper or destroy those AI companies' commercial viability in retaliation for their expressions of disagreement, chill will be the inevitable result. Given the stakes at issue in the present dispute—mass domestic surveillance and fully autonomous weapons development—and the dramatic potential effect that AI will continue have on the lives of all individuals (for better or for worse), that result could prove disastrous for our society, as highlighted by numerous amicus briefs filed in this case.

Indeed, the Trump administration's wide-ranging campaign of retaliation has had an unprecedented chilling effect not only on AI companies and their employees but on a wide range of societal actors. News organizations have cancelled hosts, pulled political interviews, and sought to delay investigative segments critical of this administration.<sup>23</sup> Federal employees at all levels who have spoken out about issues such as public health, emergency preparedness, and environmental risk, including AFGE members, have been terminated, sending a warning to all those who might waver from

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<sup>23</sup> See, e.g., *Kimmel returns to air as President threatens legal action*, N.Y. Times (Oct. 9, 2025), <https://www.nytimes.com/live/2025/09/23/us/trump-news>; Associated Press, *Stephen Colbert says CBS pulled candidate interview ahead of early voting in Texas*, PBS (Feb. 17, 2026), <https://www.pbs.org/newshour/politics/stephen-colbert-says-cbs-pulled-candidate-interview-ahead-of-early-voting-in-texas>; David Folkenflik, *CBS News chief Bari Weiss Pulls '60 Minutes' story, sparking outcry*, NPR (Dec. 22, 2025), <https://www.npr.org/2025/12/22/g-s1-103282/cbs-chief-bari-weiss-pulls-60-minutes-story>.

1 the Trump administration’s line in order to alert the public to imminent risk.<sup>24</sup> And the federal labor  
2 unions whose mission is to protect federal workers—including but not limited to AFGE—have been sent  
3 the message that if they exercise their right to petition federal courts regarding unlawful acts of the  
4 administration, they will be derecognized and their members will lose their collective bargaining  
5 relationships. *See supra* at 1.

6 Defendants’ retaliatory actions thus do not affect Anthropic alone; they send a message to every  
7 AI company, every government contractor, every government worker, and every American who dares to  
8 disagree with this administration. The Court’s intervention to disrupt that unconstitutional message is  
9 not only warranted—it is necessary.

10 **CONCLUSION**

11 The Court should grant Anthropic’s preliminary injunction motion.

12 Respectfully submitted,

13 Dated: March 13, 2026

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<sup>24</sup> *See supra* note 6.