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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 ANTHROPIC PBC,
18
19 Plaintiff,
20 v.
21 UNITED STATES DEPARTMENT OF
WAR, et al.,
22 Defendants.

Case No. 3:26-cv-01996

**[PROPOSED] BRIEF OF *AMICI CURIAE*
THE FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION, THE
ELECTRONIC FRONTIER
FOUNDATION, THE CATO INSTITUTE,
CHAMBER OF PROGRESS, AND THE
FIRST AMENDMENT LAWYERS
ASSOCIATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, OR
SECTION 705 STAY**

The Honorable Rita F. Lin
Date:
Time:
Ctrm.:

Complaint Filed: March 9, 2026

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1 The **First Amendment Lawyers Association (FALA)** is a nonprofit organization
2 comprised of attorneys across the United States with a shared commitment to preserving and
3 advancing the rights guaranteed by the First Amendment. Since its founding in the 1960s, FALA
4 has actively participated in cases concerning free expression, freedom of the press, and restrictions
5 on speech in public spaces. FALA members are often on the front lines of First Amendment
6 litigation, and the organization frequently appears as *amicus* to protect against government
7 encroachment on constitutional expression.

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INTRODUCTION

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2 The Pentagon designated Anthropic a supply chain risk because the Pentagon believes that
3 Anthropic is insufficiently “patriotic” and “fundamentally incompatible with American
4 principles.”² The reason? Anthropic refused to remove safeguards from its artificial intelligence
5 tools to help the Pentagon develop fully autonomous weapons or conduct mass domestic
6 surveillance. Anthropic believes “deeply in the existential importance of using AI to defend the
7 United States and other democracies,” but it also believes there are “[s]ome uses” that are “simply
8 outside the bounds of what today’s technology can safely and reliably do.”³ Consistent with that
9 viewpoint, Anthropic designed Claude, its “next-generation AI assistant,”⁴ to embrace a broad set
10 of values and safeguards—in Anthropic’s words, “Claude’s Constitution.”⁵ Anthropic also created
11 and adopted a Usage Policy and a government-specific addendum to it. That policy, which applied
12 to Anthropic’s dealings with the Pentagon, does not permit Claude to support fully autonomous
13 weapons or mass domestic surveillance.⁶

14 But the Pentagon recently changed its mind. It demanded that Anthropic allow its
15 technology to be used for *any* purportedly “lawful purpose,” which the Pentagon evidently believes
16 includes fully autonomous weapons and mass domestic surveillance. When Anthropic refused to
17 change Claude’s safeguards to let slip the dogs of war without limitation, the Pentagon designated
18 Anthropic a “supply chain risk” in an unprecedented attempt to strangle an *American* company for
19 its supposed threat to national security interests. *See* 10 U.S.C. § 3252. This potentially ruinous
20 sanction threatens not only Anthropic’s business but also that of its partners and customers. If left
21 in place, that sanction imposes a culture of coercion, complicity, and silence, in which the public

22
23 ² Secretary of War Pete Hegseth, X (Feb. 27, 2026) (“Secretary of War Pete Hegseth, X”),
<https://x.com/SecWar/status/2027507717469049070>.

24 ³ Statement from Dario Amodei on our discussions with the Department of War, Anthropic
25 (Feb. 26, 2026) (“Statement from Dario Amodei”), <https://www.anthropic.com/news/statement-department-of-war>.

26 ⁴ *Introducing Claude*, Anthropic (Mar. 14, 2023),
<https://www.anthropic.com/news/introducing-claude>.

27 ⁵ *See Claude’s new constitution*, Anthropic (Jan. 22, 2026),
<https://www.anthropic.com/news/claude-new-constitution>.

28 ⁶ Statement from Dario Amodei.

1 understands that the government will use any means at its disposal to punish those who dare to
2 disagree.

3 The Pentagon’s temper tantrum is a textbook violation of Anthropic’s First Amendment
4 rights. Humans at Anthropic created its Usage Policy and its government-specific addendum. And
5 Claude is fundamentally expressive. It is a “system that talks, explains, summarizes, argues, and
6 refuses—a system that sits in the middle of human inquiry.”⁷ The Pentagon’s demand that
7 Anthropic remove safeguards on that system—to *change* what Claude must and may say, analyze,
8 and refuse—asks Anthropic to make a trade on a core freedom of expression. In sum, Anthropic
9 must change its point of view and espouse its agreement with Department of Defense policy if it
10 wants to contract with the government and avoid the supply chain risk designation that threatens
11 its business, including its ability to contract and engage expressively with third parties. Anthropic
12 must agree both to refrain from speaking and to utter compelled speech: e.g., by acceding to the
13 government’s demand to remove any safeguards—chosen *by humans*—that would restrict how the
14 Pentagon can use Claude, and to change Claude’s permitted outputs in response to the Pentagon’s
15 requests.

16 The Pentagon admits its sanction is retaliation for Anthropic’s speech and an effort to
17 threaten or coerce it into compliance, an independent violation of the First Amendment. The
18 Secretary of Defense and other government officials involved in the designation have not even tried
19 to hide that they are trying to put Anthropic out of business merely for its dissent, not for any actual
20 supply chain risk. (Indeed, as Anthropic pointed out, why would the Pentagon so desperately try to
21 do business with a “security risk”?)⁸ The officials have shamelessly bragged that the purpose of
22 sanctioning Anthropic is to punish Anthropic for its “ideolog[y]” and to make room for more
23 “patriotic” businesses.⁹ The First Amendment does not allow the government to put someone out
24 of business because he or she does not pass the governing party’s ideological litmus test. “On the

25 _____
26 ⁷ See Greg Lukianoff, *The Pentagon’s Anthropic ultimatum and the case for the ‘separation of
power and truth,’* The Eternally Radical Idea (Mar. 3, 2026),
<https://eternallyradicalidea.com/p/the-pentagons-anthropic-ultimatum>.

27 ⁸ Statement from Dario Amodei.

28 ⁹ Secretary of War Pete Hegseth, X.

1 spectrum of dangers to free expression, there are few greater than allowing the government to
2 change the speech of private actors in order to achieve its own conception of speech nirvana.”
3 *Moody v. NetChoice, LLC*, 603 U.S. 707, 741–42 (2024).

4 This Court must enjoin the Pentagon’s actions. Permitting the government to dictate
5 Anthropic’s speech would violate the First Amendment, chill Anthropic’s and other businesses’
6 rights, and stifle the marketplace of ideas about AI’s transformative power, how to harness it
7 responsibly, and the potential privacy and civil-liberty risks associated with its use by the national
8 security apparatus.

9 ARGUMENT

10 I. The Pentagon’s treatment of Anthropic violates the First Amendment.

11 The Pentagon’s designation of Anthropic as a supply chain risk violates the First
12 Amendment in two independent ways. First, Anthropic’s choices about Claude’s output are
13 expressive and receive First Amendment protection. The Pentagon has no justification—beyond
14 mere policy disagreement—for its demand that Anthropic *change* its safeguards to enable Claude
15 to process data in a particular way or provide certain analyses or output. Second, by designating
16 Anthropic a supply chain risk, the Pentagon is openly and shamelessly retaliating against Anthropic
17 for Anthropic’s protected speech.

18 A. Anthropic’s design choices, including the safeguards for Claude, are 19 protected by the First Amendment.

20 Claude is fundamentally expressive. It is a “large language model” that takes in tremendous
21 amounts of data and engages in a pattern of “reasoning” to respond to user prompts.¹⁰ It can deliver
22 a range of outputs, including providing written responses to questions and generating structured
23 databases. Everything it does—from responding to requests, to processing data, to helping the user
24 work through tasks—involves this back-and-forth exchange of expression and ideas.

25 Humans—developers at Anthropic—created Claude. They developed the “detailed Usage
26 Policy to address the unique risks of AI, encourage safe and responsible uses of its models, and

27 ¹⁰ See *Tracing the thoughts of a large language model*, Anthropic (Mar. 27, 2025),
28 <https://www.anthropic.com/research/tracing-thoughts-language-model>.

1 prohibit a wide range of behaviors contrary to [Anthropic’s] mission and values.” Anthropic
2 Compl. ¶ 66. Anthropic designed the AI system and identified data to “train” the model.¹¹
3 Anthropic is *especially* careful about how its model is trained; for example, a document Anthropic
4 calls “Claude’s Constitution” governs Claude’s systems and training.¹² That document, which
5 Anthropic amends from time to time, is “a crucial part of [Anthropic’s] model training process, and
6 its content directly shapes Claude’s behavior.”¹³ For example, in response to undersigned counsel’s
7 question whether “there any tasks that you won’t perform due to safety concerns,” Claude’s Opus
8 4.6 model responded that it will not “[c]reat[e] malware, exploits, or malicious code — even for
9 stated educational purposes,” “[p]rovid[e] detailed instructions for making weapons (especially
10 chemical, biological, nuclear, or explosive),” “[g]enerat[e] content that sexualizes or could be used
11 to harm minors,” or “[h]elp[] with surveillance, stalking, or targeting individuals.” Claude also said
12 that “[w]ith health topics, [it’s] careful not to encourage self-destructive behaviors and [wi]ll flag
13 when someone should talk to a professional.” The morals and values that Anthropic programmers
14 attempt to instill in Claude reflect Anthropic’s officers’ and employees’ expressive choices.

15 For the government, Anthropic created a bespoke product: “Claude Gov,” a variation of
16 Claude that is subject to an “addendum to the Usage Policy.” *See* Anthropic Compl. ¶¶ 70–71.
17 While Claude Gov “recognize[s] the government’s unique needs and capabilities” and accordingly
18 allows some governmental applications that “would not be permitted” for civilians, many of
19 Claude’s Constitution’s restrictions and values still apply to Claude Gov: Claude “has not been
20 trained or tested” to “deploy lethal autonomous warfare,” for example. *Id.* ¶¶ 71, 76. And Anthropic
21 is unwilling to allow Claude Gov to be deployed for “mass surveillance of Americans.” *Id.* ¶ 77. In
22 sum, Claude Gov also draws on Anthropic’s fundamental values with some tweaks and
23 accommodations to support governmental uses.

24 Anthropic’s decisions about Claude’s and Claude Gov’s safeguards reflect Anthropic’s
25 beliefs and expressive choices. This conclusion is nothing new; it is well-established that the speech

26 ¹¹ *Id.*

27 ¹² *See Claude’s new constitution*, Anthropic (Jan. 22, 2026).

28 ¹³ *Id.*

1 and expressive choices of businesses, including those operating online “platforms,” plainly “receive
2 the First Amendment’s protection.” *Moody*, 603 U.S. at 728–29. The Supreme Court has been clear
3 that “whatever the challenges of applying the Constitution to ever-advancing technology, the basic
4 principles of the First Amendment do not vary.” *Id.* at 733 (citing *Brown v. Ent. Merchs. Ass’n*,
5 564 U.S. 786, 790 (2011)). The government may not “forc[e]” a person or business—no matter the
6 means of its expression—to “present views it wished to spurn,” control its “expressive choices,” or
7 require it to associate with speakers and “messages it would prefer to exclude.” *Id.* at 731–33. The
8 government therefore can no more force AI models to operate absent safeguards and/or answer
9 questions that the model’s creator would prefer it not to than it could force newspapers to print or
10 censor articles on specified topics. *Id.* at 743. Although emerging technologies can sometimes
11 present complicated applications of these principles, that is not the case here: *everything* that Claude
12 does is speech-driven, so *all* of its interactions with its users implicate these First Amendment
13 protections.

14 That Claude’s users interact with what appears to be an autonomous AI model does not
15 change the analysis. Claude works only because Anthropic instills it with a set of “human editorial
16 directions,” which are inherently expressive and receive First Amendment protection—indeed, its
17 algorithmic responses are “not unlike traditional media curated by human editors.” *See NetChoice*,
18 *LLC v. Bonta*, 152 F.4th 1002, 1014 (9th Cir. 2025); *see also X.AI LLC v. Bonta*, No. 25-cv-12295,
19 2026 WL 626926, at *5–6 (C.D. Cal. Mar. 4, 2026) (applying First Amendment scrutiny to the
20 claims of an AI company); Gilad Abiri, *Public Constitutional AI*, 59 GA. L. REV. 601, 660 (2025)
21 (“[R]equiring AI companies to train their models on a specific set of constitutional principles and
22 precedents could be viewed as a form of compelled speech.”). If those human inputs change, so too
23 do Claude’s outputs.

24 When the Pentagon demands that Claude embrace “patriotic” values, what it really means
25 is that Anthropic must jettison at least some of Claude’s guiding principles—its Usage Policy—to
26 produce outcomes of the Pentagon’s choosing.¹⁴ For example, if the Pentagon wanted Claude to
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28 ¹⁴ Secretary of War Pete Hegseth, X (Feb. 27, 2026).

1 autonomously plan and carry out missile strikes in military operations, absent technical safeguards
2 and contractual constraints on use in fully autonomous weapons,¹⁵ the Pentagon hypothetically
3 could task Claude to ingest relevant intelligence collected by the U.S. national security apparatus,
4 identify targets that will advance the administration’s military aims—whatever those may be—
5 determine which weapons system(s) will be most effective to strike the targets, and remotely initiate
6 such strikes, all without human intervention in the process. Anthropic has made it clear that in its
7 view, “frontier AI systems are simply not reliable enough to power fully autonomous weapons,”
8 and that employing Claude in such a way would “put[] America’s warfighters and civilians at risk,”
9 to say nothing of those who are targeted. Despite the obvious risks, the severity of the consequences,
10 and Anthropic’s ethical concerns, the government believes it nonetheless is entitled to either bully
11 the company into removing its safeguards or cripple its ability to do business.

12 The Pentagon may wish that Claude would answer every question the Pentagon deems
13 “patriotic” or give the most purportedly “patriotic” answer to every question, but it cannot *compel*
14 Anthropic to make Claude do so. As an even simpler example, imagine that a user at the Pentagon
15 asks Claude, “is it patriotic to oppose the war in Iran?” Must Claude answer, “no, it is important
16 that we all support the war,” in order to remain in the Pentagon’s good graces? These examples
17 make clear what the Pentagon requires of Anthropic: provide an unrestricted version of Claude that
18 advances the Pentagon’s policies and that does not object to the administration’s policy views. The
19 First Amendment cannot support such a demand.

20 Requiring Claude to express ideas that Anthropic does not wish to express is classic
21 compelled speech, which lies in the heartland of First Amendment’s prohibitions. *See W. Virginia*
22 *State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943) (the government may not “compel” a
23 person “to utter what is not in his mind”); *see also X Corp. v. Bonta*, 116 F.4th 888, 900 (9th Cir.
24 2024) (The “First Amendment’s guarantee of freedom of speech” generally prohibits government-
25 mandated “compelled speech.”). In addition, the Pentagon would require Anthropic to silence
26 itself—for instance, to eliminate the safeguard that might prevent a request to monitor social media
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28 ¹⁵ Statement from Dario Amodèi.

1 for comments critical of the government and use other available data to unmask commenters who
 2 post anonymously. *See X Corp.*, 116 F.4th at 900 (quoting *Riley v. Nat’l Fed’n of the Blind of N.C.,*
 3 *Inc.*, 487 U.S. 781, 796–97 (1988) (First Amendment also prohibits “compelled silence”).
 4 Moreover, by designating Anthropic as a supply chain risk, and imposing the consequences that
 5 designation carries, the government is punishing Anthropic for its beliefs—for instance, its stated
 6 viewpoint that “AI can undermine, rather than defend, democratic values” if not used responsibly.¹⁶
 7 The Pentagon evidently does not agree with that sentiment, but the Constitution protects
 8 Anthropic’s expression of these principles through Claude just the same. *See NAACP v. Button*,
 9 371 U.S. 415, 444–45 (1963).

10 The Pentagon’s speech-silencing, speech-altering, and speech-compelling demands simply
 11 cannot pass constitutional muster. National security does not justify an exception to strict scrutiny,
 12 which applies here. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (refusing to
 13 apply lesser scrutiny to content-based speech-restrictive laws merely because their goal was to
 14 advance national security); Anthropic Compl. ¶¶ 153–54. “The First Amendment forbids that sort
 15 of speech manipulation by the government, even in an arguably national security-related setting.”
 16 *Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 103 (D.D.C. 2025); *see also Wilmer*
 17 *Cutler Pickering Hale & Dorr LLP v. Exec. Off. of President*, 784 F. Supp. 3d 127, 148 (D.D.C.
 18 2025).

19 **B. The government’s actions are transparently retaliatory and coercive.**

20 It is textbook First Amendment law that: *first*, “government officials” may not “subject[]
 21 individuals to ‘retaliatory actions’ ... for having engaged in protected speech,” *Houston Cmty. Coll.*
 22 *Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (quoting *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019));
 23 and *second*, the government may not use a “threat of invoking legal sanctions and other means of
 24 coercion ... to achieve the suppression” of future disfavored speech, *Bantam Books, Inc. v. Sullivan*,
 25 372 U.S. 58, 67, 70 (1963); *see also Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 185 (2024).
 26 The Pentagon here did both.

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 28 ¹⁶ Statement from Dario Amodei.

1 First, “[a] plaintiff pursuing a First Amendment retaliation claim must show ... that the
2 government took an ‘adverse action’ in response to his speech [or protected conduct] that ‘would
3 not have been taken absent the retaliatory motive.’” *Wilson*, 595 U.S. at 477 (quoting *Nieves*, 587
4 U.S. at 399). As discussed above, *see pp.5–9*, Anthropic’s choices about Claude’s permitted
5 responses, including the outputs it creates (or does not create) in response to user input, are
6 “unquestionably protected conduct under the First Amendment.” *Wilmer*, 784 F. Supp. 3d at 150;
7 *see Moody*, 603 U.S. at 728–29. And the Pentagon’s decision to punish Anthropic for its refusal to
8 deploy Claude to match the Pentagon’s policy preferences constitutes retaliation “on its face.”
9 *Wilmer*, 784 F. Supp. 3d at 151.

10 This Court need not guess at the government’s retaliatory motives because the Pentagon has
11 already announced them. In Secretary Hegseth’s announcement of his “final” decision designating
12 Anthropic as a supply chain risk, he chided Anthropic for purportedly failing to create an AI model
13 that is sufficiently “patriotic.”¹⁷ He criticized Anthropic’s “ideological whims,” its policy of
14 “effective altruism,” its supposed “virtue signaling,” and ultimately its “stance” on Claude’s design
15 as “fundamentally incompatible with American principles.”¹⁸ And he made clear that these
16 criticisms were all based on Anthropic’s Usage Policy for Claude. In response, he announced the
17 Department’s intent to “transition to a ... more patriotic service.”¹⁹ Under Secretary of Defense
18 Emil Michael supported the decision by claiming that Anthropic’s CEO “is a liar and has a God-
19 complex.”²⁰ President Trump endorsed Secretary Hegseth’s decision and labeled Anthropic
20 “RADICAL,” “WOKE,” and “Leftwing nut jobs.”²¹

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24 ¹⁷ Secretary of War Pete Hegseth, X.

25 ¹⁸ *Id.*

26 ¹⁹ *Id.*

27 ²⁰ Under Secretary of War Emil Michael, X (Feb. 26, 2026),
28 <https://x.com/USWREMichael/status/2027211708201058578>.

²¹ President Donald J. Trump, Truth Social (Feb. 26, 2026),
 <https://truthsocial.com/@realDonaldTrump/posts/116144552969293195>.

1 Until recently, it was rare for government leaders to so openly and proudly boast about
2 retaliating against someone for their protected speech. Now it is commonplace.²² Evidently only
3 those who agree to be complicit in this administration’s assertion of unfettered power are safe. The
4 rest—the “left,” the “woke,” and anyone unwilling to toe the party line²³—are “virtually shunn[ed]
5 ... as persona non grata.” *Susman Godfrey LLP v. Exec. Off. of President*, 789 F. Supp. 3d 15, 50
6 (D.D.C. 2025); *cf. CAIR Found. v. Desantis*, No. 25-cv-516, 2026 WL 613468, at *1 (N.D. Fla.
7 Mar. 4, 2026) (observing “the troubling trend of using an executive office to make a political
8 statement at the expense of others’ constitutional rights”).

9 *Second* and relatedly, the Pentagon’s retaliation against Anthropic will surely silence future
10 speech from those who fear the government attempting to harm their business or extinguish it
11 entirely. *See Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (government’s “retaliatory action”
12 violates First Amendment where it is “sufficient to deter a person of ordinary firmness in plaintiff’s
13 position from speaking again”). The government’s actions send the unmistakable message to the
14 entire business community, if not the entire nation, that it “would be wise to dissociate from”
15 Anthropic as well. *CAIR Found.*, 2026 WL 613468, at *4 (cleaned up). Anthropic, other AI
16 providers, and anyone who interacts with this administration reasonably would believe that not
17 complying with the government’s demands will lead to “punishment” for “fail[ing] to accede to
18 [an] official’s request.” *Okwedy v. Molinari*, 333 F.3d 339, 342 (2d Cir. 2003).

19 By the administration’s own admission, it is using its tremendous coercive power to
20 promote what it views as “patriotic” and punish what it views as “incompatible with American
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23 ²² As one example, the government has engaged openly in a campaign of retaliation against the
24 creators of an application that reports public sightings of Immigration and Customs Enforcement
25 officers *and* the news organizations that merely cover the application. *See Compl., Rosado v. Bondi*,
26 No. 26-cv-1532 (N.D. Ill. Feb. 11, 2026), ECF No. 1. The administration has also engaged in a
27 similar retaliatory campaign against Harvard University, imposing on it as many sanctions as
28 possible with the *stated goal* of “warning [] all universities”—public and private—that they must
change their policies in order to remain in the administration’s good graces. *See Letter from Kristi
Noem, Sec’y of Homeland Security, to Maureen Martin, Harvard Univ.* (May 22, 2025), available
at Secretary Kristi Noem (@Sec_Noem), X (May 22, 2025, 2:01 PM), https://x.com/Sec_Noem/status/1925612991703052733.

²³ *Id.*

principles”²⁴ to force Anthropic to alter its expressive position and its speech. But “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty” has that power. *Barnette*, 319 U.S. at 642. And here too, it does not matter that the Pentagon claims a national security rationale. In the “nature and posture in th[is] specific case,” the Court can easily conclude, without undermining national security, that Secretary Hegseth’s supply chain risk determination is a sham aimed at punishing a private company for a policy disagreement about responsible and ethical uses of AI tools. *See Lee v. Garland*, 120 F.4th 880, 891 (D.C. Cir. 2024).²⁵ As Anthropic observed, the Pentagon would never try so hard to contract with an actual “security risk.” Labeling Anthropic a supply chain risk to put it out of business is akin to “killing a person by cutting off his oxygen supply rather than shooting him,” and the “only remedy is an injunction against the [government’s] violating [the company’s] First Amendment rights.” *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231, 238–39 (7th Cir. 2015).

II. Vindicating Anthropic’s First Amendment rights will protect all Americans.

To state a fundamental truth that the current administration seems not to understand: In a free society, “patriotism” is not measured by one’s willingness to be blindly obedient to those in power. Dissent and good-faith debate about matters of critical societal importance are as American as apple pie. The First Amendment guarantees that “concepts virtually sacred to our Nation as a whole” do not “go unquestioned in the marketplace of ideas.” *Texas v. Johnson*, 491 U.S. 397, 418 (1989). Our society thrives because of the “joust of principles protected by the First Amendment.”

²⁴ Secretary of War Pete Hegseth, X (Feb. 27, 2026).

²⁵ Anthropic is especially likely to overcome government’s asserted national security objections because it focuses its challenge on the Pentagon’s supply chain-risk determination rather than the Pentagon’s choice to terminate the parties’ direct contractual relationship. *See Anthropic Compl.* ¶ 152. But although the Pentagon arguably has more leeway to determine whether to contract with a business, even that decision is highly suspect because of its obvious retaliatory motive. In the retaliation context, “[s]ome official actions adverse to ... a speaker might well be unexceptionable if taken on other grounds” but become unlawful when “retaliation is ... the but-for cause of the official action.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *see Vullo*, 602 U.S. at 203 (Jackson, J., concurring) (“Vullo’s alleged conduct, if not done for retaliatory reasons, might otherwise be legitimate[.]”). And this contract termination also raises serious concerns under the unconstitutional conditions doctrine, as “the government ‘may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech’ even if he has no entitlement to that benefit.” *Bd. of Comm’rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 674 (1996) (citation omitted).

1 *Id.*; see also *Barnette*, 319 U.S. at 637 (“To enforce those rights today is not to choose weak
2 government over strong government. It is only to adhere as a means of strength to individual
3 freedom of mind in preference to officially disciplined uniformity for which history indicates a
4 disappointing and disastrous end.”).

5 Robust debate is especially important when government policy will have profound societal
6 consequences. And this case implicates at least two areas of extraordinary consequence: *first*, the
7 rapid evolution and transformational impact of AI; and *second*, the immense powers of our
8 government’s national security apparatus. The lines Anthropic seeks to draw in its arrangement
9 with the Pentagon and the ideas that Anthropic aims to contribute to the marketplace more broadly
10 are hardly “radical” or “selfish.”²⁶ Rather, Anthropic’s concerns about Claude being used for mass
11 domestic surveillance and fully autonomous weapons are well-founded given the history of
12 government mass surveillance efforts²⁷ and the myriad risks associated with lethal autonomous
13 weapons.²⁸

14 To protect this marketplace of ideas, the government must not be permitted to punish people
15 merely because it deems them or their conduct “unpatriotic.” See *Johnson*, 491 U.S. at 418 (“To
16 say that the government has an interest in encouraging proper treatment of the flag, however, is not
17 to say that it may criminally punish a person for burning a flag as a means of political protest.”).
18 The chilling effects of the government’s unconstitutional retaliation against Anthropic, if allowed
19 to stand, will extend far beyond this case. Others will alter their expressive activity to conform and
20 avoid scrutiny. Those holding or seeking government contracts will learn that they should always
21 adhere to the party line, even if that means being complicit in potentially unlawful or unethical
22 conduct. Other businesses and even ordinary citizens may feel compelled to publicly *embrace*
23 administration policy to which they object to avoid being branded by the government as
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25 ²⁶ President Donald J. Trump, Truth Social (Feb. 26, 2026).

26 ²⁷ See Section III, *infra*.

27 ²⁸ See, e.g., Letter from national security, business, civil society, and technology leaders to
28 Senate and House Armed Services Committee leadership (Mar. 5, 2026), <https://perma.cc/6M33-M2Y9>; *Autonomous Weapons Systems and International Humanitarian Law: Selected Issues*,
International Committee of the Red Cross (Dec. 2025), <https://perma.cc/X3T3-TTL5>.

1 “RADICAL” or “WOKE” and harassed or punished accordingly.²⁹ And yet others may decide not
 2 to engage with the government or speak publicly at all in order to minimize the risk of catching the
 3 administration’s ire. Such coerced ideological uniformity is both flatly unconstitutional and
 4 ultimately self-defeating. The “conviction that our toleration of criticism ... is a sign and source of
 5 our strength” is a value that sustains our Republic. *Johnson*, 491 U.S. at 419.

6 **III. Use of AI for domestic surveillance raises independent First Amendment concerns.**

7 *Amici* share Anthropic’s concerns underlying its Usage Policy that “AI-driven mass
 8 surveillance presents serious, novel risks to our fundamental liberties” and that law has not “caught
 9 up with the rapidly growing capabilities of AI.”³⁰ The privacy and civil liberties risks associated
 10 with evolving government surveillance capabilities—especially those used with questionable legal
 11 authority—are not a new concern.³¹ Government monitoring of American citizens’
 12 communications with inadequate oversight is a recurring theme in this country’s history.³² And
 13 social science research shows the chilling effects of these activities.³³

14 Artificial intelligence only exacerbates the risks of weaponized domestic surveillance. The
 15 government acquires vast troves of personal information from commercial entities, including
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17 ²⁹ President Donald J. Trump, Truth Social (Feb. 26, 2026).

18 ³⁰ Statement from Dario Amodei.

19 ³¹ See, e.g., Seymour Hersh, *Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces,*
 20 *Other Dissidents in Nixon Years* at 1, N.Y. Times (Dec. 21, 1974),
<https://www.nytimes.com/1974/12/22/archives/huge-cia-operation-reported-in-u-s-against-antiwar-forces-other.html>; S. Select Comm. to Study Governmental Operations with Respect to
 21 Intelligence Activities, *Book II: Intelligence Activities and the Rights of Americans*, S. Rep. No.
 22 94-755, at 12 (1976) (concluding that “surveillance ... was also often conducted by illegal or
 23 improper means”), <https://perma.cc/54FE-26TQ>; Jennifer Valentino-Devries and Siobhan Gorman,
 24 *What You Need to Know on New Details of NSA Spying*, Wall Street Journal (Aug. 20, 2013),
<https://www.wsj.com/articles/SB1000142412788732410820457902522244858490>; Bennett
 Cyphers, *How the Federal Government Buys Our Cell Phone Location Data*, EFF (June 13, 2022),
<https://perma.cc/2GMA-MBPG>.

25 ³² See generally Cora Currier, Justin Elliott, and Theodor Meyer, *Mass Surveillance in America:*
 26 *A Timeline of Loosening Laws and Practices*, ProPublica (June 7, 2013),
<https://projects.propublica.org/graphics/surveillance-timeline>.

27 ³³ See, e.g., Jonathon W. Penney, *Chilling Effects: Repression, Conformity, and Power in the*
 28 *Digital Age* at 99 (2025); Elizabeth Stoycheff, *Under Surveillance: Examining Facebook’s Spiral*
of Silence Effects in the Wake of NSA Internet Monitoring, 93 *Journalism & Mass Comm’n Q.*
 296, 307 (2016).

1 individuals' physical location, social media, and web browsing data.³⁴ Powerful large language
2 models (LLMs) can quickly analyze these massive datasets and draw inferences from a
3 constellation of scattered datapoints to construct a comprehensive picture of an individual's private
4 life, including their political affiliations, religious beliefs, personal communications, medical
5 conditions, and sexual activities. For example, an agency could use an LLM to infer an individual's
6 association with a particular mosque based upon frequent visits to the mosque's website,
7 engagement with the mosque's social media posts, and their cell phone's physical proximity to the
8 mosque during religious services. LLMs are also capable of deanonymizing online speech by using
9 public information to infer the real identities of people using anonymous online accounts.³⁵ With
10 the help of an LLM, the government can do this on massive scale, well beyond what was imaginable
11 even a few years ago.

12 It is easy to conceive how an agency, a government employee with improper intent, or a
13 malicious third party that finds a vulnerability, could exploit these capabilities to monitor public
14 discourse, preemptively squelch dissent, or cause myriad other harms. Against this background and
15 absent meaningful changes to the governing national security laws and judicial oversight structure,
16 it is entirely reasonable for Anthropic—or any other company—to insist on its own guardrails
17 regarding how the government uses its tools to surveil Americans.

18 CONCLUSION

19 It is the government's actions here, not Anthropic's, that are radical. This Court should
20 enjoin the Pentagon's unconstitutional and retaliatory designation of Anthropic as a supply chain
21 risk as promptly as possible.

25 ³⁴ See, e.g., Annie Bang & Ryan Gallagher, *Pentagon Feud with Anthropic Shines Light on AI's*
26 *Role in Mass Surveillance*, Bloomberg (Mar. 5, 2026),
[https://www.bloomberg.com/news/articles/2026-03-05/pentagon-feud-with-anthropic-shines-](https://www.bloomberg.com/news/articles/2026-03-05/pentagon-feud-with-anthropic-shines-light-on-mass-surveillance)
27 [light-on-mass-surveillance](https://www.bloomberg.com/news/articles/2026-03-05/pentagon-feud-with-anthropic-shines-light-on-mass-surveillance).

28 ³⁵ Simon Lerman, et al., *Large-Scale Online Deanonymization with LLMs* (Feb. 18, 2026),
<https://arxiv.org/html/2602.16800v1>.

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Respectfully submitted,

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