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17 **IN THE UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

20  
21 ANTHROPIC PBC,  
22 Plaintiffs,  
23 v.  
24 U.S. DEPARTMENT OF WAR, et al.,  
25 Defendants.

Case No. 3:26-cv-01996-RFL

**BRIEF OF AMICUS CURIAE  
TAXPAYERS PROTECTION ALLIANCE  
FOUNDATION IN SUPPORT OF  
PLAINTIFF’S MOTION FOR SUMMARY  
JUDGMENT**

Judge: Hon. Rita F. Lin  
Crtrm: 15, 18th floor  
Date: July 30, 2026  
Time: 10:00 a.m.

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**IDENTITY AND INTEREST OF AMICUS CURIAE**

1  
2 The Taxpayers Protection Alliance Foundation (“TPAF”) is a nonpartisan non-profit  
3 501(c)(3) organization dedicated to protecting free markets and educating the public on the impact  
4 of government overreach on the economy.<sup>1</sup> In its role as a watchdog, TPAF holds federal, state,  
5 and local bureaucracies accountable through articles, analyses, and congressional testimony.  
6 TPAF and its affiliated 501(c)(4) organization, the Taxpayers Protection Alliance (“TPA”), also  
7 regularly file *amicus* briefs in cases that directly implicate free market and limited government  
8 principles. For example, TPA has participated in cases with the aim of increasing U.S. Postal  
9 Service accountability, *see United States Postal Serv. v. Konan*, 146 S. Ct. 736 (2026), and  
10 defending the First Amendment right to participate in anonymous online speech and association  
11 without age verification, *see NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (2025). When government  
12 overreach directly encroaches on the lives, livelihoods, and freedoms of citizens, TPAF and TPA  
13 stand ready to fight.

14 TPAF has a strong interest in this matter because it believes that Defendants’ decision to  
15 brand Anthropic a “supply chain risk” is unlawful, and this unlawful action threatens America’s  
16 vibrant market-based order. When Defendants overstepped the statutory powers and limitations set  
17 by Congress, they acted as judge, jury, and executioner, and wholly disregarded the First  
18 Amendment in the process. Defendants unlawfully blacklisted Anthropic as a “supply chain risk,”  
19 preventing it from ever doing business with the government. Aside from doing damage to the  
20 separation of powers outlined in the Constitution, those actions jeopardize future American  
21 economic prosperity by singling out for punishment a thriving, innovative leader in the AI  
22 industry. Defendants’ unlawful actions will likely cripple Anthropic’s ability to do business,  
23 create new and better technologies, and provide services to American businesses and consumers.  
24 Critically, Defendants’ unlawful actions also harm taxpayers by arbitrarily limiting which AI  
25 products government agencies can use to deliver services to citizens. Defendants have sidestepped

26  
27 <sup>1</sup> No counsel for a party authored this brief in whole or in part, and no one other than *amicus*  
28 *curiae*, its members, or its counsel made a monetary contribution intended to fund this brief’s  
preparation or submission. The views expressed in this brief are those of TPAF and do not reflect  
the opinions of any specific individual counselor affiliated with TPAF.

1 legal processes in order to punish Anthropic, a pioneer in an essential and emerging industry that  
2 will define the next chapter of modern life.

### 3 SUMMARY OF ARGUMENT

4 Defendants have begun a retaliatory vendetta against Anthropic, which will have dire  
5 consequences for innovation, the free market, and American taxpayers. When Defendants  
6 “direct[ed] EVERY Federal Agency in the United States Government to IMMEDIATELY  
7 CEASE all use of Anthropic’s technology,”<sup>2</sup> in “conjunction” with the Secretary of War’s  
8 “supply chain risk” designation (to use his own wording),<sup>3</sup> it had the effect of not just denying a  
9 strong AI competitor access to necessary scale but also chilling Anthropic’s freedom of  
10 expression. Then, when Defendants declared that “[e]ffective immediately, no contractor, supplier,  
11 or partner that does business with the United States military may conduct any commercial activity  
12 with Anthropic,” they cemented Anthropic’s status as a pariah in the eyes of its other commercial  
13 partners.<sup>4</sup>

14 What occurred here was not a careful and measured review of a federal contract to assess  
15 its utility. The government did not merely terminate Anthropic’s contract with the Department of  
16 War (“DOW”); Defendants blacklisted and boycotted the company across the government. Due to  
17 the severe and public nature of Defendants’ actions, the viewpoint-discriminatory retaliation  
18 against Anthropic is likely to inflict reputational damage and thereby harm the company’s ability  
19 to continue to provide cutting-edge technology to benefit American taxpayers and consumers.

20 Defendants’ actions threaten the constitutional order and jeopardize the free-market  
21 economic system that has been the engine of tremendous American growth and innovation.  
22 Defendants’ post-hoc justifications should be rejected. They cannot excuse Defendants’ flagrant  
23 violations of the First Amendment or their flawed interpretation of the relevant statute. For these  
24 reasons, *amicus* urges this Court to grant Anthropic’s motion for summary judgment.

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26 <sup>2</sup> President Donald J. Trump (@realDonaldTrump), Truth Social (Feb. 27, 2026, 3:47 PM),  
<https://truthsocial.com/@realDonaldTrump/posts/116144552969293195> (emphasis in original).

27 <sup>3</sup> Secretary of War Pete Hegseth (@SecWar), X (Feb. 27, 2026, 5:14 P.M.),  
<https://x.com/SecWar/status/2027507717469049070?s=20>.

28 <sup>4</sup> *Id.*

## BACKGROUND

America's free market, which rewards innovation and growth and promotes shared prosperity, and its robust republican form of government, which protects private actors from government overreach, are essential ingredients to the nation's 250-year success as a self-governing democracy. The economic and political freedoms Americans enjoy have produced world-changing technology like air travel, the electric light bulb, and the internet. Often, these private sector innovations help defend the systems that enabled their creation: they directly support American defense efforts by serving as the foundations of groundbreaking military technology.

Americans' next great innovative leap is AI. "AI could transform society in the same way that technological advances like the steam engine and electrification did in the distant past and as computing and the internet have done over the past few decades."<sup>5</sup> Studies suggest "that if AI's use became more widespread, it would boost economic growth," as well as "impact ... federal spending through [AI's] use in the development of certain products."<sup>6</sup>

On a geopolitical scale, there is a race to develop the most advanced AI tools and deploy those tools to increase efficiencies and innovation.<sup>7</sup> American innovators are taking the lead. In 2024, the United States invested \$109.1 billion in AI, nearly 12 times more than China and 24 times more than the United Kingdom.<sup>8</sup> Critically, the United States "has historically relied on the strength of its private sector to drive technological innovation, with breakthroughs in fields like aerospace, semiconductors, and computing often originating in commercial industries before being adapted for national security purposes," and it is continuing to do so in AI development.<sup>9</sup> But

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<sup>5</sup> Congressional Budget Office, *Artificial Intelligence and Its Potential Effects on the Economy and the Federal Budget* (Dec. 2024), <https://www.cbo.gov/publication/61147>.

<sup>6</sup> *Id.*

<sup>7</sup> Sarah Kreps, *The Global AI Race: Will US Innovation Lead or Lag?*, Brookings Institution (Dec. 6, 2024) <https://www.brookings.edu/articles/the-global-ai-race-will-us-innovation-lead-or-lag/>.

<sup>8</sup> Njenga Kariuki, *Artificial Intelligence Index Report 2025*, Stanford Institute for Human-Centered Artificial Intelligence, Chapter 4: Economy, [https://hai.stanford.edu/assets/files/hai\\_ai-index-report-2025\\_chapter4\\_final.pdf](https://hai.stanford.edu/assets/files/hai_ai-index-report-2025_chapter4_final.pdf).

<sup>9</sup> Sarah Kreps, *supra* n. 7.

1 China is gaining ground, demonstrating some of the most significant year-over-year growth.<sup>10</sup> It is  
2 not doing so with a free market but with “massive state-led investments” and a “strategy of  
3 military-civil fusion [through which] China is rapidly integrating advancements from its  
4 commercial sector into military operations.”<sup>11</sup>

5 Anthropic and its competitors offer an American answer to this top-down centralized  
6 approach. For years, Anthropic has competed to offer groundbreaking technology in service of  
7 America’s national defense.<sup>12</sup> Such was the case until February 27 when, in the midst of a contract  
8 dispute, both the President and the Secretary of War retaliated against Anthropic.<sup>13</sup> By blacklisting  
9 Anthropic as a “supply chain risk,” Defendants have shut out a pioneer of innovation at a critically  
10 important juncture. By barring the company from federal contracts and inflicting reputational  
11 damage, Defendants have violated Anthropic’s freedom of speech and run afoul of 10 U.S.C.  
12 § 3252, which is one statutory authority providing governing “supply chain risk” designations.  
13 These actions undermine the rule of law and threaten America’s place as the global leader in AI  
14 investment and development. chapter of modern life.

15 **ARGUMENT**

16 **I. Defendants’ Actions Violate the First Amendment and Threaten the Free Market.**

17 **A. Defendants’ Actions Impose Unconstitutional Conditions Outside Relevant**  
18 **Contracting.**

19 Defendants punished Anthropic for expressing public opinions on the thorny ethical and  
20 practical question of how much human oversight AI-fueled defense technology requires. As stated  
21 by Anthropic co-founder and CEO Dario Amodei, AI technology has “[s]ome uses”—such as  
22 mass domestic surveillance and autonomous weaponization—that lie “outside the bounds of what  
23  
24  
25

26 \_\_\_\_\_  
10 *Id.*

27 11 *Id.*

28 12 Declaration of Thiyagu Ramasamy, Dkt. 6-3, ¶¶ 4-6. .

13 *Supra* nn. 2, 3.

1 today’s technology can safely and reliably do.”<sup>14</sup> This understandable point of view on the  
 2 current limits of what AI ought to be used for is core First Amendment-protected expression.  
 3 Thus, a private actor’s public expression on the appropriate exercise of a highly-consequential  
 4 technology is at “the heart of the First Amendment’s protection” and “occupies the highest rung  
 5 of the hierarchy of First Amendment values.” *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011)  
 6 (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–759 (1985)  
 7 (opinion of Powell, J.)); *Connick v. Myers*, 461 U.S. 138, 145 (1983).

8 The Supreme Court has made clear that “political speech does not lose First Amendment  
 9 protection ‘simply because its source is a corporation.’” *Citizens United v. FEC*, 558 U.S. 310,  
 10 342 (2010) (quoting *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 784 (1978)). That is  
 11 because “[c]orporations..., like individuals, contribute to the ‘discussion, debate, and the  
 12 dissemination of information and ideas’ that the First Amendment seeks to foster.” *Pac. Gas &  
 13 Elec. Co. v. Pub. Util. Comm’n of Cal.*, 475 U.S. 1, 8 (1986) (plurality opinion) (quoting *Bellotti*,  
 14 435 U.S. at 783); see *Citizens United*, 558 U.S. at 342-43. Unless said speech implicates fraud or  
 15 other punishable conduct by companies, corporations’ political speech should be protected just as  
 16 the speech of American “natural persons” are protected. *Id.* at 343 (quoting *Bellotti*, 435 U.S. at  
 17 776).

18 To be sure, the government does not violate the First Amendment by merely choosing  
 19 not to contract with companies that cannot fulfill the terms of its contracts. In general, the state has  
 20 no obligation to bankroll any particular business model or any particular exercise of constitutional  
 21 rights, including all conceivable views. *E.g.*, *United States v. Nat’l Lib. Ass’n*, 539 U.S. 194, 212  
 22 (2003) (“A refusal to fund protected activity, without more, cannot be equated with the imposition  
 23 of a ‘penalty’ on that activity.” (quoting *Rust v. Sullivan*, 500 U.S. 173, 193 (1991))). “The  
 24 Government can, without violating the Constitution, selectively fund a program to encourage  
 25 certain activities it believes to be in the public interest, without at the same time funding an

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 27 <sup>14</sup> *Statement from Dario Amodei on our discussions with the Department of War, Anthropic*  
 28 (Feb. 26, 2026) (“Statement from Dario Amodei”), <https://www.anthropic.com/news/statement-department-of-war>.

1 alternate program which seeks to deal with the problem in another way.” *Rust*, 500 U.S. at 193. In  
2 other words, if the government wants to contract with a vendor for a product, it can, and indeed  
3 necessarily must, consider the ethical boundaries that a particular vendor might place on the uses  
4 of its product. Because Anthropic’s stated values, including “[i]ndividual privacy and freedom  
5 from undue surveillance,”<sup>15</sup> are part of its constitution and an integral part of its decisions to take  
6 on surveillance-related work, some of Anthropic’s viewpoints will inevitably play a role in  
7 contract determination. Defendants thus could have severed DOW’s contract with Anthropic  
8 without exceeding DOW’s statutory authority and engaging in a government-wide contracting  
9 crusade against the company.

10 The state cannot retaliate against a company’s point of view by cutting it off from all  
11 conceivable contracts, including contracts or programmatic funding that has nothing whatsoever to  
12 do with its point of view. See *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S.  
13 205, 217 (2013) (government does not “run afoul of the First Amendment” where it does not  
14 “prohibit the recipient from engaging in the protected conduct outside the scope of the federally  
15 funded program.” (citation modified) (quoting *Rust*, 500 U.S. at 197)). A condition of contracting  
16 or funding unconstitutionally jeopardizes First Amendment rights when it “seek[s] to leverage  
17 funding to regulate speech outside the contours of the program itself.” *Id.* at 206; see also *FCC v.*  
18 *League of Women Voters of Cal.*, 468 U.S. 364, 399-401 (1984) (finding that the state cannot  
19 substantially abridge a broadcaster’s speech based on a limited policy interest).

20 Defendants’ retaliation here effectively places an unconstitutional condition on  
21 Anthropic’s exercise of its First Amendment freedoms. The unconstitutional conditions doctrine  
22 covers these “outside the contours” cases, providing that the government may not withhold a  
23 benefit—including taxpayer-funded contracts—“on a basis that infringes his constitutionally  
24 protected interests.” *All. for Open Soc’y Int’l, Inc. v. U.S. Agency for Int’l Dev.*, 651 F.3d 218, 231  
25 (2d Cir. 2011) (quotation marks omitted), *aff’d*, 570 U.S. 205 (2013). Here, Defendants are  
26 violating Anthropic’s First Amendment right to express concerns about the limits of AI by

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28 <sup>15</sup> *Claude’s Constitution*, Anthropic, <https://www.anthropic.com/constitution>.

1 withholding the immense benefit of accessing its contracts. Anthropic’s decision to place technical  
 2 limitations on its tools—which, for example, prevent certain surveillance use cases—is part and  
 3 parcel of its current philosophy on acceptable AI use. That philosophy includes the following  
 4 statement: “we believe that mass domestic surveillance of Americans constitutes a violation of  
 5 fundamental rights.”<sup>16</sup> This is not about Anthropic’s ability to carry out any specific contract  
 6 implicated by that point of view, but rather government-wide retaliation against protected  
 7 (alleged) “RADICAL LEFT, WOKE”<sup>17</sup> speech and an attempt to chill similar speech going  
 8 forward.

9 **B. Defendants’ First Amendment Violations Will Destabilize Markets.**

10 Defendants’ unconstitutional actions will have profound economy-wide consequences,  
 11 hamstringing the markets now fueling the explosive development of groundbreaking AI  
 12 technology that benefit taxpayers and consumers.

13 Anthropic’s relationships with public and private sector actors have already been impacted  
 14 outside the defense sector. Following Defendants’ actions, the Department of Treasury,  
 15 Department of State, Department of Health and Human Services, and Department of Energy all  
 16 announced they would discontinue use of Anthropic’s products.<sup>18</sup> Financial services institutions, a  
 17 national grocery chain, a pharmaceutical company, and a financial technology company have also  
 18 expressed reluctance to continue or commence working with Anthropic.<sup>19</sup> The list is long and  
 19 growing, and demonstrates that the government’s unconstitutional viewpoint discrimination  
 20 against Anthropic is having unwelcome ripple effects across the U.S. economy, wholly outside the  
 21 contours of the programs and contracts on which Anthropic and the federal government differ.

22 Defendants’ actions will thus cripple the ability of Anthropic to continue to grow,  
 23 achieving the necessary scale to benefit taxpayers and consumers. The Trump administration has  
 24 consistently acknowledged the importance of AI development to American global power and

25 <sup>16</sup> *Statement on the comments from Secretary of War Pete Hegseth*, Anthropic (Feb. 27,  
 26 2026), <https://www.anthropic.com/news/statement-comments-secretary-war>.

27 <sup>17</sup> President Donald J. Trump, *supra* n.1 (emphasis in original).

28 <sup>18</sup> Declaration of Paul Smith, Dkt. 6-4, ¶ 13.

<sup>19</sup> *Id.* at ¶¶ 16-17.

1 underscored the need to ensure that developers of the technology continue to compete inside and  
 2 outside of government—free from bureaucratic interference. For example, the White House has  
 3 declared that AI development “will promote United States national and economic security  
 4 dominance across many domains.”<sup>20</sup>

5 Despite these public pronouncements about the need for competitive AI, the government’s  
 6 actions punishing Anthropic for exercising its free speech threaten to reduce competition and harm  
 7 innovation. The Ninth Circuit has recognized that modern technology offerings benefit from scale,  
 8 i.e., the “yin and yang of th[e] symbiotic relationship” between users and developers of a platform.  
 9 *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 950 (9th Cir. 2025). When appropriately  
 10 used, increased scale allows digital platforms to grow quickly, creating substantial wealth,  
 11 benefits, and improved quality of life for taxpayers and consumers alike. Blacklisting Anthropic at  
 12 this pivotal moment in time, when the AI space is so highly competitive, threatens to deprive  
 13 Anthropic of the access to markets it needs to succeed.

14 Defendants’ actions here directly harm taxpayers, because their denial of scale to  
 15 Anthropic undercuts innovation across the government. Anthropic—at the moment a leader in  
 16 AI—now cannot compete for government contracts—defense or otherwise—with other AI  
 17 innovators on the merits of the product it offers even if it offers the most efficient and innovative  
 18 option. When AI providers are not free to compete based on the merit of their offerings, America  
 19 loses the benefit of unfettered competition yielding the best allocation of the Nation’s resources to  
 20 produce the most innovative tools and services. See *Nat’l Collegiate Athletic Ass’n v. Alston*, 594  
 21 U.S. 69, 73 (2021). The results will be predictable: higher prices, lower quality products, reduced  
 22 innovation, and a breakdown in rule of law, all in a sector critical for continued American  
 23 prosperity.

24 **II. The “Supply Chain Risk” Designation of Anthropic Ignores the Plain Meaning of 10**  
 25 **U.S.C. § 3252 and Lacks an Intelligible Principle.**

26 Beyond Defendants’ grievous First Amendment violations and likely economy-wide

27 \_\_\_\_\_  
 28 <sup>20</sup> Exec. Order No. 14365, 90 Fed. Reg. 58499 (Dec. 11, 2025).

1 harms, Defendants’ actions cannot be reconciled with the plain meaning of 10 U.S.C. § 3252 .  
2 Because the Department of War relies on that provision here as the legal basis for its “supply  
3 chain risk” designation, it is necessary to examine the ordinary public meaning of key terms found  
4 in the statute.<sup>21</sup> *Cf. Bostock v. Clayton Cnty.*, 590 U.S. 644, 654-55 (2020) (“[O]nly the words on  
5 the page constitute the law adopted by Congress and approved by the President. If judges could  
6 add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources  
7 and our own imaginations, we would risk amending statutes outside the legislative process  
8 reserved for the people’s representatives.”).

9 Here, ordinary principles of statutory construction support one conclusion: a domestic  
10 company engaged in a contract dispute is not a “supply chain risk.” The law defines “supply chain  
11 risk” as “the risk that an adversary may sabotage, maliciously introduce unwanted function, or  
12 otherwise subvert the design, integrity, manufacturing, production, distribution, installation,  
13 operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade  
14 the function, use, or operation of such system.” 10 U.S.C. § 3252(d)(4). However, it is entirely  
15 unclear how Anthropic’s concerns about the use of AI in mass surveillance and automated  
16 weapons render it an “adversary” to the government or U.S. taxpayer.

17 Dictionaries contemporary with the current statutory formulation—which dates to 2018 —  
18 uniformly define “adversary” as a “hostile opponent,” often in the context of conflict, rivalry, or a  
19 contest between opposing sides—frequently nations, armed groups, or aligned entities acting on  
20 behalf of such powers. See, e.g., *Adversary*, Black’s Law Dictionary (10<sup>th</sup> ed. 2014) (defined as  
21 “[a]n opponent; esp., opposing counsel.”); *Adversary*, Merriam-Webster, [https://www.merriam-  
22 webster.com/dictionary/adversary](https://www.merriam-webster.com/dictionary/adversary) (defining as “one that contends with, opposes, or resists”);  
23 *Adversary*, Britannica, [https://www.britannica.com/dictionary/  
24 adversary](https://www.britannica.com/dictionary/adversary) (defining as “an enemy  
25 or opponent”). In the national security context, that ordinary meaning is sharpened further: an  
26 “adversary” is not merely any disfavored actor, but one aligned with or acting in service of a

27 <sup>21</sup> Defendants also rely on 41 U.S.C. § 4713 for their “supply chain risk” designation, which  
28 Plaintiff challenges separately. See *Anthropic v. U.S. Department of War et al.*, No. 26-1049 (D.C.  
Cir.).

1 foreign threat to the United States.

2 Other language Congress used in the definition of supply chain risk in section 3252  
3 underscores this conclusion. Section 3252’s use of terms like “sabotage” and “maliciously”  
4 indicate that Congress intended supply chain risks to be intentional acts by an adversary during a  
5 time of war. See *Sabotage*, Black’s Law Dictionary (10th ed. 2014) (“Deliberate damage done to  
6 equipment, vehicles, etc. in order to prevent an enemy or adversary from using them; specif., the  
7 destruction, damage, or knowingly defective production of materials, premises, or utilities used for  
8 national defense or for war.”); *Maliciously*, Black’s Law Dictionary (10th ed. 2014) (“In a spirit of  
9 ill will.”). Congress’s choice of words in section 3252 emphasizes that there must be an alignment  
10 or action taken in service of a foreign threat, not a mere disagreement over the terms of a contract.

11 Read otherwise to include any party on the opposite side of contract negotiations would  
12 not only fly in the face of the “ordinary public meaning” of “adversary,” but would also strip the  
13 DOW’s “supply chain risk” designation powers of any intelligible or fathomable principle.<sup>22</sup> This  
14 Court should avoid any such statutory construction that enters these troubled Constitutional  
15 waters. See *United States v. Metcalf*, 156 F.4th 871, 881-82 (9th Cir. 2025) (“When the validity of  
16 an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is  
17 raised, it is a cardinal principle that this Court will first ascertain whether a construction of the  
18 statute is fairly possible by which the question may be avoided.” (quoting *Ashwander v. Tenn.*  
19 *Valley Auth.*, 297 U.S. 288, 348 (1936))).

20 A lack of intelligible principle would render 10 U.S.C. § 3252 an unconstitutional  
21 delegation of power from the legislative to executive branch. In determining whether the latter has  
22 been impermissibly delegated powers from the former, the Court has asked whether Congress has  
23 made clear an “intelligible principle” to guide what it has given the agency to do. *Gundy v. United*  
24 *States*, 588 U.S. 128, 135 (2019) (quoting *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S.

25  
26 <sup>22</sup> Anthropic discusses the nature of the negotiations at length in its Motion for Summary  
27 Judgment. See Dkt. 166 at 17-20. Construing these negotiations as “adversarial” for purposes of  
28 Section 3252 further risks creating a chilling effect on contractor participation in government  
contracting.

1 394, 409 (1928)). “The ‘guidance’ needed is greater . . . when an agency action will ‘affect the  
2 entire national economy’ than when it addresses a narrow, technical issue[.]” *Fed. Commc’ns*  
3 *Comm’n v. Consumers’ Rsch.*, 606 U.S. 656, 673 (2025) (quoting *Whitman v. American Trucking*  
4 *Assns., Inc.*, 531 U.S. 457, 475 (2001)). “[I]n examining a statute for the requisite intelligible  
5 principle, [courts] have generally assessed whether Congress has made clear both the general  
6 policy that the agency must pursue and the boundaries of its delegated authority.” *Id.* (citation  
7 modified).

8 Non-delegation principles apply equally to the Department of War as to any coordinate  
9 branch. See *United States v. Mingo*, 964 F.3d 134, 137 (2d Cir. 2020) (examining whether a  
10 provision allowing the Secretary of War to designate which military offenses constitute sex  
11 offenses violates the non-delegation doctrine). If Section 3252, the statute governing supply chain  
12 risks in this case, can be invoked whenever there is an adversarial contracting relationship between  
13 the government and a private party, there is effectively no limit on the language’s grant of powers  
14 to the executive branch—setting up DOW and its Secretary as judge, jury, and executioner and  
15 allowing it to ignore the vast body of government contract law and move against a company it  
16 disagrees with.

17 Even if this expansive reading of Section 3252 could survive constitutional scrutiny, the  
18 law nowhere allows the federal government authority to ban *other* government agencies from  
19 partnering with a contractor (properly designated) a supply chain risk—despite the White House  
20 appearing to institute a government-wide ban in direct connection with DOW’s “supply chain  
21 risk” designation.<sup>23</sup>

22 Finding for Defendants would give the executive branch unconstitutional leeway in  
23 ignoring the plain meaning of Section 3252. Congress cannot, and did not, grant Defendants the  
24 power to weaponize a supply chain risk designation to prevent any other government agency from  
25 doing business with the named company.

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27 <sup>23</sup> President Donald J. Trump, *supra* n.1. See also Anthropic PBC’s Motion for Summary  
28 Judgment, Dkt. 166 at 4-5.

