

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PERKINS COIE LLP,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL COMMUNICATIONS
COMMISSION, OFFICE OF
MANAGEMENT AND BUDGET, EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION, OFFICE OF PERSONNEL
MANAGEMENT, GENERAL SERVICES
ADMINISTRATION, OFFICE OF THE
DIRECTOR OF NATIONAL
INTELLIGENCE, THE UNITED STATES
OF AMERICA, and, in their official
capacities, PAMELA J. BONDI, BRENDAN
CARR, RUSSELL T. VOUGHT, ANDREA
R. LUCAS, CHARLES EZELL, STEPHEN
EHEKIAN, and TULSI GABBARD,

Defendants.

Civil Action No. 1:25-cv-00716 (BAH)

Judge Beryl A. Howell

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS AND FOR EXPEDITED JUDGMENT**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
LEGAL STANDARD AND RESPONSE TO “SHOTGUN PLEADING” ARGUMENT	4
ARGUMENT	5
A. The Complaint States First Amendment Claims	5
1. The Complaint States a Claim for First Amendment Retaliation	5
2. The Complaint States a Claim of Viewpoint Discrimination.....	20
3. The Complaint States a Claim of Compelled Disclosure.....	21
B. The Complaint States Due Process Claims.....	23
1. The Complaint Pleads Protected Liberty and Property Interests	23
2. The Complaint Pleads Inadequate Procedures	27
3. The Complaint Pleads the Executive Order Is Impermissibly Vague.....	30
C. The Complaint States Fifth and Sixth Amendment Right to Counsel Claims	31
D. The Complaint States a Claim That the Executive Order Exceeds the President’s Constitutional Authority and Violates the Separation of Powers.....	33
1. No Heightened Showing of Unconstitutionality Is Required.....	34
2. The President Has No Constitutional Authority To Punish the Firm.....	35
3. The Order Improperly Usurps Judicial Power	38
E. The Complaint States an Equal Protection Claim.....	39
II. THE COURT SHOULD DENY DEFENDANTS’ MOTION TO RECONSIDER.....	41
CONCLUSION.....	45

TABLE OF AUTHORITIES

CASES	Page
<i>Al-Hela v. Biden</i> , 66 F.4th 217 (D.C. Cir. 2023) (en banc)	44
<i>Am. Meat Inst. v. U.S. Dep’t. of Agr.</i> , 760 F.3d 18 (D.C. Cir. 2014) (en banc).....	22
<i>*Ams. for Prosperity Found. v. Bonta</i> , 594 U.S. 595 (2021).....	23
<i>*Aref v. Lynch</i> , 833 F.3d 242 (D.C. Cir. 2016).....	6
<i>Armstrong v. Exceptional Child Ctr., Inc.</i> , 575 U.S. 320 (2015)	43, 44
<i>Arnaud v. Odom</i> , 870 F.2d 304 (5th Cir. 1989).....	27
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	4
<i>Ashtari v. Pompeo</i> , 496 F. Supp. 3d 462 (D.D.C. 2020)	4
<i>*Bd. of Cnty. Comm’rs v. Umbehr</i> , 518 U.S. 668 (1996).....	16
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	28
<i>Borough of Duryea v. Guarnieri</i> , 564 U.S. 379 (2011).....	15
<i>Campbell v. District of Columbia</i> , 126 F. Supp. 3d 141 (D.D.C. 2015).....	26
<i>*Campbell v. District of Columbia</i> , 894 F.3d 281 (D.C. Cir. 2018).....	23
<i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991).....	38
<i>Changji Esquel Textile Co. v. Raimondo</i> , 40 F.4th 716 (D.C. Cir. 2022)	34
<i>City & County of San Francisco v. Trump</i> , 897 F.3d 1225 (9th Cir. 2018)	12
<i>City of Cleburne v. Cleburne Living Ctr., Inc.</i> , 473 U.S. 432 (1985).....	40
<i>Cleveland Bd. of Educ. v. Loudermill</i> , 470 U.S. 532 (1985)	28
<i>Codd v. Velger</i> , 429 U.S. 624 (1977).....	26
<i>Contractors Association v. Secretary of Labor</i> , 442 F.2d 159 (3d Cir. 1971)	36
<i>Corr. Servs. Corp. v. Malesko</i> , 534 U.S. 61 (2001).....	34
<i>Enquist v. Oregon Department of Agriculture</i> , 553 U.S. 591 (2008).....	39
<i>*FCC v. Fox Television Stations, Inc.</i> , 567 U.S. 239 (2012).....	25, 28, 31

	Page
Cases—continued:	
<i>FDIC v. Mallen</i> , 486 U.S. 230 (1988)	27
<i>Fed. Express Corp. v. U.S. Dep’t of Com.</i> , 39 F.4th 756 (D.C. Cir. 2022)	34
<i>Foretich v. United States</i> , 351 F.3d 1198 (D.C. Cir. 2003)	45
<i>Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.</i> , 561 U.S. 477 (2010).....	34
<i>Gen. Elec. Co. v. Jackson</i> , 610 F.3d 110 (D.C. Cir. 2010).....	25
<i>Georgia v. President of the U.S.</i> , 46 F.4th 1283 (11th Cir. 2022).....	36
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989)	38
<i>Greene v. McElroy</i> , 360 U.S. 474 (1959)	27
<i>Greer v. Spock</i> , 424 U.S. 828 (1976).....	38
<i>Gross v. Lopez</i> , 419 U.S. 565 (1975).....	26
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024) (per curiam).....	33
<i>*Hartman v. Moore</i> , 547 U.S. 250 (2006).....	6, 9
<i>Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., Loc. 737 v. Auto Glass Emps. Credit Union</i> , 72 F.3d 1243 (6th Cir. 1996).....	27
<i>*Joint Anti-Fascist Refugee Comm. v. McGrath</i> , 341 U.S. 123 (1951)	29, 34, 35
<i>*Kartseva v. Dep’t of State</i> , 37 F.3d 1524 (D.C. Cir. 1994).....	24, 25
<i>Kentucky v. Biden</i> , 23 F.4th 585 (6th Cir. 2022)	36
<i>Kincaid v. Gov’t of District of Columbia</i> , 854 F.3d 721 (D.C. Cir. 2017)	31
<i>Lee v. Garland</i> , 120 F.4th 880 (D.C. Cir. 2024).....	11
<i>*Legal Servs. Corp. v. Velazquez</i> , 531 U.S. 533 (2001).....	2, 38
<i>Logan v. Zimmerman Brush Co.</i> , 455 U.S. 422 (1982)	23
<i>Luis v. United States</i> , 578 U.S. 5 (2016).....	33
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803).....	2
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	27

Cases—continued:

Maynard v. Melton, 2021 WL 6845008 (D.D.C. Apr. 7, 2021),
R&R adopted, 2023 WL 1963919 (D.D.C. Feb. 10, 2023)4

McCray v. Biden, 574 F. Supp. 3d 1 (D.D.C. 2021).....44

McGowan v. Maryland, 366 U.S. 420 (1961).....14

Mead v. Indep. Ass’n, 684 F.3d 226 (1st Cir. 2012).....24

NAACP v. Button, 371 U.S. 415 (1963).....27

**Nat’l Council of Resistance of Iran v. Dep’t of State*, 251 F.3d 192 (D.C. Cir. 2001).....25, 26

**Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175 (2024)6, 9, 20

Navegar, Inc. v. United States, 103 F.3d 994 (D.C. Cir. 1997).....18

Nebraska v. Su, 121 F.4th 1 (9th Cir. 2024)36

News Am. Publ’g, Inc. v. FCC, 844 F.2d 800 (D.C. Cir. 1988)39

Perry v. Sindermann, 408 U.S. 593 (1972).....9

**Powell v. Alabama*, 287 U.S. 45 (1932)32, 33

Rattigan v. Holder, 689 F.3d 764 (D.C. Cir. 2012)11

**Reed v. Town of Gilbert*, 576 U.S. 155 (2015)21

Reeve Aleutian Airways, Inc. v. United States, 982 F.2d 594 (D.C. Cir. 1992)24

**Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995).....9, 20

Rumsfeld v. Forum for Acad. & Institutional Rts., Inc., 547 U.S. 47 (2006)17

Rust v. Sullivan, 500 U.S. 173 (1991).....17

Ryan v. Ill. Dep’t of Child & Fam. Servs., 185 F.3d 751 (7th Cir. 1999).....29

Schware v. Bd. of Bar Exam’rs, 353 U.S. 232 (1957)23

SEC v. Jarkesy, 603 U.S. 109 (2024).....38

Sparrow v. United Air Lines, Inc., 216 F.3d 1111 (D.C. Cir. 2000).....4

Stidham v. Tex. Comm’n on Priv. Sec., 418 F.3d 486 (5th Cir. 2005).....24

	Page
Cases—continued:	
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	32
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014).....	12, 19
<i>Swanson v. City of Chetek</i> , 719 F.3d 780 (7th Cir. 2013).....	39, 40
<i>Toolasprashad v. Bureau of Prisons</i> , 286 F.3d 576 (D.C. Cir. 2002)	14
<i>Trentadue v. Integrity Comm.</i> , 501 F.3d 1215 (10th Cir. 2007).....	27
<i>Trudeau v. FTC</i> , 456 F.3d 178 (D.C. Cir. 2006)	42
<i>Trump v. United States</i> , 603 U.S. 593 (2024).....	35
* <i>UAW-Lab. Emp. & Training Corp. v. Chao</i> , 325 F.3d 360 (D.C. Cir. 2003).....	36, 37
<i>United States v. Amlani</i> , 111 F.3d 705 (9th Cir. 1997).....	33
<i>United States v. Brown</i> , 381 U.S. 437 (1965).....	28
<i>United States v. Gonzalez-Lopez</i> , 548 U.S. 140 (2006).....	32
<i>United States v. Stanchich</i> , 550 F.2d 1294 (2d Cir. 1977).....	2
<i>United States v. Stein</i> , 541 F.3d 130 (2d Cir. 2008)	33
* <i>United States v. Williams</i> , 553 U.S. 285 (2008)	30, 31
<i>Util. Air Regul. Grp. v. E.P.A.</i> , 573 U.S. 302 (2014).....	37
<i>Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.</i> , 455 U.S. 489 (1982)	31
<i>Webster v. Doe</i> , 486 U.S. 592 (1988)	11
<i>Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President</i> , 2025 WL 946979 (D.D.C. Mar. 28, 2025).....	8
* <i>Wisconsin v. Constantineau</i> , 400 U.S. 433 (1971)	25, 26
<i>Wojcik v. Mass. State Lottery Comm’n</i> , 300 F.3d 92 (1st Cir. 2002)	26
* <i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	34, 35, 38
<i>Ziglar v. Abbasi</i> , 582 U.S. 120 (2017).....	19

CONSTITUTION, STATUTES, REGULATIONS, AND RULES

U.S. Const.
 art. I,29
 art. II,35
 amend. I..... passim
 amend. V.....32
 amend. VI.....31, 32, 33

5 U.S.C.
 *§ 702.....42, 44
 § 703.....42

40 U.S.C.
 § 121.....36
 § 318a.....38

8 C.F.R. § 31.205-33.....22

48 C.F.R.
 § 44.101.....22
 § 52.249-237

Exec. Order 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).....17, 36

Exec. Order 14215, 90 Fed. Reg. 10447 (Feb. 18, 2025).....18

Fed. R. Civ. P.
 8.....4
 12.....4, 5
 56.....5

D.D.C. L.R. 7(h)(1).....5

OTHER AUTHORITIES

Complaint, *United States v. Coe*, 2:25-cv-02269 (W.D. Tenn. March 10, 2025)4

Complaint, *United States v. New York*, No. 1:25-cv-00205 (N.D.N.Y. Feb. 12, 2025)4

INTRODUCTION

The government's motion to dismiss (ECF 43-1) attempts to obscure the unprecedented nature of the Executive Order and pretends there is nothing to see here. The government asserts (at 1), for instance, that the Order is "within the bounds of established executive authority" but does not cite any prior instance of a President issuing a remotely similar order in the 249 years of our Republic. The government also pretends (at 1) that "national security" necessitated the Order, even though the Order on its face shows it is intended to retaliate against the Firm for representing the President's political opponents and advocating positions he does not like. According to the government, the Firm is "complaining about ... a series of boogymen ... a series of ghosts." TRO Tr. 36:12-13. But the government is the one whistling past the graveyard. Unsurprisingly, four judges in this District have clearly seen the President's executive orders singling out law firms for what they are: a personal vendetta that is antithetical to our constitutional order.

To evade review, the government suggests (at 3) the Order may amount to nothing at all because agencies still must issue "guidance" that is "consistent with law." But the government ignores that the President's findings in Section 1 dictate the terms of any "guidance," and that Section 5, for example, makes clear that any guidance should "limit[]" the Firm's access to federal buildings and its engagement with federal employees. Indeed, before the TRO issued, the government already began prohibiting Perkins Coie attorneys from attending meetings based on the Order alone—without awaiting any "guidance." And since then, the President's staff secretary has made clear that the Order and those like it "ensure that [firms] *can't access* government resources [and] government buildings." Ex. 1, at 15:40-52 (Presidential signing ceremony).¹

¹ Unless otherwise indicated, exhibits are attached to the Declaration of Ryan Scarborough, filed herewith. Also unless otherwise indicated, all emphases are added and all internal quotation marks and citations are omitted.

The government insists (at 7-8) that Section 1 of the Order—which brands Perkins Coie as “dishonest and dangerous” and declares that the Firm “racially discriminates”—contains “factual” statements that “are not seriously contested,” even though the Firm vigorously contests them with evidence. Changing course, the government then asserts (at 13) that Section 1 is simply a statement of the President’s “*opinions*,” which the Firm “has no right to silence.” But the government again ignores that these “opinions” are actually *findings* by the head of the Executive Branch, and the government’s counsel recently told another judge in this District that those findings would dictate “how to implement” the rest of the Order. Manning Decl. Ex. 55 (ECF 39-4), at 20:6-9.

On top of all this, the government ignores altogether (i) the Fact Sheet, which boldly proclaims the Order’s motive to retaliate against the Firm for filing “lawsuits against the Trump Administration”; (ii) the President’s public statements both before and after the Order, in which he said he wanted to go after law firms like Perkins Coie; (iii) the Court’s TRO ruling, which preliminarily ruled on many of the issues the government addresses, but to which the government does not bother to respond; and (iv) the similar rulings of Judges Leon and Bates, now joined by Judge AliKhan.

The reality, which becomes starker with each successive executive order against a major law firm, is this: The President has embarked on an unconstitutional mission to retaliate against Perkins Coie and, more generally, to intimidate and muzzle the independent legal profession. The Judiciary should recognize that mission for what it is and not allow it to succeed. *See United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.) (“Judges are not required to exhibit a naiveté from which ordinary citizens are free.”). The Judiciary is a co-equal branch of government, but it cannot act on its own. For courts to exercise their duty to say “what the law is,” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), *lawyers* must bring cases to the courts.

That is why “[a]n informed, independent judiciary presumes an informed, independent bar.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). It is plain as day that the Order and those that followed are attempts to suppress the independent bar as a check on the Executive Branch.

As the President no doubt intended, the public at large also understands the Order for what it is: “[A] naked attempt to instill fear in the legal profession and intimidate lawyers into submission.” Bar Ass’ns Br. 25 (ECF 101). The outpouring of support from amici—representing diverse perspectives, types of organizations, experiences, and roles—has unequivocally condemned the Order’s attempt to erode the integrity of the legal system and undermine the rule of law. Among these amici are 504 law firms, 363 law professors, 334 solo or small firm practitioners, 346 former state and federal judges, 20 States and the District of Columbia, 67 current or former corporate general counsel, 23 nongovernmental organizations, 21 litigation firms, and 16 bar associations. *See* ECF 15, 49, 77-78, 94, 99, 101, 116, 130. Each understands the stakes, from some of the Nation’s largest firms to the solo practitioner who wrote: “when lawyers are apprehensive about retribution simply for filing a brief adverse to the government, there is no other choice but to do so.” Pickering Legal LLC Br. 6 (ECF 93). Well said. That is why Perkins Coie brought this case.

For the reasons explained in Perkins Coie’s motion for summary judgment (ECF 39) and further explained below, the Firm has pleaded—and proven—each and every claim in its Complaint. The government’s ripeness and standing arguments present no obstacle to review. Before the TRO issued, the Executive Order already had caused concrete harms to the Firm. It blinks reality for the government to suggest Perkins Coie has not pleaded a connection between the Order and multiple Firm clients who terminated or considered terminating their relationship with the Firm in the Order’s aftermath. The Court should deny the government’s motion to dismiss, grant Perkins Coie summary judgment, declare the Order invalid, and permanently enjoin it in full.

LEGAL STANDARD AND RESPONSE TO “SHOTGUN PLEADING” ARGUMENT

Although this Court already has held that Perkins Coie is likely to succeed on at least three of its claims, and although the Firm has moved for summary judgment and supported its claims with evidence, the government moves to dismiss the Complaint. A complaint survives a Rule 12(b)(6) motion if it “contain[s] sufficient factual matter, if accepted as true, to state a claim to relief that is plausible on its face.” *Ashtari v. Pompeo*, 496 F. Supp. 3d 462, 467 (D.D.C. 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (cleaned up). When ruling on a motion to dismiss, a court must grant the plaintiff “all inferences that can be derived from the facts alleged.” *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000) (cleaned up).

The government (at 3-4) accuses the Firm of engaging in “shotgun pleading” because each count incorporates prior paragraphs of the Complaint. According to the government (at 3-4), this “severely handicaps [its] and the Court’s ability to ascertain the particulars of Plaintiff’s challenges to the various sections of the Executive Order.” Notably, the government does *not* seek dismissal on this basis; instead, it purports (at 4) to reserve the “right” to brief “additional argument[s].”

The government’s criticism is baseless. Incorporating prior paragraphs of a complaint is a common pleading practice that the government itself employs.² That practice certainly does not “run afoul of Rule 8” where, as here, “[e]ach count includes additional allegations that make clear which of the broadly applicable facts specifically pertain to that count.” *Maynard v. Melton*, 2021 WL 6845008, at *4 (D.D.C. Apr. 7, 2021), *R. & R. adopted*, 2023 WL 1963919 (D.D.C. Feb. 10, 2023). At the TRO stage, the Court had no difficulty understanding the Complaint and concluded the Firm was likely to succeed on “at least three” of its claims. TRO Tr. 74:7-11. The government

² See, e.g., Compl. at 8-21, *United States v. Coe*, 2:25-cv-02269 (W.D. Tenn. March 10, 2025); Compl. Mar. 10, 2025); Compl. at 13-15, *United States v. New York*, No. 1:25-cv-00205 (N.D.N.Y. Feb. 12, 2025).

thus cannot credibly claim any confusion in ascertaining the Firm's claims.

Before delving into the discussion below, Perkins Coie makes two preliminary points. First, while the government wrongly accuses the Firm of hiding the nature of its claims, the government itself disguises the nature of its motion. Although the government seeks dismissal under Rule 12, it also styles its motion as one for "expedited judgment," invokes Rule 56, and makes liberal use of materials outside the pleadings to draw inferences that the Firm disputes. *See, e.g.*, MTD Cover, 4, 10, 15. To the extent the government is moving for summary judgment, its motion should be denied for failure to comply with Local Rule 7(h)(1), which requires a statement of undisputed material facts supported by record citations. However, insofar as the Court permits the government to move for summary judgment, the Court should consider the evidence submitted with the Firm's summary-judgment motion (ECF 39) and the additional exhibits submitted herewith in denying the government's motion. These additional exhibits concern recent developments and provide further support for granting the Firm summary judgment.

Second, the government organizes its brief by discussing the Order section-by-section, rather than addressing the Firm's Complaint claim-by-claim. The government's approach results in considerable repetition across sections and appears designed to obfuscate the Order's blatant unconstitutionality by discussing each section in isolation. To more clearly present the issues and to comport with Rule 12 (which governs dismissal of *claims*), the Firm organizes this opposition on a claim-by-claim basis, addressing particular sections as they become relevant.

ARGUMENT

A. The Complaint States First Amendment Claims

1. The Complaint States a Claim for First Amendment Retaliation

The Firm plainly states, and has proven with undisputed facts, a claim that the Executive Order retaliates against the Firm and its clients for protected First Amendment activities. The

Order's retaliatory aim is obvious. As the President's public statements confirm, the Order's purpose is to chill the Firm and the independent legal profession from representing clients he dislikes or advocating positions he disfavors. The entire Order is a flagrant First Amendment violation and an assault on the rule of law.

"[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions ... for speaking out," *Hartman v. Moore*, 547 U.S. 250, 256 (2006), and from "relying on the threat of invoking legal sanctions to achieve the suppression of disfavored speech," *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 189 (2024) (cleaned up). These principles prohibit retaliation for the Firm's own speech and for the Firm's "perceived association with another person and that person's speech." MSJ Br. 10 (ECF 39-1) (cleaned up).

To prevail on a retaliation claim, a plaintiff must plead and ultimately prove that "(1) he engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link [exists] between the exercise of a constitutional right and the adverse action taken against him." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016).

To begin, there is no serious dispute that the Firm has pleaded the first element: the Firm has engaged in activities protected under the First Amendment by representing clients and advocating positions on their behalf. *See* Compl. ¶¶ 15, 19, 128; MSJ Br. 10-11 (collecting cases).³ As this Court previously held, the Firm's "work on behalf of a political opponent of the President and to protect voting rights in the 2020 presidential election," as well as "the viewpoint or perceived

³ The Firm has standing to assert both its own First Amendment rights and those of its clients in this context. *See* MSJ Br. 16 n.5.

viewpoint of the law firm’s clients and even former or current partners,” “all fall squarely within the protections of the First Amendment.” TRO Tr. 76:20-25.

As to the second and third elements, the government cannot credibly dispute that the Order takes retaliatory action because of these protected activities. Neither the President nor the Executive Order was subtle about its retaliatory purpose. As the Court already found, “[t]he retaliatory nature of Executive Order 14230 is *clear from its face*.” TRO Tr. 75:12-13. Section 1, which states the Order’s “Purpose,” unabashedly cites as bases for the sanctions imposed in the following sections that the Firm represented the President’s opponent in the 2016 presidential election, worked with so-called “activist donors,” and represented clients in election-law litigation to “judicially overturn” laws that the President deems “popular” and “necessary.” EO § 1. As the Court recognized, Section 3 further points to the Firm’s work for the Clinton campaign and election litigation generally “as the explicit basis for the punitive nature of the steps” to be taken pursuant to the Order. TRO Tr. 75:21-76:1. The accompanying Fact Sheet “is even more explicit about the retaliatory animus for issuance of the order.” *Id.* at 76:4-5. It refers to the Firm’s “partisan lawsuits against the United States” and more specifically its “[l]awsuits against the Trump Administration,” and it counts the Firm among the so-called “partisan actors who exploit their influence.”

The President’s public statements underscore the Order’s retaliatory purpose. Since the 2016 election, he has threatened to retaliate against those who he accuses of having worked against his campaigns. Compl. ¶¶ 54-62. He has been clear that he includes Perkins Coie and its former partners in that group. *Id.* ¶ 61; *see also* SOF ¶¶ 100-16 (ECF 39-2). And when signing the Order, he confirmed its retaliatory purpose, stating that the Firm had engaged in “weaponization” against “a political opponent” (himself) and asserting that “it should never be allowed to happen again.” Compl. ¶¶ 6, 61.

The President's retaliatory purpose is all the more apparent because the Order is part of a wider campaign of retribution against particular law firms he perceives to be his political opponents. The campaign began before the Order, when the White House issued a memorandum targeting several personnel at Covington & Burling for representing a special counsel who investigated the President during the preceding administration. Compl. ¶¶ 54-56. And it has continued since the Complaint was filed, with the President issuing similar executive orders against four other law firms: (1) Paul Weiss, (2) Jenner & Block, (3) WilmerHale and, most recently, (4) Susman Godfrey. SOF ¶¶ 243, 252, 256; Ex. 2 (Susman EO); Ex. 3 (Susman Fact Sheet).⁴

The common thread uniting all these orders is that they retaliate against law firms for their association (or past association) with lawyers who represented the President's opponents, participated in investigations of the President, or challenged the Administration's policies. This Court recognized the President's retaliatory purpose in this case. TRO Tr. 75:12-13 ("The retaliatory nature of Executive Order 14230 is clear from its face."). So did Judge Bates in the Jenner & Block case. Manning Decl. Ex. 55, at 48:1-5 ("[T]he Executive Order facially retaliates against Jenner...."). So did Judge Leon in the WilmerHale case. *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 2025 WL 946979, at *1 (D.D.C. Mar. 28, 2025) ("The retaliatory nature of the Executive Order at issue here is clear from its face...."). And so did Judge AliKhan in the Susman case. Ex. 8, at 44:23-25 (Susman TRO Hearing) ("the retaliatory nature of the executive order is plain from the language of the EO.").

The government has nothing to say about this historically unprecedented evidence of Presidential retaliation. Indeed, the government cannot even bring itself to acknowledge what the

⁴ These orders go hand-in-hand with a recent Presidential Memorandum that targets a number of the President's perceived political opponents and certain lawyers, including Norman Eisen, Letitia James, Alvin Bragg, and Andrew Weissman. *See* Ex. 7.

Order says. To read the government’s brief, one would not know that the Order finds that the Firm engaged in “dishonest and dangerous activity” for its representation of clients; that it refers to this activity as “part of a pattern”; that it calls out its representation of “failed Presidential candidate Hillary Clinton”; and that it faults the Firm for “work[ing] with activist donors” to “judicially overturn popular, necessary, and democratically enacted election laws.” EO § 1. And the government’s brief *never* mentions the Fact Sheet, which explains that the Firm is being punished because of “partisan lawsuits against the United States”—including “lawsuits against the Trump Administration” itself. Nor does the government address the President’s statements, tweets, and posts that promised retaliation and then confirmed it after the fact.

The reason for the government’s silence is obvious: it cannot dispute the retaliatory motive. The First Amendment, at its core, protects those accused of being “partisans,” which is nothing other than the expression of a political viewpoint. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”); *accord* ACLU Br. 9 (ECF 50) (“The Executive Order’s characterization of Perkins Coie’s voting rights lawsuits as ‘partisan’ does not remove one iota of First Amendment protection.”). And just as the First Amendment protects against censorship, it protects against “[o]fficial reprisal for protected speech,” *Hartman*, 547 U.S. at 256, and even the threat of such reprisal, *Vullo*, 602 U.S. at 189. And where the government retaliates based on First Amendment activities, that ends the inquiry, for retaliation is a reason “upon which the government may not rely.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

The reprisal here—which emanates from the President himself—casts a chilling effect of “blizzard proportions across the entire legal profession.” TRO Tr. 95:23-24. The Order aims to

suppress the zealous advocacy that is fundamental to our adversarial system of justice and to our democracy itself. That other firms have, in the President’s words, had a “remarkable change of course” only proves the point. *See* Manning Decl. Ex. 50. Absent a permanent injunction, other firms will, as the President’s press secretary put it, “continue[] to bend the knee.” Ex. 6.

The Order’s retaliatory purpose extends to and invalidates each of its sections. None of the government’s section-specific arguments can save the Order from this retaliatory taint.

Section 1. Although the government claims (at 7) that Section 1 merely “contains a brief factual explanation for the operational elements of” the Order, that characterization is doubly incorrect. First, Section 1 is not a mere factual recitation. As *government* counsel argued at the TRO hearing, Section 1 is a set of “finding[s].” TRO Tr. 35:9. And contrary to the government’s contention (at 7, 15), those “findings” are hotly disputed. *See infra* p.26.

Second, Section 1 cannot be set aside as a mere “explanation” for the so-called “operational” sections of the Order. Section 1’s obvious purpose is to point agency heads, when conducting their reviews and investigations and drawing up guidance, to a preordained conclusion based on the President’s “findings.” The government acknowledged this in the Jenner & Block proceedings, confirming that Section 1 of that order “inform[s] the provisions that are to be acted upon.” Manning Decl. Ex. 55, at 18:4-12. The government added that “any member of the Executive who would be wrestling with how to implement Sections 3 or 5 would necessarily be resorting and looking at what was said in Section 1 to guide that decision.” *Id.* at 20:6-9

The government also cannot save Section 1 by arguing (at 1) that an injunction would “carr[y] with it a dangerous risk of muzzling the Executive.” The Court’s carefully written TRO did not muzzle the President, nor will the permanent injunction that the Firm has proposed.

Furthermore, the Executive Order is not merely a presidential statement. It is an *official act* that orders federal officials to impose sanctions on the Firm.

Section 2(a). Neither of the government’s defenses of Section 2(a) has merit. First, the Firm’s challenge to Section 2(a) does not “run headlong” into *Lee v. Garland*, 120 F.4th 880 (D.C. Cir. 2024). That decision simply bars challenges to (i) the merits (ii) of individualized security-clearance decisions that are (iii) made pursuant to the prescribed regulatory process (iv) on grounds of national security. *Id.* at 883-84. The government fails to account for decisions, beginning with *Webster v. Doe*, 486 U.S. 592 (1988), making clear the courts will review the constitutionality of a *policy* concerning security clearances for an entire *category* of persons. *See* MSJ Br. 15.⁵

Here, Section 2(a) does not even invoke national security as a basis for suspending or reviewing the security clearances of Firm personnel. But perhaps more importantly, the Order dictates the suspension of clearances held by any Firm personnel, regardless of who they are or for what matter they hold a clearance, simply because they belong to the Firm. As the Firm’s summary-judgment brief explains, such acts are not within *Lee*’s scope. MSJ Br. 14-16.

Section 2(a)’s categorical suspension itself indicates a retaliatory intent. But three other factors confirm that any “national security” concern is mere pretext. First, Section 2(a) does not even target the lawyers who retained Fusion GPS; they no longer work at the Firm. Compl. ¶ 20; SOF ¶¶ 71, 95. Instead, the Order punishes *current* Firm personnel who had no involvement with that episode based on nothing more than guilt by association. Second, Section 2(a) is oddly timed. If the 2016 dossier did not cause the President to revoke the clearances of Firm personnel during

⁵ Although broadly asserting that security-clearance issues are non-justiciable, even the government recognizes that the D.C. Circuit will review security-clearance decisions when the allegation is that the decisionmaker received knowingly false information. MTD Br. 14-15 (citing *Rattigan v. Holder*, 689 F.3d 764, 769 (D.C. Cir. 2012)).

his first term, “it is impossible to understand how that nearly decade-old activity could now serve as a ‘national security’ justification for the immediate suspension of security clearances.” Leonard Rpt. ¶ 50. Third, the Paul Weiss executive order contains a nearly identical Section 2(a). SOF ¶ 248. But the President withdrew that order after Paul Weiss agreed to provide *pro bono* services that the President supports. *Id.* ¶ 249. That settlement shows that “[t]here cannot reasonably have been a national security emergency that justified the immediate suspension of security clearances.” Leonard Rpt. ¶ 53 (ECF 39-8).

Second, the government argues (at 16) that the Firm’s challenges to Section 2(a) are “premature” until “any clearance suspension is accomplished” and “reviewed.” Not so. Section 2 is unconstitutional, however implemented. Future proceedings cannot make it any less retaliatory. Nor can such proceedings cure the additional infirmities discussed below, including that Section 2(a) is the product of viewpoint discrimination and denies the Firm personnel equal protection by targeting them for no legitimate purpose. These legal challenges are ripe now. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (issue was ripe where it was “purely legal” and “would not be clarified by further factual development”).

Nor is Section 2’s harm speculative. Section 2 directs agency heads to “*immediately* take steps” to “suspend any active security clearances held by individuals at Perkins Coie, *pending a review.*” EO § 2(a). The Fact Sheet similarly makes clear that clearances “*will be immediately suspended.*” The government cannot forestall review by hiding behind boilerplate language requiring steps to be “consistent with applicable law.” EO § 2(a). Section 2 “unambiguously commands action” and that boilerplate cannot “override [its] clear and specific language.” *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1239-40 (9th Cir. 2018).

Nor, for that matter, is the outcome of any later review in doubt. The Order directs agencies to revoke clearances “consistent with the national interest.” EO § 2(a). But Section 1 dictates how agencies must view the “national interest” by declaring that the Firm is “dangerous” and should not “have access to our Nation’s secrets.” EO § 1. Results of any review are preordained.

Section 2(b). Section 2(b) prevents the Firm from accessing not only “Sensitive Compartmentalized Information Facilities” (which the Firm has never had, SOF ¶ 99), but also “all Government goods, property, material, and services.” EO § 2(b). On its face, that section would prohibit the Firm from, among other things, using the postal service, accessing the SEC’s EDGAR filing system, or utilizing pay.gov. The government offers no defense of this section.⁶ Nor can it; only retaliation can explain Section 2(b)’s sweeping prohibitions.

Section 3. This section has two aspects: (1) terminating the Firm’s government contracts and (2) terminating contracts between the Firm’s clients and the government (after first compelling clients to disclose the business they do with the Firm). Both aspects are clearly retaliatory.

Regarding government contracts with the Firm, the government (at 17) claims its purpose is to combat racial discrimination through the procurement power.⁷ As discussed below, any purported concern about the Firm’s employment practices is a pretext for retaliation for the Firm’s First Amendment activities and viewpoints. *See infra* pp.20-21; *see also* MSJ Br. 17-18. Even setting that aside, the government concedes that Section 3 does not rely exclusively on that

⁶ Although the government (at 13 n.1) questions whether the Firm challenges Section 2(b), the Firm’s First Amendment claims apply to the entire “Order,” including Section 2(b). Compl. ¶¶ 134, 155.

⁷ The government seeks to have it both ways, arguing (at 20) that Section 3 fights alleged discrimination by the Firm while at the same time questioning whether the Firm even holds government contracts. That the Firm does not hold government contracts only underscores the animus behind the Order. Of course, whether or not the Firm presently has government contracts, stigmatizing the Firm and barring it from government contracting is itself a cognizable harm. *See infra* n.8.

rationale; it also relies on what the government calls (at 17) “malfeasance in election litigation,” which is in reality the Firm’s representation of the President’s opponent in the 2016 election and of clients in election-law and election-result litigation. *See* EO § 3. Indeed, the Fact Sheet says that “the Federal Government will prohibit funding contractors that use Perkins Coie LLP” “[t]o ensure taxpayer dollars no longer go to contractors whose earnings subsidize partisan lawsuits against the United States,” and does not mention racial discrimination as a justification for Section 3.

Knowing full well that terminating contracts with Perkins Coie for its representation of clients disfavored by the President is unconstitutional retaliation, the government asserts (at 17) that it need have only one legitimate basis, citing *McGowan v. Maryland*, 366 U.S. 420 (1961). But *McGowan* does not support that proposition. The passage cited by the government involved an equal-protection claim and the proposition that “statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” 366 U.S. at 426. That is irrelevant to a First Amendment retaliation claim, where even “[a]n ordinarily permissible exercise of discretion may become a constitutional deprivation if performed in retaliation for the exercise of a First Amendment right.” *Toolasprashad v. Bureau of Prisons*, 286 F.3d 576, 585 (D.C. Cir. 2002) (cleaned up). If the President can retaliate against his real and perceived political opponents so long as he articulates some additional purpose—say, a so-called “national interest”—then the First Amendment provides no protection against retaliation from government officials.

The government’s contention (at 22-23) that the Firm’s representation of Mrs. Clinton and clients in election litigation “is not ‘protected’ in any meaningful sense” because Special Counsel Durham investigated the Steele dossier is baffling. The mere fact of an investigation does not rob

speech of constitutional protection—least of all the Durham investigation, which led to the *acquittal* of a former Firm partner. Compl. ¶ 8; SOF ¶ 76.

Regarding Section 3’s treatment of government contracts held by the Firm’s *clients*, the government offers no defense of its obvious purpose to punish the Firm for its protected speech and association by going after its clients. The Fact Sheet expressly makes that connection: if government contractors employ Perkins Coie as their lawyers, then the proceeds of those government contracts “subsidize *partisan lawsuits against the United States*.” Never mind that the First Amendment protects the right to petition the government by filing a lawsuit. *See Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011); TRO Tr. 85:15-19.

Instead of denying the retaliatory intent, the government argues (at 19-21) the Firm lacks standing to challenge Section 3’s provisions targeting the Firm’s clients because there supposedly is no causal connection between that section and clients’ cutting or considering cutting their ties to the Firm. To begin with, the government is wrong (at 20) that Section 3 “only” terminates contracts for which the Firm has been hired to perform services. Section 3 also broadly directs agencies to assess any contracts “with entities that do business with Perkins Coie” and “align” their funding decisions with the “goals and priorities” of the Administration. EO § 3(b)(ii). As noted above, the Fact Sheet makes no bones about what this means: “the Federal Government *will prohibit* funding contractors that use Perkins Coie LLP.”

The Complaint pleads a direct, causal relationship between Section 3 and injury to the Firm. It alleges that “[b]ecause of the Order,” “several clients have already terminated, or have communicated that they are considering terminating, their legal engagements with Perkins Coie,” including because of the “risk of contract termination faced by clients with government contracts.” Compl. ¶ 70; *id.* ¶¶ 71-78; SOF ¶¶ 150-60; *see also* Former & Current General Counsel Br. 8, 9-

11 (ECF 99). Given the Order's close proximity to the harm, the government cannot credibly contest that the Firm has pleaded causation. Further, the government ignores that losing business is not the only harm Section 3 inflicts; the Section also chills the Firm's and its clients' rights to free speech and association. *See* TRO Tr. 95:22-96:5; *supra* pp.9-10.

The government fares no better in arguing (at 23) that its legitimate interests outweigh the Firm's free speech interests. To begin, the government relies on a weighting analysis that applies when the government retaliates against government contractors for their speech. *Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 677-80 (1996). Here, however, the government is cancelling contracts not because of contractors' speech, but because of a *non*-government-contractor law firm's speech. Nothing in *Umbehr* permits that conduct.

In any event, the interests put forward by the government (at 22) are contrived and pre-textual. "Efficiency" and "fiscal responsibility" will not suffice. Section 3 relies on neither. Nor does the Fact Sheet, which nods to fiscal responsibility only in that it seeks to ensure "taxpayer dollars" do not indirectly "subsidize partisan lawsuits." If the government does not have a legitimate interest in discharging its own *employees* "for publicly or privately criticizing their employer's policies [or] for expressing hostility to prominent political figures," *Umbehr*, 518 U.S. at 674-75, it follows with even greater force that it does not have a legitimate interest in terminating *an independent contractor* by reason of the speech of its *outside lawyers*, with whom the government has no relationship. And contrary to the government's claim (at 23), it is not reasonable "to consider a contractor's performance subpar" because of legal arguments advanced by outside counsel for other clients in unrelated litigation. The government is unable to cite any authority that supports such an attenuated view of its legitimate interests as a contractor. By the government's reasoning (at 23) that "it serves taxpayers to ensure that their dollars are not *in any way*

traceable to the subsidization” of views the President dislikes, the government could terminate any contractor whose CEO, accountant, or janitor has signed a petition in favor of what the President calls “anti-democratic election changes.” EO § 3(a).

Finally, the government’s argument that “a funding program [that] supports one point of view does not necessarily establish viewpoint discrimination” is a straw man. MTD Br. 23 (citing *Rust v. Sullivan*, 500 U.S. 173 (1991)). The present case has nothing to do with funding one program and not another. It concerns the *termination* of the government contracts of the Firm’s clients *because* of the Firm’s so-called “partisan lawsuits against the United States,” “lawsuits against the Trump Administration,” and alleged “partisan” influence generally. *See* Fact Sheet. This is retaliation and viewpoint discrimination rolled into one and held up for all to see. *See Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 59 (2006) (government may not deny a person a benefit on a basis that infringes freedom of speech “even if he has no entitlement to that benefit”).

Section 4. The government contends (at 26-27) that Perkins Coie cannot demonstrate the requisite causal link as to Section 4—namely, that the EEOC investigation would not have been taken absent retaliatory motive. What disproves that link, the government argues, is that “[e]ven before the Executive Order was issued, the Administration had begun taking steps” to enforce its view that certain DEI practices violate Title VII. MTD Br. 27 (citing Exec. Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 21, 2025)). Of course, even before that, the President repeatedly threatened the Firm with retribution.

In any event, EO 14173 proves just the opposite. Precisely because the President already had directed federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities” and to develop a “strategic enforcement plan” to target the “most

egregious and discriminatory DEI practitioners in each sector of concern,” *see* EO 14173 §§ 2, 4(b)(ii), Section 4 is at most redundant, except insofar as it singles out the Firm for opprobrium and punishment by all federal agencies. And because Section 1 finds that the Firm is guilty of racial discrimination, and the Fact Sheet concludes that the Firm’s conduct “violat[es] civil rights laws,” the Order effectively predetermines the EEOC investigation called for by Section 4. That is particularly true because the President, through yet another executive order, has made clear “[t]he President[’s] ... opinions on questions of law are controlling on all employees in the conduct of their official duties.” Exec. Order 14215, 90 Fed. Reg. 10447, 10448-49 (Feb. 18, 2025).

If the January 21 Executive Order actually were what prompted scrutiny of the Firm’s employment practices, then one would have expected the Acting EEOC Chair (given her head start) to have followed the legal procedures for commencing investigations. Instead, on March 17, 2025 (shortly after the Perkins Coie Order), she issued a press release and published letters requesting information from Perkins Coie and other law firms, disregarding statutory limitations on the EEOC’s authority to investigate conduct without first filing a charge. *See* MSJ Br. at 6. That manner of proceeding only confirms the causal link between the Order’s retaliatory motive and the retaliatory action in Section 4.

Section 5. The government’s ripeness defense to Section 5 is wishful thinking at best. It asserts (at 29) that it “cannot [be] plausibly allege[d] that Section 5 caused ... injury on the basis of guidance which *has not been issued.*” That argument fails. For one thing, Section 5’s chilling effect alone makes the Firm’s challenge ripe. *See* TRO Tr. 95:22-23; *cf. Navegar, Inc. v. United States*, 103 F.3d 994, 999 (D.C. Cir. 1997) (collecting cases that were justiciable based on chilling effects within and outside the First Amendment context). For another, before the TRO, the government *already* had begun implementing Section 5, including by cancelling meetings with the

Firm. Compl. ¶¶ 67-68. Those government officials did so without further “guidance.” And the mere threat of the Firm’s exclusion from entering federal buildings or engaging with government personnel caused some clients to withdraw work from the Firm. *Id.* ¶¶ 70-77. Moreover, the government’s coyness about Section 5 is belied by its public statements, including the Staff Secretary’s admission that the orders targeting firms are intended “*to ensure that [firms] can’t access government resources [and] government buildings.*” Ex. 1, at 15:40-52.

The Firm’s Section 5 claims also are ripe because they do not require “further factual development,” including agency guidance. *Susan B. Anthony List*, 573 U.S. at 167. Section 5’s constitutionality turns on whether it is motivated by retaliatory animus and on the other grounds discussed below, including that it discriminates on the basis of viewpoint and arbitrarily interferes with clients’ rights to have the Firm as their counsel. Agency guidance regarding “the degree to which agency heads will limit government access,” MTD Br. 28-29, is not necessary for this Court to resolve those questions. As this Court explained, Section 5 is “clear” in both its “purpose” and in “terms of what the guidance is supposed to look like.” TRO Tr. 99:21-23. Finally, the government’s observation (at 28-29) that the Firm “can only guess the degree to which agency heads will limit government access” only underscores the need for immediate review. Section 5 is so vague that “the [F]irm, its employees, and its clients will have little idea what to expect in any professional encounter with any government official.” TRO Tr. 88:6-13.

The government next asserts (at 31) that “Section 5 is not tied to speech; it is tied to the ‘national security’ and the ‘interests’ of the United States, ‘to the extent permitted by law.’” But Section 5 *is* tied to speech, because the findings in Section 1 are the factual predicate for Section 5 (and the other sections). Furthermore, “national security” is not a “talisman” that permits the President to exercise unlimited powers. *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017). And, here,

the incantation is half-hearted at most. Section 5 also refers generically to “the interests of the United States” —a nebulous term that not even the government can define. *See* TRO: 53:3-4. But however that term might be understood, it cannot explain the application of Section 5 to *all* Perkins Coie personnel, including secretaries, IT professionals, and mailroom clerks. Only indiscriminate retaliatory animus can explain that.

For all these reasons, the Order’s retaliatory animus infects the entire Order, and the government’s efforts to examine each section in isolation cannot save the Order.

2. The Complaint States a Claim of Viewpoint Discrimination

The Complaint also states a claim of viewpoint discrimination. *See* TRO Tr. 78:18-83:3. “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Discrimination based on “[v]iewpoint” is an “egregious form of content discrimination,” *id.* at 829, and “uniquely harmful to a free and democratic society,” *Vullo*, 602 U.S. at 187.

On its face, the Order discriminates against the Firm for its perceived viewpoints regarding (i) the 2016 election, (ii) the constitutionality of certain election laws, and (iii) the values of diversity and inclusion. EO §§ 1-5. The Fact Sheet adds that the Order discriminates against the Firm for filing “lawsuits *against the Trump Administration*” and for its perceived views as a “*partisan actor*.” As this Court previously held, “[a]ll of this language makes perfectly clear that Perkins Coie and its employees were targeted for the firm accepting clients with perceived viewpoints that are unpopular with those in current political power.” TRO Tr. 80:10-13.

The government claims (at 22) it is discriminating against Perkins Coie only because of “employment practices involving racial discrimination and practices that interfere with free and fair elections.” That is a euphemism for viewpoint discrimination. The government is discriminating against Perkins Coie because it does not like the Firm’s speech on issues of diversity and

inclusion or the positions the Firm has advocated on behalf of its clients in election-related litigation. EO § 1. Additionally, the government ignores that the Order discriminates against the Firm for other perceived viewpoints having nothing to do with the Firm’s “employment practices” or “free and fair elections,” including that the Firm filed a lawsuit challenging the administration’s ban on transgender military personnel. Fact Sheet; Compl. ¶ 39; SOF ¶ 84.

The Administration’s recent settlements with certain firms only confirm its viewpoint discrimination. Those settlements not only required the firms “not to engage in ... any policies, programs, and practices previously labeled, characterized, or framed as a diversity or DEI program”; they directly regulated speech by requiring the firms to “no longer categorize” even “*lawful* employment or practices” as “DEI.” Ex. 4 (EEOC Press Release). As one of those firms put it in a memo to its staff, the settlement required the firms to comply “with applicable U.S. anti-discrimination laws *including no longer using the term ‘DEI’ to describe our programs.*” Ex. 5 (A&O Shearman memo in law.com). Declaring a word that the President does not like unlawful and barring its use by private citizens on penalty of sanctions is plainly viewpoint discrimination.

Because the Order is viewpoint discriminatory, it is unconstitutional unless the government shows that it “furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015). The government makes no attempt to satisfy that exacting standard. Nor could it do so. The government has no compelling interest in punishing lawyers for representing the President’s opponents or advocating positions he dislikes; and even if it did, the Order (which applies to the *entire* Firm) is far from narrowly tailored. MSJ Br. 19-20.

3. The Complaint States a Claim of Compelled Disclosure

Perkins Coie also has stated a claim that the Order violates the First Amendment rights of the Firm and its clients by compelling disclosure of attorney-client relationships. MSJ Br. 20-21. There is no dispute that the Order would force each of the Firm’s clients with any government

contracts to disclose to the government “any business they do” with the Firm and “whether that business is related to the subject of the Government contract.” EO § 3(a).

The government argues (at 22) that, when a client’s business with the Firm is related to the subject of the Government contract, it may compel this disclosure because “it is very likely that Perkins Coie is a government subcontractor, whose work Defendants are entitled to monitor.” But the government provides no support for that assertion, and for obvious reason. Federal regulations define a “subcontract” as a contract to “to furnish supplies or services for performance of a prime contract.” 48 C.F.R. § 44.101. That language applies to services that contribute *directly* to fulfillment of a contract, not to legal advice provided to the prime contractor by an outside law firm. *See* 8 C.F.R. § 31.205-33 (recognizing legal advice as an allowable cost in some cases, but not classifying law firms as subcontractors). Section 3 thus has nothing to do with monitoring “subcontractors.” Further, the government ignores that Section 3 requires contractors to disclose “*any business they do with Perkins Coie,*” regardless of “whether that business is related to the subject of the Government contract.”

Nor is there any merit to the government’s argument (at 22) that Section 3 does not trigger constitutional scrutiny because it merely compels disclosure of “purely factual and uncontroversial” information, akin to the disclosure of a meat product’s country of origin. *See Am. Meat Inst. v. U.S. Dep’t. of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014) (en banc). The government ignores that Section 3 requires clients to disclose their *attorney-client relationships* with the Firm, which often are *confidential*. Compl. ¶ 3. To justify the compelled disclosure of such “sensitive information,” the government must demonstrate a “substantial relation between the disclosure requirement and a sufficiently important governmental interest,” and the requirement must be “narrowly tailored to

the interest.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 610-11 (2021). The government does not, and cannot, satisfy that test. *See* MSJ Br. 21.

Finally, to the extent the government suggests (at 22) that Section 3 escapes scrutiny because it compels disclosure “only to the government and not to the public,” the Supreme Court has rejected that very argument. “[D]isclosure requirements can chill association even if there is no disclosure to the general public.” *Ams. for Prosperity Found.*, 594 U.S. at 616 (cleaned up).

B. The Complaint States Due Process Claims

Perkins Coie has more than adequately pleaded that the Order violates its rights to due process. To survive a motion to dismiss, the Firm need only allege that it was (1) deprived of a protected interest, and (2) did not receive the process that was due. TRO Tr. 83:7-10 (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982)). The Firm has done so. In fact, this Court already has held that the Firm is likely to succeed on its due process claims because the Order deprives the Firm of various liberty and property interests with no process whatsoever. TRO Tr. 83:4-89:22. Indeed, the Order is so devoid of process that it functions as a “bill of attainder.” *Id.* at 89:10-13. The government’s motion provides no reason to depart from that ruling.

1. The Complaint Pleads Protected Liberty and Property Interests

The Court previously found that the Firm was likely to succeed in asserting four separate liberty and property interests: (a) the rights of the Firm and its attorneys to follow their chosen profession, (b) the Firm’s right to its reputation, (c) the Firm’s right to petition the government, and (d) the Firm’s property interests in its own contracts. TRO Tr. 83:11-86:19. The Complaint sufficiently pleads those interests, each of which independently supports the Firm’s claims.

Chosen Profession: Perkins Coie pleads a protectable interest in its right to “follow a chosen profession free from unreasonable governmental interference.” *Campbell v. District of Columbia*, 894 F.3d 281, 288 (D.C. Cir. 2018); *see Schware v. Bd. of Bar Exam’rs*, 353 U.S. 232,

238-39 (1957). Here, the Order directly interferes with the Firm’s ability to practice law and represent its clients. Specifically, the Order directs agencies to “limit the access of Perkins Coie attorneys and employees to federal buildings,” to “limit Government employees ‘from engaging with Perkins Coie employees,’” and “immediately to suspend any security clearances of Perkins Coie attorneys.” Compl. ¶¶ 66, 69 (quoting EO §§ 2(a), 5(a)). Read literally, these provisions would prevent Firm lawyers from attending court proceedings, appearing before federal agencies, participating in any case implicating classified information, or even negotiating with prosecutors—in other words, from effectively representing Firm clients in any matters involving federal courts or the federal government. The Order also stigmatizes the Firm by “signal[ing] to present and prospective clients alike that it is *persona non grata* with the Administration,” which is particularly damaging because “[t]he firm is built around representation of clients who interact with the federal government.” *Id.* ¶¶ 79, 83; *see Kartseva v. Dep’t of State*, 37 F.3d 1524, 1528-30 (D.C. Cir. 1994); *Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 598 (D.C. Cir. 1992).

The government does not seriously dispute that prohibiting the Firm from entering federal buildings, engaging with federal employees, or maintaining security clearances would deprive the Firm of cognizable liberty interests. The government instead contends (at 16, 29-30) that claims relating to these interests are not yet ripe. As discussed above, that argument is meritless. Prior to the TRO, the government already had begun implementing the Order, and the outcome of any additional processes or guidance is predetermined. *Supra* pp.10, 18-19.

The government also mischaracterizes the Complaint’s allegations that the Order separately deprives the Firm of its liberty interest in pursuing its profession by “seeking to terminate private contractual relationships between Perkins Coie and its clients.” Compl. ¶ 101; *see, e.g., Mead v. Indep. Ass’n*, 684 F.3d 226, 232 (1st Cir. 2012); *Stidham v. Tex. Comm’n on Priv. Sec.*,

418 F.3d 486, 491-92 (5th Cir. 2005). The government (at 19-21) asserts that the Firm does not have standing to challenge the Order “insofar as it regulates [the Firm’s] clients.” But the Firm does not allege that it has a liberty interest in its *clients’* relationships with the government; it alleges that the Order interferes with *its* relationships with its clients by pressuring those clients to abandon the Firm. Compl. ¶ 101. The government never disputes that this harm is cognizable.

Reputation: As this Court recognized, Perkins Coie also has a protectable interest in its reputation. TRO Tr. 85:5-9; *see Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). To show a cognizable reputational interest, the Firm must plead that “the government issue[d] a stigmatizing posting (or designation)” that “deprive[d]” the Firm of a “previously held” right. *Nat’l Council of Resistance of Iran v. Dep’t of State*, 251 F.3d 192, 204 (D.C. Cir. 2001) (cleaned up).

The government does not, and cannot, dispute that the Order stigmatizes the Firm. Among other things, the Order baselessly alleges the Firm engaged in “dishonest and dangerous activity”; “undermin[ed] democratic elections, the integrity of our courts, and honest law enforcement”; and “racially discriminates against its own attorneys and staff.” EO § 1. These charges damage the Firm’s “good name, reputation, honor, [and] integrity.” *Constantineau*, 400 U.S. at 437.

As the government also does not dispute, these stigmatizing statements were accompanied by official directives that would make the Firm a pariah by, among other things, barring it from federal contracts, suspending security clearances, limiting its access to government buildings and services, and presumptively barring Firm personnel from federal employment. EO §§ 2, 3, 5.⁸

⁸ The government argues (at 21) that the Firm lacks standing to raise its interest in being considered for government contracts because it does not allege that it currently holds such contracts or intends to bid for them. But the government ignores that the formal exclusion from federal contracting imposes significant reputational injury. *See Gen. Elec. Co. v. Jackson*, 610 F.3d 110, 121 (D.C. Cir. 2010); *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 256 (2012); *Kartseva*, 37 F.3d at 1528. The Firm plainly has standing to vindicate its interest in avoiding such stigmatizing governmental action.

In response, the government contends (at 9) that the Firm failed to plead a reputational interest because it did not allege that the Order's statements are "false" and "defamatory." But the Complaint does dispute the Order's accusations. It pleads that the Order is "based on false premises," Compl. ¶ 104, points out that a district court dismissed a lawsuit in which the President makes many of the same allegations, *id.* ¶¶ 8, 38, and notes that the Firm prevailed in a significant number of voting rights cases about which the Order complains, *id.* ¶ 43. The Complaint further pleads that the Order falsely accuses the Firm of "racially discriminat[ing]" and utilizing "percentage quotas for hiring or promoting minorities." *Id.* ¶ 45. The Complaint explains that the purportedly discriminatory acts "did not exist [in 2019 and 2023] and do not exist now," and that the Order grossly mischaracterizes the Firm's employment practices. *See id.* ¶¶ 45, 51. These allegations, and the evidence submitted in connection with summary judgment, SOF ¶¶ 21-23, unambiguously challenge the Order's false and harmful statements.

In any event, the Firm need not prove the merits of a defamation claim to show it has been deprived of a cognizable reputational interest. "[D]ue process comes into play" whenever "the State attaches a badge of infamy to [a] citizen." *Constantineau*, 400 U.S. at 437; *see Gross v. Lopez*, 419 U.S. 565, 574-75 (1975) (reputation interest where school issued "charges [that] could seriously damage the students' standing"); *Nat'l Council of Resistance of Iran*, 251 F.3d at 204. Nor does the Firm need to prove that the Order's claims are false to be entitled to a *hearing*; that would put the cart before the horse. Instead, the Firm need only "dispute the charges made against [it]," so there is a factual dispute to be heard. *Wojcik v. Mass. State Lottery Comm'n*, 300 F.3d 92, 103 (1st Cir. 2002); *see also Codd v. Velger*, 429 U.S. 624, 627 (1977). The Firm has done so.⁹

⁹ The government (at 9) cites a single case in which a court looked to the elements of common-law defamation while considering a due process claim. *See Campbell v. District of Columbia*, 126

Right to Petition: The Firm also has a liberty interest in its “right to petition the government.” Compl. ¶ 101; *see Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1236-37 (10th Cir. 2007); *see Arnaud v. Odom*, 870 F.2d 304, 311 (5th Cir. 1989); *NAACP v. Button*, 371 U.S. 415, 429-31 (1963). The government does not dispute that barring the Firm from courthouses and other federal buildings would infringe that right, and instead relies (at 30) on its argument that any infringement is not yet ripe. Again, that ripeness argument gets the government nowhere. *Supra* pp.18-19.

Private Contracts: Finally, the Order interferes with the Firm’s property rights in its private contracts. *See* Compl. ¶ 101; *FDIC v. Mallen*, 486 U.S. 230, 240 (1988); *Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., Loc. 737 v. Auto Glass Emps. Credit Union*, 72 F.3d 1243, 1250 (6th Cir. 1996) (citing, *e.g.*, *Greene v. McElroy*, 360 U.S. 474, 492 (1959)). The Order’s obvious aim and effect (until being temporarily enjoined) was to force Perkins Coie’s clients to terminate their relationships with the Firm. Compl. ¶¶ 70-78. Other than its flawed standing argument (at 19), the government does not dispute this interest at all.

2. The Complaint Pleads that the Order Provides No Process and Functions as a Bill of Attainder

Perkins Coie also pleads the second element of a due process claim—that it did not receive the process it was due. As this Court previously explained, there is no need “to determine precisely what process was due [the Firm] before issuance of [the Order] because *no process was given.*” TRO Tr. 86:20-23. At a minimum, due process requires that “a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976) (cleaned up). Indeed, it is a “root requirement” of due process that “an individual be given an opportunity for a hearing *before* he is deprived of any significant property

F. Supp. 3d 141, 150 (D.D.C. 2015). But the court in that case looked to defamation law only because the parties agreed (wrongly) that it applied. *See id.* at 149 n.5.

interest.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541-42 (1985). Due process also requires “fair notice of conduct that is forbidden,” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), as well as notice of “the severity of the penalty that [the government] may impose,” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996).

Here, Perkins Coie was given no process at all. The Firm “did not receive notice prior to being subjected to the Order.” Compl. ¶ 102. Nor did the Firm receive “any opportunity to challenge the purported factual findings or the sanctions in the Order prior to their announcement.” *Id.* ¶ 103. In addition, the Firm had no notice of what type of “conduct” would subject it to the punishments in the Order or what the “severity” of those punishments would be. *Id.* ¶ 102. The Order is based not on any legal standard, but on the President’s personal views that the Firm engaged in “dishonest and dangerous activity” and should be punished without process. EO § 1.

As this Court observed, the Order is so lacking in process that it amounts to “a bill of attainder, a punishment for a singled-out entity deemed to be disloyal, without any formal investigation, trial, or even informal process.” TRO Tr. 89:10-13; *see* MSJ Br. 26. The prohibition on bills of attainder is an essential component of the Constitution’s “separation of powers,” protects the “judicial function,” and serves as “bulwark against tyranny.” *United States v. Brown*, 381 U.S. 437, 442-43 (1965). That the Order functions as such a bill underscores that it violates due process.

It makes no difference that the Order was issued by the President, rather than enacted by Congress. Just as Article I forbids Congress from passing bills of attainder, the Due Process Clause prohibits the President from engaging in acts of attainder. TRO Tr. 89:20-22; *see* Caplan Br. 6-8, 14 n.2, 18-21 (ECF 120-1); Former Gov’t Officials Br. 15-24 (ECF 104). As Justice Black wrote, there is no reason to “believe that the authors of the Constitution, who outlawed the bill of attainder, inadvertently endowed the executive with power to engage in the same tyrannical practices

that had made the bill such an odious institution.” *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 144 (1951) (Black, J., concurring). This is particularly so, given that the Constitution provides that a congressional bill becomes a law only if it complies with Article I’s requirement of presentment to the President. U.S. Const. art. I, § 7, cl. 2. “If the President cannot issue a bill of attainder when acting together with Congress, then he surely lacks the power to unilaterally issue the same bill of attainder by executive order.” Former Gov’t Officials Br. 18.

The government nowhere responds to this Court’s prior holding that the Order amounts to a bill of attainder. Instead, it makes two narrower arguments. *First*, it contends (at 15) that Section 2(a) comports with due process because it contemplates a post-suspension “review” of whether security clearances “are consistent with the national interest.” As discussed above, however, the outcome of any such “review” is preordained. Section 1 of the Order already declares that the Firm should not “have access to our Nation’s secrets,” and Section 2 directs an immediate, across-the-board suspension before that review even takes place. EO §§ 1, 2. In short, any process “would be a sham” because the “decision has already been made.” *Cf. Ryan v. Ill. Dep’t of Child & Fam. Servs.*, 185 F.3d 751, 762 (7th Cir. 1999); *see also* Leonard Rpt. ¶¶ 54-56 (ECF 39-8).

Second, the government contends (at 30) that it is too early to tell if the Firm “received adequate process” in connection with Section 5, because that question “depends on the importance of the private interest at stake,” which in turn depends on “what guidance the agency heads will issue.” The government cannot so easily dodge review. To begin with, there is no need for this Court to conduct any interest balancing test to determine what process was due because the Firm received “no process” at all. TRO Tr. 86:20-23. And even were there such a need, the impact on the Firm’s interests already is clear. Prior to the TRO, the government already had begun implementing Section 5 by directing Firm attorneys not to attend scheduled meetings. Compl. ¶¶ 67-

68. Section 5 thus had an immediate effect on the Firm's ability to practice its profession and represent its clients, not to mention on its reputation. Further, any forthcoming "guidance" (assuming it ever issues) will not ameliorate these deprivations. Section 1 dictates to agencies the type of guidance they must issue. Indeed, as noted above, the government acknowledged as much at the Jenner TRO hearing. Manning Decl. Ex. 55, at 20:6-9.

3. The Complaint Pleads the Executive Order Is Impermissibly Vague

The Complaint also pleads that the Order is unconstitutionally vague because it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008); *see* TRO Tr. 88:5-6. In particular, the Order "does not provide Perkins Coie with a basis to understand what conduct is prohibited or how to avoid sanctions in the future," "does not provide any guidance on which interactions and buildings, and in what circumstances, its employees are restricted from," and "permits arbitrary and discriminatory enforcement." Compl. ¶ 108. And the Order purports to punish Perkins Coie for "diversity, equity, and inclusion" policies without indicating which practices, if any, are unlawful. *See id.* ¶¶ 109-14.

Ignoring these allegations, the government focuses exclusively on the Order's references to diversity, equity, and inclusion, and asserts (at 11) that Perkins Coie "identifies only Section 1" as impermissibly vague. That is incorrect. As Perkins Coie alleged and this Court found, the Order is replete with vague terms, including the instruction in Section 5 to "limit[] official access from Federal Government buildings to Perkins Coie," and "limit[] Government employees ... from engaging with Perkins Coie employees." EO § 5(a); TRO Tr. 88:5-89:9. The government conceded it does not know what sort of "engag[ement]" will be prohibited, or what the impact of the Order will be. TRO Tr. 88:21-89:4. Those concessions alone doom the government's motion.

The government further suggests that the vagueness doctrine may not apply because the

Order is not a law that “define[s] criminal offenses” or “fix[es] ... permissible sentences.” MTD Br. 12 (quoting *Kincaid v. Gov’t of District of Columbia*, 854 F.3d 721, 729 (D.C. Cir. 2017)). But *Kincaid* does not hold the vagueness doctrine is limited to criminal laws, and the government itself (at 12) cites multiple cases applying the vagueness doctrine to *civil* laws. Indeed, the Supreme Court itself applies the doctrine in civil cases. *See Fox Television*, 567 U.S. at 253-58.

The government next argues (at 12) that even if vagueness doctrine applies to civil statutes, the Order should be subject to a reduced vagueness standard. Again, not so. The government’s own authorities explain that the “most important factor affecting the clarity that the Constitution demands ... is whether [the law] threatens to inhibit the exercise of constitutionally protected rights.” *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982). Stricter vagueness standards apply here because the Order unquestionably infringes the Firm’s and its clients’ First Amendment rights to petition the Government, to associate, and to pursue litigation. *See supra* pp.6-7, 27. The government’s claim (at 12) that “all that is at stake [is] Government contracts” is farcical; the Order’s obvious purpose is to foreclose the Firm’s ability to practice law.

The government also asserts (at 12) that the Order’s attempt to punish the Firm for “diversity, equity, and inclusion” practices is not unconstitutionally vague because the Order *also* “refers to ‘categories prohibited by civil rights laws.’” But the Firm never alleged that the Order is vague because it references civil rights laws; it alleged the Order is vague because it fails to identify the conduct it proscribes or explain what features of “diversity, equity, and inclusion” programs are wrongful. *See Compl.* ¶¶ 109-14. The government does not explain how Perkins Coie could possibly conform its conduct to the Order. The Order is “so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Williams*, 553 U.S. at 304.

C. The Complaint States Fifth and Sixth Amendment Right to Counsel Claims

Perkins Coie also states a claim that the Order interferes with its clients’ rights to counsel

under the Fifth and Sixth Amendments. *See* MSJ Mem. 27-31 (ECF 39-1).

The Order intentionally targets and interferes with the Firm’s relationship with its clients and its ability to advocate on their behalf. The Order forces government contractors—including the Firm’s 15 largest clients, Compl. ¶ 65; SOF ¶ 147—to disclose their relationships with the Firm. EO § 3(a). It then requires the “heads of all agencies” to “terminate any contract ... for which Perkins Coie has been hired to perform any service” and to review “all contracts” with “entities that disclose doing business with Perkins Coie” to “align” funding decisions with the “goals and priorities” of the Administration. EO § 3(b). The Fact Sheet makes clear what this means: “the Federal Government will *prohibit funding contractors that use Perkins Coie.*” The government’s claim (at 24) that the Order “only directs the termination of contracts under which Perkins Coie provides services” thus is belied by the government’s own statements.

Making matters worse, the Order declares the Firm *persona non grata* before the federal government, requiring agencies to “limit[]” the Firm’s access to government buildings and “limit[]” government employees from “engaging” with Firm personnel. EO § 5(a).

If not enjoined, these sanctions would not only pressure the Firm’s clients to fire the Firm, but also would directly restrict the Firm’s ability to represent its clients in matters involving the federal government or federal courts. This interference in the attorney-client relationship patently violates the Sixth Amendment rights to effective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668, 686 (1984), and counsel of choice, *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006), as well as the Fifth Amendment right to freedom from arbitrary interference in the lawyer-client relationship, *Powell v. Alabama*, 287 U.S. 45, 69 (1932); *see* MSJ Mem. 27-31.

The government’s meager responses are not credible. First, the government argues (at 24) that the Firm “lacks standing” to challenge Section 3 because “Plaintiff never explains how the

disclosure requirement would itself make it *impossible* to represent its clients.” But that is not the test; the government need not completely ban a firm to violate the right to counsel. It also is forbidden from “arbitrarily” interfering in the lawyer-client relationship. *Powell*, 287 U.S. at 69.¹⁰ Constitutional rights “protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring). The ability to engage with the government “is necessary to make meaningful” a client’s right to choose the Firm. *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024) (per curiam). The Order may not leverage government access to “nullify the right to counsel of choice.” *Luis*, 578 U.S. at 27 (Thomas, J., concurring).

Next, the government observes (at 31) that the right to counsel is “not absolute” and must be “balanced against the government’s interest in the fair, orderly, and effective administration of the courts.” But the Order does not identify any credible interest that remotely could justify the extraordinary sanction of banning the entire Firm from accessing federal buildings, receiving federal services, or engaging with federal employees. Finally, to the extent the government argues (at 32) the right-to-counsel claim is not ripe, that argument fails. *Supra* pp.18-19.

D. The Complaint States a Claim That the Executive Order Exceeds the President’s Constitutional Authority and Violates the Separation of Powers

Perkins Coie also clearly states a claim that key provisions of the Order (Sections 1, 2(b), 3, and 5) exceed the President’s constitutional authority and violate the separation of powers. There is no constitutional basis for a President to unilaterally punish a law firm, with no process

¹⁰ See also, e.g., *United States v. Amlani*, 111 F.3d 705, 711 (9th Cir. 1997) (Sixth Amendment does not “allow[] the government effectively to veto defendant’s choice of counsel by intentionally undermining his confidence in the attorney-client relationship through disparagement.”); *United States v. Stein*, 541 F.3d 130, 154-55 (2d Cir. 2008) (holding that “the right to counsel in an adversarial legal system would mean little if defense counsel could be controlled by the government or vetoed without good reason,” and concluding that a Sixth Amendment violation would occur if “the government unjustifiably interfered with [a client’s] relationship with counsel”).

whatsoever. *See Joint Anti-Fascist Refugee Comm.*, 341 U.S. at 142-45 (Black, J., concurring). In doing so, the President improperly usurps judicial power.

1. No Heightened Showing of Unconstitutionality Is Required

There is no merit to the government’s contention (at 5, 18) that Perkins Coie may not challenge the Order as *ultra vires* unless it demonstrates a clear violation. The government conflates *ultra vires* claims based on purely *statutory* violations with *ultra vires* claims based on *constitutional* violations. In particular, the government relies on cases involving claims that agencies acted beyond their statutory authority and where Congress did not authorize statutory review. *See Fed. Express Corp. v. U.S. Dep’t of Com.*, 39 F.4th 756, 763-66 (D.C. Cir. 2022). In such cases, courts understandably are reluctant to exercise non-statutory review and will do so only if certain conditions exist, including that the agency “plainly” exceeded its statutory authority. *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022).

In contrast, this action seeks to enjoin federal officers and agencies from implementing a patently *unconstitutional* executive order. It is well established that federal courts have equitable jurisdiction to enjoin federal officers and agencies from violating the Constitution, including its separation of powers. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *accord Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (“[I]njunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally.”). Given that the basis for this Court’s review is clear, there is no reason to put a thumb on the scale in favor of the government. Indeed, in the seminal case on executive orders, the Supreme Court nowhere suggested that the plaintiff had to satisfy a heightened standard to show the order was unconstitutional. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585-88 (1952).

2. The President Has No Constitutional Authority To Punish the Firm

The Constitution does not grant the President the power to make laws or to adjudicate persons guilty of violating them. It instead vests in the President only the “executive Power” and certain enumerated powers, including the duty to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, §§ 1, 3. Thus, for an executive order to be constitutional, it “must stem either from an act of Congress” or from the President’s powers in “the Constitution itself.” *Youngstown*, 343 U.S. at 585. “If the President claims authority to act but in fact exercises mere ‘individual will’ and ‘authority without law,’ the courts may say so.” *Trump v. United States*, 603 U.S. 593, 608 (2024) (quoting *Youngstown*, 343 U.S. at 655 (Jackson, J., concurring)).

Here, Sections 1, 2(b), 3, and 5 of the Order have no basis in the Constitution. No constitutional provision authorizes a President to summarily declare that a law firm is “dishonest and dangerous” for representing his political opponents and then to impose various punishments on the firm. EO §§ 1, 2(b), 3, 5. Nor is there any executive practice “long pursued” and “never before questioned” of Presidents doing so. *Youngstown*, 343 U.S. at 610 (Frankfurter, J., concurring).

The government suggests (at 14, 29) the Order is justified by the President’s inherent powers over “national security.” As discussed in Perkins Coie’s summary-judgment brief, however, any purported “national security” concern is merely a pretext for retaliation. MSJ Br. 10-16. Moreover, whatever the scope of President’s national-security powers, they certainly do not include the power to unilaterally punish private parties with no process whatsoever. As Justice Black put it during the McCarthy era, our Constitution “wisely withheld authority for resort to executive investigations, condemnations and blacklists as a substitute for imposition of legal types of penalties by courts following trial and conviction in accordance with procedural safeguards of the Bill of Rights.” *Joint Anti-Fascist Refugee Comm.*, 341 U.S. at 144-45 (Black, J., concurring).!

Nor does any statute authorize the President to issue the Order. In defense of Section 3, the government (at 17) invokes its “procurement power.” But that power stems from the Federal Property and Administrative Service Act of 1949 (“Procurement Act”), 40 U.S.C. § 121. Under that act, the President does not have unbounded authority to order agencies to use their procurement powers for any purpose he sees fit. Instead, the President’s orders must have a “sufficiently close nexus to the values of providing the government an economical and efficient system for procurement and supply.” *UAW-Lab. Emp. & Training Corp. v. Chao*, 325 F.3d 360, 366 (D.C. Cir. 2003) (cleaned up); *see* 40 U.S.C. § 121.¹¹

The government asserts (at 17) that Section 3 serves to “combat racial discrimination” and analogizes to *Contractors Association v. Secretary of Labor*, 442 F.2d 159, 170 (3d Cir. 1971). The government’s reliance on that case is ironic, given that it concerned a long-standing executive order on affirmative action that the President recently revoked. *See* Exec. Order 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (revoking Executive Order 11246). Regardless, that case only underscores how far the Order here deviates from the Procurement Act. There, the Third Circuit held that the act permitted President Johnson to require contractors on federally assisted construction projects to agree to affirmative-action provisions because such provisions advanced the government’s “vital interest in assuring that the largest possible pool of qualified manpower be available” for its projects. *Contractors Ass’n*, 442 F.2d at 171.

Here, in contrast, there is zero nexus between the Order and promoting efficient procurement. Section 3 does not require government contractors to promote equal opportunity. Instead,

¹¹ Other circuits take an even narrower view of the President’s authority under the Procurement Act, holding that he may issue directives only to carry out the act’s “operative provisions.” *Nebraska v. Su*, 121 F.4th 1, 7-8 (9th Cir. 2024); *Kentucky v. Biden*, 23 F.4th 585, 604 (6th Cir. 2022); *Georgia v. President of the U.S.*, 46 F.4th 1283, 1298, 1300 (11th Cir. 2022). Under that test, Section 3 is plainly illegal, as the government identifies no relevant “operative provision.”

Section 3 threatens government contractors with termination of their existing contracts because they “do business with Perkins Coie”—regardless of whether that business has anything to do with their government contracts. EO § 3. Section 3 purports to “prevent the transfer of taxpayer dollars to Federal contractors whose earnings subsidize” Perkins Coie’s alleged “racial discrimination.” *Id.* But that purported goal—preventing contractors from doing business with third parties who allegedly engage in unlawful employment practices—is far removed from providing an “economical and efficient” procurement system. *UAW-Lab.*, 325 F.3d at 366 (cleaned up). Further, the Fact Sheet makes clear that the true purpose behind Section 3 is to prevent contractors from “subsidiz[ing]” the Firm’s allegedly “*partisan lawsuits*”—a goal having nothing to do with procurement.

The government (at 18) next invokes its power to “manage” contracts, citing a regulation on contract termination. *See* 48 C.F.R. § 52.249-2(a). But that regulation derives from the Procurement Act and thus cannot give the Executive any greater authority than the statute itself conveys. *See Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 333-34 (2014) (regulation is “invalid” to the extent it purports to grants authority exceeding statute). Because the Procurement Act does not authorize the Executive to terminate contracts to punish the Firm, neither can the regulation.

The government also argues (at 11) that, because the EEOC could investigate the Firm’s employment practices, the Executive can take “the lesser action of simply reviewing contracting decisions” involving the Firm. Setting aside that the EEOC’s investigation is itself retaliatory, *supra* pp.17-18, the government’s argument is flawed. While the grant of a greater power sometimes includes a lesser one, no one would say that granting one power includes granting an *unrelated* one. That the EEOC has some authority to investigate employment practices does not imply the President has a wholly unrelated power to terminate the contracts to punish the Firm.

Turning to Section 5, the government contends it has the “power to preserve the property under its control for the use to which it is lawfully dedicated.” MTD Br. 30 (quoting *Greer v. Spock*, 424 U.S. 828, 836 (1976)). But federal law requires the government to exercise that power through general “rules and regulations,” *see, e.g.*, 40 U.S.C. § 318a, like the rule prohibiting demonstrations on military bases in *Greer*. But Section 5 does not establish any general rule governing access to federal buildings or communication with federal employees. Instead, it singles out Perkins Coie and prohibits only its personnel from “access[ing]” federal buildings or “engag[ing]” with federal employees. EO § 5. The government does not point to any federal statute authorizing the Executive to blacklist a particular firm in this manner because there is none.

In sum, the Order “does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a *presidential policy* be executed in a manner prescribed by the President.” *Youngstown*, 343 U.S. at 588. Because the Order also finds no footing in the President’s Article II powers, it is unconstitutional.

3. The Order Improperly Usurps Judicial Power

As explained in Perkins Coie’s summary-judgment brief, the Order also usurps judicial power. MSJ Br. 34-36. It does so by arrogating to the President the Judiciary’s exclusive authority to deprive individuals of private rights. *See SEC v. Jarkesy*, 603 U.S. 109, 127-28 (2024); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 54-55 (1989). The Order also improperly wields the Judiciary’s inherent authority to discipline lawyers for their general representation of clients. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). And the Order interferes with “the proper exercise of the judicial power” by punishing lawyers for presenting “reasonable and well-grounded arguments” in court. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545-46 (2001). For all these reasons, Perkins Coie has stated a claim that the Order violates the separation of powers.

E. The Complaint States an Equal Protection Claim

Perkins Coie also has stated an equal protection claim. “Nowhere are the protections of the Equal Protection Clause more critical than when [the government] singles out one or a few for uniquely disfavored treatment.” *News Am. Publ’g, Inc. v. FCC*, 844 F.2d 800, 813 (D.C. Cir. 1988). “The classic class-of-one claim is illustrated when a public official, with no conceivable basis for his action other than spite or some other improper motive comes down hard” on a private citizen. *Swanson v. City of Chetek*, 719 F.3d 780, 784 (7th Cir. 2013) (cleaned up). As extensively described above, that is exactly what is pleaded—and what happened—here.

The government’s arguments should be rejected. First, the government wrongly argues (at 18-19) that the class-of-one theory is inapplicable to Section 3’s government-contractor provisions. The government relies on *Enquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), which held that the class-of-one theory does not apply to government employment because employment decisions require “discretionary authority based on subjective, individualized determinations.” *Id.* at 603. But Section 3 does not involve “subjective, individualized determinations” akin to employment decisions. Instead, the Order categorically directs agencies to “terminate any contract” for which “Perkins Coie has been hired to perform any service” and to “assess[]” any contracts “with entities that do business with Perkins Coie” to “align” funding decisions with the President’s “goals and priorities.” EO § 3(b). As noted above, the Fact Sheet makes clear that this means “the Federal Government *will prohibit funding contractors that use Perkins Coie LLP.*” This is not the kind of action that by its “nature involve[s] discretionary decisionmaking based on a vast array of subjective, individualized assessments.” *Enquist*, 553 U.S. at 603. Instead, it is a clear directive that agencies must target Perkins Coie and its government-contractor clients.

Next, the government contends (at 19) that the Firm is not “‘similarly situated’ to other potential government contractors who do not engage in unlawful DEI practices.” Setting aside

that the Firm does *not* engage in unlawful practices (as the Complaint pleads), the government's argument fails for two reasons. First, the government's contention that the Firm is not similarly situated to law firms that do not have similar DEI policies misses the point. There undoubtedly are numerous firms that *do* have similar policies, yet the President has targeted only Perkins Coie and a handful of other firms with executive orders. If this Court concludes that a comparator is necessary, the plethora of non-targeted firms easily would fit that bill.

Second, in any event, no comparator is necessary here. Courts have explained that because "improper motive is usually covert," the purpose of the similarly situated requirement is to "show there was no proper motivation for the disparate treatment" by pointing to two essentially identical parties who receive different treatment without any rational explanation. *Swanson*, 719 F.3d at 784. Where improper motive is "readily obvious" or "easily demonstrated" by other means, identifying similarly situated persons is unnecessary. *Id.* Here, identifying similarly situated persons is unnecessary because the Order's animus against Perkins Coie is plain on its face. *See* TRO Tr. 75:12-13; *see also* 504 Law Firms Br. 1 (ECF 78) (describing Order as "undisguised retaliation").

Finally, the government argues (at 19) that "the distinction the Executive Order makes—between potential contractors who 'engage in blatant race-based and sex-based discrimination' and those who do not—is plainly rational." That argument egregiously mischaracterizes the Order. The Order is *not* a general policy that distinguishes between firms who allegedly discriminate and firms who do not. Instead, the Order applies *only* to Perkins Coie and its clients. The government does not offer any legitimate reason for such targeting. Nor could it, as "a bare desire to harm a politically unpopular group" is "not [a] legitimate state interest." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 447 (1985) (cleaned up).

II. THE COURT SHOULD DENY DEFENDANTS' MOTION TO RECONSIDER

The Court should deny the government's motion to reconsider ("MTR," ECF 44), which seeks to limit the scope of the TRO to the seven agency heads that are separately named as defendants in the Complaint. Contrary to the government's contentions, (i) the United States *is* a proper defendant; (ii) Perkins Coie has an equitable cause of action against the United States for injunctive relief; and (iii) an injunction against the United States may cover federal officers who are not named as defendants in the Complaint. To the extent the government is concerned that the TRO does not specifically identify the heads of every agency, that issue easily can be resolved by adding the titles of those agency heads to the TRO itself. There is no reason to limit the scope of injunctive relief, as the government requests.

By way of background, the Order applies to not only certain named agencies and officials (*e.g.*, OMB and the Attorney General), but also "all" other agencies and their heads. EO §§ 2, 3, 5. The OMB Director thus issued a memorandum instructing "all executive Departments and Agencies" to implement the Order. Manning Decl. Ex. 31. Accordingly, Perkins Coie sued both the specific officials and agencies identified in the Order and "the United States," which the Complaint defines as "all other agencies that are directed by the Order to take action respecting Perkins Coie." Compl. ¶ 36. This Court then issued a temporary restraining order against all Defendants, including the United States. TRO (ECF 21). In so doing, the Court specifically ordered the Attorney General and the OMB Director to issue guidance to "all other agencies subject" to the Order to suspend and rescind any implementation or enforcement of certain sections of the Order. *Id.*

Following the Court's order, the Attorney General and OMB Director issued a memorandum on the TRO to all agencies subject to the order. *See* Memorandum (ECF 31-1). In addition, the government agreed to extend the TRO through final judgment, without objecting to the TRO's scope. *See* Joint Status Rpt. ¶ 5 (ECF 25).

Now, however, the government belatedly contends the United States is “not a proper defendant” and that this Court’s TRO should run against only the seven specific agency heads named as defendants in the Complaint. MTR 4-10. In other words, the government argues that when the President broadly orders “all” agencies to take unconstitutional action, a court is powerless to stop a particular official from implementing the order unless that official is specifically named as a defendant. The government takes that position even though, as discussed, the Attorney General and OMB Director are more than capable of issuing directives to every agency subject to the Order.

This Court should deny the government’s motion to reconsider because the United States *is* a proper defendant. A federal statute, 5 U.S.C. § 702, expressly provides as much. As the government recognizes (MTR 6), Section 702 is the provision that waives sovereign immunity in suits for non-monetary relief. In language the government conspicuously omits, that statute explicitly states that “[t]he United States *may be named as a defendant* in any such action, and a judgment or decree *may be entered* against the United States.” 5 U.S.C. § 702.¹² The next statutory section adds that where, as here, no “special statutory review proceeding” is applicable, a plaintiff may bring an action against either “the United States, the agency by its official title, *or* the appropriate officer.” *Id.* § 703. The disjunctive “or” confirms that individual agencies and officers need not be defendants.

To be sure, Section 702 further provides that, in an action against the United States, “any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title) ... personally responsible for compliance.” *Id.* § 702. But that is a requirement for the *decree*. It

¹² It is immaterial that the Firm is not bringing a claim under the Administrative Procedure Act. Section 702’s waiver applies to all equitable actions against the United States and its officers, including constitutional claims. *Trudeau v. FTC*, 456 F.3d 178, 187 (D.C. Cir. 2006). Section 702 also makes clear that the United States may be named as a defendant in “*any*” action seeking non-monetary relief, including equitable relief. 5 U.S.C. § 702.

is not a requirement that individual officers be named as defendants in the *complaint*. Nor would such a requirement be practicable; where, as here, an executive order is directed at “all” federal agencies, the government’s position would require a plaintiff to effect formal service of the complaint on hundreds, if not thousands, of separate federal officials.

To the extent the government is concerned that the TRO does not specifically list every relevant agency head, that concern can be resolved simply by adding the titles of those officials to the TRO itself. To that end, Perkins Coie has asked the government to identify each department, agency, or entity that received the OMB memoranda relating to the Order or that is otherwise subject to the Order, along with the name and title of the head official of each such body. The government has indicated that it will provide such a list this week. If the government does so, the Firm is amenable to adding those heads by title to the current TRO, as well as to the proposed permanent injunction. That should fully moot the government’s concerns. If, however, the government ultimately fails to provide the requested list, this Court should leave the TRO in place without change. The government cannot issue a government-wide order, fail to specify the agency heads who will implement it, and then fault the Firm for not identifying every one of them.¹³

The government’s remaining objections to the TRO’s scope are equally unavailing. *First*, the government asserts that “[n]o cause of action exists” against the United States itself. MTR 7. The government acknowledges, however, that a cause of action in equity exists “to enjoin unconstitutional actions” by “federal officers.” MTR 6 (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015)). The government offers no reason why such an equitable action

¹³ With respect to the proposed *permanent* injunction, the Firm is working to create its own list of all federal agencies and agency heads subject to the Order in the event that the government fails to provide such a list. If it becomes necessary, the Firm will submit that list along with a revised proposed order for the permanent injunction.

would not also lie against the United States to accomplish the same effect. Nor is there a reason. Of course, courts should not unnecessarily recognize equitable actions that would conflict with a statute. *See Armstrong*, 575 U.S. at 327. But here, Section 702 expressly contemplates a suit for injunctive relief against the United States, making an equitable action particularly appropriate.

Second, the government argues that suing the United States would circumvent the principle that courts may not enjoin the President. MTR 7. Not so. As noted, Section 702 specifically permits suits against the United States to enjoin unlawful actions by federal officers. That comports with the longstanding rule that, while courts generally may not enjoin the President, they may enjoin federal officers from implementing an unlawful order. *See* MTR 5-6 (acknowledging this rule). As a case cited by the government explains, executive orders are not “immune from injunctive or declaratory relief [I]n such litigation, the proper course is to seek to enjoin a member of the executive branch from carrying out the executive order at issue, not the President.” *McCray v. Biden*, 574 F. Supp. 3d 1, 11 (D.D.C. 2021). The Firm’s suit against the United States seeks to do precisely that.

Third, the government asserts (MTR 9-10) that the Firm lacks Article III standing to seek injunctive relief against the “vast majority of Federal agencies.” The government does not dispute that the Firm has suffered injuries in fact to its business, reputation, and constitutional rights. *See* TRO Tr. 85:5-86:13, 90:21-25, 99:15-21. The government instead contends the Firm cannot trace these injuries to each individual agency. But the Order itself broadly directs “all” agencies to take certain punitive actions against the Firm. EO §§ 2, 3, 5. Under the presumption of regularity, this Court should presume that each agency will follow those directives. *See Al-Hela v. Biden*, 66 F.4th 217, 236 (D.C. Cir. 2023) (en banc). The Firm’s injuries are, therefore, traceable to each agency. Indeed, because the Order acts as a bill of attainder, it inflicts sweeping reputational harm

on the Firm. That harm is traceable to each entity instructed to carry out the Order, even those agencies with whom the Firm has not previously interacted. *See Foretich v. United States*, 351 F.3d 1198, 1204, 1213 (D.C. Cir. 2003) (holding a plaintiff had standing to sue “the United States” over “an unconstitutional bill of attainder” because it “directly g[a]ve rise to a cognizable injury to [plaintiff’s] reputation that can be redressed by a declaratory judgment”). The Firm thus has standing as to every federal agency.

CONCLUSION

Perkins Coie respectfully requests that the Court deny the government’s motion to dismiss and for expedited judgment, ECF 43-1, and deny its motion for reconsideration, ECF 44.

Dated: April 16, 2025

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

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* *DDC bar application pending*

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERKINS COIE LLP,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-00716

**DECLARATION OF RYAN SCARBOROUGH, ESQUIRE,
IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS AND FOR EXPEDITED JUDGMENT**

1. I am a partner in the law firm of Williams & Connolly LLP and a member of the Bar of this Court. I am one of the counsel of record in the above-captioned action representing the Plaintiff, Perkins Coie LLP. I submit this declaration in support of Plaintiff's Opposition to Defendant's Motion to Dismiss and for Expedited Judgment.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a video titled "President Trump Signs Executive Orders, Discusses Tariffs Pause," posted on c-span.org on April 9, 2025. The video is available here, and the relevant portion begins at 15:28: <https://www.c-span.org/program/white-house-event/pres-trump-signs-exec-order-on-shipbuilding/658445>.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Executive Order Number 14263 issued by President Donald J. Trump on April 9, 2025 and titled "Addressing Risks from Susman Godfrey."

4. Attached hereto as **Exhibit 3** is a true and correct copy of a White House Fact Sheet titled "Fact Sheet: President Donald J. Trump Addresses Risks from Susman Godfrey," posted to the White House website on April 9, 2025.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a Press Release by the U.S. Equal Employment Opportunity Commission titled “In EEOC Settlement, Four ‘BigLaw’ Firms Disavow DEI and Affirm Their Commitment to Merit-Based Employment Practices,” posted on the website <https://www.eeoc.gov/newsroom/eeoc-settlement-four-biglaw-firms-disavow-dei-and-affirm-their-commitment-merit-based>, which upon information and belief is operated by the U.S. Equal Employment Opportunity Commission.

6. Attached hereto as **Exhibit 5** is a true and correct copy of an April 11, 2025 Law.com article titled *A&O Shearman’s Internal Memo About Trump Deal*.

7. Attached hereto as **Exhibit 6** is a true and correct copy of an April 9, 2025 New York Times article by Ben Protess, Maggie Haberman and Michael S. Schmidt titled *How Trump Is Putting Law Firms in a No-Win Situation*.

8. Attached hereto as **Exhibit 7** is a true and correct copy of a March 22, 2025 Presidential Memoranda titled *Rescinding Security Clearances and Access to Classified Information from Specified Individuals*.

9. Attached hereto as **Exhibit 8** is a true and correct copy of a transcript of an April 15, 2025 hearing before the Honorable Loren L. AliKhan in *Susman Godfrey LLP v. Executive Office of the President, et al.*, Case No. 1:25-cv-01107-LLA (D.D.C.).

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 16 day of April, 2025.



Ryan Scarborough, Esq.

EXHIBIT 1

**DECLARATION OF RYAN T. SCARBOROUGH, ESQUIRE,
IN SUPPORT OF PLAINTIFF PERKINS COIE LLP'S
OPPOSITION TO MOTION TO DISMISS**

Exhibit 1

President Trump Signs Executive Orders, Discusses Tariffs Pause

The posted video is available here:

<https://www.c-span.org/program/white-house-event/president-trump-signs-executive-orders-discusses-tariffs-pause/658445>

A digital copy of this exhibit has been preserved and can be provided to the Court and/or defendants' counsel upon request.

EXHIBIT 2

Federal Register

Vol. 90, No. 71

Tuesday, April 15, 2025

Presidential Documents

Title 3—

Executive Order 14263 of April 9, 2025

The President

Addressing Risks From Susman Godfrey

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Background. Lawyers and law firms that engage in activities detrimental to critical American interests should not have access to our Nation's secrets, nor should their conduct be subsidized by Federal taxpayer funds or contracts. My Administration must also take appropriate and necessary measures to guard against the actual, potential, or perceived conflicts of interest that arise when the Government funds, engages with, or otherwise devotes resources to law firms and their clients that engage in conduct undermining critical American interests and priorities.

I have determined that action is necessary to address the significant risks, egregious conduct, and conflicts of interest associated with Susman Godfrey LLP (Susman). Susman spearheads efforts to weaponize the American legal system and degrade the quality of American elections. Susman also funds groups that engage in dangerous efforts to undermine the effectiveness of the United States military through the injection of political and radical ideology, and it supports efforts to discriminate on the basis of race.

Susman itself engages in unlawful discrimination, including discrimination on the basis of race. For example, Susman administers a program where it offers financial awards and employment opportunities only to "students of color." My Administration is committed to ending such unlawful discrimination perpetrated in the name of "diversity, equity, and inclusion" policies and ensuring that Federal benefits support the laws and policies of the United States, including those laws and policies promoting our national security and respecting the democratic process. Those who engage in blatant discrimination and other activities inconsistent with the interests of the United States should not have access to our Nation's secrets nor be deemed responsible stewards of any Federal funds.

Sec. 2. Security Clearance Review. (a) The Attorney General, the Director of National Intelligence, and all other relevant heads of executive departments and agencies (agencies) shall immediately take steps consistent with applicable law to suspend any active security clearances held by individuals at Susman, pending a review of whether such clearances are consistent with the national interest.

(b) The Office of Management and Budget shall identify all Government goods, property, material, and services, including Sensitive Compartmented Information Facilities, provided for the benefit of Susman. The heads of agencies providing such material or services shall, to the extent permitted by law, expeditiously cease such provision.

Sec. 3. Contracting. (a) To prevent the transfer of taxpayer dollars to Federal contractors whose earnings subsidize, among other things, activities that are not aligned with American interests, including racial discrimination, Government contracting agencies shall, to the extent permissible by law, require Government contractors to disclose any business they do with Susman and whether that business is related to the subject of the Government contract.

(b) The heads of agencies shall review all contracts with Susman or with entities that disclose doing business with Susman under subsection (a) of this section. To the extent permitted by law, the heads of agencies shall:

(i) take appropriate steps to terminate any contract, to the maximum extent permitted by applicable law, including the Federal Acquisition Regulation, for which Susman has been hired to perform any service; and

(ii) otherwise align their agency funding decisions with the interests of the citizens of the United States; with the goals and priorities of my Administration as expressed in executive actions, especially Executive Order 14147 of January 20, 2025 (Ending the Weaponization of the Federal Government); and as heads of agencies deem appropriate. Within 30 days of the date of this order, agencies shall submit to the Director of the Office of Management and Budget an assessment of contracts with Susman or with entities that do business with Susman effective as of the date of this order and any actions taken with respect to those contracts in accordance with this order.

Sec. 4. *Racial Discrimination.* Nothing in this order shall be construed to limit the action authorized by section 4 of Executive Order 14230 of March 6, 2025 (Addressing Risks from Perkins Coie LLP).

Sec. 5. *Personnel.* (a) The heads of agencies shall, to the extent permitted by law, provide guidance limiting official access from Federal Government buildings to employees of Susman when such access would threaten the national security of or otherwise be inconsistent with the interests of the United States. In addition, the heads of agencies shall provide guidance limiting Government employees acting in their official capacity from engaging with Susman employees to ensure consistency with the national security and other interests of the United States.

(b) Agency officials shall, to the extent permitted by law, refrain from hiring employees of Susman, absent a waiver from the head of the agency, made in consultation with the Director of the Office of Personnel Management, that such hire will not threaten the national security of the United States.

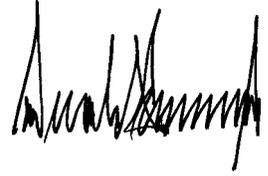
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be a stylized name, located in the upper right quadrant of the page.

THE WHITE HOUSE,
April 9, 2025.

[FR Doc. 2025-06458
Filed 4-14-25; 8:45 am]
Billing code 3395-F4-P

EXHIBIT 3

The WHITE HOUSE

Fact Sheets

Fact Sheet: President Donald J. Trump Addresses Risks from Susman Godfrey

The White House
April 9, 2025

SUSPENDING SECURITY CLEARANCES TO PROTECT THE NATIONAL INTEREST: Today, President Donald J. Trump signed an Executive Order to suspend security clearances held by individuals at Susman Godfrey LLP (Susman) pending a review of whether such clearances are consistent with the national interest.

- Security clearances held by Susman employees will be immediately suspended, pending a review of whether their access to sensitive information is consistent with the national interest.
 - The Federal Government will halt all material and services, including sensitive compartmented information facility (SCIF) access provided to Susman and restrict its employees' access to government buildings.
 - Federal Agencies will also refrain from hiring Susman employees unless specifically authorized.
- To ensure taxpayer dollars no longer go to contractors whose earnings subsidize activities not aligned with American interests, the Federal Government will terminate contracts that involve Susman.
- The practices of Susman will be reviewed under Title VII to ensure compliance with civil rights laws against racial bias.

ADDRESSING ROGUE LAW FIRMS: President Trump believes that lawyers and law firms that engage in conduct detrimental to critical American interests should not be subsidized by American taxpayers or have access to our Nation's secrets.

- Susman spearheads efforts to weaponize the American legal system and degrade the quality of American elections.
- Susman funds groups that engage in dangerous efforts to undermine the effectiveness of the U.S. military through the injection of political and radical ideology, and it supports efforts to discriminate on the basis of race.
- Susman has been accused of engaging in unlawful discrimination, including on the basis of race.
 - Susman administers a program where it offers financial awards and employment opportunities only to "students of color."

A RETURN TO ACCOUNTABILITY: President Trump is delivering on his promise to end the weaponization of government and protect the nation from partisan and bad faith actors who exploit their influence.

- In addition to Susman, President Trump has also taken action to hold other major law firms accountable.
- This Executive Order aligns with President Trump's priority on refocusing government operations to serve the citizens of the United States.
- It builds on President Trump's previous actions, such as signing an Executive Order on his first day in office to end the weaponization of the Federal government and ensure accountability for past misconduct.
- It follows his revocation of security clearances held by intelligence officials who falsely claimed Hunter Biden's laptop was Russian disinformation during the 2020 election.

NEWS

ADMINISTRATION

ISSUES

EXHIBIT 4



U.S. Equal Employment Opportunity Commission

Press Release

04-11-2025

In EEOC Settlement, Four ‘BigLaw’ Firms Disavow DEI and Affirm Their Commitment to Merit-Based Employment Practices

WASHINGTON – Four of the world’s largest law firms—Kirkland & Ellis LLP, Latham & Watkins LLP, Simpson Thacher & Bartlett LLP, and A&O Shearman Sterling, LLC—have entered into a settlement agreement with the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

On March 17, Acting Chair Andrea Lucas **[sent letters \(https://www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-sends-letters-20-law-firms-requesting-information-about-dei\)](https://www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-sends-letters-20-law-firms-requesting-information-about-dei)** to these and other elite law firms regarding their touted DEI-practices. Specifically, Lucas sought information from certain firms to better understand whether their respective “Diversity, Equity, and Inclusion” (“DEI”) policies, programs, and practices in fact entailed or resulted in race- and sex-based disparate treatment against white or male employees, applicants, and training program participants, in violation of Title VII of the Civil Rights Act of 1964. The letters inquired about potential disparate treatment in hiring, compensation, promotion, demotion, separation, and access to privileges of employment, including, but not limited to hiring and compensation for summer associate programs and access to mentoring, sponsorship, leadership development, and other training and career development programs.

Today, the law firms and the EEOC entered into a settlement agreement. The firms chose to voluntarily resolve matters with the EEOC, without admission of liability, to avoid an extended dispute. Under the multi-year agreement, the law firms affirmed their commitment to lawful

merit-based hiring, promotion, and retention; agreed not to engage in unlawful discrimination or preferences based on race, sex, or other protected characteristics, including in any policies, programs, and practices previously labeled, characterized, or framed as a diversity or DEI program; agreed to no longer categorize any lawful employment or practices (including those addressing equal employment opportunity, accessibility, or reasonable accommodation for religion, disability, or pregnancy) as DEI; and agreed to compliance monitoring.

“The statutory goal of Title VII is voluntary compliance with the law. We are pleased with the commitments made by Kirkland & Ellis, Latham & Watkins, Simpson Thacher, and A&O Shearman,” Lucas said. “We are hopeful these firms will be leaders in their industry by eliminating potentially unlawful DEI-based employment practices and returning to merit-based equal employment opportunity for all.”

For more information about when DEI initiatives, policies, programs, or practices may be unlawful under Title VII, check out EEOC’s recent technical assistance documents, **[What You Should Know About DEI-Related Discrimination at Work](https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work)** (<https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>) and **[What To Do If You Experience Discrimination Related to DEI at Work](https://www.eeoc.gov/sites/default/files/2025-03/One_Pagers_2025-2_2800229_508.pdf)** (https://www.eeoc.gov/sites/default/files/2025-03/One_Pagers_2025-2_2800229_508.pdf).

The EEOC is the sole federal agency authorized to investigate and litigate against private companies and other private employers for violations of federal laws prohibiting employment discrimination. For public employers, the EEOC shares jurisdiction with the Department of Justice’s Civil Rights Division; the EEOC is responsible for investigating public sector charges before referring them to DOJ for potential litigation. The EEOC also is responsible for coordinating the federal government’s employment antidiscrimination effort. More information is available at www.eeoc.gov (<http://www.eeoc.gov>). Stay connected with the latest EEOC news by subscribing to our **[email updates](https://public.govdelivery.com/accounts/USEEOC/subscriber/new)** (<https://public.govdelivery.com/accounts/USEEOC/subscriber/new>).

EXHIBIT 5

REGIONS



A&O Shearman. Credit: Allen & Overy courtesy photo / A&O Shearman

NEWS

A&O Shearman's Internal Memo About Trump Deal

"We identified and compared the benefits and risks of all approaches to the EEOC matter before coming to a reasoned yet difficult decision," A&O Shearman leadership said.

April 11, 2025 at 03:04 PM

🕒 5 minute read

Law Firm Management

By ALM Staff

A&O Shearman was one of five firms to have deals announced with the Trump administration Friday. The below communication from A&O Shearman leadership, obtained by Law.com, was circulated inside the firm after the deal was announced.

Today we have made the decision, alongside other leading firms, including Kirkland & Ellis, Latham & Watkins and Simpson Thacher, to enter into a group settlement to resolve fully the pending U.S. Equal Employment Opportunities Commission (EEOC) inquiry into the DEI and ethics of 20 top law firms, without any admission of liability or wrongdoing on the firm's part.

The terms of that resolution include both agreements and understandings with the EEOC and the Office of the U.S. President and were identical for each of the firms that are settling. This difficult decision was made following careful consideration with the Board and Executive Committee and was informed after a thorough evaluation of all the possible alternatives. Throughout this process, our guiding principle has been to best position the firm for long-term success, while staying true to our commitment to inclusion and our core values — all while remaining committed to the rule of law.

It is important to understand that this resolution differs from some of the other recently announced resolutions by law firms — it is a settlement and release of an EEOC employment law inquiry and was not done in response to an Executive Order or the threat of one related to the firm's representation of clients or association with any persons. Fundamentally, like most settlements by the large companies that we represent in such matters, this is a business decision to resolve a potentially distracting and expensive investigation or litigation on terms that we consider reasonable under the circumstances.

As we do every day for our clients, we identified and compared the benefits and risks of all approaches to the EEOC matter before coming to a reasoned yet difficult decision. As fiduciaries entrusted with the most important matters of thousands of clients and the livelihoods of over 7,000 people at the firm, we chose the path that we believe protects our firm and best positions us for long-term success.

After closely reviewing all relevant considerations, we, along with our Board and Executive Committee, determined that it is in the best interests of our clients, our people and the long-term health and success of our firm to participate in this group resolution. It was a difficult decision, and we are keenly aware that many of you will question or disagree with it. We wholeheartedly welcome, respect and will engage with all viewpoints.

We are as committed as ever to being an inclusive firm where highly talented people of all identities, backgrounds, experiences and viewpoints can feel at home. One where everyone is given an opportunity to reach their full potential and excel. Where all voices are heard, and all contributions are appreciated. And we are as committed as ever to serving persons and organizations in need of pro bono legal representation, wherever they may be and whatever their backgrounds and viewpoints.

Key components of the agreement and understandings include:

- An end to the EEOC inquiry and a broad release by EEOC of claims related to the inquiry; a commitment to merit-based hiring and promotion and compliance with applicable U.S. anti-discrimination laws including no longer using the term "DEI" to describe our programs.*
- A commitment not to deny representation for clients who have not traditionally received representation from major law firms on the basis of political views of individual lawyers.*
- A commitment to perform up to USD125 million in pro bono and free legal services during the current term and beyond in relation to broad areas across a spectrum of work, including to ensure fairness in the justice system, representation of veterans, first*

responders and law enforcement and combating antisemitism, among others.

Importantly, we view these as largely supporting existing commitments and principles. As communicated in recent weeks, we are committed to complying with all laws, including anti-discrimination laws, in all jurisdictions where we operate. Similarly, our robust pro bono efforts - which we view as a fundamental obligation of lawyers - will remain committed to fairness and providing access to justice across the spectrum of viewpoints. We have always been strongly opposed to all forms of bigotry, discrimination and hate against persons and groups, including as reflected in pro bono work the firm has done. To be clear, we as a firm will select our clients in honoring our obligations under these agreements. They do not impose any limitations on the types of work, pro bono or otherwise, that the firm will perform across the spectrum. As has always been the case at our firm, all of us remain completely free to choose whether or not we wish to work on any particular pro bono matter.

Of fundamental importance to us, we do not consider that there is anything in the settlement and related understandings that compromises in any way our values or our commitments to inclusion, belonging and the rule of law.

We are not changing who we are or the firm we love. Over the coming weeks and months, we will continue to demonstrate our values and our commitment to inclusion and belonging through our actions, which we know matter more than our words.

We appreciate your ongoing trust and support, and understand the personal toll this has placed on you as well as all of us. We are fully committed to facilitating an ongoing dialogue in a thoughtful and understanding manner.

Thank you for all you do and your continued dedication to our firm.

Khalid, Adam and Herve

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April 14, 2025

Kirkland Memo on Trump Deal: 'Our Mission is to Protect and Support Our People and Our Clients'

By ALM Staff

🕒 2 minute read

EXHIBIT 6

How Trump Is Putting Law Firms in a No-Win Situation

As Willkie Farr & Gallagher learned, cutting a deal with the White House can avert a financially punitive executive order. But doing so can draw internal rebukes and external criticism.

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By Ben Protes, Maggie Haberman and Michael S. Schmidt

April 9, 2025

Willkie Farr & Gallagher last week became the latest law firm to strike a deal with the White House and escape President Trump's wrath. But the firm, which pledged \$100 million in legal services to causes that the Trump administration supports, traded one problem for another.

Willkie has faced a backlash to the deal in recent days, including within its ranks, as concerns mount over Mr. Trump's broader law firm crackdown.

Doug Emhoff, former Vice President Kamala Harris's husband and one of Willkie's most prominent partners, publicly assailed the agreement with Mr. Trump. Congressional Democrats are now demanding information about the deal. And Willkie's longest-serving lawyer, Joseph T. Baio, resigned rather than stay at a firm that gave in to the White House's demands.

In an email to the firm's executive committee, Mr. Baio wrote that he had left so he could "join the fight against governmental tyranny, unconstitutional decrees and social injustice, particularly at this critical time."

The fallout at Willkie, which counted Mr. Trump among its clients decades ago, illustrates the no-win predicament facing law firms caught in Mr. Trump's cross hairs. If they resist, the firms jeopardize their bottom line, exposing themselves to executive orders that, while

legally dubious, imperil their businesses. But if they buckle, they are seen by critics as having compromised their integrity, drawing rebukes from across the broader legal community.

“We know this news is not welcomed by some of you, and you would have urged a different course of action,” Willkie’s executive committee said in an email to the firm last week explaining the deal. “Needless to say, this was an incredibly difficult decision for firm leadership.”

The negotiations that led to the deal, recounted in interviews with people briefed on the matter, demonstrate Mr. Trump’s new strategy for bringing law firms to heel. Mr. Trump’s advisers have begun contacting firms before the president issues an executive order — sometimes through a friendly intermediary — to suggest that they sign a deal, or else.

Willkie learned in late March that it was potentially next on Mr. Trump’s list. The firm’s chairman, Thomas M. Cerabino, spoke with Thomas J. Barrack Jr., a Willkie client and longtime friend of Mr. Trump’s. Mr. Cerabino then spoke with Boris Epshteyn, Mr. Trump’s outside legal adviser, who indicated that it would be best for both sides if a deal was reached, according to people briefed on the matter.



Thomas M. Cerabino, Willkie’s chairman, found himself at the center of discussions with President Trump’s advisers, including the outside legal adviser Boris Epshteyn.
Sean Zanni/PMC, via Getty Images

Other firms, including Cadwalader, Wickersham & Taft, were recently contacted under similar circumstances. Cadwalader has yet to reach a deal, but several other firms have done so.

Soon after Willkie reached a deal, the law firm Milbank did the same, saying later that “the Trump administration suggested to us that we enter into an agreement similar to one recently agreed to by Skadden,” another large firm that proactively struck a deal.

The alternative, those firms concluded, was worse. Over the last month, Mr. Trump targeted several other firms with executive orders that jeopardized their ability to represent government contractors, and limited their access to federal buildings. Those firms, including Perkins Coie and Jenner & Block, are fighting the orders in federal court, where judges have already blocked most of the restrictions.

Perkins Coie has disclosed that Mr. Trump’s order has taken a financial toll on the firm. And although Willkie’s agreement required it make certain concessions, the firm’s executive committee said in its statement to employees that an executive order would have imperiled “our clients’ rights and those of our firm.”



Perkins Coie was one of several firms targeted by the Trump administration with executive orders that jeopardized their ability to represent government contractors.

Andrew Mangum for The New York Times

Karoline Leavitt, the White House press secretary, said in a statement that “Big Law continues to bend the knee to President Trump because they know they were wrong, and he looks forward to putting their pro bono legal concessions toward implementing his America First agenda.”

Mr. Cerabino, the Willkie chairman, did not respond to requests for comment.

Mr. Baio, 71, a former Willkie partner and member of the firm's executive committee, said in an interview that he understood the difficult situation.

But Mr. Baio, who had been working full time as a senior counsel in Willkie's litigation department, decided he could no longer stay after the deal. So he resigned, leaving the firm after 47 years.

Andrew Silberstein, an associate at Willkie, also resigned in protest, lamenting in an email to colleagues that the firm's principles had been "so deeply compromised," and that "they have come for us, and we did not speak out." Associates at other firms targeted by Mr. Trump have also resigned.

Mr. Emhoff has remained at Willkie. But at a charity event last week, he denounced the firm's decision to capitulate to Mr. Trump, according to a person with knowledge of the matter.

"I wanted them to fight a patently unconstitutional potential executive order," he said at the event. Mr. Emhoff's criticism was reported earlier by CNN.



Doug Emhoff, former Vice President Kamala Harris's husband and one of Willkie's most prominent partners, publicly assailed the agreement with Mr. Trump. Bonnie Cash for The New York Times

Democratic lawmakers have also expressed concern about the deal. In a letter to Willkie this week, the top Democrats on the Senate Permanent Subcommittee on Investigations and the House Judiciary Committee questioned how the deal came about and raised what they called “the troubling prospect that the president has successfully and unlawfully coerced” the firm.

“The American people and Congress deserve transparency with respect to the president’s ongoing assault on constitutional rights and the rule of law,” Senator Richard Blumenthal of Connecticut and Representative Jamie Raskin of Maryland wrote in the letter.

Mr. Blumenthal and Mr. Raskin also sent letters to Skadden and other firms.

While the list of firms on Mr. Trump’s radar appears arbitrary at times, Willkie was an obvious target, and not only because of Mr. Emhoff.

The president’s advisers were most focused on the firm employing a former top investigator for the congressional committee that scrutinized Mr. Trump’s role in the Jan. 6, 2021, attack on the Capitol, according to a person close to Mr. Trump. They also focused on the fact that the firm’s clients included two Georgia election workers who had sued Rudolph W. Giuliani, Mr. Trump’s former personal lawyer.

Mr. Trump was also once a client. In the late 1980s, when the firm was much smaller, Willkie worked on cases on Mr. Trump’s behalf as he built himself into a local player with three casinos in Atlantic City.

One of the people who worked closely with Mr. Trump’s company at the time was Mr. Cerabino, now the firm’s chairman.

Decades later, Mr. Cerabino was at the center of the discussions with Mr. Trump’s White House.

In its internal statement, Willkie’s executive committee made oblique references to the discussions with Mr. Barrack and Mr. Epshteyn, without mentioning them by name. The firm, the statement said, was “invited to contact the administration,” which then “outlined a proposed alternative to receiving an executive order.”

Mr. Barrack, who was nominated as ambassador to Turkey, was represented by Willkie in a criminal trial in 2022, when he was acquitted on charges that he secretly worked as a foreign agent. Mr. Barrack’s private equity real estate firm is also a major Willkie client.

When Mr. Barrack spoke to Mr. Cerabino in late March, he said that the firm may want to get in touch with Mr. Trump's team, and quickly. The firm's leadership took two paths. At the same time that it prepared to go to court to fight any potential order, it began discussions with Mr. Trump's team, according to a person briefed on the matter.

After Mr. Cerabino spoke with Mr. Epshteyn, the firm's leadership conferred in two executive committee meetings, deciding that striking a deal was the most prudent decision. It was announced soon after.

Ben Protess is an investigative reporter at The Times, writing about public corruption. He has been covering the various criminal investigations into former President Trump and his allies.

Maggie Haberman is a White House correspondent, reporting on the second, nonconsecutive term of Donald J. Trump.

Michael S. Schmidt is an investigative reporter for The Times covering Washington. His work focuses on tracking and explaining high-profile federal investigations.

A version of this article appears in print on , Section A, Page 20 of the New York edition with the headline: Legal Titan That Buckled Under Trump's Crackdown Faces a Backlash

EXHIBIT 7

The WHITE HOUSE

Presidential Actions

Rescinding Security Clearances and Access to Classified Information from Specified Individuals

Presidential Memoranda

March 22, 2025

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Rescinding Security Clearances and Access to Classified Information from Specified Individuals

I have determined that it is no longer in the national interest for the following individuals to access classified information: Antony Blinken, Jacob Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.'s family. Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by the aforementioned individuals and to immediately rescind their access to classified information. I also direct all executive department and agency heads to revoke unescorted access to secure United States Government facilities from these individuals.

This action includes, but is not limited to, receipt of classified briefings, such as the President's Daily Brief, and access to classified information held by any member of the Intelligence Community by virtue of the named individuals' previous tenure in the Congress.

In the event that any of the named individuals received a security clearance by virtue of their employment with a private entity, the United States Government entity that granted the security clearance should inform the private entity that these individuals' ability to access classified information has been revoked.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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EXHIBIT 8

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSMAN GODFREY LLP,

Plaintiff,

vs.

EXECUTIVE OFFICE OF THE
PRESIDENT, et al.,

Defendants.

Civil Action No.
1:25-cv-1107

Washington, DC
April 15, 2025

2:04 p.m.

_____/

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LOREN L. ALIKHAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

1
2 **DEPUTY CLERK:** Your Honor, we're now on the record
3 for Susman Godfrey LLP vs. Executive Office of the
4 President, et al., civil action 25-cv-1107.

5 Counsel, please come forward and note your
6 appearance for the record, beginning with the plaintiff.

7 **MR. VERRILLI:** Good morning, Your Honor. I'm Don
8 Verrilli from Munger, Tolles & Olson for Susman Godfrey.
9 Permit me first to introduce two of the leaders of the
10 Susman Godfrey firm who are here, and they are sitting just
11 behind me: Kalpana Srinivasan and Vineet Bhatia. Thank
12 you. And if I can introduce my colleagues.

13 **THE COURT:** Sure, please do.

14 **MR. VERRILLI:** So I want to introduce Brad Brian,
15 who is the chairman of Munger, Tolles & Olson, and our
16 partner Ginger Anders, and our senior counsel Jeremy
17 Kreisberg. Thank you.

18 **THE COURT:** Good afternoon, and welcome to you
19 all.

20 You're a bit outmanned here.

21 **MR. LAWSON:** Good afternoon, Your Honor. Richard
22 Lawson, Deputy Associate Attorney General for the Department
23 of Justice.

24 **THE COURT:** All right, thank you very much. I
25 appreciate everybody appearing on such short notice. Susman

1 Godfrey filed this suit yesterday and sought a temporary
2 restraining order yesterday afternoon. We have opened the
3 public line for this hearing, and I will just note for
4 anybody listening that any broadcasting or recording is
5 strictly forbidden and will result in contempt sanctions.

6 So because this is Susman's motion, I will hear
7 first from counsel for the plaintiffs.

8 **MR. VERRILLI:** Thank you, and may it please the
9 Court. We are here this afternoon seeking a TRO against --
10 to block the key provisions of an executive order that is
11 one of the most brazenly unconstitutional exercises of
12 executive power in the history of this nation. And that is,
13 unfortunately, just the latest in a string of brazenly
14 unconstitutional attacks on law firms in retaliation for the
15 work they have done representing their clients. We're
16 specifically seeking a TRO against Sections 1, 3 and 5 of
17 the order.

18 Now, the first thing we need to show is likelihood
19 of success on the merits, and with the Court's permission, I
20 will turn to that first.

21 **THE COURT:** Before we get into that, you had
22 mentioned -- and I know this relates to your due process
23 argument, that you had no -- or your client had no prior
24 knowledge of this. I know that the administration has been
25 negotiating with some other firms.

1 And so there was no outreach, this is the first
2 you heard of this was when it dropped?

3 **MR. VERRILLI:** None whatsoever, total bolt from
4 the blue. No notice, no outreach, no indication whatsoever.

5 **THE COURT:** All right, thank you.

6 **MR. VERRILLI:** With respect to likelihood of
7 success on the merits, the Susman order is unconstitutional
8 for all of the reasons that the three courts that have
9 reviewed comparable orders -- the Jenner order, the
10 WilmerHale order, the Perkins Coie order -- and found them
11 likely unconstitutional, and for additional reasons as well.
12 It violates the First Amendment by retaliating against
13 Susman for its advocacy on behalf of clients, by
14 perpetrating odious viewpoint discrimination against that
15 advocacy, by trying to cut off our right to petition the
16 courts, and by seeking to disrupt Susman's right to
17 associate with clients in ways that are sadly similar to the
18 ones that the states of the old segregationist south used to
19 disrupt the relationships between civil rights lawyers and
20 their clients.

21 And there's no need to infer retaliatory intent in
22 this case, it is right there in unapologetic black and white
23 on the face of the executive order. This order also denies
24 due process by tarring Susman's reputation, disrupting its
25 client relationships and impairing its lawyers' ability to

1 practice their profession without, as Your Honor's question
2 made clear, any notice or any opportunity to be heard
3 whatsoever. And it does so on the basis of impermissibly
4 vague and totally unsubstantiated smears.

5 It denies Susman equal protection of the laws by
6 singling the firm out without even a plausible rational
7 basis for doing so. It denies Susman's clients their rights
8 to be represented by the lawyers of their choice, and it
9 runs roughshod over the separation of powers. It's every
10 bit as bad as the Steel Seizure case. The President has
11 ordered actions and imposed punishments without any
12 statutory authority or any constitutional authority. In
13 fact, it's worse than the Steel Seizure case because it's
14 also a direct assault on the authority of Article III courts
15 and the independence of the judiciary. And, if that weren't
16 enough, it also bears all the hallmarks of an
17 unconstitutional bill of attainder. We don't think, based
18 on that, and based on that read together with the rulings in
19 the other three cases, that there's any serious question
20 that we have a likelihood of success on the merits.

21 But before I turn to irreparable harm, let me
22 pause there if Your Honor has any questions with respect to
23 the merits.

24 **THE COURT:** So just a housekeeping matter. I
25 think there was a Sixth Amendment argument in some of the

1 other cases. There's not one here because you're purely a
2 civil firm?

3 **MR. VERRILLI:** Well, based on the fact that the
4 work of the firm is, with very few exceptions,
5 overwhelmingly civil in nature, that's correct.

6 **THE COURT:** And if we could turn to the order. I
7 was hoping we could go through it and you could help me get
8 some clarity, or not, as it goes to your vagueness argument.
9 So my understanding is that the allegation that Susman
10 spearheads efforts to weaponize the American legal system
11 and degrade the quality of American elections is in
12 reference to your client's representation of Dominion
13 Voting; is that how you read this?

14 **MR. VERRILLI:** We assume that that's one of the
15 bases, along with the firm's reputation of the Secretary of
16 State of Arizona in the 2020 election aftermath and the
17 Governor of Wisconsin in the 2020 election aftermath. Those
18 are the election-related representations of the firm that
19 we're aware of. You know, maybe there's something else that
20 the government has in mind with respect to this vague
21 language, but those are the ones we think must be at issue.

22 **THE COURT:** And then I think you confessed some
23 confusion as to what the next sentence was, but that: "The
24 firm funds groups that engage in dangerous efforts to
25 undermine the effectiveness of the United States military

1 through the injection of political and radical ideology."

2 Do you have a sense as to what that might be
3 about?

4 **MR. VERRILLI:** We are completely mystified by
5 that. Perhaps the government can clear it up today, but we
6 are completely mystified. You know, it's particularly
7 unfortunate, we think -- and as the Srinivasan declaration
8 identifies, this firm has reservists, it has numerous
9 veterans, it has a long and proud tradition of recognizing
10 the importance of military service. And so we're completely
11 mystified as to what that's about.

12 **THE COURT:** And then efforts to discriminate on
13 the basis of race, you know, you pointed to a fellowship
14 that your client has that I think they go on to speak of in
15 the next paragraph. But are you aware of any other hooks on
16 which the government is hanging that hat?

17 **MR. VERRILLI:** We are not; we are not.

18 **THE COURT:** And at this stage, since we're looking
19 at a temporary restraining order, I think you would agree
20 with me that I don't need to address every potential
21 argument in terms of your likelihood of success on the
22 merits.

23 Which do you think are your strongest, if you had
24 to pick a favorite child or two?

25 **MR. VERRILLI:** Well, I never like having to pick a

1 favorite child, but I would say that the Court can look to
2 the three decisions that have already been rendered on
3 virtually identical executive orders, and those courts
4 relied on the First Amendment retaliation argument. That
5 seems to us to be rock solid. And with respect to that
6 argument, of course, if there is retaliation for the
7 exercise of protected speech -- and we know from Velazquez
8 that advocacy in court is protected speech, that's just a
9 flat out violation. You don't go through the compelling
10 interests, narrowly tailored means analysis, it's just a
11 flat out violation. You have the unanimous decision of the
12 Supreme Court in Vullo from last term saying exactly that.
13 That seems to us to be just an ironclad, obvious First
14 Amendment violation.

15 The viewpoint discrimination, which the other
16 courts have also relied on, seems to us to be equally strong
17 in that it says it right on the face of the order that these
18 punishments are being imposed because of the positions that
19 the firm took. And, of course, it's standard First
20 Amendment law that viewpoint discrimination is the most
21 consequential, the most serious violation of the First
22 Amendment. Viewpoint discrimination, you have it here, they
23 admit it in the executive order. Those two seem just
24 totally rock solid.

25 We think the other ones are also very, very

1 strong. And we do think the due process argument, you know,
2 as Your Honor's question kind of reflected -- and, I mean,
3 out of the blue, we got an order imposing these punishments
4 and disabilities on us with no notice and no opportunity to
5 be heard and in this incredibly vague way so that we don't
6 even know in some instances what they're talking about.
7 That also seems completely rock solid.

8 **THE COURT:** Have there been any efforts from you
9 or your client to reach out to the administration to try and
10 clarify what the catalyst was for this and to clarify some
11 of the statements that are being made?

12 **MR. VERRILLI:** No, not to my knowledge. I'm quite
13 certain there haven't been, Your Honor. And this, of
14 course, has all happened very fast. You know, this order
15 just issued a few days ago, again, out of the blue. So
16 we've been focused on defending ourselves, defending -- our
17 firm's been focused on defending Susman, and Susman's been
18 focused on defending itself.

19 **THE COURT:** Do you want to move on to harm?

20 **MR. VERRILLI:** Yeah, I'd be happy to, Your Honor.
21 Again, as with the merits, we don't think there's any
22 serious question here that Susman is suffering and will
23 continue to suffer irreparable harm. Our papers have
24 detailed the harms. There's the harm -- irreparable harm as
25 a matter of law based on the chilling of our free

1 expression, a First Amendment harm. There's irreparable
2 harm to Susman's reputation by these unfounded smears
3 hanging out there in an executive order by the President of
4 the United States. That kind of reputational harm is well
5 established irreparable harm. And there's economic harm as
6 well, and that's detailed in the Srinivasan declaration at
7 pages 30 to 35 in numerous respects. So if we just apply
8 standard law, we easily establish irreparable harm.

9 But I think it's important to take a step back
10 here and just think about what's actually going on. The
11 point of this order is to harm Susman Godfrey. The harms
12 aren't incidental, they are the point. The Executive is
13 wielding an axe here, and we don't know exactly when that
14 axe is going to fall, but they're ready to bring it down.
15 And when they bring it down, Susman isn't going to be able
16 to represent its clients. It's not going to be able to meet
17 with government officials. It's not going to be able to --
18 which they need to do to pursue their qui tam actions --
19 which, by the way, net ironically hundreds of millions of
20 dollars for the government. They're not going to be able to
21 pursue their antitrust representations where they need to
22 meet with government officials. They're not going to be
23 able to pursue their environmental representations where
24 they need to meet with government officials. They're not
25 going to be -- they're not going to be able to pursue their

1 intellectual property cases where they've got to be in front
2 of the PTAB. And as I said, they may not even be able to
3 enter federal courthouses under this order.

4 **THE COURT:** I think under your reading of the
5 order, they couldn't even go to jury duty.

6 **MR. VERRILLI:** Yeah, jury duty. Frankly, they
7 couldn't even go to the Post Office to mail a letter. So we
8 think that there really is no doubt that this is irreparable
9 harm. And they may say, well, it's not ripe yet because you
10 don't have guidance, but that's just a question of when this
11 axe is going to fall.

12 And in that regard, Your Honor, I do think it's
13 quite valuable to look at the memoranda that the Department
14 of Justice circulated in the other cases. The Jenner one is
15 particularly illuminating, I think, in this regard. It went
16 to the heads of all executive departments and agencies. And
17 the court required that this notification go out to instruct
18 the agencies that the temporary restraining order was in
19 place. But, you know, what it says is: "A local district
20 judge has mandated that the Attorney General and OMB
21 director personally send the below notification about Jenner
22 & Block LLP, a law firm committed to the weaponization of
23 justice, discrimination on the basis of race, radical gender
24 ideology and other anti-American pursuits."

25 **THE COURT:** That was in their notice informing the

1 individuals of the court's TRO?

2 **MR. VERRILLI:** Yes, yes, to the agency heads of
3 the court's TRO. Anti-American pursuits.

4 **THE COURT:** In, I believe, the Jenner and the
5 Perkins Coie cases, there were indications that meetings
6 with government officials had been canceled. I think -- as
7 far as I can tell, you didn't allege anything like that in
8 your papers.

9 Do you have reason to believe that that has
10 happened since you filed or --

11 **MR. VERRILLI:** It hasn't happened yet, Your Honor.
12 But as the declarations do explain, the representations that
13 Susman undertakes requires meetings on a weekly basis with
14 government officials on all kinds of cases, appearances in
15 court on a weekly basis on all kinds of cases. And so it
16 seems to me it's not an answer to the irreparable harm -- or
17 even putting aside the constitutional harm and the
18 reputational harm, which may be indisputably out there, and
19 the harm that could come from the investigation into
20 government contractors who are represented by -- who Susman
21 represents. You know, this only goes to the Section Five
22 disabilities being imposed.

23 But of course -- it's just common sense, of course
24 clients thinking about hiring Susman Godfrey, thinking about
25 staying with Susman Godfrey are going to be asking

1 themselves, well, what's going to happen when the axe falls
2 here; are you going to be able to represent me. And I just
3 think it's self-evident. You know, and it does -- it brings
4 to mind a quotation from Judge Friendly that Chief Justice
5 Roberts put into the Census case -- I think it's really
6 quite apt here, which is that courts are not required to
7 exhibit a naivety from which ordinary citizens are free.

8 Everyone knows what this is about; it is plain on
9 the face of it: it is an attack on this law firm. It is a
10 attack on this law firm based on its representations, and
11 its design is to inflict harm in the here and now and harm
12 in the future. There's just not any doubt about that.

13 **THE COURT:** In a few of the other cases, the
14 complained of actions in the executive order had been
15 undertaken by individuals who are no longer associated with
16 the firm. I understand that your client still represents
17 Dominion Voting.

18 But as to some prior representations, are we
19 talking about -- and in looking at sort of a fish, actions
20 that go to people who are actually at the firm or folks that
21 have since departed?

22 **MR. VERRILLI:** Well, because the allegations are
23 so vague that we don't know what they're about, it's a
24 little bit hard to answer your -- I don't mean to flip about
25 it. I mean, genuinely it's a little bit hard to answer Your

1 Honor's question. But with respect to Dominion Voting, I do
2 think there's a significant point here. Maybe it's a
3 coincidence, maybe it's a coincidence that this executive
4 order dropped right on the eve of when Susman Godfrey was
5 about to go to trial on behalf of Dominion Voting against
6 Newsmax based on the defamatory allegations -- the
7 defamatory statements from the 2020 election aftermath.
8 Maybe it's a coincidence, but that's what happened.

9 And I do think Your Honor raised a point about
10 other firms. I think it is useful to look at the experience
11 of other firms. Of course, you did see what happened with
12 other firms and their clients and their clients' reactions,
13 it's all documented, the basis of judicial findings now. I
14 think it's equally important to look at the conduct of the
15 firms that settled with the Trump administration and to look
16 at their explanations. You know, those explanations are a
17 matter of public record; they're out there, the Paul Weiss
18 chairman's message, the Skadden chairman's message. One can
19 read those.

20 They didn't say, you know, we're really sorry, the
21 President is right; we've been behaving badly and so we're
22 doing this because it's the right thing. They said these
23 executive orders are an existential threat to the continued
24 existence of our firm, and we had no choice but to settle.
25 I don't think there's any clearer proof of the irreparable

1 harm potential of these orders than those statements and the
2 actions that those prominent, powerful firms took in
3 response.

4 **THE COURT:** And I suppose it might be even worse
5 for your client as one of the smaller firms in the --

6 **MR. VERRILLI:** Susman Godfrey is a mighty firm,
7 and it's hugely successful and it's full of courageous
8 lawyers who are standing up here. And if I may just say
9 this now, they're standing up for themselves certainly, but
10 they're doing more than that. They're standing up for the
11 profession. They're standing up for the rule of law.
12 They're standing up for the Constitution. They're standing
13 up for this country. And they've had the courage to do
14 that, but it's a risk. They understand it, everyone
15 understands it. And the reason is because everyone
16 understands what the point of this order is. The point of
17 this order is to inflict grievous harm on these firms, on
18 this firm and the others. That's its point. And I just
19 think on any reasonable understanding of what irreparable
20 injury consists of, this qualifies.

21 Now, if I may, just the last couple of factors,
22 the balance of hardships and public interest, cases like
23 this involving the government that effuse together of
24 course. And I won't spend any considerable time on it
25 unless Your Honor has questions about it, it just seems

1 obvious where the public interest lies here. It just seems
2 obvious. There is no injury whatsoever to the government
3 from the entry of a temporary restraining order. And in
4 that regard, if the Court does choose to enter one, we'll of
5 course abide by any expedited schedule necessary to achieve
6 final resolution. So there's really no harm to the
7 government here at all.

8 And it is just obvious where the public interest
9 lies. It cannot be that the executive branch can exercise
10 power that it does not have by statute, that it does not
11 have under the Constitution to retaliate against a law firm
12 like Susman Godfrey going into court, representing its
13 clients zealously to the best of their ability. That is the
14 core of what happened here. It is the definition of the
15 public interest for Susman Godfrey to do the work that it
16 does.

17 **THE COURT:** And it encroaches upon this court who
18 relies on your lawyers to negotiate with the federal
19 government in cases that you bring before us and bring
20 before other judges --

21 **MR. VERRILLI:** Of course.

22 **THE COURT:** -- or resolve cases before they come
23 to court.

24 **MR. VERRILLI:** And that's why I said earlier, Your
25 Honor, this is not -- in a way it's worse than the Steel

1 Seizure case, because it's not just a presidential assertion
2 of power that the President doesn't have under our
3 Constitution, it's a direct assault on the Article III
4 courts, on the independence of the judicial branch.

5 You know, and there's language in Velazquez that I
6 think is quite relevant here where the court said that an
7 independent judiciary relies on an independent bar. And the
8 point in that case was, of course, that it is
9 unconstitutional -- in that instance it was Congress through
10 legislation, but it's unconstitutional, it's a grave First
11 Amendment violation for the government to wield its power
12 against lawyers who come to court so that they cannot make
13 and they are deterred from making the full throated, zealous
14 defense of their clients' interests that the norms of the
15 profession and the rule of law require for the judiciary to
16 be able to do its job under our Constitution.

17 **THE COURT:** All right, thank you very much.

18 **MR. VERRILLI:** Thank you.

19 **THE COURT:** I'll give you some time on rebuttal.

20 Mr. Lawson.

21 **MR. LAWSON:** Good afternoon.

22 **THE COURT:** Good afternoon.

23 **MR. LAWSON:** Your Honor, at sort of a 30,000-foot
24 level, I would ask the Court to examine the issue of what
25 these sections really focus on. And I'd like to focus on

1 Sections 3 and 5 at this high level.

2 **THE COURT:** Well, could you start with Section 1
3 and tell me what you think are the allegations behind each
4 of the statements.

5 **MR. LAWSON:** Your Honor, I heard the Court's
6 questions of counsel. Regrettably, I don't have any further
7 information beyond what is contained in here aside from the
8 discrimination issue. And for that, all I have is a web
9 page from the Susman website discussing some of the
10 diversity initiatives, which we think would speak to the
11 sort of gray zone under the Students for Fair Admissions
12 case and diversity and quotas and so forth.

13 **THE COURT:** But you don't have any understanding
14 of what the funding groups that undermine the effectiveness
15 of the military is?

16 **MR. LAWSON:** Regrettably, Your Honor, I have no
17 further information than what's contained in the order. I
18 apologize, I just wasn't able to procure that before we got
19 here.

20 **THE COURT:** All right, thank you.

21 **MR. LAWSON:** But if I could, there is a theme that
22 will run through as this case progresses -- because
23 obviously I'm handling the other ones as well.

24 **THE COURT:** Lucky you.

25 **MR. LAWSON:** One way to put it. Is the power --

1 how is the government acting here. And then for that, we
2 have approached it from the idea of the government acting as
3 sovereign. And is the government acting here in Section 3
4 as a contractor and in Section 5 as a landlord and an office
5 supervisor, not as the sovereign.

6 A key point, counsel for plaintiff referenced the
7 Vullo case earlier -- the Court is nodding, I'm sure the
8 Court is generally familiar, involving the issue of the
9 improper use of the power of the sovereign to sanction and
10 punish entities that did business with disfavored actors.
11 There's no sanction or punishment here, not when it's coming
12 to contracting, not when it's coming to office access, not
13 when it's coming to hiring. This is not a fine. This is
14 not jail time. Classic case of Bantam Books where there
15 were books being sold at a bookstore, a concerned citizens
16 committee with the power to refer cases for criminal
17 prosecution sends a letter please remove these books. There
18 was the threat of sanction and punishment. This is --
19 Section 3 is, again, contracting. Section 5 is landlord
20 employment, that type of thing.

21 **THE COURT:** So walk me through how it's not a
22 sanction. Because, I mean, I don't know if Susman has
23 itself government contracts, but if it does and it's
24 competed for and won those, why would unrelated actions
25 relating to cases that it brings, or whatever it might be

1 doing with groups that have something to do with the
2 military, have any -- be any permissible basis on which to
3 terminate such a contract?

4 **MR. LAWSON:** So if we look at Section 3, there is
5 a reference in there to the racial discrimination angle.
6 And so for that point, the analogy would be to the LBJ
7 order, Executive Order 11246, regarding contractors and
8 their requirements to diversify their workforce. Fifty
9 something -- 60 something years ago, an extraordinary body
10 of case law supporting that.

11 Also codified in the Code of Federal Regulations,
12 I would draw the Court's attention to 41 C.F.R. -- and
13 hopefully I've written this down correctly, 60-1.4(b)(8).
14 Don't we love federal regulations. So I'll repeat, 41
15 C.F.R. 60-1.4(b)(8). And this prevents contractors from
16 working with entities that have themselves, the third-party
17 entity, been debarred for failing to comply with the LBJ
18 executive order. Now, I'm referencing this from the point
19 of view of this sort of downstream inquiry on the larger --
20 in compliance with the larger executive order has been on
21 the books for decades. And so this idea of reaching out to
22 contractors saying who are you doing business with, that's
23 been a part of federal government contracting for decades.
24 And so there's some body of law that would support that.

25 And again, so to -- I could see the Court's

1 concern, and obviously the initial question was, okay, how
2 does this relate to the national security issue. And this
3 is why I draw the Court's attention to Section 3 does
4 specifically references the racial discrimination angle.
5 Furthermore, under 40 -- we'll go to the statutes here, 40
6 U.S.C. 121(a), the President, as far as the acquisition
7 practice, is able to set -- to use the procurement power to
8 advance policies and public policies. So there is a large
9 body of case law supporting the idea of the use of the
10 procurement power to advance social policy.

11 One of the leading cases, a very old case,
12 Contractors Association of Eastern Pennsylvania vs.
13 Secretary of Labor, 442 F.2d 159, and the spot cite running
14 from 168 to 171 talks about the use of -- it traces in that
15 section decades prior -- and this is from '71. I apologize,
16 I didn't finish, the Third Circuit, 1971. Going back
17 decades to the use of procurement power to advance social
18 policy initially in the defense era under FDR. And it
19 goes -- the court at that point said: "In the area of
20 government procurement, executive authority to impose
21 nondiscrimination contract provisions falls in Justice
22 Jackson's first category" -- this is the steel case,
23 Youngstown Sheet & Tube vs. Sawyer, 343 U.S. 579,
24 discussing -- well, various levels of that. So falls in
25 Justice Jackson's first category, action pursuant to the

1 express or implied authorization of Congress.

2 And I'll further note in Chrysler Corporation vs.
3 Brown, 441 U.S. 281, spot cite 305 to 306, 1979, the court
4 was examining the origins of this LBJ order, 11246. And the
5 court said at that point: "The origins of congressional
6 authority for Executive Order 11246 are somewhat obscure and
7 have been roundly debated by commentators and courts." And
8 then the court goes on to reference it draws equally from --
9 or it can draw equally from the Administrative Services Act,
10 Titles VI and VII of the Civil Rights Act and Equal
11 Opportunity Act. So I'm referencing this from the point of
12 view that to the degree the Court -- and I suspect the Court
13 has noticed the various statutes that are and are not
14 referenced in this order, that that in and of itself is not
15 fatal.

16 Here we have a 1979 U.S. Supreme Court case
17 examining the LBJ order and noting it doesn't really say
18 what statutes are doing it. But because the use of social
19 policy -- use of procurement power to advance social policy
20 has been so established, that I would submit that that's
21 permissible here. And furthermore, it doesn't fall within
22 the world of sanctions and punishment, that it is discretion
23 on the purchasing entity, the contractor.

24 **THE COURT:** So obviously this is the first time
25 you've been able to present your arguments in this Court, so

1 I appreciate all of the citations. I've not had the chance
2 to review them. But my sense of a lot of these are the
3 government can incentivize particularly policy aims in
4 engaging with who to contract with. This seems to be quite
5 different because you're terminating existing contracts.

6 And so is there any support for that not being a
7 sanction? I could understand that you might in the future
8 not want to engage in contractual relationships with
9 individuals or companies that don't support your
10 administration's policies, but is there grounds for this
11 kind of midstream termination?

12 **MR. LAWSON:** So very excellent question. I do not
13 read the order as necessarily calling for an immediate
14 termination that would violate any existing authority.
15 Obviously there are -- what is it, the Mount Healthy and
16 Umbehr line of cases. Umbehr itself -- and I apologize for
17 Court and counsel, I don't have the cite handy, but it does
18 reference that its analysis does not apply to -- or it
19 specifically points that the case does not address future
20 contracts.

21 But to the Court's question as to is this -- the
22 cases that I rely on and just referenced, does it bless an
23 immediate termination. To my knowledge, no immediate
24 termination of the contract has happened. And obviously the
25 provisions of the EO would require that it would be

1 consistent with that body of case law, that line of First
2 Amendment retaliation of terminating an existing
3 relationship, whether it's the school teacher fired by the
4 board or the contractor who has it terminated ab initio, but
5 it would have to be consistent with that.

6 But the larger point I'm trying to make is that,
7 on its face, it's not necessarily a sanction, it's not
8 necessarily punishment. So I would urge the Court to have
9 great caution as it examines these arguments under that
10 Vullo type of analysis. That is the largest point I'd like
11 to leave the Court with as to Section 3.

12 As to Section 5, again, I would make the same
13 general arguments about we're acting here as landlord, as
14 employer. But there is an issue that I would just indulge
15 the Court with, that while we would urge the Court to deny
16 the temporary restraining order, to the degree the Court
17 does grant it, there is a problem I've been dealing with in
18 the other cases which is the ripeness issue. And there was
19 great foresight on plaintiff's counsel to note that I would
20 be referencing that.

21 And if the Court issues the order as I understand
22 it to have been drafted, not only is the issue -- in my
23 opinion would it not be ripe now, it can't be ripe because
24 the order as issued would prohibit agencies from developing
25 the guidance. I would urge the Court to consider some sort

1 of opportunity to allow these guidances to be promulgated so
2 we can have something concrete here. There is -- we've
3 already heard here, and the Court can imagine -- and we are
4 not immune to the parade of horrors that can come as far
5 as right to counsel, right to petition, but that's not
6 called for in this order here; it doesn't say that. We need
7 the guidance to know if any of that parade of horrors
8 might be queuing up, much less beginning the parade.

9 And then just the last --

10 **THE COURT:** Can I ask, has there been any guidance
11 being prepared?

12 **MR. LAWSON:** I don't know, I cannot speak to that.
13 And to my knowledge, there's been no guidance on any of the
14 other cases at all that were developed prior to the TROs
15 being entered. The one last point, to kind of go out of
16 order here -- we talked about 3, 5 and I'd like to jump back
17 to 1, which is --

18 **THE COURT:** Well, actually, before you go there, I
19 take your point that you're trying to separate the
20 government as sovereign from the government as contractor or
21 landlord, but what interest does the landlord have in
22 barring individuals that the sovereign has problems with
23 from coming into a courthouse or a federal building?

24 **MR. LAWSON:** Well, let me kind of go towards --
25 give an example that I think might apply, if I can, from

1 recent events. I believe both the chair of the FTC and I
2 believe the Deputy Attorney General have issued guidance to
3 staff regarding engagement with the American Bar
4 Association. I haven't studied them in great depth, I hope
5 everybody will forgive if I get some of this analogy off
6 point. But at a high level, I think direction that would be
7 minimizing interactions with agencies -- like one of the
8 concerns with the ABA is is it nonpartisan or is it
9 partisan.

10 To the degree it's partisan, I think there's an
11 interest by these actors to distance engagement with the --
12 between agency staff. So I'm coming at it from that angle
13 on the idea of within the power of an employer to state I
14 don't want you interacting with a certain entity in your
15 official capacity. And to the degree that is consistent
16 otherwise with employment law -- obviously, people can pay
17 their own way and go to these meetings, that is fine. But
18 to go speak on a panel would be something. So I think that
19 might be an area where some of the guidance would develop
20 and flow from.

21 To speak to the issue of guidance that came out
22 and said that marshals are to keep counsel from the firm
23 from entering the court, I would hesitate to speculate that
24 that would be anything like what was coming up. If the
25 guidance did come up, I'm quite confident that motions would

1 be filed and orders would be rendered by this Court before
2 we had an argument to hear whether you liked that position
3 or not. So again, I just -- yes.

4 **THE COURT:** What is the interest in keeping them
5 out of federal buildings, if not to retaliate against them?

6 **MR. LAWSON:** Well, I would -- again, just to kind
7 of develop a bit of an analogy. To the degree there was an
8 ability in a federal space to hold some sort of CLE on
9 diversity or so forth, maybe something along those lines
10 could apply. But again, I think the Court's -- if I can
11 take the Court's question and highlight a position, this is
12 why we need the guidance. Even if the Court issues like --
13 you know, to the degree any guidance is issued, it is to be
14 stayed pending review. I don't want to propose that
15 necessarily, but I just want to highlight the great
16 challenge we have in getting this into a concrete position
17 for a full ruling from the Court on the matter.

18 And just to conclude very briefly, on Section 1,
19 this is -- the government, as much as anyone, has its own
20 right to speak. I would view that these contents -- the
21 statements in Section 1 are classic government speech. The
22 difference between the statements in Section 1 and a press
23 conference are very, very minimal, maybe more well thought
24 out and greater punctuation and so forth. But --

25 **THE COURT:** You say it's more well thought out,

1 but you don't actually know what the second sentence about
2 funding military groups means.

3 **MR. LAWSON:** Well, correct. As far as the detail,
4 the detail speaks for itself. What I -- all I was really
5 meaning by well thought out is just, you know, coherent
6 phrases and so forth. The -- but the larger point of
7 Section 1 is -- that we've been wrestling with is how do we
8 speak. And the government has a right to speak. And I
9 think -- and I would urge great caution from the Court on
10 the judiciary policing the executive branch's speech. That
11 is just a very tricky area that is just extremely difficult
12 to try to implement. And also, I don't think Section 1 has
13 any real operative effect. Clearly Sections 3 and 5 are
14 giving instruction. So I think an injunction on Section 1
15 just courts more trouble than it might solve.

16 **THE COURT:** In other cases, my understanding is
17 that -- I think at least in the Wilmer case, that it's --
18 not that there's anything to enjoin in Section 1 because
19 it's not taking any action, but the TRO was to prevent the
20 government from discriminating against the firm on the basis
21 of that language.

22 **MR. LAWSON:** Well, I think -- I believe Wilmer,
23 before Judge Leon, there was no injunction as to Section 1.

24 **THE COURT:** Then it may be the Jenner case before
25 Judge Bates.

1 **MR. LAWSON:** Jenner and Howell -- and plaintiff's
2 counsel will speak better to this. I think their motion --
3 their proposed order tracks very closely, at least at a high
4 level, to what was entered before by Judges Bates and
5 Howell. But that -- as I understand it, that is -- the
6 purpose of the injunction of Section 1 is the use with the
7 clients and whatnot. But it becomes so difficult to know
8 what can or can't be said, what is -- what will be coming
9 before this Court to be explained as far as what we said or
10 not when it's all really, we would submit, protected by the
11 First Amendment. The issues come in -- working on Section 3
12 and working on Section 5, spot that. But Section 1, it's
13 just extraordinarily difficult to practically implement an
14 injunction as to that.

15 **THE COURT:** Do you know why the administration has
16 been reaching out to certain firms ahead of these orders
17 versus why you just drop this on Susman without opportunity?

18 **MR. LAWSON:** I cannot speak to that, I don't know,
19 and anything I would say would be rank speculation.

20 **THE COURT:** Another concern that I have is, as
21 your friend on the other side points out, a lot of the
22 relationships between companies that may be federal
23 contractors and the firm are -- is non public information,
24 you know, potentially you're hiring the firm to investigate
25 whether you should merge with somebody, what some

1 consequences would be if you bring an IP suit against
2 somebody else. And so it seems quite stark to make
3 contractors disclose that information to the federal
4 government.

5 **MR. LAWSON:** Again, I would just -- I would draw
6 back to the comments I made earlier about the idea of if
7 this is an entity that it would otherwise not be compliant
8 with the old LBJ order, that contractors need to make sure
9 that they're not working with someone who would otherwise be
10 debarred. So I do think that those -- that the line of
11 inquiry is permissible. There are issues about whether or
12 not the representation of an individual by an attorney is
13 privileged.

14 My general understanding is that is privileged if
15 the acknowledgement would be material, someone consulting a
16 criminal defense lawyer 30 minutes after a presumed murder,
17 something along those lines, whereas like, okay, what is
18 this indicating. But I believe, absent that, I'm not sure
19 there really is quite that same level of privilege. I
20 certainly understand the Court's question and concern, but
21 I -- you know, and with more time to brief, I could probably
22 answer a little more fully the true parameters of doing that
23 downstream inquiry. I'd just draw the Court's attention to
24 my earlier comments about that.

25 **THE COURT:** And a lot of your argument today

1 focuses on maybe the government's actions as a landlord or
2 as a contractor. Do those apply when we're talking about
3 the First Amendment analysis or is that just a question of
4 where the authority to enter such an order comes from?

5 **MR. LAWSON:** Well, I think that tracks to our
6 conversation earlier regarding the Mount Healthy and Umbehr.
7 That's where First Amendment issues about retaliation and
8 viewpoint discrimination come in. I don't see anything in
9 the order that is necessarily in conflict with that line of
10 cases, and so certainly the First Amendment applies. But
11 there is another line of cases on this -- well, anyway,
12 sorry, that was a -- I was going the wrong direction on that
13 one.

14 I guess the answer to your question of how does
15 the First Amendment apply on that, I think that falls within
16 the Mount Healthy-Umbehr line, and I don't see anything that
17 these orders necessarily conflict with that.

18 **THE COURT:** And do you agree that if we're looking
19 at viewpoint discrimination, strict scrutiny is the
20 appropriate standard?

21 **MR. LAWSON:** I believe it is. I haven't --

22 **THE COURT:** And so under that, give me your best
23 on your compelling interest, and then we can talk about
24 whether it's narrowly tailored.

25 **MR. LAWSON:** Sure. Well, I think the critical

1 inquiry for viewpoint discrimination has to be that there's
2 punishment or sanction. We start there. This is why I went
3 to that at the beginning. To the degree the Court finds
4 that this is a punishment, this is sanction, that this is in
5 the Vullo category, the Bantam Books category, well, that's
6 going to be a certain line of inquiry that I think I know
7 where the Court may go on that.

8 This is why I've been driving the issue towards
9 what is fundamentally going on here. If this is use of the
10 procurement power to advance social policy, very well
11 supported. And under the Northeastern Contractors -- I
12 think I've got that right, I cited it earlier, extremely
13 well supported under that first category from Youngstown
14 Sheet. And even the court later, in the Brown vs. Kisor
15 case, is talking about this use of social -- of procurement
16 power to advance social policy is -- has many statutory
17 sources on that.

18 **THE COURT:** And maybe you'll just repeat that
19 argument, but what about it being narrowly tailored? So
20 this applies to every one of, I think it's, 328 or 329
21 people that work at the firm. So the IT guy might not be
22 able to go get a job in government IT or the paralegal who's
23 also a vet may not be able to go to the VA.

24 **MR. LAWSON:** So the narrowly tailored due
25 process -- I'll put those together, if the Court will

1 indulge, from the perspective that those are inquiries far
2 more appropriate for a legislative setting. This is an
3 executive order within the ability to arrange contracting
4 provisions and within the ability to act as a landlord.
5 It's just a different -- it's just a different setting.
6 Again, this -- the Court also predicted, this is a
7 rephrasing of my earlier argument. If it's not punishment,
8 if it's not sanction, if it is acting as landlord, then I
9 would submit that the strict scrutiny, narrowly tailored
10 analysis is just the wrong way to approach, that it's
11 something else.

12 **THE COURT:** But I think, taking you at your word
13 that we're talking about the government as landlord, the
14 government as landlord doesn't have the right to engage in
15 viewpoint discrimination unless it can satisfy strict
16 scrutiny.

17 **MR. LAWSON:** Well, let's just assume that for a
18 moment, yes. We don't know what --

19 **THE COURT:** Do we need to assume that? I mean, do
20 you not agree with that?

21 **MR. LAWSON:** Well, here's -- sure, I agree with
22 that, but the guidance, we don't know what the access is.
23 We can't say it's viewpoint discrimination, we don't know
24 what it says. And if the Court issues the order as
25 requested, we won't know what it says.

1 **THE COURT:** All right, I think I'm losing you,
2 because it strikes me that we can read the viewpoint
3 discrimination from Section 1 of the executive order. You
4 do not like the views that this firm has taken on behalf of
5 its clients, and something to do with someone that's from
6 the military, and as a result you're then taking actions.
7 The degree of those actions, to be sure, we won't know until
8 we see the guidance, but the genesis is the disagreement
9 with the viewpoint.

10 **MR. LAWSON:** Well, on that point, Your Honor, if
11 you're talking about the motivation -- now, this is where
12 I -- recall where I lost -- went down the wrong path
13 earlier, but I want to return to that. If the Court is
14 talking about the motivation, there is a long body of case
15 law that when it comes to analyzing statutes where the state
16 is acting as sovereign -- McGowan vs. Maryland, criminal
17 prosecutions for violating Sunday closure laws; in U.S. v.
18 O'Brien, criminal prosecutions for the destruction of draft
19 cards, the courts -- the Supreme Court in both cases said if
20 there is a logical basis to support this decision, we will
21 not inquire any further into the discriminatory nature of
22 it, in any aspect of it.

23 So let us return on the landlord angle to the
24 example I was giving about -- say, for example, the ABA.
25 I'm not sure it would be out of place for the government, if

1 it could, if it had an access to a space and had the proper
2 discretion, otherwise compliant with the law, to deny access
3 to the ABA to use a federal facility and have -- place
4 prohibitions on official representatives representing these
5 agencies to speak at said conference. But again, this goes
6 to we need the guidance. We need to know how -- if it's
7 part of the parade of horrors or if it's within
8 established areas of discretion.

9 **THE COURT:** You know, I confess I don't know that
10 much about the ABA other than it's a nonprofit that likes
11 the rule of law, but it strikes me that the ABA doesn't have
12 the same -- there's not the same societal interest in having
13 individuals being able to choose the lawyers that represent
14 them and in encouraging lawyers to take positions that might
15 be unpopular or indeed adverse to the current federal
16 government.

17 **MR. LAWSON:** Well, on that point, as it relates,
18 again, to Section 5, access to buildings, employment, et
19 cetera, I will be the broken record and just say we need the
20 guidance, it's not ripe. The Court's concern is not
21 ill-founded, we just don't know if it holds. And if the
22 Court issues the order as requested, we won't know. As it
23 relates to Section 3 and contracting, I would just repeat
24 the arguments I made earlier.

25 **THE COURT:** All right, thank you very much.

1 **MR. LAWSON:** Thank you, Your Honor.

2 **THE COURT:** Mr. Verrilli.

3 **MR. VERRILLI:** Thank you, Your Honor. I'm going
4 to try to address some specific things that we heard from
5 the United States. First, this point about the guidance.
6 You know, I'd call that argument a red herring, but that
7 would be unfair to red herrings. These executive orders are
8 law firm-specific. They can issue general guidance
9 tomorrow, tomorrow. That's all they would need to do to
10 solve the whole problem, but they don't.

11 **THE COURT:** Well, and they can develop guidance
12 even if there's an injunction in place.

13 **MR. VERRILLI:** Of course they can. I mean, you
14 know -- I'll try to control myself here, but it is a
15 completely insubstantial argument. Now with respect to the
16 government as contractor and landlord, Your Honor's
17 questions, I think, I have elucidated the problem with that
18 argument, is that you can't violate the Constitution as a
19 contractor. You can't violate the Constitution as a
20 landlord. The Justice Department could not constitutionally
21 adopt a rule that said anyone who is a registered Democrat
22 may not enter the Department of Justice for a meeting. It
23 could not constitutionally adopt a rule that said no black
24 person may enter the Department of Justice. They can't act
25 unconstitutionally.

1 And as Your Honor's question made clear, this kind
2 of viewpoint discrimination and this kind of retaliation is
3 unconstitutional. They can't do it as a contractor; they
4 can't do it as a landlord; they can't do it as a sovereign;
5 they can't do it, period. Now --

6 **THE COURT:** And what about your friend's point
7 that the LBJ order and other authorities support the notion
8 that the government can steer policy preferences through
9 contracting?

10 **MR. VERRILLI:** So my friend, Mr. Lawson, made a
11 reference to the allegation of racial discrimination. I
12 assume what he's referring to is the Susman Prize. Of
13 course, the Susman Prize is lawful. It's described in the
14 Srinivasan declaration. Your Honor can look at it, it's
15 lawful, there's nothing unlawful about it. And the other
16 thing is it certainly hasn't been adjudicated as unlawful by
17 anybody because we haven't had any process of any kind. And
18 so the idea that you can invoke this notion that government
19 can pursue social policy to justify this kind of vindictive,
20 retaliatory order I think is just, again, completely
21 insubstantial argument.

22 Now, if I could, with respect to Section 1, my
23 friend says, well, that's just government speech. A couple
24 of points about that. I would urge on the Court the Vullo
25 case's discussion about that very issue. That was exactly

1 the argument that the state made in Vullo: well, yeah, you
2 need to separate out the fact that we were criticizing the
3 NRA from these other actions we took for unlawful conduct by
4 the NRA. And what the court held is no, no, no, you have to
5 consider them together. You have to look at it as a whole,
6 as a pattern, and what the pattern shows you is that this
7 was in retaliation for their exercise of First Amendment
8 freedoms.

9 And I do think that goes back to the contractor
10 point we were just discussing. You know, that logic in
11 Vullo seems to me to apply fully, that even -- as I said,
12 the prize is lawful, and it's certainly never been
13 adjudicated unlawful. But even if it were, they can't do
14 this. They can't do this because of that. They can't
15 engage in this kind of retaliation. And that was the case
16 in Vullo, you know, the NRA had violated the insurance
17 regulations, there wasn't any doubt about that. So again,
18 nothing to that argument.

19 **THE COURT:** And would that argument be the same if
20 the entirety of the executive order was Section 1 and there
21 weren't these Sections 3 and 5, which are tying action to
22 that statement?

23 **MR. VERRILLI:** Yeah, that was the next point I
24 wanted to make actually, Your Honor. The idea that Section
25 1 is just some standalone exercise in government speech,

1 again, seems -- I'll restrain myself here, let's call it
2 completely insubstantial. Section 1 says that Susman
3 Godfrey is engaging in activities inconsistent with the
4 interests of the United States, and that the firm should not
5 have access to the nation's secrets nor be deemed
6 responsible stewards of any federal funds.

7 And then if one drops down to Section 3,
8 subsection two -- and this is the contracting section, it
9 instructs federal agencies, in addition to dropping the
10 specific contracts, to otherwise align their agency funding
11 decisions with the interests of the citizens of the United
12 States. Paragraph one in Section 1 specifically said that
13 Susman Godfrey, in the view of the President, is acting in a
14 manner inimical to the interests of the United States. So
15 the idea that this is just speech is, it seems to me, again,
16 completely insubstantial.

17 My friend's invocation of O'Brien, et cetera, what
18 that law is is that when there's a facially neutral statute
19 or a facially neutral government action, that only in rare
20 circumstances will a court look behind a facially neutral
21 action to see whether there's unconstitutional motive. Now,
22 sometimes courts do, and there is First Amendment law saying
23 that you do. But there's no need to do that here. Beyond
24 constitutional motivation is right there in black and white
25 in the executive order. It says it's being done in

1 retaliation for advocacy and speech, it says it.

2 And then if you had any doubts, if the Court had
3 any doubts about that, there's some publicly available
4 statements that we have referred to and quoted in our
5 complaint. I'd direct the Court's attention to paragraph
6 101 of the complaint where we quote the President telling a
7 news outlet: "We have lots of law firms that we're going to
8 be going after because they were very dishonest people.
9 They're a crooked law firm. They're violent, vicious
10 lawyers. They're fake lawyers." That's the same president
11 who signed this executive order.

12 Then paragraph 105, this was not the President but
13 someone else in the White House telling the Washington Post:
14 "The President doesn't believe they," these firms, "should
15 have the privileges afforded to companies of their stature
16 to work and operate with the federal government since they
17 have made it very clear they are vehemently against the
18 President of the United States and their work proves that."
19 That's a White House official. There isn't any doubt about
20 what this is.

21 If the Court has no further questions, I'd just
22 like to leave the Court with one additional thought, which I
23 think is important. Think about what actually the
24 Department of Justice is asking you to bless here in this
25 case. In the world that they're trying to bring about, when

1 Mr. Lawson or anybody in the chain of command above him, all
2 the way up to the Attorney General, four years from now,
3 they're done with their government service, there's a new
4 president, they're out there looking for a job, the new
5 president would be, on their view, entirely within his
6 rights or her rights to say, you know, the position that the
7 Department of Justice took in court today defending this
8 executive order was, to use the language that they used
9 against Jenner & Block, anti-American. And the next
10 president could issue an executive order that says any law
11 firm that hires anybody who did that in court, who made that
12 representation of their client in that way in court, will
13 suffer exactly the same sanctions and disabilities that this
14 order imposes on Susman Godfrey.

15 And as we said in our complaint, today it's Susman
16 Godfrey, but if they're right, this could be anyone for any
17 reason at any time. And make no mistake, they have made a
18 lot of progress already. Some very prominent law firms have
19 bent the knee -- to use the words of the White House press
20 secretary, bent the knee by offering up hundreds of millions
21 of dollars in tribute to stay on the President's good side.
22 We're sliding very fast into an abyss here. There's only
23 one way to stop that slide, and it's for the courts to act
24 decisively, and to act decisively now.

25 I respectfully submit, Your Honor, that, above

1 all, is what the Article III judicial power is for. So we
2 respectfully ask this Court to grant a TRO, as we've
3 requested, and to move this case swiftly to a final
4 determination repudiating this unconstitutional executive
5 order.

6 **THE COURT:** All right, thank you very much.

7 **MR. VERRILLI:** Thank you.

8 **THE COURT:** It's 3:05 now. The Court will take a
9 brief recess until 3:15 and then we'll return with a ruling.

10 (Off the record at 3:05 p.m.)

11 (Back on the record at 3:16 p.m.)

12 **THE COURT:** So thank you to the parties for their
13 arguments today. I'm now going to issue an oral ruling,
14 which I will follow up with a written order shortly. So
15 Plaintiff Susman Godfrey LLP moves for a temporary
16 restraining order to enjoin enforcement of Sections 1, 3 and
17 5 of President Trump's Executive Order 14263 dated
18 April 9th, 2025, entitled, quote, Addressing Risks from
19 Susman Godfrey, end quote.

20 After hearing from the parties, I am inclined to
21 grant the temporary restraining order, and I will set forth
22 in brief my reasons why. First the legal standard. A
23 temporary restraining order is an extraordinary remedy meant
24 to prevent serious and imminent harm in dire circumstances.
25 To obtain one, a court -- a party must, quote, show a

1 substantial likelihood of success on the merits; that it
2 would suffer irreparable injury if the injunction were not
3 granted; that an injunction would not substantially injure
4 other interested parties; and that the public interest would
5 be furthered by the injunction, end quote. That comes from
6 Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290,
7 297; that's D.C. Circuit, 2006.

8 These four considerations are factors, not
9 elements, and a district court must balance the strength of
10 the requesting party's arguments in each of the four
11 required areas. When the government is the opposing party,
12 the third and fourth factors merge. That comes from a
13 variety of cases, but for purposes of the court record, I'll
14 cite Pursuing America's Greatness vs. Federal Election
15 Commission, 831 F.3d 500, jump cite 511, D.C. Circuit, 2016.
16 Here, Susman Godfrey has met its burden to satisfy each of
17 the factors, and therefore it is entitled to a temporary
18 restraining order enjoining the enforcement of Sections 1, 3
19 and 5 of the executive order.

20 Starting with the first factor, the likelihood of
21 success on the merits, the Court determines that Susman is
22 likely to succeed on the merits of their claims. The Court
23 need not address each, but will focus on the First and Fifth
24 Amendment harms in brief. As to the First Amendment, the
25 executive order is likely to violate the First Amendment for

1 several of the reasons outlined by Susman Godfrey in their
2 motion. The order retaliates against the firm and its
3 clients for their actual and perceived exercise of speech
4 and associational rights. The Court and the parties
5 discussed the NRA vs. Vullo case a lot today, and that
6 stands for the notion that, quote, use of the power of the
7 state to punish or suppress disfavored expression, end
8 quote, is prohibited.

9 In order to demonstrate First Amendment
10 retaliation, Susman must show that it, one, engaged in
11 conduct protected by the First Amendment; two, that a causal
12 link exists between the exercise of a constitutional right
13 and the adverse action; and three, that the government took
14 adverse action sufficient to deter a person of ordinary
15 firmness from speaking again. That test comes from Aref vs.
16 Lynch, 833 F.3d 242, jump cite 258, D.C. Circuit, 2016.

17 Susman is likely to show a likelihood of success
18 on all three elements. First, the firm's advocacy on behalf
19 of its clients, advice to its clients and petitioning of the
20 courts on behalf of its clients constitute constitutionally
21 protected expression that implicates central First Amendment
22 concerns. That comes from Legal Services Corp. vs.
23 Velazquez, 531 U.S. at 547 and 548. Second, the retaliatory
24 nature of the executive order is plain from the language of
25 the EO; namely, Section 1. Further, the Court agrees the

1 context is important here. The order against Susman is not
2 the first of its kind, it follows orders against Paul Weiss,
3 WilmerHale, Perkins Coie and others. Notably, every firm to
4 have challenged the executive order has received a temporary
5 restraining order against its enforcement.

6 Third, the executive order constitutes a
7 sufficiently adverse action against the firm, quote, to give
8 rise to an actionable First Amendment claim, end quote.
9 That's *Houston Community vs. Wilson*, 595 U.S. 468, jump cite
10 477, 2022. The order threatens the firm's clients with
11 disfavored contracting treatment and restricts attorneys
12 from engaging with federal employees, which is a routine
13 activity that is necessary for a wide range of the firm's
14 representations. The order additionally threatens to deny
15 Susman's personnel access to government buildings, including
16 federal courthouses. Any one of these actions alone meets
17 the standard for adverse action.

18 The executive order also discriminates against the
19 firm on the basis of viewpoint. The order refers to the
20 firm's participation in the, quote, legal system in the
21 context of elections. And it is highly likely that Susman
22 will be able to demonstrate that these references are veiled
23 illusions to the firm's reputation of Dominion Voting, state
24 government entities and other clients in connection with the
25 2020 election.

1 Again, quoting Vullo: "At the heart of the First
2 Amendment's free speech clause is the recognition that
3 viewpoint discrimination is uniquely harmful to a free and
4 democratic society." Viewpoint discrimination is subject to
5 strict scrutiny, which means that the government's action
6 must be sustained or will be sustained only if the
7 government proves that the order is narrowly tailored to
8 serve compelling governmental interests. As the firm
9 argues, viewpoint discrimination, in the context of legal
10 representation, is especially pernicious. In the context of
11 strict scrutiny, such viewpoint discrimination is all but
12 dispositive of the strict scrutiny test.

13 The Court agrees with Susman that nothing in the
14 order shows a compelling interest. The order's unexplained
15 reference to national security and the supposed funding of
16 groups that, quote, engage in dangerous efforts to undermine
17 the effectiveness of the United States military through the
18 injection of political and radical ideology, end quote, is
19 quite vague; so much so that no party here today actually
20 knows what it is referencing. Additionally, the firm --
21 sorry, the executive order's reliance on a purported award
22 that -- as to students of color and to representation of
23 individuals involved with voting litigation bears no
24 connection to the national security concerns that the
25 executive order is trying to promote.

1 In a similar vein, the order lacks the narrow
2 tailoring that would be required because it threatens the
3 termination of all government contracts held by any clients
4 of the firm but does not justify this far-reaching
5 punishment. Further, it allows for barring all Susman
6 attorneys and staff from federal buildings, which could mean
7 courthouses, Post Offices, the VA hospital and beyond.

8 The Court will also find that Susman is likely to
9 prevail on its Fifth Amendment claim that the order violates
10 its right to due process. The Due Process Clause is
11 violated when the plaintiff faces a deprivation of a
12 protected liberty or property interest and has not received
13 the process that is due. Here, the firm was deprived of
14 protected liberty and property interests that include the
15 right of its attorneys to pursue their chosen profession,
16 the firm's good name, reputation, honor and integrity, and
17 the constitutionally protected interest in its contracts
18 with its own clients. The firm has shown that the order was
19 issued with no process whatever, and it also raises viable
20 concerns that the order is impermissibly vague, and that
21 vagueness is its own independent due process flaw.

22 A federal law is unconstitutionally vague and thus
23 violates due process if it, quote, fails to provide a person
24 of ordinary intelligence fair notice of what is prohibited
25 or is so standardless that it authorizes or encourages

1 seriously discriminatory enforcement, end quote. That is
2 from United States v. Williams, 553 U.S. 285, jump cite 304,
3 2008.

4 The government further finds that the firm has
5 made a showing that it is likely to succeed on other aspects
6 of its Fifth Amendment claims, including its right to equal
7 protection and its client's due process right to counsel.
8 However, given the compelling nature of the First Amendment
9 harms and the due process claim, the Court need not go into
10 those at length.

11 Next I want to turn to irreparable injury. It's
12 well established that irreparable injury is a high standard
13 and the injury must be both certain and great, actual and
14 not theoretical, and of such imminence that there is a clear
15 and present need for equitable relief. Additionally, the
16 injury must be beyond remediation, meaning that the
17 possibility of adequate compensatory or other corrective
18 relief at a later date could show against irreparable harm.
19 The Court concludes that Susman has carried its burden here.

20 Susman has described several harms to its firm.
21 First, it has argued that the order has impaired its First
22 and Fifth Amendment constitutional rights. With regard to
23 the First Amendment, the loss of First Amendment freedoms,
24 even for minimal periods of time, alone constitutes
25 irreparable injury. The Court agrees that if it does not

1 grant a TRO, Susman will suffer certain and imminent injury
2 because the order chills the firm's speech and advocacy.

3 Next, with regard to the Fifth Amendment, a
4 violation of Fifth Amendment due process rights, which
5 includes unlawful interference with the right to counsel,
6 can give rise to irreparable harm. That is also true of
7 other Fifth Amendment harms the Court finds that the firm is
8 likely to establish, including equal protection. Second,
9 the firm explains that it will suffer severe and irreparable
10 reputational harm as a result of the executive order because
11 statements in the order could damage the firm's corporate
12 good will and reputation. Relying on the Srinivasan
13 declaration, Susman points to the order's description of the
14 firm's work as, quote, dangerous and, quote, detrimental to
15 critical American interests, end quote, and its accusation
16 that the firm is, quote, spearheading efforts to weaponize
17 the American legal system and degrade the quality of
18 American elections, end quote. The Court agrees that this
19 characterization indeed threatens reputational harm and
20 justifies emergency relief.

21 Third, the firm argues that it is already
22 suffering irreparable economic injuries explaining that,
23 quote, without relief from the Court, the executive order
24 will subject Susman to unrecoverable losses, end quote. By
25 not being able to meet with federal officials when one-third

1 of its business includes federal cases and where it has
2 cases not just in federal court, but also before various
3 federal agencies, including U.S. Attorney's Offices, the
4 Patent Review Board, the Coast Guard, and I believe other
5 agencies, will stymie a critical aspect of its business.

6 That is especially so when the firm engages in the
7 types of litigation that are particularly adjacent to the
8 government, including qui tam litigation and patent
9 litigation, as the firm has supported through its
10 declarations. And while Susman admits that it has not yet
11 had any meetings canceled and has not yet been barred from
12 any federal building, it has pointed out there's every
13 reason to believe that the refusals are imminent. And the
14 firm has already been fielding requests from clients about
15 how to handle such a situation.

16 Additionally, the order is discouraging current
17 clients from continuing their relationships with the firm
18 and prospective clients from beginning new relationships.
19 In particular, because the executive order directs agencies
20 to terminate contracts with contractors who have hired the
21 firm to perform services. So the Court finds that for
22 purposes of a TRO, the firm has sufficiently demonstrated
23 that the possible loss resulting from the order threatens
24 the very existence of its business and warrants emergency
25 relief.

1 Turning to the balance of the equities and the
2 public interest, as noted, when the government is the
3 opposing party in the case, the third factor -- which is
4 harm to other parties, and the fourth factor -- which is the
5 public interest, merge. Here, the balance of equities
6 overwhelmingly favors granting a TRO in this case. The
7 government has sought to use its immense power to dictate
8 the positions that law firms may and may not take. The
9 executive order seeks to control who law firms are allowed
10 to represent. And this immensely oppressive power threatens
11 the very foundation of legal representation in our country.

12 The adversarial process lies at the heart of our
13 judicial system and maintains that all individuals,
14 regardless of beliefs, are entitled to representation. As
15 the court wrote in *Velazquez*: "An independent judiciary
16 requires an independent bar." Here, the executive order
17 specifically targets lawyers because of the clients that
18 they represented. The executive order is based on a
19 personal vendetta against a particular firm. And frankly, I
20 think the framers of our Constitution would see this as a
21 shocking abuse of power.

22 We've already seen the effects of similar
23 executive orders against other law firms. Law firms across
24 the country are entering into agreements with the government
25 out of fear that they will be targeted next, and that

1 coercion is plain and simple. And while I wish other firms
2 were not capitulating as readily, I admire firms like Susman
3 for standing up and challenging it when does threaten the
4 very existence of their business.

5 But even for the many firms that have entered into
6 agreements with the administration, there is nothing
7 stopping the government from returning to target them in the
8 future. But at base, the government cannot hold lawyers
9 hostage to force them to agree with it. Allowing the
10 lawyers to coerce private -- sorry, allowing the government
11 to coerce private businesses, law firms and lawyers solely
12 on the basis of their views is antithetical to our
13 constitutional republic and hampers this Court and every
14 court's ability to adjudicate its cases. Because this
15 executive order attacks a core principle of client
16 representation and threatens to punish both Susman and the
17 legal industry as a whole, the Court finds that the public
18 interest weighs in favor of granting a TRO.

19 On the flip side, granting a TRO would not inflict
20 harm to the government. The government has no legal
21 interest in breaking the law. And furthermore, as I've
22 already said, the government is purely trying to control
23 what private lawyers may do, which I do not think will
24 withstand constitutional scrutiny.

25 So for all of those reasons, today I will impose a

1 temporary restraining order. I will put this in writing,
2 but it is ordered that plaintiff's motion for a temporary
3 restraining order is granted.

4 It is further ordered that defendants are enjoined
5 from implementing or giving effect to Sections 1, 3 and 5 of
6 the executive order of April 9th, 2025 entitled Addressing
7 Risks from Susman Godfrey, including by relying on any of
8 the statements in Section 1.

9 It is further ordered that defendants are directed
10 to rescind any and all guidance or direction that has
11 already issued that relates to implementing or enforcing
12 Sections 1, 3 and 5 of the executive order.

13 It is further ordered the defendants are directed
14 to immediately issue guidance to their officers, staff,
15 employees and contractors to disregard Sections 1, 3 and 5
16 of the executive order and carry on as if those sections of
17 the executive order were never issued.

18 It is further ordered that the defendants are
19 directed to immediately issue guidance to other agencies
20 subject to the executive order to suspend and rescind any
21 implementation or enforcement of Sections 1, 3 and 5.

22 It is further ordered the defendants are directed
23 to immediately, A, communicate to every recipient of a
24 request for a disclosure of any relationship with Susman
25 Godfrey or any person associated with the firm made pursuant

1 to Section 33(a) of the executive order, that such request
2 is rescinded until further order of the Court; and B, cease
3 making such requests for disclosure pursuant to Section
4 33(a) of the executive order until further order of the
5 Court.

6 It is further ordered the defendants are directed
7 to take in good faith any other steps that are necessary to
8 prevent the implementation or enforcement of Sections 1, 3
9 and 5 of the executive order.

10 And finally, it is ordered that defendants shall
11 file a joint -- file a status report by 5:00 p.m. tomorrow,
12 April 16th indicating the steps they've taken to comply with
13 the Court's TRO.

14 I do want to turn to scheduling, but before I do,
15 I do want to note that I am declining to impose a bond under
16 Federal Rule of Civil Procedure 65(c). Under Rule 65(c),
17 the Court has broad discretion to determine the appropriate
18 amount of an injunction bond, including the discretion to
19 award no bond at all. And here, requiring a bond would
20 potentially preclude Susman Godfrey's right to judicial
21 review.

22 So I will get a written order out later today. I
23 would like to hear from the parties on whether there is a
24 need to proceed to preliminary injunction briefing or
25 whether we can move just to summary judgment. And I'll hear

1 first from the plaintiffs.

2 **MR. VERRILLI:** Thank you, Your Honor. I believe
3 that the course here ought to parallel the course in the
4 other cases; in other words, move directly to summary
5 judgment. With respect to the schedule, we do want
6 resolution expeditiously, as I said before. With the
7 Court's indulgence, it may be that we can work out a
8 schedule jointly with the United States for prompt
9 submission of dispositive motions and then a hearing at Your
10 Honor's discretion.

11 It might make sense if we could schedule a brief
12 telephonic status conference in the next day or two so that
13 we can just nail that down and make sure that we've got
14 agreement upon that. And we haven't discussed specific
15 dates yet, but I suspect we'll be able to work out a plan
16 that's amenable to both sides. And if it's amenable to the
17 Court, then we can move forward that way.

18 **THE COURT:** All right, thank you. Anything to
19 add?

20 **MR. LAWSON:** No, Your Honor, we're happy to move
21 quickly.

22 **THE COURT:** All right. I'll ask the parties to
23 file a joint status report by 5:00 p.m. tomorrow setting
24 forth the briefing schedule for summary judgment briefing
25 mindful of the fact that the TRO will be in effect for 14

1 days, so until April 29th. If the parties agree to extend
2 it by another two weeks, that gives you a bit more time to
3 have your summary judgment briefing. I would just ask that
4 you leave me at least a day or two to go through the
5 briefing before we have our hearing and before I need to
6 render any ruling before any TRO might expire.

7 All right. Is there anything else you wish to
8 address today, Mr. Verrilli?

9 **MR. VERRILLI:** Nothing. Thank you, Your Honor.

10 **THE COURT:** Anything else from you, Mr. Lawson?

11 **MR. LAWSON:** No, Your Honor.

12 **THE COURT:** All right, thank you very much. I
13 appreciate everyone's availability today. I'm grateful for
14 the arguments, and I will look out for the order on
15 compliance and the joint briefing schedule. This matter is
16 adjourned.

17 (Proceedings adjourned at 3:36 p.m.)

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C E R T I F I C A T E

I, **Jeff M. Hook, Official Court Reporter,**
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

April 16, 2025

DATE



Jeff M. Hook

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DEPUTY CLERK: [1] 2/2		30,000-foot [1] 17/23	831 [1] 43/15 833 [1] 44/16	acting [7] 19/1 19/2 19/3 24/13 33/8 34/16 39/13
MR. LAWSON: [28] 2/21 17/21 17/23 18/5 18/16 18/21 18/25 20/4 23/12 25/12 25/24 27/6 28/3 28/22 29/1 29/18 30/5 31/5 31/21 31/25 32/24 33/17 33/21 34/10 35/17 36/1 55/20 56/11	' '71 [1] 21/15 1 1.4 [2] 20/13 20/15 101 [1] 40/6 105 [1] 40/12 1107 [2] 1/4 2/4 11246 [3] 20/7 22/4 22/6 1155 [1] 1/14 121 [1] 21/6 14 [1] 55/25 14263 [1] 42/17 15 [1] 1/5 159 [1] 21/13 168 [1] 21/14 16th [1] 54/12 171 [1] 21/14 1971 [1] 21/16 1979 [2] 22/3 22/16 1:25-cv-1107 [1] 1/4 2 20001 [1] 1/25 20004 [1] 1/15 2006 [1] 43/7 2008 [1] 48/3 2016 [2] 43/15 44/16 2020 [4] 6/16 6/17 14/7 45/25 2022 [1] 45/10 2025 [3] 1/5 42/18 53/6 20530 [1] 1/20 242 [1] 44/16 25-cv-1107 [1] 2/4 258 [1] 44/16 281 [1] 22/3 285 [1] 48/2 290 [1] 43/6 297 [1] 43/7 29th [1] 56/1 2:04 [1] 1/7 3 30 [2] 10/7	304 [1] 48/2 305 [1] 22/3 306 [1] 22/3 328 [1] 32/20 329 [1] 32/20 33 [2] 54/1 54/4 333 [1] 1/24 343 [1] 21/23 35 [1] 10/7 350 [1] 1/17 3:05 [1] 42/8 3:05 p.m [1] 42/10 3:15 and [1] 42/9 3:16 p.m [1] 42/11 3:36 p.m [1] 56/17 4 40 [2] 21/5 21/5 41 [2] 20/12 20/14 441 [1] 22/3 442 [1] 21/13 454 [1] 43/6 468 [1] 45/9 477 [1] 45/10 5 500 [1] 43/15 50th [1] 1/17 511 [1] 43/15 531 [1] 44/23 547 [1] 44/23 548 [1] 44/23 553 [1] 48/2 579 [1] 21/23 595 [1] 45/9 5:00 p.m [2] 54/11 55/23 6 60 [1] 20/9 60-1.4 [2] 20/13 20/15 65 [2] 54/16 54/16 7 7th [1] 1/14	9 90071 [1] 1/17 950 [1] 1/20 9th [2] 42/18 53/6 A ab [1] 24/4 ABA [5] 26/8 34/24 35/3 35/10 35/11 abide [1] 16/5 ability [6] 4/25 16/13 27/8 33/3 33/4 52/14 able [18] 10/15 10/16 10/17 10/20 10/23 10/25 11/2 13/2 17/16 18/18 21/7 22/25 32/22 32/23 35/13 45/22 49/25 55/15 above [3] 41/1 41/25 57/5 above-entitled [1] 57/5 absent [1] 30/18 abuse [1] 51/21 abyss [1] 41/22 access [7] 19/12 33/22 35/1 35/2 35/18 39/5 45/15 accusation [1] 49/15 achieve [1] 16/5 acknowledgement [1] 30/15 acquisition [1] 21/6 across [1] 51/23 act [7] 22/9 22/10 22/11 33/4 36/24	action [12] 1/3 2/4 21/25 28/19 38/21 39/19 39/21 44/13 44/14 45/7 45/17 46/5 actionable [1] 45/8 actions [11] 5/11 10/18 13/14 13/19 15/2 19/24 31/1 34/6 34/7 38/3 45/16 activities [1] 39/3 activity [1] 45/13 actors [2] 19/10 26/11 actual [2] 44/3 48/13 actually [7] 10/10 13/20 25/18 28/1 38/24 40/23 46/19 add [1] 55/19 addition [1] 39/9 additional [2] 4/11 40/22 additionally [4] 45/14 46/20 48/15 50/16 address [5] 7/20 23/19 36/4 43/23 56/8 Addressing [2] 42/18 53/6 adequate [1] 48/17 adjacent [1] 50/7 adjourned [2] 56/16 56/17 adjudicate [1] 52/14 adjudicated [2] 37/16 38/13

A	30/1 40/17 41/9 44/2 45/1 45/2 45/5 45/7 45/18 48/18 51/19 51/23	10/1 17/11 24/2 29/11 31/3 31/7 31/10 31/15 38/7 39/22 43/24 43/24 43/25 44/9 44/11 44/21 45/8 47/9 48/6 48/8 48/22 48/23 48/23 49/3 49/4 49/7	2/25 applies [2] 31/10 32/20 apply [7] 10/7 23/18 25/25 27/10 31/2 31/15 38/11 appreciate [3] 2/25 23/1 56/13 approach [1] 33/10 approached [1] 19/2 appropriate [3] 31/20 33/2 54/17 April [5] 1/5 42/18 53/6 54/12 56/1 April 16th [1] 54/12 April 29th [1] 56/1 April 9th [2] 42/18 53/6 apt [1] 13/6 area [3] 21/19 26/19 28/11 areas [2] 35/8 43/11 Aref [1] 44/15 argued [1] 48/21 argues [2] 46/9 49/21 argument [18] 3/23 5/25 6/8 7/21 8/4 8/6 9/1 27/2 30/25 32/19 33/7 36/6 36/15 36/18 37/21 38/1 38/18 38/19 arguments [7] 22/25 24/9 24/13 35/24 42/13 43/10 56/14 Arizona [1] 6/16 arrange [1] 33/3 Article [3] 5/14 17/3 42/1 aside [2] 12/17 18/7	aspect [2] 34/22 50/5 aspects [1] 48/5 assault [2] 5/14 17/3 assertion [1] 17/1 associate [2] 2/22 4/17 associated [2] 13/15 53/25 Association [2] 21/12 26/4 associational [1] 44/4 assume [4] 6/14 33/17 33/19 37/12 attack [2] 13/9 13/10 attacks [2] 3/14 52/15 attainder [1] 5/17 attention [4] 20/12 21/3 30/23 40/5 attorney [5] 2/22 11/20 26/2 30/12 41/2 Attorney's [1] 50/3 attorneys [3] 45/11 47/6 47/15 authorities [1] 37/7 authority [7] 5/12 5/12 5/14 21/20 22/6 23/14 31/4 authorization [1] 22/1 authorizes [1] 47/25 availability [1] 56/13 available [1] 40/3 Ave [2] 1/17 1/20 Avenue [1] 1/24 award [2] 46/21 54/19 aware [2] 6/19
administration [5] 3/24 9/9 14/15 29/15 52/6	agencies [10] 11/16 11/18 24/24 26/7 35/5 39/9 50/3 50/5 50/19 53/19	Amendment's [1] 46/2 America's [1] 43/14 American [9] 6/10 6/11 11/24 12/3 26/3 41/9 49/15 49/17 49/18 amount [1] 54/18 analogy [3] 20/6 26/5 27/7 analysis [5] 8/10 23/18 24/10 31/3 33/10 analyzing [1] 34/15 ANDERS [2] 1/13 2/16 Angeles [1] 1/17 angle [4] 20/5 21/4 26/12 34/23 answer your [1] 13/24 anti [3] 11/24 12/3 41/9 anti-American [3] 11/24 12/3 41/9 antithetical [1] 52/12 antitrust [1] 10/21 apologize [3] 18/18 21/15 23/16 appearance [1] 2/6 appearances [2] 1/12 12/14 appearing [1]	ago [2] 9/15 20/9 agree [6] 7/19 31/18 33/20 33/21 52/9 56/1 agreement [1] 55/14 agreements [2] 51/24 52/6 agrees [4] 44/25 46/13 48/25 49/18 ahead [1] 29/16 aims [1] 23/3 al [2] 1/6 2/4 align [1] 39/10 ALIKHAN [1] 1/10 allegation [2] 6/9 37/11 allegations [3] 13/22 14/6 18/3 allege [1] 12/7 allow [1] 25/1 allowed [1] 51/9 allowing [2] 52/9 52/10 allows [1] 47/5 alone [2] 45/16 48/24 along [3] 6/15 27/9 30/17 amenable [2] 55/16 55/16 Amendment [32] 4/12 5/25 8/4 8/14 8/20 8/22	
Administrative [1] 22/9 admire [1] 52/2 Admissions [1] 18/11 admit [1] 8/23 admits [1] 50/10 adopt [2] 36/21 36/23 advance [6] 21/8 21/10 21/17 22/19 32/10 32/16 adversarial [1] 51/12 adverse [5] 35/15 44/13 44/14 45/7 45/17 advice [1] 44/19 advocacy [6] 4/13 4/15 8/8 40/1 44/18 49/2 afforded [1] 40/15 aftermath [3] 6/16 6/17 14/7 afternoon [6] 2/18 2/21 3/2 3/9 17/21 17/22 again [18] 9/15 9/21 19/19 20/25 24/12 27/3 27/6 27/10 30/5 33/6 35/5 35/18 37/20 38/17 39/1 39/15 44/15 46/1 against [21] 3/9 3/16 4/12 4/14 14/5 16/11 17/12 27/5 28/20				

A	39/20	2/14	33/15 34/2	cease [1] 54/2
aware... [1] 7/15	beliefs [1] 51/14	brief [5] 30/21 42/9	36/8 36/11	Census [1] 13/5
axe [4] 10/13 10/14 11/11 13/1	below [1] 11/21	42/22 43/24 55/11	36/13 37/8	central [1] 44/21
B	bent [2] 41/19 41/20	briefing [6] 54/24 55/24	37/14 37/18 37/19 49/6	certain [6] 9/13 26/14
back [6] 10/9 21/16 25/16 30/6 38/9 42/11	best [2] 16/13 31/22	55/24 56/3 56/5 56/15	54/25 55/7 55/13 55/17	29/16 32/6 48/13 49/1
bad [1] 5/10	better [1] 29/2	briefly [1] 27/18	canceled [2] 12/6 50/11	certainly [5] 15/9 30/20
badly [1] 14/21	beyond [4] 18/7 39/23 47/7 48/16	bring [6] 10/14 10/15 16/19 16/19	capacity [1] 26/15	31/10 37/16 38/12
balance [4] 15/22 43/9 51/1 51/5	Bhatia [1] 2/11	30/1 40/25	capitulating [1] 52/2	certify [1] 57/4
Bankruptcy [1] 1/24	bill [1] 5/17	brings [2] 13/3 19/25	cards [1] 34/19	cetera [2] 35/19 39/17
Bantam [2] 19/14 32/5	bit [6] 2/20 5/10 13/24 13/25 27/7 56/2	broad [1] 54/17	carried [1] 48/19	chain [1] 41/1 chair [1] 26/1
bar [3] 17/7 26/3 51/16	black [3] 4/22 36/23 39/24	broadcasting [1] 3/4	carry [1] 53/16	chairman [1] 2/15
barred [1] 50/11	bless [2] 23/22 40/24	broken [1] 35/19	case [27] 4/22 5/10 5/13 13/5	chairman's [2] 14/18 14/18
barring [2] 25/22 47/5	block [3] 3/10 11/22 41/9	Brown [2] 22/3 32/14	17/1 17/8 18/12 18/22	challenge [1] 27/16
base [1] 52/8	blue [3] 4/4 9/3 9/15	building [2] 25/23 50/12	19/7 19/14 20/10 21/9	challenged [1] 45/4
based [7] 5/17 5/18 6/3 9/25 13/10 14/6 51/18	board [2] 24/4 50/4	buildings [4] 27/5 35/18 45/15 47/6	21/11 21/22 22/16 23/19	challenging [1] 52/3
bases [1] 6/15	body [5] 20/9 20/24 21/9 24/1 34/14	burden [2] 43/16 48/19	24/1 28/17 28/24 32/15	chance [1] 23/1
basis [12] 5/3 5/7 7/13 11/23 12/13 12/15 14/13 20/2 28/20 34/20 45/19 52/12	bolt [1] 4/3	business [6] 19/10 20/22 50/1 50/5 50/24 52/4	34/14 38/15 40/25 42/3 44/5 51/3 51/6	Chaplaincy [1] 43/6
Bates [2] 28/25 29/4	bond [4] 54/15 54/18 54/19 54/19	businesses [1] 52/11	case's [1] 37/25	characterizatio n [1] 49/19
bears [2] 5/16 46/23	books [5] 19/14 19/15 19/17 20/21 32/5	C	cases [27] 5/19 6/1 11/1	Chief [1] 13/4
becomes [1] 29/7	bookstore [1] 19/15	C.F.R [2] 20/12 20/15	11/14 12/5 12/14 12/15 13/13 15/22	child [2] 7/24 8/1
been focused [1] 9/17	both [5] 26/1 34/19 48/13 52/16 55/16	CA [1] 1/17	16/19 16/22 19/16 19/25 21/11 23/16	chilling [1] 9/25
beginning [4] 2/6 25/8 32/3 50/18	BRAD [2] 1/16 2/14	call [2] 36/6 39/1	23/22 24/18 25/14 28/16 31/10 31/11	chills [1] 49/2
behalf [5] 4/13 14/5 34/4 44/18 44/20	branch [2] 16/9 17/4	called [1] 25/6	34/19 43/13 50/1 50/2 52/14 55/4	choice [2] 5/8 14/24
behaving [1] 14/21	branch's [1] 28/10	calling [1] 23/13	choice [2] 16/4 35/13	chosen [1] 47/15
behind [3] 2/11 18/3	brazenly [2] 3/11 3/13	came [1] 26/21	Chrysler [1] 22/2	Chrysler [1] 22/2
	breaking [1] 52/21	can [31] 2/12 7/5 8/1 12/7 14/18 16/9 22/9 23/3 25/2 25/3 25/4 25/10 25/25 26/16 27/10 29/8 31/23	category [5] 21/22 21/25 32/5 32/5 32/13	Churches [1] 43/6
	BRIAN [2] 1/16		causal [1] 44/11	Circuit [4] 21/16 43/7 43/15 44/16
			caution [2] 24/9 28/9	circulated [1] 11/14
				circumstances [2] 39/20

<p>C circumstances... . [1] 42/24 citations [1] 23/1 cite [8] 21/13 22/3 23/17 43/14 43/15 44/16 45/9 48/2 cited [1] 32/12 citizens [3] 13/7 19/15 39/11 civil [7] 1/3 2/4 4/19 6/2 6/5 22/10 54/16 claim [3] 45/8 47/9 48/9 claims [2] 43/22 48/6 clarify [2] 9/10 9/10 clarity [1] 6/8 classic [2] 19/14 27/21 clause [2] 46/2 47/10 CLE [1] 27/8 clear [5] 5/2 7/5 37/1 40/17 48/14 clearer [1] 14/25 Clearly [1] 28/13 client [8] 3/23 4/25 7/14 9/9 13/16 15/5 41/12 52/15 client's [2] 6/12 48/7 clients [23] 3/15 4/13 4/17 4/20 5/7 10/16 12/24 14/12 16/13 29/7 34/5 44/3 44/19 44/19 44/20 45/10 45/24 47/3 47/18 50/14 50/17 50/18 51/17</p>	<p>clients' [2] 14/12 17/14 closely [1] 29/3 closure [1] 34/17 Coast [1] 50/4 Code [1] 20/11 codified [1] 20/11 coerce [2] 52/10 52/11 coerce private [1] 52/10 coercion [1] 52/1 coherent [1] 28/5 Coie [3] 4/10 12/5 45/3 coincidence [3] 14/3 14/3 14/8 colleagues [1] 2/12 color [1] 46/22 COLUMBIA [1] 1/1 coming [7] 19/11 19/12 19/13 25/23 26/12 26/24 29/8 command [1] 41/1 commentators [1] 22/7 comments [2] 30/6 30/24 Commission [1] 43/15 committed [1] 11/22 committee [1] 19/16 common [1] 12/23 communicate [1] 53/23 Community [1] 45/9 companies [3] 23/9 29/22 40/15 comparable [1] 4/9 compelling [5]</p>	<p>8/9 31/23 46/8 46/14 48/8 compensatory [1] 48/17 competed [1] 19/24 complained [1] 13/14 complaint [3] 40/5 40/6 41/15 completely [8] 7/4 7/6 7/10 9/7 36/15 37/20 39/2 39/16 compliance [2] 20/20 56/15 compliant [2] 30/7 35/2 comply [2] 20/17 54/12 concern [4] 21/1 29/20 30/20 35/20 concerned [1] 19/15 concerns [4] 26/8 44/22 46/24 47/20 conclude [1] 27/18 concludes [1] 48/19 concrete [2] 25/2 27/16 conduct [3] 14/14 38/3 44/11 conference [3] 27/23 35/5 55/12 confess [1] 35/9 confessed [1] 6/22 confident [1] 26/25 conflict [2] 31/9 31/17 confusion [1] 6/23 Congress [2] 17/9 22/1 congressional [1] 22/5 connection [2] 45/24 46/24</p>	<p>consequences [1] 30/1 consequential [1] 8/21 consider [2] 24/25 38/5 considerable [1] 15/24 considerations [1] 43/8 consistent [3] 24/1 24/5 26/15 consists [1] 15/20 constitute [1] 44/20 constitutes [2] 45/6 48/24 Constitution [8] 1/24 15/12 16/11 17/3 17/16 36/18 36/19 51/20 constitutional [7] 5/12 12/17 39/24 44/12 48/22 52/13 52/24 constitutionall y [4] 36/20 36/23 44/20 47/17 consulting [1] 30/15 contained [2] 18/7 18/17 contempt [1] 3/5 contents [1] 27/20 context [4] 45/1 45/21 46/9 46/10 continue [1] 9/23 continued [1] 14/23 continuing [1] 50/17 contract [4] 20/3 21/21 23/4 23/24 contracting [8] 19/12 19/19 20/23 33/3 35/23 37/9</p>	<p>39/8 45/11 contractor [9] 19/4 22/23 24/4 25/20 31/2 36/16 36/19 37/3 38/9 contractors [11] 12/20 20/7 20/15 20/22 21/12 29/23 30/3 30/8 32/11 50/20 53/15 contracts [7] 19/23 23/5 23/20 39/10 47/3 47/17 50/20 contractual [1] 23/8 control [3] 36/14 51/9 52/22 conversation [1] 31/6 core [2] 16/14 52/15 Corp [1] 44/22 corporate [1] 49/11 Corporation [1] 22/2 corrective [1] 48/17 correctly [1] 20/13 counsel [12] 2/5 2/16 3/7 18/6 19/6 23/17 24/19 25/5 26/22 29/2 48/7 49/5 country [3] 15/13 51/11 51/24 couple [2] 15/21 37/23 courage [1] 15/13 courageous [1] 15/7 course [14] 8/6 8/19 9/14 12/23 12/23 14/11 15/24 16/5 16/21 17/8 36/13</p>
---	---	--	---	---

<p>C</p> <p>course... [3] 37/13 55/3 55/3</p> <p>court [86]</p> <p>court's [17] 3/19 12/1 12/3 18/5 20/12 20/25 21/3 23/21 27/10 27/11 30/20 30/23 35/20 40/5 52/14 54/13 55/7</p> <p>courthouse [1] 25/23</p> <p>courthouses [3] 11/3 45/16 47/7</p> <p>courts [14] 1/24 4/8 4/16 5/14 8/3 8/16 13/6 17/4 22/7 28/15 34/19 39/22 41/23 44/20</p> <p>criminal [4] 19/16 30/16 34/16 34/18</p> <p>critical [3] 31/25 49/15 50/5</p> <p>criticizing [1] 38/2</p> <p>crooked [1] 40/9</p> <p>current [2] 35/15 50/16</p> <p>cut [1] 4/15</p> <p>cv [2] 1/4 2/4</p>	<p>56/1</p> <p>DC [4] 1/5 1/15 1/20 1/25</p> <p>dealing [1] 24/17</p> <p>debarred [2] 20/17 30/10</p> <p>debated [1] 22/7</p> <p>decades [4] 20/21 20/23 21/15 21/17</p> <p>decision [2] 8/11 34/20</p> <p>decisions [2] 8/2 39/11</p> <p>decisively [2] 41/24 41/24</p> <p>declaration [4] 7/7 10/6 37/14 49/13</p> <p>declarations [2] 12/12 50/10</p> <p>declining [1] 54/15</p> <p>deemed [1] 39/5</p> <p>defamatory [2] 14/6 14/7</p> <p>defendants [9] 1/7 1/19 53/4 53/9 53/13 53/18 53/22 54/6 54/10</p> <p>defending [5] 9/16 9/16 9/17 9/18 41/7</p> <p>defense [3] 17/14 21/18 30/16</p> <p>definition [1] 16/14</p> <p>degrade [2] 6/11 49/17</p> <p>degree [8] 22/12 24/16 26/10 26/15 27/7 27/13 32/3 34/7</p> <p>Democrat [1] 36/21</p> <p>democratic [1] 46/4</p> <p>demonstrate [2] 44/9 45/22</p> <p>demonstrated [1] 50/22</p>	<p>denies [3] 4/23 5/5 5/7</p> <p>deny [3] 24/15 35/2 45/14</p> <p>departed [1] 13/21</p> <p>Department [7] 2/22 11/13 36/20 36/22 36/24 40/24 41/7</p> <p>departments [1] 11/16</p> <p>deprivation [1] 47/11</p> <p>deprived [1] 47/13</p> <p>depth [1] 26/4</p> <p>Deputy [2] 2/22 26/2</p> <p>described [2] 37/13 48/20</p> <p>description [1] 49/13</p> <p>design [1] 13/11</p> <p>destruction [1] 34/18</p> <p>detail [2] 28/3 28/4</p> <p>detailed [2] 9/24 10/6</p> <p>deter [1] 44/14</p> <p>determination [1] 42/4</p> <p>determine [1] 54/17</p> <p>determines [1] 43/21</p> <p>deterred [1] 17/13</p> <p>detrimental [1] 49/14</p> <p>develop [3] 26/19 27/7 36/11</p> <p>developed [1] 25/14</p> <p>developing [1] 24/24</p> <p>dictate [1] 51/7</p> <p>difference [1] 27/22</p> <p>different [3] 23/5 33/5 33/5</p> <p>difficult [3]</p>	<p>28/11 29/7 29/13</p> <p>dire [1] 42/24</p> <p>direct [3] 5/14 17/3 40/5</p> <p>directed [5] 53/9 53/13 53/19 53/22 54/6</p> <p>direction [3] 26/6 31/12 53/10</p> <p>directly [1] 55/4</p> <p>director [1] 11/21</p> <p>directs [1] 50/19</p> <p>disabilities [3] 9/4 12/22 41/13</p> <p>disagreement [1] 34/8</p> <p>disclose [1] 30/3</p> <p>disclosure [2] 53/24 54/3</p> <p>discouraging [1] 50/16</p> <p>discretion [6] 22/22 35/2 35/8 54/17 54/18 55/10</p> <p>discriminate [1] 7/12</p> <p>discriminates [1] 45/18</p> <p>discriminating [1] 28/20</p> <p>discrimination [20] 4/14 8/15 8/20 8/22 11/23 18/8 20/5 21/4 31/8 31/19 32/1 33/15 33/23 34/3 37/2 37/11 46/3 46/4 46/9 46/11</p> <p>discriminatory [2] 34/21 48/1</p> <p>discussed [2] 44/5 55/14</p> <p>discussing [3] 18/9 21/24 38/10</p>	<p>discussion [1] 37/25</p> <p>disfavored [3] 19/10 44/7 45/11</p> <p>dishonest [1] 40/8</p> <p>dispositive [2] 46/12 55/9</p> <p>disregard [1] 53/15</p> <p>disrupt [2] 4/16 4/19</p> <p>disrupting [1] 4/24</p> <p>distance [1] 26/11</p> <p>district [6] 1/1 1/1 1/10 1/24 11/19 43/9</p> <p>diversify [1] 20/8</p> <p>diversity [3] 18/10 18/12 27/9</p> <p>documented [1] 14/13</p> <p>DOJ [1] 1/19</p> <p>DOJ-USAO [1] 1/19</p> <p>dollars [2] 10/20 41/21</p> <p>Dominion [5] 6/12 13/17 14/1 14/5 45/23</p> <p>Don [1] 2/7</p> <p>DONALD [1] 1/12</p> <p>done [3] 3/15 39/25 41/3</p> <p>doubt [4] 11/8 13/12 38/17 40/19</p> <p>doubts [2] 40/2 40/3</p> <p>down [6] 10/14 10/15 20/13 34/12 39/7 55/13</p> <p>downstream [2] 20/19 30/23</p> <p>draft [1] 34/18</p> <p>drafted [1] 24/22</p> <p>draw [5] 20/12</p>
<p>D</p> <p>D.C [3] 43/7 43/15 44/16</p> <p>damage [1] 49/11</p> <p>dangerous [3] 6/24 46/16 49/14</p> <p>date [2] 48/18 57/10</p> <p>dated [1] 42/17</p> <p>dates [1] 55/15</p> <p>day [2] 55/12 56/4</p> <p>days [2] 9/15</p>				

<p>D</p> <p>draw... [4] 21/3 22/9 30/5 30/23</p> <p>draws [1] 22/8</p> <p>driving [1] 32/8</p> <p>drop [1] 29/17</p> <p>dropped [2] 4/2 14/4</p> <p>dropping [1] 39/9</p> <p>drops [1] 39/7</p> <p>due [12] 3/22 4/24 9/1 32/24 47/10 47/10 47/13 47/21 47/23 48/7 48/9 49/4</p> <p>duty [2] 11/5 11/6</p> <hr/> <p>E</p> <p>earlier [9] 16/24 19/7 30/6 30/24 31/6 32/12 33/7 34/13 35/24</p> <p>easily [1] 10/8</p> <p>Eastern [1] 21/12</p> <p>economic [2] 10/5 49/22</p> <p>effect [3] 28/13 53/5 55/25</p> <p>effectiveness [3] 6/25 18/14 46/17</p> <p>effects [1] 51/22</p> <p>efforts [6] 6/10 6/24 7/12 9/8 46/16 49/16</p> <p>effuse [1] 15/23</p> <p>election [6] 6/16 6/17 6/18 14/7 43/14 45/25</p> <p>election-relate d [1] 6/18</p> <p>elections [3] 6/11 45/21 49/18</p>	<p>elements [2] 43/9 44/18</p> <p>else [6] 6/19 30/2 33/11 40/13 56/7 56/10</p> <p>elucidated [1] 36/17</p> <p>emergency [2] 49/20 50/24</p> <p>employees [2] 45/12 53/15</p> <p>employer [2] 24/14 26/13</p> <p>employment [3] 19/20 26/16 35/18</p> <p>encourages [1] 47/25</p> <p>encouraging [1] 35/14</p> <p>encroaches [1] 16/17</p> <p>end [9] 42/19 43/5 44/7 45/8 46/18 48/1 49/15 49/18 49/24</p> <p>enforcement [6] 42/16 43/18 45/5 48/1 53/21 54/8</p> <p>enforcing [1] 53/11</p> <p>engage [5] 6/24 23/8 33/14 38/15 46/16</p> <p>engaged [1] 44/10</p> <p>engagement [2] 26/3 26/11</p> <p>engages [1] 50/6</p> <p>engaging [3] 23/4 39/3 45/12</p> <p>England [1] 43/6</p> <p>enjoin [2] 28/18 42/16</p> <p>enjoined [1] 53/4</p> <p>enjoining [1] 43/18</p> <p>enough [1] 5/16</p> <p>enter [5] 11/3</p>	<p>16/4 31/4 36/22 36/24</p> <p>entered [3] 25/15 29/4 52/5</p> <p>entering [2] 26/23 51/24</p> <p>entirely [1] 41/5</p> <p>entirety [1] 38/20</p> <p>entities [3] 19/10 20/16 45/24</p> <p>entitled [5] 42/18 43/17 51/14 53/6 57/5</p> <p>entity [4] 20/17 22/23 26/14 30/7</p> <p>entry [1] 16/3</p> <p>environmental [1] 10/23</p> <p>EO [2] 23/25 44/25</p> <p>equal [4] 5/5 22/10 48/6 49/8</p> <p>equally [4] 8/16 14/14 22/8 22/9</p> <p>equitable [1] 48/15</p> <p>equities [2] 51/1 51/5</p> <p>era [1] 21/18</p> <p>especially [2] 46/10 50/6</p> <p>establish [2] 10/8 49/8</p> <p>established [4] 10/5 22/20 35/8 48/12</p> <p>et [4] 1/6 2/4 35/18 39/17</p> <p>eve [1] 14/4</p> <p>even [14] 5/6 9/6 11/2 11/5 11/7 12/17 15/4 27/12 32/14 36/12 38/11 38/13 48/24 52/5</p> <p>events [1] 26/1</p> <p>everybody [2] 2/25 26/5</p>	<p>everyone [3] 13/8 15/14 15/15</p> <p>everyone's [1] 56/13</p> <p>evident [1] 13/3</p> <p>exactly [4] 8/12 10/13 37/25 41/13</p> <p>examine [1] 17/24</p> <p>examines [1] 24/9</p> <p>examining [2] 22/4 22/17</p> <p>example [3] 25/25 34/24 34/24</p> <p>excellent [1] 23/12</p> <p>exceptions [1] 6/4</p> <p>executive [54] 1/6 2/3 3/10 3/12 4/23 8/3 8/23 10/3 10/12 11/16 13/14 14/3 14/23 16/9 20/7 20/18 20/20 21/20 22/6 28/10 33/3 34/3 36/7 38/20 39/25 40/11 41/8 41/10 42/4 42/17 43/19 43/25 44/24 45/4 45/6 45/18 46/21 46/25 49/10 49/23 50/19 51/9 51/16 51/18 51/23 52/15 53/6 53/12 53/16 53/17 53/20 54/1 54/4 54/9</p> <p>exercise [6] 8/7 16/9 38/7 38/25 44/3 44/12</p> <p>exercises [1] 3/11</p> <p>exhibit [1] 13/7</p> <p>existence [3]</p>	<p>14/24 50/24 52/4</p> <p>existential [1] 14/23</p> <p>existing [3] 23/5 23/14 24/2</p> <p>exists [1] 44/12</p> <p>expedited [1] 16/5</p> <p>expeditiously [1] 55/6</p> <p>experience [1] 14/10</p> <p>expire [1] 56/6</p> <p>explain [1] 12/12</p> <p>explained [1] 29/9</p> <p>explaining [1] 49/22</p> <p>explains [1] 49/9</p> <p>explanations [2] 14/16 14/16</p> <p>express [1] 22/1</p> <p>expression [3] 10/1 44/7 44/21</p> <p>extend [1] 56/1</p> <p>extraordinarily [1] 29/13</p> <p>extraordinary [2] 20/9 42/23</p> <p>extremely [2] 28/11 32/12</p> <hr/> <p>F</p> <p>F.2d [1] 21/13</p> <p>F.3d [3] 43/6 43/15 44/16</p> <p>face [4] 4/23 8/17 13/9 24/7</p> <p>faces [1] 47/11</p> <p>facially [3] 39/18 39/19 39/20</p> <p>facility [1] 35/3</p> <p>fact [4] 5/13 6/3 38/2 55/25</p>
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F	fielding [1] 50/14	firmness [1] 44/15	forbidden [1] 3/5	53/9 53/13 53/18 53/22 54/2 54/4 54/6
factor [3] 43/20 51/3 51/4	Fifth [7] 43/23 47/9 48/6 48/22 49/3 49/4 49/7	firms [21] 3/14 3/25 14/10 14/11 14/12 14/15 15/2 15/5 15/17 29/16 40/7 40/14 41/18 51/8 51/9 51/23 51/23 52/1 52/2 52/5 52/11	force [1] 52/9 foregoing [1] 57/4 foresight [1] 24/19 forgive [1] 26/5 forth [6] 18/12 27/9 27/24 28/6 42/21 55/24 forward [2] 2/5 55/17 found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	furthered [1] 43/5 furthermore [3] 21/5 22/21 52/21 future [4] 13/12 23/7 23/19 52/8
fails [1] 47/23	file [3] 54/11 54/11 55/23	first [43] 2/9 3/7 3/18 3/20 4/1 4/12 8/4 8/13 8/19 8/21 10/1 17/10 21/22 21/25 22/24 24/1 29/11 31/3 31/7 31/10 31/15 32/13 36/5 38/7 39/22 42/22 43/20 43/23 43/24 43/25 44/9 44/11 44/18 44/21 45/2 45/8 46/1 48/8 48/21 48/21 48/23 48/23 55/1	forward [2] 2/5 55/17 found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	G
fair [2] 18/11 47/24	filed [3] 3/1 12/10 27/1	firm [50] 2/10 5/6 6/2 6/4 6/18 6/24 7/8 8/19 11/22 13/9 13/10 13/16 13/20 14/24 15/6 15/18 16/11 26/22 28/20 29/23 29/24 32/21 34/4 36/8 39/4 40/9 41/11 44/2 45/3 45/7 45/19 46/8 46/20 47/4 47/13 47/18 48/4 48/20 49/7 49/9 49/16 49/21 50/6 50/9 50/14 50/17 50/21 50/22 51/19 53/25	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
faith [1] 54/7	finally [1] 54/10	fish [1] 13/19	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
fake [1] 40/10	find [1] 47/8	Five [1] 12/21	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
fall [3] 10/14 11/11 22/21	findings [1] 14/13	flat [2] 8/9 8/11	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
falls [4] 13/1 21/21 21/24 31/15	finds [5] 32/3 48/4 49/7 50/21 52/17	flaw [1] 47/21	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
familiar [1] 19/8	fine [2] 19/13 26/17	flip [2] 13/24 52/19	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
far [7] 12/7 21/6 25/4 28/3 29/9 33/1 47/4	finish [1] 21/16	Floor [2] 1/14 1/17	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
far-reaching [1] 47/4	fired [1] 24/3	flow [1] 26/20	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 41/2 generally [1] 19/8 genesis [1] 34/8 genuinely [1] 13/25 GINGER [2] 1/13 2/16 given [1] 48/8 gives [1] 56/2 giving [3] 28/14 34/24 53/5 GODFREY [22] 1/3 2/3 2/8 2/10 3/1 10/11 12/24 12/25 14/4 15/6 16/12 16/15 39/3 39/13 41/14 41/16 42/15 42/19 43/16 44/1 53/7 53/25 Godfrey's [1] 54/20 goes [6] 6/8 12/21 21/19 22/8 35/5 38/9 good [9] 2/7 2/18 2/21 17/21 17/22 41/21 47/16 49/12 54/7 Gospel [1] 43/6 government [59]
fast [2] 9/14 41/22	firm [50] 2/10 5/6 6/2 6/4 6/18 6/24 7/8 8/19 11/22 13/9 13/10 13/16 13/20 14/24 15/6 15/18 16/11 26/22 28/20 29/23 29/24 32/21 34/4 36/8 39/4 40/9 41/11 44/2 45/3 45/7 45/19 46/8 46/20 47/4 47/13 47/18 48/4 48/20 49/7 49/9 49/16 49/21 50/6 50/9 50/14 50/17 50/21 50/22 51/19 53/25	focus [3] 17/25 17/25 43/23	found [1] 4/10 foundation [1] 51/11 founded [1] 35/21 four [3] 41/2 43/8 43/10 fourth [2] 43/12 51/4 framers [1] 51/20 frankly [2] 11/6 51/19 free [4] 9/25 13/7 46/2 46/3 freedoms [2] 38/8 48/23 friend [3] 29/21 37/10 37/23 friend's [2] 37/6 39/17 Friendly [1] 13/4 front [1] 11/1 FTC [1] 26/1 full [4] 15/7 17/13 27/17 43/6 fully [2] 30/22 38/11 fundamentally [1] 32/9 funding [4] 18/14 28/2 39/10 46/15 funds [2] 6/24 39/6 further [16] 18/6 18/17 22/2 34/21 40/21 44/25 47/5 48/4 53/4	gender [1] 11/23 general [7] 2/22 11/20 24/13 26/2 30/14 36/8 4

G	5/16	hearing [5] 1/9 3/3 42/20 55/9 56/5	hope [1] 26/4	imminence [1] 48/14
government's [2] 31/1 46/5	hampers [1] 52/13	heart [2] 46/1 51/12	hopefully [1] 20/13	imminent [3] 42/24 49/1 50/13
governmental [1] 46/8	handle [1] 50/15	held [2] 38/4 47/3	hoping [1] 6/7	immune [1] 25/4
Governor [1] 6/17	handling [1] 18/23	help [1] 6/7	horribles [3] 25/4 25/7 35/7	impaired [1] 48/21
Grand [1] 1/17	handy [1] 23/17	here's [1] 33/21	hospital [1] 47/7	impairing [1] 4/25
grant [4] 24/17 42/2 42/21 49/1	hanging [2] 7/16 10/3	herring [1] 36/6	hostage [1] 52/9	impermissibly [2] 5/3 47/20
granted [2] 43/3 53/3	happen [1] 13/1	herrings [1] 36/7	House [3] 40/13 40/19 41/19	implement [2] 28/12 29/13
granting [3] 51/6 52/18 52/19	happened [7] 9/14 12/10 12/11 14/8 14/11 16/14 23/24	hesitate [1] 26/23	housekeeping [1] 5/24	implementation [2] 53/21 54/8
grateful [1] 56/13	happy [2] 9/20 55/20	high [4] 18/1 26/6 29/3 48/12	Houston [1] 45/9	implementing [2] 53/5 53/11
grave [1] 17/10	hard [2] 13/24 13/25	highlight [2] 27/11 27/15	Howell [2] 29/1 29/5	implicates [1] 44/21
gray [1] 18/11	hardships [1] 15/22	highly [1] 45/21	hugely [1] 15/7	implied [1] 22/1
great [6] 24/9 24/19 26/4 27/15 28/9 48/13	harm [29] 5/21 9/19 9/23 9/24 9/24 10/1 10/2 10/4 10/5 10/5 10/8 10/11 11/9 12/16 12/17 12/18 12/19 13/11 13/11 15/1 15/17 16/6 42/24 48/18 49/6 49/10 49/19 51/4 52/20	hired [1] 50/20	hundreds [2] 10/19 41/20	importance [1] 7/10
greater [1] 27/24	harmful [1] 46/3	hires [1] 41/11	I	important [4] 10/9 14/14 40/23 45/1
Greatness [1] 43/14	harms [6] 9/24 10/11 43/24 48/9 48/20 49/7	hiring [3] 12/24 19/13 29/24	idea [8] 19/2 20/21 21/9 26/13 30/6 37/18 38/24 39/15	impose [3] 21/20 52/25 54/15
grievous [1] 15/17	hat [1] 7/16	history [1] 3/12	identical [1] 8/3	imposed [3] 5/11 8/18 12/22
grounds [1] 23/10	heads [2] 11/16 12/2	hold [2] 27/8 52/8	identifies [1] 7/8	imposes [1] 41/14
groups [5] 6/24 18/14 20/1 28/2 46/16	Healthy [3] 23/15 31/6 31/16	holds [1] 35/21	ideology [3] 7/1 11/24 46/18	imposing [1] 9/3
Guard [1] 50/4	Healthy-Umbehr [1] 31/16	honor [25] 2/2 2/7 2/21 5/22 9/13 9/20 11/12 12/11 14/9 15/25 16/25 17/23 18/5 18/16 34/10 36/1 36/3 37/14 38/24 41/25 47/16 55/2 55/20 56/9 56/11	III [3] 5/14 17/3 42/1	improper [1] 19/9
guess [1] 31/14	hear [4] 3/6 27/2 54/23 54/25	hook [3] 1/23 57/3 57/10	ill [1] 35/21	imposing [1] 9/3
guidance [21] 11/10 24/25 25/7 25/10 25/13 26/2 26/19 26/21 26/25 27/12 27/13 33/22 34/8 35/6 35/20 36/5 36/8 36/11 53/10 53/14 53/19	heard [6] 4/2 5/2 9/5 18/5 25/3 36/4	hooks [1] 7/15	ill-founded [1] 35/21	improper [1] 19/9
guidances [1] 25/1			illuminating [1] 11/15	in the [1] 15/5
guy [1] 32/21			illusions [1] 45/23	incentivize [1] 23/3
H			imagine [1] 25/3	incidental [1] 10/12
hallmarks [1]			immediate [3] 23/13 23/23 23/23	inclined [1] 42/20
			immediately [3] 53/14 53/19 53/23	include [1] 47/14
			immense [1] 51/7	includes [2] 49/5 50/1
			immensely [1] 51/10	including [7] 45/15 48/6 49/8 50/3 50/8 53/7 54/18

<p>I</p> <p>inconsistent [1] 39/3</p> <p>incredibly [1] 9/5</p> <p>indeed [2] 35/15 49/19</p> <p>independence [2] 5/15 17/4</p> <p>independent [5] 17/7 17/7 47/21 51/15 51/16</p> <p>indicating [2] 30/18 54/12</p> <p>indication [1] 4/4</p> <p>indications [1] 12/5</p> <p>indisputably [1] 12/18</p> <p>individual [1] 30/12</p> <p>individuals [7] 12/1 13/15 23/9 25/22 35/13 46/23 51/13</p> <p>indulge [2] 24/14 33/1</p> <p>indulgence [1] 55/7</p> <p>industry [1] 52/17</p> <p>infer [1] 4/21</p> <p>inflict [3] 13/11 15/17 52/19</p> <p>information [4] 18/7 18/17 29/23 30/3</p> <p>informing [1] 11/25</p> <p>inimical [1] 39/14</p> <p>initial [1] 21/1</p> <p>initially [1] 21/18</p> <p>initiatives [1] 18/10</p> <p>initio [1] 24/4</p> <p>injection [2] 7/1 46/18</p> <p>injunction [10] 28/14 28/23</p>	<p>29/6 29/14 36/12 43/2 43/3 43/5 54/18 54/24</p> <p>injure [1] 43/3</p> <p>injuries [1] 49/22</p> <p>injury [9] 15/20 16/2 43/2 48/11 48/12 48/13 48/16 48/25 49/1</p> <p>inquire [1] 34/21</p> <p>inquiries [1] 33/1</p> <p>inquiry [5] 20/19 30/11 30/23 32/1 32/6</p> <p>instance [1] 17/9</p> <p>instances [1] 9/6</p> <p>instruct [1] 11/17</p> <p>instruction [1] 28/14</p> <p>instructs [1] 39/9</p> <p>insubstantial [4] 36/15 37/21 39/2 39/16</p> <p>insurance [1] 38/16</p> <p>integrity [1] 47/16</p> <p>intellectual [1] 11/1</p> <p>intelligence [1] 47/24</p> <p>intent [1] 4/21</p> <p>interacting [1] 26/14</p> <p>interactions [1] 26/7</p> <p>interest [17] 15/22 16/1 16/8 16/15 25/21 26/11 27/4 31/23 35/12 43/4 46/14 47/12 47/17 51/2</p>	<p>51/5 52/18 52/21</p> <p>interested [1] 43/4</p> <p>interests [8] 8/10 17/14 39/4 39/11 39/14 46/8 47/14 49/15</p> <p>interference [1] 49/5</p> <p>into [11] 3/21 12/19 13/5 16/12 25/23 27/16 34/21 41/22 48/9 51/24 52/5</p> <p>introduce [3] 2/9 2/12 2/14</p> <p>investigate [1] 29/24</p> <p>investigation [1] 12/19</p> <p>invocation [1] 39/17</p> <p>invoke [1] 37/18</p> <p>involved [1] 46/23</p> <p>involving [2] 15/23 19/8</p> <p>IP [1] 30/1</p> <p>ironclad [1] 8/13</p> <p>ironically [1] 10/19</p> <p>irreparable [18] 5/21 9/23 9/24 10/1 10/5 10/8 11/8 12/16 14/25 15/19 43/2 48/11 48/12 48/18 48/25 49/6 49/9 49/22</p> <p>is hanging [1] 7/16</p> <p>issue [16] 6/21 17/24 18/8 19/8 21/2 24/14 24/18 24/22 26/21 32/8 36/8 37/25 41/10 42/13 53/14 53/19</p> <p>issued [7]</p>	<p>9/15 24/24 26/2 27/13 47/19 53/11 53/17</p> <p>issues [7] 24/21 27/12 29/11 30/11 31/7 33/24 35/22</p> <p>J</p> <p>Jackson's [2] 21/22 21/25</p> <p>jail [1] 19/14</p> <p>JEFF [3] 1/23 57/3 57/10</p> <p>Jenner [7] 4/9 11/14 11/21 12/4 28/24 29/1 41/9</p> <p>JEREMY [2] 1/13 2/16</p> <p>job [3] 17/16 32/22 41/4</p> <p>joint [3] 54/11 55/23 56/15</p> <p>jointly [1] 55/8</p> <p>JR [1] 1/12</p> <p>judge [5] 1/10 11/20 13/4 28/23 28/25</p> <p>judges [2] 16/20 29/4</p> <p>judgment [4] 54/25 55/5 55/24 56/3</p> <p>judicial [5] 14/13 17/4 42/1 51/13 54/20</p> <p>judiciary [5] 5/15 17/7 17/15 28/10 51/15</p> <p>jump [5] 25/16 43/15 44/16 45/9 48/2</p> <p>jury [2] 11/5 11/6</p> <p>justice [11] 2/23 11/14 11/23 13/4 21/21 21/25 36/20 36/22 36/24 40/24 41/7</p>	<p>justifies [1] 49/20</p> <p>justify [2] 37/19 47/4</p> <p>K</p> <p>Kalpna [1] 2/11</p> <p>keep [1] 26/22</p> <p>keeping [1] 27/4</p> <p>key [2] 3/10 19/6</p> <p>kind [12] 9/2 10/4 23/11 25/15 25/24 27/6 37/1 37/2 37/17 37/19 38/15 45/2</p> <p>kinds [2] 12/14 12/15</p> <p>Kisor [1] 32/14</p> <p>knee [2] 41/19 41/20</p> <p>knowledge [4] 3/24 9/12 23/23 25/13</p> <p>knows [2] 13/8 46/20</p> <p>KREISBERG [2] 1/13 2/17</p> <p>L</p> <p>Labor [1] 21/13</p> <p>lacks [1] 47/1</p> <p>landlord [14] 19/4 19/19 24/13 25/21 25/21 31/1 33/4 33/8 33/13 33/14 34/23 36/16 36/20 37/4</p> <p>language [5] 6/21 17/5 28/21 41/8 44/24</p> <p>large [1] 21/8</p> <p>larger [4] 20/19 20/20 24/6 28/6</p> <p>largest [1] 24/10</p> <p>last [4] 8/12 15/21 25/9 25/15</p>
--	---	--	---	--

L	legal [9] 6/10 42/22 44/22	logic [1] 38/10	may [16] 3/8 11/2 11/9	56/6
later [3] 32/14 48/18 54/22	45/20 46/9 49/17 51/11 52/17 52/20	logical [1] 34/20	12/18 15/8 15/21 28/24 29/22 32/7 32/23 36/22 36/24 51/8 51/8 52/23 55/7	mighty [1] 15/6
latest [1] 3/13	legislation [1] 17/10	long [2] 7/9 34/14	longer [1] 13/15	military [7] 6/25 7/10 18/15 20/2 28/2 34/6 46/17
law [32] 3/14 8/20 9/25 10/8 11/22 13/9 13/10 15/11 16/11 17/15 20/10 20/24 21/9 24/1 26/16 34/15 35/2 35/11 36/8 39/18 39/22 40/7 40/9 41/10 41/18 47/22 51/8 51/9 51/23 51/23 52/11 52/21	legislative [1] 33/2	looking [10] 8/1 11/13 14/10 14/14 14/15 20/4 37/14 38/5 39/20 56/14	maybe [8] 6/19 14/2 14/3 14/8 27/9 27/23 31/1 32/18	millions [2] 10/19 41/20
lawful [3] 37/13 37/15 38/12	length [1] 48/10	LOREN [1] 1/10	mean [7] 9/2 13/24 13/25 19/22 33/19 36/13 47/6	mind [2] 6/20 13/4
laws [2] 5/5 34/17	Leon [1] 28/23	Los [1] 1/17	meaning [2] 28/5 48/16	mindful [1] 55/25
LAWSON [6] 1/19 2/22 17/20 37/10 41/1 56/10	less [1] 25/8	losing [1] 34/1	means [3] 8/10 28/2 46/5	minimal [2] 27/23 48/24
lawyer [1] 30/16	letter [2] 11/7 19/17	loss [2] 48/23 50/23	meant [1] 42/23	minimizing [1] 26/7
lawyers [14] 4/19 5/8 15/8 16/18 17/12 35/13 35/14 40/10 40/10 51/17 52/8 52/10 52/11 52/23	level [5] 17/24 18/1 26/6 29/4 30/19	losses [1] 49/24	meet [4] 10/16 10/22 10/24 49/25	minutes [1] 30/16
lawyers' [1] 4/25	liberty [2] 47/12 47/14	lost [1] 34/12	meeting [1] 36/22	mistake [1] 41/17
LBJ [6] 20/6 20/17 22/4 22/17 30/8 37/7	lies [3] 16/1 16/9 51/12	lot [5] 23/2 29/21 30/25 41/18 44/5	meetings [4] 12/5 12/13 26/17 50/11	moment [1] 33/18
leaders [1] 2/9	liked [1] 27/2	lots [1] 40/7	meets [1] 45/16	more [8] 15/10 27/23 27/25 28/15 30/21 30/22 33/2 56/2
leading [1] 21/11	likelihood [7] 3/18 4/6 5/20 7/21 43/1 43/20 44/17	love [1] 20/14	memoranda [1] 11/13	morning [1] 2/7
least [3] 28/17 29/3 56/4	likely [8] 4/11 43/22 43/25 44/17 45/21 47/8 48/5 49/8	Lucky [1] 18/24	mentioned [1] 3/22	most [3] 3/11 8/20 8/21
leave [3] 24/11 40/22 56/4	likes [1] 35/10	Lynch [1] 44/16	merge [3] 29/25 43/12 51/5	motion [5] 1/9 3/6 29/2 44/2 53/2
	line [8] 3/3 23/16 24/1 30/10 31/9 31/11 31/16 32/6	M	merits [9] 3/19 4/7 5/20 5/23 7/22 9/21 43/1 43/21 43/22	motions [2] 26/25 55/9
	lines [2] 27/9 30/17	mail [1] 11/7	message [2] 14/18 14/18	motivation [3] 34/11 34/14 39/24
	link [1] 44/12	maintains [1] 51/13	met [1] 43/16	motive [1] 39/21
	listening [1] 3/4	making [2] 17/13 54/3	midstream [1] 23/11	moves [1] 42/15
	litigation [4] 46/23 50/7 50/8 50/9	mandated [1] 11/20	might [12] 7/2 15/4 19/25 23/7 25/8 25/25 26/19 28/15 32/21 35/14 55/11	Mr. [5] 17/20 36/2 37/10 41/1 56/8
	little [3] 13/24 13/25 30/22	mandated [1] 11/20		Mr. Lawson [3] 17/20 37/10 41/1
	LLP [6] 1/3 1/14 1/16 2/3	material [1] 30/15		
	local [1] 11/19	matter [6] 5/24 9/25 14/17 27/17 56/15 57/5		

M	35/6 35/19 36/9 38/2 39/23 43/23 48/9 48/15 54/24 56/5	37/7 37/18 44/6 NRA [4] 38/3 38/4 38/16 44/5	41/23 42/25 44/10 45/16 49/25 one-third [1] 49/25	11/17 12/18 14/17 20/21 25/15 26/21 27/5 27/24 27/25 28/5 29/16 29/21 34/25 38/2 41/4 50/12 51/25 54/22 55/7 55/15 56/14
Mr. Verrilli [2] 36/2 56/8 much [9] 2/24 17/17 25/8 27/19 35/10 35/25 42/6 46/19 56/12	negotiate [1] 16/18 negotiating [1] 3/25	numerous [2] 7/8 10/7 NW [3] 1/14 1/20 1/24	ones [4] 4/18 6/21 8/25 18/23 only [5] 12/21 24/22 39/19 41/22 46/6	29/16 29/21 34/25 38/2 41/4 50/12 51/25 54/22 55/7 55/15 56/14
Munger [4] 1/14 1/16 2/8 2/15	net [1] 10/19 neutral [3] 39/18 39/19 39/20	O O'Brien [2] 34/18 39/17	opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	outlet [1] 40/7 outlined [1] 44/1 outmanned [1] 2/20 outreach [2] 4/1 4/4 over [1] 5/9 overwhelmingly [2] 6/5 51/6 own [4] 26/17 27/19 47/18 47/21
murder [1] 30/16	new [3] 41/3 41/4 50/18 news [1] 40/7 Newsmax [1] 14/6 next [8] 6/23 7/15 38/23 41/9 48/11 49/3 51/25 55/12	obscure [1] 22/6 obtain [1] 42/25 obvious [4] 8/13 16/1 16/2 16/8 obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	outlet [1] 40/7 outlined [1] 44/1 outmanned [1] 2/20 outreach [2] 4/1 4/4 over [1] 5/9 overwhelmingly [2] 6/5 51/6 own [4] 26/17 27/19 47/18 47/21
must [7] 6/21 42/25 43/9 44/10 46/6 48/13 48/16	nodding [1] 19/7 non [1] 29/23 nondiscriminati on [1] 21/21 None [1] 4/3 nonpartisan [1] 26/8 nonprofit [1] 35/10 nor [1] 39/5 norms [1] 17/14 Northeastern [1] 32/11 not one [1] 6/1 Notably [1] 45/3 note [5] 2/5 3/3 22/2 24/19 54/15 noted [1] 51/2 notice [6] 2/25 4/4 5/2 9/4 11/25 47/24 noticed [1] 22/13 notification [2] 11/17 11/21 noting [1] 22/17 notion [3]	obvious [4] 8/13 16/1 16/2 16/8 obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	page [1] 18/9 pages [1] 10/7 panel [1] 26/18 papers [2] 9/23 12/8 parade [4] 25/4 25/7 25/8 35/7 paragraph [4] 7/15 39/12 40/5 40/12 paralegal [1] 32/22 parallel [1] 55/3 parameters [1] 30/22 part [2] 20/23 35/7 participation [1] 45/20 particular [2] 50/19 51/19 particularly [4] 7/6 11/15 23/3 50/7
myself [2] 36/14 39/1	next [8] 6/23 7/15 38/23 41/9 48/11 49/3 51/25 55/12	obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	page [1] 18/9 pages [1] 10/7 panel [1] 26/18 papers [2] 9/23 12/8 parade [4] 25/4 25/7 25/8 35/7 paragraph [4] 7/15 39/12 40/5 40/12 paralegal [1] 32/22 parallel [1] 55/3 parameters [1] 30/22 part [2] 20/23 35/7 participation [1] 45/20 particular [2] 50/19 51/19 particularly [4] 7/6 11/15 23/3 50/7
mystified [3] 7/4 7/6 7/11	noted [1] 51/2 notice [6] 2/25 4/4 5/2 9/4 11/25 47/24 noticed [1] 22/13 notification [2] 11/17 11/21 noting [1] 22/17 notion [3]	obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	page [1] 18/9 pages [1] 10/7 panel [1] 26/18 papers [2] 9/23 12/8 parade [4] 25/4 25/7 25/8 35/7 paragraph [4] 7/15 39/12 40/5 40/12 paralegal [1] 32/22 parallel [1] 55/3 parameters [1] 30/22 part [2] 20/23 35/7 participation [1] 45/20 particular [2] 50/19 51/19 particularly [4] 7/6 11/15 23/3 50/7
N	nodding [1] 19/7 non [1] 29/23 nondiscriminati on [1] 21/21 None [1] 4/3 nonpartisan [1] 26/8 nonprofit [1] 35/10 nor [1] 39/5 norms [1] 17/14 Northeastern [1] 32/11 not one [1] 6/1 Notably [1] 45/3 note [5] 2/5 3/3 22/2 24/19 54/15 noted [1] 51/2 notice [6] 2/25 4/4 5/2 9/4 11/25 47/24 noticed [1] 22/13 notification [2] 11/17 11/21 noting [1] 22/17 notion [3]	obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	page [1] 18/9 pages [1] 10/7 panel [1] 26/18 papers [2] 9/23 12/8 parade [4] 25/4 25/7 25/8 35/7 paragraph [4] 7/15 39/12 40/5 40/12 paralegal [1] 32/22 parallel [1] 55/3 parameters [1] 30/22 part [2] 20/23 35/7 participation [1] 45/20 particular [2] 50/19 51/19 particularly [4] 7/6 11/15 23/3 50/7
nail [1] 55/13 naivety [1] 13/7 name [1] 47/16 namely [1] 44/25 narrow [1] 47/1 narrowly [6] 8/10 31/24 32/19 32/24 33/9 46/7 nation [1] 3/12 nation's [1] 39/5 national [3] 21/2 46/15 46/24 nature [4] 6/5 34/21 44/24 48/8 necessarily [6] 23/13 24/7 24/8 27/15 31/9 31/17 necessary [3] 16/5 45/13 54/7 need [21] 3/18 4/21 7/20 10/18 10/21 10/24 25/6 27/12 30/8 33/19 35/6	nodding [1] 19/7 non [1] 29/23 nondiscriminati on [1] 21/21 None [1] 4/3 nonpartisan [1] 26/8 nonprofit [1] 35/10 nor [1] 39/5 norms [1] 17/14 Northeastern [1] 32/11 not one [1] 6/1 Notably [1] 45/3 note [5] 2/5 3/3 22/2 24/19 54/15 noted [1] 51/2 notice [6] 2/25 4/4 5/2 9/4 11/25 47/24 noticed [1] 22/13 notification [2] 11/17 11/21 noting [1] 22/17 notion [3]	obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5 16/4 18/25 21/11 25/15 26/7 31/13 32/20 39/7 39/12 40/22	only [5] 12/21 24/22 39/19 41/22 46/6 opened [1] 3/2 operate [1] 40/16 operative [1] 28/13 opinion [1] 24/23 opportunity [5] 5/2 9/4 22/11 25/1 29/17 opposing [2] 43/11 51/3 oppressive [1] 51/10 oral [1] 42/13 order [109] order's [3] 46/14 46/21 49/13 ordered [9] 5/11 53/2 53/4 53/9 53/13 53/18 53/22 54/6 54/10 orders [10] 4/9 8/3 14/23 15/1 27/1 29/16 31/17 36/7 45/2 51/23 ordinary [3] 13/7 44/14 47/24 origins [2] 22/4 22/5 others [2] 15/18 45/3 otherwise [5] 26/16 30/7 30/9 35/2 39/10 ought [1] 55/3 ourselves [1] 9/16 out [28] 5/6 8/9 8/11 9/3 9/9 9/15 10/3	page [1] 18/9 pages [1] 10/7 panel [1] 26/18 papers [2] 9/23 12/8 parade [4] 25/4 25/7 25/8 35/7 paragraph [4] 7/15 39/12 40/5 40/12 paralegal [1] 32/22 parallel [1] 55/3 parameters [1] 30/22 part [2] 20/23 35/7 participation [1] 45/20 particular [2] 50/19 51/19 particularly [4] 7/6 11/15 23/3 50/7
myself [2] 36/14 39/1	next [8] 6/23 7/15 38/23 41/9 48/11 49/3 51/25 55/12	obviously [6] 18/23 21/1 22/24 23/15 23/24 26/16 odious [1] 4/14 off [3] 4/15 26/5 42/10 offering [1] 41/20 office [5] 1/6 2/3 11/7 19/4 19/12 officers [1] 53/14 Offices [2] 47/7 50/3 official [5] 1/23 26/15 35/4 40/19 57/3 officials [6] 10/17 10/22 10/24 12/6 12/14 49/25 old [3] 4/18 21/11 30/8 Olson [4] 1/14 1/16 2/8 2/15 OMB [1] 11/20 one [21] 3/11 6/1 6/14 11/14 14/18 15/5		

P	47/23 53/25	policing [1] 28/10	17/2 21/6 39/13 40/6 40/10 40/12 40/14 40/18 41/4 41/5 41/10 42/17	51/12
parties [8] 42/12 42/20 43/4 44/4 51/4 54/23 55/22 56/1	personal [1] 51/19	policy [9] 21/10 21/18 22/19 22/19 23/3 32/10 32/16 37/8 37/19	President's [1] 41/21	procure [1] 18/18
partisan [2] 26/9 26/10	personally [1] 11/21	political [2] 7/1 46/18	presidential [1] 17/1	procurement [7] 21/7 21/10 21/17 21/20 22/19 32/10 32/15
partner [1] 2/16	personnel [1] 45/15	position [4] 27/2 27/11 27/16 41/6	press [2] 27/22 41/19	profession [4] 5/1 15/11 17/15 47/15
party [5] 20/16 42/25 43/11 46/19 51/3	perspective [1] 33/1	positions [3] 8/18 35/14 51/8	presumed [1] 30/16	progress [1] 41/18
party's [1] 43/10	petition [2] 4/15 25/5	possibility [1] 48/17	prevail [1] 47/9	progresses [1] 18/22
patent [2] 50/4 50/8	petitioning [1] 44/19	possible [1] 50/23	prevent [3] 28/19 42/24 54/8	prohibit [1] 24/24
path [1] 34/12	phrases [1] 28/6	Post [3] 11/7 40/13 47/7	prevents [1] 20/15	prohibited [2] 44/8 47/24
pattern [2] 38/6 38/6	pick [2] 7/24 7/25	potential [2] 7/20 15/1	principle [1] 52/15	prohibitions [1] 35/4
Paul [2] 14/17 45/2	place [4] 11/19 34/25 35/3 36/12	potentially [2] 29/24 54/20	prior [4] 3/23 13/18 21/15 25/14	prominent [2] 15/2 41/18
pause [1] 5/22	plain [3] 13/8 44/24 52/1	power [19] 3/12 16/10 17/2 17/11 18/25 19/9 19/16 21/7 21/10 21/17 22/19 26/13 32/10 32/16 42/1 44/6 51/7 51/10 51/21	private [3] 52/10 52/11 52/23	promote [1] 46/25
pay [1] 26/16	plaintiff [6] 1/4 1/12 2/6 19/6 42/15 47/11	practically [1] 29/13	privilege [1] 30/19	prompt [1] 55/8
pending [1] 27/14	plaintiff's [3] 24/19 29/1 53/2	practice [2] 5/1 21/7	problems [1] 25/22	promulgated [1] 25/1
Pennsylvania [2] 1/20 21/12	plaintiffs [2] 3/7 55/1	practically [1] 29/13	prize [3] 37/12 37/13 38/12	proof [1] 14/25
people [4] 13/20 26/16 32/21 40/8	plan [1] 55/15	practically [1] 29/13	probably [1] 30/21	proper [1] 35/1
perceived [1] 44/3	plausible [1] 5/6	practically [1] 29/13	problem [3] 24/17 36/10 36/17	property [3] 11/1 47/12 47/14
perform [1] 50/21	please [4] 2/5 2/13 3/8 19/17	powerful [1] 15/2	problems [1] 25/22	propose [1] 27/14
Perhaps [1] 7/5	point [26] 10/11 10/12 14/2 14/9 15/16 15/16 15/18 17/8 19/6 20/6 20/18 21/19 22/5 22/11 24/6 24/10 25/15 25/19 26/6 28/6 34/10 35/17 36/5 37/6 38/10 38/23	powers [1] 5/9	procedure [1] 54/16	proposed [1] 29/3
period [1] 37/5	pointed [2] 7/13 50/12	practically [1] 29/13	problem [3] 24/17 36/10 36/17	prosecution [1] 19/17
periods [1] 48/24	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	problems [1] 25/22	prosecutions [2] 34/17 34/18
Perkins [3] 4/10 12/5 45/3	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	Procedure [1] 54/16	prospective [1] 50/18
permissible [3] 20/2 22/21 30/11	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	proceed [1] 54/24	protected [8] 8/7 8/8 29/10 44/11 44/21 47/12 47/14 47/17
permission [1] 3/19	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	proceedings [2] 56/17 57/5	protection [3] 5/5 48/7 49/8
Permit [1] 2/9	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	process [15] 3/22 4/24 9/1 32/25 37/17 47/10 47/10 47/13 47/19 47/21 47/23 48/7 48/9 49/4	proud [1] 7/9
pernicious [1] 46/10	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	present [2] 22/25 48/15	proves [2] 40/18 46/7
perpetrating [1] 4/14	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13	president [17] 1/6 2/4 5/10 10/3 14/21	provide [1]
person [4] 36/24 44/14	points [4] 23/19 29/21 37/24 49/13	practically [1] 29/13		

<p>P</p> <p>provide... [1] 47/23</p> <p>provisions [4] 3/10 21/21 23/25 33/4</p> <p>PTAB [1] 11/2</p> <p>public [12] 3/3 14/17 15/22 16/1 16/8 16/15 21/8 29/23 43/4 51/2 51/5 52/17</p> <p>publicly [1] 40/3</p> <p>punctuation [1] 27/24</p> <p>punish [3] 19/10 44/7 52/16</p> <p>punishment [8] 19/11 19/18 22/22 24/8 32/2 32/4 33/7 47/5</p> <p>punishments [3] 5/11 8/18 9/3</p> <p>purchasing [1] 22/23</p> <p>purely [2] 6/1 52/22</p> <p>purported [1] 46/21</p> <p>purpose [1] 29/6</p> <p>purposes [2] 43/13 50/22</p> <p>pursuant [3] 21/25 53/25 54/3</p> <p>pursue [6] 10/18 10/21 10/23 10/25 37/19 47/15</p> <p>Pursuing [1] 43/14</p> <p>pursuits [2] 11/24 12/3</p> <p>put [4] 13/5 18/25 32/25 53/1</p> <p>putting [1] 12/17</p> <hr/> <p>Q</p> <p>qualifies [1] 15/20</p>	<p>quality [2] 6/11 49/17</p> <p>queuing [1] 25/8</p> <p>qui [2] 10/18 50/8</p> <p>quickly [1] 55/21</p> <p>quite [9] 9/12 11/13 13/6 17/6 23/4 26/25 30/2 30/19 46/19</p> <p>quotas [1] 18/12</p> <p>quotation [1] 13/4</p> <p>quote [21] 40/6 42/18 42/19 42/25 43/5 44/6 44/8 45/7 45/8 45/20 46/16 46/18 47/23 48/1 49/14 49/14 49/15 49/16 49/18 49/23 49/24</p> <p>quoted [1] 40/4</p> <p>quoting [1] 46/1</p> <hr/> <p>R</p> <p>race [2] 7/13 11/23</p> <p>racial [3] 20/5 21/4 37/11</p> <p>radical [3] 7/1 11/23 46/18</p> <p>raised [1] 14/9</p> <p>raises [1] 47/19</p> <p>range [1] 45/13</p> <p>rank [1] 29/19</p> <p>rare [1] 39/19</p> <p>rational [1] 5/6</p> <p>reach [1] 9/9</p> <p>reaching [3] 20/21 29/16 47/4</p> <p>reactions [1] 14/12</p>	<p>read [5] 5/18 6/13 14/19 23/13 34/2</p> <p>readily [1] 52/2</p> <p>reading [1] 11/4</p> <p>ready [1] 10/14</p> <p>real [1] 28/13</p> <p>really [9] 11/8 13/5 14/20 16/6 17/25 22/17 28/4 29/10 30/19</p> <p>reason [4] 12/9 15/15 41/17 50/13</p> <p>reasonable [1] 15/19</p> <p>reasons [5] 4/8 4/11 42/22 44/1 52/25</p> <p>rebuttal [1] 17/19</p> <p>recall [1] 34/12</p> <p>received [2] 45/4 47/12</p> <p>recent [1] 26/1</p> <p>recess [1] 42/9</p> <p>recipient [1] 53/23</p> <p>recognition [1] 46/2</p> <p>recognizing [1] 7/9</p> <p>record [8] 2/2 2/6 14/17 35/19 42/10 42/11 43/13 57/5</p> <p>recording [1] 3/4</p> <p>red [2] 36/6 36/7</p> <p>refer [1] 19/16</p> <p>reference [6] 6/12 20/5 22/8 23/18 37/11 46/15</p> <p>referenced [3] 19/6 22/14 23/22</p>	<p>references [2] 21/4 45/22</p> <p>referencing [4] 20/18 22/11 24/20 46/20</p> <p>referred [1] 40/4</p> <p>referring [1] 37/12</p> <p>refers [1] 45/19</p> <p>reflected [1] 9/2</p> <p>refusals [1] 50/13</p> <p>regard [5] 11/12 11/15 16/4 48/22 49/3</p> <p>regarding [3] 20/7 26/3 31/6</p> <p>regardless [1] 51/14</p> <p>registered [1] 36/21</p> <p>Regrettably [2] 18/6 18/16</p> <p>regulations [3] 20/11 20/14 38/17</p> <p>relate [1] 21/2</p> <p>related [1] 6/18</p> <p>relates [4] 3/22 35/17 35/23 53/11</p> <p>relating [1] 19/25</p> <p>relationship [2] 24/3 53/24</p> <p>relationships [6] 4/19 4/25 23/8 29/22 50/17 50/18</p> <p>relevant [1] 17/6</p> <p>reliance [1] 46/21</p> <p>relied [2] 8/4 8/16</p> <p>relief [5] 48/15 48/18 49/20 49/23 50/25</p> <p>relies [2] 16/18 17/7</p>	<p>rely [1] 23/22</p> <p>relying [2] 49/12 53/7</p> <p>remediation [1] 48/16</p> <p>remedy [1] 42/23</p> <p>remove [1] 19/17</p> <p>render [1] 56/6</p> <p>rendered [2] 8/2 27/1</p> <p>repeat [3] 20/14 32/18 35/23</p> <p>rephrasing [1] 33/7</p> <p>report [2] 54/11 55/23</p> <p>Reporter [3] 1/23 1/23 57/3</p> <p>represent [4] 10/16 13/2 35/13 51/10</p> <p>representation [8] 6/12 30/12 41/12 46/10 46/22 51/11 51/14 52/16</p> <p>representations [7] 6/18 10/21 10/23 12/12 13/10 13/18 45/14</p> <p>representatives [1] 35/4</p> <p>represented [3] 5/8 12/20 51/18</p> <p>representing [3] 3/15 16/12 35/4</p> <p>represents [2] 12/21 13/16</p> <p>republic [1] 52/13</p> <p>repudiating [1] 42/4</p> <p>reputation [6] 4/24 6/15 10/2 45/23 47/16 49/12</p> <p>reputational [4] 10/4 12/18 49/10 49/19</p>
---	---	--	--	--

<p>R</p> <p>request [2] 53/24 54/1</p> <p>requested [3] 33/25 35/22 42/3</p> <p>requesting [1] 43/10</p> <p>requests [2] 50/14 54/3</p> <p>require [2] 17/15 23/25</p> <p>required [4] 11/17 13/6 43/11 47/2</p> <p>requirements [1] 20/8</p> <p>requires [2] 12/13 51/16</p> <p>requiring [1] 54/19</p> <p>rescind [2] 53/10 53/20</p> <p>rescinded [1] 54/2</p> <p>reservists [1] 7/8</p> <p>resolution [2] 16/6 55/6</p> <p>resolve [1] 16/22</p> <p>respect [8] 4/6 5/22 6/20 8/5 14/1 36/15 37/22 55/5</p> <p>respectfully [2] 41/25 42/2</p> <p>respects [1] 10/7</p> <p>response [1] 15/3</p> <p>responsible [1] 39/6</p> <p>restrain [1] 39/1</p> <p>restraining [12] 3/2 7/19 11/18 16/3 24/16 42/16 42/21 42/23 43/18 45/5 53/1 53/3</p> <p>restricts [1] 45/11</p> <p>result [3] 3/5 34/6 49/10</p>	<p>resulting [1] 50/23</p> <p>retaliate [2] 16/11 27/5</p> <p>retaliates [1] 44/2</p> <p>retaliating [1] 4/12</p> <p>retaliation [10] 3/14 8/4 8/6 24/2 31/7 37/2 38/7 38/15 40/1 44/10</p> <p>retaliatory [3] 4/21 37/20 44/23</p> <p>return [3] 34/13 34/23 42/9</p> <p>returning [1] 52/7</p> <p>review [4] 23/2 27/14 50/4 54/21</p> <p>reviewed [1] 4/9</p> <p>RICHARD [2] 1/19 2/21</p> <p>right [33] 2/24 4/5 4/15 4/16 4/22 8/17 14/4 14/21 14/22 17/17 18/20 25/5 25/5 27/20 28/8 32/12 33/14 34/1 35/25 39/24 41/16 42/6 44/12 47/10 47/15 48/6 48/7 49/5 54/20 55/18 55/22 56/7 56/12</p> <p>rights [8] 4/19 5/7 22/10 41/6 41/6 44/4 48/22 49/4</p> <p>ripe [4] 11/9 24/23 24/23 35/20</p> <p>ripeness [1] 24/18</p> <p>rise [2] 45/8 49/6</p> <p>risk [1] 15/14</p>	<p>Risks [2] 42/18 53/7</p> <p>Roberts [1] 13/5</p> <p>rock [3] 8/5 8/24 9/7</p> <p>roughshod [1] 5/9</p> <p>roundly [1] 22/7</p> <p>routine [1] 45/12</p> <p>rule [7] 15/11 17/15 35/11 36/21 36/23 54/16 54/16</p> <p>ruling [4] 27/17 42/9 42/13 56/6</p> <p>rulings [1] 5/18</p> <p>run [1] 18/22</p> <p>running [1] 21/13</p> <p>runs [1] 5/9</p> <hr/> <p>S</p> <p>sadly [1] 4/17</p> <p>same [7] 24/12 30/19 35/12 35/12 38/19 40/10 41/13</p> <p>sanction [9] 19/9 19/11 19/18 19/22 23/7 24/7 32/2 32/4 33/8</p> <p>sanctions [3] 3/5 22/22 41/13</p> <p>satisfy [2] 33/15 43/16</p> <p>Sawyer [1] 21/23</p> <p>saying [3] 8/12 20/22 39/22</p> <p>schedule [6] 16/5 55/5 55/8 55/11 55/24 56/15</p> <p>scheduling [1] 54/14</p> <p>school [1] 24/3</p> <p>scrutiny [7] 31/19 33/9 33/16 46/5</p>	<p>46/11 46/12 52/24</p> <p>second [3] 28/1 44/23 49/8</p> <p>secretary [3] 6/15 21/13 41/20</p> <p>secrets [1] 39/5</p> <p>section [37] 12/21 18/2 19/3 19/4 19/19 19/19 20/4 21/3 21/15 24/11 24/12 27/18 27/21 27/22 28/7 28/12 28/14 28/18 28/23 29/6 29/11 29/12 29/12 34/3 35/18 35/23 37/22 38/20 38/24 39/2 39/7 39/8 39/12 44/25 53/8 54/1 54/3</p> <p>sections [13] 3/16 17/25 18/1 28/13 38/21 42/16 43/18 53/5 53/12 53/15 53/16 53/21 54/8</p> <p>security [3] 21/2 46/15 46/24</p> <p>seeking [3] 3/9 3/16 4/16</p> <p>seeks [1] 51/9</p> <p>seem [1] 8/23</p> <p>seems [12] 8/5 8/13 8/16 9/7 12/16 15/25 16/1 23/4 30/2 38/11 39/1 39/15</p> <p>segregationist [1] 4/18</p> <p>Seizure [3] 5/10 5/13 17/1</p> <p>self [1] 13/3</p> <p>self-evident [1] 13/3</p> <p>send [1] 11/21</p>	<p>sends [1] 19/17</p> <p>senior [1] 2/16</p> <p>sense [4] 7/2 12/23 23/2 55/11</p> <p>sentence [2] 6/23 28/1</p> <p>separate [2] 25/19 38/2</p> <p>separation [1] 5/9</p> <p>serious [4] 5/19 8/21 9/22 42/24</p> <p>seriously [1] 48/1</p> <p>serve [1] 46/8</p> <p>service [2] 7/10 41/3</p> <p>services [3] 22/9 44/22 50/21</p> <p>set [2] 21/7 42/21</p> <p>setting [3] 33/2 33/5 55/23</p> <p>settle [1] 14/24</p> <p>settled [1] 14/15</p> <p>several [2] 44/1 48/20</p> <p>severe [1] 49/9</p> <p>shall [1] 54/10</p> <p>Sheet [2] 21/23 32/14</p> <p>shocking [1] 51/21</p> <p>short [1] 2/25</p> <p>shortly [1] 42/14</p> <p>show [5] 3/18 42/25 44/10 44/17 48/18</p> <p>showing [1] 48/5</p> <p>shown [1] 47/18</p> <p>shows [2] 38/6 46/14</p> <p>side [3] 29/21 41/21 52/19</p> <p>sides [1]</p>
--	---	--	--	---

S	14/20 31/12	53/14	5/13 16/25	15/7
sides... [1]	46/21 52/10	stage [1] 7/18	21/22	suffer [5]
55/16	sort [6] 13/19	standalone [1]	steer [1] 37/8	9/23 41/13
signed [1]	17/23 18/11	38/25	step [1] 10/9	43/2 49/1 49/9
40/11	20/19 24/25	standard [6]	steps [2] 54/7	suffering [2]
significant [1]	27/8	8/19 10/8	54/12	9/22 49/22
14/2	sought [2] 3/1	31/20 42/22	stewards [1]	sufficient [1]
similar [3]	51/7	45/17 48/12	39/6	44/14
4/17 47/1	sources [1]	standardless	still [1]	sufficiently
51/22	32/17	[1] 47/25	13/16	[2] 45/7
simple [1]	south [2] 1/17	standing [7]	stop [1] 41/23	50/22
52/1	4/18	15/8 15/9	stopping [1]	suit [2] 3/1
singling [1]	sovereign [7]	15/10 15/11	52/7	30/1
5/6	19/3 19/5 19/9	15/12 15/12	Street [1]	summary [4]
sitting [1]	25/20 25/22	52/3	1/14	54/25 55/4
2/10	34/16 37/4	stands [1]	strength [1]	55/24 56/3
situation [1]	space [2] 27/8	44/6	43/9	Sunday [1]
50/15	35/1	stark [1] 30/2	strict [6]	34/17
Sixth [1] 5/25	speak [11]	start [2] 18/2	31/19 33/9	supervisor [1]
Skadden [1]	7/14 18/10	32/2	33/15 46/5	19/5
14/18	25/12 26/18	Starting [1]	46/11 46/12	support [5]
slide [1]	26/21 27/20	43/20	strictly [1]	20/24 23/6
41/23	28/8 28/8 29/2	state [6] 6/16	3/5	23/9 34/20
sliding [1]	29/18 35/5	26/13 34/15	strikes [2]	37/7
41/22	speaking [1]	38/1 44/7	34/2 35/11	supported [3]
smaller [1]	44/15	45/23	string [1]	32/11 32/13
15/5	speaks [1]	statement [1]	3/13	50/9
smears [2] 5/4	28/4	38/22	strong [2]	supporting [2]
10/2	spearheading	statements [9]	8/16 9/1	20/10 21/9
so to [1]	[1] 49/16	9/11 14/7 15/1	strongest [1]	suppose [1]
20/25	spearheads [1]	18/4 27/21	7/23	15/4
social [8]	6/10	27/22 40/4	students [2]	supposed [1]
21/10 21/17	specific [4]	49/11 53/8	18/11 46/22	46/15
22/18 22/19	36/4 36/8	states [13]	studied [1]	suppress [1]
32/10 32/15	39/10 55/14	1/1 1/10 4/18	26/4	44/7
32/16 37/19	specifically	6/25 10/4 36/5	stymie [1]	Supreme [3]
societal [1]	[5] 3/16 21/4	39/4 39/12	50/5	8/12 22/16
35/12	23/19 39/12	39/14 40/18	subject [3]	34/19
society [1]	51/17	46/17 48/2	46/4 49/24	sure [9] 2/13
46/4	speculate [1]	55/8	53/20	19/7 30/8
sold [1] 19/15	26/23	stature [1]	submission [1]	30/18 31/25
solely [1]	speculation [1]	40/15	55/9	33/21 34/7
52/11	29/19	status [3]	submit [4]	34/25 55/13
solid [3] 8/5	speech [11]	54/11 55/12	22/20 29/10	SUSMAN [53]
8/24 9/7	8/7 8/8 27/21	55/23	33/9 41/25	1/3 2/3 2/8
solve [2]	28/10 37/23	statute [2]	subsection [1]	2/10 2/25 4/7
28/15 36/10	38/25 39/15	16/10 39/18	39/8	4/13 5/5 6/9
somebody [2]	40/1 44/3 46/2	statutes [4]	substantial [1]	9/17 9/22
29/25 30/2	49/2	21/5 22/13	43/1	10/11 10/15
someone [4]	spend [1]	22/18 34/15	substantially	12/13 12/20
30/9 30/15	15/24	statutory [2]	[1] 43/3	12/24 12/25
34/5 40/13	spot [3] 21/13	5/12 32/16	succeed [2]	14/4 15/6
sometimes [1]	22/3 29/12	stay [1] 41/21	43/22 48/5	16/12 16/15
39/22	Srinivasan [5]	stayed [1]	success [7]	18/9 19/22
somewhat [1]	2/11 7/7 10/6	27/14	3/19 4/7 5/20	29/17 37/12
22/6	37/14 49/12	staying [1]	7/21 43/1	37/13 39/2
sorry [4]	staff [4] 26/3	12/25	43/21 44/17	39/13 41/14
	26/12 47/6	steel [4] 5/10	successful [1]	41/15 42/15

S	55/12	today [11] 7/5	4/15 24/6	13/15
SUSMAN... [22]	telling [2]	30/25 41/7	25/19 40/25	undertakes [1]
42/19 43/16	40/6 40/13	41/15 42/13	46/25 52/22	12/13
43/21 44/1	temporary [12]	44/5 46/19	Tube [1] 21/23	unexplained [1]
44/10 44/17	3/1 7/19 11/18	52/25 54/22	turn [5] 3/20	46/14
45/1 45/21	16/3 24/16	56/8 56/13	5/21 6/6 48/11	unfair [1]
46/13 47/5	42/15 42/21	together [4]	54/14	36/7
47/8 48/19	42/23 43/17	5/18 15/23	Turning [1]	unfortunate [1]
48/20 49/1	45/4 53/1 53/2	32/25 38/5	51/1	7/7
49/13 49/24	term [1] 8/12	Tolles [4]	two [8] 2/9	unfortunately
50/10 52/2	terminate [2]	1/14 1/16 2/8	7/24 8/23 39/8	[1] 3/13
52/16 53/7	20/3 50/20	2/15	44/11 55/12	unfounded [1]
53/24 54/20	terminated [1]	tomorrow [4]	56/2 56/4	10/2
Susman's [7]	24/4	36/9 36/9	tying [1]	uniquely [1]
3/6 4/16 4/24	terminating [2]	54/11 55/23	38/21	46/3
5/7 9/17 10/2	23/5 24/2	took [5] 8/19	type [2] 19/20	UNITED [12]
45/15	termination [5]	15/2 38/3 41/7	24/10	1/1 1/10 6/25
suspect [2]	23/11 23/14	44/13	types [1] 50/7	10/4 36/5 39/4
22/12 55/15	23/23 23/24	total [1] 4/3	U	39/11 39/14
suspend [1]	47/3	totally [2]	U.S [9] 1/24	40/18 46/17
53/20	terms [1] 7/21	5/4 8/24	21/23 22/3	48/2 55/8
sustained [2]	test [2] 44/15	towards [2]	22/16 34/17	unlawful [5]
46/6 46/6	46/12	25/24 32/8	44/23 45/9	37/15 37/16
swiftly [1]	theme [1]	traces [1]	48/2 50/3	38/3 38/13
42/3	18/21	21/14	U.S.C [1] 21/6	49/5
system [4]	theoretical [1]	tracks [2]	Umbehr [4]	unless [2]
6/10 45/20	48/14	29/3 31/5	23/16 23/16	15/25 33/15
49/17 51/13	therefore [1]	tradition [1]	31/6 31/16	unpopular [1]
T	43/17	7/9	unanimous [1]	35/15
tailored [6]	thinking [2]	transcript [2]	8/11	unrecoverable
8/10 31/24	12/24 12/24	1/9 57/4	unapologetic	[1] 49/24
32/19 32/24	third [7]	treatment [1]	[1] 4/22	unrelated [1]
33/9 46/7	20/16 21/16	45/11	unconstitutiona	19/24
tailoring [1]	43/12 45/6	trial [1] 14/5	l [10] 3/11	unsubstantiated
47/2	49/21 49/25	tribute [1]	3/14 4/7 4/11	[1] 5/4
talk [1] 31/23	51/3	41/21	5/17 17/9	up [14] 7/5
talked [1]	third-party [1]	tricky [1]	17/10 37/3	15/8 15/9
25/16	20/16	28/11	39/21 42/4	15/10 15/11
talking [7]	thought [4]	TRO [14] 3/9	unconstitutiona	15/12 15/13
9/6 13/19 31/2	27/23 27/25	3/16 12/1 12/3	lly [2] 36/25	25/8 26/24
32/15 33/13	28/5 40/22	28/19 42/2	47/22	26/25 41/2
34/11 34/14	threat [2]	49/1 50/22	under [14]	41/20 42/14
talks [1]	14/23 19/18	51/6 52/18	11/3 11/4	52/3
21/14	threaten [1]	52/19 54/13	16/11 17/2	upon [2] 16/17
tam [2] 10/18	52/3	55/25 56/6	17/16 18/11	55/14
50/8	threatens [7]	TROs [1] 25/14	21/5 21/18	urge [5] 24/8
target [1]	45/10 45/14	trouble [1]	24/9 31/22	24/15 24/25
52/7	47/2 49/19	28/15	32/11 32/13	28/9 37/24
targeted [1]	50/23 51/10	true [3] 30/22	54/15 54/16	USAO [1] 1/19
51/25	52/16	49/6 57/4	under 40 [1]	use [15] 19/9
targets [1]	three [5] 4/8	Trump [1]	21/5	21/7 21/9
51/17	5/19 8/2 44/13	14/15	undermine [3]	21/14 21/17
tarring [1]	44/18	Trump's [1]	6/25 18/14	22/18 22/19
4/24	throated [1]	42/17	46/16	29/6 32/9
teacher [1]	17/13	try [4] 9/9	understands [2]	32/15 35/3
24/3	thus [1] 47/22	28/12 36/4	15/15 15/16	41/8 41/19
telephonic [1]	Titles [1]	36/14	undertaken [1]	44/6 51/7
	22/10	trying [6]		used [2] 4/18

<p>U</p> <p>used... [1] 41/8</p> <p>useful [1] 14/10</p>	<p>52/12</p> <p>VII [1] 22/10</p> <p>vindictive [1] 37/19</p> <p>Vineet [1] 2/11</p>	<p>weeks [1] 56/2</p> <p>weighs [1] 52/18</p> <p>Weiss [2] 14/17 45/2</p> <p>welcome [1] 2/18</p> <p>weren't [2] 5/15 38/21</p> <p>what's [3] 10/10 13/1 18/17</p> <p>whatnot [1] 29/7</p> <p>whatsoever [4] 4/3 4/4 5/3 16/2</p> <p>whereas [1] 30/17</p> <p>white [5] 4/22 39/24 40/13 40/19 41/19</p> <p>who's [1] 32/22</p> <p>whole [3] 36/10 38/5 52/17</p> <p>wide [1] 45/13</p> <p>wield [1] 17/11</p> <p>wielding [1] 10/13</p> <p>Williams [1] 48/2</p> <p>Wilmer [2] 28/17 28/22</p> <p>WilmerHale [2] 4/10 45/3</p> <p>Wilson [1] 45/9</p> <p>Wisconsin [1] 6/17</p> <p>wish [2] 52/1 56/7</p> <p>within [7] 22/21 26/13 31/15 33/3 33/4 35/7 41/5</p> <p>without [5] 5/1 5/6 5/11 29/17 49/23</p> <p>withstand [1] 52/24</p> <p>won [1] 19/24</p> <p>word [1] 33/12</p> <p>words [2] 41/19 55/4</p> <p>work [9] 3/15</p>	<p>6/4 16/15</p> <p>32/21 40/16</p> <p>40/18 49/14</p> <p>55/7 55/15</p> <p>workforce [1] 20/8</p> <p>working [4] 20/16 29/11 29/12 30/9</p> <p>world [2] 22/22 40/25</p> <p>worse [3] 5/13 15/4 16/25</p> <p>wrestling [1] 28/7</p> <p>writing [1] 53/1</p> <p>written [3] 20/13 42/14 54/22</p> <p>wrong [3] 31/12 33/10 34/12</p> <p>wrote [1] 51/15</p>	
<p>V</p> <p>VA [2] 32/23 47/7</p> <p>vague [7] 5/4 6/20 9/5 13/23 46/19 47/20 47/22</p> <p>vagueness [2] 6/8 47/21</p> <p>valuable [1] 11/13</p> <p>variety [1] 43/13</p> <p>various [3] 21/24 22/13 50/2</p> <p>vehemently [1] 40/17</p> <p>veiled [1] 45/22</p> <p>vein [1] 47/1</p> <p>Velazquez [4] 8/7 17/5 44/23 51/15</p> <p>vendetta [1] 51/19</p> <p>VERRILLI [4] 1/12 2/8 36/2 56/8</p> <p>versus [1] 29/17</p> <p>vet [1] 32/23</p> <p>veterans [1] 7/9</p> <p>VI [1] 22/10</p> <p>viable [1] 47/19</p> <p>vicious [1] 40/9</p> <p>view [5] 20/19 22/12 27/20 39/13 41/5</p> <p>viewpoint [17] 4/14 8/15 8/20 8/22 31/8 31/19 32/1 33/15 33/23 34/2 34/9 37/2 45/19 46/3 46/4 46/9 46/11</p> <p>views [2] 34/4</p>	<p>violate [4] 23/14 36/18 36/19 43/25</p> <p>violated [2] 38/16 47/11</p> <p>violates [3] 4/12 47/9 47/23</p> <p>violating [1] 34/17</p> <p>violation [6] 8/9 8/11 8/14 8/21 17/11 49/4</p> <p>violent [1] 40/9</p> <p>virtually [1] 8/3</p> <p>voting [6] 6/13 13/17 14/1 14/5 45/23 46/23</p> <p>Vullo [10] 8/12 19/7 24/10 32/5 37/24 38/1 38/11 38/16 44/5 46/1</p> <p>W</p> <p>walk [1] 19/21</p> <p>warrants [1] 50/24</p> <p>Washington [5] 1/5 1/15 1/20 1/25 40/13</p> <p>way [10] 9/5 10/19 16/25 18/25 26/17 33/10 41/2 41/12 41/23 55/17</p> <p>ways [1] 4/17</p> <p>weaponization [1] 11/22</p> <p>weaponize [2] 6/10 49/16</p> <p>web [1] 18/8</p> <p>website [1] 18/9</p> <p>weekly [2] 12/13 12/15</p>	<p>years [2] 20/9 41/2</p> <p>yesterday [2] 3/1 3/2</p> <p>Youngstown [2] 21/23 32/13</p> <p>Z</p> <p>zealous [1] 17/13</p> <p>zealously [1] 16/13</p> <p>zone [1] 18/11</p>		