

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Rita F. Lin, Judge

ANTHROPIC PBC,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	<b>NO. 3:26-cv-01996-RFL</b>
	)	
U.S. DEPARTMENT OF WAR, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California  
Tuesday, March 24, 2026

**TRANSCRIPT OF PROCEEDINGS (CORRECTED)**

**APPEARANCES:**

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**(APPEARANCES CONTINUED ON FOLLOWING PAGE)**

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1 **APPEARANCES:** (CONTINUED)

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13 **BY: ERIC J. HAMILTON, TRIAL ATTORNEY**

14 **Also Present:**

15 **Brian Israel, Anthropic**  
16 **Jeff Bleich, Anthropic**  
17 **Aparna Sridhar, Anthropic**

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1 Tuesday - March 24, 2026

1:33 p.m.

2 P R O C E E D I N G S

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4 **THE COURTROOM DEPUTY:** All rise. Court is now in  
5 session. The Honorable Rita F. Lin is presiding.

6 Please be seated.

7 These proceedings are being recorded by this Court. Any  
8 other recording of this proceeding, either by video, audio,  
9 screenshots, or any other copying of the hearing is strictly  
10 prohibited.

11 Calling Civil Action 26-1996, Anthropic PBC vs. U.S.  
12 Department of War, et al.

13 Counsel, please approach the podium and state your  
14 appearances for the record, beginning with counsel for  
15 plaintiffs.

16 **MR. MONGAN:** Good morning, Your Honor. Michael Mongan  
17 from Wilmer Hale on behalf of plaintiff Anthropic Public  
18 Benefit Corporation.

19 I'm joined in Court this morning by my colleagues from  
20 Wilmer Hale, Joshua Geltzer, Susan Hennessey, Lauren Moxley  
21 Beatty, and Sonika Data. I'm also joined by Brian Israel,  
22 chief legal officer at Anthropic; Jeff Bleich, general counsel;  
23 and Aparna Sridhar, deputy general counsel.

24 And I'll just add that I apologize for my physical  
25 appearance this morning. I had a very poorly timed mishap on a

1 trail run on Sunday.

2 **THE COURT:** Thank you for making it despite your  
3 mishap.

4 **MR. MONGAN:** Thank you.

5 **THE COURT:** I appreciate it.

6 **MR. HAMILTON:** Good afternoon, Your Honor. Eric  
7 Hamilton for defendants. I'm joined by Christian Dibblee at  
8 counsel table.

9 **THE COURT:** Okay. Good afternoon to -- to both of  
10 you.

11 Yesterday I disclosed a list of questions that I asked  
12 counsel to be prepared to answer today. Before we go down that  
13 list, I thought it might be helpful for the attorneys to hear  
14 kind of a general overview of my tentative thoughts on the case  
15 so far. You're welcome to sit down for that if you'd like, but  
16 then I'll invite you back up to address the questions.

17 I will say that I do think this case touches on an  
18 important debate. On the one hand, Anthropic is saying that  
19 its AI product Claude is not safe to use for autonomous lethal  
20 weapons and domestic mass surveillance. Anthropic's position  
21 is that if the Government wants to use its technology, the  
22 Government has to agree not to use it for those purposes.

23 On the other hand, the Department of War is saying that  
24 military commanders have to decide what is safe for its AI to  
25 do, not a private company.

1           It's a fascinating public policy debate and it's not my  
2           role to decide who's right in that debate; that is  
3           Secretary Hegseth's call. The Department of War decides what  
4           AI product it wants to use and buy. And everyone, including  
5           Anthropic, agrees that the Department of War is free to stop  
6           using Claude and look for a more permissive AI vendor.

7           I don't see that as being what this case is about. I see  
8           the question in this case as being a very different one, which  
9           is whether the Government violated the law when it went beyond  
10          that.

11          After Anthropic went public with this contracting dispute,  
12          defendants seemed to have a pretty big reaction to that. They  
13          took three actions that are the subject of this lawsuit.

14          So first, the President announced that every federal  
15          agency, not just the Department of War, would immediately ban  
16          Anthropic from ever having another government contract, so that  
17          would include the National Endowment of the Arts using Claude  
18          to design its website. Not allowed.

19          Second, Secretary Hegseth announced that anyone who wants  
20          to do business with the U.S. military has to sever their  
21          commercial relationship with Anthropic. So if a company uses  
22          Claude to have a customer service chatbot, now they can't do  
23          any defense work.

24          Third, the Department of War designated Anthropic as a,  
25          quote, supply chain risk. That label applies to adversaries of

1 the U.S. government who may sabotage its technology systems.  
2 It's typically directed at foreign intelligence, terrorists, or  
3 other hostile architects.

4 What is troubling to me about these reactions is that they  
5 don't really seem to be tailored to the stated national  
6 security concern.

7 If the worry is about the integrity of the operational  
8 chain of command, DoW could just stop using Claude. It looks  
9 like defendants went further than that because they were trying  
10 to punish Anthropic.

11 One of the amicus briefs used the term "attempted  
12 corporate murder." I don't know if it's murder, but it looks  
13 like an attempt to cripple Anthropic.

14 And specifically my concern is whether Anthropic is being  
15 punished for criticizing the Government's contracting position  
16 in the press. Defendants say they were doing this because  
17 Anthropic's, quote, sanctimonious rhetoric, unquote, was an  
18 attempt to, quote, strong-arm the Government.

19 DoW's records say that it designated Anthropic as a supply  
20 chain risk because it was, quote, hostile in the press. So it  
21 looks like DoW is punishing Anthropic for trying to bring  
22 public scrutiny to this contracting dispute, which, of course,  
23 would be a violation of the First Amendment.

24 So I have a lot of concern about that and I would like to  
25 hear more from the Government about that.

1 I also have a lot of questions about, one, whether  
2 Congress gave defendants the authority to do this in the first  
3 place; and two, whether defendants violated Anthropic's due  
4 process rights by not giving them notice and an opportunity to  
5 respond.

6 The questions I put out yesterday really go more to those  
7 latter two topics so I want to start going through those  
8 questions, but I will just say that at the end of the  
9 questions, I'll give both parties an opportunity to address  
10 the Court. You can give me your reaction to the tentative  
11 thoughts that I gave you.

12 And you could also just let me know anything else you  
13 think is important that I know about the case before I take it  
14 under submission. So let me just invite counsel back up to the  
15 podiums and we'll just go through the questions.

16 I'll direct the question at one party, and then the other  
17 one will have an opportunity to respond to what the first party  
18 said.

19 So the first question is really directed at counsel for  
20 defendants. And I'll just read it so we're all on the same  
21 page. [as read]:

22 "Secretary Hegseth directed the following action  
23 on February 27th, via social media. Quote, effective  
24 immediately, no contractor, supplier, or partner that  
25 does business with the United States military may

1 conduct any commercial activity with Anthropic.

2 Then there's some more statements and then it concludes  
3 with [as read]:

4 "This decision is final."

5 I'm just going to refer to that quote as the "Hegseth  
6 Directive."

7 Defendants' opposition brief states that the Hegseth  
8 Directive was not the, quote, source of any binding legal  
9 obligations on Anthropic or any other contractor.

10 So the question I have for defendants is, is it your  
11 position that this directive has just no legal effect at all?

12 **MR. HAMILTON:** Yeah. I think that is basically  
13 correct. Our position is that this is not an action by which  
14 rights or obligations are determined, or from which legal  
15 consequences flow.

16 As we explain in our PI opposition brief, no entity would  
17 face liability for noncompliance with the post. This was a  
18 social media post announcing that DoW would be taking action.

19 The sentence before the sentence that Your Honor read from  
20 says "I am directing the Department of War to designate  
21 Anthropic," indicating that action is to come.

22 Now, it's possible that officials within DoW might rely on  
23 this post in taking agency actions, but that would not convert  
24 the post into final agency action under the APA.

25 **THE COURT:** So the post itself, it says "Effective

1 immediately, no contractor that does business with the U.S.  
2 military may conduct any commercial activity with Anthropic and  
3 that the decision is final."

4 Your position is that has absolutely no legal effect at  
5 all?

6 **MR. HAMILTON:** Correct. That sentence needs to be  
7 read with the previous sentence, which talks about taking  
8 action to designate Anthropic as a supply chain risk.

9 **THE COURT:** So that brings me to my next question,  
10 which is whether this directive is an accurate statement of the  
11 Department of War's immediate intended course of action.

12 **MR. HAMILTON:** The answer is no. If the "no  
13 contractor" sentence is read in isolation. DoW's present  
14 concern is with DoW personnel and contracting partners using  
15 Anthropic for DoW work.

16 Again, the better reading of the "no contractor" sentence  
17 is to read that sentence with the one that precedes it  
18 indicating DoW is going to take action to designate Anthropic  
19 as a supply chain risk.

20 "Supply chain risk" is capitalized. It's a term of art in  
21 DoW procurement parlance, and that's how the post was  
22 understood.

23 The plaintiff attached to its motion for a preliminary  
24 injunction a post by an entity called Fluet Law. This is  
25 ECF 6-30. And what Fluet Law said in interpreting the post is

1 the Government hasn't identified its legal authority yet, which  
2 matters. The scope of the restrictions on contractors depends  
3 entirely on which authority is invoked and each carries very  
4 different implications for contractors.

5 Fluet Law then goes on to talk about 10 U.S.C. 3252, as  
6 well as 41 U.S.C. 4713, which are the authorities that  
7 Secretary Hegseth invoked in designating Anthropic as a supply  
8 chain risk.

9 And I'd add that DoW has now filed briefs in this Court as  
10 well as the U.S. Court of Appeals for the DC Circuit in a  
11 separate action that the plaintiff here brought in that court  
12 to challenge the 4713 designation, and those briefs explain the  
13 agency's position on what it -- its designations.

14 **THE COURT:** So I have to say, I find that pretty  
15 surprising that -- I mean, obviously, the statement is front  
16 and center in this lawsuit and had a pretty big impact on the  
17 way the public and Anthropic's customers and a whole ecosystem  
18 of people reacted to what was about to happen.

19 So you're saying that that sentence, "Effective  
20 immediately no contractor with the U.S. military may conduct  
21 any commercial activity with Anthropic," it's just not true?  
22 This is a false statement?

23 **MR. HAMILTON:** Well, I'm saying it needs to be read in  
24 the context of the sentence that preceded it, which is, again,  
25 pointing to action that is yet to come in designating Anthropic

1 as a supply chain risk.

2 And it's -- it's indicating that DoW will be taking action  
3 to do that, which is what it did in the Title 10 and the  
4 Title 41 supply chain risk designations.

5 **THE COURT:** But those subsequent designations don't  
6 take any action on this "no contractor" statement; right?

7 **MR. HAMILTON:** They don't go as far as that sentence  
8 goes.

9 **THE COURT:** So that sentence doesn't -- even though it  
10 says it's effective immediately, it doesn't reflect the  
11 immediate intent of the Department of War?

12 **MR. HAMILTON:** That's right. Technically, it would  
13 have been effective when the designations took effect, and the  
14 designations, of course, would control the limits of the  
15 authority that was exercised.

16 **THE COURT:** And how -- how is Anthropic supposed to be  
17 able to know that that will be true?

18 I mean, you're standing here saying "We said it but we  
19 didn't really mean it." So how do they have any confidence  
20 that even though Secretary Hegseth is out there saying  
21 effective immediately, we're going to do this, how do they know  
22 that that's not going to happen?

23 **MR. HAMILTON:** A few ways. Secretary Hegseth sent a  
24 letter directly to Anthropic explaining the designations of  
25 supply chain risks. That letter attached to it a -- a process

1 statement about due process available to Anthropic if it wished  
2 to utilize that procedure to challenge the supply chain risk  
3 designation. And the parties, of course, had lines of  
4 communication open, they were, after all, negotiating an  
5 agreement for the Department of War to use Anthropic's services  
6 before the designation.

7 **THE COURT:** So -- but before this moment, did DoW do  
8 anything to take back that statement?

9 **MR. HAMILTON:** We've clarified the statement through  
10 our filings in this Court, as well as the DC circuit. I think  
11 we've been clear in both Secretary Hegseth's designation  
12 memoranda, that the Department of War has now filed on the  
13 public docket, as well as our filings in this Court and the DC  
14 circuit exactly what DoW --

15 **THE COURT:** So just in the interest of clarity, I want  
16 to be clear: Is it accurate the DoW does not intend to  
17 terminate any contractors on the basis that they have a  
18 commercial relationship with Anthropic that's separate from  
19 their work for DoW?

20 **MR. HAMILTON:** Separate from their work from DoW?

21 That is my understanding.

22 Again, I'd say what I said earlier in our discussion,  
23 which is DOW's present concern is with DoW personnel and  
24 contracting partners using Anthropic for DoW work, not for  
25 non-DoW work.

1           **THE COURT:** So let's say I'm a military contractor. I  
2 don't provide IT to the military; I provide toilet paper to the  
3 military. I'm not going to be terminated for using Anthropic.

4           Is that accurate?

5           **MR. HAMILTON:** For non-DoW work, that is my  
6 understanding.

7           **THE COURT:** Okay. And then if I'm a military  
8 contractor and I am providing IT services to DoW but it's not  
9 for national security systems, it's just for their regular  
10 systems, I won't be terminated because I use Anthropic.

11          Is that accurate?

12          **MR. HAMILTON:** It might be if you're using it for DoW  
13 work. DoW still has concerns about the reliability and  
14 trustworthiness of the Anthropic model, and that includes with  
15 how contractors are using the services which, of course, have  
16 weights and measures that are set by Anthropic for DoW work in  
17 and out of the -- the -- you know, the controlled systems  
18 platforms.

19          But, to reiterate, for non-DoW work, that is not the  
20 Department's concern at this point.

21          **THE COURT:** Okay. And let me just also ask you: Are  
22 defendants then conceding that Secretary Hegseth did not have  
23 statutory authority to enter a directive of this breadth under  
24 Section 3252 or any other statute?

25          **MR. HAMILTON:** We agree that Section 3252 does not go

1 as far as the "no contractor" sentence goes. If that sentence  
2 is read in isolation, standing here today, I'm not aware of any  
3 authorities that would permit DoW to categorically bar  
4 contractors from using a company's products or services for  
5 non-DoW work.

6 But to reiterate, this post does not itself impose  
7 obligations on contractors or subcontractors, that instead  
8 flows through the supply chain risk designations.

9 **THE COURT:** So why did Secretary Hegseth say this if  
10 it has no legal effect and he didn't intend to -- to cause it  
11 to happen?

12 **MR. HAMILTON:** I don't know. I know that this  
13 administration is committed to transparency, and it indicated  
14 in this post it would be taking action following the post to  
15 designate the company as a supply chain risk, which is what it  
16 did.

17 **THE COURT:** But this "no contractor" statement, why  
18 did Secretary Hegseth say that part? Why didn't he just say  
19 "We're going to designate Anthropic a supply chain risk"?

20 **MR. HAMILTON:** Again, that sentence has to be read in  
21 the context of the sentence that immediately precedes it, and  
22 uses a term of art, which the submission by the plaintiff even  
23 recognizes that at least the contractor -- you know, DoW  
24 contracting experts. I understood what Secretary Hegseth was  
25 saying, which is he was talking about using authorities for

1 supply chain risk designation.

2 **THE COURT:** All right. I have a question for  
3 plaintiffs, and then I'll allow you to respond to some of the  
4 other things that defendants had said.

5 So for Anthropic, if defendants are conceding that this  
6 "no contractor" sentence, that I'm calling the Hegseth  
7 Directive, has no legal effect, how does Anthropic still face  
8 irreparable harm from that? What, if any, legal authority  
9 supports the view that there's still irreparable harm even if  
10 they're now saying it has no legal effect at all?

11 **MR. MONGAN:** Right, Your Honor. We are continuing to  
12 be irreparably injured by this directive and if I might -- if I  
13 can back up and respond to a few of the points and then get to  
14 your question about legal authority.

15 **THE COURT:** You may.

16 **MR. MONGAN:** I'm not sure that I totally followed the  
17 parsing offered by my colleague this morning, but what I heard  
18 him to say -- this afternoon, rather. What I heard him to say  
19 is that the defendants cannot identify any legal authority for  
20 the secondary boycott, what the Court has styled the Hegseth  
21 Directive, part of the February 27 post that the Federal  
22 Government's position is that it has no legal effect and that  
23 they have no present intent to enforce that against any entity.

24 I appreciate those concessions.

25 Those concessions are coming on March 24th, 25 days after

1 this directive went out.

2 It went out in a very public way. Last time I looked, it  
3 was read by over 13 million people. And I think that the  
4 average person or employee at a military contractor or  
5 prospective consumer or customer or partner or investor who  
6 looks at the words of this nine-paragraph directive on the  
7 official social media account of the Secretary of War is going  
8 to read it to say exactly what it says. It is a final  
9 decision. It says that at the end as to both components.

10 And with respect to this secondary boycott, "Effective;  
11 immediately no contractor," et cetera, "that does business with  
12 the United States military may conduct any commercial activity  
13 with Anthropic," that caused Anthropic immediate and  
14 irreparable harm to its constitutional rights, as Your Honor's  
15 tentative indicates, to its reputation, and to its business  
16 interests in the national security sector and beyond.

17 Now, I heard my colleague this afternoon say, "Well,  
18 that's okay, because there was a letter that clarified this."

19 That letter wasn't received until March 4th. It's  
20 attached to our complaint at Docket 1-3.

21 I don't think it provides any clarity. There has been a  
22 period, now, of 25 days where there is profound uncertainty as  
23 to the scope of this directive and its impact on our partners.  
24 And I think that this is a problematic scenario where the  
25 executive, in a profoundly public way, asserts something that

1 is sweeping and categorical that does immediate harm to a  
2 business, and then, through its lawyers, three or four weeks  
3 later in court, backs away from it.

4 So what we would suggest in response to your question  
5 about the need for preliminary injunctive relief, because all  
6 of these people who have X accounts probably don't have PACER  
7 accounts and may not be watching this hearing, and because the  
8 Secretary has not withdrawn this directive, we do need  
9 preliminary injunctive relief. We need authoritative clarity  
10 that binds the Department that the Secretary's directive does  
11 not have legal effect on Anthropic and its customers and  
12 partners.

13 And I want to emphasize, we'd be very open to achieving  
14 that clarity through a stipulation or other agreed resolution  
15 with the Government, but absent that, we need a preliminary  
16 injunction and eventually a permanent injunction.

17 Now, as to the question of authority, Your Honor, we have  
18 looked at this since we received the Court's order. This is a  
19 highly unusual case and, not surprisingly, we haven't found a  
20 decision involving an identical situation.

21 There is Ninth Circuit authority for the rather  
22 common-sense proposition that a defendant can't defeat a  
23 showing of irreparable injury at the preliminary injunction  
24 stage by unilaterally terminating the challenged conduct if  
25 they could resume the conduct during the course of the

1 litigation.

2 And we have copies of this case. The case I'm referring  
3 to is *Boardman against Pacific Seafood Group* at 822 F.3d 1011,  
4 and the relevant discussion is at 1023.

5 And I think, although that case is factually dissimilar in  
6 some respects, the reasoning there applies a *fortiori* here,  
7 where the Secretary hasn't even publicly agreed to withdraw the  
8 secondary -- pardon me -- secondary boycott directive in his  
9 February 27th order, and where it's continuing to have effects  
10 until we get that authoritative clarity.

11 **THE COURT:** Let me ask defendants: Would you be  
12 willing to stipulate to the entry of an injunction enjoining  
13 the "no contracting" language that I'm calling the Hegseth  
14 Directive?

15 **MR. HAMILTON:** No, Your Honor; there's nothing to  
16 stipulate to.

17 We have already disabused the plaintiff of the  
18 interpretation that it gave to the Secretary's post. We've  
19 explained in this court, in writing and today orally, how that  
20 post is supposed to be interpreted. And plaintiff is asking  
21 the Court to give the post a different interpretation and  
22 enjoin it in a way that the Department of War does not even  
23 read the post to operate.

24 **THE COURT:** What prevents the Department of War from  
25 changing its mind about how this sentence operates or it --

1 changing its understanding?

2 **MR. HAMILTON:** Well, the Department of War, and under  
3 Secretary Michael's declaration filed this morning, indicates  
4 that it remains open to receiving information from Anthropic  
5 and is continuing to assess the situation.

6 So I mean, the Department of War can, of course --  
7 you know, and will take action as needed, as appropriate to  
8 mitigate the risk from Anthropic if it, you know, receives  
9 different information about the company.

10 But we've explained today and in writing how the  
11 Department of War understands Secretary Hegseth's post, and  
12 that should end the matter.

13 **THE COURT:** So am I understanding that the Department  
14 of War could change its mind depending on other information it  
15 receives about the impact of this "no contracting" statement?

16 **MR. HAMILTON:** The impact of the "no contracting"  
17 statement?

18 **THE COURT:** Are you saying -- today you're saying that  
19 the "no contracting" statement is not a -- a statement that has  
20 any legal effect and it doesn't reflect the Department of War's  
21 immediate intended course of action. Then you also said the  
22 Department of War is looking at the situation, every day  
23 changes, and it might change its mind.

24 So what's to prevent the Department of War from changing  
25 its view and having a different approach to this "no

1 contracting" statement that was made by Secretary Hegseth on  
2 February 27th?

3 **MR. HAMILTON:** Well, the Department of War isn't going  
4 to change its interpretation of the social media post. What  
5 might change is the Department of War might have additional  
6 information or -- I mean, this isn't different than any other  
7 national security risk. If the Department of War comes into  
8 additional or new information, it evaluates that information.

9 And I only meant to indicate that if the Department of War  
10 does receive different information that changes its assessment  
11 of Anthropic's risk, it would act accordingly; but it won't  
12 change its interpretation of the social media post.

13 **THE COURT:** Okay. Let me move to my next question,  
14 which is about the supply chain risk designation.

15 Section 3252(b)(3) provides that Secretary Hegseth may  
16 designate Anthropic as a supply chain risk only after providing  
17 notice to various congressional committees and requires that  
18 the notice contain, quote, a discussion of less intrusive  
19 measures that were considered and why they were not reasonably  
20 available to reduce supply chain risk.

21 Do defendants concede that Secretary Hegseth's letters to  
22 the congressional committees did not contain a discussion of  
23 those required topics?

24 **MR. HAMILTON:** Yes, we agree that the letters do not  
25 have that discussion, but that doesn't change the preliminary

1 injunction analysis for a few reasons.

2 First, this is an argument that Anthropic forfeited. We  
3 filed the letters with our opposition brief. Anthropic could  
4 have raised any argument it wished to make about this in its  
5 reply brief; it decided not to do so. And under the party  
6 presentation principle, this Court should rule on the  
7 question -- the issues that Anthropic has decided to raise in  
8 its motion and its reply brief.

9 Second, Anthropic has no right to enforce the  
10 congressional notification requirement. Statute doesn't give  
11 Anthropic a right to congressional notification. Cases like  
12 *TransUnion against Ramirez* recognize that when a plaintiff  
13 complains of a harm, that harm has to be personal to the  
14 plaintiff. Whatever harm could have possibly ensued from  
15 the Department's congressional notification correspondence,  
16 that harm would be personal to Congress, not to Anthropic, and  
17 it doesn't have the ability to challenge the congressional  
18 notifications that the Department provided.

19 That doesn't mean --

20 **THE COURT:** Isn't the point of congressional  
21 notification to make sure that the Department gets it right and  
22 hears from members of Congress or others who have a viewpoint  
23 about whether there are less restrictive measures that  
24 the Department should think about? And if then the Department  
25 didn't get it right because they didn't get enough input, that

1 harm, it seems to me, would be a harm to Anthropic.

2 What am I missing there?

3 **MR. HAMILTON:** I don't know Congress's specific  
4 purpose in creating the congressional notification requirement,  
5 but it's, if anything, at most, an information right only for  
6 Congress, not for Anthropic.

7 And the executive congressional back-and-forth is  
8 something that those two work out together, not Anthropic.

9 DoW has an office of legislative affairs that receives  
10 questions and provides answers when members of Congress have  
11 questions about correspondence the Department has sent or  
12 things that Congress comes to learn about that the Department  
13 has done.

14 And Congress has enforcement mechanisms if it feels like  
15 the executive has not done what Congress expects of the  
16 executive. It can withhold appropriations. It has its own  
17 information-gathering tools. But none of that creates a right  
18 for Anthropic as a third party to that congressional executive  
19 relationship to seek an injunction based on the congressional  
20 notice element of the statute.

21 And I would add that even if the Court found this piece to  
22 be actionable, it should, at most, enter an order deferring  
23 ruling on the motion for a preliminary injunction for  
24 three days to allow DoW to cure any defect that the Court may  
25 identify in its order.

1           It would be disruptive to DoW and not helpful to Anthropic  
2 to enjoin the designation over something that can be remedied  
3 in relatively short order. And I would also note that if DoW  
4 did provide additional information to Congress on this point,  
5 it would likely do that in a classified or otherwise restricted  
6 nonpublic setting.

7           **THE COURT:** Okay. Let me give Anthropic an  
8 opportunity to respond.

9           **MR. MONGAN:** Thank you, Your Honor.

10           I appreciate the concession from my colleague that this  
11 did not follow the procedures that Congress imposed when it  
12 granted this authority.

13           On the forfeiture point, I disagree. Our motion  
14 specifically called out the procedural defects in this  
15 designation, including the failure to properly notify Congress.  
16 And our reply brief also pointed to, in particular, the  
17 procedural defects with respect to the less intrusive measures  
18 requirement.

19           As to the question about whether there's a right to  
20 enforce, the Administrative Procedure Act is pretty clear under  
21 5 U.S.C. Section 706(2)(D) that agencies have to follow the  
22 procedures required by Congress.

23           And I heard my colleague say that he doesn't know why  
24 Congress would have asked for this information. I think it's  
25 apparent from the statute why Congress asked for this

1 information, because the Congress expressly said that this  
2 designation cannot incur -- occur until after this notification  
3 that goes to Congress.

4 It's not just an FYI to Congress. It's an opportunity for  
5 Congress to review, in particular, a summary of the basis for  
6 the determination, including a discussion of less intrusive  
7 measures that were considered, and why they were not reasonably  
8 available. And I've looked at all the materials in Docket 96-2  
9 that my colleague is pointing to and there's -- there's nothing  
10 like that in the letters.

11 And beyond that, Your Honor, there's nothing like that  
12 even in the agency materials that predate the letters. I have  
13 looked through those materials and I have not seen any  
14 discussion of less intrusive measures, even though there are  
15 some obvious less intrusive measures that were plainly  
16 available to the Department here.

17 And I think it's telling that when the defendants  
18 addressed this in their opposition brief and spoke about  
19 the Department's purported consideration of less intrusive  
20 measures, they don't point anything into their -- their  
21 submission of the documents that predated the Secretary's  
22 determination. They point to a declaration from March 17th.

23 I guess, my final point on the suggestion of deferring  
24 ruling, I would submit, respectfully, that there are many other  
25 irregularities and deficiencies here that would support a

1 preliminary injunction and would urge the Court not to delay  
2 for this purpose.

3 Happy to have the Department notify Congress belatedly of  
4 the information that it should have notified Congress of before  
5 March 3rd, and indeed before February 27th, in our view; but  
6 that would not be a reason for slowing down the work of this  
7 Court given the irreparable and mounting injuries that  
8 Anthropic is experiencing.

9 **THE COURT:** When you mentioned that you believe that  
10 there are obvious less restrictive measures that should have  
11 been considered, what are you talking about?

12 **MR. MONGAN:** Well, Your Honor -- and this may be  
13 getting to some of the other questions that you have for us  
14 this afternoon, but as Your Honor's tentative suggested, they  
15 have concerns about working with Anthropic.

16 One obvious less intrusive measure, which we have  
17 recognized is available to them, is to stop working with  
18 Anthropic and to transition away from Anthropic and towards  
19 another AI frontier model. And we've said quite publicly and  
20 in our papers that if that's what the Department prefers to do,  
21 we will facilitate an orderly transition.

22 There are also federal procurement statutes and  
23 regulations that deal with procurement issues and procedures  
24 that an agency can invoke, such as the debarment procedure or  
25 the suspension procedure, terminating a contract at the

1 convenience of the Federal Government.

2 I don't want to concede anything to as to how we would  
3 respond to those procedures, but those are certainly less  
4 intrusive measures that, at a minimum, Congress is directing  
5 the Department to consider and evaluate before it takes this  
6 extraordinary action of designating an American company as a  
7 supply chain risk for the first time, as far as we are aware.

8 **THE COURT:** Okay. Let's go to the next question.

9 With respect to the less intrusive measures analysis,  
10 everyone agrees the Department would be free to terminate any  
11 direct contract with Anthropic.

12 I understand the defendants as saying that this would be  
13 insufficient to mitigate the risk because the Department needs  
14 to prohibit the use of Claude in its national security systems  
15 in situations where Anthropic is a subcontractor. But does  
16 designating Anthropic as a supply chain risk sweep more broadly  
17 than that?

18 An example that comes to mind, after reading the amicus  
19 briefs, is if a contractor for the Department uses Claude code  
20 as a tool to write software for the Department's national  
21 security systems, would the contractor face termination as a  
22 result?

23 That's a question for defendants.

24 **MR. HAMILTON:** My understanding is that that specific  
25 fact pattern would not be covered by the Section 3252

1 designation, the main thrust of which is to prevent Anthropic  
2 from being utilized as a subcontractor in covered settings.

3 DoW could still, in managing its contractors, tell  
4 contractors that it does not want them using Claude code as a  
5 tool to write software for DoW national security systems, but  
6 that wouldn't flow directly from the exercise of 3252  
7 authority.

8 **THE COURT:** So it wouldn't flow from the exercise of  
9 3252 authority that occurred in this litigation.

10 Am I understanding correctly?

11 **MR. HAMILTON:** Yes.

12 **THE COURT:** Okay.

13 **MR. HAMILTON:** Could I also make a few points  
14 responding to something my friend said earlier?

15 **THE COURT:** You may.

16 **MR. HAMILTON:** One is this is not -- we were talking  
17 about the congressional notification statute. This is not a  
18 statute like IEEPA or the Congressional Review Act that has  
19 built into it some mechanism for congressional review and  
20 congressional action upon agency action.

21 So the notification requirement is, at most, just a  
22 mechanism for Congress to stay abreast of actions that the  
23 Department of War is taking, but it doesn't itself confer on  
24 the -- the Congress an authority, like as in IEEPA, to review  
25 what the Department has done.

1           And the second point is my friend argued that it would  
2 have been a less intrusive measure for the Department of War to  
3 just decide it didn't want to work with Anthropic anymore; but  
4 that, of course, is exactly what this authority allows  
5 the Department to do. And if that were always something that  
6 could be a less intrusive measure, then the authority would  
7 never be available to use.

8           Instead, Congress recognized that when a supply chain risk  
9 exists, the Department of War, and other covered agencies,  
10 shouldn't have to go contract by contract and tell contractors:  
11 We've identified a risk and we need you to adjust how you  
12 perform whatever services the Department of War has contracted  
13 for.

14           No, it wanted to give the executive a tool with one  
15 designation to address a risk.

16           **THE COURT:** But the requirement isn't that as soon as  
17 there's a less restrictive measure, the Department of War has  
18 to take it. It's just that the Department of War has to say  
19 why that less restrictive measure doesn't cut it and is it  
20 going to address the national security concern.

21           So I'm wondering why it is that the Department of War  
22 can't just say: We're not using Claude anymore so we're going  
23 to stop our contract with Anthropic, and anyone else who is  
24 using Claude in our systems, they need to stop using Claude in  
25 our systems or we're going to terminate their contracts too.

1           That seems like it would get to the operational security  
2 concern that you have, but it doesn't go all the way to the  
3 supply chain risk designation. Help me understand why that's  
4 not -- that's not sufficient for the national security  
5 justification that's been put forward.

6           **MR. HAMILTON:** Well, the -- as I was trying to  
7 explain, the supply chain risk designation, it's a tool for the  
8 Department of War with one designation to address a risk, in  
9 particular under (d) (2) (C), to tell its primes that a source  
10 should not be contracted with as a subcontractor because of the  
11 supply chain risk.

12           The alternative is more of a patchwork approach that is  
13 not a preferred option in the context of a national security  
14 risk.

15           **THE COURT:** Okay. So I just want to be clear. So is  
16 it DoW's view that the supply chain risk designation that  
17 occurred here excludes Claude from being deployed inside DoW's  
18 covered systems, whether by contract or subcontract, and it  
19 does not go beyond that? That's the full extent of the impact  
20 of the supply chain risk designation?

21           **MR. HAMILTON:** I think that is generally correct.  
22 There are three subsections to the statute 3252 in (d) (2) (A),  
23 (B), and (C).

24           My understanding is that it's (d) (2) (C) that is doing most  
25 of the work in permitting the Department of War to tell

1 contractors that it cannot use the Anthropic platform as a  
2 source for subcontracts, but the designation does also invoke  
3 (2) (A) and (B) where they apply.

4 **THE COURT:** I suppose what's giving me pause on some  
5 level is that Section 3252(d)(2)(C) seems to say that the DoW  
6 can withhold consent for a contractor to subcontract with  
7 Anthropic, but it doesn't limit that to subcontracting with  
8 Anthropic to incorporate the Claude software into the DoW  
9 system.

10 I mean, it would seem to cover the -- and I think the  
11 reason the amicus wrote that they were so concerned was because  
12 it would seem to cover situations in which a subcontractor is  
13 subcontracting with Anthropic to test its code, to write its  
14 code, to conduct a bunch of different functions that Anthropic  
15 commonly does for software development companies.

16 So I suppose this is kind of similar to our conversation  
17 about the Hegseth Directive.

18 How can Anthropic have some confidence that you're not  
19 going to interpret the scope of the supply chain designation to  
20 go further than what you just said in court today?

21 **MR. HAMILTON:** Well, to be clear, I've tried to  
22 provide some additional clarity on this particular authority,  
23 but DoW, of course, still retains the authority to manage this  
24 risk through discussions with contractors and other means.

25 You know, I don't mean to suggest that 3252 and the

1 Title 41 designation that Anthropic is challenging in the DC  
2 Circuit are the sole ways in which DoW is going to mitigate the  
3 risk that Anthropic presents, and the Davies memorandum, the  
4 March 5th Davies memorandum that is attached to our documents,  
5 talks some about DoW's implementation of the measures to  
6 mitigate supply chain risk, and that talks about authorities  
7 that aren't just confined to 3252 and the Title 41 authority,  
8 although, I think the main thrust of that is implementing those  
9 authorities.

10 I hope that's helpful.

11 **THE COURT:** Just to be clear, that memorandum that you  
12 referred to that is a March 5th memorandum, is that DoW's view  
13 of the full scope of the implementation of the Section 3252  
14 finding here?

15 In other words, this is not Phase 1 of the implementation  
16 of that designation. It's -- this memo is the full  
17 implementation of the designation.

18 Am I understanding that correctly?

19 **MR. HAMILTON:** I don't know the exact answer to that  
20 question. I can say it is at least what the CIO deemed  
21 appropriate the day after the designation was signed in  
22 implementing the designation.

23 **THE COURT:** So maybe it's Phase 1 or maybe it's the  
24 complete plan; we don't know yet.

25 Am I understanding that right?

1           **MR. HAMILTON:** No. And the designation does go to the  
2 full limits of 3252(d)(2), each of those A, B, and C. So those  
3 are fully designated. I just don't know the kind of full,  
4 you know, nature of that memorandum.

5           **THE COURT:** Okay. Let me give Anthropic an  
6 opportunity to respond.

7           **MR. MONGAN:** Sure, Your Honor.

8           I'll address the issues related to Question 3, and with  
9 the Court's permission, maybe very quickly respond to the  
10 remaining points on Question 2.

11           **THE COURT:** You may.

12           **MR. MONGAN:** I think I heard defendants say that the  
13 designation -- the 3252 designation only reaches formal  
14 subcontracting relationships --

15           **THE COURT:** Let me just check if that's right before  
16 we go down a whole discussion.

17           Is that accurate?

18           **MR. HAMILTON:** That is, I think, generally correct for  
19 (d)(2)(C) but not (d)(2)(A) and (B).

20           **THE COURT:** So in the Department of War's view, under  
21 the designation that was made, it could apply beyond formal  
22 subcontracting relationships?

23           **MR. HAMILTON:** Yes. But I believe (d)(2)(A) and (B)  
24 are generally discussing prime relationships.

25           **THE COURT:** So it's the practice not to go beyond

1 subcontracting relationships but the Department could, if it  
2 wanted to, include informal uses or not formal subcontracting  
3 of Anthropic?

4 **MR. HAMILTON:** No, no. I'm only trying to explain  
5 that (d)(2)(A) and (B) apply to certain situations involving  
6 primes, wherein, I mean, in the case of (d)(2)(A) where there's  
7 a failure to meet qualification standards established in  
8 accordance with requirements of Section 3243, that's not  
9 exclusive to a subcontractor situation. And in (d)(2)(B) where  
10 there's a failure to achieve an acceptable rating with regard  
11 to an evaluation factor, by contrast, (d)(2)(C) is about  
12 subcontractors.

13 **THE COURT:** So I guess what I'm asking is, let's say  
14 Anthropic is not the prime contractor in the contract. They're  
15 also not a formal subcontractor to the prime contract in any  
16 way.

17 Is it the Department of War's position that this  
18 designation does not apply in that situation?

19 **MR. HAMILTON:** That's my understanding. But DoW may  
20 mitigate a risk that Anthropic presents, for example, if,  
21 you know, someone is using Claude code for DoW work, and DoW  
22 has a concern that the use of that software may affect the  
23 reliability or trustworthiness or quality of the product and  
24 create a risk, it would work with that contractor to mitigate  
25 that risk, but that's outside the scope of 3252.

1           **THE COURT:** Okay. Let me allow Mr. Mongan to  
2 continue.

3           **MR. MONGAN:** Yeah. So I think this may be one issue  
4 on which I believe we're in vigorous agreement. If we're  
5 looking at the provisions in 3252(b) -- sorry, (d)(2)(A)  
6 through (C), (A) through (B) are generally dealing with prime  
7 contracts, (C) is dealing with subcontractors.

8           As my colleague walked through (A) and (B). They require  
9 particular determinations regarding failures to meet  
10 qualification standards or failures to achieve an acceptable  
11 rating with regard to an evaluation factor. We're not aware of  
12 those determinations being made here, so I think we're  
13 centrally focused on Subsection C.

14           And as to the hypothetical, the text of 3252 does not  
15 reach suppliers or vendors who have commercially available  
16 products that happen to be used by a contractor under a general  
17 license in the way that a contractor might use Excel or Word.

18           The -- Professor Rozenshtein's amicus brief is helpful on  
19 this point because it notes that there have been circumstances  
20 where Congress has wanted to accomplish a broader ban and it  
21 has done that through different statutory authority which  
22 indicates that 3252 is narrow.

23           If I might briefly return to a couple of points on  
24 Question 2.

25           **THE COURT:** You may.

1           **MR. MONGAN:** The general argument here is to sort of  
2 normalize the invocation of the supply chain risk designation.  
3 This is a fairly extraordinary authority. So the suggestion  
4 from my colleague this afternoon is: Well, you have a contract  
5 negotiation and if you can't work it out and you're frustrated  
6 that the other side is being stubborn, then instead of just  
7 following the normal lawful approach under the procurement laws  
8 and winding down the contract, or even doing something like  
9 pursuing debarment or suspension, you invoke the supply chain  
10 risk designation.

11           This is something that has never been done with respect to  
12 an American company. It is a very narrow authority. It  
13 doesn't apply here, and it's not a normal way to respond to the  
14 concerns that have been articulated by -- by the other side.

15           There was a point about the congressional statute here and  
16 it only requiring notice. I think what's clear on the face of  
17 that statute is not only that Congress intended this to be a  
18 narrow authority, but that it was presuming an agency  
19 decision-maker with an open mind who would make a  
20 designation -- and this is in 3252(b), quote, only after doing  
21 the enumerated things.

22           And one of those things is consulting with procurement or  
23 other relevant officials of the covered agency. The other is  
24 giving this fairly detailed summary to the appropriate  
25 congressional committees which presumes an ability for those

1 committees to respond and raise questions or concerns.

2 Now, the suggestion I seem to be hearing this morning is  
3 it wouldn't have made a difference because this cake was  
4 already fully baked; and as an observation about what happened  
5 here, I'm not sure I'm in a position to dispute that. But that  
6 just underscores the irregularity and the problematic nature of  
7 this decision-making processes where it appears that the  
8 Secretary, on February 27th, had made this decision and then  
9 you have folks at the agency sort of, after the fact,  
10 scrambling around to try and backfill the procedural  
11 requirements and not even doing that successfully, Your Honor.

12 **THE COURT:** Okay. Let me move to the next question,  
13 then.

14 The term "supply chain risk" refers to, quote, the risk  
15 that an adversary may sabotage, maliciously introduce an  
16 unwanted function, or otherwise subvert the operation of the  
17 Department's national security systems.

18 Assume that the Court determines that the plain text of  
19 the term "adversary" could encompass domestic terrorists or  
20 other non-foreign hostile actors. Do defendants then agree  
21 that usage restrictions that are publicly announced and  
22 directly communicated to the Department do not, standing by  
23 themselves, constitute acts of sabotaging, maliciously  
24 introducing an unwanted function, or otherwise subverting an IT  
25 system?

1           **MR. HAMILTON:** Yes. And we have never argued that  
2 Anthropic's insistence in contract negotiations on limiting  
3 DoW's lawful uses is itself sabotage or subversion of an IT  
4 system. Instead, based on Anthropic's position in  
5 negotiations, based on discussions that have incurred, DoW has  
6 come to worry that Anthropic may in the future take action to  
7 sabotage or subvert IT systems. That is why they have been  
8 designated a supply chain risk; it's because of the risk of  
9 future sabotage or subversion or like acts.

10           **THE COURT:** So that brings me to the next question,  
11 then, which is: What evidence in the administrative record  
12 shows that Anthropic had ongoing access to or control over  
13 Claude after delivering it to the Government such that  
14 Anthropic could engage in acts of sabotage or subversion after  
15 the product was delivered?

16           **MR. HAMILTON:** Well, everyone agrees that the  
17 Department of War, to maintain the freshest, up-to-date, and  
18 best artificial intelligence technology will require updates to  
19 that technology. And I'll point to a few places in the record  
20 where the record discusses the concern that sabotage and  
21 subversive functionality could be introduced through updates to  
22 the Anthropic platform.

23           Start with the joint recommendation, which is  
24 Bates-stamped 002, it says [as read]:

25           "Use of the covered entity's products or

1 services introduces significant risk to the DoW's  
2 covered systems as the vendor, by maintaining the  
3 ability and necessity to continuously update the  
4 product or service, enables the potential of the  
5 vendor to subvert the design and/or functionality of  
6 their product or service."

7 There's similar language in the separate memorandum  
8 completed by Undersecretary Michael at Bates stamp 8, talks  
9 about Anthropic maintaining the ability and necessity to  
10 continuously update and tune the product.

11 And earlier in the Michael memorandum, on the page  
12 having 6 as the Bates stamp, talks about how DoW cannot trust  
13 Anthropic to ensure the integrity of its models through these  
14 updates.

15 Again, the --

16 **THE COURT:** Are you -- so I understand what you're  
17 saying about updates, but do you dispute that the updates have  
18 to be accepted by DoW? It only updates if DoW agrees to update  
19 the software. It's not like Anthropic can secretly update the  
20 software without DoW agreeing and accepting each update.

21 **MR. HAMILTON:** I don't know that we've taken a  
22 position on whether or not Anthropic maintains the ability to  
23 update the platform without DoW's consent.

24 I'll note that Undersecretary Michael's declaration, filed  
25 this morning, notes that the agency is conducting an audit to

1 identify any malicious or unintended software intrusions to  
2 Anthropic's technology.

3 **THE COURT:** So just to be clear, standing here now,  
4 DoW doesn't know one way or the other whether Anthropic is, in  
5 fact, able to update without DoW's consent.

6 Is that what you're saying?

7 **MR. HAMILTON:** I'm not aware of DoW having knowledge  
8 of Anthropic maintaining that functionality. But, like I said,  
9 there's an audit underway to better understand what may be in  
10 the Anthropic platform.

11 **THE COURT:** And sitting here now, are you aware of  
12 whether Anthropic -- or is DoW aware of whether Anthropic can,  
13 in fact, access its existing model to make adjustments or tune  
14 it without DoW's knowledge or consent?

15 **MR. HAMILTON:** I don't know.

16 **THE COURT:** Okay. So if we're just talking about  
17 updates or the original delivery of the software, that brings  
18 me to my other question, which is, you know, presumably most IT  
19 vendors could, if they wanted to, deliver updates that had to  
20 be accepted by the Government client and could bury unwanted  
21 functions in their software without detection.

22 I mean, I know theoretically the Department of War could  
23 review every line of code from every update, but I think the  
24 reality is that at some level, it's a trust relationship and  
25 so -- with every software vendor, it is really a trust

1 relationship on some level. But is it defendant's view, then,  
2 that Section 3252 lets the Department designate an IT vendor as  
3 a supply chain risk just on the basis that "The vendor was  
4 really stubborn or refused to agree to contracting terms and so  
5 now we, the Department of War, don't really trust them  
6 anymore"?

7 That seems like a really low bar and potentially one that  
8 could apply basically in any case.

9 So is that your view?

10 **MR. HAMILTON:** No, Your Honor. Acting stubbornly and  
11 refusing to agree to contracting terms are not alone enough to  
12 satisfy Section 3252 standards. But Anthropic is not just  
13 acting stubbornly; it's not just refusing to agree to  
14 contracting terms. Instead, it's raising concerns to DoW about  
15 how DoW uses its technology in military missions that are even  
16 within the scope of the usage terms.

17 And I'd add, DoW has not been working with this vendor for  
18 a very long period of time. There's not the same trusting  
19 relationship built over decades of time that DoW has with some  
20 other vendors, and so the trust is especially important. And  
21 Anthropic's insistence on being able to dictate which lawful  
22 uses DoW can use its technology for, combined with the  
23 discussions that have taken place in recent months between the  
24 company and the Department of War, have destroyed that trust  
25 and made it unacceptable for the Department of War to treat

1 Anthropic as a reliable and trustworthy partner whose  
2 technology can be installed in classified settings and whose  
3 technology would be relied upon by our war fighters in  
4 sensitive missions and important operations.

5 **THE COURT:** So what I'm hearing from you, though, is  
6 that it's enough if an IT vendor is stubborn and insists on  
7 certain contracting terms and it asks annoying questions, then  
8 it can be designated as a supply chain risk, because they might  
9 not be trustworthy. That seems like a pretty low bar.

10 Am I misunderstanding your view?

11 **MR. HAMILTON:** I don't think that's the best -- the  
12 best interpretation of the record here.

13 Again, there have been discussions between the company and  
14 the Department of War. Those discussions have included the  
15 company questioning lawful uses even within the usage terms  
16 that Anthropic has presently with the subcontract with which  
17 DoW uses the technology.

18 And so the worry is if Anthropic is now pushing back  
19 against the Department of War's use of its technology in  
20 certain settings, what's going to happen in the future? What  
21 happens if Anthropic, through an update, installs a kill switch  
22 or installs functionality that allows it to change how the  
23 software is functioning when our war fighters need it the most?

24 That is an unacceptable risk to DoW, especially with this  
25 very sensitive type of technology embedded in classified

1 settings and which our war fire -- war fighters rely on in  
2 performing missions and operations.

3 **THE COURT:** I guess I'm just wondering why it is that  
4 someone questioning the way things work would lead to suspicion  
5 that they might build in a kill switch or backdoor or other  
6 sabotage mechanisms.

7 I'm not seeing the connection here.

8 **MR. HAMILTON:** Well, the worry is that Anthropic will,  
9 instead of merely raising concerns and pushing back, it will  
10 decide "We have a problem with what DoW is doing and we are  
11 going to manipulate the software in a way so that we can  
12 control how DoW is using it, and we are going to adjust the  
13 weights so that it doesn't perform in the way DoW wants and  
14 expects it to because we aren't okay with what DoW is doing."  
15 And that isn't the sort of partner with which the Department of  
16 War can work. In this setting -- I can't imagine another  
17 setting where total trust, total reliability is more important  
18 than this one.

19 And so the record here shows that the Federal Government  
20 isn't able to treat Anthropic as a reliable and trustworthy  
21 partner anymore because of the conduct that has taken place  
22 between the company and the Department in recent months.

23 **THE COURT:** Okay. Let me give Anthropic an  
24 opportunity to respond.

25 **MR. MONGAN:** Where to start, Your Honor?

1 If I can begin at a high level and then respond to the  
2 particular points and questions raised.

3 At this point, I've now reviewed the Undersecretary  
4 Michael memorandum, two declarations, the opposition brief, and  
5 the arguments we've heard this afternoon.

6 The rationale seems to continue to shift and I'm not sure  
7 that I entirely understand what the current rationale is.

8 But what I have heard this afternoon, which seems to align  
9 with much of the original memorandum from Undersecretary  
10 Michael, is that there is a mature supply chain risk in  
11 the Department's view that has built up as a result of these  
12 contract negotiations and the public statements and  
13 pronouncements by Anthropic and its leadership to the point  
14 that it not only distrusts us and wants to discontinue the  
15 contract, but that they think we are an adversary for purposes  
16 of a supply chain risk designation.

17 It's very hard for me to square that with the suggestion  
18 in the opposition brief that if Anthropic agreed to the  
19 contract term that was preferred by the Secretary of War, none  
20 of this would have happened.

21 It's hard for me to square it with the undisputed  
22 recognition in the declarations that even after the  
23 designation, negotiations continued; and that was noted by  
24 Undersecretary Michael in his declaration today where he  
25 indicated that they would still be open to an arrangement.

1 I think that the reality is that this is a supply chain  
2 designation in search of a justification or a rationale, and  
3 that is a problem under the Administrative Procedure Act.

4 I'd like to go directly to the technical matter. We  
5 introduced a declaration on this point. It's at Docket 115.  
6 And it was not controverted in Undersecretary Michael's  
7 declaration which was submitted this morning. And that makes  
8 very clear that before any model is deployed, the Department  
9 has an extensive opportunity to test it and approve it.

10 That's at paragraph 18.

11 After it's deployed, Anthropic has no ability to cause the  
12 model to stop working, to alter its functionality, to shut off  
13 access, to surveil the Department's activities, or otherwise to  
14 influence operations. That's at paragraph 19 and the  
15 surrounding paragraphs. And I don't think that that's a  
16 question that's in dispute.

17 As to Your Honor's questions, I think -- it sounds like  
18 we're in agreement as to Subsection A, that simply arguing for  
19 usage restrictions on a service or product is not enough to  
20 make you an adversary who is trying to sabotage or maliciously  
21 introduce unwanted function.

22 And I think that the language in (d)(4) is relevant  
23 because what Congress is talking about there is a whole bunch  
24 of surreptitious things that an adversary or saboteur might do  
25 to try and torpedo a national security IT system. Everything

1 we stand accused of in this proceeding has been entirely  
2 aboveboard. It's openly having transparent usage restrictions,  
3 which the Government previously agreed to, and then openly  
4 communicating to the Government and the public our continuing  
5 views about the profound importance of these two usage  
6 restrictions with respect to mass surveillance of Americans and  
7 lethal autonomous weaponry.

8 But if Congress is positing a saboteur, a saboteur is not  
9 going to get into a public spat or a contracting dispute.  
10 They're just going to accept the contractual term proposed by  
11 the Government and then go and do the nefarious things that  
12 Congress was contemplating.

13 As to -- I think I've already addressed the Question B. I  
14 don't think that there is any evidence in the record or  
15 otherwise that Anthropic has the ability to alter or control  
16 the model once it has been deployed after approval by  
17 the Department of War.

18 And finally, the question about another IT vendor, I think  
19 it's a good question, Your Honor, because notwithstanding what  
20 we've heard this afternoon, it does seem that that is the  
21 logical implication of defendants' position here, that they can  
22 point to their frustrations in a contract negotiation, the  
23 stubbornness of the vendor, and say: Aha. Because you're  
24 working in an area that touches national security, we're now  
25 going to tell the world that we think you might come around in

1 the future and sabotage our systems.

2 That is clearly not what Congress was talking about in  
3 3252. And it's especially inapplicable to a company like  
4 Anthropic, who, in contrast to most IT vendors, has this air  
5 gap where they're not in any position to alter or control the  
6 model once it's been deployed; where they've made very clear  
7 publicly, including to the Secretary of War, that there's no  
8 desire to interfere with ongoing operations. And so I don't  
9 see how that can be a tenable understanding of the statute.

10 **THE COURT:** Okay. Let me move to -- I'm going to skip  
11 Question 5 because it was answered by Michael's declaration  
12 this morning, and just move to Question 6, which is a question  
13 for Anthropic.

14 I listed a series of agencies in this question and my  
15 question is: Is there evidence in the record that indicates  
16 these agencies actually use Anthropic's products so that  
17 Anthropic has standing to seek emergency injunctive relief  
18 against those agencies?

19 **MR. MONGAN:** Yes.

20 Your Honor, this is in an emergency posture and we're  
21 moving quickly. If I can give a little bit of context and then  
22 respond specifically to each of the listed agencies.

23 Our complaint named agencies that we know have contracts  
24 with Anthropic, or use Anthropic's technology through a  
25 third-party provider, as well as agencies that indicated they

1 would be terminating contracts or terminating use of Claude  
2 shortly after the February 27th presidential directive. And we  
3 also name the Executive Office of the President in part because  
4 of its likely role in carrying out the directive and in  
5 facilitating any government-wide relief.

6 The Court asked about evidence in the record and I want to  
7 be candid that we haven't yet introduced evidence as to every  
8 single one of the particular contracts or use through third  
9 parties or termination decisions. We can do that in a  
10 declaration very quickly, unless the Court would prefer us to  
11 proceed in a different manner.

12 And to just quickly tic through this -- the other specific  
13 agencies that the Court asked about in its question, we are  
14 aware -- I understand that the Office of Personnel Management  
15 announced internally that it was terminating use of Anthropic's  
16 technology. The Nuclear Regulatory Commission told Anthropic  
17 it is no longer using Claude, and cited the presidential  
18 directive.

19 And then, as the Social Security Administration, the SEC,  
20 NASA, the Federal Reserve, and the National Endowment for the  
21 Arts, these all have contracts or have subagencies with  
22 contracts with Anthropic or use our technology through a  
23 third-party provider.

24 **THE COURT:** If I ordered you to submit that  
25 declaration by 6:00 p.m. today, is that something that you all

1 could do?

2 **MR. MONGAN:** Yes.

3 **THE COURT:** Okay. And that if I would allow them to  
4 do that, would the -- does the Government dispute this point?  
5 Do you want an opportunity to put in evidence that you don't  
6 actually have contracts with these entities?

7 Or -- I don't want to waste your time, so if you don't  
8 have a dispute with that, I won't set a deadline. But if you  
9 have a dispute and you want to put in evidence, I can set a  
10 deadline for you to provide --

11 **MR. HAMILTON:** We do, Your Honor. And we'd  
12 respectfully object to Anthropic providing late record evidence  
13 as a basis for a preliminary injunction.

14 I didn't hear my friend on the other side say anything  
15 that would entitle it to a preliminary injunction. Anthropic  
16 decided when it would file its motion. It could have waited to  
17 put forward the record evidence and given us an opportunity to  
18 respond to that in our opposition brief. It decided against  
19 that. This is a forfeited argument and we would respectfully  
20 submit that the Court should not consider any late evidence  
21 that Anthropic submits where it bears the burden on its motion  
22 and chose the timing of its motion.

23 **THE COURT:** I understand that, but we're also in a  
24 preliminary injunction posture and I've been trying to let  
25 everyone put in evidence all the way up till this morning when

1 the Government put in evidence, which I thought was absolutely  
2 fair for you to do and I had invited you to do. So I think  
3 it's important that we just get this right more than that we  
4 stand on ceremony necessarily.

5 So I don't have a problem with them putting in the  
6 evidence, but I want to make sure I give you all a chance to  
7 respond, so I'm thinking about setting the deadline for you all  
8 to respond at noon if you have some reason to think it's not  
9 true that you have contracts with these -- or these entities  
10 have contracts with Anthropic.

11 Otherwise, it seems the analysis is pretty much the same,  
12 unless there's something I'm missing.

13 **MR. HAMILTON:** Could we get just a little more time  
14 than that? You're saying noon after they file something at  
15 6:00 p.m. today? Could we get at least 24 hours for any  
16 response?

17 **THE COURT:** I could -- yeah, I could set it at  
18 6:00 p.m. tomorrow. That's fine.

19 **MR. HAMILTON:** Thank you, Your Honor.

20 **THE COURT:** So the deadline for Anthropic is 6:00 p.m.  
21 today, and then any response by 6:00 p.m. tomorrow with  
22 counterevidence.

23 I promised I'd give you all -- I know we've been going for  
24 some time but I promised I'd give you all an opportunity to  
25 tell me anything else you wanted me to know before I took the

1 case under submission. Let me give defendants the opportunity,  
2 and then I can hear from Anthropic, and then we'll probably  
3 conclude the hearing at that point.

4 **MR. HAMILTON:** Thank you, Your Honor.

5 This Court should deny the motion for a preliminary  
6 injunction. In January, Secretary Hegseth signed a policy  
7 memorandum directing that the Department of War would not use  
8 artificial intelligence services that came with limits on  
9 lawful uses -- there were any other way a tech company could  
10 gain leverage over the Department of War and influence DoW's  
11 decision-making on which missions it chooses to undertake.  
12 That is unacceptable and DoW will instead continue to direct  
13 its operations without tech company influence.

14 Anthropic does not want to contract with DoW on the terms  
15 that DoW requires for AI contracts. It believes tech companies  
16 should be able to tell DoW what it can and cannot do with the  
17 products and services that DoW purchases. And more than that,  
18 Anthropic revealed itself to be an untrustworthy and unreliable  
19 partner in recent negotiations.

20 Based on that, the President directed the Federal  
21 Government to end its relationships with Anthropic, and  
22 Secretary Hegseth designated Anthropic as a supply chain risk  
23 under two separate authorities. As we've discussed earlier  
24 today, Anthropic is challenging one of those supply chain risk  
25 designations separately in the DC Circuit.

1 This case fails for multiple reasons. I'll start with the  
2 First Amendment retaliation claim that Anthropic brings which  
3 fails for at least three reasons.

4 To start, Anthropic's refusal to deal with the Government  
5 on the terms that the Government requires for AI providers is  
6 conduct that is not protected by the First Amendment.

7 Cases like *Rumsfeld against FAIR* recognize that for  
8 conduct to be protected by the First Amendment, it has to be  
9 inherently expressive. In *Rumsfeld*, a law school boycotted  
10 military recruiters over the law school's opposition to the  
11 "Don't Ask, Don't Tell" policy and the Supreme Court recognized  
12 that that conduct is not inherently expressive, the boycott,  
13 and so --

14 **THE COURT:** Do you think going to the press and  
15 bringing public scrutiny to a contracting dispute is conduct  
16 rather than speech?

17 **MR. HAMILTON:** That sounds more like speech, but the  
18 conduct in Anthropic refusing to deal with the Government is  
19 not speech. That is commercial conduct and it isn't inherently  
20 expressive commercial conduct.

21 Anthropic's response is, "Well, we were trying to express  
22 something," but that's the argument that was rejected in  
23 *Rumsfeld against FAIR*. It doesn't change the fundamentally  
24 noninherently expressive nature of this commercial conduct.

25 Anthropic also argues in its reply brief that *Janus* is a

1 key case for its argument. That case received one passing  
2 mention in its opening brief, but it's a readily  
3 distinguishable case dealing with a compelled speech claim  
4 where a public employee was required to subsidize a union  
5 negotiator on that employee's behalf. And the Supreme Court  
6 held that that was inconsistent with the First Amendment.

7 I'd also note one point of agreement between Anthropic and  
8 the Government, to the extent Anthropic has identified  
9 inherently expressive conduct or speech, that has to be  
10 examined through the *Pickering-Connick/Garcetti* framework for  
11 public employee and governmental contractor speech.

12 Under that framework, the company has to show that it  
13 spoke on a matter of public concern, has to show that its  
14 interest as the employee or contractor outweigh the interest of  
15 the Federal Government, and statements pursuant to official  
16 duties are not protected by the First Amendment.

17 That gauntlet is something that Anthropic can't possibly  
18 run through on the speech and conduct that it points to,  
19 especially given the Department of War's strong interest in  
20 protecting national security and the sensitive setting for this  
21 particular contract that is being negotiated.

22 **THE COURT:** I didn't recall you applying the *Pickering*  
23 framework in your opposition brief, but will you give me the  
24 basis for applying that to a government contractor as opposed  
25 to a federal employee?

1           **MR. HAMILTON:** Well, Anthropic cites the *Umbare* case  
2 which extends *Pickering-Connick* to the context of contractors.  
3 So I believe *Umbare* is the case that takes *Pickering-Connick* to  
4 the context of a government contractor. And to be clear, we  
5 don't think that that case reaches *Pickering-Connick/Garcetti*,  
6 and the reason is that the conduct of Anthropic refusing to  
7 deal with the Government on the terms the Government requires  
8 for AI providers isn't inherently expressive, so we don't even  
9 enter into the *Pickering-Connick/Garcetti* framework. But if  
10 the Court disagrees with us on that, that is the framework on  
11 which its First Amendment arguments would be tested.

12           The second defect is one of causation. Anthropic, to  
13 succeed on its claim, has to show that its speech or inherently  
14 expressive conduct was the motivating factor for the challenged  
15 actions.

16           But here, what the record shows is that the company's  
17 refusal to deal with the Government as well as the lost trust  
18 between the company and the Department of War was the  
19 motivating factor.

20           That's what the President's post on the Truth Social  
21 platform says. It says Anthropic was trying to strong-arm the  
22 Department of War.

23           Secretary Hegseth's post repeats that. And Undersecretary  
24 Michael's memorandum talks about Anthropic as an unreliable and  
25 untrustworthy contracting partner.

1           **THE COURT:** I have a question about that "strong-arm"  
2 language. It's a little odd to think about a private company  
3 negotiating with the U.S. Government saying, "We really want  
4 this term," and the U.S. Government saying, "No, no, we're not  
5 going to agree to that" and that being a strong-arming act. So  
6 when I read "strong-arm" it seemed to -- and you tell me if I'm  
7 wrong about this -- it seemed to me likely a reference to the  
8 bringing of public pressure and public scrutiny to the  
9 contracting dispute.

10           Is there some reason I should interpret "strong-arm" in a  
11 different way?

12           **MR. HAMILTON:** I think it's principally driving at  
13 Anthropic's insistence on dictating to the Federal Government  
14 what it can and cannot use its products and services for.

15           But as we've explained through Undersecretary Michael's  
16 declarations, as well as the record for the supply chain risk  
17 designation, there is a whole record of conduct here that  
18 underlies the judgment that this is not a trustworthy and it is  
19 not a reliable partner with which the United States Government  
20 could continue to work.

21           An additional point on the President's and the Secretary's  
22 judgments about Anthropic, and that is that those judgments are  
23 entitled to substantial deference, especially in the context of  
24 national security. That's something the U.S. Supreme Court  
25 recognized in the *TikTok against Garland* case.

1 The third defect in the First Amendment retaliation claim  
2 is the fact that even if Anthropic succeeds in showing  
3 retaliatory animus was the motivating factor, the Government  
4 can show that it still would have acted the same way.

5 And the Government has made that showing here in  
6 explaining that it has acted because of Anthropic's insistence  
7 on dictating to the United States Government how it would  
8 control the use of products and services that the Government  
9 purchases from Anthropic.

10 And I want to highlight the Ninth Circuit's recent  
11 decision in the *AFGE* case. There the President signed an  
12 executive order designating certain employees as exempt from  
13 collective bargaining, and the plaintiff argued that there was  
14 a First Amendment problem because a fact sheet on the White  
15 House website said that unions had declared war on  
16 President Trump's agenda and asserted that one union had said  
17 it was fighting Trump.

18 The Ninth Circuit assumed that the plaintiff had succeeded  
19 in showing retaliatory animus underlied the President Trump's  
20 action, but it still held that the First Amendment retaliation  
21 claim failed because the focus was on the national security  
22 judgment that the President made, and the same is true for the  
23 actions that Anthropic has challenged here.

24 We've already discussed the 3252 designation, and so I'll  
25 make just a few brief additional points. One, that this is a

1 highly deferential standard in the context of arbitrary and  
2 capricious review; it's an extremely limited one. And that  
3 deference is doubled in the national security context. Our  
4 brief at page 18 marches through some of those authorities that  
5 explain that.

6 A point on the term "adversary." The term does not apply  
7 exclusively to foreign actors or foreign states. Congress  
8 instead just used the term "adversary," which Webster's defines  
9 as an opponent in a contest, conflict, or dispute.

10 And in addition, Anthropic's weight on the adversary term  
11 in this statute and its interpretation really leads to some  
12 absurd results. It would suggest that Congress wanted the  
13 Department of War to have an authority to counter risks of  
14 sabotage and subversion of IT systems but only if the adversary  
15 is a foreign state overseas; and that policy, of course, makes  
16 no sense.

17 The better interpretation is that this is a statute giving  
18 the Department a tool to address subversion and -- and risks of  
19 sabotage by an adversary, and one that only needs to be a risk  
20 of an adversary at that. Again, Secretary Hegseth only  
21 designated Anthropic as a supply chain risk; and under the  
22 statute, there only needs to be a risk that an adversary will  
23 take these acts that are covered by the statute.

24 We've already discussed the record supporting the  
25 Secretary's determination of a supply chain risk.

1 And I'll move, then, to procedural due process.

2 This claim also fails by *Anthropic* -- first, it hasn't  
3 been deprived of a life, liberty, or property interest. Its  
4 reputational harms that are alleged are not sufficient to  
5 satisfy that element for procedural due process, nor or any  
6 interests that it has in a contracting relationship with the  
7 United States Government.

8 And in any event, it has process with the procedure  
9 outlined in Secretary Hegseth's memorandum attached to the  
10 correspondence that *Anthropic* received. And in addition,  
11 the Court of Federal Claims is a forum in which *Anthropic* could  
12 litigate any concerns that it may have about contract  
13 terminations.

14 Our brief also explains why the irreparable harm showing  
15 is fail- -- why they failed to make an irreparable harm  
16 showing.

17 And I will just conclude the *Winter* factors by touching on  
18 the balance of the equities. This factor in *Winter* often gets  
19 glossed over. It's not usually a very important part of the  
20 analysis, but this is a case where this is a significant  
21 factor, and a -- a fatal one for the motion that *Anthropic* has  
22 filed.

23 The *Winter* case itself is directly on point. *Winter* arose  
24 in the national security context. The plaintiff was  
25 challenging the Navy's use of sonar equipment, and the Supreme

1 Court recognized the harm that would befall the Navy and  
2 the-then -- the Department of Defense for a limitation on the  
3 use of the sonar equipment.

4 The Court said, "We give great deference to the  
5 professional judgment of military authorities." And that case  
6 is directly on point here because the plaintiff is seeking a  
7 preliminary injunction that would interfere and act against the  
8 judgments of the country's commander-in-chief, as well as the  
9 secretary of defense in whom the Congress has vested this  
10 authority to designate a supply chain risk.

11 In addition, on the balance of the equities, I would note  
12 that this is a highly unusual motion for a preliminary  
13 injunction in that, at the same time, the plaintiff is asking  
14 the Court to enter an order against enforcement and  
15 implementation of the challenged actions. It is telling  
16 the Court to, in the motion, say that the defendants can  
17 continue to decide they don't want to work with Anthropic, and  
18 they aren't compelled to use the software and the products that  
19 Anthropic had -- provides to the defendants in this case.

20 I appreciate the concession, and it's a necessary  
21 concession, but the concession doesn't change the fact that  
22 this is a fatally flawed theory of a motion for a preliminary  
23 injunction that fails each of *Winter's* factors and very clearly  
24 fails the balance of the equities factor in the *Winter* test.

25 I'll conclude by just noting that if the Court does enter

1 any injunctive relief, it should stay any preliminary  
2 injunction or other relief pending appeal for all of the  
3 reasons that we have argued in our opposition to the motion for  
4 a preliminary injunction.

5 We would ask the Court to rule on our motion for a stay  
6 pending appeal in the same order that it issues -- that  
7 provides any sort of relief to Anthropic. At a minimum, we'd  
8 ask the Court to administratively stay any injunctive relief  
9 for a seven-day period. And I note that in its reply brief,  
10 anthropic states it would not oppose that seven-day  
11 administrative stay.

12 And finally, we agree that if the Court does enter a  
13 preliminary injunction, it should be clear in recognizing that  
14 the Government can continue to off-board Anthropic, and it is  
15 not required by the Court's order to continue to use the  
16 services that Anthropic provides to the United States  
17 Government.

18 **THE COURT:** Okay.

19 Let me give Anthropic an opportunity to respond.

20 **MR. MONGAN:** Thank you, Your Honor.

21 I was scribbling furiously earlier in the hearing when  
22 Your Honor walked through your tentative. And, I think, from  
23 my notes, we generally agree with the points made in that  
24 tentative.

25 With great respect to my -- to my colleague, we generally

1 disagree with the legal arguments that we've heard in the last  
2 few minutes, including some of the characterizations of our  
3 position and arguments. I think you have most of our arguments  
4 in the reply brief in response to the opposition brief, and I  
5 want to proceed in a manner that would be helpful to the Court.

6 Suffice it to say on the merits, Anthropic's view is it is  
7 likely to succeed on a powerful First Amendment retaliation  
8 claim, on the APA claim, the due process claim, and the  
9 separation of powers claim.

10 And if the Court has particular questions on the merits  
11 issues, I'd be happy to respond to them.

12 **THE COURT:** I do have a question about the *Pickering*  
13 framework that counsel said that you conceded applies.

14 **MR. MONGAN:** Sure.

15 **THE COURT:** I don't recall seeing anyone walk through  
16 the *Pickering* factors in the briefing, but maybe -- there was a  
17 lot of briefings, so maybe I'm not recalling it.

18 What is your position as to the applicability of the  
19 *Pickering* factors and whether the Court needs to walk through  
20 that analysis?

21 **MR. MONGAN:** That's right, Your Honor.

22 I understand my colleague to be inferring that from a  
23 citation. That is not the framework that we have advanced.  
24 It's not the way that the defendants have analyzed this claim.  
25 We are proceeding on the standard three-factor retaliation

1 framework that is well familiar in this circuit.

2 **THE COURT:** Do you contest that the *Pickering* factor  
3 app- -- *Pickering* framework applies to government contractors  
4 and their speech?

5 **MR. MONGAN:** I want to be very candid, Your Honor.  
6 This is not an issue that's been briefed, and I'm a little bit  
7 reluctant to state a final position on behalf of Anthropic.

8 That's not the framework that we have advocated, and I  
9 think as recent decisions, including from this Court, applying  
10 the three-part *O'Brien* retaliation framework suggests, it's  
11 perfectly applicable, I think, in this -- in this context as  
12 well.

13 If that's something that is of interest to the Court, we  
14 would be happy to prepare a supplemental briefing to make sure  
15 that we can give you a forthright statement of our positions.

16 **MR. HAMILTON:** Your Honor, if I could make a  
17 correction on this. My colleague has handed me a note  
18 indicating that Anthropic did not cite *Umbare*, so I think I was  
19 incorrect in saying that.

20 But again, it is the defendants' view that if this claim  
21 gets off the ground and past the inherently expressive test,  
22 then it would go through that framework of *Pickering-Connick*  
23 and *Garcetti*. But I don't believe the plaintiff did cite  
24 *Umbare* in their papers.

25 **THE COURT:** Did you argue for the *Pickering* framework

1 in your papers?

2 **MR. HAMILTON:** It's not something we raised because we  
3 don't think it even gets that far.

4 **THE COURT:** Okay. Thank you.

5 I didn't -- the other question I did have for plaintiffs  
6 is: In your reply brief you suggested that the Court, for  
7 clarity, should -- or could enter a ruling saying that the  
8 Department of War would be free to stop using Claude. I am  
9 assuming that's in a situation where Anthropic was the prime  
10 contractor, but do you agree also that it makes sense to allow  
11 the Department of War to stop using Claude in situations where  
12 Anthropic is a formal subcontractor of some kind?

13 **MR. MONGAN:** Your Honor, what I -- I want to be a  
14 little bit careful about making concessions as to hypotheticals  
15 that have not come to pass yet because, as we've seen in this  
16 case, there's various different forms of executive actions and  
17 the details matter here.

18 The relief that we are requesting would be to put the  
19 parties back in the status quo that existed on the morning of  
20 February 27th. And on that day, instead of taking these  
21 unlawful and retaliatory actions, the Department could have  
22 decided it no longer wanted to contract with Anthropic. There  
23 are many detailed statutes and regulations that bear on how  
24 agencies can wind down statutes and make procurement decisions,  
25 and what our point is, is that nothing in this preliminary

1 injunction that we're seeking would prohibit the Government  
2 from taking any action that it would have been able to take on  
3 February 27 so long as it complies with applicable regulations  
4 and statutes and constitutional provisions.

5 **THE COURT:** So the Department of War could, for  
6 example, decide to terminate contracts in which Anthropic is a  
7 subcontractor and go through the termination process with those  
8 contracts.

9 Is that accurate?

10 **MR. MONGAN:** Yes. And I don't want to be evasive, but  
11 we'd like to know what the exact action is. But the Federal  
12 Government has broad authority under the FAR and under the  
13 procurement statutes, and our point is simply that it just  
14 needs to comply with the existing authority as --

15 **THE COURT:** As long as the action's otherwise lawful.

16 **MR. MONGAN:** As long as it's otherwise lawful and not  
17 for a, you know, unconstitutional, retaliatory purpose,  
18 Your Honor.

19 **THE COURT:** Okay.

20 **MR. MONGAN:** And if I might just say a few words about  
21 the equities, which we haven't spent much time on.

22 These are unprecedented executive actions. We recognize  
23 in our papers that they are in the national security realm and  
24 that courts accord an appropriate measure of deference, but  
25 courts do sometimes, as appropriate, grant preliminary

1 injunctive relief when executive actors violate the  
2 Constitution or violate statutes.

3       These actions are unlawful for the reasons that we've  
4 discussed. They have caused immediate, irreparable, and  
5 ongoing harm to Anthropic, to its constitutional rights, to its  
6 reputation in the eyes of partners, customers, and investors,  
7 and to its business interests not just in the national security  
8 sector, but beyond.

9       And I want to emphasize, my colleague talked about the  
10 public interest. These harms don't just stop at Anthropic.  
11 We've been joined by dozens of amici who have underscored how  
12 these actions are harming the broader public interest; military  
13 leaders who explained how the actions harm our military  
14 readiness; employees of other competitor frontier AI labs who  
15 talk about how they are chilling debate on this really  
16 important subject of public significance about AI safety;  
17 Microsoft industry trade associations who explain how they  
18 hinder the development of important technologies.

19       And, Your Honor, as I mentioned a moment ago, what we're  
20 asking for, contrary to what my colleague just suggested, is  
21 not extraordinary at all. We are simply asking to be returned  
22 to the status quo on the morning of February 27th.

23       At that time, there's a range of lawful actions that the  
24 defendants could have taken. What they can't do is engage in  
25 unconstitutional retaliation for our protected speech. They

1 can't impose a secondary boycott that they have now conceded  
2 has no valid legal basis. They can't impose an immediate  
3 prospective effective debarment of Anthropic for all future  
4 government contracting that is not supported by any lawful  
5 executive authority.

6 So we would respectfully request that the Court enter a  
7 preliminary injunction.

8 **THE COURT:** Thank you all for the argument and for the  
9 briefing on both sides, which was very helpful to the Court. I  
10 also want to thank the amici for providing a lot of important  
11 background on a very short timeline. Thank you all.

12 I anticipate issuing an order in the next few days, but  
13 I'm going to take the matter under submission and look into the  
14 different authorities that you all cited.

15 Be well.

16 **THE COURTROOM DEPUTY:** Court is adjourned.

17 (Proceedings adjourned at 3:09 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Wednesday, March 25, 2026

A handwritten signature in blue ink, reading "Ruth Levine Ekhaus", with a horizontal line extending to the right.

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Ruth Levine Ekhaus, RMR, RDR, FCRR, CCG, CSR No. 12219  
Official Reporter, U.S. District Court