

1 BRETT A. SHUMATE  
 Assistant Attorney General  
 Civil Division  
 2 ERIC J. HAMILTON (CA Bar No. 296283)  
 Deputy Assistant Attorney General  
 3 JEAN LIN (NY Bar No. 4074530)  
 Special Litigation Counsel  
 4 JAMES W. HARLOW (Md. Bar, no number issued)  
 KRISTINA A. WOLFE (VA Bar. No. 71570)  
 Senior Trial Counsel  
 5 CHRISTIAN DIBBLEE (DC Bar No. 90002557)  
 Trial Attorney  
 6 Federal Programs Branch  
 U.S. Department of Justice  
 7 1100 L Street, N.W.  
 Washington, D.C. 20005  
 8 (202) 514-6786  
 9 james.w.harlow@usdoj.gov

10 *Counsel for Defendants*

11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 ANTHROPIC PBC,	)	Case No. 3:26-cv-01996-RFL
15 Plaintiff,	)	DEFENDANTS' OPPOSITION TO PLAINTIFF'S
16 v.	)	MOTION FOR A PRELIMINARY INJUNCTION;
17 U.S. DEPARTMENT OF WAR, <i>et al.</i> ,	)	MEMORANDUM OF POINTS AND
18 Defendants.	)	AUTHORITIES
	)	Hearing Date: March 24, 2026
	)	Time: 1:30 PM
	)	Judge: Hon. Rita F. Lin
	)	Place: San Francisco Courthouse
	)	Courtroom 15

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## INTRODUCTION

1  
2 It is black-letter law that, “[l]ike private individuals and businesses, the Government enjoys the  
3 unrestricted power . . . to determine those with whom it will deal, and to fix the terms and conditions upon  
4 which it will make needed purchases.” *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127 (1940). For national  
5 security reasons, the terms of service for Plaintiff Anthropic PBC’s artificial intelligence (AI) technology  
6 have become unacceptable to the Executive Branch. Anthropic concedes the Government’s right not “to  
7 use Anthropic’s services” and to “transition[] to other AI providers.” ECF No. 6 (PI Mot.), at 10.<sup>1</sup> It  
8 nonetheless seeks a preliminary injunction to effectively bar the Government from doing just that. The  
9 facts and the law do not support such extraordinary relief.

10 Early this year, the Secretary of War directed the Department of War (“DoW” or “Department”) to  
11 incorporate into any AI service contracts a provision that permits DoW to use the technology for any  
12 lawful purpose. If it were any other way, an AI provider might gain influence over how DoW conducts  
13 operations and which missions it chooses. Anthropic, whose Claude AI model is embedded in DoW’s  
14 unclassified and classified systems, refused to accept the term during new contract negotiations, citing its  
15 Usage Policy that imposes various limitations on the use of Claude. And throughout the negotiations,  
16 Anthropic’s behavior more generally caused the Department to question whether Anthropic represented a  
17 trusted partner with whom the Department was willing to contract in this highly sensitive area. In  
18 particular, DoW became concerned that allowing Anthropic continued access to DoW’s technical and  
19 operational warfighting infrastructure would introduce unacceptable risk into DoW supply chains. After  
20 all, AI systems are acutely vulnerable to manipulation, and Anthropic could attempt to disable its  
21 technology or preemptively alter the behavior of its model either before or during ongoing warfighting  
22 operations, if Anthropic—in its discretion—feels that its corporate “red lines” are being crossed. DoW  
23 deemed that an unacceptable risk to national security.

24 As a result of these concerns, on February 27, 2026, the President directed all federal agencies to  
25 stop using Anthropic’s technology with a six-month phaseout period (the Presidential Directive), which  
26 the agencies have begun to implement consistent with any contractual terms. Additionally, the same day,  
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<sup>1</sup> Pincites are to the page number stamped in the header by CM/ECF.

1 the Secretary announced on social media that the Department would no longer use Anthropic. The  
2 Secretary further directed his subordinates to undertake the process for designating Anthropic a supply  
3 chain risk under 10 U.S.C. § 3252. On March 3, after receiving recommendations from the relevant  
4 officials, the Secretary so designated Anthropic, as authorized by section 3252(a) (the Secretarial  
5 Determination). The effect of this Determination is to exclude Anthropic from procurements involving  
6 national security systems.

7 Anthropic now seeks to preliminarily enjoin the Government from taking any action to  
8 “implement, effectuate, or further the purposes” of the Presidential Directive and Secretarial  
9 Determination, ECF No. 6-34 at 2—that is, to force the Government to continue to use its products and  
10 services and to enjoin the designation. At the outset, although Anthropic has lumped them together, it is  
11 important to distinguish the Presidential Directive from the Secretary’s actions—each is distinct and  
12 grounded in unique authority. The Directive flows from the President’s Article II power to supervise the  
13 Executive Branch, as confirmed by judicial precedent, while the Secretary acted pursuant to statute.

14 This Court should deny Anthropic’s motion because Anthropic is not likely to succeed on the  
15 merits. Anthropic is not likely to succeed in showing that the Presidential Directive, the Secretary’s social  
16 media post, and the Secretarial Determination were retaliation for Anthropic’s expressions “about the  
17 safety of its model and the responsible use of AI.” PI Mot. 12. The record reflects that the President and  
18 the Secretary were motivated by concerns about Anthropic’s potential future conduct if it retained access  
19 to the Government’s IT infrastructure. Those concerns are unrelated to Anthropic’s speech, and no one  
20 has purported to restrict Anthropic’s expressive activity. By its own account, Anthropic has long expressed  
21 its “values” and “founding commitments,” and “the company and its leadership are leading voices on  
22 issues related to AI safety and policy.” PI. Mot. 11. That was true before and during the time the  
23 Government was using its products and services. It was only when Anthropic refused to release the  
24 restrictions on the use of its products—which refusal is conduct, not protected speech—that the President  
25 directed all federal agencies to terminate their business relationships with Anthropic. As authorized by  
26 statute, the Secretary also responsibly took steps to protect national security from the supply chain risk  
27 posed by Anthropic. Thus, none of the distinct actions of the President and the Secretary was retaliation  
28 for Anthropic’s expression; they were simply the consequences of Anthropic’s commercial conduct,

1 including its decision to reject the Department’s requested amendment to the terms of service. Indeed,  
2 had Anthropic accepted the Government’s “all lawful use” contractual term, the challenged actions would  
3 not have occurred.

4 Equally unlikely to succeed are Anthropic’s claims under the Administrative Procedure Act (APA)  
5 and for ultra vires review. The President’s Directive—which itself does not cancel any contractual  
6 relationships—reflects nothing more than a routine exercise of the President’s Article II authority to direct  
7 his Executive Branch subordinates about how to exercise their own statutorily conferred discretion. And  
8 the Secretary properly exercised his authority under 10 U.S.C. § 3252. Their judgments on matters of  
9 national security and procurement policies are entitled to double and substantial deference, and the  
10 Secretary’s Determination readily survives the highly deferential and extremely limited arbitrary and  
11 capricious review. As for its Fifth Amendment due process claim, Anthropic fails to make the threshold  
12 showing that it has been deprived of a protected liberty or property interest. And even if it had, Anthropic  
13 still has the opportunity to receive any process it is due by seeking agency reconsideration, not to mention  
14 that it is already pursuing this litigation.

15 Anthropic also fails to establish that it is likely to suffer an irreparable harm in the absence of  
16 injunctive relief or that the balance of equities favors emergency relief. Anthropic’s claims of harm—  
17 mostly centering on its potential loss of business—are speculative and legally insufficient to constitute  
18 irreparable injury. And the public interest strongly disfavors Anthropic’s requested relief, which—  
19 applying equally to the Presidential Directive and the Secretarial Determination—would prevent not only  
20 the Department of War but also the Government broadly from removing Anthropic’s technology from the  
21 Government’s systems and force the Government to continue a business relationship it no longer deems  
22 appropriate. That runs counter to the considered judgment of those officials entrusted with protecting  
23 national security and to the President’s authority as the Chief Executive to set procurement priorities for  
24 the Executive Branch in a manner consistent with law.

### 25 **STATUTORY BACKGROUND**

26 As early as 2011, Congress recognized the “increasing risk that [information technology] systems  
27 and networks critical to [DoW] could be exploited through the introduction of counterfeit or malicious  
28 code and other defects introduced by suppliers of systems or components.” S. Rep. 111-201, at 162 (2010).

1 It “conclude[d] that the Secretary should have the authority needed to address this risk,” including the  
 2 ability to “exclude a particular source from consideration where necessary to avoid an unacceptable supply  
 3 chain risk.” *Id.* The resulting legislation was contained within the Ike Skelton National Defense  
 4 Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 806, 124 Stat. 4137, 4260 (Jan. 7, 2011)  
 5 (later codified as amended at 10 U.S.C. § 3252).

6 The statute empowers the Secretary of War “to protect national security by reducing supply chain  
 7 risk.” 10 U.S.C. § 3252(b)(2)(A). “The term ‘supply chain risk’ means the risk that an adversary may  
 8 sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity,  
 9 manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as  
 10 to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.” 10 U.S.C.  
 11 § 3252(d)(4). The Secretary (along with the heads of the military departments) may designate a “supply  
 12 chain risk” and take “covered procurement action[s]” for qualifying procurements of “a national security  
 13 system” or “an item of information technology . . . purchased for inclusion in a” national security system.  
 14 10 U.S.C. § 3252(a)(1), (d)(1)(A), (d)(3), (d)(5), (d)(6); *see also* 44 U.S.C. § 3552(b)(6) (defining  
 15 “national security system”); 40 U.S.C. § 11101 (defining “item of information technology”). Covered  
 16 procurement actions include “[t]he decision to withhold consent for a contractor to subcontract with a  
 17 particular source or to direct a contractor . . . to exclude a particular source from consideration for a  
 18 subcontract.” 10 U.S.C. § 3252(d)(2)(C). Before carrying out a covered procurement action, the Secretary  
 19 must “consult[] with procurement or other relevant officials” in the Department of War and “mak[e] a  
 20 determination in writing” that, among other things, the use of § 3252 authority is necessary to protect  
 21 national security and that less intrusive measures are not reasonably available to reduce the supply chain  
 22 risk. *Id.* § 3252(b). The Secretary must notify appropriate congressional committees of the determination.  
 23 *Id.* § 3252(b)(3); *see* 48 C.F.R. § 239.7304 (implementing regulations).

## 24 **FACTUAL BACKGROUND**

### 25 **I. ANTHROPIC REJECTS THE DEPARTMENT OF WAR’S STANDARD “ANY LAWFUL USE” POLICY**

26 Shortly after taking office in 2025, the President issued an Executive Order declaring that: “It is  
 27 the policy of the United States to sustain and enhance America’s global AI dominance in order to  
 28 promote . . . national security.” Exec. Order No. 14,179, § 2, 90 Fed. Reg. 8741 (Jan. 23, 2025). To that

1 end, on January 6, 2026, the Secretary of War “direct[ed] the Department of War to accelerate America’s  
2 Military AI Dominance by becoming an ‘AI-first’ warfighting force across all components.” Sec’y of  
3 War, *Artificial Intelligence Strategy for the Department of War*, at 1 [https://perma.cc/52KE-  
4 X7VQ?type=image](https://perma.cc/52KE-X7VQ?type=image). Achievement of that goal requires utilizing AI “models free from usage policy  
5 constraints that may limit lawful military applications.” *Id.* 5. Accordingly, the Secretary “direct[ed] the  
6 Under Secretary of War for Acquisition and Sustainment to incorporate standard ‘any lawful use’ language  
7 into any DoW contract through which AI services are procured” and set a six-month deadline to do so. *Id.*

8 One AI service used by the Department is Anthropic’s Claude model. The usage of Claude,  
9 however, is “subject to Terms of Service that incorporate its Usage Policy.” Decl. of Jared Kaplan (ECF  
10 No. 6-1) ¶¶ 21-22. That Usage Policy reflects Anthropic’s corporate “judgment” about how to enable  
11 “beneficial uses of AI while mitigating” what Anthropic believes to be “potential harms.” *Id.* As  
12 Anthropic explains, “[t]he Usage Policy generally prohibits uses” that the company believes “pose  
13 unacceptable risks, including surveillance, compromising computer systems or networks, and designing  
14 weapons or other systems to cause harm or loss of human life.” *Id.* ¶ 22. The Department accessed Claude  
15 through a contract with Palantir Technologies (which in turn partnered with Anthropic), as well as a  
16 separate agreement with Anthropic. *See* Decl. of Thiyagu Ramasamy (ECF No. 6-3) ¶¶ 5-6; ECF No. 6-  
17 14. Currently, Claude is the Department’s most widely deployed AI model—and the only one embedded  
18 in the Department’s classified systems—with a “government-specific addendum to the Usage Policy” “for  
19 national security users.” Kaplan Decl. ¶¶ 26-27.

20 Pursuant to the Secretary’s January directive, the Department requested that Anthropic “permit ‘all  
21 lawful uses’ of Claude.” Ramasamy Decl. ¶ 16; *see, e.g.*, Kaplan Decl. ¶ 32; ECF No. 6-33 (“Here’s what  
22 we’re asking: Allow the Pentagon to use Anthropic’s model for all lawful purposes.”). The Secretary also  
23 delivered the request personally to Anthropic’s CEO on February 24. *See* Decl. of Sarah Heck (ECF No.  
24 6-2) ¶¶ 12-16. Although Anthropic characterized the dispute as about the use of Anthropic’s models for  
25 lethal autonomous warfare and mass surveillance of Americans, *see* Kaplan Decl. ¶ 33, the Department  
26 made clear that it “has no interest in using AI to conduct mass surveillance of Americans (which is illegal)  
27 nor [does it] want to use AI to develop autonomous weapons that operate without human involvement,”  
28 ECF No. 6-33. The principle behind the “all lawful uses” contract language is that the Department “will

1 not let ANY company dictate the terms regarding how [it] make[s] operational decisions.” *Id.* Yet  
2 Anthropic refused to include the term, fully aware that it “meant Anthropic was not the right vendor for  
3 the Department’s needs.” Heck Decl. ¶ 11; *see* Kaplan Decl. ¶ 37 (recognizing “that because of Claude’s  
4 limitations and safeguards, DoW may opt to work with another company that better suits its needs”).

## 5 **II. PRESIDENTIAL DIRECTIVE TO CEASE USE OF ANTHROPIC’S TECHNOLOGY AND THE** 6 **SECRETARY’S RESPONSE**

7 On February 27, the concerns building with the Government about Anthropic’s behavior boiled  
8 over. That day, President Trump stated in a social media post that, by effectively insisting the Department  
9 of War “obey” the company’s terms of service, Anthropic was “putting AMERICAN LIVES at risk, our  
10 Troops in danger, and our National Security in JEOPARDY.” ECF No. 6-20. The President explained  
11 that the Executive Branch did not “want”—nor “need”—to do business with Anthropic under such  
12 circumstances. *Id.* The President thus directed every Federal Agency to cease use of Anthropic’s  
13 technology, with a six month phase out period. *Id.*

14 In a social media post that followed, the Secretary echoed that the Department of War will not  
15 allow Anthropic to “seize veto power over the operational decisions of the United States military” through  
16 its terms of service; rather, the Department “must have full, unrestricted access to Anthropic’s models for  
17 every LAWFUL purpose in defense of the Republic.” ECF No. 6-21. The Secretary believed that  
18 Anthropic’s “unelected tech executives” were attempting to “strong-arm the United States military into  
19 submission” when it is the “Commander-in-Chief and the American people alone” who decide the  
20 military’s course. *Id.* “In conjunction with the President’s directive for the Federal Government to cease  
21 all use of Anthropic’s technology,” the Secretary “direct[ed] the Department of War to designate Anthropic  
22 a Supply-Chain Risk to National Security.” *Id.*

## 23 **III. SECRETARIAL DETERMINATION THAT ANTHROPIC’S BEHAVIOR POSES A SUPPLY CHAIN RISK**

24 After the Secretary’s post, the Department proceeded with the statutory process to determine  
25 whether Anthropic posed a supply chain risk. On March 3, 2026, the Secretary received “the joint  
26 recommendation of the Under Secretary of War for Acquisition and Sustainment . . . and the Department  
27 of War Chief Information Officer” “that there is supply chain risk to DoW covered systems related to the  
28

1 use of Anthropic . . . products or services.” DoW-PI-002–003<sup>2</sup>; *see* 10 U.S.C. § 3252(d)(5) (defining  
2 “covered system”). In their view, there was a “significant risk” that, “by maintaining the ability and  
3 necessity to continuously update the product or service,” Anthropic could “subvert the design and/or  
4 functionality of their product or service,” including “alignment to the vendor’s preferred terms of service.”  
5 DoW-PI-002. That ability “put[s] the Department’s lawful use of the capability at risk” and thereby  
6 “introduces national security risks to the DoW’s supply chain.” DoW-PI-002.

7 The Under Secretary of War for Research and Engineering, with the assistance of the Chief Digital  
8 and Artificial Intelligence Office (CDAO),<sup>3</sup> analyzed the risk posed by Anthropic in a memorandum  
9 entitled “Urgent Supply Chain Risk Analysis: Anthropic’s Refusal to Permit Lawful AI Use.” *See* DoW-  
10 PI-005–008; Decl. of Emil Michael ¶¶ 7-9. “Unlike traditional software,” the Under Secretary explained,  
11 “AI models are probabilistic systems which are understood to ‘drift’ or degrade as new data is introduced  
12 and require constant tuning, the integrity of which[] is fundamentally based on the trustworthiness of the  
13 vendor”—*i.e.*, Anthropic—“to ensure the model continues to perform accurately and fairly.” DoW-PI-  
14 006. Put simply, “AI systems are acutely vulnerable to manipulation” by those with “[p]rivileged access”  
15 who can “introduce unwanted function, or otherwise subvert the design, integrity, and operation of the  
16 model.” DoW-PI-006. In real world terms, “Anthropic’s ability to unilaterally alter system guardrails and  
17 model weights without DoW consent could fundamentally change the system’s function and creates a  
18 significant operational risk,” “such as a critical defense system failing to engage due to an unapproved,  
19 vendor-side modification.” DoW-PI-006. And based on recent events, “DoW cannot trust Anthropic to  
20 ensure the integrity of its models.” DoW-PI-006.

21 The Under Secretary further assessed that “Anthropic’s risk level escalated from a potentially  
22 manageable technical and business negotiation to an unacceptable national security threat over the course  
23 of the DoW’s contract negotiation with them.” DoW-PI-007. “[T]here was a baseline risk given the  
24

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25 <sup>2</sup> Documents with the Bates prefix of “DoW-PI” are filed at Exhibit 1 to the Harlow Declaration.

26 <sup>3</sup> CDAO’s mission “is to accelerate DoW’s adoption of AI to ensure that [its] warfighters have the  
27 best capabilities to dominate on the battlefield and have full trust that the technologies they are using to  
28 create decision advantage are secure and trustworthy.” Michael Decl. ¶ 7. CDAO was realigned under  
the Under Secretary for Research and Engineering in 2025. *Id.* ¶ 8. “Because of its institutional and  
subject matter expertise, CDAO inherited responsibility for section 3252 supply chain risk assessments  
relating to AI issues.” *Id.* ¶ 8.

1 potential harm actions” made possible by Anthropic’s “privileged access as the AI model’s developer,  
2 curator, and maintainer.” DoW-PI-007; *see also* Michael Decl. ¶¶ 9-10 (explaining that the “relatively  
3 opaque nature of large language model (LLM) technology” and the fact that Anthropic “employs a large  
4 number of foreign nationals to build and support its LLM products” contributes to this baseline risk). That  
5 “risk level increased when Anthropic insisted on terms of service that would constrain the DoW beyond  
6 what is in the law.” DoW-PI-007; *see also* Michael Decl. ¶ 11 (explaining Anthropic’s insistence on  
7 “imposing restrictions on DoW’s lawful military capability development, operations, and intelligence  
8 missions” would “impair the capabilities of the U.S. military relative to our adversaries”). It “further  
9 increased when Anthropic asserted in the negotiations that it have an approval role in the operational  
10 decision chain, which would require the DoW to accept significant operational risk.” DoW-PI-007.

11         These concerns were bolstered by Anthropic’s recent behavior. As the Under Secretary explained,  
12 during recent “active military operations, Anthropic leadership [had] questioned the use of their  
13 technology in [DoW] warfighting systems” despite the use being “clearly permitted under the Terms of  
14 Service of their existing contract with [DoW’s] Prime contractor,” Palantir. DoW-PI-007; *see also*  
15 Michael Decl. ¶ 15. “This led to alarm by the DoW and the prime contractor who provides Anthropic  
16 software, and raised material doubts as to whether they would cause their software to stop working or  
17 cause some other disastrous action that would put our warfighters lives in danger.” DoW-PI-005; *cf.*  
18 Kaplan Decl. ¶ 39 (declaration from one of petitioner’s co-founders explaining that Anthropic’s attempts  
19 to limit the Department’s use of its software reflect petitioner’s own “technical judgment” and  
20 “principles”). Indeed, if such interference took place “during an operation, whether by shutting off access  
21 to the model or altering its functionality,” it “could cause serious harm to national security and loss of  
22 human life.” Michael Decl. ¶ 16. Atop all that, “during the final weeks of negotiations,” Anthropic “began  
23 engaging in an increasingly hostile manner through the press,” a manner at odds with “the ongoing private  
24 negotiations with DoW leadership,” which amplified doubts that Anthropic “can[] be trusted.” DoW-PI-  
25 006–07; *see also* Michael Decl. ¶ 13.

26         Anthropic’s “collective set of actions,” the Under Secretary concluded, “represents a fully mature  
27 supply chain risk—including increased potential for model poisoning, insider threat risk, data exfiltration,  
28 and denial of service.” DoW-PI-007; Michael Decl. ¶ 16 (explaining the actions demonstrate potential to

1 “undermine lawful U.S. national security activities and objectives”). “[T]his risk is not limited only to  
2 Anthropic and its model’s standalone presence in DoW systems or as a subcontractor to DoW.” Michael  
3 Decl. ¶ 17. “When Anthropic’s model is layered into other applications, there is a substantial risk that any  
4 company-imposed restrictions or alterations to the model would be transferred and impact mission  
5 applications, including in weapon systems development, and other products or services that ultimately  
6 perform DoW activities.” *Id.* For example, “if Anthropic’s technology is used as a plug-in to a larger  
7 application, it may limit the functionality of that larger system to the internal limitations built into or added  
8 to the Anthropic system.” *Id.* ¶ 18. “This would directly impair other covered systems by reducing their  
9 functionality to the same level as Anthropic’s system.” *Id.* By “posing a direct, intolerable, and material  
10 risk to our warfighting capability,” Anthropic “warrants designation . . . as a supply chain risk.” DoW-PI-  
11 007.

12 On March 3, the Secretary accepted the joint “recommendation provided by the Under Secretary  
13 of War for Acquisition and Sustainment,” “the Department of War Chief Information Officer,” and the  
14 Under Secretary of War for Research and Engineering. DoW-PI-001. The Secretary determined that  
15 “[t]he use of any of” Anthropic’s “products or services in any DoW covered system presents a supply  
16 chain risk and the use of the authority in section 3252(a) is necessary to protect national security by  
17 reducing that supply chain risk.” DoW-PI-001. He directed that “[a]ll actions authorized in accordance  
18 with 48 C.F.R. § 239.7305” should be implemented for “[a]ll DoW procurements for which 48 C.F.R.  
19 Subpart 239.73 is applicable.” DoW-PI-001 (adopting Scoping Analysis); DoW-PI-022 (Scoping  
20 Analysis). This means Anthropic is excluded from supplying products or services, as a contractor or a  
21 subcontractor, for procurements involving national security systems. *See* 10 U.S.C. § 3252(d)(2)-(3),  
22 (d)(5)-(6); 48 C.F.R. § 239.7305. Through letters also dated March 3, the Secretary notified both  
23 Congress, *see* DoW-PI-023–028; 10 U.S.C. § 3252(b)(3), and Anthropic of his Determination, *see* ECF  
24 No. 6-22; DoW-PI-029–032.

#### 25 **IV. FEDERAL AGENCIES DISCONTINUE USE OF CLAUDE AND ANTHROPIC SUES TO RETAIN ACCESS**

26 Since the Presidential Directive, federal agencies have taken steps to exercising their respective  
27 authorities to discontinue the use of Anthropic’s products and services. *See, e.g.*, ECF Nos. 6-22, 6-23, 6-  
28 25, 6-26. Because it is “technically and operationally infeasible” to immediately remove Anthropic’s

1 technology from all DoW systems, “particularly in the midst of active operations[,]” the Secretary has  
2 provided a 180-day transition period to “migrate to alternative LLM products without impacting  
3 operational readiness.” Michael Decl. ¶ 22. That transition process has been initiated. Michael Decl.  
4 ¶¶ 23-26; DoW-PI-033–034.

5 On March 9, Anthropic filed this suit against the Department of War (and the Secretary), 16 other  
6 federal agencies (and their heads), as well as the Executive Office of the President. *See generally* Compl.  
7 Anthropic alleges five counts: (1) an APA claim challenging the Secretarial Determination and the  
8 Secretary’s social media post; (2) a First Amendment claim based on the Presidential directive and the  
9 Secretary’s actions; (3) an *ultra vires* claim against the Presidential Directive and its implementation; (4)  
10 a Fifth Amendment due process claim challenging the Presidential Directive and the Secretary’s actions;  
11 and (5) and an omnibus APA claim against all agency defendants. *See id.* ¶¶ 113-87. Simultaneously,  
12 Anthropic moved for a preliminary injunction and 5 U.S.C. § 705 stay, although the motion does not rely  
13 on Count V. *See* PI Mot. Among other things, Anthropic asks the Court to prevent all defendants from  
14 taking any action to “implement, effectuate, or further the purposes of” the Presidential Directive, the  
15 Secretary’s February 27 social media post, and the Secretarial Determination. ECF No. 6-34 at 2.

### 16 LEGAL STANDARD

17 A “preliminary injunction is an extraordinary and drastic remedy” that “is never awarded as of  
18 right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citation omitted). A district court may enter a  
19 preliminary injunction only “upon a clear showing that the [movant] is entitled to such relief.” *Winter v.*  
20 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the movant must  
21 demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an  
22 irreparable harm in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and  
23 (4) that the proposed injunction is in the public interest. *Id.* at 20; *see, e.g., Baird v. Bonta*, 81 F.4th 1036,  
24 1040 (9th Cir. 2023). When “the Government is the opposing party,” the assessment of “harm to the  
25 opposing party” and “the public interest” merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). These same  
26 factors apply to determine whether a stay under the APA, 5 U.S.C. § 705, is warranted. *Immigrant Defs.*  
27 *L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir. 2025).

## ARGUMENT

### I. ANTHROPIC IS NOT LIKELY TO SUCCEED ON THE MERITS

Likelihood of success “is a threshold inquiry and is the most important factor.” *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020). “[A] court need not consider the other factors if a movant fails to show a likelihood of success on the merits.” *Baird*, 81 F.4th at 1040. Moreover, in seeking to overturn the President and the Secretary of War’s assessment of the risks of using its products, Anthropic must overcome the “unique deference” owed by courts to the Executive Branch in national security matters, *Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965, 980 (9th Cir. 2012), and the “significant weight” afforded to such judgments, *Holder v. Humanitarian L. Project*, 561 U.S. 1, 36 (2010). What is more, agencies “are entitled to exercise discretion upon a broad range of issues confronting them in the procurement process,” and “determining an agency’s minimum needs” for AI models squarely falls within that broad discretion and is not a matter “for [the] court to second guess.” *Savantage Fin. Servs., Inc. v. United States*, 595 F.3d 1282, 1286 (Fed. Cir. 2010) (citations omitted); *cf. Palantir USG, Inc. v. United States*, 129 Fed. Cl. 218, 260-61 (Fed. Cl. 2016) (“[e]ffective contracting demands broad discretion” and thus contracting decisions are subject to a “highly deferential rational basis review”). Against this headwind of double deference, Anthropic has not clearly shown that it is likely to succeed on any of its claims.

#### A. Anthropic’s First Amendment claim is unlikely to succeed

To bring a First Amendment retaliation claim, a plaintiff must allege, among other things, that it engaged in constitutionally protected activity and that the protected activity was a substantial motivating factor in the defendant’s conduct—*i.e.*, “that there was a nexus between the defendant’s actions and an intent to chill speech.” *Am. Fed’n of Gov’t Emps., AFL-CIO v. Trump*, — F.4th —, 2026 WL 534591, at \*6 (9th Cir. Feb. 26, 2026) (*AFGE*). “Upon making a prima facie showing, ‘the burden shifts to the defendant official to demonstrate that even without the impetus to retaliate he would have taken the action complained of.’” *Id.* (quoting *Boquist v. Courtney*, 32 F.4th 764, 777-78 (9th Cir. 2022), and *Hartman v. Moore*, 547 U.S. 250, 260 (2006)). “If there is a finding that retaliation was not the but-for cause of the adverse action, the claim fails for lack of causal connection between unconstitutional motive and resulting harm, despite proof of some retaliatory animus in the official’s mind.” *Id.*; *see Boquist*, 32 F.4th at 778;

1 *Hartman*, 547 U.S. at 260.

2 **1. Refusal to accept the Government’s contractual term is not speech**

3 The parties’ dispute stems from Anthropic’s refusal to agree to the Government’s “all lawful use”  
4 contractual term. The refusal is conduct, not speech. Anthropic says that agreeing to the Government’s  
5 contractual term would be against its “mission to advance the safe and beneficial development and use of  
6 AI.” Kaplan Decl. ¶ 39. But Anthropic was free to reject DoW’s term for that reason, and it did, along  
7 with the reason that agreeing to the term would be bad for business. *See id.* ¶ 38 (discussing that the “all  
8 lawful use” term would compromise Anthropic’s “core identity and competitive advantage,” “erode  
9 internal and external trust, weaken the company’s culture, and threaten its ability to attract and retain the  
10 expertise and commitment necessary to build innovative, cutting-edge AI systems”). But that does not  
11 transform the parties’ commercial dispute, or the consequences that flow from it, into a dispute about  
12 speech. *Cf. Nicopure Labs, LLC v. FDA*, 944 F.3d 267, 291 (D.C. Cir. 2019) (Government’s ban on the  
13 free distribution of manufacturer’s products does not “restrict the manufacturer’s ability to communicate”  
14 and thus, does not implicate any “communication of information” protected by the First Amendment).

15 To conclude otherwise “would extend First Amendment protection to every commercial  
16 transaction on the ground that it communicates to the customer information about a product or  
17 service.” *Id.* And yet, the Supreme Court has long rejected the “view that an apparently limitless variety  
18 of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express  
19 an idea.” *United States v. O’Brien*, 391 U.S. 367, 376 (1968). Indeed, “[i]t is possible to find some kernel  
20 of expression in almost every activity a person undertakes[.]” *City of Dallas v. Stanglin*, 594 U.S. 19, 25  
21 (1989). Anthropic’s refusal might be “accompanied by expressions of principle[.] [b]ut the refusal itself  
22 is not speech.” *See* Michael C. Dorf, *Is the Government Punishing Anthropic for Speech?* (Mar. 11, 2026),  
23 <https://perma.cc/7UWM-3K8V> (likening Anthropic’s argument to a manufacturer’s refusal to agree to new  
24 terms of service that the manufacturer believes will violate its principles about animal conservation); *cf.*  
25 *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 769 (2018) (“[T]he First Amendment  
26 does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on  
27 speech.”); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011) (same); *Las Vegas Nightlife, Inc. v. Clark*  
28 *Cnty.*, 38 F.3d 1100, 1102 (9th Cir. 1994) (the government can regulate “ordinary commercial activity”

1 without “offending the First Amendment”).

2           Importantly, in the context of contract negotiations, “it has never been deemed an abridgment of  
3 freedom of speech” merely because the conduct at issue “was in part initiated, evidenced, or carried out  
4 by means of language, either spoken, written, or printed.” *Rumsfeld v. Forum for Acad. & Institutional*  
5 *Rights, Inc.*, 547 U.S. 47, 62 (2006) (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502  
6 (1949)). Because the Government unquestionably has authority “to determine those with whom it will  
7 deal, and to fix the terms and conditions upon which it will make needed purchases,” *Perkins*, 310 U.S. at  
8 127, it makes no sense to suggest that the Government risks a First Amendment violation every time it  
9 rejects a vendor’s contractual term. *Cf. Coyne-Delany Co. v. Capital Dev. Bd.*, 616 F.2d 341, 342 (7th Cir.  
10 1980) (per curiam) (“[N]o one has a ‘right’ to sell to the government that which the government does not  
11 wish to buy.”). The First Amendment is not a license to unilaterally impose contract terms on the  
12 Government, and Anthropic cites nothing to support such a radical conclusion.

13           Anthropic also briefly mentions the Petitions Clause, alleging that Anthropic’s “attemp[t] to  
14 persuade the government to understand and accept” its terms of service is a protected petition. PI  
15 Mot. 21. But the Petition Clause protects “concerted efforts to influence public official[s]” about policy,  
16 *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 670 (1965), not a vendor’s business negotiations  
17 with the Government, *see United States ex rel. Wilson v. Maxxam, Inc.*, No. C 06-7497 CW, 2009 WL  
18 322934, at \*6 (N.D. Cal. Feb. 9, 2009) (forest management company’s statements in a management plan  
19 during “business negotiations with the government” to buy company’s land were not covered by Petitions  
20 Clause). The Petitions Clause does not even require the Government “to listen or respond” to  
21 petitions. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 286 (citation modified). Anthropic  
22 was free, and continues to be free, to petition the Government.

## 23           **2. Anthropic’s speech was not the motivating factor for the challenged actions**

24           Anthropic acknowledges that the Government “took the Challenged Actions only after Anthropic  
25 refused to change its position on acceptable uses of Claude.” Compl. ¶ 149. Anthropic’s expressive  
26 activity thus was not “a substantial or motivating factor” for the Presidential Directive or the Secretary’s  
27 actions. *O’Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016); *see also Mendocino Env’tl Ctr. v. Mendocino*  
28 *Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (“[i]ntent to inhibit speech” is “an element” of a First

1 Amendment retaliation claim). This is evident from the timeline of events. *See Burch v. City of Chubbuck*,  
2 146 F.4th 822, 838 (9th Cir. 2025) (examining “timeline of events” to determine casual connection); *Ariz.*  
3 *Students’ Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 870 (9th Cir. 2016) (same). Anthropic admits that it  
4 has advocated “since its inception” on issues of AI safety and policy, including the conditions in its terms  
5 of service. Compl. ¶ 73. Anthropic’s Usage Policy from as early as 2023 prohibited using Claude for  
6 “covertly tracking, targeting, or surveilling individuals.” Anthropic, *Acceptable Use Policy*,  
7 <https://perma.cc/7UC7-8T7U> (version of Sep. 15, 2023). According to Anthropic’s own declarations, the  
8 Government first accessed Claude in March 2025, *see* Kaplan Decl. ¶ 29, contracted with Anthropic for  
9 Claude in July 2025, *see* Ramasamy Decl. ¶ 6, and gave Anthropic a Top Secret security clearance that  
10 same year, *see id.* ¶ 9, all of which occurred after Anthropic’s public expressions on AI usage and policy.  
11 And Anthropic never alleges that the Government at any time attempted to stifle Anthropic’s expressive  
12 activity.<sup>4</sup> The allegedly adverse actions occurred only after Anthropic rejected the Government’s standard  
13 contractual term and insisted on its own term.

14 At bottom, had Anthropic agreed to the Government’s term, the challenged actions would not have  
15 occurred. The Presidential Directive indicates the President’s belief that Anthropic had “tr[ie]d to  
16 STRONG-ARM the Department of War and force them to obey [Anthropic’s] Terms of Service,” and that  
17 those attempts would put “AMERICAN LIVES at risk, our Troops in danger, and our National Security  
18 in JEOPARDY.” ECF No. 6-20 at 2. The Secretary’s social media post that same day echoed those  
19 sentiments and emphasized that a private vendor cannot “seize veto power over the operational decisions  
20 of the United States military.” ECF No. 6-21 at 2. As for the Secretarial Determination, the underlying  
21 joint recommendation identified a supply chain risk based on the “restrictions on the use of [Anthropic’s]  
22 products and services” as required by Anthropic’s terms of service. DoW-PI-001. The Department  
23 assessed that those restrictions “introduce[d] national security risks,” including the potential for Anthropic  
24 “to subvert the design and/or functionality of their product or services,” *id.*, a concern that was heightened  
25 by Anthropic’s course of conduct during the parties’ negotiations.

26  
27  
28 <sup>4</sup> The Government did not, for example, object to Dr. Amodei’s 60 Minutes interview in 2025 about  
the potential dangers of AI. *See* CBS News, *Why Anthropic CEO Dario Amodei spends so much time*  
*warning of AI’s potential dangers* (Nov. 16, 2025), <https://perma.cc/S87T-BJ38> (Interview Tr.).

1 The Presidential Directive and the Secretary’s exercise of section 3252 authority thus were not  
2 borne out of “a desire to punish Anthropic for its views,” PI Mot. 23, but rather out of concern that a  
3 private vendor is seeking to dictate the military’s use of AI in the national security realm. The “utmost  
4 deference” afforded by courts to the Executive in national security matters would mean nothing if a court  
5 could focus only on a vendor’s public statements—that accompanied the conduct deemed to cause national  
6 security concern—to find a First Amendment violation. *Cf. Dep’t of the Navy v. Egan*, 484 U.S. 518, 530  
7 (1988); *see CIA v. Sims*, 471 U.S. 159, 180 (1985) (“[I]t is the responsibility of the [Executive Branch],  
8 not that of the judiciary, to weigh the variety of complex and subtle factors in determining whether [the  
9 conduct at issue] may lead to [national security harm].”); *AFGE*, 2026 WL 534591, at \*7 (court should  
10 not consider challenged statements “in the worst possible light” but must consider them alongside the  
11 Government’s national security reasons).

12 **3. Even assuming a retaliatory motive, the Government would have acted the**  
13 **same**

14 As noted, even when a plaintiff has made a prima facie showing, and there is “proof of some  
15 retaliatory animus in the official’s mind,” the claim still fails if the retaliation against speech “was not the  
16 but-for cause of the adverse action.” *AFGE*, 2026 WL 534591, at \*6 (citation omitted). The above  
17 discussion makes clear that “even without the impetus to retaliate,” the President and the Secretary “would  
18 have taken the action[s] complained of” because both of their social media posts clearly articulated a  
19 national security concern for continuing to use Anthropic’s products and services. *Id.* And the Secretarial  
20 Determination and its supporting documents conclude that Anthropic’s restrictions “introduce[d] national  
21 security risks” and make no mention of Anthropic’s speech. Because the challenged actions have “a  
22 legitimate grounding in national security concerns, quite apart from any retaliatory animus,” the President  
23 and the Secretary would have taken the same actions regardless. *Id.*, at \*6 (citation omitted); *cf. TikTok*  
24 *Inc. v. Garland*, 604 U.S. 56, 79-80 (2025) (holding that because Congress would have passed the law  
25 based on content-neutral national security reasons “alone,” the Court had no need to analyze the law under  
26 an alternative allegedly content-based rationale). That is fatal to Anthropic’s First Amendment claim.

1                   **B. Anthropic’s APA challenge to the Secretary’s actions is not likely to succeed**

2                   Anthropic challenges under the APA, 5 U.S.C. § 706, the Secretary’s February 27 social media  
3 post (which Anthropic inaptly styles a “Secretarial Order”), and the March 3 Secretarial Determination  
4 under 10 U.S.C. § 3252—but not the Presidential Directive.<sup>5</sup> See PI Mot. 23-27; Compl. ¶¶ 113-33 (Count  
5 I). Both challenges lack merit.

6                   **1. The Secretary’s social media post is not a distinct, final agency action**

7                   Contrary to Anthropic’s assertion (PI Mot. 24), the Secretary’s social media post on February 27  
8 is *not* a final agency action subject to APA review. An “agency action” is “final” when it “mark[s] the  
9 consummation of the agency’s decisionmaking process” and is one “by which rights or obligations have  
10 been determined, or from which legal consequences will flow.” *U.S. Army Corps of Eng’rs v. Hawkes*  
11 *Co.*, 578 U.S. 590, 597 (2016) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)). The Secretary’s  
12 social media post satisfies neither requirement.

13                   The post was more “the beginning” than the consummation of DoW’s decisionmaking process  
14 under 10 U.S.C. § 3252. *Indus. Customers of Nw. Utilities v. Bonneville Power Admin.*, 408 F.3d 638, 646  
15 (9th Cir. 2005). The facts bear this out. Days *after* the Secretary’s post, ECF No. 6-21, the Under Secretary  
16 of War for Acquisition and Sustainment and the Department of War Chief Information Officer submitted  
17 a “joint recommendation” based on “consult[at]ions] with procurement and other relevant officials within  
18 DoW.” DoW-PI-002–003. The recommendation packet also includes a risk analysis memorandum.  
19 DoW-PI-005–008; see 10 U.S.C. § 3252(b)(1); 48 C.F.R. § 239.7304. It is only on March 3, upon receipt  
20 of that recommendation packet, that the Secretary actually exercised his authority under 10 U.S.C. § 3252  
21 to find that “covered procurement actions” are “necessary to protect national security by reducing th[e]  
22 supply chain risk” from Anthropic’s products or services. DoW-PI-001. Although “directing” his

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<sup>5</sup> The Presidential Directive itself, of course, is not subject to APA review because the President is  
24 not an “agency” within the meaning of the APA, *Franklin v. Massachusetts*, 505 U.S. 788, 800 (1992),  
25 and “this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties,”  
26 *id.* at 802-03 (quoting *Mississippi v. Johnson*, 4 Wall. 475, 501 (1867)). As for the agencies’  
27 implementation of the Presidential Directive, Anthropic does not move for a preliminary injunction on  
28 that basis. This is not surprising because a challenge to an agency’s termination of any contractual  
relationship with Anthropic falls outside this Court’s jurisdiction under the APA. See *Dep’t of Educ. v. California*, 604 U.S. 650, 651 (2025) (per curiam). Anthropic must instead proceed in accordance with the review scheme available for contract disputes with the Government. See, e.g., 28 U.S.C. § 1491; *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1022-23 (9th Cir. 2023).

1 subordinates to take future steps in the February 27 social media post, ECF No. 6-21, any such direction  
2 was “subsumed in” the final Secretarial Determination, so the post necessarily did not consummate DoW’s  
3 decisionmaking process, *Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997, 1008  
4 (9th Cir. 2021).

5 Nor is the social media post “the source of any binding legal obligations” on Anthropic or any  
6 other contractor. *Id.* at 1009. Those legal obligations were only fixed by the March 3 Secretarial  
7 Determination. In other words, no entity “would face liability for noncompliance” with the post. *Id.*  
8 Proving that point, Anthropic identifies “no provision” of law for which “noncompliance” with the post  
9 “might result in a consequence beyond those contained in” the Secretarial Determination. *Id.*; see PI Mot.  
10 25. Because the post did not “alter the legal regime to which” Anthropic “is subject,” it does not qualify  
11 as a “final agency action” amenable to judicial review under the APA. *Bennett*, 520 U.S. at 178.

12 Even if the Court finds the Secretary’s post to be a final agency action, that would not get Anthropic  
13 very far. An “agency can ‘deal with the problem afresh’ by taking *new* agency action.” *Dep’t of Homeland*  
14 *Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194,  
15 201 (1947)). The March 3 Secretarial Determination would constitute a new agency action, evaluated on  
16 its own record, and “not limited to [the] prior reasons” of the social media post. *Id.* And to the extent the  
17 post presaged the Determination, that “is hardly improper”; the Secretary may have “policy preferences  
18 and ideas” and then “work with” his subordinates “to substantiate” the bases “for a preferred policy.”  
19 *Dep’t of Com. v. New York*, 588 U.S. 752, 783 (2019).

## 20 **2. The Secretarial Determination was lawful and reasonable**

21 The Secretarial Determination is not contrary to law. *See* 5 U.S.C. § 706(A), (C). It does not  
22 exceed “the scope of the Secretary’s authority” under 10 U.S.C. § 3252. PI Mot. 25. The statute authorizes  
23 the Secretary to determine that a covered procurement action is necessary to protect national security. The  
24 Secretary did so, and his Determination properly seeks to mitigate the supply chain risk. Consistent with  
25 the statute, the Determination also specifies that it is applicable only to Anthropic’s “products or services  
26 that meet the definition of a ‘covered item of supply’ or that are part of a ‘covered procurement,’ as those  
27 terms are defined at 10 U.S.C. § 3252(d).” DoW-PI-001. Thus, on its face, the Determination does *not*  
28 “purport[] to” sweep “outside” those statutory parameters. PI Mot. 24.

1           *Second*, the Secretarial Determination complied with all procedural requirements. *See* PI Mot. 25-  
2 26. The record reveals that, before issuing the Determination, the Secretary “consult[ed] with procurement  
3 [and] other relevant officials” in the Department of War, made the requisite “determination in writing,”  
4 and “provid[ed] . . . notice of the determination . . . to the appropriate congressional committees.” 10  
5 U.S.C. § 3252(b)(1)-(3); *see* DoW-PI-002–028; Michael Decl. ¶¶ 7-8 (identifying the relevant officials  
6 after DoW’s 2025 reorganization to include subject matter expert CDAO and the Office of the Chief  
7 Information Officer).

8           *Third*, the Determination readily clears the arbitrary and capricious standard, which is “highly  
9 deferential” and “extremely limited.” *Compassion Over Killing v. U.S. FDA*, 849 F.3d 849, 854 (9th Cir.  
10 2017). Under that standard, “[a]gency action is presumed to be valid and must be upheld if a reasonable  
11 basis exists for the agency decision.” *Peck v. Thomas*, 697 F.3d 767, 772 (9th Cir. 2012). “A court may  
12 not substitute its own policy judgment for that of the agency”; rather, it “simply ensures that the agency  
13 has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues  
14 and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423-24 (2021).  
15 And lying at the intersection of national security and government procurement, the Secretarial  
16 Determination is entitled to “unique deference,” *Al Haramain*, 686 F.3d at 980, given “the broad discretion  
17 of agency officials” in those areas, *Savantage*, 595 F.3d at 1286; *see China Unicom (Americas) Operations*  
18 *Ltd. v. FCC*, 124 F.4th 1128, 1153-54 (9th Cir. 2024) (in arbitrary and capricious challenge, a court may  
19 “not interfere with the agency’s latitude . . . to select the policies deemed in the public interest, . . .  
20 particularly “when national security is implicated”).

21           Anthropic argues that it could not qualify as “an ‘adversary’” for purposes of posing a “supply  
22 chain risk” because “[t]he Executive Branch has typically reserved such designations for enemies of the  
23 United States” that are foreign countries. PI Mot. 26. However, section 3252 does not textually limit the  
24 pool of potential adversaries to foreigners or hostile nations. On the contrary, both foreign and domestic  
25 actors (and state and non-state actors alike) are capable of the adversarial activities identified by  
26 Congress—“sabotage, maliciously introduce unwanted function, or otherwise subvert the design,  
27 integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered  
28 system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.”

1 10 U.S.C. § 3252(d)(4). That is consistent with the word’s plain meaning, which broadly encompasses  
2 any “opponent in a contest, conflict, or dispute.” *Adversary*, New Oxford American Dictionary (3d ed.  
3 2010); *see* American Heritage Dictionary of the English Language 25 (5th ed. 2011) (adversary includes  
4 “an opponent”); Webster’s New World College Dictionary 20 (4th ed. 2008) (same); *see Niz-Chavez v.*  
5 *Garland*, 593 U.S. 155, 169 (2021) (consulting dictionaries to discern statute’s “ordinary” meaning). And  
6 “[a]textual judicial supplementation” with Anthropic’s proposed foreign-nation qualifier “is particularly  
7 inappropriate” because “Congress has shown that it knows how to adopt the omitted language.” *Lackey v.*  
8 *Stinnie*, 604 U.S. 192, 205 (2025) (citation omitted); *see, e.g.*, 15 U.S.C. § 9901(c)(2), (c)(4) (defining  
9 “foreign adversary” and “foreign adversary country”).

10 Anthropic’s argument that there was no factual “basis for labeling [it] an ‘adversary’” fares no  
11 better. PI Mot. 26. As the Under Secretary of War for Research and Engineering explains, Anthropic’s  
12 “privileged access as the AI model’s developer, curator and maintainer” creates “a baseline risk” of  
13 “potential harmful actions” from “this privileged technical access.” DoW-PI-007; *see also* Michael Decl.  
14 ¶ 9 (explaining that the “relatively opaque nature” of “LLM technology” also creates a “baseline risk”).  
15 And recent events led the Department to conclude that it “cannot trust Anthropic to ensure the integrity of  
16 its models.” DoW-PI-006. For instance, “Anthropic insisted on terms of service that would constrain the  
17 DoW beyond what is in the law.” DoW-PI-007; *see also* Michael Decl. ¶ 11. The company also insisted  
18 upon “an approval role in the operational decision chain, which would require the DoW to accept  
19 significant operational risk.” DoW-PI-007; *see also* Michael Decl. ¶¶ 11-12. Equally alarming was how,  
20 after recent “active military operations, Anthropic leadership questioned the use of their technology in  
21 [DoW] warfighting systems,” despite the use being “clearly permitted under the Terms of Service of their  
22 existing contract with [DoW’s] Prime contractor.” DoW-PI-007; *see also* Michael Decl. ¶ 15. And “during  
23 the final weeks of negotiations,” Anthropic “began engaging in an increasingly hostile manner.” DoW-  
24 PI-007. The Secretary therefore reasonably determined that, in opposition to a DoW operational decision,  
25 Anthropic staff might sabotage, maliciously introduce unwanted function, or otherwise subvert the design,  
26 integrity, or operation of a national security system to degrade its function, use or operation—a national  
27 security assessment this Court must afford “significant weight.” *Humanitarian L. Project*, 561 U.S. at 36;  
28 *cf. Egan*, 484 U.S. at 529 (“assessing the potential risk” to classified information of an entity’s “future

1 actions” involves a “[p]redictive judgment” that “must be made by those with the necessary expertise in  
2 protecting classified information”).

3 Anthropic attacks as internally inconsistent the designation of Anthropic as a “supply chain risk”  
4 while allowing up to “six more months of classified use” of Claude. PI Mot. 27. But there’s nothing  
5 inconsistent about acknowledging the reality that it will take time for DoW to offramp Anthropic and  
6 standup new AI models. See Michael Decl. ¶ 22 (explaining that it is “technically and operationally  
7 infeasible to remove [Anthropic’s] technology from all DoW systems immediately, particularly in the  
8 midst of active operations”). The 180-day transition period allows DoW to “migrate to alternative LLM  
9 products without impacting operational readiness.” *Id.* And nothing in the statute’s text suggests the  
10 authority cannot reach products and services that DoW cannot immediately discontinue. As the Secretary  
11 noted, the six months timeframe is “to allow for a seamless transition.” ECF No. 6-21. The Department  
12 cannot simply flip a switch at a time when Anthropic currently is the only AI model cleared for use on  
13 DoW’s classified systems and high-intensity combat operations are underway.

14 Finally, Anthropic claims the Secretary’s “finding that ‘less intrusive measures’ were ‘not  
15 reasonably available’” was “untenable” because “[t]he Secretary could have agreed to Anthropic’s offer  
16 to support an orderly offboarding and replaced Claude with other AI models not subject to Anthropic’s  
17 policy.” PI Mot. 27. That simply validates the Secretarial Determination. Anthropic’s proposed “less  
18 intrusive measure” accepts that DoW must remove Claude from DoW systems, which DoW is doing with  
19 a six-month phase out period. And in any event, “DoW *considered* whether less restrictive means than  
20 exclusion and removal could mitigate the supply chain risk and national security harm.” Michael Decl.  
21 ¶ 20 (emphasis added). But “[t]he only potential mitigation to [Anthropic’s] collective set of risks—  
22 acquisition of LLM products with the usage terms and technical and service delivery specifications DoW  
23 requires—was not an option to which Anthropic would agree.” *Id.*; see also *id.* ¶ 21. Accordingly, the  
24 Court should reject Anthropic’s arbitrary and capricious challenge to the Secretarial Determination.

25 In sum, Anthropic’s APA challenges are unlikely to succeed.

### 26 **C. Anthropic is not likely to succeed on its due process challenge**

27 The Due Process Clause protects against the deprivation “of life, liberty, or property, without due  
28 process of law.” U.S. Const. amend. V. The threshold “inquiry in every due process challenge is whether

1 the plaintiff has been deprived of a protected interest” in liberty or property. *Am. Mfrs. Mut. Ins. Co. v.*  
2 *Sullivan*, 526 U.S. 40, 59 (1999). Anthropic’s Due Process claim fails at this first step.

3 *First*, Anthropic’s cursory invocation of reputational harm does not suffice. Generally, “harm to  
4 reputation alone is insufficient to implicate an individual’s liberty interest.” *Mustafa v. Clark Cnty. Sch.*  
5 *Dist.*, 157 F.3d 1169, 1179 (9th Cir. 1988); *see also Siekert v. Gilley*, 500 U.S. 226, 233 (1991) (same).  
6 *Second*, Anthropic’s “contractual relationships with its customers and the government,” PI Mot. 28, do  
7 not constitute protected property interests. “To have a property interest in a benefit, a person clearly  
8 must . . . have a legitimate claim of entitlement to it.” *Town of Castle Rock v. Gonzalez*, 545 U.S. 748,  
9 756 (2005). Without more, a government contract for services does not create such a claim. *See*  
10 *Physicians’ Servs. Med. Grp., Inc. v. San Bernardino Cnty.*, 825 F.2d 1404, 1410 (9th Cir. 1987) (“contract  
11 to supply medical services to the state does not confer any constitutionally protectible interest on” the  
12 plaintiff); *Erickson v. United States*, 67 F.3d 858, 862 (9th Cir. 1995) (“[P]hysicians do not have a property  
13 interest in continued participation in Medicare.”); *see also Fox Ins. Co. v. Ctrs. for Medicare & Medicaid*  
14 *Servs.*, 715 F.3d 1211, 1223 (9th Cir. 2013) (labeling as “questionable” the proposition that a plaintiff “has  
15 a protectable property interest in its government contract”). Accordingly, neither the Presidential  
16 Directive nor the Secretary’s corresponding social media post implicates a property interest.

17 As for Anthropic’s contracts with other customers, the Government “played no role” in those  
18 contracts, so any impact on them stems from the customers’ actions and choices, not the Government’s.  
19 *Guzman v. Shewry*, 552 F.3d 941, 957 n.12 (9th Cir. 2009). And the Government has not designated  
20 Anthropic in such a way that broadly prohibits anyone from “conducting any business whatsoever” with  
21 Anthropic. *Al Haramain*, 686 F.3d at 980 (cited by PI Mot. 20). The Secretarial Determination excludes  
22 Anthropic only from procurements involving “covered system[s],” 10 U.S.C. § 3252(d)(3), (d)(5), and  
23 the Presidential Directive applies only to federal agencies, *see* ECF No. 6-20 at 2. Private individuals and  
24 enterprises (not legally subject to government control) remain free to transact with Anthropic for any  
25 purpose unrelated to providing a service to the Government.

26 *Third*, Anthropic complains that the Presidential Directive “accomplishes a de facto debarment”  
27 infringing on Anthropic’s “liberty interest in pursuing its chosen trade.” PI Mot. 28. But the Directive  
28 does not effect “a complete prohibition of the right to engage in a calling.” *Dittman v. California*, 191

1 F.3d 1020, 1029 (9th Cir. 1999) (citation omitted). The Government has not, for example, “yanked the  
2 license of [Anthropic] in an occupation that requires licensure.” *Engquist v. Ore. Dep’t of Agric.*, 478 F.3d  
3 985, 998 (9th Cir. 2007) (citation omitted), *aff’d on other grounds*, 553 U.S. 591 (2008). Indeed,  
4 Anthropic maintains substantial commercial relationships outside the Government, and it remains free to  
5 contract with those partners and pursue its AI business.

6 Even if Anthropic had properly invoked a protected interest, “the question remains what process  
7 is due.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). “Due process . . . is a flexible  
8 concept that varies with the particular situation.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). A  
9 “statutory provision for a postdeprivation hearing” can satisfy “due process,” *id.* at 128, particularly where  
10 there is “the necessity of quick action by the State or the impracticality of providing any predeprivation  
11 process,” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982). For that reason, section 3252 does  
12 not mandate pre-deprivation process—the constitutionality of which scheme Anthropic does not  
13 challenge. And because determinations under section 3252 involve sensitive national security matters and  
14 potentially classified information, Congress expressly authorized the Secretary “to limit disclosure of  
15 information” about any determination. *Id.* § 3252(c). Due process is then satisfied post-determination by  
16 the opportunity for Anthropic to seek reconsideration before DoW within 30 days of receipt of the  
17 Determination, *see* DoW-PI-030–032, and to pursue judicial review under the APA, *see First Nat’l Bank*  
18 *& Tr., Wibaux, Mont. v. Dep’t of Treasury*, 63 F.3d 894, 899 (9th Cir. 1995) (holding that APA review in  
19 district court adequately safeguards “due process rights”); *cf. Ewing v. Mytinger & Casselberry, Inc.*, 339  
20 U.S. 594, 599 (1950) (“It is sufficient, where only property rights are concerned, that there is at some stage  
21 an opportunity for a hearing and a judicial determination.”).

#### 22 **D. The President and the Secretary acted well within their authority**

23 As a last gasp, Anthropic asserts that the Presidential Directive, the Secretary’s February 27 social  
24 media post, and the Secretarial Determination “are *ultra vires*” and violate the separation of powers. PI  
25 Mot. 29. However, “[u]ltra vires review is . . . unavailable if, as is usually the case, a statutory review  
26 scheme provides aggrieved persons with a meaningful and adequate opportunity for judicial review, or if  
27 a statutory review scheme forecloses all other forms of judicial review.” *Nuclear Regul. Comm’n v. Texas*,  
28 605 U.S. 665, 681 (2025) (internal quotation omitted). And this *is* a usual case. Given the APA and

1 contract-specific statutory review schemes, Anthropic cannot proceed under an *ultra vires* theory.

2 Even if it could, an *ultra vires* claim “is essentially a Hail Mary pass—and in court as in football,  
3 the attempt rarely succeeds.” *Id.* at 681-82 (quotation omitted). It does not apply to constitutional claims,  
4 nor does it apply “simply because an agency has arguably reached a conclusion which does not comport  
5 with the law.” *Id.* at 681 (quotation omitted). “Rather, it applies only when an” Executive Branch official  
6 “has taken action entirely in excess of [their] delegated powers and contrary to a specific prohibition in a  
7 statute.” *Id.* (quotation omitted). Anthropic’s *ultra vires* claim falls far short of that high bar.

8 As for the Presidential Directive, *ultra vires* review is only available for claims alleging that the  
9 President clearly exceeded delegated statutory authority. *See Murphy Co. v. Biden*, 65 F.4th 112, 1129-31  
10 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1111 (2024); *see also, e.g., Am. Forest Res. Council v. United*  
11 *States*, 77 F.4th 787, 798 (D.C. Cir. 2023) (concluding *ultra vires* claim that the President exceeded  
12 authority delegated under the Antiquities Act was reviewable). Anthropic identifies no statute that the  
13 President purportedly exceeded—let alone that the President acted “entirely in excess” of, *Nuclear Regul.*  
14 *Comm’n*, 605 U.S. 681–82—when he directed his subordinates to exercise their discretion to stop using  
15 Anthropic’s products and services due to national security concerns. And federal agencies themselves  
16 have broad discretion to assess their procurement needs and determine how best to meet them. *See, e.g.,*  
17 *Perkins*, 310 U.S. at 127; *PricewaterhouseCoopers Pub. Sector, LLP v. United States*, 126 Fed. Cl. 328,  
18 364 (2016); 48 C.F.R. § 49.502 (termination for government’s convenience).

19 And under Article II, the President may guide his subordinates’ lawful exercise of discretion  
20 regarding procurement policies. Article II vests “[t]he entire ‘executive Power’” in the President. *Seila*  
21 *Law LLC v. CFPB*, 591 U.S. 197, 213 (2020). And if “any power whatsoever is in its nature Executive, it  
22 is the power of . . . overseeing, and controlling those” in the Executive Branch. *Id.* (quoting 1 Annals of  
23 Cong. 463 (1789)). Article II accordingly permits “the President [to] maintain a degree of control over  
24 [his] subordinates” and “ensure that these subordinates serve the people effectively and in accordance with  
25 the [President’s] policies.” *Collins v. Yellen*, 594 U.S. 220, 252 (2021). It is, therefore, well within the  
26 President’s authority to determine that the Executive Branch does not “need” or “want” to use Anthropic’s  
27 products and services, when, in the President’s judgment, their continued use puts “our National Security  
28 in JEOPARDY.” ECF No. 6-20. The President fairly could require his subordinates to “CEASE all use

1 of Anthropic’s technology” with a phase out period in accordance with applicable law. *Id.* If anything, it  
2 is Anthropic’s proposed relief that, if granted, would contravene separation of powers principles. This  
3 Court would require the Executive Branch to continue using Anthropic’s products and services, even when  
4 the Executive Branch no longer wants to do so. ECF No. 6-34. Such an order would encroach on the  
5 Executive’s “power . . . to determine those with whom it will deal[.]” *Perkins*, 310 U.S. at 127, and “intrude  
6 upon the authority of the Executive in military and national security affairs,” *Egan*, 484 U.S. at 530.

7 As for the Secretary’s actions, Anthropic’s *ultra vires* argument is meritless. As noted, review of  
8 the company’s *ultra vires* claim is unavailable because the APA provides Anthropic “with a meaningful  
9 and adequate opportunity for judicial review[.]” *Nuclear Regul. Comm’n*, 605 U.S. at 681 (citation  
10 omitted). Further, Anthropic concedes the Department’s authority “to work with another company that  
11 better suits its needs.” Kaplan Decl. ¶ 37. And the Secretarial Determination was expressly authorized  
12 by 10 U.S.C. § 3252. Necessarily then, the Secretary did not act “entirely in excess of [his] delegated  
13 powers.” *Nuclear Regul. Comm’n*, 605 U.S. at 681-82.

## 14 **II. ANTHROPIC WILL NOT SUFFER IRREPARABLE HARM BEFORE A RULING ON THE MERITS**

15 Because Anthropic fails to establish a likelihood of success on the merits of its claims, the Court  
16 “need not consider the other [*Winter*] factors” and can deny Anthropic’s motion on that basis alone. *Baird*,  
17 81 F.4th at 1040 (quotation omitted). In any event, Anthropic fails to meet the other factors as well. To  
18 obtain a preliminary injunction, Anthropic must also “demonstrate that irreparable injury is *likely* in the  
19 absence of an injunction.” *Winter*, 555 U.S. at 22. A “showing of a mere possibility of irreparable harm  
20 is not sufficient,” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 474 (9th Cir. 2010), nor is “[s]peculative  
21 injury,” *Federated Indians of Graton Rancheria v. Haaland*, 762 F. Supp. 3d 888, 897-98 (N.D. Cal. 2025);  
22 *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007). Rather, “a plaintiff must *demonstrate*  
23 immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).  
24 Anthropic has not carried its burden.

25 *First*, Anthropic argues that because the Presidential Directive and the Secretarial Determination  
26 purportedly “violate the First Amendment and the Due Process Clause,” “irreparable harm ‘follows  
27 inexorably[.]’” PI Mot. 30. But that is just another way of saying that an injunction is appropriate because  
28 Anthropic is likely to prevail on the merits. But as already discussed, it cannot make that showing. *Cf.*

1 *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (plaintiffs had carried their burden of showing  
2 “the government’s current policies are likely unconstitutional”).

3 Moreover, as a factual matter, despite Anthropic’s claims of being chilled in its First Amendment  
4 expression, *see* PI Mot. 22, Compl. ¶ 146, there is no evidence of a chilling effect on Anthropic’s speech.  
5 And the status quo does not result in any “loss of First Amendment freedoms, for even minimal periods  
6 of time,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), because the designation in no way hinders Anthropic’s  
7 ability to espouse whatever views it wishes. None of Anthropic’s declarations suggest otherwise; they  
8 merely catalogue the business implications of the challenged actions, *see, e.g.*, Decl. of Krishna Rao (ECF  
9 No. 6-5) ¶ 9 (effect on investor confidence); Decl. of Paul Smith (ECF No. 6-4) ¶ 11 (effect on Anthropic’s  
10 partnerships”). Anthropic has also since announced (1) the creation of a new institute designed “to tell  
11 the world what we’re learning about the[] challenges [of AI]” and (2) the expansion of its public policy  
12 team “to help inform and shape AI governance around the world.” Anthropic, *Introducing the Anthropic*  
13 *Institute* (Mar. 11, 2026), <https://www.anthropic.com/news/the-anthropic-institute>. As for its Due Process  
14 claim, Anthropic has received notice of the Secretarial Determination and given an opportunity to seek  
15 reconsideration.

16 *Second*, Anthropic contends that the challenged actions “risk imminent, ongoing damage” to its  
17 “reputation and institutional standing.” PI Mot. 30. But a finding of reputational harm must be grounded  
18 in non-conclusory record evidence, *see Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239,  
19 1250 (9th Cir. 2013), and here, the record evidence consists of conclusory statements about risks that may  
20 occur at a future date. For example, Anthropic’s Chief Commercial Officer, Paul Smith, avers that the  
21 Secretarial Determination and the social medial posts “endeavor to signal to customers and counterparties  
22 that [Anthropic] [is] a company to be avoided[,]” and “should it stand, . . . risks Anthropic’s partnerships  
23 with all kinds of firms[.]” Smith Decl. ¶¶ 8, 10. Far from demonstrating that harm to Anthropic’s  
24 reputation is imminent, that assertion merely indicates the possibility of a reputational injury. As Smith  
25 concedes, the “practical effect” of the Secretarial Determination on Anthropic’s reputation will materialize  
26 only if the Determination is upheld, *see id.* ¶ 8. Further, Anthropic’s reliance on *Stuhlberg International*  
27 *Sales Company Inc. v. John D. Brush & Company* for the proposition that “threatened loss of prospective  
28 customers or goodwill” could support an irreparable harm, is misplaced. 240 F.3d 832, 841 (9th Cir.

1 2001). The case was assessing whether there was a “possibility of irreparable harm,” *id.* at 840-41—a  
2 standard that has been overruled by the Supreme Court in *Winter*, which now requires that the asserted  
3 harm be “likely,” 555 U.S. at 22.

4 *Third*, Anthropic asserts the challenged actions “risk rupturing” its relationships with DoW  
5 “contractors with which Anthropic partners on government work and commercial partners embedded in  
6 the national-security sector,” which may affect “the company’s growth.” PI Mot. 31. Anthropic cited  
7 purported confusion among its customers and its partners’ concerns about continuing to work with the  
8 company. *Id.* at 31-32. It also noted that others have “delayed or paused several national security contracts  
9 or business arrangements already in active development with Anthropic.” *Id.* Most of these asserted  
10 injuries are speculative. More importantly, as discussed above, no one is entitled to conduct business with  
11 the Federal Government, *see Perkins*, 310 U.S. at 127, and irrespective of the challenged actions, DoW  
12 and other federal agencies are free to terminate its contracts and agreements with Anthropic, as Anthropic  
13 readily admits. *See* PI Mot. 9, 33. The Government frequently terminates contractual relationships with  
14 vendors, but that does not mean that any collateral consequences flowing from such terminations  
15 constitute irreparable harm entitling a vendor to the extraordinary relief of an injunction. This is so  
16 because if the termination were illegal, the asserted harm would be redressable “by a legal or equitable  
17 remedy following adjudication on the merits.” *Haaland*, 762 F. Supp. 3d at 897. And given that  
18 Anthropic’s partners and potential partners are only “assessing” their relationships with Anthropic,  
19 Ramasamy Decl. ¶ 33, “much of [Anthropic]’s asserted injury could be repaired if [Anthropic] were to  
20 prevail.” *AFGE*, 2026 WL 534591, at \*8. Even “temporary economic loss alone generally is not a basis  
21 for injunctive relief[.]” *Id.* (citing *Arcamuzi v. Cont’l Air Lines, Inc.*, 819 F.2d 935, 938 (9th Cir. 1987)).

22 Finally, Anthropic argues that the resulting economic harm is irreparable because “sovereign  
23 immunity precludes Anthropic from obtaining compensatory relief from the government[.]” PI Mot. 32.  
24 Anthropic, however, has grounded its allegations of economic harm in the potential termination and  
25 modification of its contracts, which are governed by the terms of each contract. Monetary relief for breach  
26 of contract is available in the Court of Federal Claims. *See Thakur v. Trump*, 163 F.4th 1198, 1204 (9th  
27 Cir. 2025) (Tucker Act confers jurisdiction on the Court of Federal Claims for contract claims against the  
28 United States seeking more than \$10,000); *United Aeronautical Corp.*, 80 F.4th at 1022-23.

### 1 III. THE BALANCE OF EQUITIES STRONGLY DISFAVORS A PRELIMINARY INJUNCTION

2 Even if Anthropic could show some modicum of irreparable harm, “any such injury is outweighed  
3 by the public interest” and the Government’s “interest” in eliminating the risk that an AI model used in  
4 national security systems would be sabotaged by a hostile and untrustworthy corporate owner. *Winter*,  
5 555 U.S. at 23. Anthropic’s sweeping proposed preliminary injunction would prohibit every federal  
6 agency—including DoW and members of the Intelligence Community—from complying with the  
7 Presidential Directive to cease using the company’s technology. *See* ECF No. 6-34, at 2 (asking the Court  
8 to, among other things, enjoin all Defendants “from implementing, applying, or enforcing in any manner”  
9 the directives to stop using Anthropic’s technology and “from taking any other action to implement,  
10 effectuate, or further the purposes of” those directives). That relief would inflict substantial harm across  
11 the Executive Branch “by denying a duly elected branch[] the policies of [its] choice” about which AI  
12 models to use. *Immigrant Defs. L. Ctr.*, 145 F.4th at 994. The Government should not be required to use,  
13 and particularly within its most sensitive national security IT infrastructure, an AI technology that it neither  
14 wants nor is legally required to use, regardless of whether it obtained the technology directly or through  
15 subcontracts or vendor agreements. Because that is the sole purpose of the Presidential Directive, the  
16 public interest commands that it stand.

17 The harm would be especially acute at the Department of War. Anthropic’s preliminary injunction  
18 would intrude on “‘complex, subtle, and professional decisions as to the . . . equipping, and control of a  
19 military force,’ which are ‘essentially professional military judgments.’” *Winter*, 555 U.S. at 24 (quoting  
20 *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)). This Court must “give great deference to the professional  
21 judgment of military authorities concerning the relative importance of a particular military interest” in  
22 identifying and mitigating supply chain risks posed by particular AI companies and their models. *Winter*,  
23 555 U.S. at 24 (quoting *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986)). As the record reflects, the  
24 Secretary determined there is a “substantial risk that Anthropic could attempt to disable its technology or  
25 preemptively and surreptitiously alter the behavior of the model in advance or in the middle of ongoing  
26 warfighting operations[.]” DoW-PI-007; *see also id.* (assessing risk to supply chain to include “potential  
27 for model poisoning, insider threat risk, data exfiltration, and denial of service”). The Under Secretary  
28 explains such action “could cause serious harm to national security and loss of human life.” Michael Decl.

¶ 16. This substantial risk is amplified by Anthropic’s demand during contract negotiations that “it ha[s] an approval role in the operational decision chain.” DoW-PI-007. Acquiescing to such a demand would require “DoW to accept significant operational risk” at a time when its warfighters are actively operating abroad. *Id.*; *see also* Michael Decl. ¶ 27 (“preventing the removal of Anthropic’s technology from DoW systems” would “result in an ongoing threat to national security remaining on DoW’s systems . . . regardless of whether [the risk] flows directly to DoW systems or through a prime contractor”).

On the other side of the ledger, Anthropic concedes the Government’s right to not “deal with Anthropic” and to “transition” away from using its products. PI Mot. 33. Given this concession, particularly in light of Anthropic’s speculative assertions of irreparable harm, the equities strongly favor permitting the Government to continue taking steps to cease its use of Anthropic’s products and services. Amici, including Microsoft and a number of employees from Open AI and Google, contend that the Secretarial Determination harms the public interest by “introduc[ing] an unpredictability” in the AI industry that undermines “innovation and competitiveness.” Brief of Amici Curiae Employees of Open AI and Google, ECF No. 24-1, at 8; *see also* Brief of Microsoft Corp., ECF No. 75, at 9-11; Brief of Former Service Secretaries Retired Senior Military Officers, ECF No. 58, at 12-14; Brief of ACT | The App Association, ECF No. 73, at 7-8. Innovation and competitiveness, however, do not outweigh the public interest in national security and the safety of the nation’s warfighters, whether or not during a time of active operations.

Further, the Government “suffers a form of irreparable injury” when it is prevented “from effectuating statutes enacted by representatives of its people.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025). That harm is especially pronounced here because the interest in ensuring the nation’s security “is an urgent objective of the highest order.” *Humanitarian L. Project*, 561 U.S. at 28; *see Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 581-82 (2017) (recognizing the central importance of national security). The requested preliminary injunction would inflict irreparable harm on the Secretary by interfering with the national-security determinations entrusted to him by Congress in 10 U.S.C. § 3252, thereby compromising DoW’s “technical and warfighting infrastructure” and placing the national security at risk. In sum, the balance of equities and consideration of the overall public interest . . . tip strongly” against granting Anthropic’s request for preliminary relief. *Winter*, 555 U.S. at 26.

1 **IV. ANY PRELIMINARY RELIEF SHOULD BE NARROWLY TAILORED**

2 Should the Court grant Anthropic’s motion, it should not adopt Anthropic’s proposed language.  
3 Anthropic’s motion claims “[p]reliminary relief would not require the Department [of War] to deal with  
4 Anthropic,” and the company disavows any interest in “require[ing] any other federal agency to deal with  
5 Anthropic on terms the agency does not prefer.” PI Mot. 25. But Anthropic’s proposed order, if adopted  
6 would require Defendants to continue the use of products and services that were or will be discontinued  
7 under the Presidential Directive and Secretarial Determination. *See* ECF No. 6-34, at 2 (enjoining all  
8 Defendants, and those working in concert with them, “from implementing, applying, or enforcing in any  
9 manner” the Presidential Directive and Secretarial Determination to stop using Anthropic’s technology  
10 and “from taking any other action to implement, effectuate, or further the purposes of” those directives).

11 Even without Anthropic’s concession, such a sweeping and extraordinary order would be  
12 inappropriate. The proposed order would turn this Court into a supervisor of AI use across the Federal  
13 Government. But “injunctive relief should be no more burdensome to the defendant than necessary to  
14 provide complete relief to the plaintiff[.]” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). A court order  
15 requiring the use of Anthropic’s products and services would not redress the company’s alleged irreparable  
16 harm because, as discussed above, Anthropic asserted harm generally centers on its potential loss of  
17 business (sometimes repackaged as reputational injuries). PI Mot. at 24.<sup>6</sup> A public ruling on the merits in  
18 the company’s favor would address those concerns. But a court order compelling Defendants’ use of  
19 Anthropic’s products and services would not. When Defendants use AI models, that conduct generally  
20 takes place in private—out of view of the private firms with which Anthropic separately deals.

21 Nor should the President’s or the Secretary’s public criticisms of Anthropic form the basis for  
22 injunctive relief. The former is not even a defendant. Anthropic wisely does not sue the President, likely  
23 recognizing the Court cannot enjoin him. And in any event, “[a] government entity has the right to ‘speak  
24 for itself.’” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009) (quoting *Bd. of Regents of*  
25 *Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000)). Because Anthropic acknowledges the right

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<sup>6</sup> To the extent Anthropic complains about the loss of revenue from government business, the  
28 company’s remedy, if any, is in the contract governing that business, and any judicial remedy, if available,  
would be in the Court of Federal Claims.

1 of every defendant agency and officer to not deal with Anthropic on terms they do not prefer and to  
2 transition to other AI models, any preliminary injunction must preserve the Executive Branch’s discretion  
3 to do just that while this case is pending. Accordingly, even if the Court were to preliminary set aside the  
4 Secretarial Determination, Defendants, including DoW, should be permitted to continue to take steps to  
5 comply with the Presidential Directive.

6 **V. ANY INJUNCTION SHOULD BE STAYED PENDING APPEAL AND BE ACCOMPANIED BY A BOND**

7 To the extent the Court issues any injunctive relief, Defendants respectfully request that such relief  
8 be stayed pending the disposition of any appeal that is authorized by the Solicitor General, or at a  
9 minimum, administratively stayed for a period of seven days to allow Defendants to seek an emergency,  
10 expedited stay from the court of appeals if an appeal is authorized. The factors a court considers when  
11 evaluating a request for an administrative stay “substantial[ly] overlap” with the “factors governing  
12 preliminary injunctions.” *Nken*, 556 U.S. at 434. Thus, for all the reasons the Government demonstrated  
13 above in opposing the motion for preliminary injunction, an administrative stay would be warranted.

14 Defendants also respectfully request that any injunctive relief accompany a bond under Fed. R.  
15 Civ. P. 65(c)—that is, “security in an amount that the court considers proper to pay the costs and damages”  
16 sustained by the Government. A bond is appropriate here given that any preliminary relief would  
17 potentially mandate that the Executive spend money on unneeded and unwanted uses of Anthropic’s  
18 technology that may be lost forever once distributed. *California*, 604 U.S. at 651-52.

19 **CONCLUSION**

20 For the foregoing reasons, this Court should deny Plaintiff’s Motion for a Preliminary Injunction.  
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Respectfully submitted,

BRETT A. SHUMATE  
Assistant Attorney General  
Civil Division

ERIC J. HAMILTON  
Deputy Assistant Attorney General

JEAN LIN  
Special Litigation Counsel  
Federal Programs Branch

/s/ James W. Harlow

JAMES W. HARLOW (Md. Bar; no number issued)  
KRISTINA A. WOLFE (VA. Bar. 71570)  
Senior Trial Counsel  
CHRISTIAN DIBBLEE (D.C. Bar 90002557)  
Trial Attorney  
Federal Programs Branch  
Civil Division  
U.S. Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005  
(202) 514-6786  
james.w.harlow@usdoj.gov