United States Court of Appeals

for the

First Circuit

Case Nos. 25-1236
and 25-1413

STATE OF NEW YORK; STATE OF CALIFORNIA; STATE OF ILLINOIS; STATE OF RHODE ISLAND; STATE OF NEW JERSEY; COMMONWEALTH OF MASSACHUSETTS; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NORTH CAROLINA; STATE OF NEW MEXICO; STATE OF OREGON; STATE OF VERMONT;

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF RHODE ISLAND,
PROVIDENCE, IN CASE NO. 1:25-CV-00039-JJM,
HONORABLE JOHN J. MCCONNELL, JR., U.S. DISTRICT JUDGE

BRIEF OF FORMER EXECUTIVE BRANCH OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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STATE OF WASHINGTON; STATE OF WISCONSIN, OFFICE OF THE GOVERNOR OF KENTUCKY, ex rel. ANDREW BESHEAR, in their official capacity as Governor of the Commonwealth of Kentucky,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in their official capacity as President of the United States; U.S. OFFICE OF MANAGEMENT AND BUDGET; RUSSELL THURLOW VOUGHT, in their official capacity as Director of the U.S. Office of Management and Budget; U.S. DEPARTMENT OF THE TREASURY; SCOTT BESSENT, in their official capacity as Secretary of the Treasury; PATRICIA COLLINS, in their official capacity as Treasurer of the U.S.; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in their official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF EDUCATION; LINDA MCMAHON, in their official capacity as Secretary of Education; U.S. FEDERAL EMERGENCY MANAGEMENT AGENCY; CAMERON HAMILTON, in their official capacity as Acting Administrator of the U.S. Federal Emergency Management Agency; U.S. DEPARTMENT OF TRANSPORTATION; SEAN P. DUFFY, in their official capacity as Secretary of Transportation; U.S. DEPARTMENT OF LABOR; LORI CHAVEZ-DEREMER, in their official capacity as Secretary of Labor; U.S. DEPARTMENT OF ENERGY; CHRISTOPHER ALLEN WRIGHT, in their official capacity as Secretary of the U.S. Department of Energy; U.S. ENVIRONMENTAL PROTECTION AGENCY; LEE M. ZELDIN, in their official capacity as Administrator of the U.S. Environmental Protection Agency; U.S. DEPARTMENT OF THE INTERIOR; DOUGLAS BURGUM, in their official capacity as Secretary of the Interior; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF JUSTICE; PAMELA J. BONDI, in their official capacity as Attorney General; NATIONAL SCIENCE FOUNDATION; DR. SETHURAMAN PANCHANATHAN, in their official capacity as Director of the National Science Foundation; U.S. DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in their official capacity as Secretary of Agriculture; U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT; SCOTT TURNER, in their official capacity as Secretary of Housing and Urban Development; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in their official capacities as Secretary of State and Acting Administrator of the United States Agency for International Development; US AGENCY FOR INTERNATIONAL DEVELOPMENT; U.S. DEPARTMENT OF DEFENSE; PETE HEGSETH, in their official capacity as Secretary of Defense; U.S. DEPARTMENT OF VETERANS AFFAIRS; DOUGLAS COLLINS, in their official capacity as Secretary of Veterans Affairs; U.S. DEPARTMENT OF COMMERCE; HOWARD LUTNICK, in their official capacity as Secretary of Commerce; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; JANET PETRO, in their official capacity as Acting Administrator of National Aeronautics and Space Administration; CORPORATION FOR NATIONAL AND COMMUNITY SERVICE; JENNIFER BASTRESS TAHMASEBI, in their official capacity as Interim Head

of the Corporation for National and Community Service; U.S. SOCIAL SECURITY ADMINISTRATION; LELAND DUDEK, in their official capacity as Acting Commissioner of United States Social Security Administration; U.S. SMALL BUSINESS ADMINISTRATION; KELLY LOEFFLER, in their official capacity as Acting Administrator of U.S. Small Business Administration,

Defendants-Appellants.

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INTEREST OF *AMICI CURIAE*[1]

Amici are former officials who have served in the Executive Branch of various administrations. Combined, *Amici* have more than 50 years of government experience, with a particular focus on government administration, budget policy, and work with and within the White House Office of Management and Budget. Given their experience and commitment to the rule of law, *Amici* submit this brief in support of Plaintiffs-Appellees to emphasize the need to ensure that the Executive Branch take care that the laws of the United States are faithfully executed.

A list of *Amici* and their respective experience is set forth in the Appendix accompanying this brief.

INTRODUCTION

For decades, the Office of Management and Budget ("OMB") has played a narrow but important role in the shaping of our federal government's budget. As part of Executive Branch practice, agencies seeking federal funds submit requests to OMB during the government's budget-proposal phase and, traditionally, OMB relies

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(2), this brief is submitted on the consent of all parties. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), undersigned counsel for *amici curiae* certify that: (1) no counsel for a party authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and (3) no person or entity—other than *amici curiae*, its members, and/or its counsel—contributed money intended to fund the preparation or submission of this brief.

on those requests to shape budgetary policy by issuing so-called "M-Memoranda." Once a budget proposal is submitted to Congress, however, the President—and OMB—have only a limited ability to influence the use of federal funding.

Yet, on January 27, 2025, OMB issued an unprecedented directive that sought to implement a sweeping federal funding freeze, thwarting the will of Congress to disburse funds as set out in federal legislation (the "Directive"). A115. Because Congress has acted, OMB can only influence spending at the margins where the appropriations laws authorize or allow discretion, which is not the situation here.

In *Amici*'s experience, the Directive is an unprecedented executive act. By its plain terms, the Directive freezes federal funding approved by Congress to give the Executive Branch "time" to "determine the best uses of the funding" to advance "the *President's priorities*." A116 (emphasis added). The Directive requires all federal agencies to identify and review their use of appropriated funds "consistent with the President's policies and requirements," expressly citing seven of President Trump's Executive Orders issued in his first week in office. A115. In the meantime, the Directive halted federal funding for essential governmental services including law enforcement, healthcare, and infrastructure, to name a few. That unprecedented instruction is inconsistent with executive practice.

ARGUMENT

I. OMB AND THE DIRECTIVE IN HISTORICAL CONTEXT

A. OMB's Origins And Development

"Prior to 1921, federal agencies submitted uncoordinated financial requests directly to the Secretary of the Treasury, where they were packaged with little alteration into a Book of Estimates and forwarded to Congress. The President played only a limited role in formulating the national budget." LARRY BERMAN, THE OFFICE OF MANAGEMENT AND BUDGET AND THE PRESIDENCY, 1921-1979, at 3 (1979) [hereinafter, *OMB and The Presidency*].

In 1921, Congress enacted the Budget and Accounting Act, which created the Bureau of the Budget (the predecessor to OMB). The Act centralized executive budget decisions to be considered by Congress in the Bureau but otherwise left the task of appropriations to Congress. The Act thus "denied federal agencies independent influence in the budget decisions of Congress by specifically empowering the Budget Bureau 'to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments." *Id.* at 4 (citation omitted). But Congress continued to make appropriation decisions, consistent with constitutional design, as the first Budget Bureau director, General Charles G. Dawes, well understood:

> Much as we love the President, if Congress in its omnipotence over appropriations and in accordance with its authority over policy, passed a law that garbage should be put on the White House steps, it would be our regrettable duty, as a bureau, in an impartial, non-political way and non-partisan way to advise the Executive and Congress as to how the largest amount of garbage could be spread in the most expeditious and economical manner.

Id. at 6 (quoting CHARLES DAWES, THE FIRST YEAR OF THE BUDGET OF THE UNITED STATES, at 178 (1923)).

Over the past century, OMB has undergone several reforms to promote its accountability and improve the administrative functioning of the Executive Branch, but the basic design has remained unchanged. The original Bureau of the Budget operated within the Treasury Department and the President appointed its director and assistant director without Senate confirmation. *See* Taylor N. Riccard et al., *Office of Management and Budget (OMB): An Overview,* CONG. RSCH. SERV. at 1 (June 22, 2023), https://www.congress.gov/crs-product/RS21665 [hereinafter, *OMB: An Overview*]. In 1939, Congress transferred the Bureau to the newly created Executive Office of the President. *Id.* In 1940, the Bureau's director established five divisions staffed with specialists to provide government-wide advice to the President. *See OMB and The Presidency,* at 19. Within the Bureau, "Estimates, the largest division, had responsibility for formulating and presenting the President's budget to Congress." *Id.*

From the early 1950s until 1970, task forces to Presidents Eisenhower, Johnson, and Nixon studied and recommended reforms to the then-Bureau of the Budget to improve the Executive's administrative management, particularly in light of "the growth of the federal government's responsibilities." *See* Larry Berman, *The Office of Management and Budget that Almost Wasn't*, 92:2 Pol. Sci. Q. 281, 283 (1977). President Eisenhower's Advisory Committee on Government Organization had the following criticism: "Under the Budget Bureau at present, such functions as organization and management and legislative reference have the appearance, at least, of being subordinated to budget considerations." *Id.* at 282. In 1957, that Advisory Committee proposed the creation of an Office of Administration to sit between the then-Bureau of the Budget and the President—a proposal that would require Congress to amend the Budget and Accounting Act. *Id.* at 284. By 1969, President Nixon's Advisory Council on Executive Organization had the benefit of "studies made since 1939 on Presidential management" and reported that "[r]egardless of ideology or party, there [was] virtual unanimity that organizational improvement of the Executive Office of the President [was] needed." *Id.* at 296.

On March 12, 1970, President Nixon forwarded a reorganization plan to Congress, proposing to replace the then-Bureau of the Budget with today's OMB. *See OMB and The Presidency*, at 108. The House and Senate had subcommittees that evaluated the proposed reorganization bill, and on July 1, 1970, it went into

effect after Congress enacted the legislation. *Id.* at 110–12. A central goal of the 1970 reorganization was to provide the President with increased institutional staff capability and improve administrative management within the Executive Branch. *Id.* at 113, 121–23. But "Members of Congress [soon] felt that, under Nixon, OMB was becoming too powerful, particularly because of Nixon's aggressive impoundment of funds," as a bipartisan committee report reflected. James P. Pfiffner, *OMB, the Presidency, and the Federal Budget, in* EXECUTIVE POLICYMAKING: THE ROLE OF THE OMB IN THE PRESIDENCY 11, 17 (Meena Bose & Andrew Rudalevige eds., 2020).

In 1974, Congress passed legislation requiring Senate confirmation for both the OMB director and deputy director. 31 U.S.C. § 502(a)–(b). During congressional hearings leading to enactment of this statute, Representative Alexander explained that "this nation cannot afford to allow a miniscule group of elitists who believe they know what's good for the people . . . to dictate the shape and direction of the future." *OMB and The Presidency*, at 123.

At the same time, "as a response to President Nixon's impoundment of appropriated funds," Congress enacted the Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. §§ 681 *et seq.* ("ICA"). *See* STUART SHAPIRO, TRUMP AND THE BUREAUCRATS: THE FATE OF NEUTRAL COMPETENCE at 23 (2023) [hereinafter *Trump and the Bureaucrats*]. Under the ICA, the President can only

rescind federal funds if both Houses of Congress approve of such a recission within 45 days. 2 U.S.C. § 683; *see generally Train v. City of New York*, 420 U.S. 35, 42 (1975) (President may not terminate or impound appropriated money absent clear delegation of that power by Congress). Moreover, the President, the OMB director, and any agency head can only defer federal funds through a special message to both Houses of Congress in very limited enumerated circumstances. 2 U.S.C. § 684. Significantly, these circumstances *exclude* deferrals of federal funding that are based on changes in policy. Furthermore, the special message must state the specific amount of budget authority proposed to be deferred, the particular projects or governmental functions, and the length of time (limited by statute to the current fiscal year). *Id.*

From 1974 to 2002, Congress established four statutory offices within the OMB: the Office of Federal Procurement Policy; the Office of Information and Regulatory Affairs; the Office of Federal Financial Management; and the Office of Electronic Government. *See OMB: An Overview*, at 2; *see also* 41 U.S.C. § 1101; 44 U.S.C. § 3503; 31 U.S.C. § 901; 44 U.S.C. § 3602 (present enabling statutes). Those statutory offices promote organizational efficiency and government-wide management, but do not alter the basic design.

B. OMB Operations Until The Current Administration

During most presidential administrations over the past 30-plus years, OMB

was only occasionally in the spotlight. *See Trump and the Bureaucrats*, at 35. And its role has been circumscribed by statute and the separation of powers.

The President makes budget proposals to Congress, and once funds are appropriated, the President wields only limited authorities consistent with the separation of powers: "*Ex ante*, the president wields formal proposal authority over the budget. *Ex post*, he harnesses additional controls over agency administrators who distribute federal funds." Christopher R. Berry et al., *The President and the Distribution of Federal Funds*, 104:4 Am. Pol. Sci. Rev. 783, 783 (2010) [hereinafter *The President and Federal Funds*]. At the same time, Congress sets spending policy under the Appropriations Clause, and in doing so usually enacts a package of spending decisions reflecting the will of the people's representatives. The President has no license under the Constitution to cancel individual items of spending. *Cf. Clinton v. City of New York*, 524 U.S. 417, 442 (1998) (President cannot unilaterally repeal or amend properly enacted statutes). *See generally* Alan Charles Raul, *Trump cannot remake the government with the stroke of a Sharpie*, Wash. Post (May 5, 2025), www.washingtonpost.com/opinions/2025/05/05/trump-constitution-courts-unilateral ("Congress's legislative power to set polices and rules to govern the executive branch must generally prevail over presidential executive orders and unilateral mandates.").

In line with that design, OMB's role is primarily confined to the President's preparation of a proposed budget for submission to Congress. In the *ex ante* budget proposal phase, agencies seeking federal funds submit requests to OMB. *See The President and Federal Funds*, at 785. In that phase, OMB can shape budgetary policy by issuing so-called "M-Memoranda" that provide guidance to agencies, including specifying budget methods and even justifications of agency programs in light of presidential priorities. *See* Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control* (2016), 125 Yale L.J. 2182 (2016) (collecting M-Memos across Administrations). Once the President submits the budget proposal, however, "members of Congress begin their own elaborate budgetary process and may alter the fiscal blueprint." *The President and Federal Funds*, at 785.

Once an appropriation is approved by Congress, the President (and thus OMB) have only limited ability to influence the use of federal funds by, for example, apportioning funds to grants or programs that executive agencies administer or redirecting unallocated contingency accounts in line with statutory requirements. *Id.* at 786. For example, under President George W. Bush's Administration, federal grants were increasingly directed to faith-based organizations, who were supported by both technical assistance and rule-changing by agencies "to ensure that religious organizations would qualify for the financial support of daycare, job-training, nutrition, anti-poverty, housing, anti-drug, and educational programs." *Id.*

In addition, OMB has limited statutory authority over apportionment within federal agencies "to specify by time period and by project how agencies may spend their appropriations." Eloise Pasachoff, *The President's Budget Powers in the Trump Era*, *in* EXECUTIVE POLICYMAKING: THE ROLE OF THE OMB IN THE PRESIDENCY 69, 73 (Meena Bose & Andrew Rudalevige eds., 2020). This power "is not unfettered" and "may not be used to withhold sums from programs the administration does not like." *Id.* at 73–74. To the contrary, OMB's apportionment power comes from and is restricted by statute. *See* ICA, 2 U.S.C. §§ 681 *et seq.*; Antideficiency Act, 31 U.S.C. §§ 1341 *et seq.*

OMB typically apportions funds through bulletins under its circulars, not through M-Memoranda. *See, e.g.*, OMB, Apportionment Under the Continuing Resolution for Fiscal Year 1998, OMB Bulletin No. 98-01 (Oct. 9, 1997); OMB, Apportionment of the Continuing Resolution(s) for Fiscal Year 2009, OMB Bulletin No. 08-02 (Sept. 30, 2008). Where OMB has issued M-Memoranda concerning appropriations, they have concerned reporting requirements or guidance on agency discretion when spending federal funds. *See, e.g.*, OMB, Guidance on Implementing P.L. No. 110-329 in accordance with Executive Order 13457 on 'Protecting American Taxpayers From Government Spending on Wasteful Earmarks', M-09-03 (Oct. 23, 2008); OMB, Amending OMB Memorandum M-12-12, Promoting Efficient Spending to Support Agency Operations, M-17-08 (Nov. 25, 2016). This

is because Congress is responsible for ultimately spending the federal purse, even though the president proposes the budget and maintains limited power over non-statutory, congressional policy preferences, such as discretionary earmarks.

II. THE DIRECTIVE IS INCONSISTENT WITH TRADITIONAL EXECUTIVE LEGAL PRACTICE

Amici have many decades of experience in the Executive Branch. The Directive is not business-as-usual for any presidential administration, but rather, stands in stark contrast to traditional executive practice and legal advice from within the Executive Branch, which had respected the fact that our Constitution assigns to Congress the power of appropriations. The Directive also conflicts with Congress's judgment in the ICA and the Constitution's allocation of the power of the purse to Congress, not the President.

A. Typical OMB Memoranda Directly Serve Its Narrow Functions

As explained above, OMB "has a number of statutory duties relating to the operations of executive branch agencies," and "acts on the President's behalf in preparing the President's annual budget proposal, overseeing executive branch agencies, and helping steer the President's policy actions and agenda." *OMB: An Overview*, at 1; *see also* The White House, *Office of Management and Budget* (accessed July 24, 2025), https://www.whitehouse.gov/omb [hereinafter *About*] (describing OMB's role as "assist[ing] the President in meeting his policy, budget, management and regulatory objectives and [fulfilling] the agency's statutory

responsibilities"). But OMB does not displace Congress's role in making appropriation decisions for the people of the United States. M-Memoranda normally fit comfortably within OMB's modest mandate.

Indeed, other M-Memoranda issued by the current Administration serve to showcase OMB's limited mandate—in line with practice and constitutional design. A March 24, 2025, memorandum "provide[d] an overview of the Executive branch's formal legislative coordination and clearance process." OMB, Legislative Coordination and Clearance, M-25-19 (Mar. 24, 2025). An April 3, 2025, memorandum instructed the Executive Branch on "Accelerating Federal Use of AI through Innovation, Governance, and Public Trust." OMB, Accelerating Federal Use of AI through Innovation, Governance, and Public Trust, M-25-21 (Apr. 3, 2025). A corresponding fact sheet provided guidance on the implementation of artificial-intelligence tools across the Executive Branch. The White House, *Fact Sheet: Eliminating Barriers for Federal Artificial Intelligence Use and Procurement* (Apr. 7, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-eliminating-barriers-for-federal-artificial-intelligence-use-and-procurement/. And on June 12, 2025, OMB issued a memorandum on how the Executive Branch should approach "Federal Acquisition Regulation (FAR) deviations related to Project Labor Agreements (PLAs) and the use of those agreements." OMB, Use of Project Labor

Agreements on Federal Construction Projects - Amendments to OMB Memorandum, M-24-29 (June 12, 2025).

Each of these memoranda served the function of "overseeing the implementation of [the President's] vision across the Executive Branch." *See About*, at 1. But crucially, they operated within the discretion the President is constitutionally and statutorily afforded, and addressed internal processes, logistics, and procurement. In this respect, these memoranda resemble OMB memoranda issued during the last several presidential administrations, including President Trump's first term. *See, e.g.*, OMB, Advancing the Responsible Acquisition of Artificial Intelligence in Government, M-24-18 (Sept. 24, 2024) (directing agencies to improve respective artificial intelligence capacities and setting forth new requirements and guidance for agencies regarding AI); OMB, Improving the Federal Hiring Experience, M-24-15 (Aug. 14, 2024) (providing guidelines for federal hiring practices); OMB, Guidance on Implementing Payroll Tax Deferral for Federal Employees, M-20-35 (Sept. 11, 2020) (expediting implementation of payroll tax deferral during COVID-19 pandemic).

B. The Directive Amounts To An Extraordinary Command To Ignore Congress

The Directive, unlike standard OMB memoranda addressing matters of internal process, sought to abridge Congress's constitutional power over the purse by categorically halting federal spending inconsistent with the policy goals of the

President, never mind that Congress had made the policy decision to spend the funds in question in duly authorized legislation consistent with the Constitution. With the benefit of their combined 50 years of experience in the Executive Branch, *Amici* are uniquely positioned to contextualize how extraordinary this was.

To begin, the memorandum is substantively an unconditional bar on carrying out congressionally mandated spending. *Amici* can recall no analogue to this maneuver during their time in government service. The Directive does not resemble standard OMB guidance instructing the Executive Branch on how to execute Congress's commands. Instead, the Directive *overrides* Congress's commands. It leaves no functional discretion to individual agencies, and grants OMB itself the centralized power to make case-by-case exceptions to agencies' implementation of the freeze. *See* A115. The closest analogue to this sort of executive action (by the Nixon Administration) led Congress to enact legislation to prohibit the Executive Branch from unilaterally withholding or impounding federal funds based on an administration's policy preferences. *See supra* Part I.A.

The government has pointed to the Directive's instructions that freezes were to be implemented "to the extent permissible under applicable law." That does not make the rest of the memorandum any less anomalous, and, based on their experience writing and implementing Executive Branch memoranda, *Amici* agree with the district court that this was mere "window dressing" with no practical effect.

A22; *see also* A569. This conclusion is confirmed by the fact that the savings clauses did nothing to limit the implementation of the Directive. *Id.* ("The record makes clear that following the OMB Directive's issuance—and even before it was set to take effect—many of the States found themselves unable to draw down appropriated and awarded funding"). And it is made clear by the fact that—in *Amici*'s experience—it takes extensive time and effort to ensure that directives are implemented in a manner that is consistent with applicable law, which was impossible with the Directive here since it seeks to freeze funding of such a large portion of the federal government.

III. THE DISTRICT COURT'S GRANT OF RELIEF WAS JUSTIFIED

Given the Directive's extreme and anomalous nature, the district court was justified in granting Plaintiffs the relief that they obtained. Despite the government's best efforts to recast the Directive before this Court, Opening Br. 16–19, the district court properly recognized the Directive's categorical, indefinite nature and practical import as arbitrary and capricious and substantively unreasonable. That the Directive has no analogue during *Amici*'s terms of government service also supports the district court's conclusion that the Directive is likely arbitrary and capricious, and contrary to law, and the suggestion that all prior presidents held such a power but simply did not use it strains credulity.

Given the extraordinary nature of the Directive—again, it bears *no* resemblance to normal executive practice—the relief granted by the district court was proper. The Directive violates bedrock constitutional principles committing the power of the purse to Congress and disregards the clear limits that Congress, in enacting the ICA, imposed on the President's ability to decline to spend appropriated funds. As the district court correctly reasoned, "[w]ithout the injunction, Congressional control of spending will have been usurped by the Executive without constitutional or statutory authority," A43, and the Supreme Court has long recognized that federal courts have broad equitable power to enjoin unlawful executive action. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–88 (1952).[2]

Traditional equity principles further underscore the propriety of the district court's remedy. As a component of our legal system that is designed to adapt to the

[2] The Supreme Court's recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), in no way suggests that the district court lacked the power to grant the injunctive relief it ordered in this case. The case before this court does not involve a "universal injunction," and *CASA* in no way disturbs the traditional principles of equity that support affirming the district court's injunction here. Furthermore, even if a universal injunction were necessary in this case, the district court would maintain broad discretion in this case in order to provide the state plaintiffs with "complete relief," as one post-*CASA* circuit court decision just recognized. *Washington v. Trump*, 2025 WL 2061447, at *17 (9th Cir. July 23, 2025).

needs of society, courts can rely on equity (*i.e.*, injunctions) to effectuate broad relief. Indeed, throughout our nation's history, it has been well-established that broad injunctive relief is "manifestly indispensable . . . and therefore should be fostered and upheld by a steady confidence." JOSEPH STORY, COMMENTARIES ON EQUITY JURIS. AS ADMINISTERED IN ENGLAND & AM. § 959a (2d ed. 1839); *see also* JOSEPH STORY, COMMENTARIES ON EQUITY PLEADINGS § 72 (2d ed. 1840) ("Courts of Equity delight to do justice, and not by halves.").

Evaluated under basic equity principles requiring discretion and flexibility, the district court's injunction was entirely appropriate. The injunction provides complete relief to Plaintiffs, it addresses the precise harms inflicted on Plaintiffs that flow directly from Defendants' unlawful actions, and it is specifically tailored to address the Directive. Consequently, the district court acted well within its authority in enjoining the government and the Directive in this case.

CONCLUSION

For the foregoing reasons, the district court's decisions should be affirmed.

Dated: July 25, 2025

Respectfully submitted,

HOLWELL SHUSTER & GOLDBERG LLP

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,256 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

The foregoing brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word 2013.

Dated: July 25, 2025

/s/ Vincent Levy
Vincent Levy

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on July 25, 2025.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 25, 2025

/s/ Vincent Levy
Vincent Levy

APPENDIX

Amici consist of the following individuals:

- Alan Raul served as Associate Counsel to President Ronald Reagan from 1986 to 1988 and as General Counsel of the Office of Management and Budget in the Executive Office of the President under Reagan and George H.W. Bush from 1988 to 1989. From 1989 to 1993, Raul served as General Counsel of the U.S. Department of Agriculture by appointment of President George H.W. Bush, with the consent of the Senate. President George W. Bush appointed Raul, with the consent of the Senate, to serve as Vice Chairman of the Privacy and Civil Liberties Oversight Board, originally located in the Executive Office of the President. Raul served on PCLOB from 2006 to 2008.

- Paul Rosenzweig served as Deputy Assistant Secretary for Policy, Department of Homeland Security in the George W. Bush Administration from 2005 to 2009. He is one of America's leading experts in homeland security and national security, with a particular focus on issues relating to the implementation and development of new technologies. In addition to Mr. Rosenzweig's government service, he is an accomplished speaker and one of the leading thinkers regarding new technologies. Among other things, he teaches at the George Washington University School of Law, and is an advisor to and former member of the American Bar Association's Standing Committee on Law and National Security.

- Peter Keisler served at the Department of Justice from 2002 to 2007, including as Acting Attorney General and as Assistant Attorney General for the Civil Division. Mr. Keisler also served in the White House, first as Assistant Counsel and then Associate Counsel to the President, from 1986 to 1988. He has 7 years of Executive Branch service in legal positions.

- Philip Allen Lacovara has spent more than ten years in federal service, primarily serving within the U.S. Department of Justice. After serving as a law clerk on the United States Court of Appeals for the District of Columbia Circuit, he became the Assistant to Solicitor General Thurgood Marshall in 1967 and continued in that role under the new Solicitor General until 1969. In the Nixon Administration, he was appointed as Special Assistant to the Attorney General in 1970 and then in 1972 as Deputy Solicitor General of the United States in charge of the federal government's criminal and national security cases before the Supreme Court. He later served as the Counsel to the

Watergate Special Prosecutor in 1973 and 1974. In the Reagan Administration, Mr. Lacovara was appointed and reappointed as the President's representative on the District of Columbia Judicial Nomination Commission from 1981 to 1986. In addition, he served as the special counsel to the House of Representatives Ethics Committee in its "Koreagate" investigation, and as counsel to the Senate Judiciary Committee for its "Abscam" hearings. On numerous occasions from 1974 through 2024 he has testified as an expert witness on government policies and practices before various congressional committees.

- Ty Cobb served as a federal prosecutor from 1980 to 1986, and as Special White House Counsel from 2017 to 2018. Between his years of service in these positions, Mr. Cobb also spent 10 years in government service, working on Capitol Hill and as Senior Trial Counsel for Independent Counsel, Judge Arlin Adams.