AGAINST CONSTITUTIONAL RIGHTS FOR FRONTIER AI COMPANIES IN GOVERNMENT CONTRACTS

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INTRODUCTION

Frontier artificial intelligence (AI) companies occupy a critical position in the national security ecosystem. Large language models (LLMs) and other AI systems promise to reshape the conduct of warfare.[1] Information from multiple sources can be aggregated, analyzed, and deployed to cue weapons systems at exponentially faster rates. AI systems can also enhance

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1. The U.S. Department of War asserts that its newly launched Agent Network "capability utilizes AI-enabled agents to continuously scan defense intelligence and operational systems, translating findings into clearly presented options for commanders within seconds." Press Release, U.S. Dep't of War, DOW Unleashes 'Agent Network' to Transform AI-Enabled Battle Management and Targeting (June 25, 2026), https://www.war.gov/News/Releases/Release/Article/4526862/dow-unleashes-agent-network-to-transform-ai-enabled-battle-management-and-targe/ [https://perma.cc/N4WM-CY9A].

cyber operations, strategic planning, command and control, logistics, and the development and testing of new weapons systems.[2] In an era defined by strategic competition between the United States and China, policymakers see frontier AI development as a core matter of national security, like the nuclear arms race during the Cold War.

But AI is transformative across many domains, not just national security. Consequently, the question of which laws should apply and how they should regulate AI is complicated. Should frontier AI companies like Anthropic and OpenAI be trusted to develop their own use guidelines? Or should the government take a more active role in regulating potentially harmful uses? If so, which level of government should be the primary lawmaker in the United States? Should it be the states on a consumer-protection model because countless Americans use AI for myriad everyday purposes? Or should the federal government be the primary regulator of frontier AI companies, given their global scope and AI's centrality to national security?

The subject of this Essay is frontier AI companies' constitutional rights against the federal government regarding decisions to use—or stop using—the companies' contracted-for AI models because of national security concerns. The constitutional question is a central focus of current litigation between Anthropic and the administration of President Donald J. Trump. President Trump and Secretary of War[3] Pete Hegseth ordered actions to discontinue the use of Anthropic's Claude AI by defense contractors and agencies after Anthropic refused to accede to the U.S. Department of War's demand to authorize all lawful uses of Claude.[4] Upon announcement of these measures, Anthropic sued in the U.S. District Court for the Northern

2. PRIYESH MISHRA ET AL., HARV. KENNEDY SCH.: BELFER CTR. FOR SCI. & INT'L AFFS., CODE, COMMAND, AND CONFLICT: CHARTING THE FUTURE OF MILITARY AI 3–6 (2025).

3. In Executive Order No. 14347, President Trump decreed that "[t]he Secretary of Defense is authorized the use of this additional secondary title—the Secretary of War—and may be recognized by that title in official correspondence, public communications, ceremonial contexts, and non-statutory documents within the executive branch," and that "[t]he Department of Defense and the Office of the Secretary of Defense may be referred to as the Department of War and the Office of the Secretary of War, respectively," in those contexts. Exec. Order No. 14347, 90 Fed. Reg. 43893, 43893 (Sep. 5, 2025). The order is, by its terms, a secondary-naming measure only; it directs the secretary to recommend to the president "the proposed legislative and executive actions necessary to accomplish this renaming." *Id.* at 43894. Under the U.S. Code, however, the department remains the U.S. Department of Defense, headed by a secretary of defense. *See* 10 U.S.C. §§ 111(a), 113(a). Congress has not ratified the new name: The most recent defense authorization statute—the National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, 139 Stat. 718 (2025)—authorizes appropriations "for military activities of the Department of Defense" and refers throughout to the Department of Defense and the secretary of defense. *See generally id.* This Essay uses "Department of War" and "secretary of war" because those are the titles the executive branch used at all relevant times.

4. *See* Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101, 1114–16 (N.D. Cal. 2026); Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 1042493, at *2 (D.C. Cir. Apr. 8, 2026); Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *5–6 (N.D. Cal. Aug. 27, 2026) (order granting in part and denying in part cross-motions for summary judgment).

District of California and the U.S. Court of Appeals for the D.C. Circuit. The district court first granted preliminary injunctive relief and then, on August 27, 2026, granted summary judgment for Anthropic on its statutory claims and constitutional claims under the First Amendment and the Fifth Amendment Due Process Clause.[5] The court denied summary judgment only as to Anthropic's separation-of-powers claim and as to certain individual and agency defendants who took no part in the challenged actions.[6] By contrast, on September 25, 2026, a D.C. Circuit panel upheld by a two-to-one vote the government's designation of Anthropic as a national security supply chain risk under a separate statutory authority, 41 U.S.C. § 4713, and in so doing rejected Anthropic's First and Fifth Amendment claims.[7]

I argue in this Essay that federal courts should refrain from holding that the U.S. Constitution protects companies engaged in procurement-contract disputes with the federal government over use of their AI. Regarding the First Amendment, Anthropic's public airing of its impasse with the Pentagon over the "lawful uses" contract term in a classified-data case may not even be protected speech.[8] Moreover, even if it were protected speech, Anthropic's interests as a government contractor in speaking should be balanced against the president's legitimate interest in maintaining command and control over sensitive U.S. military operations during active hostilities.[9] Finally, the courts owe greater deference than the California district court afforded to the Pentagon's determination that a frontier AI company is not a trustworthy partner in processing classified data for military targeting and other operational uses. The D.C. Circuit paid more deference to the executive branch but also may have overread the breadth of emergency power Congress delegated to Secretary Hegseth under the applicable federal supply chain statute.[10]

As for the Fifth Amendment procedural due process claim, the factual predicate for the claim has become shakier since Anthropic sued. According to a May 28, 2026, press release, Anthropic raised $65 billion in its latest Series H funding round, resulting in a $965 billion valuation.[11] As announced on February 12, 2026, the company was valued at $380 billion

5. *See Anthropic*, 825 F. Supp. 3d at 1114–16; *Anthropic*, 2026 WL 2534714, at *1; *infra* Part II (discussing the preliminary injunction ruling in more detail).

6. *Anthropic*, 2026 WL 2534714, at *1.

7. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 2881404, at *13, *16–17 (D.C. Cir. Sep. 25, 2026).

8. *See infra* notes 94–99 and accompanying text.

9. *See* Bd. of Cnty. Comm'rs v. Umbehr, 518 U.S. 668, 673, 676, 684–85 (1996) (extending the balancing framework established in *Pickering v. Board of Education* to independent government contractors "adjusted to weigh the government's interests as a contractor rather than as an employer").

10. *See Anthropic*, 2026 WL 2881404, at *12, *18.

11. *Anthropic Raises $65B in Series H Funding at $965B Post-Money Valuation*, ANTHROPIC (May 28, 2026), https://www.anthropic.com/news/series-h [https://perma.cc/YFA8-YHKJ].

after its prior Series G funding round,[12] two weeks before President Trump's and Secretary Hegseth's social media statements banning future uses of Claude to process classified data for military operations.[13] It seems that, not only did Anthropic suffer no diminution in its valuation, but it may have attracted investors and institutional adopters opposed to President Trump's policies and the Iran war because of President Trump's and Secretary Hegseth's actions.[14] Thus, even presuming that Anthropic has a protected liberty or property interest in maintaining its government contracts, the interest was not necessarily "deprived."[15] In its analysis, the district court did not consider that Anthropic suffered no apparent economic harm from the government's actions.

There is also a compelling case for constitutional avoidance because applicable statutes provide ample legal protections for government contractors in the national security space.[16] This is no surprise given the substantial political lobbying power of national-defense companies, which is also a reason for declining to extend bill-of-attainder protections to them.[17] The bottom line is that the district court did not need to reach the constitutional issues given its decision that Anthropic prevailed on its claims under the "governing statutory scheme, 10 U.S.C. § 3252, and [that the supply chain risk designation] was arbitrary and capricious."[18] This decision, unlike its constitutional holdings, may be reconciled with the D.C. Circuit's ruling.[19] There is not even clear confirmation that President Trump's Truth Social post ordering all federal government agencies—including those outside the national security domain—to cease using Anthropic's AI models is a final action that agencies have implemented or

12. *Anthropic Raises $30B in Series G Funding at $380B Post-Money Valuation*, ANTHROPIC (Feb. 12, 2026), https://www.anthropic.com/news/anthropic-raises-30-billion-series-g-funding-380-billion-post-money-valuation (on file with the *Fordham Law Review*).

13. *Statement on the Comments from Secretary of War Pete Hegseth*, ANTHROPIC (Feb. 27, 2026), https://www.anthropic.com/news/statement-comments-secretary-war (on file with the *Fordham Law Review*).

14. Nathaniel Meyersohn & Hadas Gold, *How Anthropic May Benefit from Its Fight with Trump*, CNN (Mar. 16, 2026), https://www.cnn.com/2026/03/16/business/anthropic-trump-ai-race (on file with the *Fordham Law Review*).

15. *See infra* notes 77–82 and accompanying text; *cf.* Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *18 (N.D. Cal. Aug. 27, 2026) (rejecting, on a fuller record, a similar argument that press reports of Anthropic's revenue growth negated its stigma-based liberty interest). *Contra* Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101, 1125–28 (N.D. Cal. 2026).

16. *See infra* Part I (discussing the procedural protections afforded contractors under 10 U.S.C. § 3252 and the notice, review, and waiver protections in the Federal Acquisition Supply Chain Security Act).

17. *See* Thomas H. Lee, Recent Case, *Constitutional Law—Bill of Attainder—Fifth Circuit Holds That the Special Provisions of the Telecommunications Act of 1996 Are Not a Bill of Attainder*, 112 HARV. L. REV. 1385, 1390 (1999).

18. *Anthropic*, 2026 WL 2534714, at *3.

19. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 2881404, at *16–17 (D.C. Cir. Sep. 25, 2026).

will implement.[20] Because this total federal government ban poses the strongest case for a procedural due process violation, the district court could at least have limited its constitutional relief to enjoining that act alone.

The dispute between Anthropic and the Pentagon reflects a broader structural tension inherent in frontier AI itself. AI companies increasingly behave not merely as software vendors but as quasi governors of unprecedented technological systems that shape many areas of human activity including and beyond war. Moreover, AI technology in the national security space is not a static product like a rifle or a wooden frigate. AI firms exercise continuing influence over downstream uses of their products through updates, cloud infrastructure, "safety stack" mechanisms, and ongoing technical support. From the government's perspective, this reality raises sovereignty and command-and-control concerns, including "the deeply sobering prospect of overly constrained AI models shutting down unexpectedly and thus causing important military operations to fail."[21] One corollary of these practical realities is that a "lawful uses only" contract term may provide as much protection as Anthropic's desired "prohibited uses" term, as OpenAI emphasized when it replaced Anthropic as the Pentagon's classified AI provider.[22] Another implication is that a politically powerful company is seeking to control how the president uses its military technology to defend the country. Those concerned about the deployment of AI for lethal weapons or mass surveillance should focus on formulating and enforcing laws defining and circumscribing their "lawful uses" rather than constitutionalizing the rights of AI companies against the federal government.

Consider a hypothetical underscoring the important constitutional issues at stake. What if the president had been Dwight D. Eisenhower and the military contractor was a maker of nuclear weapons at the onset of the Cold War after the Soviet Union had acquired the atomic bomb? Suppose the company insisted on a contract term categorically prohibiting use of its technology in the event the president ordered a preemptive first strike. The president, troubled by the company's idealism, rejects the demand, deems the company a significant risk to the nuclear deterrence policy of the United States, and immediately orders the federal government not to do any more business with the company. It is difficult to imagine that the U.S. Supreme Court—even under Chief Justice Earl Warren—would have ruled that the *Constitution* prohibited the president's actions, even if the president did not follow prescribed statutory procedures for terminating government contracts and his actions were unlawful on that basis. The larger key point is that federal courts should refrain from constitutional holdings that neither

20. Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Feb. 27, 2026), https://truthsocial.com/@realDonaldTrump/posts/116144552969293195 (on file with the *Fordham Law Review*).

21. *See Anthropic*, 2026 WL 2881404, at *18.

22. *See Our Agreement with the Department of War*, OPENAI (Mar. 2, 2026), https://openai.com/index/our-agreement-with-the-department-of-war/ (on file with the *Fordham Law Review*).

the president nor Congress can override in the national-security, government-contract domain.

This Essay proceeds in three parts. Part I lays out the facts of the Anthropic-Pentagon dispute and the statutes President Trump and Secretary Hegseth invoked as legal authorities for their actions. Part II lays out the district court's reasoning in its preliminary injunction order, which provided the basis for the summary judgment decision for Anthropic on its First Amendment and Fifth Amendment due process claims. Part III recasts the First Amendment retaliation and Fifth Amendment procedural due process analyses as balancing tests in which courts owe deference to the government's interests, despite President Trump's and Secretary Hegseth's heated language. I conclude by proposing that the principal constraints on executive action in the deployment of AI technology in military operations should come from congressionally enacted statutes and democratic politics rather than courts constitutionalizing the rights of frontier AI firms.

I. ANTHROPIC, THE PENTAGON, AND SUPPLY CHAIN RISK DETERMINATIONS

U.S. intelligence and defense agencies began using Anthropic's Claude in November 2024 through a partnership with Palantir Technologies.[23] In 2025, the War Department entered into contracts with Anthropic, worth approximately $200 million, to deploy its Claude AI models to process classified data for military uses.[24] The contracts' terms prohibited the Pentagon from using Claude for autonomous lethal weapons systems or mass surveillance of Americans.[25]

After apparently raising no objections to the prohibited-uses terms, War Department officials requested that Anthropic agree to all "lawful use[s]" of Claude in late 2025.[26] The change followed the release of Secretary Hegseth's memorandum on January 9, 2026, titled "Artificial Intelligence Strategy for the Department of War."[27] Secretary Hegseth warned of an AI arms race and stated that the Pentagon must "utilize models free from usage

23. *See Anthropic and Palantir Partner to Bring Claude AI Models to AWS for U.S. Government Intelligence and Defense Operations*, PALANTIR (Nov. 7, 2024), https://investors.palantir.com/news-details/2024/Anthropic-and-Palantir-Partner-to-Bring-Claude-AI-Models-to-AWS-for-U.S.-Government-Intelligence-and-Defense-Operations/ [https://perma.cc/U5CM-BTRE].

24. *See Anthropic and the Department of Defense to Advance Responsible AI in Defense Operations*, ANTHROPIC (July 14, 2025), https://www.anthropic.com/news/anthropic-and-the-department-of-defense-to-advance-responsible-ai-in-defense-operations [https://perma.cc/BJL9-KFRN].

25. *See* Complaint at 4, Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101 (N.D. Cal. 2026) (No. 26-cv-01996).

26. *Id.* at 15.

27. Memorandum from Pete Hegseth, Sec'y of War, to Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DOW Field Activity Directors, on Artificial Intelligence Strategy for the Department of War (Jan. 9, 2026), https://media.defense.gov/2026/Jan/12/2003855671/-1/-1/0/artificial-intelligence-strategy-for-the-department-of-war.pdf [https://perma.cc/HZS5-WHK6].

policy constraints that may limit lawful military applications."[28] He specifically directed relevant Pentagon officials "to incorporate standard 'any lawful use' language into any DoW contract through which AI services are procured within 180 days."[29]

On February 26, 2026, Anthropic Chief Executive Officer (CEO) Dario Amodei published an online statement asserting that Anthropic "cannot in good conscience accede" to the Pentagon's request that it accept revised contract terms authorizing all lawful uses of Claude.[30] On February 27, the eve of massive Israeli-U.S. attacks on Iran, President Trump and Secretary Hegseth posted excoriating online responses to Anthropic's refusal as set out in Amodei's public statement. On Truth Social, President Trump directed "EVERY Federal Agency" to "IMMEDIATELY CEASE all use of Anthropic's technology," subject to "a Six Month phase out period for Agencies like the Department of War who are using Anthropic's products, at various levels."[31] Later that day, Secretary Hegseth tweeted:

> In conjunction with the President's directive for the Federal Government to cease all use of Anthropic's technology, I am directing the Department of War to designate Anthropic a Supply-Chain Risk to National Security. Effective immediately, no contractor, supplier, or partner that does business with the United States military may conduct any commercial activity with Anthropic.[32]

Hegseth then sent two letters dated March 3, 2026, to Anthropic designating it a supply chain risk under two different statutory authorities.[33]

On March 9, 2026, Anthropic filed two lawsuits. One lawsuit, filed in the Northern District of California, raised constitutional and statutory claims arising from President Trump's post ordering all government agencies to "cease" using Anthropic products and Secretary Hegseth's supply chain ban under 10 U.S.C. § 3252.[34] This statute authorizes the secretary of war to carry out "a covered procurement action," including the exclusion of a source from military procurements as a prime contractor or subcontractor involving national security systems, for the purpose of

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28. *Id.* at 5.

29. *Id.*

30. *Statement from Dario Amodei on Our Discussions with the Department of War*, ANTHROPIC (Feb. 26, 2026), https://www.anthropic.com/news/statement-department-of-war (on file with the *Fordham Law Review*).

31. Donald J. Trump (@realDonaldTrump), *supra* note 20.

32. Secretary of War Pete Hegseth (@SecWar), X (Feb. 27, 2026, at 17:14 ET), https://x.com/SecWar/status/2027507717469049070 [https://perma.cc/FFX8-LZPW]. The U.S. Department of Justice clarified that Secretary Hegseth's authority to determine supply chain risks extends only to banning the use of Anthropic products by military contractors with respect to work done on military contracts, not "any commercial activity." *See* Brief for Defendants in Opposition to Plaintiff's Motion for Preliminary Injunction at 21, Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101 (N.D. Cal. 2026) (No. 26-cv-01996).

33. Letter from Pete Hegseth, Sec'y of War, to Dario Amodei, Chief Exec. Officer, Anthropic (Mar. 3, 2026) (citing 10 U.S.C. § 3252) (on file with the *Fordham Law Review*); Letter from Pete Hegseth, Sec'y of War, to Dario Amodei, Chief Exec. Officer, Anthropic (Mar. 3, 2026) (citing 41 U.S.C. § 4713) (on file with the *Fordham Law Review*).

34. *See generally* Complaint, *supra* note 25.

reducing supply chain risk.[35] The statute defines "supply chain risk" as the risk that "an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system."[36] This authority imposes three procedural requirements on the secretary. He must (1) make a "written determination" that the action is "necessary to protect national security by reducing supply chain risk," (2) find that "less intrusive measures are not reasonably available," and (3) provide notice to the appropriate congressional committees with a summary of the risk assessment and the basis for the determination.[37]

The other lawsuit, filed in the D.C. Circuit, requested judicial review of Secretary Hegseth's supply chain risk determination under the Federal Acquisition Supply Chain Security Act of 2018[38] (FASCSA).[39] This more recent statute gives the secretary a streamlined emergency process and more robust statutory authorities than 10 U.S.C. § 3252.[40] It also vests in the D.C. Circuit exclusive jurisdiction over determinations under the statute.[41] FASCSA defines supply chain risk more broadly than 10 U.S.C. § 3252 to include the risk that "any person" (not just an "adversary") may

> sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or *otherwise manipulate* the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.[42]

The statute provides that the agency head, as under 10 U.S.C. § 3252, must complete a supply chain risk assessment, consider less intrusive alternatives, and provide notice to the affected party and relevant congressional committees.[43] However, the statute also gives the secretary authority to issue exclusion or removal orders for covered articles if the secretary "determines that an *urgent national security* interest [so] requires," and authorizes the secretary to "temporarily delay" notice to the excluded source and congressional committees until "practicable after addressing the urgent national security interest."[44]

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35. 10 U.S.C. § 3252(a)(1).
36. *Id.* § 3252(d)(4).
37. *Id.* § 3252(b).
38. Pub. L. No. 115-390, 132 Stat. 5178 (codified as amended in scattered sections of the U.S. Code).
39. *See* Petition for Review at 1, Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 1042493 (D.C. Cir. Apr. 8, 2026).
40. *See* 41 U.S.C. §§ 1327(b)(3), 4713(c).
41. *See id.* § 1327(b)(1).
42. *Id.* § 4713(k)(6) (emphasis added).
43. *Id.* § 4713(b).
44. *Id.* § 4713(c) (emphasis added). Secretary Hegseth's March 3 letter designating Anthropic a supply chain risk under FASCSA means that prime contractors and

Anthropic sought preliminary relief from the government's actions in both courts. On March 26, 2026, Judge Rita F. Lin of the Northern District of California granted Anthropic preliminary injunctive relief.[45] She concluded that Anthropic was likely to succeed on its constitutional and statutory claims, including First Amendment retaliation and Fifth Amendment procedural due process claims.[46] Anthropic did not raise the claim that the government's blacklisting constituted a bill of attainder. Although courts have only ever applied the constitutional protection against attainders to *legislative* punishment of natural persons (not corporations), courts and scholars have recently warmed to the notion that covered persons have a constitutional right against *executive* punishment, too.[47] Both parties moved for summary judgment and a hearing was held on July 30, 2026.[48] On August 27, 2026, the district court granted summary judgment largely in Anthropic's favor, resting on much of the same reasoning as its preliminary injunction order.[49]

On April 8, 2026, the D.C. Circuit panel denied Anthropic's emergency motion for a stay pending review.[50] In a per curiam statement, the panel conceded that Anthropic would "likely suffer some degree of irreparable harm absent a stay" but cast its harm as "primarily financial in nature" and not constitutional.[51] The D.C. Circuit expedited consideration of Anthropic's appeal on the merits;[52] the Ninth Circuit stayed the government's appeal in the California action pending the D.C. Circuit's adjudication on the merits.[53] The D.C. Circuit ordered supplemental

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subcontractors performing under contracts governed by Federal Acquisition Regulation (FAR) 52.204-30 may be prohibited from providing or using Anthropic's products and services in the performance of those government contracts, absent a waiver. FAR 52.204-30(b) (2026). While contractors subject to FAR 52.204-30 may continue using products that were not subject to an order when their contracts were awarded, the government may request a contract modification restricting ongoing use. *Id.* 52.204-30(b)(4). Such contractors must also conduct a "reasonable inquiry" to identify whether covered products were provided to the government or used during government contract performance and report such provision or use to the government within three business days along with mitigation and corrective action plans within ten business days. *Id.* 52.204-30(c)(2)–(3).

45. *See* Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101, 1110–11 (N.D. Cal. 2026).

46. *See id.* at 1122, 1128, 1133.

47. *See, e.g.*, Zaid v. Exec. Off. of the President, 815 F. Supp. 3d 113, 140 & n.6 (D.D.C. 2025); Perkins Coie LLP v. U.S. Dep't of Just., 783 F. Supp. 3d 105, 173 n.36 (D.D.C. 2025).

48. Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996 (N.D. Cal. Apr. 23, 2026) (order setting case schedule).

49. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *30 (N.D. Cal. Aug. 27, 2026) (order granting in part and denying in part cross-motions for summary judgment).

50. *See generally* Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 1042493 (D.C. Cir. Apr. 8, 2026) (per curiam) (order denying motion for stay pending review).

51. *Id.* at *3.

52. *See id.* at *4.

53. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-2011 (9th Cir. Apr. 27, 2026) (order staying appeal).

briefing regarding whether a determination by the court would be premature given that the statute allows the secretary to reconsider his initial supply chain risk determination.[54] Both parties asserted that a decision would not be premature[55] and, on September 25, 2026, the D.C. Circuit panel upheld the government's designation of Anthropic as a supply chain risk and rejected Anthropic's constitutional claims.[56]

The D.C. Circuit concluded that Anthropic's "ability to 'alter system guardrails and model weights' over time" in its Claude models and its resultant "ability to prevent Claude from 'engag[ing]' in specific operations that it deems to reflect contractually unauthorized uses" satisfied the FASCSA "or otherwise manipulate" trigger for supply chain risk.[57] Judge Karen L. Henderson dissented strongly on the point, reasoning that the words "or otherwise manipulate" "connote some intentionally hostile or clandestine purpose with respect to a covered article."[58]

II. THE PRELIMINARY INJUNCTION ORDER

Judge Lin's March 26 order granting Anthropic preliminary injunctive relief rested on three central conclusions. First, the court determined that Anthropic was likely to succeed on its First Amendment retaliation claim.[59] Second, the court concluded that Anthropic likely would prevail on its procedural due process claims under the Fifth Amendment.[60] Third, the court found that Anthropic likely would succeed on its statutory claims under the Administrative Procedure Act[61] (APA) and applicable federal procurement statutes.[62]

The court characterized the case as "classic First Amendment retaliation," which requires (1) First Amendment protected speech that (2) was "a substantial motivating factor" in government action that (3) would reasonably chill further such speech.[63] Judge Lin found that Anthropic, along with its CEO Dario Amodei, had "publicly staked out [its] position[] and engaged in a public debate" about AI safety in military uses, which was plainly "speech on matters of public concern."[64] For this reason,

54. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-1049 (D.C. Cir. May 21, 2026) (order requiring supplemental briefing).

55. *See* Supplemental Brief for Petitioner at 6, *Anthropic*, 2026 WL 1042493 (No. 26-1049); Supplemental Brief for Respondent at 10, *Anthropic*, 2026 WL 1042493 (No. 26-1049).

56. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 2881404, at *13, *16–17 (D.C. Cir. Sep. 25, 2026).

57. *Id.* at *9, *13.

58. *Id.* at *19 (Henderson, J., dissenting).

59. *See* Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101, 1122 (N.D. Cal. 2026).

60. *See id.* at 1125–28.

61. 5 U.S.C. §§ 551–559, 701–706.

62. *See Anthropic*, 825 F. Supp. 3d at 1128–33.

63. *See id.* at 1122 (citing Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 867 (9th Cir. 2016)).

64. *Id.* at 1122–23 (quoting Snyder v. Phelps, 562 U.S. 443, 451–52 (2011)).

it was not just about "private contract negotiations"; rather, "Anthropic engaged in protected speech when it made public the parties' contracting impasse and the reasons behind its refusal to agree to DoW's terms."[65]

The court also found that the government did "not dispute that . . . [its actions] would cripple the company and chill public debate" about AI risks and guardrails.[66] Next, given the strident language in President Trump's Truth Social post and Secretary Hegseth's tweet, the court held "that the measures were prompted by Anthropic's public repudiation of DoW's contracting request," rather than a legitimate interest in protecting the president's capacity to deploy Claude to all lawful uses.[67] Moreover, the court reasoned that the Anthropic ban "far exceed[ed] the scope of what could reasonably address such a national security interest."[68] Finally, Judge Lin acknowledged that courts "owe deference to the government on issues of national security"[69] but quoted the Supreme Court's 2010 admonition in *Holder v. Humanitarian Law Project*[70] that deference does not mean "abdication of the judicial role."[71]

Applying the *Mathews v. Eldridge*[72] three-part balancing test, the district court also found a likelihood of success on Anthropic's Fifth Amendment procedural due process claim.[73] Judge Lin found that Anthropic had a protected liberty interest, that there was a high risk of erroneous deprivation of that interest by the procedures the government had used, and that the government's interests did not outweigh affording additional procedural safeguards.[74] Although no Supreme Court precedent holds that a government contractor has a protected liberty interest,[75] the district court cited D.C. Circuit decisions finding that "debarring a corporation from government contract bidding constitutes a deprivation of liberty," triggering *Mathews* balancing.[76] Second, the court found a serious risk of erroneous deprivation existed because Anthropic had no prior "notice or opportunity to object before Defendants publicly barred it from all federal government work and blacklisted it with private companies working with the U.S. military."[77] Nor, Judge Lin reasoned, did the government carry its burden

65. *Id*. at 1124.
66. *Id.* at 1123.
67. *See id*. at 1110, 1123.
68. *Id.* at 1125.
69. *Id.*
70. 561 U.S. 1 (2010).
71. *Anthropic*, 825 F. Supp. 3d at 1125 (quoting *Holder*, 561 U.S. at 34); *accord* Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *17 (N.D. Cal. Aug. 27, 2026) (same quotation).
72. 424 U.S. 319 (1976).
73. *See id*. at 334–35.
74. *See Anthropic*, 825 F. Supp. 3d at 1125–28.
75. *Cf.* Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 566 (1972) (holding that government contractors have no constitutionally protected property interest in the continuation or renewal of their contracts).
76. *Anthropic*, 825 F. Supp. 3d at 1126 (quoting Trifax Corp. v. District of Columbia, 314 F.3d 641, 643 (D.C. Cir. 2003)).
77. *Id.* at 1127.

to show exigent circumstances for, or the impracticality of, affording predeprivation process.[78]

Finally, the district court ruled that Anthropic demonstrated a likelihood of success on its APA claim for three reasons. First, the court found that Anthropic's conduct likely did not fall within § 3252's statutory definition of "supply chain risk"[79]—"the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert . . . a covered system."[80] Second, Judge Lin reasoned, Secretary Hegseth did not follow the congressionally prescribed procedures for designating a supply chain risk in § 3252, including a reasoned "'determination in writing' [considering] . . . less intrusive measures" to ensure it is "not an empty letter."[81] The court concluded that Secretary Hegseth's February 27 tweet (which the district court called the "Hegseth Directive") was a final agency action and that there was no evidence of compliance with § 3252's requirements before issuing it.[82] Consequently, the Hegseth Directive was "likely in excess of statutory authority and contrary to law."[83] Third, Judge Lin found that the government's "contradictory positions" praising Anthropic before the 180-degree reversal in February 2026, "the procedural defects, and the rushed process following a public declaration of the foreordained conclusion [in President Trump's Truth Social post and the Hegseth Directive] all indicate that the actions were arbitrary and capricious."[84]

Having determined the likelihood of success on the merits of Anthropic's constitutional claims and its APA claim, Judge Lin easily found that Anthropic satisfied the rest of the four-part test for granting preliminary injunctive relief.[85] Her finding that Anthropic's constitutional claims were likely to succeed necessarily meant that it would suffer irreparable harm if the ban were not enjoined.[86] Anthropic, according to the court, also "submitted concrete, non-speculative evidence" that government contractors had already terminated contracts and that it had lost out on deals and customers.[87] The court collapsed the balance of equities and public interest factors.[88] It found that the merged factors favored Anthropic because of "the financial and reputational harm" the ban inflicted on

78. *See id.* at 1128.
79. *Id.* at 1129–30.
80. 10 U.S.C. § 3252(d)(4).
81. *Anthropic*, 825 F. Supp. 3d at 1130–31.
82. *See id.* at 1115, 1132.
83. *Id.* at 1132.
84. *Id.* at 1133.
85. *See id.* at 1134–36; Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (explaining that "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest").
86. *See Anthropic*, 825 F. Supp. 3d at 1134.
87. *Id.*
88. *Id.* at 1135 (quoting Washington v. Trump, 145 F.4th 1013, 1037 (9th Cir. 2025)).

Anthropic and the chilling effect the ban had on important public debates about AI technology and its potential for "catastrophic misuse."[89] The court dismissed the government's argument that "an AI model used in national security systems [would] be sabotaged by a hostile and untrustworthy corporate owner" because "the preliminary injunctive relief that the Court authorizes does not require the government to continue to use Claude on its national security systems."[90]

III. THE SUMMARY JUDGMENT ORDER AND ACCOUNTING FOR NATIONAL SECURITY INTERESTS AND DEFERENCE

On August 27, 2026, the district court granted summary judgment for Anthropic on its statutory and constitutional claims, elaborating on its reasoning months earlier in its preliminary injunction order.[91] The court denied summary judgment only as to Anthropic's separation-of-powers claim and as to certain individual and agency defendants who took no part in the challenged actions.[92]

At a high level of generality, the district court's holding that the executive branch punished Anthropic for publicly criticizing the government's contracting position and for advocating ethical restrictions on AI use is intuitively appealing.[93] The Supreme Court has held that the government cannot retaliate against independent contractors for exercising First Amendment protected speech.[94] Corporations generally have the same political speech rights as individuals.[95] And speech concerning war, mass surveillance, civil liberties, and emerging AI technologies plainly involves matters of public concern.[96] Yet the constitutional analysis becomes more complicated after situating the dispute within the law governing federal government contractors and national security procurement.

The Supreme Court has recognized this reality by prescribing a balancing approach in the government-contracting context. Even if a contractor shows its conduct was constitutionally protected by broaching a matter of public concern and was a "substantial or motivating factor"[97] for adverse action, the government may still prevail if its "legitimate interests . . . deferentially viewed, outweigh the free speech interests at

89. *Id.* at 1135–36.
90. *Id.* at 1135.
91. *See id.* at 1114–16; Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *1 (N.D. Cal. Aug. 27, 2026); *supra* Part II.
92. *Anthropic*, 2026 WL 2534714, at *1.
93. *See Anthropic*, 825 F. Supp. 3d at 1110.
94. *See* Bd. of Cnty. Comm'rs v. Umbehr, 518 U.S. 668, 685 (1996).
95. *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 342–43 (2010).
96. *See supra* Part II.
97. *Umbehr*, 518 U.S. at 675.

stake."[98] The Court specifically observed that deference is "due to the government's reasonable assessments of its interests *as contractor*."[99]

Judge Lin's summary judgment order, however, declined to analyze the dispute within that framework. She held that *Pickering v. Board of Education*[100] balancing, as extended to independent government contractors in *Board of County Commissioners v. Umbehr*,[101] governs only where the government exercises its "contractual power," and that the challenged actions here were an exercise of "sovereign power": a permanent, government-wide debarment coupled with a secondary boycott reaching private parties with no connection to military work.[102] The court applied *Pickering* in the alternative and reached the same result, holding that the government's asserted interest in mitigating an "undisputedly hypothetical" risk that Anthropic might covertly sabotage its models failed as a matter of law because the challenged actions swept far beyond anything that risk could justify.[103]

Three considerations nonetheless favor the government more than the district court credited in its summary judgment analysis, as in its preliminary injunction opinion. First, the application of AI technology to warfare is indubitably a matter of public concern, but does that make any speech on the topic by a classified AI contractor protected activity? The summary judgment order answers yes, reasoning that contract negotiations may themselves involve "'controversial subjects' of great public importance" and that speech on such subjects "occupies the highest rung of the hierarchy of First Amendment values and merits special protection."[104] The court dismissed the government's contrary position as "unsupported."[105] But that reasoning elides the distinction between speech about a public controversy and a contractor's public campaign to dictate the terms on which the government may use the very product it is paid to supply. The absence of precedent on that distinction is a reason for caution before constitutionalizing the question, not for resolving it against the government on a paper record.

Consider again the historical analogy to a pioneering company in classified nuclear weapons technology during the Cold War. Suppose the

98. *Id.* at 685; *see also id.* at 677–78 (adopting a balancing test for independent contractors' First Amendment rights, borrowed from the "fact-sensitive and deferential weighing of the government's legitimate interests" set forth in *Pickering v. Board of Education*). At the preliminary injunction stage, the parties apparently waived the argument and so the district court did not fully consider it. *See Anthropic*, 825 F. Supp. 3d at 1122 n.11. But the district court did deploy *Pickering* balancing in the alternative at the summary judgment stage, as explained *infra*. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *15–17 (N.D. Cal. Aug. 27, 2026).

99. *Umbehr*, 518 U.S. at 678.

100. 391 U.S. 563 (1968).

101. 518 U.S. 668 (1996).

102. *See Anthropic*, 2026 WL 2534714, at *15.

103. *Id.* at *16.

104. *Id.* at *13 (quoting Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, 585 U.S. 878, 913–14 (2018)).

105. *Id.*

company finds out in its contract discussions with the Pentagon that President Eisenhower contemplates lawful first use of nuclear weapons against the Soviet Union. Imagine the company insists on a term in the government's procurement contract prohibiting first use under any circumstances and makes public announcements condemning nuclear first use when the Pentagon refuses. Nuclear first-use policy is clearly a general matter of public concern, but should it be First Amendment-protected activity when a nuclear weapons company negotiating with the Pentagon sounds off publicly against it? There is no Supreme Court precedent directly on point, but it is surely reasonable to assert that the same statement might not be protected speech when it is uttered by a classified military-equipment contractor regarding the very product it was contracted to provide to the government.[106]

Second, the district court did not appear to fully appreciate the government's legitimate interests, which were obscured by President Trump's and Secretary Hegseth's pungent language. Secretary Hegseth framed the key interest in his February 27 tweet: "[T]he Department of War must have full, unrestricted access to Anthropic's models for every LAWFUL purpose in defense of the Republic."[107] The basic point is that AI technology is a powerful new weapons technology, like nuclear weapons technology in the late 1940s. The Pentagon was on the cusp of deploying that AI technology in massive military operations and armed conflict with Iran.[108] It is not unreasonable for the government to determine that Anthropic's public stance indicated a continuing desire to restrict lawful military uses of critical AI infrastructure according to its own ethics code.

Third, courts traditionally have granted extraordinary deference to the executive branch in matters relating to classified or sensitive military operations. For instance, in *Department of the Navy v. Egan*,[109] the Supreme Court held that a civilian employed at a U.S. Navy ballistic-missile submarine facility could not appeal the revocation of his security clearance[110] because he was not "sufficiently trustworthy":

> The President, after all, is the "Commander in Chief of the Army and Navy of the United States." U.S. Const., Art. II, § 2. His authority to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position in the Executive Branch that will give that person access to such information flows primarily from this constitutional investment of power

106. *Cf.* Garcetti v. Ceballos, 547 U.S. 410, 421 (2006) (holding that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes").

107. Pete Hegseth (@SecWar), *supra* note 32.

108. James O'Donnell, *OpenAI's "Compromise" with the Pentagon Is What Anthropic Feared*, MIT TECH. REV. (Mar. 2, 2026), https://www.technologyreview.com/2026/03/02/1133850/openais-compromise-with-the-pentagon-is-what-anthropic-feared/ (on file with the *Fordham Law Review*).

109. 484 U.S. 518 (1988).

110. *See id.* at 530.

> in the President and exists quite apart from any explicit congressional grant.[111]

Similarly, in *Winter v. Natural Resources Defense Council*,[112] the Court held that a federal district court abused its discretion when it granted preliminary injunctive relief against the Navy using "mid-frequency active sonar" to train carrier battle groups in waters off the California coast for enemy submarine detection.[113] In so doing, the Court held that the district court had second-guessed the Navy's determination that it had adequately balanced the threat to mammals in the testing area—a determination that warranted deference.[114]

Judge Lin did not defer to the Pentagon's assessment of national-security risks posed by Anthropic's refusal to accede to all lawful uses.[115] Anthropic's $200 million contract with the Pentagon was the first contract with an AI company authorized to handle classified data.[116] In wartime, the rapid processing of information that AI enables means accelerated reaction to threats and the potential saving of the lives of countless noncombatant civilians and of American servicemembers. Given the multiple domains of usage and the downstream controls a first-mover AI provider necessarily holds, the Pentagon's concerns cannot be dismissed as unreasonable.

Judge Lin's summary judgment order does not so much weigh those concerns as decline to reach them. Invoking *Holder*, the court reasoned that deference to the executive in this domain "do[es] not warrant abdication of the judicial role,"[117] and concluded that "even according maximum deference," the administrative record provided no articulable basis for the Pentagon's sabotage concern.[118] This reading of *Holder* converts a doctrine of calibrated deference into a threshold judicial finding that the executive's national security assessment was unreasonable. That finding is made on a paper record, without the factfinding that *Egan* and *Winter* counsel courts to leave to the political branches.[119]

Anthropic has now prevailed, and the strongest grounds in Judge Lin's ruling arise from procedural protections grounded in procedural due process and administrative law rather than the First Amendment. Unlike the retaliation claim, the procedural objections do not require courts to second-guess sensitive national security judgments. Instead, they focus on whether the government employed lawful procedures before imposing

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111. *Id.* at 527.
112. 555 U.S. 7 (2008).
113. *See id.* at 13, 33.
114. *See id.* at 26–27.
115. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996, 2026 WL 2534714, at *17 (N.D. Cal. Aug. 27, 2026).
116. *See Statement from Dario Amodei on Our Discussions with the Department of War*, *supra* note 30.
117. *Anthropic*, 2026 WL 2534714, at *17 (quoting Holder v. Humanitarian L. Project, 561 U.S. 1, 34 (2010)).
118. *Id.* at *24.
119. *See supra* notes 109–15 and accompanying text.

sweeping and potentially devastating restrictions on a major domestic company. And, as Judge Lin cogently reasoned in the preliminary injunction order, the government did not have strong arguments that the statutory definition of supply chain risk was met, that the government's measures were narrowly tailored, or that the government followed the congressionally prescribed procedures.[120]

The summary judgment order makes those grounds concrete. The court held that Anthropic's conduct falls outside the scope of 10 U.S.C. § 3252(d)(4), which reaches only "the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert" a covered system, and that a military contractor does not become an adversary of the United States by asking probing questions or insisting on particular contract terms.[121] The D.C. Circuit panel affirmed the soundness of her logic while distinguishing its FASCSA analysis: "We have no quarrel with the Northern District's conclusion that Anthropic has acted with no such bad motive in its dealings with the Department."[122] Judge Lin further held that Secretary Hegseth never made the reasoned written determination required by § 3252(b)(2)(B) that "less intrusive measures are not reasonably available," and that the designation bypassed the joint recommendation and risk assessment of the under secretary of defense for intelligence and security, required by 48 C.F.R. § 239.7304(a).[123] Tellingly, the one claim Anthropic lost was the most aggressive structural one: The court granted the government summary judgment on the ultra vires separation-of-powers challenge to the Hegseth Directive, reasoning that "claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims"[124] and that Anthropic's cursory statutory references and appeal to "Congress's 'power of the purse'" did not show that the "President clearly exceeded 'any background constitutional authority.'"[125] That disposition is itself an argument for the more robust constitutional-avoidance principle I propose in this Essay: The statutory and administrative law grounds did the real work, and the broadest constitutional theory (separation of powers) was the one the court found unnecessary to adopt. Why should the court give a frontier AI company *any* constitutional rights when congressional statutes suffice to protect against executive-branch overreach against military contractors?

There is a strong argument for constitutional avoidance on Anthropic's Fifth Amendment due process claim, too, given that the government failed to do what § 3252 requires, as the district court persuasively concluded. But Judge Lin went further to uphold the constitutional claim, finding that

120. *See* Anthropic PBC v. U.S. Dep't of War, 825 F. Supp. 3d 1101, 1128–29 (N.D. Cal. 2026).

121. *Anthropic*, 2026 WL 2534714, at *22–23.

122. Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 2881404, at *12 (D.C. Cir. Sep. 25, 2026).

123. *Anthropic*, 2026 WL 2534714, at *24–25.

124. *Id.* at *28 (quoting Dalton v. Specter, 511 U.S. 462, 473 (1994)); *id.* at *30.

125. *Id.* at *28 (quoting Sierra Club v. Trump, 929 F.3d 670, 696 (9th Cir. 2019)).

Anthropic "has a protectible liberty interest under the 'stigma-plus' doctrine," and that the proper focus is "the scope of conduct the agencies were instructed to take, not how quickly those instructions were implemented."[126] In other words, the court reasoned that the reputational harm sufficed and that actual economic harm did not matter, given Anthropic's statements in the record that it risked losing billions of dollars in revenue in 2026.[127]

It is not clear that the court's reasoning correctly applies the Supreme Court's procedural due process doctrine. Like *Pickering* in the First Amendment context, *Mathews v. Eldridge* requires courts to evaluate procedural due process claims by balancing private interests, risks of erroneous deprivation, and governmental interests.[128] Anthropic may not have actually suffered any economic or concrete injury from the government's actions, or even "stigma-plus" injury. In fact, recent news reporting has indicated that "Anthropic is emerging as the presumptive front-runner in the race for artificial-intelligence supremacy, with faster growth and fundraising that could soon yield a higher valuation than rival OpenAI."[129] Even though the government applied deficient procedures, it is not clear that there has been a deprivation of Anthropic's liberty interest as required for a constitutional procedural due process violation. In fact, it seems as if Anthropic has benefited from standing up to the Pentagon and President Trump in its AI procurement-contract dispute. Judge Lin dismissed this observation by attributing Anthropic's increased valuation to "the restoration of the status quo" under the preliminary injunction rather than to the absence of injury.[130] That answer is plausible, but it leaves the deprivation holding resting on projected rather than realized loss. Avoiding such speculation counsels for resolving the statutory and administrative law claims before reaching the constitutional ones. The D.C. Circuit panel's holding that Anthropic's exclusion under FASCSCA does not violate the First and Fifth Amendments further supports the argument against constitutional rights in government contracts for frontier AI companies.[131]

CONCLUSION

The federal district court's summary judgment order in *Anthropic PBC v. U.S. Department of War*[132] captures legitimate concerns about executive overreach and procedural irregularity, but the constitutional analysis is more complicated than the court presumed. The executive branch

126. *Id.* at *18–19.
127. *See id.* at *29.
128. *See* Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976).
129. Kate Clark, *Anthropic Was Behind. Now It's the AI Boom's Front-Runner*, WALL ST. J. (May 13, 2026, at 10:00 ET), https://www.wsj.com/tech/ai/anthropic-was-behind-now-its-the-ai-booms-front-runner-5020f621 (on file with the *Fordham Law Review*).
130. *Anthropic*, 2026 WL 2534714, at *29.
131. *See* Anthropic PBC v. U.S. Dep't of War, No. 26-1049, 2026 WL 2881404, at *16–17 (D.C. Cir. Sep. 25, 2026).
132. No. 26-cv-01996, 2026 WL 2534714 (N.D. Cal. Aug. 27, 2026).

possesses substantial authority over military procurement and operational decisions, which must be weighed against Anthropic's rights to advocate for AI safety principles and to criticize government policy. Frontier AI systems are uniquely sensitive technologies whose providers may retain continuing practical influence over military operations through updates, safety stacks, servicing arrangements, alignment systems, and usage restrictions. Thus, the government may reasonably conclude that dependence on idealistic frontier AI contractors asserting independent ethical constraints on lawful military uses creates operational vulnerabilities incompatible with the president's constitutional role as military commander in chief. Anthropic's strongest legal objections likely arise under administrative law and procedural due process, given the abrupt and broad nature of the government's actions, rather than sweeping constitutional theories. Multibillion-dollar AI companies are the polar opposite of the "discrete and insular minorities" shut off from "political processes" whose constitutional rights courts should intervene to protect.[133]

As a general matter, courts should be wary about using constitutional doctrines to disable the political branches from managing strategic technological dependencies in areas central to national defense. As AI systems become increasingly integrated into military and governmental functions, conflicts between private technological governance and democratic sovereignty will proliferate. The Anthropic-Pentagon controversy offers an early glimpse into those coming struggles. Courts should approach them carefully, recognizing both the dangers of politicized executive retaliation and the equally serious risks posed by allowing strategically critical corporations to acquire quasi-sovereign authority over the lawful operations of democratic governments.

133. United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938).