No. 25-5452

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, et al.,
Petitioners.

On Petition for a Writ of Mandamus to the United States District Court for the District of Columbia No. 1:25-cv-00766 The Hon. James E. Boasberg.

UNOPPOSED MOTION FOR INVITATION TO PARTICIPATE AS *AMICI CURIAE* BY 174 FORMER JUDGES IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING EN BANC

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

Pursuant to Federal Rule of Appellate Procedure 29(b)(2) and D.C. Circuit Rule 40(f), 174 former judges, respectfully move this Court for an invitation to file the attached brief as *amici curiae* in support of Respondent's Petition for Rehearing En Banc. Respondent consents to and Petitioner is unopposed to this filing.

Movants seeking an invitation to file an amicus curiae brief are former judges. As former judges, *amici* have a unique understanding of the vital role contempt proceedings play in ensuring compliance with their rulings and, more generally, the rule of law.

The attached proposed brief will aid the Court's consideration of the Petition for Rehearing En Banc by providing additional briefing Respondent has not addressed: explaining how the criminal contempt power is a core judicial authority and indispensable to the existence of a court; and how the issuing court's power to investigate disobedience is constitutionally inseparable from its power to issue orders. .

The participation of *amici* will not cause the recusal of any member of the en banc court.

Amici former judges are as follows:

- **Judge Michael Luttig, U.S. Circuit Judge, U.S. Court of Appeals for the Fourth Circuit (Ret.)**
- **Judge Nancy Gertner, U.S. District Judge, District of Massachusetts (Ret.)**

Federal:

- Chief Judge John W. Bissell, U.S. District Judge, District of New Jersey (Ret.)
- Judge Robert J. Cindrich, U.S. District Judge, Western District of Pennsylvania (Ret.)
- Chief Judge U.W. Clemon, U.S. District Judge, Northern District of Alabama (Ret.)
- Judge Susan E. Cox, U.S. Magistrate Judge, Northern District of Illinois (Ret.)
- Judge Andre M. Davis, U.S. Circuit Judge, U.S. Court of Appeals for the Fourth Circuit (Ret.)
- Judge Morton Denlow, U.S. Magistrate Judge, Northern District of Illinois (Ret.)
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- Judge David K. Duncan, U.S. Magistrate Judge, District of Arizona (Ret.)
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- Judge Jeremy Fogel, U.S. District Judge, Northern District of California (Ret.)
- Judge James C. Francis IV, U.S. Magistrate Judge, Southern District of New York (Ret.)
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- Judge Steven M. Gold, U.S. Magistrate Judge, Eastern District of New York (Ret.)

- Judge A. Benjamin Goldgar, U.S. Bankruptcy Judge, Northern District of Illinois (Ret.)
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- Judge James Larson, U.S. Magistrate Judge, Northern District of California (Ret.)
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- Judge A. Howard Matz, U.S. District Judge, Central District of California (Ret.)
- Chief Judge Paul Michel, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)
- Judge Kathleen O'Malley, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)
- Judge Brian Owsley, U.S. Magistrate Judge, Southern District of Texas (Ret.)
- Judge Philip M. Pro, U.S. District Judge, District of Nevada (Ret.)
- Judge Shira A. Scheindlin, U.S. District Judge, Southern District of New York (Ret.)
- Judge Fern M. Smith, U.S. District Judge, Northern District of California (Ret.)
- Judge John D. Tinder, U.S. Circuit Judge, U.S. Court of Appeals for the Seventh Circuit (Ret.)
- Judge Ursula Ungaro, U.S. District Judge, Southern District of Florida (Ret.)

- Judge Thomas I. Vanaskie, U.S. Circuit Judge, U.S. Court of Appeals for the Third Circuit (Ret.)
- Judge T. John Ward, U.S. District Judge, Eastern District of Texas (Ret.)
- Judge Paul Watford, U.S. Circuit Judge, U.S. Court of Appeals for the Ninth Circuit (Ret.)
- Judge Alexander Williams, Jr., U.S. District Judge, District of Maryland (Ret.)
- Judge Lee Yeakel, U.S. District Judge, Western District of Texas (Ret.)

State:

- Judge Verna A. Adams, Marin County Superior Court, California (Ret.)
- Judge Elaine Andrews, Anchorage Superior Court, Alaska (Ret.)
- Judge Beth M. Andrus, Washington State Court of Appeals (Ret.)
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- Chief Justice Scott Bales, Arizona Supreme Court (Ret.)
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- Judge Paul A. Bastine, Spokane County Superior Court, Washington (Ret.)
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- Chief Justice Michael L. Bender, Colorado Supreme Court (Ret.)
- Justice Margot Botsford, Massachusetts Supreme Judicial Court (Ret.)
- Justice G. Arthur Brennan, York County Superior Court, Maine (Ret.)
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- Judge Wynne Carvill, Alameda County Superior Court, California (Ret.)
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- Chief Justice Sue Bell Cobb, Alabama Supreme Court (Ret.)
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- Chief Justice Dori Contreras, 13th Court of Appeals, Texas (Ret.)
- Associate Justice Patricia Cotter, Montana Supreme Court (Ret.)
- Judge Denise Navarre Cubbon, Lucas County Court of Common Pleas Juvenile Division, Ohio (Ret.)
- Judge Ronald E. Culpepper, Pierce County Superior Court, Washington (Ret.)
- Judge James Dannenberg, Hawaii District Court, First Circuit (Ret.)
- Justice Mary McGowan Davis, New York State Supreme Court (Ret.)
- Justice Carolyn E. Demarest, New York State Supreme Court (Ret.)
- Justice Michael P. Donnelly, Supreme Court of Ohio (Ret.)
- Justice Fernande R.V. Duffly, Massachusetts Supreme Judicial Court (Ret.)
- Judge Sally Duncan, Maricopa County Superior Court, Arizona (Ret.)
- Justice Robert D. Durham, Oregon Supreme Court (Ret.)
- Judge George Eskin, Santa Barbara County Superior Court, California (Ret.)
- Judge Noel Fidel, Arizona Court of Appeals (Ret.)
- Judge Francisco Firmat, Orange County Superior Court, California (Ret.)
- Justice Helen E. Freedman, New York Appellate Division of the Supreme Court (Ret.)
- Judge Julia Garratt, King County Superior Court, Washington (Ret.)
- Judge Deborra Garrett, Whatcom County Superior Court, Washington (Ret.)
- Judge David George, First Judicial District of Alaska (Ret.)

- Judge Tim Gerking, Jackson County Circuit Court, Oregon (Ret.)
- Justice Janine P. Geske, Wisconsin Supreme Court (Ret.)
- Justice Emily Jane Goodman, New York State Supreme Court (Ret.)
- Judge Dianna Gould-Saltman, Los Angeles Superior Court, California (Ret.)
- Judge Ernestine S. Gray, Orleans Parish Juvenile Court, Louisiana (Ret.)
- Chief Justice Mark V. Green, Massachusetts Appeals Court (Ret.)
- Justice Karen F. Green, Massachusetts Superior Court (Ret.)
- Judge Helen Halpert, King County Superior Court, Washington (Ret.)
- Judge Brook Hedge, Superior Court of the District of Columbia (Ret.)
- Judge James Hely, New Jersey Superior Court, Vicinage 12 (Ret.)
- Judge Bethany G. Hicks, Maricopa County Superior Court, Arizona (Ret.)
- Justice Geraldine S. Hines, Massachusetts Supreme Judicial Court (Ret.)
- Judge Vicki L. Hogan, Pierce County Superior Court, Washington (Ret.)
- Justice Robin E. Hudson, North Carolina Supreme Court (Ret.)
- Judge J. Robin Hunt, Washington Court of Appeals (Ret.)
- Justice Barbara Jaffe, New York State Supreme Court (Ret.)
- Judge Nely Johnson, Multnomah County Circuit Court, Oregon (Ret.)
- Chief Justice Jim Jones, Idaho Supreme Court (Ret.)
- Judge Henry Kantor, Multnomah County Circuit Court, Oregon (Ret.)
- Judge Ann O'Regan Keary, Superior Court of the District of Columbia (Ret.)
- Judge Steven J. Kleifield, Los Angeles Superior Court, California (Ret.)
- Judge Scot Kline, Vermont Superior Court (Ret.)
- Judge Michael S. Kupersmith, Chittenden County Superior Court, Vermont (Ret.)
- Judge David A. Kurtz, Snohomish County Superior Court, Washington (Ret.)

- Judge Linda Lau, Washington State Court of Appeals (Ret.)
- Chief Judge John P. Leopold, Colorado District Court, 18th Judicial District (Ret.)
- Judge Richard A. Levie, Superior Court of the District of Columbia (Ret.)
- Chief Justice R. Fred Lewis, Florida Supreme Court (Ret.)
- Judge John Lohrmann, Walla Walla County Superior Court, Washington (Ret.)
- Judge Richard Lyman, Los Angeles Superior Court, California (Ret.)
- Judge Barbara Mack, King County Superior Court, Washington (Ret.)
- Chief Justice Eric Magnuson, Minnesota Supreme Court (Ret.)
- Judge Patrick J. Mahoney, San Francisco County Superior Court, California (Ret.)
- Chief Justice Conrad L. Mallett Jr., Michigan Supreme Court (Ret.)
- Judge Victoria S. Marks, Hawaii First Circuit Court (Ret.)
- Justice Mary Anne Mason, Illinois Appellate Court, First District (Ret.)
- Chief Justice Mike McGrath, Montana Supreme Court (Ret.)
- Justice James F. McHugh, Massachusetts Appeals Court (Ret.)
- Judge Kevin McKenney, Santa Clara County Superior Court, California (Ret.)
- Judge Robert Mello, Addison County Superior Court, Vermont (Ret.)
- Judge Christopher Melly, Clallam County Superior Court, Washington (Ret.)
- Judge Peter Michalski, Anchorage Superior Court, Alaska (Ret.)
- Judge Rita Miller, Los Angeles Superior Court, California (Ret.)
- Judge David Minge, Minnesota Court of Appeals (Ret.)
- Judge Walter M. Morris, Jr., Orleans County Superior Court, Vermont (Ret.)
- Judge John M. Mott, Superior Court of the District of Columbia (Ret.)
- Justice James C. Nelson, Montana Supreme Court (Ret.)
- Judge Peggy J. Nelson, Eighth Judicial District Court of New Mexico (Ret.)

- Judge Leslie C. Nichols, Santa Clara County Superior Court, California (Ret.)
- Judge Rita M. Novak, Cook County Circuit Court, Illinois (Ret.)
- Chief Justice Lawton R. Nuss, Kansas Supreme Court (Ret.)
- Justice Michael J. Obus, New York County Supreme Court (Ret.)
- Chief Justice Maureen O'Connor, Supreme Court of Ohio (Ret.)
- Associate Justice Robert F. Orr, North Carolina Supreme Court (Ret.)
- Judge Gary Oxenhandler, 13th Circuit Court, Missouri (Ret.)
- Judge Philip M. Pallenberg, Juneau Superior Court, Alaska (Ret.)
- Chief Justice Barbara J. Pariente, Florida Supreme Court (Ret.)
- Judge Lynn Pickard, New Mexico Court of Appeals (Ret.)
- Judge Maurice Portley, Arizona Court of Appeals (Ret.)
- Judge Jeffrey M. Ramsdell, King County Superior Court, Washington (Ret.)
- Judge Judith H. Ramseyer, King County Superior Court, Washington (Ret.)
- Chief Justice Mark Recktenwald, Hawaii Supreme Court (Ret.)
- Judge John Reese, Anchorage Superior Court, Alaska (Ret.)
- Justice Rosalyn Richter, New York State Appellate Division, First Department (Ret.)
- Judge Palmer Robinson, King County Superior Court, Washington (Ret.)
- Judge Erik Rohrer, Clallam County Superior Court, Washington (Ret.)
- Judge John Romero, New Mexico Second Judicial District Court (Ret.)
- Judge David A. Rosen, Los Angeles Superior Court, California (Ret.)
- Judge Carol Schapira, King County Superior Court, Washington (Ret.)
- Judge Barry C. Schneider, Maricopa County Superior Court, Arizona (Ret.)
- Judge Richard L. Seabolt, Alameda County Superior Court, California (Ret.)
- Judge Catherine Shaffer, King County Superior Court, Washington (Ret.)
- Judge Nan R. Shuker, Superior Court of the District of Columbia (Ret.)

- Administrative Judge Jacqueline Silbermann, New York County Supreme Court, Civil Branch (Ret.)
- Associate Justice Sheila Sonenshine, California Court of Appeal (Ret.)
- Judge Michael Spearman, Washington Court of Appeals (Ret.)
- Judge Julie Spector, King County Superior Court, Washington (Ret.)
- Chief Justice Laura Denvir Stith, Supreme Court of Missouri (Ret.)
- Judge Diana I. Stuart, Multnomah County Circuit Court, Oregon (Ret.)
- Judge Paul Suzuki, Los Angeles Superior Court, California (Ret.)
- Judge Jeffrey Swartz, Miami-Dade County Court, Florida (Ret.)
- Judge Sen Tan, Anchorage Superior Court, Alaska (Ret.)
- Judge Philip E. Toci, Arizona Court of Appeals (Ret.)
- Judge Michael J. Trickey, Washington Court of Appeals (Ret.)
- Judge Kitty-Ann van Doorninck, Pierce County Superior Court, Washington (Ret.)
- Judge Emily E. Vasquez, Sacramento County Superior Court, California (Ret.)
- Judge Art Wang, Washington Court of Appeals (Ret.)
- Chief Justice Daniel E. Wathen, Maine Supreme Judicial Court (Ret.)
- Judge Larry Weeks, Juneau Superior Court, Alaska (Ret.)
- Judge John P. Wesley, Windham County Superior Court, Vermont (Ret.)
- Judge Ken Williams, Clallam County Superior Court, Washington (Ret.)
- Judge Jeffrey K. Winikow, Los Angeles Superior Court, California (Ret.)
- Chief Justice Michael A. Wolff, Supreme Court of Missouri (Ret.)
- Judge Beverly Wood, Marin County Superior Court, California (Ret.)
- Judge Merri Souther Wyatt, Multnomah County Circuit Court, Oregon (Ret.)

International

- Judge Patricia Whalen, War Crimes Chamber, Court of Bosnia and Herzegovina (Ret.)

CONCLUSION

For the foregoing reasons, Movants respectfully request that the Court invite them to file the accompanying amici curiae brief.

Respectfully submitted,

/s/ Norman L. Eisen
Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the requirements of Fed. R. App. P. 27(d) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 1,962 words according to the count of Microsoft Word.

Respectfully submitted,

/s/ Norman L. Eisen

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on May 12, 2026. 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.

Respectfully submitted,

/s/ Norman L. Eisen

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

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AMICI CURIAE OF 174 FORMER JUDGES IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING EN BANC

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202)594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING[1]

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for amici curiae certifies that this separate brief is necessary because it provides unique insights regarding the importance of the court's contempt power. The brief explains how the criminal contempt power is a core judicial authority and indispensable to the existence of a court, and how the issuing court's power to investigate disobedience is constitutionally inseparable from its power to issue orders. Because *amici* are not aware of any other *amicus* brief addressing these issues, *amici* certify pursuant to D.C. Circuit Rule 29(d) that joinder in a single brief with other *amici* would be impracticable. Respondent consents and Petitioner is unopposed to this filing.

/s/ Norman L. Eisen
Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or its counsel made a monetary contribution to its preparation or submission.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

/s/ Norman L. Eisen
Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. Parties and *Amici*

Except for *amici* and any other *amici* who had not yet entered an appearance in this case as of the filing of Respondents' brief, all parties, intervenors, and *amici* appearing in this Court are listed in Respondents' brief.

II. Rulings Under Review

References to the ruling at issue in this case appear in Respondents' brief.

III. Related Cases

Related cases are listed in Appellees' brief.

/s/ Norman L. Eisen
Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

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STATEMENT OF INTEREST AND INTRODUCTION

The most basic proposition of judicial authority is that courts must be able to enforce their own orders. A court that issues orders a litigant is free to disregard or circumvent is not a court in any meaningful sense; it is instead an advisory body, and its judgments are mere suggestions. The contempt power is crucial to transforming judicial decrees into enforceable law. As part of that authority, courts also necessarily possess the power to conduct the investigative and procedural steps—including gathering evidence, calling witnesses, and determining which officials bear responsibility for an apparent violation—before making any referral for criminal prosecution. That power is inherent and indispensable to the integrity of the federal judiciary. The attempt by the Executive Branch in this case to interfere with that bedrock function—through an extraordinary writ of mandamus—should be rejected.

Amici are 174 former judges who write to express grave concern over the D.C. Circuit panel's decision to peremptorily halt Chief Judge Boasberg's criminal contempt proceedings. The panel's ruling creates a means for the Government to defy an order, and then curtail court inquiry into the Government's conduct on the basis of post-hoc justifications. *J.G.G. v. Trump*, 147 F.4th 44, 100 (Childs, J., dissenting) (panel "cut[] factfinding at the knees" by ratifying a litigant's ex post determination of what a court order means"); *see also J.G.G. v. Trump*, 147 F.4th

1044, 1085 (Pillard, J., dissenting). As former judges, *amici* have a unique understanding of the vital role contempt proceedings play in ensuring compliance with their rulings and, more generally, the rule of law. We urge the Court to grant the Petition.

ARGUMENT

I. The Criminal Contempt Power Is A Core Authority and Indispensable to the Existence of a Court

"The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874). The contempt power is not merely a useful tool for courts; it is "inherent" and "essential." Without it, the exercise of every other judicial power may collapse.

The Judiciary Act of 1789, which expressly empowered all federal courts to punish, at their discretion, all contempts of their authority, recognized and codified what equity and the constitution already required.[2] "It is true, that the Courts of justice of the United States are vested, by express statute provision, with power to

[2] "Sec. 17. And be it further enacted, That all the said courts of the United States shall have power to…punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same; and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States."

fine and imprison for contempts; but it does not follow, from this circumstance, that they would not have exercised that power without the aid of the statute, or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power." *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227–28 (1821). *See also United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812) ("Certain implied powers must necessarily result to our Courts of justice from the nature of their institution….To fine for contempt—imprison for contumacy—inforce the observance of order, &c. are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others: and so far our Courts no doubt possess powers not immediately derived from statute").

Furthermore, no party—not private litigants nor the Executive Branch—may be the judge of which court orders deserve obedience. The remedy for an order believed to be erroneous is to challenge it through reconsideration or appeal; the remedy for confusion over an order's meaning would be to seek clarification. *See Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 103 F.3d 1007, 1019 (D.C. Cir. 1997) (affirming contempt finding and noting litigant "did not seek a clarification"); *Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.,* 689 F.2d 885 (9th Cir. 1982) ("if [a party] was in doubt about the scope of the injunction, the proper procedure was to seek a modification or clarification"). *See also In re Sealed*

Case, 77 F.4th 815, 835 (D.C. Cir. 2023) (affirming civil contempt finding for non-compliance with search warrant, noting contemnor's failure to raise issues regarding scope of production with opposing party prior to due date for production). Unilateral defiance is not permitted, and the contempt power is what enforces that rule. The Supreme Court has reinforced this principle repeatedly, including upholding the contempt convictions of civil rights demonstrators who had violated a state court injunction they believed to be unconstitutional. An injunction "must be obeyed…however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." *Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) (quoting *Howat v. State of Kansas*, 258 U.S. 181, 189-190 (1922)).

This principle applies with heightened urgency when the party defying the court order is the Executive Branch of the federal government. Officials of the Executive Branch have taken an oath to uphold the Constitution—a commitment they violate where they willfully defy a court order. Moreover, these officials, by virtue of the resources and powers of their offices, are in an especially strong position

to challenge or seek clarification of purportedly erroneous or unclear court orders through proper legal channels. The attempt to use those powers to defy a court order and then seek to avoid scrutiny of that defiance is a profound abuse of power and violation of the separation of powers.

And where the appellate court shuts down a contempt inquiry before the district court has even completed its investigation, the result is both the subordination of the Judicial Branch to the Executive Branch and a threat to our constitutional framework.

The logic of these principles applies with equal force in circumstances where the Government, as the alleged contemnor, also controls the prosecutorial apparatus that would ordinarily be called upon to vindicate the court's authority. In such circumstances, the court's independent authority to identify responsible officials, define the scope of the inquiry, and set the terms of any referral is not an expansion of judicial power. It is, in fact, the minimum necessary to preserve the judiciary's institutional integrity against a branch that has an obvious structural interest in foreclosing scrutiny of its own conduct.

The panel's ruling that the supposed ambiguity of Chief Judge Boasberg's Temporary Restraining Order ("TRO") undercuts the district court's authority to investigate or make a referral violates these core principles and unnecessarily shields the Government from its responsibilities. Mandamus is not necessary to address the

Government's argument, since "if such ambiguity were present, it could be fully litigated as an ordinary defense to a contempt prosecution and on appeal from conviction, which makes it ineligible for mandamus." *J.G.G.*, 147 F.4th at 1076 (Pillard, J., dissenting). There was no need for the panel to assist the Executive Branch in avoiding judicial investigation and the deleterious consequences of doing so extend far beyond this case.

II. The Issuing Court's Power to Investigate Disobedience Is Constitutionally Inseparable from Its Power to Issue Orders

The issuing court's power to conduct its own contempt inquiry is inextricably linked to the contempt power itself. The Supreme Court has precisely articulated this principle:

> [T]he power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or *another court*, would operate to deprive the proceeding of half its efficiency.

In re Debs, 158 U.S. 564, 594-95 (1895) (emphasis added).

Three elements of the Court's formulation of the contempt inquiry function are of particular relevance here.

First, the inquiry power is not secondary. As the Court notes, it is equal to the power that created the order. That framing should cause the appellate court, in

reviewing the underlying order, to avoid acquiring authority over the contempt inquiry absent extraordinary circumstances not present here.

Second, the Court describes the inquiry function as having been "from time immemorial, the special function of the court." Just as with the contempt power itself, this is not a statutory creation, a modern innovation, or a procedural convenience—it is a foundational feature of judicial power inherent in the Constitution. Indeed, this authority predates the Constitution itself, inherited from the English equity courts and incorporated into the structure of Article III. *See* Fox, *The King v. Almon*, 24 L.Q. Rev. 184, 194–195 (1908). Any usurpation of that power therefore weakens one of the defining features of judicial bodies in Anglo-American law and violates constitutionally proscribed authority.

Third, and perhaps most significantly, the Court explains that submitting the contempt question to any other tribunal, including "a jury or another court," would "deprive the proceeding of half its efficiency." This statement directly addresses attempts by appellate courts to interfere with a district court's ongoing contempt inquiry: even well-intentioned appellate intervention in the fact-finding stage of a contempt proceeding diminishes the proceeding's constitutional function. The contempt inquiry is solely for the issuing court. The panel in this case has done precisely what the Supreme Court has said it may not: it has interfered with an issuing court's criminal contempt investigation while it was still in progress.

While courts should exercise their contempt authority as a "last resort," *see Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787, 801 (1987) (holding that "[t]he ability to punish disobedience to judicial orders is regarded as essential to ensuring that the judiciary has a means to vindicate its own authority without complete dependence on other branches…"), the path to a last resort runs through, not around, the preliminary stages of inquiry, notice, and hearing. By utilizing mandamus to foreclose those stages before they are complete, an appellate court does not enforce restraint. It encourages defiance of court orders, precisely what the contempt power was designed to prevent. As the Court recognized in *In re Debs*, the inquiry into disobedience is the court's "special function." That function cannot be set aside without destroying the very institutional capacity the function exists to protect.

CONCLUSION

The panel's decision to halt the district court's criminal contempt inquiry undercuts an essential power of the judiciary to enforce its rulings and the rule of law. That danger is heightened by doing so to aid an Executive Branch whose conduct in this case illustrates an intent to push the limits of compliance with court orders. In light of the profound implications of the panel's mandate, *Amici* respectfully request that the Court grant the Petition.

Dated: May 12, 2026

Respectfully submitted,

/s/ Norman L. Eisen

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave., S.E., No. 15180
Washington, D.C. 20003
(202) 594-9958
norman@democracydefendersfund.org

Counsel for the *Amici Curiae*

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 1,977 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14-point font.

Respectfully submitted,

/s/ Norman L. Eisen

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on May 12, 2026.

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.

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/s/ Norman L. Eisen

Norman L. Eisen
Stephen A. Jonas
Joshua G. Kolb
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave. SE#15180
Washington. D.C. 20003
(202) 594-9958
norman@democracydefenders.org

Counsel for *Amici Curiae*