No. 25-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS and AMERICAN FEDERATION OF TEACHERS,

PLAINTIFFS-APPELLANTS,

v.

UNITED STATES DEPARTMENT OF JUSTICE, PAMELA BONDI, in her official capacity as the U.S. Attorney General, LEO TERRELL, in his official capacity as Senior Counsel to the Assistant Attorney General for Civil Rights and Head of the DOJ Task Force to Combat Anti−Semitism, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her official capacity as the U.S. Secretary of Education, THOMAS E. WHEELER, in his official capacity as Acting General Counsel of the U.S. Department of Education, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., in his official capacity as the U.S. Secretary of Health and Human Services, SEAN R. KEVENEY, in his official capacity as Acting General Counsel of the U.S. Department of Health and Human Services, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, in his official capacity as the Acting Director of the National Institutes of Health, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the U.S. General Services Administration, JOSH GRUENBAUM, in his official capacity as Commissioner of the Federal Acquisition Service,

DEFENDANTS–APPELLEES.

On Appeal from the United States District Court
for the Southern District of New York
1:25-cv-02429 (Hon. Judge Mary Kay Vyskocil)

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION, CATO INSTITUTE, NATIONAL COALITION AGAINST CENSORSHIP, NEW YORK CIVIL LIBERTIES UNION, AND RUTHERFORD INSTITUTE IN SUPPORT OF PLAINTIFFS–APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae American Civil Liberties Union, Cato Institute, National Coalition Against Censorship, New York Civil Liberties Union, and Rutherford Institute state that they do not have a parent corporation and that no publicly held corporation owns 10 percent or more of their stock.

Dated: September 29, 2025

By: */s/ Vera Eidelman*
Vera Eidelman

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Regulations

INTERESTS OF AMICI CURIAE[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit organization that since 1920 has sought to protect the civil liberties of all Americans. The New York Civil Liberties Union ("NYCLU") is a state affiliate of the ACLU. The ACLU and NYCLU have frequently appeared as both counsel and amici in cases about the Constitution's limits on government power, including consequential First Amendment cases about coercing third parties into silencing disfavored speakers, retaliation, government funding conditions, and academic freedom. *See, e.g.*, *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024) (ACLU as counsel); *Rust v. Sullivan*, 500 U.S. 173 (1991) (ACLU and NYCLU as counsel); *Brooklyn Inst. of Arts and Sci. v. City of N.Y.*, 64 F. Supp. 2d 184 (E.D.N.Y. 1999) (NYCLU and ACLU as amici curiae).

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no person or entity, other than amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. The parties have consented to the filing of this brief.

books and studies, conducts conferences, and produces the annual *Cato Supreme Court Review*.

The National Coalition Against Censorship ("NCAC") is an alliance of more than 60 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups joined to defend freedom of thought, inquiry, and expression. NCAC has a longstanding interest in assuring robust free expression rights for all—including academic freedom and independence. The positions advocated in this brief do not necessarily reflect the views of NCAC's member organizations.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

Amici are legal advocacy organizations from across the ideological spectrum. Though they vary in their views on many issues, they have in common an abiding commitment to the Constitution and the liberties it protects.

INTRODUCTION

Academic freedom has long been conceptualized as a defense against the government using financial leverage to curtail the autonomy of scholars. At the turn of the twentieth century, there were several prominent examples of such efforts to use the power of the purse to censor and punish scholars for their views.[2] Indeed, when the Association of American University Professors ("AAUP") was formed in 1915, a central goal was to protect scholarship, research, and debate from retaliation by those outside the academy. In the words of Professor Arthur Lovejoy, one of AAUP's founders, "The distinctive social function of the scholar's trade can not be fulfilled if those who pay the piper are permitted to call the tune."[3] The Supreme Court, too, recognized academic freedom as a core component of the First Amendment. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). And America's

[2] *See* Ronald J. Daniels, *What Universities Owe Democracy* 148–150 (2021); Jonathan R. Coles, *The Great American University: Its Rise to Preeminence, Its Indispensable National Role, Why It Must Be Protected* 50–51 (2009).

[3] David Rabban, *Does Academic Freedom Limit Autonomy*, 66 Tex. L. Rev. 1405, 1413 (1988) (quoting Arthur O. Lovejoy, *Professional Association or Trade Union?*, 24 AAUP Bull. 409, 414 (1938)).

respect for academic freedom has made its colleges and universities the envy of the world.

The government's use of federal funding to intrude upon a private university's academic governance and to dictate scholarly discourse directly conflicts with the basic understanding of academic freedom. Federal officials violate foundational academic freedom principles and First Amendment rights when, as here, they coerce a university to forfeit its institutional autonomy "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring) (citation omitted). Equally, federal officials violate academic freedom principles and the First Amendment when they force scholars to "better manifest the government's favored worldview," whether the government regulates their research and teaching directly or instead bullies their university into doing its academic-freedom-infringing dirty work. *President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs.*, No. 25-CV-10910-ADB, 2025 WL 2528380, at *27 (D. Mass. Sept. 3, 2025) (citing *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 180–81 (2024)).

Appellees have violated broader First Amendment principles as well. The First Amendment protects all private speakers and institutions from viewpoint-based discrimination, coercion, and retaliation, even as it specifically protects colleges, universities, and their professors from infringements on academic freedom. It

prohibits the government from forcing any private actor to express the government's preferred views, from leveraging federal funds in a viewpoint-based way, and from seeking to control speech outside of the scope of a government-funded program. The administration's conduct here has crossed each of those lines and, unless this Court makes that clear, it could open the floodgates to retaliation, coercion, and ideological bullying of private actors across sectors and ideologies.

STATEMENT OF THE CASE

This controversy began in early March of this year when the Trump Administration announced that it was withdrawing $400 million in federal funds that had been promised to Columbia University. Much of this funding had been intended to support scientific and medical research.

Federal officials initially justified this decision by claiming that Columbia was in violation of Title VI of the 1964 Civil Rights Act for having inadequately addressed antisemitism on campus. A March 7 press release announced that the funds had already been canceled because Columbia officials had been unresponsive "in the face of persistent harassment of Jewish students," Joint App. ("JA") at JA343 (Jonathan Rosenthal Decl. Ex. 23, at 3, ECF No. 49-3), even though the government had failed to follow any of the procedural requirements which must be satisfied

before funds can be withdrawn from a university for failure to comply with the statute.[4]

Within days, the Trump Administration confirmed it had a broader agenda. In a March 13 letter, federal officials threatened to further upend "Columbia University's financial relationship with the United States government" unless the university acquiesced to nine specific demands. JA357 ("March 13 Letter"). These included, among other things, (1) placing the Middle East, South Asian, and African Studies ("MESAAS") department "under academic receivership for a minimum of five years," (2) ensuring that the university's governing definition of antisemitism includes "[a]nti-'Zionist' discrimination," and (3) "[i]mplement[ing] permanent, comprehensive" new rules regarding speech and protest on campus, including a ban on wearing masks to preserve anonymity. JA358. The government explained that these were "precondition[s]" that Columbia must "immediately satisfy" before then

[4] Pursuant to 34 C.F.R. § 100.8(c), the termination of federal funds can only occur after (1) the U.S. Department of Education has advised the recipient of funding that the Department has concluded that "compliance cannot be secured by voluntary means"; (2) there has been an "express finding" on the record, after an opportunity for a hearing, on the issue of the recipient's failure to comply with Title VI; (3) the Secretary of Education has issued a post-hearing and -finding Report setting forth the "circumstances and the grounds" for the termination of funding and filed it with the appropriate House and Senate committees; and (4) 30 days have passed since the filing of the Secretary's Report. Finally, any termination of funding must be limited to the specific program that has been found to have failed to comply with the Civil Rights statute. It does not appear from the Record below that federal officials complied with any of these procedural requirements.

facing additional demands from the government regarding how to "return Columbia to its original mission of innovative research and academic excellence." JA358; JA364–368.

On March 21, 2025, Columbia announced that it would seek to accomplish many of the goals outlined in the March 13 Letter. JA359–JA363. With respect to the MESAAS-receivership demand, Columbia agreed to "immediately" start "a thorough review" of Columbia's "Middle East Programs," including but not limited to MESAAS, to "ensure the educational offerings are comprehensive and balanced." JA362. It also promised to implement new "[f]aculty searches" to "ensure intellectual diversity across [its] course offerings and scholarship," including specifically "in Middle East Studies." JA362. With respect to the protest-related policies, it announced that anyone wearing a mask at a protest or demonstration would have to present University identification when asked for it. JA360. And it adopted the government's preferred definition of antisemitism. *Id.*

Subsequently, the government presented Columbia University with proposals about "how specifically to address viewpoint diversity" on campus. JA716. *See also* JA783 (government demands "seek[] viewpoint diversity among Columbia's faculty").

On March 25, AAUP and the American Federation of Teachers ("AFT") filed this lawsuit. On April 3, plaintiffs moved for preliminary injunctive relief. In a

decision issued on June 16, the federal District Court denied the request for injunctive relief and dismissed the suit upon the conclusion that plaintiffs lacked standing.

On July 23, Columbia announced that it had arrived at a settlement with the federal government. Pursuant to the settlement, the University will "conduct a thorough review of the portfolio of programs in regional areas"—"starting with the Middle East," and including the Center for Palestine Studies, the Institute for Israel and Jewish Studies, MESAAS, the Middle East Institute, its Middle East Policy major, "and other University programs focused on the Middle East."[5] The review will reach "all aspects of leadership and curriculum," and is meant to "ensure the educational offerings are comprehensive and balanced."[6] Columbia will also appoint new faculty members in "the Institute for Israel and Jewish Studies" to "contribute to a robust and intellectually diverse academic environment."[7]

In addition, Columbia will prohibit "protest activities . . . inside academic buildings" and require "[a]ll individuals who engage in protests or demonstrations, including those who wear face masks . . . [to] present their University identification"

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[5] *Resolution Agreement Between the United States of America and Columbia University* 6, Columbia Univ., Off. of the President (July 23, 2025), https://perma.cc/H77D-87VS.

[6] *Id.*

[7] *Id.* at 7.

when asked.[8] The settlement further provides that Columbia will evenly implement its institution-wide policies on harassment and discrimination under Title VI.[9]

The agreement further contemplates the appointment of an individual, not from Columbia's academic community, to serve as Resolution Monitor of the agreement. This Monitor will file semi-annual reports assessing Columbia's compliance "with the obligations contained in [the] Agreement."[10]

ARGUMENT

I. The Government Cannot Coerce Private Institutions into Allowing Expression Only of Its Preferred Views.

At the core of the First Amendment lies the principle that the government cannot impose its preferred ideological vision on private actors or institutions. As Justice Robert Jackson wrote more than eighty years ago, "[i]f there is any fixed star

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[8] *Id.* at 11.

[9] In accordance with First Amendment doctrine, efforts to regulate verbal or symbolic expression on the basis of its content or viewpoint can be sustained only if such efforts advance "compelling" government interests and do so in a manner that is "narrowly tailored" to the pursuit of those interests. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Ensuring equal access to education, without regard to race, ethnicity, or religion, is undoubtedly a compelling government interest. But Title VI may only reach protected expression when "narrowly tailored" to advance those interests. *Id.*; *see also Gartenberg v. Cooper Union for the Advancement of Sci. & Art*, 765 F. Supp. 3d 245, 261 (S.D.N.Y. 2025) ("That a private institution . . . is generally free to regulate its students' speech without regard for the First Amendment . . . is irrelevant to the question of whether [the government] may compel it to do so via the threat of civil liability under Title VI.").

[10] Columbia Univ., Off. of the President, *supra* note 5, at 16.

in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). This proposition stems from "the recognition that viewpoint discrimination [by the government] is uniquely harmful to a free and democratic society." *Vullo*, 602 U.S. at 187; *see also Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995) (holding that viewpoint discrimination is presumptively unconstitutional).

Yet imposing its preferred ideological vision is precisely what the government has done in this case, for example by requiring that Columbia's course offerings regarding the Middle East be "comprehensive and balanced"—as verified by a government-selected Monitor—and that the University appoint new faculty members specifically in the Institute for Israel and Jewish Studies.

The fact that Columbia has not joined this suit and has, instead, negotiated a settlement with the federal government does not immunize the government from constitutional responsibility. A speaker who is chilled or silenced through the government's coercion of a third party is just as entitled to relief as one regulated directly by the government itself. "[A] government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Vullo*, 602 U.S. at 190.

Thus, it has long been "clearly established that the First Amendment tolerates neither laws nor other means of coercion, persuasion or intimidation 'that cast a pall of orthodoxy' over the free exchange of ideas in the classroom." *Dube v. State Univ. of N.Y.*, 900 F.2d 587, 598 (2d Cir. 1990) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)) (holding that public university officials were not entitled to qualified immunity for First Amendment retaliation claim after they denied tenure to professor who taught a class about racism that compared "Nazism, apartheid, and Zionism").

The government's framing of its demands as efforts to *promote* viewpoint diversity does not make those demands any less viewpoint based. *See, e.g.,* JA716. "[T]he government cannot get its way just by asserting an interest in improving, or better balancing, the marketplace of ideas." *Moody v. Netchoice, LLC*, 603 U.S. 700, 732 (2024). To the contrary, "in case after case, the [Supreme] Court has barred the government from forcing a private speaker to present views it wished to spurn in order to rejigger the expressive realm." *Id.* at 733 (citing *Miami Herald Publ'g Co. v. Tornillo,* 418 U.S. 241 (1974), *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.,* 475 U.S. 1 (1986), and *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Bos., Inc.,* 515 U.S. 557 (1995)). The goal of "balanc[ing] the marketplace of ideas" is one that the government simply "may not pursue . . . consistent with the First Amendment." *Id.* at 742 (cleaned up).

Finally, any stock that the government places in the idea that federal grants are a privilege, not a right, such that the withdrawal or limitation of funds is not governed by the First Amendment, is misplaced. "The Government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit,'" including by attempting to "regulate speech outside the contours of the federal program itself." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 206, 214–15 (2013) (cleaned up). It follows that "ideologically driven attempts to suppress a particular point of view are presumptively unconstitutional in funding, as in other contexts." *Rosenberger*, 515 U.S. at 830. Thus, "even in the provision of subsidies, the Government 'may not aim at the suppression of dangerous ideas'" or "disfavored viewpoints," *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998) (quoting *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 550 (1983)), much less "'manipulate[]' [a subsidy] to have a 'coercive effect,'" *id.* (quoting *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 237 (1987) (Scalia, J., dissenting)).

The challenged actions here violate each of these rules: They leverage huge sums of money to push Columbia into restricting Plaintiffs' speech by curtailing the independence of professors to fashion their own courses; they deny a private university the benefit of federal research funding because the university does not align with the administration's vision of what "innovative research," "academic

excellence," and "viewpoint diversity" should look like on a college campus; and they seek to regulate speech far outside of the scope of the federal research grants that have been revoked.

II. The First Amendment Principle of Academic Freedom Prohibits the Government from Imposing Ideological Requirements on Academics.

The government's violations are particularly egregious in light of the university's role in a free society. "[T]he university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment." *Rust v. Sullivan*, 500 U.S. 173, 200 (1991). In other words, even conditions that could be imposed on other grant recipients under current Supreme Court precedents cannot be imposed on private colleges and universities—or, through bullying such institutions, on their professors or students.

It is a bedrock constitutional principle that "'debate on public issues should be uninhibited, robust, and wide-open'" and, as this Court has held, "[n]owhere is it more important to safeguard that interest . . . than in academia, where disputes . . . abound within and across countless disciplines." *Heim v. Daniel*, 81 F.4th 212, 228–29 (2d Cir. 2023) (quoting *NY Times v. Sullivan*, 376 U.S. 254, 270 (1964)). "[T]he entire premise powering academic freedom is that the advancement of the arts and sciences is of long-term value to society, and that the benefits of academic

scholarship are no less valuable even though the eventual benefits of particular works may be unexpected, indirect, or diffuse." *Id.* at 229.

"[The] freedoms of speech and thought associated with the university environment" are "expansive," *id.* at 227–28 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003)), and they encompass "*both* [an academic's] interest in free speech *and* a university's underlying mission." *Id.* at 229–30 (quoting *Blum v. Schlegel*, 18 F.3d 1005, 1011 (2d Cir. 1994)) (cleaned up).

In *Sweezy*, Justice Frankfurter's concurring opinion insisted on "the exclusion of governmental intervention in the intellectual life of a university." 354 U.S. at 262. Frankfurter further observed that "[i]t matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor." *Id*. And he went on to endorse the following conception of "academic freedom": "'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation,'" and to exercise "'the four essential freedoms' of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'" *Id.* at 263.

The government has no business getting in the way of those decisions. To the contrary, a university has a strong "interest in deciding for itself what skills,

expertise, and academic perspectives it wishes to prioritize," *Heim,* 81 F.4th at 234, and "courts have consistently celebrated the need to safeguard universities' self-determination over the substance of the education they provide and the scholarship they cultivate." *Id.* at 230.

Equally, "'[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding . . .' That *is* their job." *Id.* at 227 (quoting *Sweezy*, 354 U.S. at 250). Were it otherwise, "our civilization w[ould] stagnate and die." *Id.* (quoting *Sweezy* 354 U.S. at 250). Indeed, "[n]o one disputes the wealth of authority championing individual educators' interest in academic freedom." *Id.* at 230. Instead, students, faculty, and educational institutions "must be exemplars of open-mindedness and free inquiry," *Wieman v. Updegraff*, 344 U.S. 183, 196 (1952) (Frankfurter, J., concurring), so they can engage in "that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection," *Keyishian*, 385 U.S. at 603 (cleaned up).

"'[G]overnmental administrators [can]not [] discipline a college teacher for expressing controversial, even offensive, views,' or for criticizing their employer, or for speaking in a way that may upset or disturb their students." *Heim*, 81 F.4th at 230 (quoting *Vega v. Miller*, 273 F.3d 460, 467 (2d Cir. 2001)). Neither may government officials coerce university administrators into adopting speech-

restrictive measures as "a pretextual veil to obscure discrimination, or a cudgel to stamp out controversial or dissenting viewpoints, or some other mechanism to advance the views of non-academic public officials." *Id.* at 233 (cleaned up).

As noted above, the government's assertion that it is trying to correct Columbia's lack of viewpoint diversity does not cure the constitutional defects here. Once the federal government is allowed to interfere in colleges' and universities' internal governance, it will inevitably do so to promote its own ideologies and suppress alternatives. That is why "the way the First Amendment achieves th[e] goal [of an expressive realm in which the public has access to a wide range of views] is by preventing *the government* from 'tilt[ing] public debate in a preferred direction.'" *Moody*, 603 U.S. at 741 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–79 (2011)). Interests in pluralism are not advanced "by licensing the government to stop *private actors* from speaking as they wish and preferring some views over others." *Id.* Giving the government that power would impose the very straightjacket on academic inquiry that ideological diversity is intended to avoid.

Indeed, the federal government's insistence on imposing "balance" in the educational offerings of the MESAAS Department and Public Affairs Middle East Policy major, among others, maintains a federal Sword of Damocles over faculty members. Federal officials who called for placing the MESAAS Department in "receivership" will continue to scrutinize whether Columbia has complied with their

preferred vision of ideological balance among the faculty. Professors must now second-guess their instruction, assignments, or classroom discussion as to whether it meets the government's view of balance, lest any words or statements be taken out of context to trigger the federal oversight process. The presence of the Monitor is likely to increase the chilling effect on faculty. Close monitoring and control by funding authorities will further diminish the atmosphere of free inquiry previously enjoyed by Columbia's faculty.

All of these measures promoted by federal officials intrude upon Columbia's authority "to determine for itself … who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring). And they will chill—and are intended to chill—scholarship, campus discussion, and academic pursuits on disfavored topics. So understood, the intrusion by the federal government into the academic governance of Columbia is unlawful. The settlement is an agreement that Columbia was coerced into accepting, and one that bullies the University into curtailing the free speech rights of its students and faculty. This case should move forward to protect the important constitutional values at stake here and to restore the academic freedom that Columbia's scholars and researchers once enjoyed.

CONCLUSION

For the reasons stated above, Amici respectfully submit that the Court should reverse the district court's order dismissing this case.

Dated: September 29, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this Brief of Amicus Curiae in Support of Plaintiffs–Appellants and Reversal complies with the type-volume limitation, typeface requirements, and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6), and 29(5) because it contains 4053 words, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), and has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word 2016.

Dated: September 29, 2025

By: */s/ Vera Eidelman*
Vera Eidelman

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ACMS system, which will send notification of such filing to all counsel of record.

Dated: September 29, 2025

By: */s/ Vera Eidelman*
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