No. 24A1063

IN THE

Supreme Court of the United States

SOCIAL SECURITY ADMINISTRATION, ET AL.,

Applicants,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, ET AL.,

Respondents.

On Application for a Stay of the Injunction Issued by the United States District Court for the District of Maryland and Request for an Administrative Stay

BRIEF OF VETERANS AND LABOR UNIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Pursuant to Supreme Court Rule 37.4, Donald Martinez, Jason Cain, Clifford Grambo, Thomas Fant, Christopher Purdy, Kristofer Goldsmith (collectively, "Veteran Amici"), the International Association of Machinists and Aerospace Workers, the International Federation of Professional and Technical Engineers, the National Active and Retired Federal Employees Association, and the National Federation of Federal Employees (collectively, "Union Amici") respectfully submit this brief amicus curiae in support of Respondents.

Veteran Amici are United States military veterans who provided sensitive personally identifiable information ("PII")—including but not limited to Social Security numbers, financial information, and home addresses—to the Department of Education ("Education"), the Office of Personnel Management ("OPM"), and the Department of the Treasury ("Treasury") in order to receive government benefits, including VA home loans, GI Bill benefits, student loans, disability benefits, and civil service employment. Their PII is stored in these agencies' systems of records. Union Amici are labor unions, membership organizations, and nonprofits that collectively represent more than two million Americans, including teachers, nurses, government employees, and retirees. Members of each of the Union Amici likewise have PII stored within systems of records maintained by Education, OPM, and Treasury.

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[1] Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amici* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Amici are plaintiffs in the related case, *American Federation of Teachers* v. *Bessent*, Case No. 25-1282 (4th Cir. Mar. 24, 2025),[2] which concerns Education's, OPM's, and Treasury's decisions to provide Department of Government Efficiency ("DOGE") affiliates with unfettered access to Amici's PII in violation of the Privacy Act. The agencies appealed the district court's decision to grant Amici a narrowly tailored preliminary injunction enjoining disclosure of Amici's specific PII to DOGE affiliates, and a panel of the Fourth Circuit heard oral argument on the merits of the government's appeal on May 5, 2025.

This case is of central concern to Amici because several of the threshold legal issues raised in the Application—in particular the issues of Article III standing and the availability of judicial review under the Administrative Procedure Act ("APA")—were raised by Education, OPM, and Treasury in the *Bessent* appeal. Indeed, Amici's case is discussed at length in the Application. See Application at 2, 5, 8–15, 19, 21, 29. Because this Court's consideration and resolution of the Application and the threshold legal issues raised therein may affect the resolution of Amici's related case before the Fourth Circuit, Amici write to provide this Court with additional argument on these issues and to explain why the procedural posture of both this and Amici's case counsels against the Court's early intervention on the Application.

[2] One plaintiff in the *Bessent* case, the American Federation of Teachers, is also among the Respondents in this case and therefore not a member of Amici here. The American Federation of Teachers did not contribute to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In enacting the Privacy Act, Congress made a considered judgment about the evils that go hand-in-hand with government collection and dissemination of highly sensitive personal information. As the bill's sponsor, Senator Sam Ervin Jr., explained: "When the Government knows all of our secrets, we stand naked before official power. Stripped of our privacy, we lose our rights and privileges." Comm. on Gov't Operations, U.S. Senate, Legislative History of the Privacy Act of 1974, S. 3418 (Public Law 93-579), Source Book on Privacy 4 (Sept. 1976) ("Source Book"). Congress "hope[d] that we never see the day when a bureaucrat in Washington . . . can use his organization's computer facilities to assemble a complete dossier of all known information about an individual." *Id.* at 776. If the Application is granted, that day will be today.

Applicants' position is straightforward: no American has the power to enjoin the government's unauthorized sharing of the American people's most private and confidential information within the government. That is true no matter the government's reasons for doing so, and despite the fact that the Privacy Act was enacted precisely to guard against that sort of indiscriminate sharing of Americans' most private information.

Applicants are wrong on the law, for the reasons outlined below, but their request to render the Privacy Act a nullity despite the clear Congressional intent behind the law is particularly inappropriate in a stay application. Such applications are "rarely granted," and never as of right. *Heckler* v. *Lopez*, 463 U.S. 1328, 1330

(1983) (Rehnquist, J., in chambers) (citation omitted). The Application does not identify any "extraordinary circumstances" that would warrant this Court's use of its stay powers to suspend the district court's preliminary injunction in this case. *CBS, Inc.* v. *Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers); *O'Rourke* v. *Levine*, 80 S.Ct. 623, 624 (1960) (Harlan, J., in chambers) (general practice is "not to disturb, except upon the weightiest considerations, interim determinations of the Court of Appeals in matters pending before it"). To the contrary, there are at least three compelling reasons why the Application should be denied.

First, Justices of this Court have recently acknowledged that emergency applications often ask the Court to undertake the difficult task of "assess[ing] the merits on a tight timeline—without the benefit of many reasoned lower-court opinions, full merits briefing, and oral argument." *Labrador* v. *Poe by and through Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring in grant of stay). For this reason, the Court has typically been inclined to deny such applications when it appears that the Court of Appeals is proceeding expeditiously in evaluating the merits of the appeal, such as by ordering expedited briefing. Here, the Fourth Circuit not only expedited briefing in Amici's related case, the case has already been *heard and submitted* to the panel for a decision. And the day after Amici's case was heard, the Fourth Circuit granted initial en banc review in this case. Rather than engage in a hasty evaluation of the merits of Applicants' arguments as presented in the Application, the Court should stay its hand and allow the Fourth Circuit to complete its review and issue reasoned opinions on these issues.

Second, Applicants are unlikely to prevail on their argument that Respondents lacked standing to bring their action. Time and again, this Court has held that intangible harms, such as invasions of privacy, are sufficiently concrete for Article III standing when they bear "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 424, 425 (2021). Respondents have alleged that they suffered such a harm when Applicants disclosed their highly sensitive information for a purpose unauthorized by law. That is enough to establish standing. Indeed, this Court concluded in *United States* v. *Sells Engineering, Inc.*, 463 U.S. 418 (1983), that the government's continued unauthorized access to a person's private information was an ongoing and redressable harm. In addition, courts have concluded that unauthorized access to private information inside the government or another organization, as happened here, is enough for a viable claim of intrusion upon seclusion.

Third, this Court has already held in *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 318 (1979), that a government agency's decision to disclose private records pursuant to a statutory scheme is "reviewable agency action" under the APA. Applicants are thus unlikely to prevail on their argument that an agency's policy to disclose to DOGE affiliates PII belonging to millions of Americans is not a final agency action subject to judicial review. The Court should deny the Application.

ARGUMENT

I. This Court's Intervention Is Not Warranted.

"[S]tays pending appeal to this Court are granted only in extraordinary circumstances." *Williams* v. *Zabrez*, 442 U.S. 1309, 1311 (1979) (citation omitted). This Court has been particularly reluctant to intervene at a preliminary stage when the Court of Appeals "is proceeding to adjudication on the merits with due expedition." *Doe* v. *Gonzales*, 546 U.S. 1301, 1308 (2005); see also *Barr* v. *Roane*, 140 S. Ct. 353, 353 (2019) (Ginsburg, J., in chambers) (denying application for stay with "expect[ation] that the Court of Appeals will render its decision with appropriate dispatch"); *id.* at 353–54 (Alito, J.) ("I would state expressly in the order issued today that the denial of the application to vacate is without prejudice to the filing of a renewed application if the injunction is still in place 60 days from now."). That is because this Court "is a court of final review and not first view," and benefits from the issuance of "thorough lower court opinions to guide [its] analysis of the merits." *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012) (internal quotation marks and citation omitted).

These considerations strongly weigh against the Court's intervention here. The Fourth Circuit expedited briefing in amici's related case, *American Federation of Teachers* v. *Bessent*, Case No. 25-1282, presenting the same threshold legal issues (with one notable exception),[3] oral argument was held on May 5, 2025, and the case

[3] The government argued both before the district court as well as in its briefs to the Fourth Circuit in *Bessent* that the availability of monetary damages under the

has been submitted to the panel for a decision. The Fourth Circuit also took the extraordinary step of granting initial en banc review of Respondents' case, which will greatly expedite the full court's resolution of the issues it raises. Under these circumstances, this Court's "hasty last-minute" intervention "might more likely increase than clarify any confusion that might possibly have been brought about" by the proceedings below. *Louisiana* v. *United States*, 1966 WL 87237, at *1 (U.S. Aug. 12, 1966) (Black, J., denying application for stay).

II. DOGE Affiliates' Unauthorized Access to PII Is a Concrete Injury in Fact.

1. Article III requires plaintiffs to have a "concrete" "injury in fact" for standing. *TransUnion*, 594 U.S. at 424 (citation omitted). "In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 340 (2016). As to history, intangible harms are concrete if they bear "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion*, 594 U.S. at 425. There need not be "an exact duplicate"; the inquiry is "whether plaintiffs have identified a close historical or common-law analogue for their asserted injury." *Id.* at 424. In other words, plaintiffs' injury must simply be "the same *kind* of harm that common law courts recognize." *Gadelhak* v. *AT&T Servs.,*

Privacy Act forecloses judicial review under the APA. On May 1, 2025, counsel for Amici informed counsel for the government that the government had previously taken the opposite position before this Court in *Doe* v. *Chao*, 540 U.S. 614 (2001), and argued that injunctive relief for violations of the Privacy Act *is* available under the APA. The next day, Applicants filed their application for a stay, which omits this argument that they pressed below.

Inc., 950 F.3d 458, 462–63 (7th Cir. 2020) (Barrett, J.). The "*degree*" of their injury need not rise to the level where it would be "actionable at common law." *Id.* (emphasis added). Further, "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important." *Spokeo,* 578 U.S. at 341. "Congress may 'elevate to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.'" *TransUnion*, 594 U.S. at 425 (quoting *Spokeo*, 578 U.S. at 341).

When assessing whether plaintiffs have Article III standing, this Court "has long resisted efforts to transform ordinary merits questions into threshold jurisdictional questions by jamming them into the standing inquiry." *California* v. *Texas*, 593 U.S. 659, 698 (2021) (Alito, J., dissenting) (citing cases); see also, *e.g.*, *Davis* v. *United States*, 564 U.S. 229, 249 n.10 (2011) ("[S]tanding does not 'depend[] on the merits of [a claim].'" (second and third alteration in original) (quoting *ASARCO Inc*. v. *Kadish*, 490 U.S. 605, 624 (1989)). To avoid impermissibly collapsing the standing inquiry with the merits inquiry, the Court "accept[s] as valid the merits of [plaintiffs'] legal claims" "[f]or standing purposes." *Fed. Election Comm'n* v. *Cruz*, 596 U.S. 289, 298 (2022). That means the Court accepts the legal theory asserted by plaintiffs—for instance, that a law "unconstitutionally burdens speech" or that government action is "unlawful." *Id.*; see *Dept. of Educ.* v. *Brown*, 600 U.S. 551, 564 (2023).

2. Respondents here claim that Applicants granted DOGE affiliates access to their PII in violation of the Privacy Act, because the affiliates do not need access

to the PII to do their jobs. Opposition at 17–20; see 5 U.S.C. § 552a(b)(1) (need-to-know exception to Privacy Act's general prohibition on disclosure of records). Accepting Respondents' legal claim as valid—as the Court must for standing purposes—their injury is DOGE affiliates' unauthorized access to their PII. That injury is concrete under this Court's precedent.

a. This Court necessarily decided in *United States* v. *Sells Engineering, Inc.*, 463 U.S. 418 (1983), that continued access to materials that may have been improperly disclosed within the government is a concrete injury. In *Sells*, two individuals challenged the sharing of information within the government under a court's disclosure order. *Id.* at 420–22. The government argued that the case was moot "because the disclosure sought to be prevented had already occurred." *Id.* at 422 n.6. This Court rejected that argument. It reasoned that, "[e]ach day this order remains in effect[,] the veil of secrecy is lifted higher . . . by the continued access of those to whom the materials have already been disclosed." *Id.* The Court's holding that the case was not moot means there was a concrete injury; it is fundamental that "avoiding mootness" requires a "concrete" injury. *Harris* v. *Univ. of Mass. Lowell*, 43 F.4th 187, 195 (1st Cir. 2022) (citation omitted). And the Court was clear what that concrete injury in *Sells* was: "continued access" to the materials by government employees, who (according to the individuals) were not entitled to such access. *Sells*, 463 U.S. at 422 n.6.

Sells requires rejection of Applicants' no-standing argument. In this case, just as in *Sells*, the injury is "continued access" to confidential materials by persons inside

the government who are not lawfully entitled to access the materials. *Id.* And, just as in *Sells*, that is a concrete injury entitling Respondents to press their claims in federal court.

b. Applying the principles enunciated in *TransUnion* and *Spokeo* leads to the same result. DOGE affiliates' unauthorized access to Respondents' PII is the exact harm Congress addressed in the Privacy Act. It is also the same kind of harm targeted by the common-law tort of intrusion upon seclusion.

In evaluating whether a statutory violation gives rise to Article III injury, Congress's judgment is both "instructive and important." *Spokeo*, 578 U.S. at 341. As this Court has explained, the Privacy Act "serves interests similar to those protected by . . . privacy torts," and "there is good reason to infer that Congress relied upon those torts in drafting the Act." *FAA* v. *Cooper*, 566 U.S. 284, 295 (2012); see also, *e.g.*, Source Book at 803 (referring to common law "right to be protected against disclosure of information given by an individual in circumstances of confidence"). In the Privacy Act, Congress thus "identified a modern relative of a harm with long common law roots", and made it "legally cognizable" in the federal courts. *Gadelhak*, 950 F.3d at 462–63. Respondents' harm is precisely the concrete harm the Privacy Act was intended to address: their digitized personal information being freely shared inside the government without authorization. See, *e.g.*, Source Book at 204 (Act intended to "prevent the easy exchange of data about the same individual" within the government); *id.* at 776 ("I hope that we never see the day when a bureaucrat in

Washington . . . can use his organization's computer facilities to assemble a complete dossier of all known information about an individual.").

Because Congress based the Privacy Act on common law invasion of privacy torts, it should be no surprise that the harm here is analogous to that addressed by intrusion upon seclusion. The tort of intrusion upon seclusion occurs when there is an "intentional[] intrus[ion], physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns . . . if the intrusion would be highly offensive to a reasonable person." Restatement (Second) Torts § 652B (Am. Law. Inst. 1977). The "touchstone of the tort of intrusion upon seclusion" is "[a] legitimate expectation of privacy." *Fletcher* v. *Price Chopper Foods of Trumann, Inc.*, 220 F.3d 871, 877 (8th Cir. 2000). "The kind of harm vindicated by the intrusion-upon-seclusion tort is relatively broad" and includes the loss of an individual's "sense of solitude" that occurs from prying into the domain of "one's life and private affairs." *Dickson* v. *Direct Energy, L.P.*, 69 F.4th 338, 345 (6th Cir. 2023); see also, *e.g*. *Benitez* v. *KFC Nat'l Mgmt. Co.*, 714 N.E.2d 1002, 1033 (Ill. App. Ct. 1999) (similar).

Among other things, intrusion upon seclusion addresses the privacy harm that occurs when there is prying into the domain of an individual's personal information. "[B]oth the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person." *U.S. Dep't. of Just.* v. *Reps. Comm. For Freedom of Press*, 489 U.S. 749, 763 (1989). This is so even if the individual has voluntarily "divulged" the information "to another." *Id.* The individual may maintain an expectation that the information will remain private to

some extent—for instance, that it will not be shared beyond "a particular person or group or class of persons." *Id.* at 764. In those circumstances, an individual's seclusion is intruded upon when her information is shared with someone outside the expected group. See, *e.g.*, Restatement § 652B cmt. b (example of intrusion upon seclusion when an individual shares information with her bank, but the bank then shares the information in circumstances where the individual expected it would remain private).

The harm of DOGE affiliates' unauthorized access to PII is the same kind of harm that intrusion upon seclusion addresses: prying into a domain—Respondents' personal information—that they legitimately expected would remain private. The Privacy Act "protect[s] the privacy of individuals identified in information systems maintained by Federal agencies." *Doe* v. *Chao*, 540 U.S. 614, 618 (2004) (quoting Privacy Act, Pub. L. No. 93-579, § 2(a)(5), 88 Stat. 1896 (1974)). The Act thus "created a new sphere in which individuals not only *expect* privacy, but have a right to it—*i.e.*, a sphere of seclusion." *AFL-CIO* v. *Dept. of Labor*, 2025 WL 1129227, at *8 (D.D.C. Apr. 16, 2025); see also, *e.g.*, Source Book at v (the Act "secur[es] for each citizen of the United States the right of privacy with respect to confidential information held by the Federal Government"). In particular, the Act creates an expectation that the government will keep personal information private from "any person" whether inside the government or out, unless a statutory exception applies. See 5 U.S.C. § 552a(b). When Applicants granted DOGE affiliates access to PII even though nothing in the

Privacy Act permitted such access, there was an intrusion on Respondents' privacy expectations—the essence of intrusion upon seclusion.

Courts have consistently found intrusion upon seclusion in circumstances indistinguishable from those here. In a case where a city police officer accessed city records that he was not authorized to access, the Seventh Circuit allowed a state-law intrusion upon seclusion claim to proceed. See *Socha* v. *City of Joliet*, 107 F.4th 700, 711–12 (7th Cir. 2024) (emphasizing the city's "explicit policy restricting access (and thereby authorization) to certain agents within the organization," and finding no evidence that police officer had authorization). Similarly, in a case where a hospital employee accessed medical records he was not allowed to access, the district court allowed a state-law intrusion upon seclusion claim to proceed. *Perez-Denison* v. *Kaiser Found. Health Plan of the Nw.*, 868 F. Supp. 2d 1065, 1073, 1090 (D. Or. 2012). The fact that courts found these intrusion upon seclusion claims viable proves that Respondents' injury is the same kind of harm protected by that tort.

c. Applicants make four arguments as to why there is no concrete injury; all are meritless.

First, Applicants repeatedly claim that Respondents' information can be and is lawfully accessed within the Social Security Administration ("SSA") under the Privacy Act; that SSA "legally retains" Respondents' information in its databases; and that DOGE affiliates are "bound by the same legal and ethical restrictions on the disclosure of [R]espondents' information." Application at 17–21. These arguments are immaterial.

The fact that *other* SSA employees access Respondents' PII consistent with the Privacy Act, and that SSA itself legally possesses the information, does not change that here DOGE affiliates were granted *illegal* access to PII (as the Court must assume for standing purposes, see *ante*, p. 8). Such unauthorized access violates Respondents' privacy expectation that the information they entrusted to the government would be accessed only as permitted by the Privacy Act. See *ante*, p. 12–13. Indeed, courts have permitted intrusion upon seclusion claims to proceed when an unauthorized person accessed confidential information held by an organization that others in the organization *were* allowed to access. See *Socha*, 107 F.4th at 706 (indicating sergeant was allowed to access relevant data); *Perez-Denison*, 868 F. Supp. 2d at 1073 (noting that medical records could be accessed for "the specific purpose of providing medical care").

The fact that DOGE affiliates are restricted from disclosing Respondents' information also does nothing to weaken the analogy between Respondents' injury and the intrusion-upon-seclusion harm. As the Restatement makes clear, the "intrusion itself makes the defendant subject to liability, *even though there is no publication*" of the "information." Restatement § 652B cmt. b (emphasis added). Thus, even assuming that DOGE affiliates are unlikely to further disclose Respondents' information, it makes no difference: intrusion upon seclusion targets a harm that has nothing to do with such further disclosures.

Second, Applicants protest that there is "no . . . resembl[ance]" to intrusion upon seclusion because the tort "addresses narrow, individualized scrutiny," not

"general, impersonal oversight" such as access to PII in databases. Application at 19–20. Applicants are wrong. Intrusion upon seclusion is not limited to "targeted snooping," *id.* at 20; courts have held (for example) that when an entity engages in internet tracking *en masse*, plaintiffs state a claim for intrusion upon seclusion. See, *e.g.*, *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 601–06 (9th Cir. 2020); *Doe* v. *Regents of Univ. of Cal.*, 672 F. Supp. 3d 813, 820 (N.D. Cal. 2023); *In re Group Health Plan Litig.*, 709 F. Supp. 3d 707, 713 (D. Minn. 2023). Those rulings are undoubtedly correct. An intrusion into one person's private sphere—whether through the collection of their personal information by automated digital means, or access to their information stored in databases—is not somehow lessened or erased by the fact that millions of others' privacy was intruded upon at the same time.

Third, Applicants assert there is no connection to intrusion upon seclusion because Respondents have not "allege[d] that any 'DOGE-affiliated SSA employee has seen their specific personal information.'" Application at 20 (citation omitted). Even assuming that the viewing of Respondents' specific information was required for intrusion upon seclusion to be an analogue—and it is not, *see post*, p. 16—there would be standing here. Respondents collectively have around 7.6 million members. See *AFSCME, AFL-CIO* v. *SSA*, 2025 WL 1206246, at *1, 6–7 (D. Md. Apr. 17, 2025). At the same time, Applicants represent that DOGE affiliates "*need* to access" SSA records to "support [a] *critical* government effort," Application at 2 (emphasis added)—*above and beyond* the access to redacted, anonymized data that is permitted under the district court's injunction. This need is apparently so pressing that

Applicants have filed an application for emergency relief with this Court. Given Applicants' position that DOGE affiliates need to actively and extensively use SSA records with PII, it is practically certain that DOGE affiliates have already viewed or will soon view the PII of at least one of Respondents' members—and that suffices for standing. See *Hunt* v. *Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977) (enough for "one" member of an association to "suffer[] immediate or threatened injury").

In any event, Applicants are incorrect that DOGE affiliates need to actually view PII for Respondents to suffer the same harm as is protected by the tort. Intrusion upon seclusion requires only intrusion into a private sphere—and nothing more. See Restatement § 652B, cmt. b ("The intrusion itself makes the defendant subject to liability, even though there is no . . . use of any kind of" the information."); see also, *e.g.*, *Nayab* v. *Cap. One Bank (USA), N.A.*, 942 F.3d 480, 491–93 (9th Cir. 2019) (same). In other words, intrusion upon seclusion does not require that any sight, knowledge, information, or anything else be gleaned as a result of the intrusion. See Eli A. Meltz, *No Harm, No Foul? "Attempted" Invasion of Privacy and the Tort of Intrusion Upon Seclusion*, 83 Fordham L. Rev. 3431, 3454–58 (2015) (discussing cases). Here, the Privacy Act creates an expectation that the government will only permit access to personal records in certain circumstances, none of which exist here. Thus, as soon as DOGE affiliates accessed databases containing Plaintiffs' PII, there was an intrusion on their sphere of expected privacy—the very harm addressed by intrusion upon seclusion.

Fourth, all of Applicants' arguments sound the same theme: that DOGE affiliates' access to Respondents' PII is unremarkable and inoffensive—whether because DOGE affiliates have legal and ethical restrictions, because the harm purportedly does not include viewing PII, or some other reason. See, *e.g.*, Application at 21 (claiming that injury here does not "constitut[e] a highly objectional invasion of personal privacy"). Applicants' attempt to minimize the harm is belied by both the undisputed facts of this case and what the Court is required to accept as true for standing purposes: "SSA granted DOGE personnel broad access to the PII of millions of Americans," in violation of the Privacy Act, and despite the public's reliance on SSA's longstanding "representations that it will safeguard their private information." *AFSCME*, 2025 WL 1206246, at *71.

Applicants' protestation is also beside the point. Again, determining whether an injury is concrete depends on whether there is "a 'close relationship' in kind, not degree." *Gadelhak*, 950 F.3d at 462; see also, *e.g.*, *Perez* v. *McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816, 822 (5th Cir. 2022) (court must "focus on types of harms protected at common law" (citation omitted)); *Ward* v. *NPAS, Inc.*, 63 F.4th 576, 581 (6th Cir. 2023) (same). Even if the harm to Respondents is "too minor" to be "actionable at common law"—which it is not, see *ante*, p. 13—that is of no moment. *Gadelhak*, 950 F.3d at 463. What matters is whether Respondents' injury is the same kind of injury protected by intrusion upon seclusion—and Applicants fail to provide a single reason to think it is not.

III. Applicants' Decision to Disclose Records Protected by the Privacy Act Is a Final Agency Action.

This Court has long held that "[t]he APA establishes a 'basic presumption of judicial review for one suffering legal wrong because of agency action.'" *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 17 (2020) (quoting *Abbott Lab'ys* v. *Gardner*, 387 U.S. 136, 140 (1967), abrogated on other grounds by *Califano* v. *Sanders*, 430 U.S. 99 (1977)). Thus, "[t]he APA, by its terms, provides a right to judicial review of all 'final agency action for which there is no other adequate remedy in a court.'" *Bennett* v. *Spear*, 520 U.S. 154, 175 (1997) (quoting 5 U.S.C. § 704). Notwithstanding this, Applicants contend that their policy decision to grant DOGE affiliates sweeping access to millions of Americans' most sensitive information is not subject to judicial review under the APA. That argument cannot be squared with this Court's precedents and provides no basis for a stay.

1. Applicants' argument that there can be no APA review here is foreclosed by this Court's decision in *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 317 (1979). In *Chrysler*, third parties had made a Freedom of Information Act ("FOIA") request to the Defense Logistics Agency ("DLA") seeking to obtain copies of certain of Chrysler's plans and reports that it had submitted to the agency. *Id.* at 287. Relying on various exemptions to FOIA's disclosure provisions, Chrysler "objected to release of the requested information." *Id.* DLA determined, however, that the cited exemptions did not apply and "the requested material was subject to disclosure under the FOIA." *Id.* The agency subsequently informed Chrysler of its intent to provide the requested material to the third parties several days later. *Id.* Chrysler responded by filing a

reverse-FOIA action under the APA "to enjoin agency disclosure" of the company's records "on the grounds that it is inconsistent with the FOIA" and the Trade Secrets Act. *Id.* at 285. On appeal, this Court was asked to determine whether Chrysler had a private right of action to enjoin the agency's disclosure. *Id.* The Court concluded that Chrysler did under the APA because "DLA's decision to disclose the Chrysler reports is *reviewable agency action* and Chrysler is a person 'adversely affected or aggrieved' within the meaning of [the APA]." *Id.* at 318 (emphasis added).

Chrysler is dispositive. Just as in *Chrysler*, Applicants include a federal agency and its head that made a disclosure decision pursuant to a statutory scheme—in this case, the Privacy Act. Just as in *Chrysler*, Applicants defend their disclosure decision based on the applicability of a statutory exemption. And just as in *Chrysler*, Applicants' decision to disclose Respondents' Social Security numbers, medical and mental health records, and other highly sensitive PII without obtaining their prior written consent adversely affected Respondents. Applicants' decision is thus subject to review under the APA. See *Doe* v. *Stephens*, 851 F.2d 1457, 1466 (D.C. Cir. 1988) (citing *Chrysler*, 441 U.S. at 317–19, and concluding that the Department of Veteran Affairs' disclosure of plaintiff's medical records pursuant to the Privacy Act "clearly is a case of agency action . . . within the meaning of [the APA]").[4]

[4] The D.C. Circuit did not consider it material to the agency action analysis in *Stephens* whether a disclosure was made pursuant to FOIA or the Privacy Act. 851 F.2d at 1466. Not only do both statutes place limitations on the government's ability to disclose records, their provisions "substantially overlap." *Greentree* v. *U.S. Customs Serv.*, 674 F.2d 74, 78 (D.C. Cir. 1982).

2. The Application tellingly does not address or even mention *Chrysler*. Instead, Applicants insist that their decision to grant access is not reviewable under the APA because it is not "agency action" and not "final." Even setting apart that those arguments are foreclosed by *Chrysler*, they fail on their own terms.

a. Applicants' contention that there is no "agency action" is meritless. As this Court explained in *Abbott*, "[t]he legislative material elucidating [the APA] manifests a congressional intention that it cover a broad spectrum of administrative actions." 387 U.S. at 140. Consistent with that mandate, this Court has held that "action" should be read to "cover comprehensively every manner in which an agency may exercise its power." *Whitman* v. *Am. Trucking Ass'n*, 531 U.S. 457, 478 (2001). That includes an agency's power to order the disclosure of personal records pursuant to a statutory scheme. *Chrysler*, 441 U.S. at 318; see also 5 U.S.C. § 551(13) (defining agency action to include "the whole or a part of an agency rule" or "order").

Applicants' reliance on this Court's decision in *Lujan* v. *National Wildlife Federation*, 497 U.S. 871 (1990), concluding that the APA does not permit judicial review of an agency's "day-to-day operations," Application at 21–22 (quoting *Lujan*, U.S. at 899), is misguided. In *Lujan*, the plaintiffs sought judicial review of an agency's failure to "provide adequate information and opportunities for public participation" with respect to a specific program. 497 U.S. at 899. This Court held that these generalized grievances failed to "identify any particular 'agency action'" and amounted to an impermissible demand for "general judicial review of the [agency's] day-to-day operations." *Id.*

Lujan bears no resemblance to this case. Respondents did not seek review under the APA of Applicants' "personnel decisions," staffing choices, or e-mail creation processes, as Applicants wrongly assert. Application at 22–23. Rather, Respondents challenged Applicants' policy decision to grant DOGE affiliates unfettered access to information protected by the Privacy Act. That is precisely the sort of agency action that this Court and numerous Courts of Appeals have concluded is subject to judicial review under the APA. See, *e.g.*, *Chrysler*, 441 U.S. at 317; *Stephens*, 851 F.2d at 1466; *John Doe #1* v. *Veneman*, 380 F.3d 807, 813 (5th Cir. 2004) ("[A] party seeking to prevent disclosure in response to a FOIA request may seek judicial review of an agency's decision to release information under the [APA]."); *Megapulse, Inc.* v. *Lewis*, 672 F.2d 959, 966 (D.C. Cir. 1982) ("[T]he 'agency action' exists in the official decision to disclose 'protected' data."); *GTE Sylvania, Inc.* v. *Consumer Prod. Safety Comm'n*, 598 F.2d 790, 795 n.1 (3d Cir. 1979) (where law "place[s] substantive limits" on agency disclosures, "review of an agency decision to disclose data submitted by a private party is available under the APA").

It is therefore demonstrably untrue that the district court's conclusion that Applicants' decision was an agency action will "have sweeping and untenable consequences" that will lead to judicial review of "virtually every aspect of an agency's internal management of its employees." Application at 22. For more than half a century, this Court and the Courts of Appeals have consistently held that judicial review applies under the APA to federal agencies' decisions to disclose records in their possession pursuant to a statutory scheme. Yet there has been no flood of cases—or

even a single case cited by the Applicants—to suggest that these holdings have triggered the consequences of which Applicants complain. That is unsurprising. The agency policy Respondents challenged in this case does not even remotely resemble the minute day-to-day personnel decisions described in the Application.

b. Applicants' argument that there is no "final" agency action here also fails. Agency action is "final" when it (a) "mark[s] the 'consummation' of the agency's decisionmaking process" and (b) is one "by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett*, 520 U.S. at 177–78 (1997) (citation omitted). Applicants contend that the second requirement is not satisfied, but they are wrong.

Applicants' decision to grant DOGE affiliates access to PII plainly determined rights and obligations and therefore had legal consequences. The Privacy Act generally provides individuals with the right not to have their personal information disclosed within the government without their "prior written consent." 5 U.S.C. § 552a(b). Applicants determined this right was not applicable here when they disclosed Respondents' PII to DOGE affiliates without seeking their written consent beforehand. In granting access, Applicants also determined their own obligations. For example, they determined they had no legal obligation to seek written consent before granting access. And the decision itself triggered an obligation under federal regulations to "ensure" the disclosed records were "accurate, relevant, timely and complete." 1 C.F.R. § 304.32(f). Because Applicants' policy decision affected the rights of millions of Americans and decided Applicants' own obligations, the action

was one from which legal consequences immediately flowed—not mere "indirect, practical consequences" as Applicants baselessly assert. Application at 23; see *Am. Farm Bureau Fed'n* v. *EPA*, 836 F.3d 963, 969 (8th Cir. 2016) (ruling that agency letter committing to release data was a "final agency action" because it "mark[ed] 'the consummation of the agency's decisionmaking process . . . from which legal consequences will flow'" (second alteration in original) (quoting *Bennett*, 520 U.S. at 177–78).

In response, Applicants suggest there is no "final" agency action because no real-world harms flow from disclosures of Respondents' PII *inside* the government (as opposed to disclosures to outside actors). Application at 24. That is unavailing for multiple reasons.

First, for all the reasons explained above, the decision to grant DOGE affiliates within the government access to Respondents' PII created a "concrete"—and thus "real"—injury. *Spokeo*, 578 U.S. at 340; see *ante*, p. 7–17.

Second, the finality inquiry is not whether sufficient *practical* consequences flow from the agency action but whether there are *legal* consequences. See *Bennett*, 520 U.S. at 177–78; see also *Louisiana State* v. *U.S. Army Corps of Eng'rs*, 834 F.3d 574, 583 (5th Cir. 2016) (explaining that finality is concerned with "legal" consequences, not "practical" ones). As discussed above, Applicants' decision to disclose Respondents' PII clearly had significant legal consequences. See *ante*, p. 22.

Whether a decision to disclose information has *legal* consequences has nothing whatsoever to do with whether the disclosure would be internal or external.

Applicants presumably agree that if a statute provides for disclosure of information externally under certain conditions, and an agency discloses the information, that would be a "final" agency action. See Application at 24. There is no rhyme or reason why the result should be any different if the statute were instead to provide for disclosure of information internally under certain conditions (as the Privacy Act does). The legal consequences are the same in both instances—the agency has determined rights and obligations surrounding disclosure under the applicable statute. See *Ipsen Biopharmaceuticals, Inc.* v. *Azar*, 943 F.3d 953, 956 (D.C. Cir. 2019) (the "determin[ation]" of "whether 'legal consequences will flow'" for purposes of determining finality of agency action is "based on the concrete consequences an agency action has or does not have *as a result of the specific statutes and regulations that govern it*" (emphasis added) (citations omitted)).

Third, Applicants misread *Venetian Casino Resort, LLC* v. *EEOC*, 530 F.3d 925 (D.C. Cir. 2008). In that case, the plaintiff had submitted confidential information to the EEOC, and brought suit to prevent its disclosure under an agency "policy of permitting employees to disclose confidential information without notice." *Id.* at 931. The plaintiff contended that the policy violated a federal statute and the EEOC's own regulations. *Id.* The D.C. Circuit held that the policy's adoption was an "agency action that is both final and consequential to [plaintiff]" because it was an action "by which [the submitter's] rights [and the agency's] obligations have been determined." *Id.* (second and third alteration in original) (citation omitted). In other words, the policy's adoption determined that the plaintiff had no right under the federal statute

or EEOC's regulations to receive notice before disclosure, and the agency had no obligation to provide such notice. See *id.* All of that is true here—and so *Venetian* helps *Respondents* establish "final" agency action, rather than helping Applicants establish the lack thereof. No part of the D.C. Circuit's opinion supports Applicants' contention that the court was instead focused on the practical "consequences" of potential "unauthorized third-party disclosures," much less that it found finality for that reason. Application at 24.

* * *

The upshot of Applicants' arguments about standing and the APA is that no plaintiff can sue the federal government to enjoin it from disclosing their information to others inside the government in violation of the Privacy Act—no matter how sensitive the information, how widely it is disseminated within the government, and for what purpose it is disseminated, even a flagrantly unlawful one. Courts would be "powerless to prevent an agency from systematically running roughshod over the rights the [Privacy] Act was promulgated to protect." *Doe* v. *Herman*, 1998 WL 34194937, at *6 (W.D. Va. Mar. 18, 1998). The Congress that passed the Act would be shocked at this development. This Court should hesitate to sanction Applicants' arguments, which would eviscerate the Privacy Act's protections. That is especially true here, where these arguments have been made in support of an extraordinary request for a stay without the benefit of the Fourth Circuit's reasoned opinion.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

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Respectfully submitted,

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