No. 25-1311

In the
Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

EPIC GAMES, INC.,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Brief for *Amici Curiae* State of Utah and 31 Other States and the District of Columbia in Support of Respondent

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Introduction and Statement of Interest

Judicial remedies make the rule of law a practical reality, not just an abstract ideal. From its inception, this Court recognized that courts must be able to "furnish [a] remedy for the violation of a vested legal right" to prevent that right from becoming a dead letter. *Marbury* v. *Madison*, 5 U.S. 137, 163 (1803). This precept especially matters in competition cases, where courts must "protect the public from a continuation of the harmful and unlawful activities." *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 48 (1960). If the equitable relief awarded in these suits "accomplishes less than that," the plaintiff will have "won a lawsuit and lost a cause." *Int'l Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947).

That sort of pyrrhic victory benefits no one but defendants found to have engaged in illegal conduct, whose anticompetitive behavior generates artificial profit at the public's expense. The policy "'unequivocally laid down'" in both state and federal law is "'competition'"—the principle that "'the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.'" *NCAA* v. *Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 104 n.27 (1984) (quoting *N. Pac. Ry. Co.* v. *United States*, 356 U.S. 1, 4 (1958)). Antitrust and other competition-preserving laws are thus "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the

protection of our fundamental personal freedoms." *North Carolina State Bd. of Dental Exam'rs* v. *FTC*, 574 U.S. 494, 502 (2015) (quoting *United States* v. *Topco Assocs., Inc.*, 405 U.S. 596, 610 (1972)). And evading those laws drains our economy of free-market benefits, leaving consumers to bear the costs.

States have critical interests in preventing such evasion. In recent years, state enforcement in competition cases has grown considerably. States are increasingly challenging mergers and monopolistic behaviors that harm their citizens, often working together in bipartisan coalitions to bring high-stakes lawsuits to protect competition. Tamzin Booth, *States Are Stepping Up as the New Antitrust Enforcers*, N.Y. Times (Oct. 17, 2026), https://www.nytimes.com/2026/10/17/business/dealbook/state-antitrust-enforcement.html. For example, just this year, a coalition of all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands secured judicial approval for their $700 million settlement with Google over the tech company's anticompetitive behavior. Margaret Attridge, *Judge Grants Final Approval of $700 Million Android App Antitrust Settlement*, Courthouse News Serv. (Apr. 30, 2026), https://www.courthousenews.com/judge-grants-final-approval-of-700-million-android-app-antitrust-settlement/. States are key parties in this arena, often the first to seek justice when their citizens are injured by anticompetitive conduct.

But no matter how energetically states enforce the law, their citizens still suffer harm when companies contrive to circumvent injunctions against anticompetitive behavior. That's what happened here. After finding a violation under California's Unfair

Competition Law ("UCL"), the district court issued an injunction barring Petitioner Apple Inc. from engaging in anti-steering practices that prevented developers from steering users to external payment systems. Pet. App. 166a. Apple immediately tried to sidestep the injunction by tweaking its policies to ensure that developers would still not be able to steer users elsewhere. Worse, Apple also actively hid its injunction evasion in a series of bad-faith actions culminating with an "outright li[e] under oath." Pet. App. 52a. After finding that Apple's conduct "d[id] not comport with the text of the Injunction" and that "Apple knew it was violating the Injunction," the district court held Apple to be in civil contempt. Pet. App. 135a, 141a. The Ninth Circuit upheld those contempt findings in relevant part. Pet. App. 19a–36a.

Apple's sole argument on appeal is that its actions were not "forbidden" by the district court's injunction, and so "Apple cannot be held in contempt here." Petr. Br. 17. But Apple does not challenge the district court's findings or deny that it intended to—and in fact did—nullify the effects of the district court's injunction and perpetuate anticompetitive behavior through its conduct. And its remarkably narrow conception of how the district court's (or any) injunction should be read undermines equity principles and competition law.

The States of Utah, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, Washington,

and West Virginia, and the District of Columbia (*Amici* States), respectfully submit this brief in support of Respondent Epic Games, Inc. As explained, *Amici* States are primary enforcers under both state and federal antitrust and competition law. *Amici* States' attorneys general enforce their own states' laws to protect their citizens from the harmful effects of anticompetitive conduct. *E.g.*, Utah Code § 76-16-501 *et seq*. They are also authorized by Congress to bring law enforcement actions to protect their citizens, including antitrust actions, under federal law. 15 U.S.C. § 15c. Enforcement is particularly important in this case, where tens of millions of Americans (including citizens of *Amici* States) use the iOS platform implicated in the underlying violations. *Amici* States thus have a strong interest in ensuring that courts employ effective legal standards for determining liability and enforcing remedies in cases of anticompetitive conduct.

Summary of Argument

I. The district court correctly held Apple in contempt for continuing to engage in anticompetitive conduct barred by a prior injunction. To afford complete relief in competition cases, courts must be able to exercise equitable authority to both stop ongoing violations and address the market effects of those violations. That's because anticompetitive behavior can create a self-perpetuating cycle that continues to benefit the violator (and harm the public) long after specific violations are enjoined. When a company resorts to unlawful means to gain control over a greater share of the market, that control can

prevent effective competition for years to come. So to provide complete redress for that kind of injury, courts must provide relief that faces both backward (enjoining previous conduct) and forward (preventing similar future conduct).

Injunctions in anticompetition violations therefore cannot be read through an artificially narrow lens. Apple's approach would allow an enjoined party free rein to accomplish the same anticompetitive ends by implementing marginally different means. Even a modestly creative violator could effortlessly evade accountability—and keep reaping ill-gotten gains—by slightly tweaking its methods to keep preventing competition. This Court's precedents preclude such mischief. They affirm that injunctions for anticompetitive conduct are "not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." *United States* v. *U.S. Gypsum Co.*, 340 U.S. 76, 88–89 (1950). Injunctions remedying anticompetitive conduct should be read consistent with that principle.

The district court's injunction here is no exception. The court found that Apple engaged in unlawful anti-steering restrictions and required Apple to lift those restrictions. Apple then lifted them in name only, imposed new (and substantially similar) strictures on developers that mirrored the old ones and produced the same result. Worse still, Apple did all this in bad faith: Apple knew its behavior was wrong and actively hid that fact from the court, including by providing false testimony. Under any

reasonable reading of the district court's injunction, Apple's conduct is worthy of civil contempt.

II. Under this Court's decision in *Taggart* v. *Lorenzen*, "civil contempt is proper only where there is no '"fair ground of doubt as to the wrongfulness of the defendant's conduct."' 587 U.S. 554, 561 (2019) (quotation omitted). The parties agree that the "fair ground of doubt" standard applies in this case. But if the Court finds it necessary to refine that standard, remand is the proper course. This Court's usual practice when announcing a legal rule is to remand for lower court application of the rule in the first instance. That is especially true where, as here, the parties contest the application of the rule to a complex factual record. If the Court finds it necessary to clarify the *Taggart* standard, it should remand the case to the Ninth Circuit for further proceedings under the correct rule.

Argument

I. Apple's misconduct violated the district court's injunction and warranted a civil contempt finding.

There's no mystery why the district court held Apple in contempt: after finding Apple violated the UCL, the district court entered an injunction "to restrain and prohibit Apple's anticompetitive conduct and anticompetitive pricing," and "Apple *willfully* chose not to comply" with that injunction, instead engaging in similar anticompetitive conduct that caused the same harm. Pet. App. 51a, 163a. On appeal, Apple does not challenge any of the district court's substantive findings. Nor does it deny that it

"chose to maintain its anticompetitive revenue stream" and engaged in "repeated misrepresentations" to obscure that fact from the district court. Pet. App. 135a. Instead, it argues that the district court's contempt power should be construed "narrowly and cautiously"—and that the injunction Apple violated should be thus interpreted in the same limited way. Petr. Br. 19. That reframing, Apple contends, would let Apple off the hook.

But Apple's approach, if adopted, would also violate established equitable relief principles and competition law. Injunctive relief cannot be interpreted in a vacuum. It especially cannot be read so narrowly that it creates "a 'whack-a-mole' game" where the enjoined party can easily dodge an injunction's requirements and continue to inflict the very harm the injunction redressed. Pet. App. 133a. That is particularly true in antitrust and competition cases, where—given the "great public importance" of protecting a broad consumer base from the effects of violations—the "remedial phase, more often than not, is crucial." *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 323 (1961).

Injunctions addressing anticompetitive conduct are designed to restore competitive conditions to the marketplace and eliminate continuing effects of violations. Those goals are impossible when violators are permitted to continue their anticompetitive behavior through functionally equivalent means, particularly when they know that doing so remains unlawful. Any rule adopting Apple's crabbed method for interpreting injunctions would be a windfall for competition-law violators—and undercut *Amici* States' interests as enforcers and the rule of law.

A. Injunctions in competition cases cannot afford complete relief without addressing the ongoing effects of anticompetitive behavior.

Injunctive relief is by nature flexible. "'The power of a court of equity'" to shape relief to the needs of a particular case is "'long-established, broad, and flexible.'" *Brown* v. *Plata*, 563 U.S. 493, 542 (2011) (quoting *New York State Ass'n for Retarded Child., Inc.* v. *Carey*, 706 F.2d 956, 967 (2d Cir. 1983) (Friendly, J.)). Courts of equity have always enjoyed broad discretion to fashion remedies. As this Court recently reiterated, "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 854 (2025) (quoting *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944)) (modification in original). That discretion is often necessary to ensure that injunctions provide meaningful redress. Without it, courts could not "afford the plaintiff complete relief," leaving no way to stop unlawful acts from continuing or reoccurring. *Id.* at 851.

Competition cases often call upon courts to exercise their equitable powers with multiple concerns in mind. In these cases, effective remedies generally require more than "a simple proscription against the precise conduct previously pursued." *Nat'l Soc'y of Pro. Eng'rs* v. *United States*, 435 U.S. 679, 698 (1978). After all, "the end to be served is not punishment of past transgression, nor is it merely to end specific illegal practices." *Int'l Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947). Instead, an injunction against anticompetitive conduct must be designed to

"eliminat[e] the *consequences* of the illegal conduct." *Nat'l Soc'y of Pro. Eng'rs*, 435 U.S. at 698 (emphasis added). In short, equitable authority empowers courts to restore competition—to "cure the ill effects of the illegal conduct, and assure the public freedom from its continuance." *U.S. Gypsum Co.*, 340 U.S. at 88.

Competition harms demand this broader relief because of the nature of the violations at issue. Anticompetitive actions often reshape market conditions in ways that cannot be undone simply by ordering the defendant to stop its unlawful conduct. Even after that conduct has ceased, the defendant benefits from its unlawful acts until the court restores competitive conditions, eliminates any continuing effects of the violations, and ensures that the defendant cannot perpetuate those effects through functionally equivalent means. To afford complete relief, an injunction must do more than bar the particular flavor of anticompetitive conduct in which a defendant previously engaged; it must "pry open to competition a market that has been closed by defendants' illegal restraints." *Int'l Salt Co.*, 332 U.S. at 401. Otherwise, the plaintiff will have "won a lawsuit and lost a cause." *Ibid.*

These principles carry particular force in markets characterized by network effects (like the market in which Apple competes). In those markets, "one product or standard tends towards dominance, because the utility that a user derives from consumption of the good increases with the number of other agents consuming the good." *United States* v. *Microsoft Corp.*, 253 F.3d 34, 49 (D.C. Cir. 2001) (quotation omitted). Social media provides an everyday example: the more people that use a

particular app (such as TikTok or Instagram), the more content is available for users to consume, and the more the app offers compared to its competitors. In network-effect markets, scale can generate self-reinforcing advantages: the bigger you are, the more you can grow.

The network-effect positive feedback loop creates unique challenges in maintaining free and fair competition. A larger user base results in more usage, engagement, and potential profit, which in turn reinforces existing advantages and makes it more difficult for rivals to achieve meaningful competitive scale. So when anticompetitive restraints impede rivals' access to customers or distribution opportunities, the effects of those restraints not only give an undeserved boost to the defendant; they also persist even after a defendant ceases a specific means of exploiting them.

That's what happened in this case. Apple implemented "anti-steering" restrictions prohibiting developers from informing consumers about purchase opportunities outside Apple's ecosystem. Pet. App. 58a. Those restrictions artificially kept consumers on Apple's platforms and away from competitors, giving Apple a "competitive advantage." *Ibid.* As a result, Apple enjoyed continuous exposure and access to customers (and their data) while hamstringing competitors' ability to get a foot in the door. Without an injunction to both stop Apple's anti-steering requirements *and* erase their effects, no complete relief would be possible.

B. Construing competition injunctions narrowly defeats their purpose and prevents meaningful redress.

Given these principles of relief described above, it's no surprise that the district court issued an injunction prohibiting "Apple's conduct impeding competition with respect to in-app and out-of-app purchases" and preventing Apple from "maintain[ing] its anticompetitive revenue stream." Pet. App. 51a. Yet Apple wasted no time in adjusting its practices to keep reaping the benefits of its prior anti-steering restrictions. In Apple's view, the altered policies were just distinct enough from its earlier conduct to avoid running afoul of the injunction—even though they yielded the same results. The district court saw it differently. It found Apple in contempt because "despite knowing its obligations" under the injunction, Apple "thwarted the Injunction's goals[] and continued its anticompetitive conduct solely to maintain its revenue stream." *Ibid.*

The district court was correct. Apple's constricted view of the injunction's reach severely limits how equitable relief operates in competition cases. Defendants should not be able to preserve the anticompetitive effects of unlawful conduct by fine-tuning their approach to achieve the same ends. Injunctions should not be construed so narrowly as to allow the enjoined party to easily circumvent the remedy while allowing the challenged competitive restraint to persist. That approach would turn this Court's warning—that plaintiffs opposing anticompetitive behavior may "w[i]n a lawsuit and los[e] a cause"—into a common occurrence. *Int'l Salt Co.*, 332 U.S. at 401.

This Court's precedents foreclose Apple's invitation to read injunctions in competition cases "narrowly and cautiously." Petr. Br. 19. Because injunctive remedies in cases like this one must restore competition, those remedies may reach conduct that is not independently unlawful when doing so is necessary to eliminate the consequences of proven violations. *See Int'l Salt Co.*, 332 U.S. at 400–01. A court's equity power obliges it to "uproot all parts of an illegal scheme" when necessary to eliminate its anticompetitive effects. *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 148 (1948). And courts must also ensure that defendants do not retain the benefits of unlawful conduct where doing so would frustrate restoration of competition. *United States* v. *United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968). Restoring competition thus may require dismantling continuing advantages preserved through such conduct because those advantages are themselves part of the injury to the competitive process.

Apple resists this conclusion, instead "demanding that the injunction clearly and specifically proscribe the conduct at issue." Petr. Br. 28. In its view, a defendant complies with an injunction designed to remove barriers to competition so long as the defendant avoids the exact mechanism identified in the original decree (such as by technically allowing developers to "includ[e] buttons, external links, or calls to action in their apps")—even while it employs similar means to reach the same anticompetitive end (such as requiring buttons or links to be limited, hidden, and ineffective). *Id.* at 27.

Competition injunctions cannot be read with Apple's artificial blinders. To be sure, a district court

must take care to craft injunctions that fully address the relevant harm. But its remedies need not take the form of a laundry list. To the contrary, defendants cannot claim "an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined." *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949). Relief in competition cases is "not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." *U.S. Gypsum Co.*, 340 U.S. at 88–89. And "the injunction of a court[] is not to be evaded by indirections or formal observances which in fact defy it," particularly "since we are in a field where subtleties of conduct may play no small part." *NLRB* v. *Express Pub. Co.*, 312 U.S. 426, 437 (1941). Courts are neither obligated nor equipped to spell out in painstaking detail every conceivable method a well-funded and technologically savvy defendant might imagine to cling to its market position and profits.

"When the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed." *Int'l Salt Co.*, 332 U.S. at 400. In this as in other competition cases, the Court should not allow defendants to evade injunctions by immediately sidestepping onto the road less traveled.

C. Apple's anticompetitive conduct violated the district court's injunction—not merely the "spirit" of that injunction—and demonstrated bad faith.

Properly read in the light of its remedial purpose, the district court's injunction plainly prohibited Apple's anticompetitive conduct. And Apple's subsequent violation justified the district court's finding of civil contempt.

The district court issued the injunction after finding that "Apple's conduct in enforcing anti-steering restrictions [wa]s anticompetitive." Pet. App. 59a. Those restrictions prohibited developers from putting in their apps any mechanism that could point users to any method of paying for the developer's content other than Apple's own in-app purchase process (through which Apple collected a 30% commission). The restrictions went further than just prohibiting in-app steering: developers were also not allowed to encourage—or even mention—payment alternatives outside the app (for instance, by emailing users). Nor could they mention Apple's 30% commission to their users. Pet. App. 55a–56a.

To remedy these anticompetitive harms and create a fair, competitive market for app-developer products, the district court "permanently restrained and enjoined [Apple] from prohibiting developers from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing." Pet. App. 59a. Apple responded by implementing several measures

designed to ensure that its anticompetitive aims could continue unabated.

First, Apple established a 27% commission on out-of-app purchases. Contemporaneous documentary evidence and testimony showed that Apple knew that, though they could pitch it as a 3% discount off the in-app rate, the out-of-app option would end up costing developers more than an in-app purchase, and so "no rational developer" would choose to use this method. Pet. App. 20a. The result was that, as before, Apple "made all alternatives to [its platform] economically unviable." *Ibid.*

Second, while the injunction required Apple to allow developers to include buttons, links, and "other calls to action" in their apps, Apple set policies that drastically limited their use. The only "buttons" Apple allowed were "plain buttons," which were required to be indistinguishable from their surroundings (that is, "invisible"). Pet. App. 23a. For links and any other "calls to action," developers were given five premade templates to choose from, and Apple severely limited the placement of any links to ensure that they would "never appear where users naturally expect to see their purchase options." Pet. App. 23a–24a. Links were also limited to "static URLs," which would render even those lucky users who discovered the links unable to access the websites without logging in manually. Pet. App. 24a. Thus, "[i]n practical effect at least, th[ese] restriction[s] prohibited linked-out purchases." *Ibid.*

Third, Apple inserted a "scare screen" every time a link outside the app was clicked, warning that users would be taken to an "external website" and that "Apple [wa]s not responsible for the privacy or security

of any purchases made on the web." *Ibid.* Internal documents showed that the wording of the screen was intentionally designed to be as "scary" as possible to users, with the intent to discourage them from following through on clicking the link. Apple "engineer[ed] this screen" to prohibit users from "completing linked-out purchases." *Ibid.*

Apple makes much of the brevity of the district court's injunction. Relying on a strict interpretation of the word *prohibit* as meaning *to completely prevent*, Apple protests that by allowing some (limited and ineffective by design) use of buttons and links, it did "[j]ust the opposite" of violate the injunction. Petr. Br. 32; *but see ibid.* (quoting *Black's Law Dictionary* as defining "prohibit" to also mean to "preclude" or "severely hinder"). That reading blinks reality. Apple's bevy of new policies, explicitly aimed at circumventing the injunction, walled in developers seeking to escape its anticompetitive conduct. By any measure, Apple's practices prohibited the very conduct the district court required. *See* Resp. Br. 9–12, 36–43. There is no "'fair ground of doubt'" on which Apple can argue otherwise. *Taggart*, 587 U.S. at 561 (quoting *California Artificial Stone Paving Co.* v. *Molitor*, 113 U.S. 609, 618 (1885)). The district court therefore correctly found Apple in contempt.

The court's contempt determination finds further support in Apple's bad faith. Although the standard for contempt is "generally an *objective* one," "subjective intent" is not "always irrelevant." *Ibid.* Rather, "civil contempt sanctions may be warranted when a party acts in bad faith." *Id.* at 561–62 (citing *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 50 (1991)).

Apple did so here. In findings that remain unchallenged on appeal, the district court explained that Apple (i) "attempted to mislead the Court" with testimony riddled with "misdirection and outright lies," Pet. App. 86a; (ii) "engaged in tactics to delay the proceedings," including by asserting tens of thousands of baseless privilege claims, Pet. App.67a; and (iii) submitted a "sham" report "entirely manufactured" as a "show piece" to persuade the district court that its post-injunction policies had a legitimate basis, even though the report "did not materially factor into Apple's decision-making process," Pet. App. 137a–38a. Apple's "persistent contumacy" is yet another reason for finding contempt. *McComb*, 336 U.S. at 192.

Apple's conduct violated the district court's injunction, and under this Court's governing precedents, the district court's finding of contempt was justified. The Court should therefore affirm.

II. If the Court modifies the *Taggart* analysis for determining civil contempt, remand is the proper disposition.

Unsurprisingly, Apple's merits brief skims over the factual basis for the district court's contempt finding. Instead, Apple concentrates its fire on the Ninth Circuit's reasoning, arguing that the panel applied an "erroneous legal standard." Petr. Br. 4. Everyone acknowledges the proper standard reaffirmed in *Taggart* v. *Lorenzen*: civil contempt is proper only where there is no "'fair ground of doubt as to the wrongfulness of the defendant's conduct.'" 587 U.S. at 561 (quoting *California Artificial Stone*, 113 U.S. at 618); Petr. Br. 17, 19, 21–22; Resp. Br. 3, 18; *see also* Br. for United States 1–3, 21. Under that

standard, as explained above, there is no fair ground of doubt that Apple's conduct—including both its defiance of the injunction and its repeated pattern of acting in bad faith—was wrong. Resp. Br. 17–30. That alone justifies affirmance.

But Apple argues the Ninth Circuit did not apply Apple's version of the *Taggart* test. Petr. Br. 26–29. And, taking it further, Apple wants the Court to apply this new test in the first instance. In Apple's view, a boots-on-the-ground analysis by this Court "would provide helpful guidance to lower courts," and "[i]t requires no extensive analysis to conclude" that Apple's conduct cannot justify a finding of contempt. Petr. Br. 47. The United States also asserts the Ninth Circuit failed to apply *Taggart* and invites the Court to take the first crack. In its view, the *Taggart* "standard is of the type that is best articulated through illustrative applications," and "lower courts would greatly benefit if this Court took the opportunity . . . to provide illustrations of how it applies in practice." Br. for United States 21.

The Court should decline these invitations to conduct district-court first-instance analysis. If the Court concludes the Ninth Circuit applied the proper civil contempt standard in substance, this Court should affirm. Apple has challenged only the proper legal standard, not the facts giving rise to its contempt. But if this Court modifies the *Taggart* standard or otherwise concludes the Ninth Circuit applied the wrong test, this Court should remand the case to the Ninth Circuit, consistent with its role as "a court of final review and not first view." *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012)

(quoting *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 110 (2001) (per curiam)).

As this Court has repeatedly explained, its "usual practice" is to not "decide in the first instance how [a] dispute should come out under" any rule or "approach" it adopts to answer the legal question presented. *Hunter* v. *United States*, 608 U.S. 713, 729–30 (2026). The Court departs from that practice only in exceptional circumstances, such as "the absence of any reason to anticipate that the District Court's judgment would change on a remand that neither party seeks." *Monasky* v. *Taglieri*, 589 U.S. 68, 86 (2020). Here, where the issue is contested and the analysis requires review of an extensive record, review by the lower courts is consistent with this Court's practice. *See, e.g.*, *Golan* v. *Saada*, 596 U.S. 666, 683 (2022) ("[I]t is appropriate to follow the ordinary course and allow the District Court to apply the proper legal standard in the first instance."); *Johnson* v. *California*, 543 U.S. 499, 515 (2005) (similar).

"The lower courts should determine whether a narrower injunction is appropriate" under any modified *Taggart* standard. *CASA*, 606 U.S. at 854. This Court should "therefore leave it to them." *Ibid.*

Conclusion

The Court should affirm the judgment of the Ninth Circuit. If further analysis is necessary in light of the Court's holding, the Court should remand the case to allow the district court and the Ninth Circuit to apply that holding in the first instance.

Respectfully submitted,

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