

In the  
Supreme Court of the United States

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TIMOTHY BARTON,

*Petitioner,*

v.

SECURITIES AND EXCHANGE COMMISSION,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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BRIEF OF AMICUS CURIAE  
THE OPEN-SOURCE AI FOUNDATION (O-SAIF)  
IN SUPPORT OF PETITIONER

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## INTEREST OF THE AMICUS CURIAE

The Open-Source AI Foundation (“O-SAIF”) is a § 501(c)(4) nonprofit organization devoted to advancing open-source artificial-intelligence systems for public good, transparency, and ethical governance. Founded in 2025, O-SAIF advocates mandatory adoption of open-source technologies in civilian government AI procurement to ensure auditability, enhance security, and prevent waste of taxpayer funds.<sup>1</sup>

Its flagship initiative, The 20 Percent Project, uses open-source “agentic” AI to review federal pardon and commutation cases—demonstrating that transparent automation can expand due-process access while lowering cost. The project is led by Michael “Harry-O” Harris, a former death-row inmate pardoned after 33 years of incarceration.

O-SAIF submits this brief because the SEC’s use of opaque, quasi-algorithmic receiverships presents the same structural hazard as closed-source AI: government power exercised through hidden mechanisms, immune from public audit or legislative control. When enforcement occurs without transparency or appropriation, accountability collapses. O-SAIF’s mission is to ensure that technological governance remains consistent with the Constitution’s demand that all exer-

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a), Amicus Curiae provided timely notice of its intent to file this brief to counsel for all parties. No counsel for any party authored this brief in whole or in part, and no one other than Amicus and its supporters made any monetary contribution to its preparation or submission.

cises of power be traceable to law and visible to the people who consent to it.<sup>2</sup>



## SUMMARY OF ARGUMENT

This case asks whether federal agencies may continue operating enforcement mechanisms that spend and seize beyond statutory and appropriations limits. O-SAIF urges the Court to answer no.

Closed-source AI and closed-equity receiverships share a constitutional flaw: they replace law with opacity. Both violate Article I’s Power of the Purse, Article II’s duty of faithful execution, and the Fifth Amendment’s guarantee of due process.<sup>3</sup>

Open-source governance satisfies those clauses by design. Its code, like statute, is publicly inspectable; its operations are reproducible and reviewable. When agencies act transparently—whether in financial enforcement or algorithmic decision-making—Congress, courts, and citizens can verify that execution remains “faithful” to enacted law.<sup>4</sup>

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<sup>2</sup> U.S. Const. arts. I & II; *INS v. Chadha*, 462 U.S. 919, 951 (1983) (noting that separation of powers protects democratic accountability by ensuring each branch remains answerable for its own actions).

<sup>3</sup> U.S. Const. art. I, § 9, cl. 7 (*Appropriations Clause*); U.S. Const. amend. V (*Due Process Clause*).

<sup>4</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); *West Virginia v. EPA*, 597 U.S. 697 (2022).

Just as *West Virginia v. EPA* and *Loper Bright v. Raimondo* reaffirmed that major actions require major authorization, this Court should hold that major enforcement systems also require major visibility. Statutory silence cannot justify secret governance. Equitable or algorithmic discretion untethered from law is as dangerous to constitutional order as unbacked currency is to economic order.<sup>5</sup>



## ARGUMENT

### I. Transparency Is a Constitutional Imperative.

The Framers understood that liberty depends on visibility. As Madison wrote, “A dependence on the people is, no doubt, the primary control on the government.” (*The Federalist No. 51*). Government that operates through hidden code or secret equity deprives citizens of that control.<sup>6</sup>

Article II’s Take Care Clause— “[The President] shall take Care that the Laws be faithfully executed”—requires execution according to publicly knowable rules. (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Closed-source enforcement tools violate that command because neither Congress nor courts can inspect the rule being applied.

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<sup>5</sup> *The Federalist No. 58* (James Madison) (explaining that congressional control of appropriations is a safeguard of liberty).

<sup>6</sup> *The Federalist No. 51* (James Madison); see also 1 Joseph Story, *Commentaries on the Constitution of the United States* § 21 (1833).

Open-source systems, by contrast, institutionalize the transparency the Constitution presumes. They allow oversight comparable to public legislation: every parameter visible, every modification recorded, every result auditable. That is faithful execution in technological form.<sup>7</sup>

## **II. Closed Systems Undermine the Appropriations Clause and Legislative Oversight.**

Article I, Section 9, Clause 7 provides: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The SEC’s receivership model, like closed AI procurement, allows funds to be created and used outside that chain of authorization. In *Reeside v. Walker*, the Court held that “however much money may be in the Treasury at any one time, not a dollar of it can be used in payment of anything not thus previously sanctioned.” 52 U.S. (11 How.) 272, 291–92 (1850). That principle forbids off-ledger spending through judicial or algorithmic proxies.<sup>8</sup>

Congress cannot oversee what it cannot see. Closed-source code hides the inputs, logic, and outputs of governmental decision systems; open-source design restores legislative oversight by making those elements reviewable. Fiscal transparency and code transparency are twins—each ensures that the people’s representatives retain the “most effectual weapon” over government power. (*The Federalist No. 58*).<sup>9</sup>

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<sup>7</sup> U.S. Const. art. II, § 3; *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>8</sup> *Reeside v. Walker*, 52 U.S. (11 How.) 272, 300 (1850).

<sup>9</sup> *The Federalist No. 58* (James Madison).



### III. Due Process Requires Algorithmic Auditability.

The Fifth Amendment guarantees that no person shall “be deprived of life, liberty, or property, without due process of law.” Procedural fairness includes notice of the rule applied and opportunity to contest it. (*Mathews v. Eldridge*, 424 U.S. 319 (1976)). When government decisions rely on proprietary algorithms, that notice vanishes; citizens cannot challenge reasoning they cannot see.<sup>10</sup>

Open-source AI corrects that defect. By exposing model architecture and data lineage, it allows independent experts to verify compliance and courts to review legality. This transparency fulfills *Mathews*’ balancing test—reducing the risk of erroneous deprivation while imposing minimal administrative burden. In constitutional terms, open code is due process rendered in logic.<sup>11</sup>

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<sup>10</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976).

<sup>11</sup> *Id.*; see also Nat’l Inst. of Standards & Tech., *Artificial Intelligence Risk Management Framework* 1.0 (2023), <https://www.nist.gov/itl/ai-risk-management-framework> (“Transparency and accountability are key to trustworthy AI systems.”).

#### **IV. Open Source Reinforces Separation of Powers and National Security.**

Transparency strengthens, rather than weakens, the Republic. When Congress, courts, and the public can inspect the tools government uses, each branch can perform its constitutional role. Opaque, vendor-controlled systems create dependency and obscure accountability. Open frameworks, maintained by federated research consortia such as the Linux Foundation AI & Data and the OpenFold Consortium, demonstrate that collaborative transparency enhances both innovation and security.<sup>12</sup>

A government that builds in the open obeys the same rule that binds its laws: it must be knowable to those it governs.

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<sup>12</sup> Linux Foundation, *AI & Data Foundation* (2025 update); OpenFold Consortium, *OpenFold 3 Technical Release Notes* (2025).



## CONCLUSION

Transparency is the modern form of constitutional faithfulness. Whether labeled “equity” or “algorithm,” secret governance subverts Article I oversight, Article II accountability, and Fifth Amendment fairness. O-SAIF respectfully urges this Court to reaffirm that no power—human or artificial—may operate beyond the law’s visibility or Congress’s appropriation.

A government backed by secrecy is counterfeit; a government backed by law and open code is legitimate.

Respectfully submitted,

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November 17, 2025