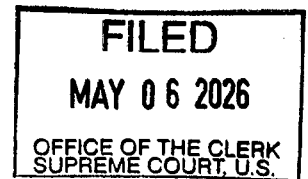


26-5296

PETITION FOR A WRIT OF CERTIORARI

In the Supreme Court of the United States

ORIGINAL



DARRELL LEON McCLANAHAN III,

Petitioner,

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES; UNITED STATES
DEPARTMENT OF JUSTICE; UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

No. _____

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

Darrell Leon McClanahan III, Petitioner

24346 S. 2425 Rd.

Milo, MO 64767

(417) 388-9595

darrell4mogov@gmail.com

QUESTIONS PRESENTED

Whether a federal court may apply *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to dismiss a First Amendment pre-enforcement challenge for lack of Article III standing by requiring past or imminent enforcement, despite this Court's decisions in *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), *Babbitt v. United Farm Workers National Union*, 442 U.S. 289 (1979), and *Virginia v. American Booksellers Association*, 484 U.S. 383 (1988), which hold that self-censorship in response to a credible threat of enforcement is itself a concrete, cognizable injury.

Whether the Eighth Circuit's decision which treated a detailed record of governmental labeling of petitioner's speech in active federal litigation, sworn declarations of self-censorship, and the government's own characterization of this lawsuit as petitioner's demand to speak "without fear of reprisal" as "speculative" at the pleading stage can be reconciled with this Court's recognition in *National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024), that fear of reprisal and informal government pressure leveraged to suppress disfavored speech may state a plausible First Amendment claim actionable without completed enforcement.

PARTIES TO THE JUDGMENT BELOW

Petitioner Darrell Leon McClanahan III was the plaintiff-appellant below.

Respondents Donald J. Trump, President of the United States; United States Department of Justice; and United States Department of Education were the defendants-appellees below.

CORPORATE DISCLOSURE STATEMENT

No corporate parties were involved in the proceedings below. Petitioner is a natural person.

TABLE OF CONTENTS

Questions Presented	ii
Parties to the Judgment Below.....	iii
Corporate Disclosure Statement	iii
Table of Contents	iv
Table of Cited Authorities	v
Opinions Below	1
Jurisdiction	1
Introduction	2
Constitutional Provisions Involved	4
Statement of the Case	5
Reasons for Granting the Writ	10
Conclusion	20
Appendix	
1 A — United States Court of Appeals for the Eighth Circuit, Per Curiam Opinion, January 27, 2026, Case No. 25-3007, Judges Benton, Stras, and Kobes.	
2B — United States Court of Appeals for the Eighth Circuit, Order Denying Rehearing and Rehearing En Banc, February 25, 2026, Case No. 25-3007.	
3C — United States District Court, Western District of Missouri, Order Dismissing Complaint and Denying Leave to Amend, September 30, 2025, Case No. 3:2025cv05025, District Judge M. Douglas Harpool.	
4D — Declaration of Petitioner Darrell Leon McClanahan III, Pursuant to 28 U.S.C. § 1746, Doc. 32, Case No. 3:2025cv05025.	
5E — Filing of Assistant United States Attorney Wyatt Nelson on Behalf of Respondents, Doc. 20, Case No. 3:2025cv05025, page 3 and footnote 2.	
6F — United States District Court, Western District of Missouri, Order of Magistrate Judge Jill A. Morris, December 15, 2023, Case No. 3:23-cv-05076, Doc. 28.	

TABLE OF CITED AUTHORITIES Cases:

<i>281 Care Committee v. Arneson</i> , 638 F.3d 621 (8th Cir. 2011)	13
<i>Babbitt v. United Farm Workers National Union</i> , 442 U.S. 289 (1979)	3, 11, 12
<i>Bantam Books, Inc. v. Sullivan</i> , 372 U.S. 58 (1963)	16
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	15
<i>Boos v. Barry</i> , 485 U.S. 312 (1988)	12
<i>Chiles v. Salazar</i> , 607 U.S. ____ (2026)	18
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	11
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	10
<i>McClanahan v. Anti-Defamation League et al.</i> , No. 3:23-cv-05076, Doc. 28 (W.D. Mo. Dec. 15, 2023)	7, 16
<i>Missouri v. Biden</i> , No. 3:22-cv-01213 (W.D. La.), Consent Decree (Mar. 27, 2026)	19
<i>National Rifle Association of America v. Vullo</i> , 602 U.S. 175 (2024)	passim
<i>Speech First, Inc. v. Cartwright</i> , 32 F.4th 1110 (11th Cir. 2022)	14
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)	passim
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	passim
<i>Virginia v. American Booksellers Association</i> , 484 U.S. 383 (1988)	3, 11, 12
Constitutional Provisions:	
U.S. Const. amend. I	passim
U.S. Const. amend. V	4
Statutes and Rules:	
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1746	8
Mo. H.B. 2061 (signed April 23, 2026)	18, 19
Sup. Ct. R. 13.3	2
Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019)	passim
Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025)	passim

OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Eighth Circuit, affirming dismissal for lack of Article III standing, is unpublished and reproduced in the Appendix at App. 1A. The order of the United States District Court for the Western District of Missouri dismissing petitioner's complaint for lack of jurisdiction and denying leave to amend as futile, entered by United States District Judge M. Douglas Harpool on September 30, 2025, is reproduced at App. 3C.

JURISDICTION

United States District Judge M. Douglas Harpool of the Western District of Missouri dismissed petitioner's complaint for lack of Article III standing on September 30, 2025, and denied leave to amend as futile. The district court declined to analyze the claims set forth in the proposed amended complaint, including claims under the Administrative Procedure Act, the Establishment Clause, and viewpoint discrimination principles, treating the standing deficiency as dispositive. The United States Court of Appeals for the Eighth Circuit affirmed in an unpublished per curiam opinion entered January 27, 2026, by a panel consisting of Circuit Judges Stras, Kobes, and Benton. The court denied timely petitions for panel rehearing and rehearing en banc on February 25, 2026. The mandate issued March 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed under Supreme Court Rule 13.3.

INTRODUCTION

The Eighth Circuit held that self-censorship caused by federal executive enforcement directives implementing Executive Orders 13899 and 14188 directives instructing federal agencies to treat speech critical of Israel and Zionism as actionable antisemitism under Title VI of the Civil Rights Act fails to establish Article III standing absent completed enforcement action, even where that claim is supported by: sworn declarations attesting to concrete self-censorship and online content removal; documented governmental labeling of petitioner's speech as "antisemitic" and "anti-Israel" in active federal court filings by Assistant United States Attorney Wyatt Nelson; a prior federal judicial ruling employing Executive Order 13899's exact enforcement framework to characterize petitioner's constitutionally protected expression as "antisemitic, white supremacist, anti-government, and bigoted"; and the government's own characterization of this lawsuit, in a filed pleading, as petitioner's attempt to speak "without fear of reprisal."

This holding directly conflicts with this Court's settled First Amendment standing doctrine. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014). It cannot be reconciled with *National Rifle Association of America v. Vullo*, 602 U.S. 175, 191-94 (2024), which recognized that informal government pressure leveraged to create a climate of intimidation around protected

expression states a plausible First Amendment claim actionable at the pleading stage. And it extends *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) a consumer-credit damages case into a domain this Court has never subjected to a completed-harm requirement: pre-enforcement challenges to government speech policies.

The breadth and urgency of the question presented is confirmed by subsequent events. The International Holocaust Remembrance Alliance definition of antisemitism at the center of this case has been encoded into Missouri state policy via H.B. 2061, signed April 23, 2026, as applied to public university campuses throughout the state. A Catholic member of the President's Religious Liberty Commission, Carrie Prejean Boller, was removed from that federal body in February 2026 following a public hearing in which she challenged whether criticism of Israeli government policy constitutes antisemitism under the IHRA framework demonstrating that the government's enforcement of this ideological standard extends even to its own advisory members. The current administration, in settling *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La.), acknowledged through a court-approved consent decree entered March 27, 2026, that government labels applied to disfavored speech do not strip that speech of First Amendment protection the identical principle the Eighth Circuit foreclosed petitioner from litigating by denying standing at the threshold. Millions of American speakers across religious, political, and academic contexts now confront the same chilling dynamic petitioner challenged in this proceeding. The decision below forecloses pre-enforcement relief for all of them.

This Court should grant certiorari to resolve whether the First Amendment's special solicitude for pre-enforcement standing survives *TransUnion*, and to ensure that *Vullo*'s protection against government-engineered chilling extends to the pleading stage in the Eighth Circuit as it does elsewhere.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press" U.S. Const. amend. I.

The Fifth Amendment to the United States Constitution provides in relevant part:

"No person shall . . . be deprived of life, liberty, or property, without due process of law" U.S. Const. amend. V.

STATEMENT OF THE CASE

A. The Challenged Executive Orders and the IHRA Definition

Executive Order 13899, issued December 11, 2019, directs all federal agencies to "consider" the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism when enforcing Title VI of the Civil Rights Act of 1964. 84 Fed. Reg. 68779. The IHRA definition, as incorporated into federal enforcement practice, extends beyond traditional religious discrimination to encompass political speech, including expression that draws comparisons between Israeli government policies and the actions of historical regimes, questions the legitimacy of Zionism as a political movement, or advocates for Palestinian self-determination. Core political speech on matters of significant public concern thus falls within the definition's reach.

Executive Order 14188, issued January 29, 2025, escalated the enforcement posture significantly. That directive declared on its face the policy of the United States to "prosecute, remove, or otherwise hold to account" those responsible for speech deemed antisemitic under the IHRA framework. 90 Fed. Reg. 8847. The directive instructed the Departments of Justice and Education, among other agencies, to prioritize enforcement of this standard and to report findings to the White House within sixty days.

Together, these directives established an enforcement regime in which petitioner's documented speech his constitutionally protected political expression on matters of Middle East policy, Zionism, and the conduct of Israeli government was identified by name, in active federal judicial proceedings, as within the targeted category.

B. Prior Judicial Labeling of Petitioner's Speech

The enforcement framework established by EO 13899 was not theoretical as applied to petitioner. Petitioner filed a civil action against the Anti-Defamation League in *McClanahan v. Anti-Defamation League et al.*, No. 3:23-cv-05076 (W.D. Mo.). In that proceeding, United States Magistrate Judge Jill A. Morris issued a dismissal order, Doc. 28, December 15, 2023, that applied definitional categories tracking EO 13899's enforcement framework to characterize petitioner's constitutionally protected speech as "antisemitic, white supremacist, anti-government, and bigoted." App. 6F. That characterization was made in a federal judicial order and attached to petitioner by name in a publicly accessible federal docket.

Magistrate Judge Morris did not cite the IHRA definition by name. The significance of her order is precisely that the definitional categories of EO 13899 have become so thoroughly operationalized within federal practice that a federal officer applied them without needing to cite their source. The characterization employed tracks the IHRA definition's core enforcement categories and carries concrete legal consequences under the executive directives then in force. The government had already done precisely what petitioner sought to prevent.

C. Governmental Characterization in This Proceeding

In the district court proceedings below, the government did not dispute that petitioner's speech had been labeled. Instead, Assistant United States Attorney Wyatt Nelson, filing on behalf of the

President and the respondent agencies, characterized petitioner's expression as "anti-Israel and antisemitic" in an official court pleading. Doc. 20 at 3. In the same filing, AUSA Nelson framed the relief petitioner sought as a demand to speak "without fear of reprisal" language that, in context, acknowledges the existence of the reprisal apparatus petitioner challenged. Doc. 20 at 3 n.2.

D. Petitioner's Declaration of Chilling Effect

Petitioner submitted a declaration under 28 U.S.C. § 1746, Doc. 32, attesting under penalty of perjury to the following concrete, specific effects of the challenged enforcement directives on his expressive conduct:

First, petitioner removed content from online platforms after the issuance of EO 14188 and the subsequent governmental labeling in Doc. 20, because he reasonably feared that the content would subject him to enforcement action under the executive directives. Second, petitioner self-censored ongoing political commentary on matters of public concern specifically, commentary related to Israeli government policy and the IHRA definition's application to Christian and conservative political speech because of the credible, documented threat that such expression would be characterized by federal officials as antisemitic and subject to adverse action. Third, petitioner attested that this self-censorship was not speculative or generalized: it was a direct response to named federal officials having already labeled his speech in active federal proceedings using the enforcement framework he challenged.

E. District Court Proceedings

Petitioner filed this action in the Western District of Missouri on April 4, 2025, challenging EO 13899 and EO 14188 on First Amendment grounds, seeking declaratory and injunctive relief. Petitioner was granted leave to proceed in forma pauperis on April 8, 2025. Doc. 3. All three defendants the President, the Department of Justice, and the Department of Education were served with process. A scheduling order issued on August 28, 2025, setting discovery and dispositive motion deadlines. A Rule 26 conference was held. The government filed a motion to dismiss and fully briefed it through reply suggestions filed on the docket. The district court initially granted petitioner leave to supplement his complaint. App. 3C.

On September 30, 2025, District Judge M. Douglas Harpool dismissed the complaint for lack of Article III standing, concluding that petitioner had not demonstrated a sufficiently concrete or imminent injury, and denied leave to amend as futile. App. 3C. The court denied leave to amend without analyzing the claims set forth in petitioner's proposed amended complaint. Those additional claims included challenges under the Administrative Procedure Act, the Establishment Clause, and viewpoint discrimination principles. App. 3C. The court did not address Vullo. The district court's dismissal on standing grounds thus acted as a gatekeeper that foreclosed review of petitioner's broader constitutional claims without any merits analysis.

F. Eighth Circuit Proceedings

Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. A panel consisting of Circuit Judges Stras, Kobes, and Benton affirmed in an unpublished per curiam opinion on January 27, 2026. App. 1A. The government declined to file an appellee brief. The Eighth Circuit concluded that petitioner's allegations of self-censorship were too speculative to satisfy Article III's injury-in-fact requirement, applying TransUnion's concrete-harm analysis. The panel did not address Vullo or explain how its holding could be reconciled with this Court's recognition in that case that governmental pressure creating a climate of intimidation states a plausible First Amendment claim at the pleading stage.

Rehearing and rehearing en banc were denied February 25, 2026. The mandate issued March 2, 2026.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW DIRECTLY CONFLICTS WITH THIS COURT'S SETTLED FIRST AMENDMENT STANDING DOCTRINE.

A. This Court Has Long Held That Credible Threat of Enforcement Causing Self-Censorship Is a Concrete Injury.

The Eighth Circuit's holding that petitioner lacked standing absent completed enforcement directly conflicts with this Court's unbroken line of First Amendment standing decisions. In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), this Court unanimously held that a plaintiff "need not expose himself to actual arrest or prosecution" to challenge an enforcement directive that chills protected speech. *Id.* at 158. The Court reaffirmed that where a plaintiff alleges "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute," and "there exists a credible threat of prosecution thereunder," the resulting self-censorship is itself the concrete injury conferring standing. *Id.* at 159 (quoting *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298 (1979)).

This Court applied the same principle in *Virginia v. American Booksellers Association*, 484 U.S. 383 (1988), holding that booksellers had standing to challenge a content-restriction directive because the "alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution." *Id.* at 393. And in *Babbitt*, this Court recognized that where a policy "could arguably affect" constitutionally protected conduct, the plaintiff need not "first expose himself to actual arrest" before seeking judicial relief. 442 U.S. at 301.

The Eighth Circuit's decision cannot be squared with these holdings. The court required petitioner to demonstrate completed enforcement an arrest, a formal prosecution, or a final adverse agency action before his self-censorship would constitute cognizable injury. That

requirement contradicts the rule, clearly established in *SBA List*, *Babbitt*, and *American Booksellers*, that "the injury-in-fact requirement of Article III is satisfied if the plaintiff alleges concrete plans to violate the challenged provision and a credible threat that the government will enforce it." *SBA List*, 573 U.S. at 162.

B. The Record Here Establishes Far More Than a Generalized Threat.

This case does not present a plaintiff invoking abstract concern about an enforcement directive that might someday be applied against him. The record establishes that the federal government has already, in active judicial proceedings, applied the enforcement framework petitioner challenges to label his specific speech by name. A federal magistrate judge characterized petitioner's expression as "antisemitic, white supremacist, anti-government, and bigoted" using the definitional categories that track EO 13899's enforcement framework. App. 6F Assistant United States Attorney Wyatt Nelson, in a filing before the district court in this very case, characterized petitioner's speech as "anti-Israel and antisemitic" and acknowledged that petitioner sought to speak "without fear of reprisal." Doc. 20 at 3.

The threat is no longer merely executive in character. The State of Missouri has enacted H.B. 2061 (signed April 23, 2026), encoding the IHRA definition into state policy as applied to public university campuses throughout the state. That enactment institutionalizes the same viewpoint-selective definitional standard on campuses where petitioner and millions of other Missourians speak, publish, and engage in public discourse. The chilling effect on individual speakers within that institutional environment is immediate and cognizable.

Under *SBA List*, this record is more than sufficient. The government has not merely issued a directive that might theoretically apply to petitioner. It has already identified petitioner, by name, as a person whose speech falls within the enforcement category established by the challenged directives. The self-censorship attested to in petitioner's § 1746 declaration is the direct, concrete consequence of that governmental action. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

C. The Eighth Circuit's Rule Creates an Irresolvable Paradox.

The self-censoring speaker has no standing until enforcement occurs. Once enforcement occurs, the speaker has been punished for the very expression the First Amendment protects. The mechanism of constitutional protection pre-enforcement review that allows speakers to know where the enforcement framework stands before paying its price is thus rendered unavailable precisely when it matters most. This Court has never endorsed that result, and *SBA List* forecloses it.

II. THE DECISION BELOW IS IN TENSION WITH THIS COURT'S RECENT DECISIONS IN VULLO AND CHILES.

A. National Rifle Association of America v. Vullo

In *National Rifle Association of America v. Vullo*, 602 U.S. 175, 191-94 (2024), this Court unanimously confirmed that governmental pressure leveraged to suppress disfavored speech even without formal prohibition or completed legal action states a plausible First Amendment claim actionable at the pleading stage. The Court reaffirmed the principle, established in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), that official conduct that a reasonable speaker would understand as conveying a threat of adverse government action in order to punish or suppress protected speech gives rise to cognizable constitutional injury. *Vullo*, 602 U.S. at 191.

The record in this case presents a pattern that *Vullo* directly addresses. EO 14188 declared on its face that the government would "prosecute, remove, or otherwise hold to account" persons responsible for speech deemed antisemitic. 90 Fed. Reg. 8847. Assistant United States Attorney Wyatt Nelson, in an official filing in this proceeding, characterized petitioner's speech as "anti-Israel and antisemitic" and framed this lawsuit as petitioner's demand to speak "without fear of reprisal." Doc. 20 at 3. United States Magistrate Judge Jill A. Morris, in a prior federal proceeding, applied the same definitional categories to label petitioner's speech in terms that carry legal consequences under the challenged directives. App. 6F.

These documented actions by federal prosecutors and federal judges, in active federal proceedings, applying the enforcement categories of challenged executive directives to petitioner's identified speech constitute precisely the climate of intimidation that *Vullo* recognizes as a cognizable First Amendment injury. A reasonable speaker who had been labeled "antisemitic" in two separate federal judicial proceedings, whose speech had been characterized in that same manner by AUSA Nelson in the pending case, and who faced executive directives declaring the government's intent to "prosecute, remove, or otherwise hold to account" speakers so labeled, would understand that continued expression carries a concrete risk of adverse governmental action. That understanding is not speculation. It is the direct, rational response to the governmental conduct in the record.

The Eighth Circuit's per curiam opinion does not address *Vullo*. Its conclusion that petitioner's allegations were too speculative to satisfy Article III stands in direct tension with *Vullo*'s holding that plausible allegations of government-engineered intimidation survive dismissal. This Court should grant review to ensure that *Vullo* is applied consistently across the circuits and that its protection against informal government suppression of speech is not nullified at the pleading stage.

B. Chiles v. Salazar

This Court's decision in *Chiles v. Salazar*, 607 U.S. ____ (2026), decided March 31, 2026, confirms that viewpoint-based speech regulation is presumptively unconstitutional and subject to

strict scrutiny, regardless of the institutional or regulatory framework in which it is embedded. The Court held 8-1, in an opinion by Justice Gorsuch, that a directive permitting some viewpoints while targeting others for restriction is a viewpoint-based regulation that demands the most exacting First Amendment scrutiny. The fact that a regulation is framed as professional, institutional, or administrative in character does not diminish that scrutiny.

The IHRA enforcement framework at issue here operates in precisely the same manner. It permits speech affirming Israeli government policy while targeting speech critical of that policy for adverse governmental action. Under Chiles, that framework demands strict scrutiny. The Eighth Circuit never reached that scrutiny because it extinguished standing at the threshold. This Court should grant certiorari to ensure that Chiles and Vullo are applied consistently, and that viewpoint-based enforcement regimes are not insulated from constitutional challenge by threshold standing rulings that contradict SBA List.

III. THE EIGHTH CIRCUIT'S EXTENSION OF TRANSUNION TO FIRST AMENDMENT PRE-ENFORCEMENT CLAIMS EFFECTIVELY ELIMINATES PRE-ENFORCEMENT REVIEW AND CONFLICTS WITH HOW OTHER CIRCUITS HAVE APPLIED THE DOCTRINE.

TransUnion LLC v. Ramirez, 594 U.S. 413 (2021), arose in an entirely different context: a consumer class action seeking statutory damages under the Fair Credit Reporting Act for inaccurate credit report entries. The Court held that plaintiffs in a damages action must demonstrate concrete harm that "actually exist[s]" rather than a mere statutory violation. *Id.* at 424-25. TransUnion did not involve a First Amendment claim. It did not involve a pre-enforcement challenge. It did not involve self-censorship. And it did not purport to abrogate SBA List, Babbitt, or American Booksellers.

The Eighth Circuit's application of TransUnion's damages-context concrete-harm analysis to a pre-enforcement First Amendment injunctive relief claim cannot be sustained. The First Amendment's pre-enforcement standing doctrine exists precisely because the harm of self-censorship occurs before and in order to avoid formal government action. The Eighth Circuit's rule requires the harm to manifest in the form the plaintiff sought to prevent before the plaintiff can seek prevention. That inversion of constitutional protection finds no support in TransUnion and directly conflicts with SBA List.

Other circuits have recognized that TransUnion does not displace First Amendment pre-enforcement standing doctrine. The Eleventh Circuit, in *Speech First, Inc. v. Cartwright*, 32 F.4th 1110 (11th Cir. 2022), applied the SBA List framework to uphold pre-enforcement standing based on chilling effect without requiring completed enforcement, notwithstanding TransUnion. The Eighth Circuit's contrary approach applying TransUnion to extinguish standing where SBA List would recognize it creates a conflict that warrants this Court's review.

That the government's enforcement apparatus is not idle is confirmed by events since the decision below. In February 2026, a Catholic member of the President's Religious Liberty Commission, Carrie Prejean Boller, was removed from that federal advisory body following a public hearing in which she questioned whether criticism of Israeli government policy constitutes antisemitism under the IHRA framework. EO 14188 directed the government to "prosecute, remove, or otherwise hold to account" speakers deemed to fall within the IHRA definition. The removal of a presidentially appointed commissioner for questioning the application of that very definition confirms that the enforcement trajectory petitioner described is not hypothetical. When government officials are removed from federal positions for challenging the ideological boundaries of the IHRA framework, the chilling effect on private citizens who lack even the limited institutional protection of a presidential appointment is objectively reasonable and immediate. The Eighth Circuit's insistence that no cognizable injury exists until formal prosecution occurs cannot be squared with a record in which the government is already exercising its removal authority against those who question its preferred definitional standards.

The stakes of this conflict extend well beyond this case. If TransUnion's damages-case concrete-harm requirement is imported wholesale into First Amendment pre-enforcement challenges, the result is that speakers in the Eighth Circuit must choose between two options: remain silent and lose their voice, or speak and risk prosecution before any court will hear their challenge. This Court has never countenanced that choice. *Boos v. Barry*, 485 U.S. 312, 322 (1988). This Court should grant certiorari to resolve it.

IV. THIS CASE PRESENTS AN EXCEPTIONALLY IMPORTANT FEDERAL QUESTION AND AN IDEAL VEHICLE FOR RESOLUTION.

A. The Question Is of Substantial National Importance.

The question whether TransUnion displaces First Amendment pre-enforcement standing doctrine bears on the constitutional rights of millions of speakers. The IHRA definition of antisemitism at the center of this case has now been adopted not only in federal executive directives but in Missouri state policy, H.B. 2061 (signed April 23, 2026), as applied to public university campuses, and is being considered for adoption in additional jurisdictions. Federal agencies continue to apply EO 13899 and EO 14188. Members of federal advisory bodies have faced removal for speech deemed inconsistent with IHRA enforcement priorities. Academics, journalists, religious leaders, and political advocates across the ideological spectrum including evangelical Christians, Catholic conservatives, and progressive critics of Israeli government policy face the same definitional apparatus petitioner challenged.

The Eighth Circuit's rule that none of these speakers may seek pre-enforcement relief without first being prosecuted leaves a substantial portion of American expressive life beyond the reach

of the courts until after constitutional injury has been fully realized. That result is incompatible with the First Amendment's structural role in democratic governance.

The significance of this question is further confirmed by the March 2026 consent decree in *Missouri v. Biden*, No. 3:22- cv-01213 (W.D. La.). In that decree, entered March 27, 2026, the current administration acknowledged that the government cannot label speech as disfavored and leverage that label as the basis for suppression and that government designations do not strip protected speech of its constitutional character. That principle applies directly here. AUSA Nelson's characterization of petitioner's speech as "antisemitic" in a filed pleading, made in the context of executive directives declaring prosecution of so-labeled speech, is precisely the kind of governmental labeling the *Missouri v. Biden* consent decree confirms is constitutionally suspect. The Eighth Circuit foreclosed petitioner from litigating that argument by denying standing before any merits review could occur.

B. This Case Is an Ideal Vehicle.

This case presents the federal question cleanly and on a fully developed record. The chilling effect is attested under penalty of perjury in a § 1746 declaration. The governmental labeling is documented in filed court pleadings in two separate federal proceedings. The executive directives are published in the Federal Register.

This is not a case dismissed at the threshold before the litigation commenced. All three defendants were served with process. A Rule 26 conference was held. A scheduling order issued on August 28, 2025, setting discovery and dispositive motion deadlines. The government filed a motion to dismiss and fully briefed it through reply suggestions. The government then declined to file an appellee brief in the Eighth Circuit, allowing the appellate record to stand on the fully developed district court proceedings alone. The federal question was therefore fully developed and argued before the standing ruling extinguished the case, presenting this Court with a clean vehicle on a complete record.

The district court's dismissal on standing grounds without reaching any merits question ensures that the threshold standing issue is cleanly presented without entanglement in merits disputes. The denial of leave to amend as futile, without analysis of the proposed amended complaint's additional claims under the APA, the Establishment Clause, and viewpoint discrimination principles, further demonstrates how the Eighth Circuit's standing rule operates as a categorical gatekeeper that forecloses any judicial review of constitutionally significant government conduct. App. 3C.

This Court's decisions in *Vullo* and *Chiles* have moved the doctrinal landscape in ways that make the Eighth Circuit's standing analysis increasingly untenable. No vehicle cleaner than this one is likely to present this question. Petitioner respectfully urges the Court to grant the writ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Darrell Leon McClanahan III

Darrell Leon McClanahan III Petitioner

24346 S. 2425 Rd. Milo, MO 64767

(417) 388-9595

darrell4mogov@gmail.com

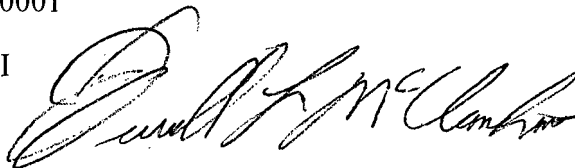
CERTIFICATE OF SERVICE

I certify that on May 7, 2026, I served copies of this Petition for a Writ of Certiorari on counsel for Respondents by United States Mail, first-class postage prepaid, addressed to:

Office of the Solicitor General United States Department of Justice 950 Pennsylvania Avenue,
N.W. Washington, D.C. 20530-0001

/s/ Darrell Leon McClanahan III

Darrell Leon McClanahan III

A handwritten signature in black ink, appearing to read "Darrell Leon McClanahan III", written over a horizontal line.