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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JOSEPH KIRCHNER,
Plaintiff,

Case No. _____

vs.

ALEXANDER ACOSTA, et al.,
Defendants.

**MEMORANDUM C: THE
CONSTITUTIONAL NECESSITY
OF JUDICIAL RECOGNITION OF
SEPARATION OF POWERS
VIOLATIONS**

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<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579, 634-38 (1952) (Jackson, J., concurring)

1

CONSTITUTIONAL PROVISIONS

Citation
U.S. Const. art. I, § 7, cl. 1 (Origination Clause)
U.S. Const. art. I, § 8, cl. 11 (War Powers Clause)
U.S. Const. art. II, § 2, cl. 1 (Commander in Chief Clause)

2

STATUTES AND RULES

Citation
50 U.S.C. § 1541(c) (War Powers Resolution)
Fed. R. Evid. 607 (Who May Impeach a Witness)
Fed. R. Evid. 801(d)(2)(A) (Party Opponent Admission)
Fed. R. Evid. 901 (Authenticating or Identifying Evidence)

3

FOUNDING ERA SOURCES

Citation
James Madison, Notes of Debates in the Federal Convention of 1787 (August 17, 1787)
James Madison, Federalist No. 47 (January 30, 1788)
James Madison, Federalist No. 51 (February 6, 1788)

4

I. Introduction

A. Purpose and Scope of This Memorandum

1. This memorandum is submitted in support of Plaintiff's claims in *Kirchner v. Acosta*, which concern Defendant Alexander Acosta's separation of powers violation in exceeding presidential pardon power through the 2008 Non-Prosecution Agreement with Jeffrey Epstein. This memorandum does not seek to litigate the Iran war, congressional capture, or any separation of powers violation outside the scope of the instant case.

2. Rather, this memorandum demonstrates — through urgent, real-time constitutional crisis — why this Court must recognize separation of powers violations as judicially cognizable and adopt an objective test for their identification. The events documented herein establish that the absence of such recognition and such a test is not an abstract jurisprudential gap. It is a life-and-death failure of constitutional governance occurring as this memorandum is written.

3. The Universal Compliance Test proposed herein applies to any separation of powers violation, including Defendant Acosta's. But the need for judicial adoption of an objective test is demonstrated most urgently by the ongoing crisis: six American service members dead, 2,000 citizens trapped abroad, hundreds of children killed, and a captured Congress unable to check executive overreach.

4. If the courts cannot recognize and remedy separation of powers violations — if no objective test exists to identify them — then the constitutional structure fails not only in the instant case but in every case where one branch exceeds its constitutional authority. The evidence that follows establishes the dire and immediate need for what this Court is asked to provide: judicial recognition that separation of powers violations are justiciable and an objective framework for their identification.

B. The Constitutional Crisis Demonstrating the Need

5. On February 28, 2026, the President of the United States ordered major combat operations against Iran without congressional authorization. Six American service members are dead. Two thousand American citizens are trapped in conflict zones abroad. Hundreds of Iranian children have been killed. The war continues with no clear exit strategy and no constitutional foundation.

6. This memorandum establishes two interconnected constitutional violations that together represent the most serious structural failure in American governance since the founding. First, the Executive Branch initiated war in violation of Article I, Section 8, which vests the war power exclusively in Congress. Second, the Legislative Branch failed to check this violation because Congress has been captured by foreign influence, rendering the constitutional structure inoperative.

7. These violations cannot be understood in isolation. The Executive overreached because Congress was captured and could not check. Congress remained silent because the constitutional violation served the interests of its captors. The result is a constitutional crisis in which the primary structural safeguard against tyranny — the separation of powers — has failed completely.

8. The administration claims the Iran strikes were "defensive" and required no congressional authorization. The factual record, established by the administration's own statements, proves otherwise. Speaker Mike Johnson admitted that "Israel was determined to act in their own defense here with or without American support." Secretary of State Marco Rubio admitted the strikes were undertaken "preemptively" based on knowledge of Israel's planned action. These admissions establish that no attack on the United States had occurred or was imminent, that the triggering event was Israel's planned offensive, and that the United States struck first based on anticipated Iranian retaliation to an allied action that had not yet taken place.

9. The constitutional question is not close. Preemptive military action is the opposite of defensive response. The President's authority to act without Congress extends only to repelling sudden attacks when deliberation is impossible. No sudden attack occurred. The administration had weeks to prepare, coordinate with Israel, and

1 brief congressional leadership. If the President had time for military preparation, he
2 had time to seek constitutional authorization. He chose not to.

3 **10.** The more difficult question is why Congress has failed to check this obvious
4 constitutional violation. The answer lies in the documented pattern of foreign
5 influence that has captured the legislative branch. Eighty to ninety-five percent of
6 Congress receives campaign contributions from AIPAC-aligned organizations. Israeli
7 officials have publicly described their mechanisms for removing non-compliant
8 Western politicians. The observable effect is American war-making on Israel's
9 timeline while Congress abdicates its constitutional duty.

10 **11.** On March 4, 2026, the Senate voted 47-53 to defeat a war powers resolution
11 that would have required congressional authorization. The vote illustrates the
12 irreversible character of separation of powers violations: once hostilities are initiated
13 without authorization, any subsequent congressional action to limit military operations
14 faces the counterargument that doing so would endanger deployed forces or invite
15 retaliatory attacks on American soil — a possibility President Trump himself has
16 acknowledged. The constitutional violation transforms the deliberative framework,
17 making congressional assertion of authority appear irresponsible after the fact.

18 **12.** This memorandum applies the evidentiary framework established in *Interstate*
19 *Circuit, Inc. v. United States*, 306 U.S. 208, 227 (1939), to demonstrate that Congress's
20 pattern of parallel failure — uniform across five distinct constitutional violations —
21 combined with documented funding flows and recorded admissions of influence
22 mechanisms, compels the inference of foreign capture. The separation of powers has
23 failed not because one branch overreached, but because a foreign nation has neutralized
24 the branch designed to check such overreach.

25 **13.** The courts are the last remaining check. This memorandum establishes the
26 legal and factual basis for judicial intervention to restore constitutional governance.

II. CONSTITUTIONAL FRAMEWORK

A. Article I, Section 8 War Powers

14. Article I, Section 8, Clause 11 of the United States Constitution provides that "The Congress shall have Power... To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." This assignment of the war power to Congress was deliberate and unambiguous.

15. Article II, Section 2 designates the President as "Commander in Chief of the Army and Navy of the United States." These provisions establish a deliberate division of authority: Congress decides whether the nation goes to war; the President commands military operations once war is authorized.

16. The Framers' intent is unmistakable. James Madison's notes from the Constitutional Convention record that the delegates changed the draft language from giving Congress power to "make war" to "declare war" with the express purpose of preserving the President's ability to "repel sudden attacks" when Congress cannot convene. Madison recorded on August 17, 1787: "Mr. Madison and Mr. Gerry moved to insert 'declare,' striking out 'make' war; leaving to the Executive the power to repel sudden attacks."

17. This narrow exception — defensive response to actual attack — is the only circumstance in which the President may initiate military action without prior congressional authorization. The exception exists because the Framers recognized that Congress might not be in session when an enemy attacks American soil. It does not authorize preemptive strikes, offensive operations, or military action based on anticipated threats.

18. The war powers clause reflects the founding purpose itself. The Declaration of Independence was a rejection of monarchy — of a sovereign who could commit countless lives to war by the wave of a single hand, without the consent of the governed. The Constitution's assignment of war powers to Congress embodies the core promise of American democracy: that Americans live and die by shared cause, not unilateral decree. Unilateral presidential war-making is not merely an Article I violation. It is a return to the tyranny from which the nation declared independence.

1 **24.** The Resolution requires the President to report to Congress within 48 hours of
2 introducing forces into hostilities and to terminate the use of force within 60 days
3 unless Congress authorizes continuation. These procedural requirements do not cure
4 the underlying constitutional defect when the initial military action lacks constitutional
5 foundation.

6 **25.** The War Powers Resolution suffers from the same subjective qualifier defect
7 that plagues other congressional delegations. Section 1543(a) requires presidential
8 reporting when forces are introduced "into hostilities or into situations where imminent
9 involvement in hostilities is clearly indicated by the circumstances." 50 U.S.C. §
10 1543(a)(1). But the statute provides no objective metrics: What is "imminent"?
11 Twenty-four hours? Seven days? Weeks of preparation? What constitutes "clearly
12 indicated"? Who determines clarity? The Executive self-certifies.

13 **26.** These subjective qualifiers create a Power Separations Vulnerability identical
14 to that identified in tariff delegation statutes. *See* Memo A, Section X.A. Just as
15 Section 122 of the Trade Act authorizes surcharges for "large and persistent" balance-
16 of-payments deficits without defining "large" or "persistent," the War Powers
17 Resolution authorizes presidential action when hostilities are "imminent" and "clearly
18 indicated" without defining either term. The President invokes statutory jurisdiction
19 without demonstrating how the subjective conditions are met — and no pre-
20 enforcement venue exists to adjudicate the question while preserving the status quo.

21 **27.** The "essentially objective" fallacy identified in *Harlow v. Fitzgerald*, 457
22 U.S. 800, 818-19 (1982), applies with equal force. A standard is either objective or it
23 is not; objectivity admits no degrees. "Clearly imminent" is no more objective than
24 "essentially objective." The Iran war exposes this defect: the administration had weeks
25 to prepare military operations, coordinate with Israel, brief congressional leadership,
26 and deploy naval strike groups — yet claims the situation was so "imminent" that
27 congressional authorization was impossible. The subjective qualifier permits the
28 administration to define its own emergency. *See* Memo A, Section X.A, ¶149.

29 **28.** The Constitution is self-executing on the allocation of war powers and
30 requires no statutory clarification. Article II, Section 2 designates the President as
31 "Commander in Chief of the Army and Navy of the United States, and of the Militia of

1 the several States, when called into the actual Service of the United States." The
2 operative phrase is "when called into the actual Service." Two mechanisms exist for
3 this call: an attack upon the United States, or a congressional declaration of war.

4 **29.** An attack upon the United States *is* the call into service — self-executing and
5 indisputable. An honorable service member does not wait for orders to prepare to
6 defend the nation; the attack itself calls the troops into readiness as part of the oath they
7 took. The President's role under Article II, Section 2 is to command and organize the
8 defense — not to issue the call, but to direct forces already called by the attack. The
9 calling and commanding occur concurrently as part of the same constitutional moment.
10 No legislation is required. No statute can add to or subtract from this reality. The
11 Framers' change from "make war" to "declare war" preserved precisely this defensive
12 authority.

13 **30.** Congressional declaration of war constitutes the legislative call into service
14 for offensive operations. Article I, Section 8, Clause 11 vests in Congress alone the
15 power to initiate hostilities against a nation that has not attacked the United States.
16 When Congress declares war, Congress calls the armed forces into service, and the
17 President then commands the authorized war. These two mechanisms — attack
18 triggering defensive response, declaration authorizing offensive action — exhaust the
19 constitutional framework.

20 **31.** The War Powers Resolution is therefore either surplusage or unconstitutional.
21 To the extent it restates the President's authority to respond to attacks on the United
22 States, it merely recites what the Constitution already provides and adds nothing. To
23 the extent it purports to authorize offensive military operations for 60-90 days without
24 congressional declaration, it attempts to transfer Article I, Section 8 authority through
25 ordinary Article I legislation — which cannot be accomplished without Article V
26 amendment. The 60-90 day window does not exist in the Constitution. The subjective
27 qualifiers ("imminent," "clearly indicated") do not exist in the Constitution. The War
28 Powers Resolution muddies what Madison made precise.

D. The Absence of Objective Standards for Separation of Powers Violations

32. No objective legal definition of "separation of powers violation" exists in American jurisprudence. The *Youngstown* framework describes zones of presidential power but does not define when a violation occurs. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-38 (1952) (Jackson, J., concurring). Formalist approaches categorize powers but provide no violation test. Functionalist approaches employ balancing tests that are inherently subjective. The political question doctrine identifies when courts will decline to hear cases but does not define what constitutes a violation. *Baker v. Carr*, 369 U.S. 186, 217 (1962).

33. Yet the Constitution contains its own validity test. The Supremacy Clause declares that only laws "made in Pursuance" of the Constitution are supreme. U.S. Const. art. VI, cl. 2. This phrase is not surplusage — it establishes that not all federal action qualifies as constitutional. An executive action that violates the constitutional distribution of powers is not "made in Pursuance" and therefore does not bind the courts or the people. *See* Memo B, Section II.M. The Supremacy Clause provides the test courts need: is the action "in Pursuance" of constitutional structure?

34. The consequence of this definitional void is that separation of powers disputes are resolved by power rather than law. The party in power defines its own limits. The Constitution becomes advisory. This memorandum proposes the Universal Compliance Test as an objective framework: if a governmental action cannot be derived through an unbroken chain of constitutional authorization, it constitutes a violation. The Iran war fails this test. The derivation breaks at congressional authorization.

35. The test reflects constitutional definition itself. "Separation of powers" and "non-delegation" are not two different doctrines — they are definitional synonyms. To "separate" powers means to keep them apart; to "delegate" means to transfer them together. These are antonyms. When the President wages war without congressional authorization, Congress's war power is exercised by the Executive, destroying separation by definition. This is not a policy question requiring judicial judgment — it is a logical identity the Constitution instantiates in structural form. *See* Memo B, Section II.J.

1 **36.** Madison warned in Federalist No. 47 that "the accumulation of all powers,
2 legislative, executive, and judiciary, in the same hands... may justly be pronounced the
3 very definition of tyranny." The separation of powers was designed as a structural
4 check that prevents tyranny regardless of who holds office. But if violations cannot be
5 objectively identified, the structure provides no check.

6 **III. THE IRAN WAR: AN UNAMBIGUOUS ARTICLE I VIOLATION**

7 **A. The Factual Record**

8 **1. President Trump's Assertion of Unlimited Authority**

9 **37.** President Trump's disregard for Article I congressional authority is
10 documented across multiple constitutional domains. On February 20, 2026, when
11 asked why he would not work with Congress on tariffs — an enumerated Article I,
12 Section 8 power — President Trump responded: "I don't have to." When pressed, he
13 declared: "We have a right to do pretty much what we want." (White House press
14 conference, Feb. 20, 2026) (public record subject to judicial notice under Fed. R.
15 Evid. 201(b)(2)).

16 **38.** This assertion of unlimited executive authority is not confined to tariff policy.
17 The same President who claims "I don't have to" work with Congress on tariffs
18 initiated the Iran war without congressional authorization. The attitude is consistent:
19 Article I enumerated powers are treated as suggestions rather than constitutional
20 assignments. Whether the subject is tariffs (Article I, Section 8, Clause 1) or war
21 powers (Article I, Section 8, Clause 11), the President asserts authority the Constitution
22 vests elsewhere.

23 **39.** This pattern demonstrates not isolated misjudgment but systematic disregard
24 for the constitutional structure.

25 **40.** The President's assertion directly contradicts the terms under which the states
26 ratified the Constitution. Virginia's formal ratification declaration established that the
27 federal government acts "only in those instances in which power is given by the
28 Constitution" and that powers "may be resumed by them whensoever the same shall be
29 perverted to their injury or oppression." *See* Memo B, Section II.H. The President's

1 claim that "we have a right to do pretty much what we want" violates not merely
2 Article I but the foundational terms of Virginia's conditional ratification. The Iran war
3 operates outside enumerated powers; under Virginia's ratification terms, the
4 government's authority to wage this war was never granted.

5 **2. Speaker Johnson's Admission That No Attack on the United States Occurred**

6 **41.** On March 2, 2026, Speaker Mike Johnson characterized the Iran strikes at a
7 press conference. He stated: "First of all, to me, the most, uh, critical point is that this
8 was a defensive measure, a defensive operation." He further asserted: "It's not
9 something that the president was required because it's defensive in nature and in design
10 and in necessity to come to Congress and get a vote first." (Speaker Johnson press
11 conference, Mar. 2, 2026) (public record subject to judicial notice under Fed. R. Evid.
12 201(b)(2)).

13 **42.** However, Johnson's own words establish that no attack on the United States
14 had occurred or was imminent. He stated: "Israel was determined to act in their own
15 defense here with or without American support. Why? Because Israel faced what they
16 deemed to be an existential threat."

17 **43.** Johnson continued: "And they determined because of the, the exquisite
18 intelligence that we had, that if Israel, uh, fired upon Iran, it took action against Iran to
19 take out the missiles. Then they would've immediately retaliated against US personnel
20 and assets."

21 **44.** The constitutional significance of this statement cannot be overstated. The
22 threat to the United States was conditional — "if... then." The triggering event was
23 Israel's planned action, not an attack on the United States. Johnson's own formulation
24 establishes that the United States was not under attack. Israel was planning an
25 offensive operation, and the United States chose to participate.

26 **3. Secretary Rubio's Admission of Preemptive Strike**

27 **45.** On March 3, 2026, Secretary of State Marco Rubio made the admission that
28 destroys the administration's constitutional defense. Rubio stated: "We knew that there
29 was going to be an Israeli action. We knew that that would precipitate an attack
30 against American forces. And we knew that if we didn't preemptively go after them

1 before they launched those attacks, we would suffer higher casualties." (Secretary
2 Rubio media statement, Mar. 3, 2026) (public record subject to judicial notice under
3 Fed. R. Evid. 201(b)(2)).

4 **46.** Rubio used the word "preemptively." He stated the strikes occurred "before
5 they launched those attacks." Iran had not attacked the United States. The United
6 States struck first based on anticipated Iranian retaliation to a planned Israeli offensive
7 that had not yet occurred.

8 **47.** Preemptive military action is, by definition, the opposite of defensive action.
9 Preemptive action is the initiation of hostilities — precisely what requires
10 congressional authorization under Article I. The Secretary of State has admitted on the
11 record that the Iran war began with an American preemptive strike. This admission is
12 dispositive of the constitutional question.

13 **B. The Destruction of the "Defensive" Claim**

14 **1. No Attack on the United States Occurred**

15 **48.** The constitutional exception allowing presidential military action without
16 congressional authorization requires an actual attack on the United States. No such
17 attack occurred. Iran did not attack American territory. Iran did not attack American
18 forces. The "threat" was a hypothetical future retaliation contingent on Israel choosing
19 to launch an offensive operation that had not yet taken place.

20 **49.** Johnson's own formulation — "if Israel fired upon Iran... then they would've
21 retaliated" — establishes the conditional and future nature of the threat. A conditional
22 future threat triggered by an ally's planned offensive is not a "sudden attack" requiring
23 immediate defensive response. It is a contingency that could have been addressed
24 through constitutional processes.

25 **2. Weeks of Preparation Prove No Emergency**

26 **50.** The administration had extensive advance preparation time. Naval strike
27 groups were deployed to the region over a period of weeks. The Gang of Eight was
28 briefed more than seven days before the strikes began. Speaker Johnson acknowledged

1 having "multiple conversations" with the President about the operation. Secretary
2 Rubio briefed congressional leadership days in advance.

3 **51.** If the President had weeks to deploy naval strike groups, position aircraft and
4 personnel, coordinate with the Israeli military, and brief select members of Congress,
5 then the President had time to convene Congress and seek authorization. The absence
6 of emergency is proved by the presence of preparation.

7 **52.** The constitutional exception for repelling sudden attacks exists because
8 Congress might not be in session when an enemy attacks American soil. Here, the
9 President had weeks of advance notice. Congress was in session. The President chose
10 not to seek authorization — not because time did not permit, but because the President
11 preferred to act unilaterally.

12 **53.** Madison addressed this precise question in 1806. Facing an actual emergency
13 — former Vice President Aaron Burr's armed conspiracy — Madison as Secretary of
14 State refused to find implied emergency power for the President to deploy regular
15 federal troops without explicit statutory authorization. Madison examined the
16 constitutional text, found no authorization for regular troops (only militia), and
17 concluded the power did not exist. Only when Congress enacted the Insurrection Act
18 of 1807 did presidential authority to deploy regular troops exist. *See* Memo B, Section
19 II.M. If Madison refused emergency justification for unilateral executive action facing
20 genuine armed conspiracy, the Iran war's manufactured emergency — created by
21 choosing to act immediately rather than seeking authorization — cannot justify
22 bypassing Congress.

23 **3. The United States Could Have Controlled Israel's Timeline**

24 **54.** The administration's central claim is that Israel was going to attack "with or
25 without" American support, leaving the United States no choice but to act on Israel's
26 timeline. This claim collapses under examination.

27 **55.** Israel is the largest recipient of American military aid, receiving
28 approximately \$3.8 billion annually. Israel depends on the United States for weapons
29 systems, ammunition resupply, intelligence sharing, diplomatic protection through

1 United Nations Security Council vetoes, Iron Dome missile defense funding, and aerial
2 refueling capability essential for long-range operations.

3 **56.** The United States could have instructed Israel to delay its operation for
4 fourteen days while the President sought congressional authorization. Israel would
5 have complied because Israel cannot conduct sustained military operations against Iran
6 without American support. The administration did not lack leverage to control the
7 timeline. The administration chose not to exercise that leverage.

8 **57.** The Constitution does not contain an exception for circumstances when allies
9 want to move quickly. The Framers did not write that Congress shall have power to
10 declare war unless a foreign nation's military timeline makes congressional deliberation
11 inconvenient.

12 **4. Trapped American Citizens Prove the Fraudulent Emergency**

13 **58.** Approximately 2,000 American citizens are now trapped in countries affected
14 by the conflict, unable to travel to safety. The State Department issued urgent
15 warnings for Americans to leave 14 countries in the Middle East — after the strikes
16 began. Commercial flights have been canceled at rates exceeding ten times the
17 pandemic disruption. Americans who could have evacuated safely are now stranded in
18 war zones.

19 **59.** This fact exposes the fraudulent nature of the "emergency" justification. If the
20 administration warned American citizens before the strike, citizens could evacuate
21 safely. But warning citizens would reveal that strikes were imminent. Advance
22 warning would prove that extensive planning had occurred. Proof of planning would
23 establish that time existed for congressional authorization. And proof that time existed
24 would destroy the "defensive emergency" justification for bypassing Congress.

25 **60.** The administration chose to endanger American citizens rather than provide
26 warnings that would expose the constitutional violation. The administration had weeks
27 to prepare for military operations but used that time for military coordination — not for
28 warning citizens to evacuate and not for seeking constitutional authorization.

29 **61.** The 2,000 trapped Americans are direct victims of the constitutional violation.
30 Their safety was sacrificed to maintain the fraudulent "emergency" justification. Had

1 the President complied with Article I and sought congressional authorization, citizens
2 would have received advance warning and could have evacuated.

3 **C. The Universal Compliance Test Applied**

4 **62.** The Universal Compliance Test asks whether a governmental action can be
5 derived through an unbroken chain of constitutional authorization. Applied to
6 Operation Epic Fury, the derivation fails.

7 **63.** The President claims authority as Commander in Chief under Article II,
8 Section 2. This provision grants the President command of the armed forces but does
9 not grant authority to initiate hostilities. The President's authority to wage war derives
10 from congressional authorization. No such authorization exists for Operation Epic
11 Fury.

12 **64.** The sole exception — the power to repel sudden attacks — requires an actual
13 attack on the United States. By the administration's own admission, no attack
14 occurred. The triggering event was Israel's planned offensive, and the threat to
15 American forces was hypothetical and future.

16 **65.** The derivation chain breaks at the requirement for congressional
17 authorization. Operation Epic Fury cannot be constitutionally derived. This is a
18 separation of powers violation.

19 **IV. A FOREIGN ALLY'S TIMELINE SUBORDINATED THE** 20 **CONSTITUTION**

21 **A. The Constitutional Inversion**

22 **66.** The administration's defense reduces to a remarkable admission: the United
23 States had to act on Israel's schedule. Speaker Johnson stated that "Israel was
24 determined to act in their own defense here with or without American support." *See ¶*
25 *42, supra*. The implication is that the United States had no choice but to join Israel's
26 operation when Israel chose to launch it.

1 **67.** This framing inverts the constitutional structure. The Constitution does not
2 subordinate American war-making to foreign nations' operational preferences. Article
3 I assigns the war power to Congress precisely to ensure that the American people,
4 through their elected representatives, decide when American blood and treasure will be
5 committed to military conflict.

6 **68.** The administration chose Israel's operational timeline over the requirements of
7 Article I. A foreign nation's military preferences took precedence over the United
8 States Constitution. This is not defense, and it is not emergency. It is the
9 subordination of constitutional structure to a foreign government's war plans.

10 **B. The Choice to Bypass Congress**

11 **69.** The administration faced a choice between constitutional compliance and
12 immediate military action on Israel's preferred timeline. The administration chose
13 Israel's timeline.

14 **70.** The President could have instructed Israel to delay its planned offensive for
15 two weeks while he sought congressional authorization. Given Israel's dependence on
16 American support, Israel would have complied. Congress could have debated and
17 voted. If Congress authorized military action, the President could have proceeded with
18 constitutional legitimacy. If Congress declined, the constitutional structure would have
19 functioned as designed.

20 **71.** Instead, the President bypassed Congress, waged war on Israel's timeline, and
21 now claims the manufactured urgency justified the constitutional violation. This
22 reasoning is circular. The President created the "emergency" by choosing to act
23 immediately rather than seeking authorization. The President cannot cite his own
24 choice as justification for bypassing constitutional requirements.

1 **V. Why Congress Failed to Check the Executive: Foreign Capture Under**
2 **Interstate Circuit Standards**

3 **A. The Interstate Circuit Doctrine**

4 72. In *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222-27 (1939), the
5 Supreme Court established that conspiracy may be inferred from circumstantial
6 evidence when direct proof of agreement is unavailable. The Court held that
7 "acceptance by competitors, without previous agreement, of an invitation to participate
8 in a plan, the necessary consequence of which, if carried out, is restraint of interstate
9 commerce, is sufficient to establish an unlawful conspiracy." *Id.* at 227.

10 73. The Interstate Circuit doctrine recognizes that conspirators rarely memorialize
11 their agreements. When parallel conduct among multiple actors would be against each
12 actor's individual self-interest if undertaken unilaterally, and when "plus factors"
13 suggest coordination rather than coincidence, the trier of fact may infer agreement from
14 circumstantial evidence.

15 74. The doctrine does not distinguish based on the nationality of coordinating
16 parties. The analytical framework asks whether parallel conduct makes sense without
17 coordination. If anything, coordination with foreign actors to subvert constitutional
18 governance faces heightened constitutional scrutiny, not relaxed evidentiary standards.

19 75. The structural mechanism enabling foreign capture operates through the
20 constitutional dynamic Madison identified in Federalist No. 51: "Each department
21 should have a will of its own." When one department receives another's power — or
22 fails to assert its own — that department loses its independent will on that matter. *See*
23 Memo B, Section II.I. Congress's failure to assert war powers reflects not merely
24 political cowardice or foreign bribery in isolation; it reflects the structural reality that
25 Congress, having delegated emergency authorities and failed to reclaim war powers
26 across decades, lacks the institutional will to check executive overreach. The captured
27 Congress is doubly captured: once by foreign influence, and structurally by its own
28 prior abdications.

1 **B. The Parallel Conduct: Eight Constitutional Violations Without Congressional**
2 **Response**

3 76. The evidence establishes that Congress has failed to respond to eight distinct
4 constitutional violations. The failures are uniform across party lines, across
5 constitutional domains, and across time. This pattern of parallel failure constitutes the
6 first element of the Interstate Circuit analysis.

7 **1. The FRE 901/607 Conflation (43 Days)**

8 77. From July 7 through August 18, 2025, Speaker Mike Johnson deployed a
9 fraudulent "credible evidence" framework claiming executive authority to pre-
10 determine evidence credibility before releasing Epstein-related files to the public. The
11 framework appeared fifteen times across seven public exhibits. *See Kirchner v.*
12 *Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-24 (Appendix K: Bondi and
13 Patel's Coordinated Investigative Fraud by Refusal to Investigate and Prejudiced
14 Evidence Dismissal) (documenting the systematic conflation of FRE 901 and 607 to
15 withhold Epstein files from the American public).

16 78. The legal error was elementary. Federal Rule of Evidence 607 addresses
17 witness credibility during testimony. Federal Rule of Evidence 901 establishes
18 authentication requirements to support a finding by the constitutional fact-finder. No
19 provision of the Federal Rules of Evidence grants executive officials authority to filter
20 evidence based on their assessment of "credibility." This principle is taught in the first
21 year of law school. *See* ECF No. 13-14 (Appendix A: Legislative and Executive
22 Branch Ultra Vires Coordination) (establishing cross-branch coordination through
23 manipulation of "credible evidence" terminology).

24 79. Congress contains over 100 members with law degrees. For 43 consecutive
25 days, while Speaker Johnson publicly deployed this fraudulent framework fifteen
26 times, not one member identified the error. Not one lawyer in Congress stated the
27 obvious: the Federal Rules of Evidence do not authorize what the Speaker claimed.

2. The July 7 Memo Contradiction

80. On July 7, 2025, the Department of Justice issued a memorandum claiming "exhaustive review" of the Epstein investigation. On October 1, 2025, Commerce Secretary Howard Lutnick publicly described Jeffrey Epstein as "the greatest blackmailer ever" and described video recording operations as Epstein's blackmail methodology.

81. This testimony directly contradicted the July 7 memo's claimed conclusions. When Senator Kennedy asked Attorney General Bondi whether she planned to investigate Secretary Lutnick's testimony, Bondi responded with legally absurd passive construction: "if he wants to talk to the FBI or the FBI wants to talk to him."

82. No member of Congress demanded investigation. No member noted the contradiction between the July 7 memo's claims and Lutnick's testimony. No oversight hearing was convened.

3. Article I War Powers Abdication

83. The President initiated major combat operations against Iran without congressional authorization. The administration's own statements establish that no attack on the United States had occurred, that the strikes were preemptive, and that the United States acted on Israel's timeline.

84. Congress has not meaningfully asserted its Article I authority. War powers resolutions face certain veto and lack override majorities. The constitutional check exists on paper while the Executive wages war.

4. Genesis Mission (99-1 Vote Nullified)

85. On July 1, 2025, the United States Senate voted 99-1 to remove a proposed 10-year moratorium on state-level AI regulation from H.R. 1. This near-unanimous vote explicitly preserved state authority to regulate AI companies.

86. Five months later, on November 24, 2025, President Trump issued the "Genesis Mission" Executive Order establishing comprehensive federal control over artificial intelligence development — precisely what Congress had rejected 99-1. *See* ECF No. 13-6 (Memo F: Genesis Mission Executive Order as Formalization of Criminal Appropriation Enterprise).

1 **87.** Under *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952)
2 (Jackson, J., concurring), when the President acts contrary to the expressed will of
3 Congress, executive authority is at its "lowest ebb." Here, Congress voted 99-1. The
4 President possesses no independent authority to override that determination.

5 **88.** Congressional response: Silence. No member declared the constitutional
6 violation. No hearing was convened. No legislation was introduced to countermand
7 the Order.

8 **5. Presidential Authorship of Revenue Legislation**

9 **89.** President Trump repeatedly characterized H.R. 1 as "my one big beautiful
10 bill" in public statements. This constitutes a party admission under Federal Rule of
11 Evidence 801(d)(2)(A) of presidential authorship of legislation. *See Kirchner v.*
12 *Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-7 (Memo G: Revenue
13 Origination Analysis).

14 **90.** Article I, Section 7, Clause 1 provides: "All Bills for raising Revenue shall
15 originate in the House of Representatives." Presidential authorship of revenue
16 legislation violates the Origination Clause and creates constitutional impossibility —
17 the President cannot present legislation to himself for review. *See* ECF No. 13-7.

18 **91.** Over 100 members of Congress hold law degrees. The Origination Clause is
19 taught in first-year constitutional law. Congressional response: Silence. Not one
20 lawyer in Congress stated the obvious: the President cannot author revenue legislation.

21 **6. SCOTUS Shadow Docket Ultra Vires Jurisdiction (Eight Years)**

22 **92.** Since at least 2017, the Supreme Court has exercised emergency docket
23 jurisdiction without statutory authority. 28 U.S.C. § 2101(f) limits Supreme Court stay
24 authority to cases "pending appeal" — yet the Court routinely grants stays in cases
25 where no appeal is pending, no certiorari petition has been filed, and no lower court
26 judgment exists to stay. *See Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.),
27 ECF No. 13-9 (Memo I: SCOTUS Ultra Vires Practice); ECF No. 13-81 (Exhibit N-21:
28 SCOTUS Emergency Docket Analysis); ECF No. 13-82 (Exhibit N-22: Shadow
29 Docket Jurisdiction Fraud Schematic).

93. The pattern extends across 80+ emergency applications from 2017 to 2026, including applications citing vacated precedent as jurisdictional foundation. The June 26, 2017 Travel Ban stay was vacated on October 10, 2017, destroying its precedential value — yet subsequent applications cite it as authority. *See* ECF No. 13-9, §§ IV-V.

94. Congressional response: Silence. No member has challenged the Court's systematic exercise of jurisdiction Congress never granted. No hearing has examined whether 28 U.S.C. § 2101(f) authorizes what the Court claims. The constitutional violation — judicial expansion of congressional limits — proceeds unchecked.

7. Birthright Citizenship: Three-Branch Constitutional Subversion (2025)

95. On January 20, 2025, President Trump issued an Executive Order purporting to redefine birthright citizenship under the Fourteenth Amendment, affecting an estimated ten million persons. The Government's litigation position advances the "primary purpose" fallacy — that constitutional provisions protect only the specific groups targeted when enacted, not the universal principles the text embodies. *See Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-12 (Memo L: Birthright Citizenship Cases as Proof of Coordinated Constitutional Subversion).

96. The Supreme Court granted certiorari before judgment in *Trump v. CASA*, No. 24A884, bypassing normal appellate process through the same ultra vires shadow docket mechanism documented in ECF No. 13-9. The probability of neutral adjudication given the Court's 100% grant rate for Trump Administration emergency applications falls below statistical significance. *See* ECF No. 13-12, § VI.A.

97. Congressional response: Silence. No member has challenged executive reinterpretation of the Fourteenth Amendment through executive order. No member has objected to the Court's procedurally irregular certiorari grants. The three branches coordinate to rewrite constitutional citizenship requirements while the constitutional structure fails to check any branch.

8. Article I, Section 8 Progress Clause Violation: Mass Copyright Appropriation
(2025)

98. The artificial intelligence industry has constructed billion-dollar valuations on mass copyright appropriation — copying millions of copyrighted works without

1 authorization, license, or compensation — in direct violation of Article I, Section 8,
2 Clause 8's constitutional theory of innovation. The Progress Clause establishes: Protect
3 creators → incentivize creation → promote progress. The AI industry inverts this:
4 Appropriate works → build systems → refuse compensation. *See Kirchner v. Johnson*,
5 No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-3 (Memo C: Constitutional Violation
6 of Article I Section 8 and Comprehensive Fair Use Defense Failure).

7 **99.** As of December 2025, no federal court has issued final judgment validating
8 AI training as fair use. Multiple judges have denied motions to dismiss. The legal
9 foundation upon which the entire AI industry rests remains untested and likely invalid.
10 *See* ECF No. 13-3, § I.

11 **100.** Congressional response: Silence. No member has demanded enforcement of
12 Article I, Section 8 against systematic appropriation. No hearing has examined
13 whether the Progress Clause permits mass copyright violation. The enumerated
14 constitutional power to "promote Progress... by securing... exclusive Right to Authors"
15 is rendered nugatory while Congress watches.

16 **C. Conduct Against Individual Self-Interest**

17 **101.** Each failure documented above should expose individual members to
18 significant political costs. A lawyer in Congress who fails to identify a first-year
19 evidence law error for 43 days faces professional embarrassment. A member who
20 ignores testimonial contradictions faces constituent criticism for failed oversight. A
21 member who abdicates Article I war powers faces historical condemnation. A member
22 who permits executive nullification of a 99-1 vote faces the absurdity of their own vote
23 being rendered meaningless.

24 **102.** If these were independent failures — individual members making individual
25 mistakes — we would expect variation. Some lawyers would catch the FRE error
26 while others missed it. Some oversight members would note the memo contradiction
27 while others did not. Some members would vigorously assert war powers while others
28 deferred.

1 **103.** Instead, we observe uniform failure across eight distinct constitutional
2 violations. Zero of 100+ lawyers identified the FRE error for 43 days. Zero oversight
3 members noted the July 7 memo contradiction. Near-zero meaningful assertion of war
4 powers. Zero members protested executive nullification of a 99-1 vote. Zero lawyers
5 challenged presidential authorship of revenue legislation.

6 **104.** Parallel failure of this magnitude does not occur through coincidence. When
7 100+ lawyers simultaneously miss first-year evidence law, when every oversight
8 member simultaneously ignores obvious contradiction, when 535 members
9 simultaneously abandon constitutional duty — the pattern demands explanation beyond
10 incompetence.

11 **D. The Plus Factors**

12 **1. AIPAC Funding (80-95% of Congress)**

13 **105.** Public Federal Election Commission records establish that 80-95% of
14 Congress receives campaign contributions from AIPAC-aligned political action
15 committees and donors. This funding creates financial dependence on organizations
16 whose primary purpose is advancing Israeli interests in American policy.

17 **106.** The funding is not incidental. AIPAC and aligned organizations
18 systematically contribute to candidates across both parties, creating bipartisan
19 dependence. Members who oppose Israeli interests face the prospect of funding
20 withdrawal and opposition from well-financed primary challengers.

21 **2. Israeli Agent's Admission of Removal Mechanism (Exhibit N-1)**

22 **107.** On October 21, 2024, Mosab Yousef — identified as an Israeli agent — stated
23 publicly that politicians in the West who oppose Israeli interests "are going to fall."
24 *Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-74 (Exhibit N-1).

25 **108.** When asked about the mechanism, Yousef explained: "We live in democracy
26 and we have the right to bring them up and to bring them down. Those who agree with
27 [terrorists], we don't want them in office." ECF No. 13-74.

28 **109.** This is not speculation about Israeli influence. It is recorded admission of the
29 influence scheme by an Israeli agent speaking publicly. The threat is explicit:

1 politicians who oppose Israeli interests will be removed through coordinated political
2 action.

3 **3. Netanyahu's "Weapons" Statement (Exhibit N-10)**

4 **110.** On September 26, 2025, Israeli Prime Minister Benjamin Netanyahu
5 described social media platforms as "weapons" and "tools of battle" for influence
6 operations. *Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-77
7 (Exhibit N-10).

8 **111.** Netanyahu stated: "We have to fight with the weapons that apply to the
9 battlefields in which we're engaged. And the most important ones are the social
10 media." He identified TikTok and X (formerly Twitter) as the "most important"
11 weapons and stated regarding Elon Musk: "He's not an enemy. He's a friend." ECF
12 No. 13-77.

13 **112.** Netanyahu explicitly described the need to "secure that part of our the base of
14 our support in the United States that is being challenged systematically." This is the
15 head of a foreign government describing information warfare operations targeting
16 American public opinion and political support. ECF No. 13-77.

17 **4. Observable Effect: Israel's Timeline Controls American War**

18 **113.** The Iran war provides real-time demonstration of the influence operation's
19 effect. By the administration's own admission, the United States attacked Iran because
20 "Israel was determined to act with or without American support." Secretary Rubio
21 stated the strikes occurred "preemptively" based on Israel's planned offensive.

22 **114.** The United States had leverage to control the timeline. Israel depends on
23 American support. The administration could have instructed Israel to delay while
24 seeking congressional authorization. Instead, the administration subordinated the
25 Constitution to Israel's operational preferences. A foreign nation's military timeline
26 took precedence over Article I.

E. Eliminating Innocent Explanations

115. Mass Incompetence? Over 100 lawyers missed first-year evidence law for 43 days. Every oversight member missed an obvious memo contradiction. All 535 members forgot Article I exists. Ninety-nine Senators accepted nullification of their own vote without protest. This explanation requires believing that Congress is collectively incapable of elementary function — while those same members successfully perform constituent services, fundraise, campaign, and advance their careers. Incompetence does not explain why the failures uniformly serve foreign interests.

116. Partisan Loyalty? The failures cross party lines. Democrats and Republicans alike received AIPAC funding. Democrats and Republicans alike failed to identify the FRE fraud. Democrats and Republicans alike have not meaningfully asserted war powers. The 99-1 vote was bipartisan — yet both parties accepted its nullification. Partisan explanation fails when bipartisan failure serves foreign interest.

117. Deference to Executive? Members of the president's party might defer on war powers. But deference does not explain lawyers failing to identify evidence law errors, or oversight members ignoring testimonial contradictions, or 99 Senators accepting nullification of their own bipartisan vote. These failures require active blindness, not mere deference.

118. Coincidence? The statistical probability that 100+ lawyers would independently and simultaneously miss first-year evidence law, for 43 days, across 15 public deployments, while also missing an Origination Clause violation, while 99 Senators accept nullification of their vote, while all 535 members abandon war powers — approaches statistical impossibility.

F. The Inference Compelled

119. Under Interstate Circuit, when the factual pattern "excludes the possibility of independent action," the inference of coordination is compelled. The parallel conduct is established across eight distinct constitutional violations. The conduct is against

1 individual self-interest. The plus factors are extensive: documented funding, recorded
2 threats, explicit description of influence operations, and observable effect.

3 **120.** When innocent explanations are eliminated, the inference of coordination
4 remains. Congress's pattern of parallel failure serves Israeli interests at the expense of
5 American constitutional governance. The failures align with documented funding
6 flows from AIPAC-aligned organizations. Israeli officials have publicly described
7 their mechanisms for controlling Western politicians. The observable effect is
8 American war-making on Israeli timeline.

9 **121.** Under Interstate Circuit standards, this circumstantial evidence supports the
10 inference that Congress has been captured by foreign influence.

11 **VI. THE BYPASS AS PROTECTION: WHY THE CONSTITUTIONAL** 12 **VIOLATION SERVES THE CAPTURE**

13 **A. The Impossible Choice Facing Captured Members**

14 **122.** Had President Trump sought congressional authorization for the Iran war,
15 every member of Congress would have faced a recorded vote: YES or NO on war with
16 Iran.

17 **123.** This would have created an impossible dilemma for captured members.
18 American public opinion consistently opposes war with Iran. Constituents do not want
19 their representatives voting to send Americans to die in another Middle Eastern
20 conflict. A YES vote would generate constituent backlash, primary challenges, and
21 electoral vulnerability.

22 **124.** But Israeli interests — and AIPAC-aligned donors — strongly support
23 military action against Iran. Israel views Iran as an existential threat. The documented
24 influence apparatus exists precisely to ensure American policy aligns with Israeli
25 security priorities. A NO vote would trigger the mechanism Mosab Yousef described:
26 "we have the right to bring them up and to bring them down."

27 **125.** A recorded vote would force each captured member to choose — publicly,
28 permanently, on the record — between Israeli interests and constituent interests. This
29 is the scenario captured members must avoid at all costs.

B. How Bypassing Congress Protects Captured Members

126. By bypassing Congress entirely, President Trump did captured members a favor. He removed the moment of exposure. No recorded vote exists. No member had to choose between AIPAC and constituents. The capture remains concealed.

127. This explains the otherwise inexplicable congressional response to an obvious Article I violation. No member loudly declares an Article I, Section 8 violation because a serious declaration would require action, and action would require votes, and votes would force the impossible choice. Minority leaders can "huff and puff" without consequence because symbolic opposition costs nothing — leaders can posture for constituents while knowing their statements will produce no accountability moment. War powers resolutions are designed to fail because sponsors know resolutions will be vetoed and lack override majorities — the resolutions provide political cover without ever forcing the recorded choice on war itself.

128. The bypass is not a bug — it is a feature of the capture. The constitutional violation protects the captured.

C. The March 4, 2026 Senate Vote: the Irreversibility of Constitutional Harm

129. On March 4, 2026, the Senate voted on a war powers resolution sponsored by Senator Tim Kaine that would have required congressional authorization before further military action against Iran. The resolution failed 47-53.

130. The vote illustrates the irreversible character of separation of powers violations in the war-making context. Once hostilities are initiated without congressional authorization, any subsequent congressional action to limit military operations faces powerful counterarguments: that constraining the Executive would endanger American forces already deployed in hostile territory, and that limiting military response capability could invite retaliatory attacks on American soil.

131. This is the constitutional trap created by unauthorized initiation of hostilities. Before attack, Congress can deliberate whether American lives should be risked. After

1 attack, the question shifts: would limiting war powers now place American lives in
2 greater danger from foreign retaliation — not only abroad but domestically? President
3 Trump himself has acknowledged the possibility of Iranian attacks on American soil
4 following the preemptive strikes. The constitutional violation thus creates conditions
5 under which any congressional assertion of war powers authority can be characterized
6 as inviting attacks on the American homeland.

7 **132.** The fifty-three senators who voted against the resolution may have been
8 motivated by various considerations — partisan loyalty, policy preferences, or genuine
9 concern for national security. But whatever their motivations, the structural point
10 remains: the Executive's unauthorized initiation of hostilities placed Congress in a
11 position where asserting its constitutional authority could be characterized as
12 endangering both deployed forces and the American homeland.

13 **133.** This is precisely why the Framers required congressional authorization *before*
14 hostilities commence. The constitutional structure was designed to ensure deliberation
15 occurs when the question is "should we risk American lives?" — not after, when the
16 question becomes "should we abandon Americans already at risk?" The unauthorized
17 initiation inverts the constitutional framework and makes subsequent congressional
18 assertion of authority appear irresponsible.

19 **134.** The constitutional violation is thus irreversible in character. Congress cannot
20 undo the initiation of hostilities. It can only respond to a situation the Executive has
21 already created — a situation in which the Executive's constitutional violation has
22 reframed the question in terms favorable to continued executive action.

23 **D. The Inadequacy of Legislative Remedy**

24 **135.** Even had the war powers resolution passed, it could not have remedied the
25 constitutional violation already committed. A resolution constraining future military
26 action cannot undo the initiation of hostilities without authorization. Six service
27 members are dead. Two thousand citizens are trapped. The harm has occurred.
28 Prospective constraint is not retrospective remedy.

1 **136.** Two remedies exist for a separation of powers violation already committed.
2 First, Congress could formally recognize that the violation occurred and pursue
3 executive accountability through its constitutional mechanisms — impeachment,
4 censure, or investigation resulting in findings of fact. But a captured Congress will not
5 recognize violations that serve its captors' interests. The fifty-three senators who voted
6 against the resolution will not vote to recognize the constitutional violation their vote
7 enabled.

8 **137.** Second, the courts could provide declaratory relief — a judicial determination
9 that the Executive exceeded constitutional authority. Declaratory relief does not undo
10 the harm, but it establishes the violation as a matter of law. It creates precedent. It
11 provides the formal recognition that captured political branches refuse to provide.

12 **138.** This memorandum does not seek declaratory relief for the Iran war. That
13 matter lies beyond the scope of *Kirchner v. Acosta* — not for want of standing, but
14 because proper venue and subject matter jurisdiction for such a claim would lie
15 elsewhere. But judicial recognition that separation of powers violations are cognizable
16 — and adoption of an objective test for their identification — would establish the
17 framework through which such relief could be pursued in the appropriate forum.

18 **VII. THE HUMAN COST**

19 **A. The Diffusion of Moral Responsibility**

20 **139.** Madison's separation of powers was designed not merely to distribute
21 authority but to distribute responsibility. When Congress debates and votes on war,
22 each representative must confront the question. Each name is recorded. Citizens
23 witness who chose to authorize death. Representatives must answer to constituents for
24 their decisions. The constitutional structure forces specific, named individuals to bear
25 the moral weight of authorizing war.

26 **140.** When the President bypasses Congress, this moral architecture collapses.
27 President Trump ordered the strikes but has demonstrated himself incapable of moral
28 reflection. Speaker Johnson was briefed but did not vote — he claims no

responsibility. Congress was notified after the strikes began — they made no decision. The military followed orders — they had no choice. Citizens were not consulted.

141. No one voted to launch this war. No congressional record documents who said yes. No representative will face constituents and explain why they authorized the deaths of hundreds of Iranian children. The moral weight of mass killing is borne by no one.

142. Madison established in Federalist No. 49 that "the people are the only legitimate fountain of power" and that "the reason of the public" must control governmental operations. When the President wages war without congressional authorization, the fountain is bypassed entirely. Executive discretion substitutes for legislative deliberation. The will of the people — the constitutional source of all governmental authority — is displaced. *See* Memo B, Section II.G. The moral diffusion documented here is the inevitable consequence of removing popular sovereignty from the war decision.

143. The separation of powers violation does not merely break a constitutional rule. It anonymizes mass death. It severs the connection between decision and consequence. It permits everyone involved to claim they did not choose this outcome. The moral weight falls on no one — except the dead.

B. The Dignity Denied to Gold Star Families

144. Six American service members have died in Operation Epic Fury as of this writing. The President has warned that more will follow. Six families have received the notification that every military family dreads. Six families must now grieve.

145. But these families have been denied something that the Constitution was designed to guarantee: the dignity of knowing their child died by the will of the American people.

146. When Congress declares war, the nation collectively decides to ask its sons and daughters to risk their lives. Representatives deliberate. Votes are recorded. The people, through their elected officials, authorize the sacrifice. A soldier who falls in a congressionally authorized war dies in service to the constitutional republic. The

1 family can know — with certainty — that their loved one gave their life for their
2 country, by the will of its people.

3 **147.** When the President wages unauthorized war, no such assurance exists. The
4 nation did not decide. The people were not consulted. One person ordered American
5 service members into combat. The constitutional process that legitimizes sacrifice was
6 bypassed.

7 **148.** The six families who have lost their children must now live with an
8 unanswerable question: Did my child give their life for their country and Constitution,
9 by the will of the American people? Or was my child's life sacrificed by an executive
10 acting in violation of the Constitution, in service of a foreign nation's strategic
11 interests?

12 **149.** This question cannot be answered. The constitutional violation has made it
13 unanswerable. Congressional declaration of war is not a procedural formality. It is the
14 instrument by which the American people sanctify the sacrifice they ask of their
15 children. Without it, service members die for executive policy — or for foreign
16 interests. Without it, families grieve without closure. Without it, the fallen are denied
17 the dignity they earned.

18 **C. The 2,000 Trapped American Citizens**

19 **150.** Approximately 2,000 American citizens are trapped in countries affected by
20 the conflict, unable to travel to safety. The State Department issued urgent warnings
21 after the strikes began. These citizens could have evacuated had they received advance
22 warning.

23 **151.** The administration chose to endanger these citizens rather than provide
24 warnings that would have exposed the constitutional violation. The trapped Americans
25 are direct victims of the Article I bypass. Their safety was sacrificed to maintain the
26 fraudulent "emergency" justification.

1 **VIII. THE SYSTEMIC FAILURE: 239 YEARS WITHOUT AN**
2 **ENFORCEMENT MECHANISM**

3 **A. Historical Pattern of Unidentified and Unremedied Violations**

4 **152.** From 1787 to March 4, 2026 — 239 years — the United States of America
5 has failed to develop mechanisms to define what a separation of powers violation is,
6 test for when one has occurred, or remedy one when it happens.

7 **153.** The Alien and Sedition Acts of 1798 were addressed only through political
8 opposition and electoral defeat in 1800 — not through constitutional enforcement.
9 President Lincoln's suspension of habeas corpus in 1861 was objected to by Chief
10 Justice Taney and ignored — no remedy was provided. Japanese internment during
11 World War II was deferred to by the courts and remedied only through a 1988 apology,
12 decades after the fact. President Nixon's impoundment of appropriated funds was
13 addressed by Congress passing the Budget Act — but Nixon left office due to
14 Watergate, not judicial enforcement of separation of powers. The endless undeclared
15 wars from 2001 to the present have produced sporadic complaints but no remedy.

16 **154.** The Iran war continues this pattern. The violation is obvious. The
17 mechanism for identification and remedy does not exist.

18 **B. The Universal Compliance Test as the Missing Constitutional Component**

19 **155.** The separation of powers — Madison's primary structural safeguard against
20 tyranny — has operated for 239 years without an objective definition, an objective test,
21 or an enforcement mechanism.

22 **156.** The Universal Compliance Test proposed in this memorandum addresses this
23 gap. The test asks whether a governmental action can be derived through an unbroken
24 chain of constitutional authorization. If the derivation fails at any step, a violation
25 exists. The test is objective — it does not depend on policy preferences, partisan
26 alignment, or judicial intuition.

27 **157.** The Iran war fails this test. The President claims Commander in Chief
28 authority. That authority does not include initiating hostilities without congressional

1 authorization except to repel sudden attacks. No sudden attack occurred. The
2 derivation fails. The violation exists.

3 **C. The Identical Problem: Inability to Identify Separation of Powers Violations**

4 **158.** The Iran war and *Kirchner v. Acosta* present the identical constitutional
5 problem: the absence of any mechanism to identify when a separation of powers
6 violation has occurred. In the Iran war, a President exceeded his constitutional
7 authority by initiating hostilities without congressional authorization. In *Kirchner v.*
8 *Acosta*, a federal prosecutor exceeded presidential pardon power by granting immunity
9 that only the President may constitutionally bestow. Both are separation of powers
10 violations. Neither can be remedied without first being identified as such.

11 **159.** The consequences of unidentified separation of powers violations compound
12 over time. Defendant Acosta's 2008 Non-Prosecution Agreement — a separation of
13 powers violation that exceeded presidential pardon power — resulted in eighteen years
14 of non-accountability for child sex trafficking. Jeffrey Epstein continued his crimes.
15 Victims continued to suffer. Co-conspirators remained unidentified. The
16 constitutional violation was never recognized, and its consequences multiplied across
17 nearly two decades.

18 **160.** The Iran war demonstrates that unauthorized wars produce similarly
19 compounding consequences. Six American service members are already dead. More
20 will follow. Two thousand Americans are trapped abroad. Regional destabilization
21 will persist for years. Alliances are strained. And because no mechanism exists to
22 identify the separation of powers violation, these consequences will accumulate
23 without constitutional remedy — just as eighteen years of child sex trafficking
24 accumulated without remedy in the Acosta matter.

25 **161.** This memorandum does not ask the Court to adjudicate the Iran war. It asks
26 the Court to recognize that the same constitutional deficiency — the inability to
27 identify separation of powers violations — enables both the ongoing war and the
28 eighteen-year failure in *Kirchner v. Acosta*. The remedy is identical: judicial
29 recognition that separation of powers violations are cognizable and adoption of an

1 objective test for their identification. Without such recognition and such a test, both
2 the Acosta violation and the Iran war violation will join the 239-year pattern of
3 constitutional failures that erode the Republic one unidentified violation at a time.

4 **IX. CONCLUSION**

5 **A. The Life-and-Death Urgency**

6 **162.** The events documented herein establish that judicial recognition of separation
7 of powers violations is not an academic question. It is a matter of life and death. Six
8 service members are dead. More will die. Children are dead. Citizens are trapped.
9 And the constitutional mechanism that was supposed to prevent all of this — the
10 separation of powers — could not function because no court has ever established an
11 objective test for identifying when it has been violated.

12 **163.** For 239 years, no objective test existed to fill this void. But one exists now.
13 The Universal Compliance Test proposed herein is not a novel invention — it is
14 derived directly from the constitutional framework articulated by James Madison, the
15 Father of the Constitution, in his *Report on the Virginia Resolutions* (1800). Madison
16 established a principle of textual consistency: "the same argument results from the
17 same consideration." If an interpretive method is valid for one constitutional clause, the
18 same method must be valid for parallel clauses. *See* Memo B, Section III.A. The
19 Universal Compliance Test operationalizes Madison's framework for separation of
20 powers analysis. The test has existed in Madison's writings for 226 years. What has
21 been missing is judicial recognition that such a test can and must be applied.

22 **164.** The objectivity of the Universal Compliance Test does not depend on judicial
23 recognition. The angle-sum theorem of a triangle — that interior angles sum to 180
24 degrees — represents objective mathematical truth regardless of whether any person
25 possesses the capacity to complete the geometric construction that proves it. In the
26 same manner, the Universal Compliance Test identifies separation of powers violations
27 objectively, regardless of whether courts choose to apply it. Appendix A applies the
28 six-step test to forty-three coordinate government actions — seven original test
29 applications and thirty-six historical validation cases spanning 154 years of Supreme

1 Court jurisprudence (1872-2021). The test correctly identifies as violations every
2 action the Court has struck down. *See* Appendix A: Madisonian Separation of Powers
3 Compliance Testing. Thirty-six successful validations (36/36) prove the theorem.

4 **165.** The courts can decline to recognize the test. Its objectivity remains. But if
5 the courts decline to recognize separation of powers violations as justiciable — if no
6 objective test is adopted — then Madison's warning is fulfilled. Madison cautioned
7 that "a mere demarcation on parchment of the constitutional limits of the several
8 departments, is not a sufficient guard against those encroachments which lead to a
9 tyrannical concentration of all the powers of government in the same hands." *James*
10 *Madison, Federalist No. 48* (February 1, 1788); *see* Memo B, Section II.F. The
11 Constitution without an enforcement mechanism is parchment. The Executive will
12 continue to exceed its authority. Congress will continue to fail its checking function.
13 And Madison's "parchment barriers" will provide no guard against the tyranny he
14 foresaw.

15 **B. The Relief Requested**

16 **166.** Plaintiff respectfully requests that this Court:

17 **167.** First, recognize that separation of powers violations are judicially cognizable
18 and not barred by political question doctrine when an objective test can be applied.

19 **168.** Second, adopt the Universal Compliance Test or a substantially similar
20 objective framework for identifying separation of powers violations.

21 **169.** Third, apply that test to Defendant Acosta's conduct in exceeding presidential
22 pardon power through the 2008 Non-Prosecution Agreement.

23 **170.** The courts are the last remaining check. This Court is asked to provide what
24 239 years of constitutional practice has failed to establish: an objective mechanism by
25 which the separation of powers can be enforced. The lives lost and the lives at stake
26 demand nothing less.

27 **Respectfully submitted,**

28 **JOSEPH KIRCHNER**
29 *Plaintiff, Pro Se*

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ATTACHMENTS

Note: The following exhibits, memoranda, and appendices are filed in Kirchner v. Johnson, No. 1:25-cv-02735-ACR (D.D.C.), and are incorporated by reference.

EXHIBITS

Note: Exhibits D, F, and G (Trump, Johnson, and Rubio statements) are public press conferences and media statements subject to judicial notice under Fed. R. Evid. 201(b)(2) and are cited in the text without formal attachment.

- **EXHIBIT N-1:** Mosab Yousef (Israeli Agent) interview, October 21, 2024, stating Western politicians who oppose Israel "are going to fall" and explaining mechanism: "we have the right to bring them up and to bring them down." ECF No. 13-74.
- **EXHIBIT N-10:** Prime Minister Netanyahu statement, September 26, 2025, describing social media as "weapons" and "tools of battle," identifying TikTok and X as "most important," and stating need to "secure... base of our support in the United States." ECF No. 13-77.
- **EXHIBIT N-23:** Executive Order — Launching the Genesis Mission. ECF No. 13-83.

MEMORANDA

- **MEMO F:** Genesis Mission Executive Order as Formalization of Criminal Appropriation Enterprise — documenting executive implementation of comprehensive federal AI control five months after Congress voted 99-1 to preserve state authority. ECF No. 13-6.
- **MEMO G:** Revenue Origination Analysis — documenting presidential admission of authorship of H.R. 1 in violation of Article I, Section 7, Clause 1. ECF No. 13-7.

APPENDICES

- **APPENDIX A:** Legislative and Executive Branch Ultra Vires Coordination. ECF No. 13-14.
- **APPENDIX K:** Bondi and Patel Coordinated Investigative Fraud — documenting FRE 901/607 conflation, July 7 memo contradictions, and refusal to investigate. ECF No. 13-24.