No. 13-56

IN THE

Supreme Court of the United States

HORNBECK OFFSHORE SERVICES, LLC, ET AL.,

Petitioners,

v.

SALLY JEWELL, SECRETARY OF THE INTERIOR, ET AL.,

Respondents.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CORY L. ANDREWS
Counsel of Record
RICHARD A. SAMP
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave. N.W.
Washington, D.C. 20036
(202) 588-0302
candrews@wlf.org

QUESTION PRESENTED

Amici address the following questions:

(1) Whether a district court possesses authority to prevent circumvention of its orders by imposing sanctions on conduct that violates the understood purpose of an injunction, but not its explicit terms.

(2) Whether a court of appeals should accord deference to a district court's construction of its own orders rather than review that construction *de novo*.

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INTERESTS OF *AMICUS CURIAE*[1]

The Washington Legal Foundation (WLF) is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited, accountable government. In particular, WLF has litigated to maintain the integrity of the judicial process and to support the right and duty of a federal district court to police the misconduct of those within the jurisdiction of the court. *See, e.g.*, *Chevron Corp. v. Naranjo*, 667 F.3d 232 (2d Cir. 2012). WLF has also appeared as *amicus curiae* in cases raising serious questions about governmental overreach by the Executive Branch. *See, e.g.*, *Indiana State Police Pension Trust v. Chrysler LLC*, 558 U.S. 1087 (2009).

WLF is deeply concerned by the Fifth Circuit's decision below, which improperly curtails a district court's ability to sanction the litigants before it. Under the Fifth Circuit's view, a litigant can deliberately undermine and avoid a district court's order, so long as it does not technically engage in the narrow scope of conduct expressly proscribed by that order. But a district court order should not have to

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. More than ten days before the due date, counsel for WLF provided counsel for Respondent with notice of intent to file. All parties have consented to the filing of this brief; letters of consent have been lodged with the Clerk.

anticipate every conceivable tactic a determined litigant may undertake to evade its orders. Perhaps nowhere is the civil contempt power more essential than where, as here, the federal government is the very litigant seeking to circumvent the court's rulings.

STATEMENT OF THE CASE

Following the April 2010 explosion on the Deepwater Horizon and the resulting oil spill in the Gulf of Mexico, the President directed the Secretary of the Interior to investigate the accident and recommend what, if any, new safety measures should be imposed on offshore exploration and production activities. Pet. App. 64a. Secretary Salazar quickly announced that no applications for drilling permits would be considered until the safety review requested by the President was completed. *Id.* at 39a. As part of that review, the Mineral Management Service (since renamed the Bureau of Ocean Energy Management) inspected 29 of 33 permitted deep-water wells operating in the Gulf. *Id.* Interior's inspectors determined that 27 of those 29 wells were fully compliant with all regulations. *Id.* Only two wells revealed some minor violations, but those were quickly remedied. *Id.*

Five weeks after the initial Deepwater Horizon explosion, Secretary Salazar released a safety report entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (the Safety Report). Pet. App. 65a. The body of the Safety Report contained various proposals to increase drilling safety, including recommendations for improving equipment, regular testing, and

certification procedures. *Id.* The report's executive summary, however, included recommendations found nowhere in the full report. These included recommendations for a six-month moratorium on new permits for wells using floating rigs and an immediate halt to all drilling operations on the existing 33 permitted wells. *Id.* Contrary to the executive summary, however, the text of the Safety Report allowed for the immediate resumption of drilling once rigs came into compliance with the new safety measures. *Id.*

Importantly, the Safety Report's executive summary stated that all of its recommendations had been peer-reviewed by seven experts identified by the National Academy of Engineering. Pet. App. 65a. But five of those experts, as well as three consulting experts, publicly complained that the moratorium recommendation was never part of their analysis, had been inserted into the report after final review, and that they disagreed with it. *Id.* Subsequent investigation by Interior's Office of Inspector General (OIG) revealed that a last-minute edit by the White House was responsible for the Safety Report's misleading claim that the moratorium recommendation had been peer reviewed by the experts. *Id.* at 3a. On May 28, 2010, the day after it released the Safety Report, Interior implemented the six-month moratorium and sent notice to all 4,500 active leases in the Gulf to halt activity. *Id.* at 4a.

Arguing, *inter alia*, that the moratorium was arbitrary and capricious under the Administrative Procedure Act (APA), Petitioners (39 entities engaged in oil and gas drilling, exploration, and

production) filed suit in U.S. District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief. Pet. App. 63a-69a. At a June 21, 2010 hearing on Petitioners' motion for preliminary injunction, the district court thoroughly questioned counsel on both sides for more than two hours. At that hearing, the government attempted to mislead the court about the experts' peer review of the proposed moratorium by giving an impression which the court described as "wholly at odds" with the OIG's account of the last-minute edit by the White House, "a story the government does not now dispute." *Id.* at 56a n.2. On June 22, 2010, the day after the hearing, the district court granted Petitioners' motion for preliminary injunction, holding that the moratorium was so lacking in scientific support that it was likely arbitrary and capricious. *Id.* at 81a-82a. The court entered an order that "immediately prohibited" the government from enforcing the moratorium "as applied to all drilling on the [outer continental shelf] in water at depths greater than 500 feet." *Id.* at 61a. The order further directed Interior to promptly file a report "setting forth in detail the manner and form in which [Interior] ha[d] complied with the terms of [the] Preliminary Injunction." *Id.*

Within hours of the court's order, Secretary Salazar publicly announced that the moratorium "was and is the right decision" and promised to "issue a new order in the coming days that eliminates any doubt that a moratorium is needed, appropriate, and within our authorities." Pet. App. 41a. The following day, Secretary Salazar attended a Senate subcommittee hearing where he declared that, notwithstanding the court's order, he would

issue an identical moratorium very soon. At that same Senate hearing, the Secretary twice referred to the moratorium as still being "in place." *Id.* at 41a-42a.

Interior later hosted a meeting with various oil and gas representatives where it again emphasized that a second moratorium was imminent. Pet. App. 42a. According to one industry representative who attended the meeting, the meeting with Interior made clear "that the cost and expense of resuming drilling should not be undertaken by [the] industry because the second moratorium would prevent that activity from continuing once it was issued." *Id.*

The government promptly appealed. In its motion for a stay pending the appeal, Interior announced that, notwithstanding the district court's order, "the Secretary will pursue all avenues for addressing risky operations, and will take new and immediately effective action as necessary." Pet. App. 42a. Rather than notify all 4,500 active leases in the Gulf of the court's injunction, Interior notified only the 33 wells that were being drilled at the time of the Deepwater Horizon incident. *Id.* at 42a-43a. As a result, despite the district court's injunction, drilling did not resume in the Gulf. The appeals court denied the request for a stay, but ordered expedited briefing of the appeal. *Id.*

On July 12, 2010, while the appeal was pending, Interior issued a new moratorium that was virtually identical in scope and substance to the first one. Pet. App. 7a. Importantly, Interior issued the new moratorium without seeking remand to reopen

its administrative proceedings, even though the expedited appeal of the district court's preliminary injunction was still pending. *Id.*

In proceedings before both the district court and the appeals court, Interior sought to elude a final decision on the merits as to whether the first moratorium was arbitrary and capricious. Following a remand to the district court, the appeals court declined to address an injunction that was "legally and practically dead," denying as moot the government's merits appeal. Pet. App. 8a. On October 12, 2010, Interior lifted the second moratorium, which allowed drilling operations to resume and effectively mooted Petitioner's suit. *Id.* at 43a-44a.

Seeking to recoup attorneys' fees, Petitioners moved for civil contempt against Interior in the district court. Petitioners argued that Interior's actions following the district court's preliminary injunction constituted a "calculated plan to interfere with enforcement of a remedy obtained by [Petitioners] and to insulate the moratorium decision from judicial review." Pet. App. 44a. The district court agreed and, considering the totality of the circumstances surrounding the government's conduct in the course of the litigation, concluded that Interior's actions reflected a "determined disregard" of the preliminary injunction order:

> [E]ach step the government took following the Court's imposition of a preliminary injunction showcases its defiance: the government failed to seek a remand; it continually reaffirmed its intention and

> resolve to restore the moratorium; it even notified operators that though a preliminary injunction had issued, they could quickly expect a new moratorium.

Id. at 58a. The district court awarded $528,801.18 in fees and $444.33 for costs under its "inherent authority in cases of civil contempt." *Id.* at 52a.

On appeal, a divided panel of the Fifth Circuit reversed. Purporting to review the district court's contempt finding for "abuse of discretion," the court acknowledged that the government had orchestrated an "end-run" around the injunction. Pet. App. 28a. Nevertheless, the appeals court concluded that "[a] more broadly worded injunction that explicitly prohibited the end-run taken by Interior would have set up issues more clearly supportive of contempt." *Id.* at 16a.

Judge Elrod dissented, criticizing the court's overly narrow approach to the scope of the district court's injunction order. Pet. App. 47a-49a. That approach, she feared, "suggests that a litigant can undermine and avoid a district court's order, provided that it does not, as a very technical matter, engage in activity that the order expressly prohibits." *Id.* at 47a. In her view, "[a] district court order need not anticipate every creative or strategic tactic a litigant may take to evade it." *Id.*

The Fifth Circuit considered, sua sponte, whether to grant rehearing en banc. Five judges dissented from the denial of rehearing en banc, and Judge Clement (joined by Judges Jones, Smith, and Elrod) issued a dissenting opinion. Pet. App. 85a.

The panel issued a revised opinion reversing the district court's finding of contempt, from which Judge Elrod again dissented. *Id.* at 1a-19a.

REASONS FOR GRANTING THE PETITION

This Court has long defined "inherent powers" as those which "cannot be dispensed with . . . because they are necessary to the exercise of all others." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). A district court's inherent contempt power is essential to preserve its ability to effectuate its own judgments and to administer justice. One of the central purposes of civil contempt sanctions is "to compensate the complainant for losses sustained" by levying a fine payable to the complainant. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947). Here, even though the district court determined that the government's actions amounted to a "determined disregard" of its preliminary injunction order, the Fifth Circuit's reversal has rendered that court powerless to impose contempt sanctions in the interest of justice. As a result, only discretionary review by this Court can now vindicate the important interests at stake in this case.

This case squarely presents two recurring and important questions of federal practice on which the courts of appeal have reached an intractable impasse: namely, (1) the scope of a district judge's power to sanction conduct intended to evade a court order and (2) the appropriate standard of review on appeal from that sanction order. Reversing the district court below for abuse of discretion, the Fifth Circuit held that the scope of a district judge's authority in enforcing an injunction can never reach

conduct that falls outside the four corners of the order. The First, Second, and Tenth Circuits follow the same narrow rule as the Fifth Circuit.

In contrast, the Third, Seventh, and Eleventh Circuits follow virtually the opposite rule, holding that a district court may enter a contempt sanction in cases where a party circumvents the purpose of an injunction—even where the party's conduct does not technically violate the four corners of the court's order. These circuits look to the underlying purpose of an injunction, which should be read in the light of the circumstances surrounding its formation. Such an approach closely follows this Court's guidance that a court's "decree must be read in view of the issues made and the relief sought and granted." *Haskell v. Kan. Natural Gas Co.*, 224 U.S. 217, 223 (1912). Only discretionary review by this Court can furnish a uniform rule for all federal courts.

Deep disagreement among the courts of appeals also presents a similar quandary concerning the appropriate standard of review for a district court's contempt sanction. In the decision below, the Fifth Circuit purported to review the district court's contempt finding for abuse of discretion, but held that "the interpretation of the scope of the injunctive order is a question of law" to be reviewed *de novo*. Pet. App. 9a. Yet only the Second, District of Columbia, and Federal Circuits follow the Fifth Circuit in reviewing a district judge's construction of his own order *de novo*. In contrast, the overwhelming majority of the federal circuits (eight of the thirteen courts of appeal) accord broad deference to a district court's construction of its own orders, recognizing that the same court that drafted an order is in the

best position to interpret its meaning and scope. Because the standard of review employed so often determines the outcome of the entire appeal, this deep division is ripe for resolution by this Court.

This case uniquely demonstrates how important these issues have become. The district court's authority to ensure compliance with its orders is especially important where, as here, the contemnor was an agent of the Executive Branch, a co-equal branch of government. The Founders stressed the importance of protecting the independence of the Judiciary, especially in light of the "least dangerous branch's" vulnerability to attack by the other branches of government. Despite the district court's detailed consideration of the circumstances surrounding the Department of Interior's "end-run" around its order, the Fifth Circuit has undercut that court of the ability to sanction such "defiance." But if the federal courts lack sufficient discretion to sanction contemptuous conduct by the Executive Branch, the Judiciary's integral role in the Constitution's system of checks and balances will be eroded.

I. THIS CASE PRESENTS THE COURT WITH A SINGLE VEHICLE TO RESOLVE TWO EXPRESS CONFLICTS AMONG THE CIRCUITS.

The circuit split presented here is real and pronounced, revealing a clear and significant division of judicial authority on two important and related questions of federal law. At least *half* of the nation's courts of appeal have weighed in on *both* questions presented by the Petition. These appeals

court decisions, which arrive at divergent conclusions about the scope of a district judge's power to sanction conduct intended to evade a court order, as well as the appropriate standard of review on appeal, cannot be reconciled with each other, demonstrating the recurring importance of the issues presented here. Because both of these questions affect a district court's inherent authority to ensure compliance with its own orders, they arise frequently in federal litigation. Only this Court can resolve the impasse among the courts of appeal.

A. The Circuits Are Divided Over A District Court's Ability To Sanction A Litigant For Circumventing The Purpose, But Not The Letter, Of A Court Order

In the decision below, the Fifth Circuit concluded that the district court had abused its discretion by imposing sanctions on the government for its willful contempt of a court-ordered preliminary injunction. Despite the district court's detailed consideration of the circumstances surrounding the government's "defiance"—including the government's failure to seek a remand before issuing a second blanket moratorium—the Fifth Circuit held that "[a] more broadly worded injunction that explicitly prohibited the end-run taken by Interior would have set up issues more clearly supportive of contempt." Pet. App. 34a.

In other words, notwithstanding the Fifth Circuit's acknowledgement that the government's actions in this case constituted an "end-run" around the district court's injunction, the appeals court

concluded that a district court does not enjoy the discretion to sanction a party's conduct in the absence of an explicit prohibition in the court's order. That is, the scope of a district judge's authority in enforcing an injunction, according to the Fifth Circuit, can never reach conduct that falls outside the "four corners of the order." *See, e.g., Seattle-First Nat'l Bank v. Manges*, 900 F.2d 795, 800 (5th Cir. 1990); *FTC v. Sw. Sunsites, Inc.*, 665 F.2d 711, 724 (5th Cir. 1982).

This is the same inflexible rule followed by the First, Second, and Tenth Circuits. *See, e.g., United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005) (holding that the applicable test is "whether the putative contemnor is able to ascertain from the four corners of the order precisely what acts are forbidden"); *Fonar Corp. v. Deccaid Servs., Inc.*, 983 F.2d 427, 429-30 (2d Cir. 1993) (vacating contempt ruling despite proof "that defendants knew precisely what was prohibited" because sanctioned acts were not within "the four corners of the order"); *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1168 (10th Cir. 2009) ("This strict approach mandates that the parties 'be able to interpret the injunction from the four corners of the order.'") (quoting *Seattle-First*, 900 F.2d at 800).

But such a hyper-technical approach to a district court's inherent contempt power has been roundly rejected by at least three other circuits. Authorizing a district court to enter a contempt sanction in cases where a party circumvents the purpose of an injunction—even where that conduct does not technically violate the four corners of the court's order—the Third, Seventh, and Eleventh

Circuits have heeded this Court's reminder that a court's "decree must be read in view of the issues made and the relief sought and granted." *Haskell*, 224 U.S. at 223.

Relying on *Haskell*, the Third Circuit has embraced the more sensible rule that "an injunction must be read in light of the circumstances surrounding its entry: the relief sought by the moving party, the evidence produced at the hearing on the injunction, and the mischief that the injunction seeks to prevent." *United States v. Christie Indus., Inc.*, 465 F.3d 1002, 1007 (3d Cir. 1972). In *Christie*, the district court enjoined the selling of specified fireworks assembly-kits. But when the defendant sold different but equivalent kits (and their individual components), the Third Circuit found such conduct to be in violation of the court's order. Under such an approach, an injunction cannot "be avoided on merely technical grounds" so long as its "thrust" gives litigants "fair warning of the acts that it forbids." *Id.; Harris v. City of Philadelphia*, 47 F.3d 1342, 1353 (3d Cir. 1995).

The Seventh Circuit has similarly embraced the rule that a litigant's conduct may "violate an injunction if it threatens the spirit if not the literal language of the earlier order." *Youakim v. McDonald*, 71 F.3d 1274, 1283 (7th Cir. 1995). Citing this Court's guidance in *Haskell*, the Seventh Circuit explained in *Youakim* that "the terms of an injunction, like any other disputed writing, must be construed in their proper context," which naturally requires consideration of "the mischief the injunction was designed to eradicate." *Id.* As Judge Richard Posner has cautioned, "[i]f narrow literalism is the

rule of interpretation, injunctions will spring loopholes, and parties in whose favor injunctions run will be inundating courts with request for modification in an effort to plug the loopholes." *Schering Corp. v. Ill. Antibiotics Co.,* 62 F.3d 903, 906 (7th Cir. 1995) (holding that a court order barring the sale of a certain antibiotic liquid was violated by sales of the same antibiotic in powder form).

The Eleventh Circuit (again relying on *Haskell*) looks to the underlying purpose of an injunction, which "is to be read in the light of the circumstances surrounding its formation." *Abbott Labs. v. Unlimited Beverages, Inc.*, 218 F.3d 1238, 1241 (11th Cir. 2000). Recognizing that "the narrowest conceivable interpretation of an injunction is not necessarily the correct one," *Alley v. U.S. Dep't of Health & Human Servs.*, 590 F.3d 1195, 1205 (11th Cir. 2009), the Eleventh Circuit recognizes that a court order "need not recite every possible way in which a violation might occur when the proscribed conduct is readily ascertainable to an ordinary person." *Abbott Labs*, 218 F.3d at 1241. Otherwise, "an enjoined party could assert 'an overly literal or hypothetical reading' of an injunction in order to slip the restraints that it imposes on that party." *Alley*, 590 F.3d at 1205 (quoting *AmBrit, Inc. v. Kraft, Inc.*, 812 F.3d 1531, 1548 n.89 (11th Cir. 1986)). That is precisely what happened here. By issuing a second moratorium that was virtually identical to the first one, Interior was engaged in a pure game of delay that enabled it to keep the moratorium in place for four and a half months notwithstanding the court's order enjoining it from doing so.

The deep split of authority among the circuits ultimately hinges on the interpretation of Rule 65(d), which provides that an order granting an injunction "must . . . describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d). The Tenth Circuit has expressly acknowledged this circuit split of authority on how Rule 65(d) should be interpreted, conceding that "[n]ot all circuits strictly construe [Rule] 65(d)" and citing the Eleventh Circuit's divergent approach. *See Consumers Gas & Oil, Inc. v. Farmland Indus., Inc.*, 84 F.3d 367, 371 (10th Cir. 1996).

Because the widening split of circuit authority on this issue concerns the application and interpretation of a Federal Rule of Civil Procedure, review here is especially warranted. As demonstrated, the First, Second, and Tenth Circuits have interpreted Rule 65(d) in a way that is wholly inconsistent with that of the Third, Seventh, and Eleventh Circuits. But Rule 65(d) should mean the same thing and impose on parties the same obligations in Massachusetts and New York as it does in New Jersey and Florida. The Fifth Circuit's decision below only exacerbates this problem.

Importantly, it was this very disparity of legal process among the states that served as the primary catalyst for the federal rules in the first place. Indeed, the creation of federal procedural rules was bottomed entirely on the need for uniformity of procedure in the federal courts. See *Sayre v. The Musicland Group, Inc.*, 850 F.2d 350, 354 (8th Cir. 1988) (stating that the "purpose of the Federal Rules of Civil Procedure" was "to provide uniform

guidelines for all federal procedural matters"); Erwin Chemerinsky & Barry Friedman, Federal Judicial Independence *Symposium: The Fragmentation of Federal Rules*, 46 Mercer L. Rev. 757, 780 (1995) (noting that the "primary justification for adopting the Federal Rules of Civil Procedure was to increase the uniformity in procedural rules in federal courts across the country").

The entire purpose of the Federal Rules of Civil Procedure is to provide a uniform and orderly process of adjudicating cases in the federal system. An ongoing circuit split, especially one that has been further complicated by the decision below, defeats the purpose of having a system of standardized procedural rules in the federal system. It is difficult to overestimate the detrimental effect that the widening circuit split will have on the value of uniformity that the Federal Rules of Civil Procedure are intended to foster.

Only this Court can announce a single uniform standard for the application of Rule 65(d). A rule that gives the district court greater discretion and latitude in enforcing its own orders would incentivize parties to affirmatively seek the court's guidance in the event of any unclear provision. The contrary rule, applied in this case, encourages parties to skirt the boundaries of compliance, being careful to avoid violating only the precise letter of the court's order. Such gamesmanship should not be encouraged, much less rewarded.

B. The Circuits Are Similarly Divided Over The Applicable Standard For Reviewing A District Court's Interpretation Of Its Own Order

In the decision below, the Fifth Circuit purported to review the district court's contempt finding for abuse of discretion, but held that "the interpretation of the scope of the injunctive order is a question of law" to be reviewed *de novo*. Pet. App. 9a (quoting *Drummond Co. v. Dist. 20, United Mine Workers*, 598 F.2d 381, 385 (5th Cir. 1979)). This led the appeals court to conclude that "[a] more broadly worded injunction that explicitly prohibited the end-run taken by Interior would have set up issues more clearly supportive of contempt." Pet. App. at 28a. By subjecting the trial judge's construction of his own order to *de novo* review, the Fifth Circuit once again drastically curtailed the district court's ability to enforce its orders.

Yet only the Second, District of Columbia, and Federal Circuits follow the Fifth Circuit in reviewing a district judge's construction of his own order *de novo*. *See Latino Officers Ass'n v. City of New York*, 558 F.3d 159, 164 (2d Cir. 2009) ("[W]hen a district court's ruling on a contempt motion is challenged on appeal, its interpretation of the terms of the underlying order or judgment is subject to *de novo* review."); *Int'l Ass'n of Machinists & Aero. Workers v. E. Air Lines, Inc.*, 849 F.2d 1481, 1485 (D.C. Cir. 1988) (holding that the scope an injunction is "a question of law to be determined by the independent judgment of this Court"); *Abbott Labs. v. TorPharm, Inc.*, 503 F.3d 1372, 1382 (Fed. Cir. 2007) (holding that the "interpretation of the terms of an injunction

is a question of law we review de novo").

By contrast, the overwhelming majority of the federal circuits accord broad deference to a district court's construction of its own orders, recognizing that the same court that drafted an order is in the best position to interpret its meaning and scope. Unlike the panel below, a broad consensus of eight of the thirteen federal courts of appeal will not second guess a district court's reasonable construction of its own order. This commonsense "majority rule" provides a district court with the authority needed to manage the litigants before it and best effectuate its judgments.

In light of "the special role played by the writing judge in elucidating the meaning and intendment of an order which he authored," *Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1066-67 (1st Cir. 1987), the First Circuit "accord[s] deference to the district court's interpretation of the wording of its own order." *Harvey v. Johanns*, 494 F.3d 237, 242 (1st Cir. 2007).

Likewise, in the Fourth Circuit, "when a district court's decision is based on an interpretation of its own order, [the] review is even more deferential because district courts are in the best position to interpret their own orders." *JTH Tax, Inc. v. H & R Block E. Tax Servs., Inc.*, 359 F.3d 699, 705 (4th Cir. 2004). Under this deferential view, "the district court's interpretation of its own" orders merits "especial respect." *In re Grand Jury Subpoena (T-11)*, 597 F.3d 189, 195 (4th Cir. 2010).

This approach has been adopted by the Third, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits as well. *See, e.g., WRS, Inc. v. Plaza Entm't, Inc.*, 402 F.3d 424, 428 (3d Cir. 2005) (holding that "great deference is given to a district court's interpretation of its own order"); *Kendrick v. Bland*, 931 F.2d 421, 423 (6th Cir. 1991) ("The District Court's interpretation of its own order is certainly entitled to great deference."); *Southworth v. Bd. of Regents of Univ. of Wis. Sys.*, 376 F.3d 757, 766 (7th Cir. 2004) (according "broad deference" to "a district court in its interpretation of its own orders" because "[t]hat court is in the best position to interpret its own orders"); *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 947 (8th Cir. 2012) ("[W]e will defer to the [d]istrict [c]ourt's construction of its own order."); *G.J.B. & Assocs. v. Singleton*, 913 F.2d 824, 831 (10th Cir. 1990) ("The district court surely knows more about the meaning of its own orders than we do, and we are not prepared to second guess its construction."); *Alley*, 590 F.3d at 1202 (reviewing "a district court's interpretation of its own orders only for an abuse of discretion").

As in this case, the standard of review applied on appeal is quite often dispositive of the larger contempt issue itself. Rather than allow the district court the necessary discretion to both interpret and enforce its own orders, the panel below substituted its judgment for that of the trial judge. But a district court's ability to sanction litigants who circumvent its orders should not hinge on *where* that court sits. To the contrary, the interest of uniform justice under Article III demands that federal district judges interpreting their orders should be accorded the same level of deference in every appeals court

throughout the country.

The District of Columbia Circuit has expressly acknowledged this conflict of authority among the circuits. *See United States v. W. Elec. Co.*, 900 F.2d 283, 294 (D.C. Cir. 1990) ("[W]e reject the suggestion—apparently embraced by other circuits—that this particular district judge's interpretations should be afforded some "special" deference because he drafted the pivotal provision of the decree . . . and because he has had enormous experience overseeing the case and the decree since its inception."). The decision below directly conflicts with a majority of federal courts of appeal and thus warrants further review.

II. THE DECISION BELOW UNDERMINES THE JUDICIARY'S VITAL ROLE IN THE CONSTITUTIONAL SYSTEM OF CHECKS AND BALANCES

For more than 200 years, the United States has recognized that a strong, independent judiciary is essential to the preservation of our system of ordered liberty. The Framers set up a system of checks and balances to serve as "a self-executing safeguard against the encroachment or aggrandizement of one branch of government at the expense of the other." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). As James Madison explained in *Federalist* No. 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." *The Federalist* No. 47 (James Madison). This principle

"was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *Buckley*, 424 U.S. at 124. As a result, the architects of the Constitution "sought to divide delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial, to assure, as nearly as possible, that each branch of government would confine itself to its assigned responsibility." *INS v. Chadha*, 462 U.S. 919, 951 (1983).

This Court has never hesitated to enforce the system of checks and balances embodied in the Constitution when necessary to resolve the cases or controversies properly before it. Consistent with its role in our system of government, this Court has always protected its role as the final arbiter of the propriety of executive actions. For example, this Court has held that administrative duties of a non-judicial nature may not be imposed on Article III judges. *See United States v. Ferreira*, 54 U.S. 40 (1852). The Court has further held that the President may not use the Executive Branch to exercise legislative authority properly belonging only to Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). These checks on executive power are fundamental to our system of government.

Under the Constitution's framework, then, "the President's power to see the laws are faithfully executed refutes the idea that he is to be a lawmaker." *Id.* at 587. That is why the contempt power is so fundamental to a federal court's ability to effectuate its own judgments and to administer

justice. As this Court has recognized, "[i]f a party can make [itself] a judge of the validity of orders which have been issued, and by [its] own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911).

A district court's authority to ensure compliance with its orders is uniquely important here, where the contemnor was acting on behalf of the Executive Branch, a co-equal branch of government. The Constitution preserves Petitioner's "right to have claims decided before judges who are free from political domination by other branches of government." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986). By undertaking a calculated plan to thwart enforcement of a court-ordered remedy, Interior's "end-run" frustrates "the role of the independent judiciary within the constitutional scheme of tripartite government." *Id.* But, as this Court has previously emphasized, "[t]he hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted." *Chadha*, 462 U.S. at 951.

The Federal Judiciary was "designed by the Framers to stand independent of the Executive and Legislature—to maintain the checks and balances of the constitutional structure." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982). Here, even though the district court expressly found that the government's actions amounted to a "determined disregard" of its preliminary injunction

order, the Fifth Circuit's reversal renders the trial court powerless to impose contempt sanctions in the interest of justice. But if federal district courts lack sufficient latitude to sanction contemptuous conduct by the Executive Branch, our constitutional system of checks and balance will be rendered a dead letter.

The Founders stressed the importance of protecting the independence of the Judiciary, especially in light of the "least dangerous branch's" vulnerability to attack by the other branches of government. Indeed, because "the judiciary is the weakest of the three departments of power . . . all possible care is requisite to enable [the Judiciary] to defend itself." *The Federalist* No. 78 (Alexander Hamilton). Without robust, discretionary review by this Court, the Judiciary faces the very real danger of becoming a subordinate branch of government.

CONCLUSION

For the foregoing reasons, *amicus curiae* Washington Legal Foundation respectfully requests that the Court grant the Petition.

Respectfully submitted,

CORY L. ANDREWS
Counsel of Record
RICHARD A. SAMP
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave. N.W.
Washington, D.C. 20036
(202) 588-0302
candrews@wlf.org

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