

ORAL ARGUMENT NOT YET SCHEDULED
Case No. 26-5072

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JOE NEGUSE, in his capacity as a Member of the
U.S. House of Representatives, *et al.*,

Plaintiffs-Appellees,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, *et al.*,

Defendants-Appellants.

*ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
No. 25-cv-2463 Hon. JIA M. COBB*

**CORRECTED BRIEF OF LAWYERS DEFENDING AMERICAN
DEMOCRACY AS *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLEES URGING AFFIRMANCE**

MICHAEL D. BERGMAN
(301) 908-5035
mdbergman1@gmail.com
Counsel for *Amicus Curiae*
Lawyers Defending
American Democracy
P.O. Box 1922
FRAMINGHAM, MA

**CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES**

A. Parties and Amici

All parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for Appellants.

B. Rulings under Review

References to the rulings at issue appear in the Brief for Appellants.

C. Related Cases

This case has not previously been before this Court or any court other than the district court. Undersigned counsel is unaware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

Dated: August 18, 2026

/s/ Michael D. Bergman
Michael D. Bergman

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Dated: August 18, 2026

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Michael D. Bergman

CERTIFICATE REGARDING SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for amicus curiae states that a separate amicus brief is necessary. Counsel for amicus curiae certifies that he has conferred with relevant counsel and determined that the contents of this brief are meaningfully different from the briefings likely to be submitted by other amici curiae. This brief supports affirmance of the decision below.

Dated: August 18, 2026

s/ Michael D. Bergman
Michael D. Bergman

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GLOSSARY OF ABBREVIATIONS

ACLU	American Civil Liberties Union
CMS	Center for Medicare & Medicaid Services
CRS	Congressional Research Service
DHS	Department of Homeland Security
FOIA	Freedom of Information Act
ICE	Immigration and Customs Enforcement
IG	Inspector General
LDAD	Lawyers Defending American Democracy
MSHA	Federal Mine Safety and Health Act
NHRA	Nursing Homes Reform Act
OLC	Dept. of Justice Office of Legal Counsel
POGO	Project on Government Oversight
USDA	United States Department of Agriculture

STATEMENT OF IDENTITY, INTEREST, AND AUTHORIZATION

Identity. Lawyers Defending American Democracy (LDAD) is a non-profit, non-partisan organization devoted to encouraging the legal profession to enforce and uphold principles of American democracy and law, consistent with our obligations as lawyers; demanding accountability from lawyers and public officials; and identifying attacks on legal norms and prescribing redress for them. LDAD's mission is to defend the underlying constitutional values and norms of political behavior on which our democracy depends, including the rule of law, institutional checks and balances, separation of powers, press freedom, and the integrity of our system of justice.

Interest. LDAD files this amicus brief because fundamental rule of law principles require that the executive branch is held accountable under its constitutional duty to faithfully execute the laws. Congress has repeatedly passed, and Presidents have regularly signed, appropriations acts that unequivocally provide individual Members of Congress with statutory authority to enter facilities operated by or for the Department of Homeland Security (DHS) to detain or otherwise house noncitizens for the purpose of conducting oversight. These

appropriations acts have the full force of law, and DHS cannot now claim that it has the discretion whether to abide by it. This is an affront to essential separation of powers principles and a direct interference with Congress's core function of oversight of executive branch programs.

Authorization. Counsel for all parties consented to the filing of this brief. No counsel for a party has drafted this brief in whole or in part. No party or other entity has made any financial contribution toward the preparation and submission of this brief.

SUMMARY OF ARGUMENT

Oversight of executive branch programs by Congress and by individual Members is a core constitutional function and obligation of the legislative branch. In furtherance of this function and obligation, Congresses and Presidents of both parties since 2019 have enacted legislation requiring that Members of Congress have access without advance notice to Immigration and Customs Enforcement (ICE) facilities used for detention and housing of detainees. This legislation, commonly known as § 527, establishes a right of access for individual Members. Congress has delegated this right to individual Members in order to enhance oversight of these facilities and enable Members to serve their constituents. Member Plaintiffs have sought to exercise and have been denied this right based on ICE's adoption of a seven-day notice requirement. They therefore have suffered a personal and particularized injury in contrast to Members who have not sought and been denied access. This injury is the result of the executive branch's violation of a direct statutory command, which reflects disregard for Congress's role and authority in our constitutional system.

ARGUMENT

I. Congressional Oversight is a Core Constitutional Function

Congress's oversight authority dates back to the beginning of this country. As the Congressional Research Service (CRS) observes, "Congress has exhibited a robust view of its own investigatory powers from its outset, especially in regard to the legislature's role in overseeing the administration of government." CRS, *Congressional Oversight Manual*, Rep. No. RL30240, updated March 27, 2026, at 27. *See also Hannah v. Larche*, 363 U.S. 420, 444 (1960) ("The investigative function of [legislative] committees is as old as the Republic"). During the First Congress in 1790, for instance, the House appointed five Members to investigate Senator Robert Morris's activities as Superintendent of Finance under the Articles of Confederation. CRS, *Congressional Oversight Manual*, at 27-28.

The Supreme Court has affirmed for almost a century that the authority of Congress to oversee the administration of federal law is a core incident of the legislative power, as vital to Congress's constitutional function as the power to legislate in the first instance. The Department of Homeland Security's seven-day notice policy

therefore does not merely inconvenience a handful of legislators. Instead, it interferes with oversight in the form of facility visits whose effectiveness depends on their being unannounced.

In *McGrain v. Daugherty*, 273 U.S. 135 (1927), the Supreme Court upheld the Senate’s investigation into the Teapot Dome scandal, holding that Congress’s power to investigate, including the “process to enforce it,” is “an essential and appropriate auxiliary to the legislative function.” *Id.* at 174. The Court said that a legislative body cannot legislate wisely or effectively without information about the administration of existing law, and that the power to compel that information is therefore implicit in Article I. *Id.* All jurisprudence on Congressional oversight since then has taken this premise as foundational.

Three decades later, in *Watkins v. United States*, 354 U.S. 178 (1957), the Court reaffirmed that “the power of the Congress to conduct investigations is inherent in the legislative process.” *Id.* at 187. In stating that oversight must be for a legitimate legislative purpose, the Court said:

That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or

possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.

Id.

Two years later, in *Barenblatt v. United States*, 360 U.S. 109 (1959), the Court stated, “The scope of the power of inquiry, in short, is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution.” *Id.* at 111. In *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975), the Court rejected the notion that a legislative inquiry must culminate in a specific bill to be legitimate, holding that “[t]o be a valid legislative inquiry there need be no predictable end result.” *Id.* at 509. The Supreme Court thus has consistently recognized that Congressional oversight for a valid legislative purpose is a core constitutionally protected function.

The CRS’s own *Congressional Oversight Manual*, the basic reference work that Congress commissions and relies upon, similarly describes vigilant oversight of administration as important as lawmaking. “Congress’s legislative role does not end when it passes legislation,” the *Manual* says. “Oversight is fundamental to make sure

that laws are working as intended and are being administered in an effective, efficient, and economical manner. The information that oversight can bring to Congress is essential as the body grapples with the complexities of American government and society.” CRS, *Congressional Oversight Manual*, Rep. No. RL30240, updated March 27, 2026, Introduction (no page number).

This Court’s *en banc* decision in *Comm. on the Judiciary v. McGahn*, 968 F.3d 755 (D.C. Cir. 2020), recognizes this principle. The Court held in that case that a House committee suffers a judicially cognizable injury when the executive branch defies a subpoena for testimony. It observed, “Congress began using its investigative powers from the earliest days of the Republic to investigate national problems and probe for possible federal solutions.” *Id.* at 764. The Court also said that the Supreme Court “has recently emphasized that ‘[u]nless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served.’ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 865 (2020) (quotation omitted).” The executive’s failure to comply with a congressional oversight demand

therefore is a concrete harm for which Congress may seek a remedy in federal court.

The authority of individual Members to conduct oversight likewise has been recognized based on their constitutional role. In *Murphy v. Department of the Army*, 613 F.2d 1151 (D.C. Cir. 1979), this Court addressed a dispute over the confidentiality of a document the Army had provided to an individual Member of Congress under the Freedom of Information Act (FOIA). The Court held that disclosure to a Member did not waive exemption from disclosure to members of the general public under FOIA, because it fell within Congress's right under the statute to receive information not available to the general public. Specifically, FOIA says that the statute "is not authority to withhold information from Congress." 5 U.S.C. 552(d). The Court rejected the claim that this right was held by Congress rather than an individual Member. It stated that, while some activities of Congress are conducted by committees, "[i]n other respects, however, the legislature acts through its individual Members. All Members have a constitutionally recognized status entitling them to share in general

congressional powers and responsibilities, many of them requiring access to executive branch information.” 613 F.2d at 1157.

The Court further said that each Member “participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.” *Id.* While *Murphy* interpreted the FOIA, it is significant because it locates the individual Member’s informational entitlement not in a delegation from a committee, but directly in the Member’s constitutional status as a Member — a status every Member holds independently of committee assignment or chairmanship.

Consistent with this understanding, the CRS says, “individual Members possess an implicit constitutional responsibility to conduct oversight of the executive branch and inform themselves of matters of legislative importance.” CRS, *Site Visits, Information Gathering, and Oversight by Members of Congress*, November 21, 2025, at 2.

Additionally, the CRS notes, “Members of both chambers and both parties have long engaged in their own efforts to inform themselves of agency activity and confirm that a given executive agency is

implementing the law in a way that comports with that Member’s view of the statutory powers that Congress has entrusted to that agency.” *Id.* at 1.

Furthermore, oversight is not simply a power but a responsibility: “Quite as important as legislation is vigilant oversight of administration.” Woodrow Wilson, *Congressional Government: A Study in American Politics* (1885), excerpted at Teaching American History, Congressional Government: House of Representatives, <https://teachingamericanhistory.org/document/congressional-government/>. Wilson continued:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents.

Id.

Senator Charles Grassley has emphasized the responsibility of individual Members in fulfilling this obligation: “Oversight isn’t just the responsibilities of committees or their chairmen,” but also “is the responsibility of each individual member of congress.” Remarks, Sen. Comm. on the Judiciary, *Sen. Charles Grassley on the Importance and Responsibility of Congressional Oversight* (June 25, 2018),

<https://www.judiciary.senate.gov/grassley-on-the-importance-and-responsibility-of-congressional-oversight>. He elaborated, “Whether in the majority or minority, each member is a constitutional officer. He or she was elected to represent and cast votes in the interests of their constituents. And each member needs accurate information from the executive branch in order to make informed decisions on all sorts of matters.” *Id.* Oversight of immigration detention conditions that Member Plaintiffs in this case sought to observe falls squarely within this responsibility. Congress’s explicit prohibition of advance notice in § 527 reflects an understanding that it expects individual Members to visit ICE detention facilities to fulfill this responsibility.

Under longstanding historical practice, the executive branch aims to accommodate requests for information from individual Members seeking to fulfill their legislative responsibilities.¹ Enforcing a request

¹ In 2017, the Department of Justice’s Office of Legal Counsel (OLC) issued an opinion purporting to deny the inherent authority of individual Members to obtain information from the executive branch. 41 Op. O.L.C. 76 (2017). <https://www.justice.gov/olc/file/966326/dl>. The opinion, however, did not discuss *Murphy*. Senator Grassley objected. In response, President Trump’s nominee to head OLC, Steven Engel, wrote to Senator Grassley and said, citing *Murphy*, “I believe that individual Members are ‘authorized’ to seek such information in their roles as constitutional officers.” Letter from Steven Engel to the

for information, however, generally requires some delegation from the House or Senate. For subpoenas, for instance, House and Senate rules delegate that power to committees. In this case, delegation occurred through § 527, which is even more powerful than a unicameral delegation because it has complied with the Constitution's requirements for legislation: bicameralism and presentment. U.S. CONST., ART. I, § 7.

In-person oversight has a distinct historical pedigree of its own, dating back to the Revolutionary War. That history confirms that facility inspection has long been understood as a routine exercise of the oversight function, not a novel form of congressional activity. In 1777, for instance, a congressional committee visited the Continental Army camp at Valley Forge to assess the conditions there. *See* 9 Journals of

Honorable Charles Grassley, Chairman, Committee on the Judiciary, United States Senate, June 23, 2017, at 2, <https://www.judiciary.senate.gov/imo/media/doc/2017-07-19%20CEG%20on%20Engel%20Nomination%20for%20the%20Record.pdf>. *See also* 43 Op. O.L.C. 42, 43 (2019), <https://www.justice.gov/olc/file/1356251/dl> (“the Executive Branch’s appropriate respect for the legislative functions of individual members supports Executive Branch officials’ practice of giving due weight and sympathetic consideration to those requests.”). In any event, in this case Member Plaintiffs rely on an explicit delegation of oversight authority from Congress under § 527.

the Continental Congress, 1774–1789, at 1029–31 (Worthington C. Ford ed., 1907). The committee afterward adopted measures to determine how best to reinforce the forces, including providing adequate housing during the winter. *Id.*

During the Civil War, Members of the Joint Committee on the Conduct of the War, created in December 1861, traveled to inspect conditions directly. On December 4, 1862, a subcommittee visited Camp Convalescent, a military hospital camp in Alexandria, Virginia. The visiting Members met afterward with Secretary of War Edwin Stanton to demand improved conditions, the discharge of soldiers too ill or injured to serve, and the appointment of a dedicated hospital inspector. Levin Ctr. for Oversight & Democracy, *Joint Committee on the Conduct of the Civil War* (2025), <https://levin-center.org/joint-committee-on-the-conduct-of-the-civil-war/> (last visited July 25, 2026). On May 6, 1864, committee Members traveled to Annapolis, Maryland, to assess the condition of Union prisoners of war who had just been released by the Confederacy. The Members found them ill, malnourished, and abused, which led to the committee’s findings on the treatment of Union captives. *Id.*

Examples of in-person oversight during World War II include a 1943 bipartisan group of Senators from the Truman Committee and the Senate Committee on Military Affairs who undertook a 65-day, 10,000-mile inspection tour of American military installations around the world, to assess the treatment of wounded service members. *See* U.S. Senate, Senate Stories, *A World War II Combat Tour for Senators* (2022), <https://www.senate.gov/artandhistory/senate-stories/world-war-II-combat-tour.htm> (last visited July 25, 2026). The committee's successor under Senator James Mead continued the activity into 1945, personally inspecting military bases in the European theater as the war concluded. *See* U.S. Senate, Senate Stories, *European-African Trip of Subcommittee of Mead Committee* (2022), Truman Library Footage, <https://www.senate.gov/artandhistory/senate-stories/videos/mead-committee-1945-truman-library.htm> (last visited July 25, 2026).

Individual Members also have engaged in such in-person oversight. Senator Harry Truman's investigation of national-defense spending began not with activity by a committee but with an unannounced, 10,000-mile personal tour of military bases and defense

plants that Truman undertook on his own initiative in early 1941. Only afterward did Truman urge the Senate to authorize a full committee.

Levin Ctr. for Oversight & Democracy, *Harry Truman and the Investigation of Waste, Fraud, & Abuse in World War II* (2025),

<https://levin-center.org/harry-truman-and-the-investigation-of-waste-fraud-abuse-in-world-war-ii/> (last visited July 25, 2026).

Section 527 was enacted to explicitly authorize such individual Member visits in the face of resistance by the executive branch. In June 2018, Senator Jeff Merkley traveled to a former Walmart converted into an immigration detention facility for children, Casa Padre, in Brownsville, Texas. He attempted to enter the facility without a committee delegation or advance authorization. Facility staff refused him entry and summoned local police. *See CBS News, Sen. Jeff Merkley denied entry into one migrant detention facility, claims he saw kids caged in another* (June 4, 2018),

<https://www.cbsnews.com/news/senator-jeff-merkley-barred-brownsville-texas-detention-center-refugee-children-2018-06-04/>. The incident prompted a Member of the House, Representative Joaquin Castro, to announce that he would introduce

legislation guaranteeing congressional access to such facilities, explaining that Members “have the ability to inspect these facilities” because they are “charged with overseeing the function of government agencies.” Texas Tribune, *U.S. Rep. Joaquin Castro wants to guarantee members of Congress access to immigrant detention centers* (June 6, 2018), <https://www.texastribune.org/2018/06/06/us-rep-joaquin-castro-texas-immigrant-detention-facilities/>.

Thus, the legislative provision at issue was born. Beginning with appropriations legislation enacted in 2019 and continuing through the current version of § 527 discussed above, Congress has repeatedly enacted and progressively strengthened a statutory guarantee of individual Member access to DHS detention facilities — expanding the provision from facilities housing only unaccompanied minors to all DHS detention facilities and eventually adding the explicit no-prior-notice guarantee. See CRS, *Site Visits, Information Gathering, and Oversight by Members of Congress* (2025) (tracing the statute’s legislative evolution from 2019 forward). These appropriations acts have been enacted by Congresses and Presidents of both parties.

Section 527 bars DHS from using appropriated funds to prevent a listed set of persons — including, by name, “a Member of Congress” — from entering, for oversight purposes, any DHS facility used to detain or otherwise house aliens. Pub. L. No. 118-47, div. C, tit. V, § 527, 138 Stat. 460 (Mar 23, 2024).

Critically, the statute further states expressly that nothing in the section may be construed to require a Member of Congress to provide prior notice of an intent to enter such a facility, even as it permits DHS to require congressional staff to give twenty-four hours’ notice. *Id.*

This asymmetry between access for Members and for staff reflects Congress’s deliberate judgment that the value of a Member’s visit lies precisely in being unannounced, since advance warning creates the opportunity to stage conditions for visits that would not otherwise be observed. Section 527(e) reflects concern about the latter possibility by prohibiting the use of appropriated funds “to make any temporary modification at any such facility that in any way alters what is observed by a visiting Member of Congress . . . compared to what would be observed in the absence of such modification.” Indeed, a House Resolution, H. Res. 546, 119th Cong. (submitted in House and referred

to House Judiciary Committee, June 25, 2025), emphasized that “unannounced visits are the only practical way to ensure that Department of Homeland Security employees and contractors do not alter the facilities before Members of Congress visit.” *Id.* at 4.

A consistent line of judicial precedent therefore confirms that oversight of executive administration, such as that embodied in § 527, is a core and constitutionally protected legislative function. Individual Members not only have inherent authority and an obligation of office to engage in such oversight, but § 527 explicitly delegates it to them based on the important role that Members play performing this function.

Just as Congress chose to delegate subpoena authority to committees through House and Senate rules, it decided to delegate specific authority to individual Members of Congress to access DHS detention facilities on demand. It is entirely within Congress’s authority to empower, and rely on, individual Members, as constitutional officers attuned to actions in their districts and states, to strengthen the exercise and scope of Congress’s oversight authority.

Treating individual Member facility site visits as merely permissive, subject to committee gatekeeping, chair authorization, or,

as attempted here, agency-imposed notice periods, would defeat the specific purpose for which § 527 was enacted. A detention facility houses individuals in real time; conditions observed today may not exist next week, let alone after a seven-day notice period of delay while a Member seeks committee authorization. Oversight of exactly this kind exists to expose the corruption, inefficiency, waste, or abuse in the administration of federal programs that *Watkins v. United States* described, 354 U.S. at 187, as they actually operate, not as an agency might arrange for them to appear given advance warning. Treating an individual Member's statutory right of unannounced access as a scheduled, negotiable courtesy is fundamentally at odds with Congress's intent that Member access without advance notice be obligatory, enforceable, and immediate.

II. The Ability to Conduct Congressional Oversight Visits Without Prior Notice is Critical

Congress has long recognized the need for unannounced inspections of certain facilities, as demonstrated by the fact that it has passed several laws allowing and sometimes requiring such inspections. These include, for instance, the Federal Mine Safety and Health Act (MSHA); the Surface Mining Control and Reclamation Act; and the

Nursing Homes Reform Act (NHRA). *See* 30 U.S.C. § 813(a); 30 U.S.C. § 1267(b)(3); 42 U.S.C. § 1395i-3(g)(2)(A).

Furthermore, regulatory agencies have noted the importance of unannounced visits in gathering accurate information. For instance, the Center for Medicare & Medicaid Services (CMS), which administers the NHRA, has emphasized that unannounced surveys increase “the probability that the surveys will observe conditions and care processes that are typically present.” CMS, S&C-09-41, *Policy Regarding Unannounced Surveys* (2009), <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/policy-and-memos-to-states-and-regions-items/cms1223113>.

Similarly, the United States Department of Agriculture, in its 2024 “Instruction [for] Unannounced Inspections,” stated, “[u]nannounced inspections serve the dual purpose of giving the certifying agent the opportunity to observe the activities of a specific operation without the advance notice, as provided in the annual monitoring inspections, and acting as a deterrent to other operations who may consider violating USDA regulations.” USDA, *Instruction:*

Unannounced Inspections (March 20, 2024)

<https://www.ams.usda.gov/sites/default/files/media/2609.pdf>.

The Supreme Court has emphasized the necessity of unannounced regulatory visits, noting that “if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections [of firearms dealers’ premises] are essential.” *United States v. Biswell*, 406 U.S. 311, 316 (1972); *see also Donovan v. Dewey*, 452 U.S. 594, 603 (1981) (unannounced inspections under MSHA are essential for safety enforcement). Several federal appellate courts also have recognized that unannounced visits are central to some legislation and prevent concealment of subpar conditions. *See Western Oilfields Supply Co. v. Sec’y of Labor*, 946 F.3d 584, 589 (D.C. Cir. 2020) (“it is hard to understand what good [a no-prior-notice] provision would do if any [mine] operator could delay a surprise inspection by blocking it without penalty”); *KenAmerican Resources, Inc. v. Sec’y of Labor*, 33 F.4th 884, 890 (6th Cir. 2022) (“Congress saw the advance-notice prohibition as important enough to the [MSHA] statutory scheme to warrant both civil and criminal penalties”); *Marshall v. Stoudt’s Ferry Prep. Co.*, 602 F.2d 589, 593–94 (3d Cir. 1979) (citing the legislative history to establish

Congressional intent that “prior notice of [mine] inspections would undercut the Act’s objectives because of the ease with which safety or health hazards could be concealed”).

Unannounced oversight visits are especially important in the current context because ICE has previously attempted to conceal conditions at detention facilities. For instance, in May 2018, DHS’s Inspector General (IG) conducted an unannounced inspection of an ICE facility and found objectionable conditions that, prior to a scheduled inspection two weeks later by the Nakamoto Group (an ICE contractor that engages in announced inspections of ICE facilities), appeared to have been ameliorated. A former detainee later stated that guards had instructed individuals to clean their cells and fix the offending condition the day before the scheduled inspection. Katherine Hawkins, *Outsourced Oversight*, POGO [Project on Government Oversight] Investigates (March 12, 2019), the (detainees ordered to take down bedsheets that were hung for privacy; such bedsheets had been used for suicide in the past, were referred to as “nooses” by the guards and other detainees, and had been noted by the IG’s unannounced visit).

In September 2019, a few months before the initial passage of the progenitor to § 527, the House Subcommittee on Oversight, Management, and Accountability of the Committee on Homeland Security, held a hearing to discuss ICE facility oversight. *See House Subcommittee Hearing, Oversight of ICE Detention Facilities: Is DHS Doing Enough?* (September 26, 2019), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg40455/pdf/CHRG-116hhrg40455.pdf>. During that hearing, Representative Xochitl Torres Small noted that “[c]ommittee staff recently visited a few ICE detention facilities in Mississippi and Louisiana. Staff heard from detainees that prior to their arrival, walls were painted, new curtains were put up, and even flower beds were placed outside.” *Id.* at 24.

Additionally, Representative Torres Small examined Katherine Hawkins, a senior legal analyst for the POGO, as well as Jenni Nakamoto, Founder and President of the Nakamoto Group. Ms. Hawkins testified that, with respect to scheduled visits, there was a “tendency to clean things up” before inspectors arrived, that “[o]ther things being equal, it is better to conduct an unannounced visit,” and that the Office of the Inspector General had conducted unannounced

visits that had been valuable in bringing poor conditions to light. *Id.* Ms. Nakamoto, when asked whether unannounced visits more regularly helped determine the true conditions of the facility, testified, “I think so.” *Id.* at 25. In its recommendations to the committee, the Project on Government Oversight stated, in relevant part, that Members of Congress should visit detention facilities, and that Congress should “pass legislation ensuring that Members cannot be denied access to immigration detention facilities.” *Id.* at 16.

A 2020 Majority Staff Report reflected that announced oversight visits by committee staff found evidence of recent remedial activities designed to alleviate conditions that might have concerned congressional staff. Majority Staff Report, H. Comm. on Homeland Sec., *ICE Detention Facilities: Failing to Meet Basic Standards of Care*, 4-5 (2020), <https://perma.cc/W9TG-URSC>. These visits began during Summer 2019, continued through December, and included visits to facilities in California and Maryland. *Id.* The California facility had been recently painted; a Louisiana facility had had a “major cleanup” prior to committee staff’s arrival; and in one facility, guards returned individuals from solitary to the general population “just prior” to the

oversight visit. *Id.* at 5. The report also noted that varying levels of access were granted at different ICE facilities and that some facilities put up roadblocks. “During site visits, the Committee faced varying degrees of cooperation with respect to access to the facilities and detainees.” *Id.*

Another 2020 subcommittee report identified deficient sanitation practices, poor handling of infectious diseases, systemic health and safety issues at for-profit immigration detention facilities that lacked proper oversight, and ICE failures to release investigative reports on detainee deaths. Staff of H. Comm. on Oversight & Reform and Subcomm. on Civil Rights & Civil Liberties, *The Trump Administration’s Mistreatment of Detained Immigrants* (2020), <https://perma.cc/37NF-SFBS>.

Quickly changing and rapidly deteriorating conditions are especially important to investigate in covered ICE facilities because such conditions can affect the medical well-being of the inhabitants of those facilities. An ACLU article, while discussing deaths in ICE facilities so far in 2026, noted that recent “deaths span multiple facilities with documented medical failures and unsafe conditions...In

many cases advocates and medical experts have found these deaths to be preventable.” Haddy Gassama, *Deaths in Detention: ICE is Rapidly Expanding Detention Camps into Warehouses Despite Record Deaths*, ACLU (April 28, 2026), <https://www.aclu.org/news/immigrants-rights/deaths-in-detention-ice-is-rapidly-expanding-detention-camps-into-warehouses-despite-record-deaths>.

Section 527’s provision for unannounced oversight visits by members of Congress was intended to prevent any effort to hide poor conditions and could very well save lives. Indeed, § 527 sometimes permits Members of Congress to observe conditions detrimental to detainees even before the detainees’ own families or attorneys know where their family members or clients are. *See, e.g., Suri v. Trump*, No. 25-1560, 2026 WL 2123557, at *2 (4th Cir. July 23, 2026) (ICE transferred a detainee to multiple, widely dispersed detention centers nationwide before his family and attorney knew where he was).

Congress recognized the importance of unannounced visits when crafting § 527 and its predecessors. It issued these laws to address inhumane conditions, such as those widely reported at ICE facilities, and to prevent ICE actions to thwart Members of Congress from seeing

what is really happening in these facilities. This is especially crucial now, as ICE facilities hold more detainees than ever.

III. Plaintiffs Have Suffered a Particularized Personal Injury in this Case

In *Raines v. Byrd*, the Supreme Court held that standing for Members of Congress requires that they establish that they have suffered an injury that is “personal, particularized, concrete, and otherwise judicially cognizable.” 521 U.S. 811, 820 (1997). In § 527, Congress granted to each Member of Congress a right of access to ICE detention and housing facilities without advance notice. Member Plaintiffs attempted to exercise that right, but ICE repeatedly denied them entry in violation of the statute. Their injury therefore is personal and particular to each one of them, and is not an institutional injury to Congress as a whole. While non-Plaintiff Members have the same right of access, those who have not sought to exercise that right and been denied it cannot claim any personal particularized injury.

The government’s claim to the contrary rests on two misconceptions. First, it argues that Members seek to redress an institutional injury to Congress because all Members possess the right that has been violated. Second, it asserts that Members’ claims cannot

be personal because they rest on their membership in Congress. Neither claim withstands scrutiny.

First, § 527 provides all Members a right of access, but only those who have sought to exercise and have been denied it can claim injury. The Plaintiff Members assert a personal, particularized injury caused by this denial, not an institutional injury to Congress as a whole. The fact that non-Plaintiff Members also possess a right under § 527 does not convert the Plaintiff Members' individual harms into an institutional one. It is not simply possession of the right that provides standing for Member Plaintiffs, but attempted exercise and denial of it. As the district court said, “[n]ot all Members of Congress could bring this suit.” *Neguse v. ICE*, 813 F. Supp. 3d 45, 79 (D.D.C. 2025). If a Member who had not sought and been denied access sued ICE to challenge its seven-day notice policy, they would lack standing because they suffered no individual injury. Unlike Member Plaintiffs, they would merely be asserting Congress's institutional interest in avoiding dilution of its power due to the ICE policy's violation of § 527. Such an interest would be an “abstract dilution of institutional legislative power” that was not particular to the plaintiff. *Raines*, 521 U.S. at 826.

The injury in this case therefore is distinguishable from the ones in cases denying standing such as *Raines* (legality of the Line Item Veto); *Blumenthal v. Trump*, 949 F.3d 14 (D.C. Cir. 2020) (failure to seek Congressional consent to receive foreign emoluments); *Chenoweth v. Clinton*, 181 F.3d 112 (D.C. Cir. 1999) (alleging executive order deprived Congress of opportunity for debate and consideration of legislation on subject of order); *Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir. 2000) (alleged violation of War Powers Clause and War Powers Resolution). Because the injuries in these cases were to the interests of Congress as a whole, they were injuries shared not only by the plaintiffs, but also the “members of the Congress who did not join the lawsuit[s],” and, therefore, could not support standing for individual legislators. But here, while the right in this case is shared with all members of Congress, the injury is not. As the district court below held, “while any Member of Congress may have the ability to seek access under § 527, they only become injured for Article III purposes when those rights have been stymied.” 813 F. Supp. 3d at 79.

As this Court noted in *McGahn*, 968 F.3d at 767, referring to the Supreme Court’s decision on legislative standing in *Va. House of*

Delegates v. Bethune-Hill, 587 U.S. 658 (2019), “[T]he [Supreme] Court’s focus on ‘mismatch’ is an inquiry into whether the claimed injury is personal to the plaintiff or else shared by a larger group of which the plaintiff is only a component—in other words, whether the injury is particularized.” There is no such mismatch in this case: only individual Members who have been denied access are seeking a remedy for this denial.

The government also claims that Plaintiff Members’ injury in this case cannot be “personal” because it rests on their membership in Congress. It says, “[a]s the district court noted, the Members ‘stress the importance of unannounced visits to their duties as Members of Congress, including their duties in drafting and passing legislation, timely serving constituents impacted by the Administration’s enforcement policies, and conducting oversight of government operations.’ Any rights thus attach to the Members in their capacities as members of Congress, which is why they sued in that capacity.” Brief for Appellant, at 33-34 (citations to Joint Appendix omitted). Because of this, the government argues, Members therefore “assert no private-capacity right to inspect ICE facilities.” *Id.* at 35

The government thus assumes that in order to assert a “personal” right, Members cannot assert a right based on membership in Congress but must do so as private citizens. This argument mistakenly assumes that “personal” is the opposite of “private.” As the district court clarified, however, “the key inquiry under *Raines* and the subsequent cases is whether the alleged injury is ‘personal’ or ‘institutional.’” 813 F. Supp. 3d at 78 (quoting *Campbell*, 203 F.3d at 20, 21 n.2) (emphasis added).

The effect of the government’s argument would be that individual Members of Congress *never* have standing to sue, since being in office would preclude having *any* private interest. This ignores that *Raines* itself said that a legislator could have standing based on a personal injury if, for instance, they had “been singled out for specially unfavorable treatment as opposed to other Members,” *Raines*, 521 U.S. at 821, or if their vote was “denied its full validity in relation to the votes of their colleagues.” *Id.* at 824 n.7. Similarly, in *Coleman v. Miller*, 307 U.S. 433 (1939), the Supreme Court found that 20 individual legislators who had voted against ratification of an amendment to the U.S. Constitution had standing to sue based on effective nullification of

their votes due to a tie-breaking vote cast by the Lieutenant Governor in favor of ratification. The injury to these legislators was loss of the effectiveness of their particular votes, which was not shared by colleagues who had voted in favor of the amendment. This obviously was an injury to the individuals in their official capacity as legislators, not as private persons. The Court nevertheless held that the injury was sufficiently personal and particularized to sustain standing.

The same was true in *Powell v. McCormack*, 395 U.S. 486 (1969), where the Court held that an individual Member of Congress had standing to challenge his exclusion from the House of Representatives. The Court in *Raines* said that Plaintiffs in that case were distinguishable from the one in *Powell* in that they had not been singled out for unfavorable treatment compared to other Members of Congress, nor had they been “deprived of something to which they *personally* are entitled.” *Raines*, 521 U.S. at 821 (emphasis in original). These individual personal injuries in *Powell* obviously were suffered only in Plaintiff’s official capacity as a Member of Congress. *See also Kerr v. Hickenlooper*, 824 F.3d 1207, 1216 (10th Cir. 2016) (“personal injury” suffered by an “individual legislator” could be based on the claim

that a “particular subset of legislators was barred from exercising their right to vote on bills”).

In sum, membership in Congress is the source of a right under § 527, but only individual Members who have sought to exercise and have been denied that right have suffered an injury. This injury is personal rather than institutional, because not every Member has suffered it, and because Plaintiffs are not claiming injury in the form of the dilution of Congress’s power as a body. Member Plaintiffs’ injuries therefore are sufficiently particularized and personal to establish standing.

CONCLUSION

For the foregoing reasons, we urge the Court to affirm the district court's decision preliminarily enjoining DHS from applying its policy requiring a Member of Congress to provide seven-days' notice of their intent to visit, for purposes of oversight, any facility operated by or for DHS to detain or otherwise house noncitizens.

Dated: August 18, 2026

Respectfully submitted

/s/ Michael D. Bergman

MICHAEL D. BERGMAN

(301) 908-5035

mdbergman1@gmail.com

Counsel for *Amicus Curiae*

Lawyers Defending

American Democracy

P.O. BOX 1922

FRAMINGHAM, MA 01701

CERTIFICATE OF COMPLIANCE

This corrected brief complies with the type-volume limitation of FED. R. APP. P. 29(a)(5) and 32(a)(7) because it contains 5,667 words, according to the word count feature reported in Microsoft Word, excluding the parts of the brief exempted by FED. R. APP. P. 32(f) and Circuit Rule 32(e)(1).

This corrected brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook in 14-point font.

Dated: August 18, 2026

/s/ Michael D. Bergman
MICHAEL D. BERGMAN

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing corrected brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on August 18, 2026. I also hereby certify that I filed the original brief in the same manner on July 31, 2026.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. Any non-CM/ECF participants, as shown on the Notice of Electronic Filing, will be served by First-Class Mail, postage prepaid.

Dated: August 18, 2026

/s/ Michael D. Bergman
MICHAEL D. BERGMAN