ORAL ARGUMENT NOT YET SCHEDULED
No. 26-5077

United States Court of Appeals for the District of Columbia Circuit

JASON LEOPOLD, *et al.*,
Plaintiffs–Appellant,
BUZZFEED, INC.,
Plaintiff–Appellant,
v.
UNITED STATES DEPARTMENT OF JUSTICE,
Defendant–Appellee,

On Appeal from the United States District Court for the District of Columbia (No. 1-19-cv-03192) (Hon. Rudolph Contreras)

BRIEF OF THE BANK POLICY INSTITUTE, THE AMERICAN BANKERS ASSOCIATION, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICI CURIAE SUPPORTING APPELLEE AND AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), amici curiae the Bank Policy Institute ("BPI"), the American Bankers Association ("ABA"), and the Chamber of Commerce of the United States of American ("Chamber"; collectively, "*Amici*") certify as follows:

A. Parties and Amici

BPI, the ABA, and the Chamber are participating as amici curiae. All other parties appearing to date in this Court are referenced in the Brief for Appellee, Doc. 2184469, filed on July 22, 2026.

B. Rulings Under Review

The ruling under review is listed in the Brief for Appellee, Doc. 2184469, filed on July 22, 2026.

C. Related Cases

The related cases are listed in the Brief for Appellee, Doc. 2184469, filed on July 22, 2026.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici* state that they are not subsidiaries of any other corporation. *Amici* are nonprofit trade groups and have no shares or securities that are publicly traded.

Pursuant to D.C. Circuit Rule 26.1(b), amici identify below their general nature and purpose, insofar as relevant to this litigation:

BPI. BPI is a nonpartisan public policy, research, and advocacy group, that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to bank supervision and examination issues, anti-money laundering policy and the Bank Secrecy Act, and other key information security issues.

ABA. Established in 1875, the ABA is the united voice of America's $26.1 trillion banking industry, comprised of small, regional, and large national and State banks that safeguard nearly $20.5 trillion in deposits and extend more than $13.7 trillion in loans.

Chamber. The Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the Courts.

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GLOSSARY

ABA	American Bankers Association
Amici	BPI, ABA, Chamber, collectively
BPI	Bank Policy Institute
Buzzfeed	Plaintiffs-Appellant
Chamber	Chamber of Commerce of the United States of America
DOJ	U.S. Department of Justice
Federal Reserve	Federal Reserve Board
FOIA	Freedom of Information Act
HSBC	HSBC Holdings plc. and Subsidiaries
J.A.[#]	Joint Appendix
Monitor	Monitor Michael Cherkasky
Monitor Report	First Annual Follow-Up Review Report and Appendices
U.K. Regulator	United Kingdom's Financial Conduct Authority

INTEREST OF THE *AMICI CURIAE*

Amici respectfully submit this brief in support of Defendant-Appellee.[1]

Amici regularly file amicus curiae briefs in cases that, like this one, present questions that affect the U.S. banking and financial system, and in which its members have a direct interest in the outcome. *Amici*'s members have a deep-seated interest in an effective international bank regulatory system, which is essential to financial stability.

The proper scope of 5 U.S.C. § 552(b)(8) ("Exemption 8") is of particular importance to *amici* and its members. BPI's, the Chamber's, and ABA's member banks are supervised by federal, state, and foreign banking authorities and routinely provide these authorities with highly sensitive information in the course of these supervisory relationships. Preserving the confidentiality of this information from public disclosure under Exemption 8 safeguards banks from commercial, reputational, and security harms and facilitates the reciprocal exchange of information among domestic and foreign

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[1] The parties have consented to the filing of this *amici curiae* brief. *See* Fed. R. App. P. 29(a)(2). The undersigned counsel certify that no party's counsel authored this brief in whole or in part, and no party or party's counsel, or any other person, other than *amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E).

bank regulators. These protections, in turn, promote the stability and integrity of the broader financial system.

INTRODUCTION

This appeal presents a question of exceptional importance to the U.S. banking and financial system: whether a federal court may compel partial disclosure under the Freedom of Information Act ("FOIA") of a report prepared at the request of and for financial regulatory agencies, when doing so would erode key relationships—those between domestic and foreign agencies and between banks[2] and their regulators—on which effective financial regulation depends. The district court correctly answered no, and its judgment should be affirmed.

Congress enacted FOIA Exemption 8, 5 U.S.C. § 552(b)(8), to "safeguard the relationship between the banks and their supervising agencies" and "ensure the security of financial institutions." *Consumers Union of U.S., Inc.* v. *Heimann*, 589 F.2d 531, 534 (D.C. Cir. 1978). The report at issue ("Monitor Report") was prepared by an independent compliance monitor approved by the Department of Justice ("DOJ") pursuant to a deferred

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[2] As used herein, the term "bank" includes "financial institutions," which courts have construed broadly for FOIA purposes to encompass both banks and nonbank financial companies.

prosecution agreement between DOJ and HSBC Holdings plc. and its subsidiaries ("HSBC"). The Monitor Report contains bank supervisory material from HSBC, the Board of Governors of the Federal Reserve System ("Federal Reserve"), DOJ, the United Kingdom's Financial Conduct Authority ("U.K. Regulator"), the Hong Kong Monetary Authority, and the Central Bank of Malaysia. Compelling the Monitor Report's disclosure in any part would foreseeably harm the interests protected by Exemption 8 in profound and lasting ways that redaction cannot cure.

This harm is foreseeable because of how bank supervision operates. Effective supervision requires a continuous, candid exchange between regulated institutions and their examiners, and for banks with a global reach, among numerous host and home country supervisory authorities. As this Court has long recognized, this dialogue works when participants feel free to speak candidly: examiners must be able to raise preliminary concerns, banks must be willing to disclose weaknesses or risks, and regulators in different jurisdictions must be able to exchange the sensitive information needed to have a complete view of a global institution's condition. *See In re Subpoena Served Upon Comptroller of the Currency, & Sec'y of Bd. of Governors of Fed. Rsrv. Sys.*, 967 F.2d 630, 633 (D.C. Cir. 1992). The cornerstone of the protection Exemption 8 affords is banks' reliable expectation that supervisory materials meeting the criteria in Exemption 8 will be exempt from disclosure under FOIA, and not be publicly exposed, including to competitors and even to malicious actors who seek to exploit bank information. Congress, this Court, federal banking agencies, international supervisory authorities, and foreign regulators have all also recognized the importance of credible promises of confidentiality to preserving effective cross-border regulatory cooperation.

Reversal would undermine this expectation, with serious effects. Banks and examiners would predictably sanitize their discussions, refrain from difficult conversations, and avoid creating written records. Foreign supervisors would likewise narrow what information they share, delay disclosure, or refuse to cooperate altogether—as the U.K. Regulator has warned in this very case. Exemption 8 "was drawn to protect not simply each individual bank but the integrity of financial institutions as an industry." *Gregory* v. *FDIC*, 631 F.2d 896, 898 (D.C. Cir. 1980). Because the consequences of reversal would make it harder for regulators to coordinate their responses and protect an interconnected financial system from instability, it would cause the very harms Congress enacted Exemption 8 to prevent.

This brief proceeds in three parts. *First*, it explains how the global bank supervision system operates, including the critical role played by overlapping, cooperative supervision of international banks by home- and host-country authorities and the highly sensitive information generated and exchanged through this network. *Second*, it details the concrete reputational, competitive, legal, and operational harms to banks that Exemption 8 is designed to prevent, as well as the negative effect that public disclosure would have on information sharing among domestic and foreign authorities. *Third*, it explains why the district court correctly concluded that even partial disclosure of the Monitor Report would cause foreseeable harm to the coordinated international bank supervisory system that cannot be cured by segregation and redaction. Because a contrary ruling would undermine the framework on which financial institutions and effective international bank supervision depends, this Court should affirm.

ARGUMENT

I. INTERNATIONAL BANKS ARE SUBJECT TO MULTIPLE OVERLAPPING SUPERVISORY RELATIONSHIPS PURSUANT TO WHICH HIGHLY SENSITIVE INFORMATION IS EXCHANGED.

Modern international banks do not operate under the purview of a single regulator. Their activities are supervised simultaneously by multiple authorities around the globe, each of which possesses different jurisdiction, responsibilities, and information. Effective oversight is facilitated by continuing coordination and information exchange among these authorities.

Cross-border supervisory relationships, including the monitorship at issue here, operate within this framework. Independent monitors are generally appointed as part of a government resolution to provide an external assessment of whether the institution is implementing required remediation measures, whether its compliance controls are operating effectively, and whether further reforms are needed. Here, the Monitor was jointly retained by, and worked closely with, the DOJ, the Federal Reserve, and the U.K. Regulator. This monitorship illustrates both the importance of cross-border regulator cooperation and the sensitivity of the information generated and exchanged throughout the process.

A. International Banks Are Subject to Concurrent Home- and Host-Country Supervision.

The cross-border nature of the operations of international banks results in the corresponding need to allocate and coordinate supervisory responsibility among multiple domestic and foreign authorities. Home-country authorities generally supervise the banking organization "on a consolidated basis," while host-country authorities supervise branches, subsidiaries, and activities within their jurisdiction. Katia D'Hulster, *Cross Border Banking Supervision: Incentive Conflicts in Supervisory Info. Sharing Between Home and Host Supervisors* 12 (World Bank Pol'y Rsch. Working Paper No. 5871, Nov. 2011).

As a result, internationally active U.S. banks maintain extensive relationships with both foreign supervisory authorities and their U.S. regulators. Likewise, internationally active non-U.S. banks and their home country regulators maintain extensive relationships with U.S. regulators with jurisdiction over the U.S. banking presence of the non-U.S. bank. These relationships encompass licensing and authorization, prudential and conduct supervision, anti-money laundering and sanctions compliance, consumer protection, data regulation, examinations, supervisory colleges,[3] coordinated risk assessments, and enforcement and remediation. *See, e.g.*, Richard H. Neiman, *Effective Cross-Border Supervision: From Imperative to Implementation*, in Current Devs. in Monetary & Fin. L., 391, 396-97 (Int'l Monetary Fund 2013). These relationships are ongoing rather than episodic and generate a continuous exchange of sensitive information. Mark Swinburne et al., *The Globalization of Fin. Insts. and Its Implications for Fin. Stability*, in Glob. Fin. Stability Rep.: Mkt. Devs. and Issues 98, 118-19 (Int'l Monetary Fund 2007). It is within this regulatory construct that international banks whose home jurisdictions are outside the United States—like HSBC here—are supervised comprehensively by their home-country regulators and by relevant U.S. authorities for their U.S. operations. *See, e.g.*, 12 C.F.R. § 211.24(a)(2)(i)(A) (2026) (permitting foreign banks to establish offices in the United States "provided that the [Federal Reserve] Board has previously determined the foreign bank to be subject to comprehensive

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[3] Supervisory colleges are "permanent [ ] structures for collaboration, coordination and information-sharing among the authorities responsible for and involved in the supervision of cross-border banking groups." Basel Comm. on Banking Supervision, *Princs. for Effective Supervisory Colleges* 1 (Bank for Int'l Settlements June 2014).

supervision or regulation on a consolidated basis by its home country supervisor”).

B. Consolidated Supervision Requires Coordination Among Home- and Host-Country Authorities.

Because home- and host-country authorities possess different information and responsibilities, they act on a coordinated basis and share information and insights about a global institution’s condition and operations. Consequently, it is widely accepted that “[t]he supervision of foreign banking establishments should be the joint responsibility of host and parent authorities.” Duncan Alford, *The Operation of Supervisory Colleges in EU Banking Supervision: A Case Study of Soft Law Becoming Hard Law*, 54 Int’l Law. 83, 86 (2021). When administered correctly, these cross-border supervisory arrangements should operate “as effectively *as if* there were a global supervisor.” Grp. of Thirty, *Global Institutions, National Supervision and Systemic Risk* 19 (1997).

Information sharing among regulators is central to this system. Cooperation—including the exchange of confidential supervisory information—enables authorities to compensate for the limits of their own information and jurisdiction. It allows them to identify risks that would be opaque if viewed solely through a jurisdictional lens, and permits authorities to exchange information, compare assessments, coordinate examinations and remediation, and respond to risks directly affecting different parts of global organizations. Accordingly, the Basel Committee on Banking Supervision, "the most important international standard-setting body in the field of financial regulation,"[4] has emphasized for decades the importance of both the flow of information "from the local banking activity to the home country supervisor" and vice versa to ensure "effective consolidated supervision." Basle Comm. on Banking Supervision & Offshore Grp. of Banking Supervisors, *The Supervision of Cross-Border Banking* 8 (Bank for Int'l Settlements Oct. 1996);[5] *see also* Basel Comm. on Banking Supervision, *Basel Core Principles for Effective Banking Supervision* princ. 13 (Bank for Int'l Settlements Sept. 2012), ¶ 40.30 (information sharing necessary "for effective supervision" of cross-border banks); Katia D'Hulster, *supra*, at 3 ("To exercise

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[4] Matteo Ortino, *The Basel Committee on Banking Supervision in the Post-crisis Int'l Governance of Banking Reg.: Continuity Despite Weakness*, in The Evolution Of Transnat'l Rule-Makers Through Crises 116, 117 (Panagiotis Delimatsis, Stephanie Bijlmakers & M. Konrad Borowicz eds., Cambridge Univ. Press 2023).

[5] The Basel Committee was formerly styled the "Basle Committee," reflecting the older English spelling of the city. It adopted the modern "Basel" spelling in 1999. This brief preserves the "Basle" form when citing pre-1999 publications.

consolidated supervision of a cross border financial group, the home supervisor thus must cooperate with its counterparts in other jurisdictions."). Absent such cooperation, because "national regulators represent national interests," this "misalignment of interests leads to suboptimal exchange of information and distorted intervention decisions." Thorsten Beck, *Regulatory Cooperation on Cross-Border Banking—Progress and Challenges After the Crisis*, 235 Nat'l Inst. Econ. Rev. R40, R43 (2016).

The monitorship at issue shows how this system of cross-border supervision operates and why the information contained in the Monitor Report is particularly sensitive. HSBC is subject to coordinated oversight by both U.S. and U.K. authorities, and the Monitor Report allowed regulators from both countries to gather and analyze the information they needed to fulfill their supervisory responsibilities, and to ensure that HSBC was complying with the terms of the various resolutions at issue. J.A.159 (Federal Reserve declaration that Monitor Report "functioned as a bank examination report"); J.A.320-21 (U.K. Regulator statement that information in the Monitor's Report "was collected and analyzed on [its] behalf" and "for . . . [its] use" to "fulfill its supervisory duties"). Further, the work of both nations' regulators was necessarily reflected in the Monitor's evaluation of HSBC's compliance and remediation across jurisdictions. *See* J.A.348 ("In preparing the Report, the Monitor worked with foreign regulators to gain access to 'confidential client information' in multiple jurisdictions . . . The Report 'reflects the Monitor's review, analysis, and summary' of this confidential information . . . .").

HSBC is no isolated example. Other recent bank remediation arrangements demonstrate similar cross-border coordination, and, with it, the necessary exchange of sensitive information. *See, e.g.*, Joint Cease and Desist Order Issued to BNP Paribas S.A., Bd. of Governors of the Fed. Rsrv. Sys. & Autorité de Contrôle Prudentiel et de Résolution (June 30, 2014) (requiring BNP Paribas to submit its global sanctions-compliance program and quarterly remediation reports to both the Federal Reserve and France's ACPR); Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Consent Order to Cease and Desist Against Credit Suisse (Dec. 16, 2009) (noting that the Swiss Financial Markets Supervisory Authority "has agreed to assist the Federal Reserve" in overseeing Credit Suisse's "compliance with U.S. economic sanctions requirements").

II. EXEMPTION 8 PROTECTS SUPERVISED INSTITUTIONS FROM THE HARMS OF PUBLIC DISCLOSURE OF SUPERVISORY INFORMATION AND SUPPORTS CROSS-BORDER INFORMATION SHARING.

Exemption 8 of FOIA protects the confidentiality of "matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. § 552(b)(8). An agency may withhold information protected by Exemption 8 if, among other requirements, it "reasonably foresees that disclosure would harm an interest protected by" that Exemption. 5 U.S.C. § 552(a)(8)(A)(i)(I).

Exemption 8 protects two distinct interests implicated here. *First*, it shields financial institutions from the commercial, reputational, operational, and security harms that would follow if sensitive internal information could become publicly available under FOIA. *Second*, in the cross-border supervision context, it enables domestic and foreign supervisory authorities to obtain information that neither could access alone. Both functions are critical, and Congress, this Court, federal banking agencies, and foreign regulators have all recognized the importance of Exemption 8 to preserving these interests.

A. Exemption 8 Protects Financial Institutions from the Concrete Harms Caused by Public Disclosure of Confidential Supervisory Information.

Exemption 8 shields financial institutions from the harms that would arise if sensitive, institution-specific supervisory information becomes publicly available under FOIA. Such material can include preliminary assessments, unresolved concerns, areas of vulnerability, proprietary business information, customer and transaction data, internal controls, technological systems, and ongoing remediation efforts. As Congress recognized when it drafted Exemption 8, "[t]his exemption is designed to [e]nsure the security and integrity of financial institutions." H. Rep. No. 1497, 89th Congress, 2nd Session, House Committee on Government Operations (May 9, 1966) (S. 1160) at 32. If released under FOIA, protected information could be republished and used without restriction by competitors, counterparties, the press, or malicious actors, subverting the very purposes of the supervisory process.

First, public disclosure of confidential supervisory information can inflict reputational harm and provoke distorted market reactions. Preliminary concerns may be mistaken for final findings, ongoing deficiencies, or evidence of broader financial weakness, prompting depositors, investors, rating agencies, or customers to act on an incomplete understanding of an institution's condition, with the further risk that action by any of these groups would precipitate action by others. Exemption 8 accordingly serves "to ensure the security of financial institutions by eliminating the risk that disclosure . . . might undermine public confidence and cause unwarranted runs on banks." *McKinley* v. *FDIC*, 744 F. Supp. 2d 128, 142–43 (D.D.C. 2010); *Nat'l Cmty. Reinvestment Coal.* v. *Nat'l Credit Union Admin.*, 290 F. Supp. 2d 124, 135 (D.D.C. 2003) (affirming that a key purpose of Exemption 8 is "to safeguard public confidence . . . which could be undermined by candid evaluations of financial institutions").

Second, disclosure can subject banks to competitive injury or even to operational and security risks. Supervisory materials often reveal nonpublic information about a bank's business strategy, operations, customers, risk profile, internal controls, deficiencies, resource allocation, and planned remediation. Competitors could exploit that information to target customers or take advantage of areas in which the bank is addressing weaknesses, and malicious actors could be provided a blueprint for attacking a bank and its customers. Congress was alerted to precisely the competitive risk in the hearings preceding FOIA's enactment. The OCC's Chief Counsel warned that making supervisory information available "to [a bank's] competitors and the general public" would "be grossly unfair and in violation of basic principles of competition" and would reasonably "make bankers most reluctant to cooperate with our examiners and seriously hamper the Comptroller in the exercise of his assigned duties." Hearings on the Administrative Procedure Act Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 88th Cong. 186 (1964). And in terms of malicious actors, the risk has been increased exponentially by cyber attacks.

Finally, the prospect of unrestricted disclosure—and the resulting injuries described above—will predictably make bank personnel more guarded in identifying weaknesses, memorializing tentative concerns, or discussing possible solutions with their supervisors. As this Court explained more than three decades ago, "[t]he success of the supervision . . . depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency." *In re Subpoena Served Upon Comptroller of the Currency*, 967 F.2d at 633-34 (discussing the basis for the bank examination privilege). Effective communication requires "[b]ank management [to] be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank." *Id.* at 634. Without the protections of Exemption

8, banks will struggle to address problems candidly knowing that sensitive discussions may later surface as public records under FOIA for commercial, adversarial, or reputational use against their interests.

In short, Exemption 8 serves a critical function: it guards against these consequences by ensuring that sensitive supervisory information is not available as a public record under FOIA.

B. Exemption 8 Facilitates Information Sharing Among Home- and Host-Country Supervisors.

Exemption 8's protections also encourage information sharing among home- and host-country bank supervisors. Home-country authorities depend on host-country authorities for information about local branches, subsidiaries, and activities, and host-country authorities depend on home-country authorities for information about the consolidated group, its governance, financial condition, and risks arising elsewhere in the organization. *Supra* Section I. Cross-border supervision is therefore dependent on information flowing freely in both directions—which in turn is facilitated by reliably ensuring application of Exemption 8.

Foreign (and U.S.) authorities have made clear that their willingness to exchange information depends on the receiving authority's ability to preserve confidentiality for the sending authority's disclosures. As one scholar of cross-border banking supervision has concluded, "confidentiality concerns" are among the principal factors that "exacerbate the obstacles to effective cross border cooperation." Katia D'Hulster, *supra*, at 12. The U.K. Regulator has said the same in this very case, warning that "the FCA itself may[ ] give greater consideration to, or indeed refuse to, provide reports or confidential information to overseas regulators (including those in the US) if the FCA perceive there is a risk that an outside party may seek to gain access to that information through foreign courts." J.A.323.

International supervisory principles reinforce the importance of the confidentiality interests Exemption 8 protects. The Basel Committee's guidance on the supervision of cross-border banking has long recommended that information sharing between home- and host-country supervisors operates within confidential "two-way flow[s]." Basle Comm. on Banking Supervision & Offshore Grp. of Banking Supervisors, *supra*, at 10; *see also* Basle Comm. on Banking Supervision, *Information Flows Between Banking Supervisory Authorities* (Supplement to the Concordat) pt. D(iii) (Bank for Int'l Settlements Apr. 1990) (similar). Supervisory colleges, which facilitate meetings of home- and host-country authorities, likewise depend on written promises of confidentiality for exchanged information. *See, e.g.*, Basel Comm.

on Banking Supervision, *Basel Core Principles for Effective Banking Supervision*, *supra*, at ¶ 40.31(1)(2) ("Informal or formal arrangements (such as memoranda of understanding and confidentiality agreements) are in place to enable the timely exchange of confidential information" between home- and host-country authorities).

Congress has enacted a statutory framework to enable the federal banking agencies follow the same model. Section 3109 authorizes the federal banking agencies to both (1) *share* supervisory information with foreign regulators based on assurances of confidentiality, *see* 12 U.S.C. § 3109(a)–(b), and (2) under a 2006 amendment, to preserve the confidentiality of certain information *received* from foreign supervisory authorities, *id.* § 3109(c). This two-way confidentiality is a cornerstone of U.S. bank supervisory policy. Prior to the addition of § 3109(c), officials warned that "[b]ecause as U.S. regulators we may not assure our foreign counterparts that the information that we receive from them will be held confidential, those governments may be less willing, or legally unable, to share information with us fully or completely, or to do so on a regular or timely basis." E. Gerald Corrigan, J. Virgil Mattingly Jr. & William Taylor, *The Federal Reserve's Views on BCCI*, 26 Int'l Law. 963, 985 (1992). Congress's enactment of § 3109(c) thus provided explicit statutory underpinning for the confidentiality that effective cross-border supervisory cooperation requires.

III. THE DISTRICT COURT CORRECTLY HELD THAT EVEN PARTIAL DISCLOSURE OF THE MONITOR REPORT WOULD CAUSE FORSEEABLE HARM.

The district court was correct that making any part of the Monitor Report public would harm an interest safeguarded by Exemption 8, namely ensuring continued supervisory cooperation among international banking regulators. Plaintiff does not dispute that "caus[ing] foreign regulators to cooperate less with U.S. financial authorities" would be injury to an interest protected by Exemption 8. Buzzfeed Br. 26. Instead, Plaintiff asserts only that releasing a redacted version of the Monitor Report would not foreseeably harm this interest. *Id.* All available evidence is otherwise: that the disclosure of a report prepared on behalf of a governmental agency which is interlaced with confidential supervisory information *would* foreseeably chill the critical supervisory dialogue between U.S. regulators and their foreign counterparts that is an important component of effective cross-border oversight of internationally active banks. J.A.377. Because DOJ met the standard required by FOIA, this Court should uphold the district court's findings.

A. Even Partial Disclosure Would Foreseeably Harm International Cooperation Critical to Global Banking Stability.

As Section II explains, no single authority possesses the information needed to supervise a global bank on its own, so instead regulators rely on continuing exchanges of sensitive supervisory material, subject to assurances of confidentiality. The record—and common sense—shows that even partial disclosure of the Monitor Report would disrupt this framework.

The U.K. Regulator explained that should the Monitor Report "become public" despite the assurances of confidentiality, the U.K. Regulator "may, give greater consideration to, or indeed refuse to, provide reports or confidential information to overseas regulators (including those in the US)" in the future. J.A.323. U.S. supervisors echoed this warning: the Federal Reserve testified that even partial disclosure "would harm the Federal Reserve's relationships with foreign bank supervisors going forward because it would signal to such supervisors, who share extensive, sensitive information with the Federal Reserve on the understanding that it will remain confidential, that such information in bank examination reports could in fact be publicly disclosed." J.A.165; *see also* J.A.177-78 (similar).

Allowing disclosure here would upset the reciprocal system upon which cross-border bank regulation is premised. *Supra* Section II. It would give foreign authorities reason to doubt whether information provided to U.S. regulators will remain within the promised confidential channels on which the exchange was based. Those authorities will foreseeably respond by narrowing the information they provide, implementing additional restrictions, or declining to share information altogether. And because the supervisory system is reciprocal, weakening protections for information received by U.S. authorities would compromise the collective capacity of home- and host-country authorities to identify emerging risks in an increasingly interconnected system, with bank stability being the foreseeable casualty.

Put simply, there either is a principle of confidentiality in cross-border information exchanges or there is not. There will be an understandable unwillingness by regulatory authorities to share highly sensitive supervisory information if there is no reliable legal recognition of that principle, but instead an ad hoc approach of making at least part of that sensitive information available based on the demands of third parties and ultimate determinations by judicial authorities. This is precisely the type of foreseeable harm that Exemption 8 was designed to prevent. As this Court has found, "[t]he exemption was drawn to protect not simply each individual bank but the integrity of financial institutions as an industry." *Gregory*, 631 F.2d at 898. Because "[j]eopardizing U.S. regulators' access to information from foreign regulators would reduce the efficacy of the financial regulatory system, both domestically and abroad, and would accordingly leave multinational banks and their clients around the world more vulnerable to exploitation," disclosure is plainly inappropriate here. J.A.178.

B. Neither Partial Disclosure Nor Redaction Can Cure These Harms.

"[B]ecause [these] harm[s] could materialize once any part of the Report is released," J.A.375, the district court got it right: segregation and redaction are inadequate solutions. J.A.378. This conclusion is borne out by the nature of the harms themselves.

First, redaction cannot combat the chilling effect described above, which is triggered by the prospective potential of disclosure as a categorical matter, without regard to the inherently uncertain potential that the extent of a given future disclosure will be circumscribed in certain respects by redaction or other means. A bank or regulator would not be reassured by the possibility that a reviewing court *may* redact portions of a report. Foreign regulators cannot know in advance what a court will deem subject to redaction. *See*

J.A.145 (partial disclosure would leave foreign regulators with "no certainty or control over what information a court may or may not protect from disclosure in the future"). Faced with this uncertainty, the reasonably foreseeable response—as the United Kingdom's regulator confirmed in sworn testimony—is to withhold information wholesale rather than trust that a future foreign court will redact with sensitivity to the ramifications of the disclosed information. J.A.323.[6] At the very least, communications will become more guarded if speakers know that they could become subject to even partial disclosure under FOIA. *Supra* Section II. This in turn would compromise the quality, accuracy, and completeness of information flowing to and between supervisors, at the expense of the quality of regulatory oversight.

Second, foreign regulators are generally not parties to a FOIA action and ordinarily have no guaranteed right to defend the confidentiality of the information they provide or to influence the redaction process. The U.K. Regulator, for example, is neither a party to this action nor to the Monitor Agreement. J.A.372-73. And even where a withholding agency may be willing

[6] This uncertainty extends beyond whether a court could identify for redaction all potentially sensitive foreign-sourced information, which requires judgment and bank regulatory expertise. Banks and regulators must also trust that any redactions will be applied accurately and consistently.

to permit a foreign regulator to submit evidence (as here), the process imposes substantial burdens. The foreign regulator must divert personnel and resources to monitor U.S. FOIA litigation, identify and review potentially sensitive material, coordinate with U.S. counsel and agencies, prepare declarations, and explain its own confidentiality laws and supervisory practices—all without any certainty that the court will respect the regulator's concerns and protect the information at issue. The continuing uncertainty over what will be disclosed, combined with this burden, will cause the same end result: less cooperation, resulting in less information shared, and a damaged supervision apparatus.

Third, only full withholding, not partial disclosure, can effectively safeguard the interests protected by Exemption 8. Small pieces of information, even if not problematic in isolation, can together create a composite disclosure capable of causing reputational injury, market harm, or security vulnerabilities to financial institutions. *See Ctr. for Nat'l Sec. Studs.* v. *DOJ*, 331 F.3d 918, 928 (D.C. Cir. 2003) ("[T]he Supreme Court caution[s] that bits and pieces of data may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself.") (cleaned up); *see also supra* Section II.A. This mosaic problem is heightened where, as here, sophisticated FOIA requesters, market participants, and even malicious actors can be expected to collect the information received and cross-reference any release against publicly available information. *See, e.g.*, J.A.182 ("[T]he redacted reports contain detailed descriptions of potential gaps in HSBC's compliance processes and technology that, if released, would provide a roadmap for bad actors to infiltrate and exploit.").

For all these reasons, the district court properly concluded that the harms identified in the sworn declarations could not be cured by segregation or redaction. The district court's judgment should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's decision.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I certify that this brief complies with the length limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 4,823 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This 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 brief has been prepared in a proportionately spaced typeface using Century Expanded BT 14-point font.

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July 29, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026 I electronically filed the foregoing 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.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished through the CM/ECF system.

Dated: July 29, 2026

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