No. 25-4014

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States, et al.*,

Defendants-Appellants.

On Appeal from Order of the United States District Court
for the Northern District of California,
U.S. District Court Action No. 3:25-CV-03070-JD

PLAINTIFFS-APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Defendants' request for a stay pending appeal should be denied as they have failed to carry the heavy burden to justify such relief. This case challenges the validity of an Executive Order ("EO") that eliminated statutory labor law protections and collective bargaining rights for the vast majority of the federal workforce. In a Fact Sheet accompanying the EO, the White House acknowledged that the Order was issued in response to "hostile" federal unions who had publicly opposed the President's policy agenda. Based on this and other evidence demonstrating that the EO was motivated by retaliatory animus, the District Court granted Plaintiffs' preliminary injunction motion and enjoined implementation of the EO as to Plaintiffs and their members pending resolution of the litigation.

The District Court's preliminary injunction order was well-supported by both the facts and the law. Defendants' jurisdictional argument is contrary to law and common sense, and their First Amendment argument is contradicted by the White House's own official statement. And as the District Court found denying a stay, Defendants' "belatedly-filed declarations" fail to demonstrate irreparable harm from maintaining the labor relations framework that has existed for decades.

BACKGROUND

I. Congress Grants Collective-Bargaining Rights to Federal Workers to Safeguard the Public Interest

Nearly a half century ago, Congress rejected the proposition that federal workers' right to bargain collectively with their employer should depend on Presidential grace. In the Civil Service Reform Act of 1978 ("CSRA"), Congress declared that "labor organizations and collective bargaining in the civil service are in the public interest," 5 U.S.C. § 7101(a)(2), and established "[a] statutory Federal labor-management program which cannot be universally altered by any President." 124 Cong. Rec. H9637 (Sept. 13, 1978) (statement of Rep. Clay).

Codified in Chapter 71 of Title 5, the CSRA permits the President to exclude a particular agency or subdivision from the statute, but only if he makes two specific "determin[ations]": (1) that "the agency or subdivision has as a *primary* function intelligence, counterintelligence, investigative, or national security work"; and (2) that "the provisions of [Chapter 71] cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations." 5 U.S.C. § 7103(b)(1) (emphasis added). Past Presidents have invoked this authority sparingly, specifying subdivisions "at a high level of granularity" and never using it to exclude cabinet-level departments in their entirety, let alone eliminate the statute's protections for two-thirds of the federal workforce. Add.9.

II. In Response to "Hostile" Federal Unions, the President Issues the Executive Order

On March 27, 2025, President Trump issued the EO, which purported to exclude a broad array of agencies and subdivisions from Chapter 71, ranging from the Department of Veterans Affairs to the EPA. *Id.* at 6-8. That same night, the White House published a Fact Sheet explaining the rationale for the EO. Supplemental Addendum ("SA") 57-61. The Fact Sheet explained that "[c]ertain Federal unions have declared war on President Trump's agenda" and stated, with disapproval, that "[t]he largest Federal union describes itself as 'fighting back' against Trump." SA60. The Fact Sheet contrasted federal unions "hostile" to President Trump to those who "work with him," explaining that "President Trump supports constructive partnerships" with the latter type of union. SA59-60.

III. Agencies Have Implemented the EO, Harming Plaintiffs and Their Members

The Office of Personnel Management ("OPM") has instructed agencies to refuse to recognize and negotiate with unions, abide by the terms of collective bargaining agreements ("CBAs"), process grievances, transmit member dues, allow employees to have a union representative at disciplinary meetings, or provide official time to union representatives. SA135-42. Record evidence demonstrates that Defendants have adhered to this guidance and implemented the EO to the detriment

of Plaintiffs and their members. SA122 ¶8; SA128 ¶¶11-13; SA130-31 ¶¶23-24; *see also, e.g.*, SA72 ¶14; SA 109 ¶10; SA144-45 ¶6; SA 151-52 ¶¶6-10.

IV. Procedural History

Plaintiffs filed a motion for temporary restraining order on April 7, which the District Court denied and converted to a preliminary injunction motion. Plaintiffs provided declarations and accompanying exhibits in support of their motion, while Defendants submitted no evidence despite ample opportunity. *See* Dkt. 44. Following a hearing, the District Court granted the preliminary injunction on June 24. Add.1-29. Defendants waited a week to file a motion for a stay in the District Court and then filed an emergency stay motion in this Court two days later. This Court granted an administrative stay on July 7. The District Court denied the motion to stay on July 8. Dkt. 65.

STANDARD OF REVIEW

A stay of a preliminary injunction pending appeal is an "extraordinary request." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021). To obtain a stay, the applicant bears the burden of demonstrating that (1) he is "likely to succeed on the merits"; (2) he "will be irreparably injured absent a stay"; (3) the stay will not "substantially injure the other parties interested in the proceeding"; and (4) the public interest favor a stay, with the first two factors being "the most critical." *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

I. The District Court Correctly Found That Plaintiffs Demonstrated a Sufficient Likelihood of Success for a Preliminary Injunction

A. The District Court Has Jurisdiction

Plaintiffs' challenge to the EO is not channeled because that Order removes the Defendant agencies from the entirety of the CSRA framework governing federal sector collective bargaining set out in Chapter 71 of Title 5, which includes the provisions giving the FLRA jurisdiction to adjudicate unfair labor practices and exceptions to arbitration awards. Yet even though the EO deems the Defendant agencies outside the CSRA and thereby incapable of being respondents in FLRA proceedings, Defendants' lead argument is that the "channeling" doctrine enunciated first in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), required Plaintiffs to bring their claims to the FLRA instead of federal district court. Br. 8-13.

1. The District Court properly rejected this argument. Congress empowered the FLRA to adjudicate labor-relations disputes between unions and employing agencies covered by the CSRA to determine compliance with the substantive conduct rules prescribed by the statute, *see* 5 U.S.C. §§ 7116(a), 7118(a)(6)-(8); Congress did *not* empower the FLRA to sit in judgment on the validity of presidential action under § 7103(b) to exclude agencies from the CSRA framework altogether.

Thus, when executive action purports to take a claim "outside the FLRA's purview," unions may seek judicial review of the "legality" of that action in federal

district court. *AFGE Loc. 446 v. Nicholson*, 475 F.3d 341, 348 (D.C. Cir. 2007); *see also NTEU v. Trump*, 2025 WL 1218044, at *5 (D.D.C. Apr. 28, 2025) (rejecting channeling argument "for the simple reason that those agencies and subdivisions have been excluded from the [statute's] coverage by the very Executive Order at issue here"). Throughout its nearly 50-year history, the FLRA has repeatedly—and summarily—declined to exercise jurisdiction over cases brought by a union against a respondent agency that the President has ordered to be excluded from CSRA coverage. *See, e.g.*, *U.S. Att'ys Off. S. Dist. of Tex. & AFGE Loc. 3966*, 57 F.L.R.A. 750 (2002); *AFGE Local 2118 & Dep't of Energy, Albuquerque Operations, Los Alamos Area Off.*, 2 F.L.R.A. 916 (1980).

Defendants claim that Plaintiffs rely on "circular" reasoning because, it says, Plaintiffs' position on the merits is that the EO is invalid but their position on channeling depends on the premise that the Order is valid. Br. 10. Defendants miss the point. The reason Plaintiffs' claims are not channeled is not that the *EO* is valid, but rather that the *FLRA* is not the tribunal that Congress empowered to review Presidential exclusion orders. Indeed, elsewhere, the Government agrees, instructing agency heads to take the position that the FLRA cannot hear claims by a union against excluded agencies because a union "no longer has standing" to bring such

claims, SA136, and filing its own lawsuits in federal district courts seeking a declaration that the EO is valid.[1]

2. Because the CSRA's design demonstrates that Congress could not have intended for claims challenging the President's exclusion authority under § 7103(b) to go to the FLRA, Defendants' channeling argument fails at a threshold level. But even if the Court were to apply the *Thunder Basin* factors, they confirm the District Court's exercise of jurisdiction. *See Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 186 (2023) (only claims "of the type Congress intended to be reviewed" within the relevant statutory scheme are channeled).

The first *Thunder Basin* factor focuses on the practical question whether judicial review would "come too late to be meaningful." *Id.* at 191. In *Thunder Basin* itself, judicial review was not too late to be meaningful because the plaintiff was a mining company that all agreed could function as such—extracting ore from the earth and selling it for the benefit of its shareholders—while awaiting agency adjudication as to whether it violated the statute and merited a fine. In contrast, under the EO, the excluded agencies—at the President's direction—have ceased dealing

[1] That claims challenging § 7103(b) exclusions are not channeled to the FLRA is further confirmed by the fact that FLRA members may now be removed at will by the President. *See Grundmann v. Trump*, 2025 WL 1840641 (D.C. Cir. July 3, 2025). Congress could not have intended the question of presidential authority under § 7103(b) to be channeled to an agency that is no longer independent of the President. *See Nat'l Ass'n of Immigr. Judges v. Owen*, 139 F.4th 293, 305-07 (4th Cir. 2025).

altogether with Plaintiffs, not only threatening their continued existence, *see* § III *infra*, but also depriving them of their ability to function as labor organizations, which the CSRA itself defines as an organization whose "purpose" is "*dealing with an agency concerning grievances and conditions of employment*." 5 U.S.C. § 7103(4) (emphasis added).

The second and third factors—whether the claim is "wholly collateral to [the] statute's review provisions" and "outside the agency's expertise"—"reflect in related ways the point of special review provisions," *i.e.*, "to give the agency a heightened role in the matters it *customarily handles*, and can apply *distinctive* knowledge to." *Axon*, 598 U.S. at 186 (emphases added). The FLRA has not handled cases against agencies excluded from the statute's coverage by executive order and cannot apply any distinctive knowledge either to whether an exclusion satisfies the statutory standards (wholly collateral to the FLRA's function) or is the product of unconstitutional animus (both collateral and obviously outside the agency's expertise). By statutory design, the FLRA's expertise lies in deciding whether an employing agency or union has violated the FLRA's substantive provisions, not the antecedent question whether the President has validly invoked § 7103(b).[2]

[2] Defendants can hardly deny any of this, for on the day the EO was published, the Government turned not to the FLRA, but to a federal district court in Waco, Texas, to ask for a declaration of the Order's validity. *See Dep't of Defense. v. AFGE Dist. 10*, No. 6:25-cv-00119-ADA (W.D. Tex.).

Indeed, because the FLRA's consistent practice, upon seeing that the respondent agency is excluded from the coverage of the statute, is to summarily announce that it lacks jurisdiction and to say no more, *see supra* at 6, questions of this EO's validity will not become intertwined with the sorts of questions the FLRA routinely adjudicates involving whether an agency has violated the CSRA's substantive provisions. That distinguishes this case from *Elgin v. Department of Treasury*, 567 U.S. 1, 23 (2012), where channeling was required because the agency, in adjudicating the type of case in question, did not dismiss but instead resolved all non-constitutional issues before it, potentially obviating the need for constitutional questions to be addressed. *See AFGE v. Trump*, 139 F.4th 1020, 1029 (9th Cir. 2025) (distinguishing *Elgin* on this basis and finding channeling not required), *stay granted on other grounds*, 2025 WL 1873449 (July 8, 2025).[3]

B. Plaintiffs Have Demonstrated that the EO Was Unlawful Retaliation for First Amendment Protected Activity

To establish a retaliation claim, a plaintiff must show: (1) it engaged in "constitutionally protected activity"; (2) it was "subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity"; and (3) there was a "substantial causal relationship"

[3] For similar reasons, *AFGE v. Trump*, 929 F.3d 748 (D.C. Cir. 2019), is readily distinguishable. The executive order at issue in that case did not purport to exclude agencies or unions from the coverage of Chapter 71 and still enabled them to participate fully in Ch. 71 proceedings.

between the protected activity and the adverse action. *Ballentine v. Tucker*, 28 F.4th 54, 61 (9th Cir. 2022).

Defendants do not dispute that the first two factors are met. The evidentiary record contains extensive evidence that Plaintiffs have engaged in protected activity opposing the President's policies, including multiple lawsuits challenging the President's executive actions, SA11-22 ¶¶6-50; SA102-03 ¶¶19-24, public criticism of the President's policies, SA27-34; SA90-92, and grievances against the administration's policies, SA6-7 ¶8; SA71 ¶12. The record also contains substantial evidence of the chilling effect caused by the EO. Add.18-19; *see also Heffernan v. City of Paterson*, 578 U.S. 266, 273 (2016) (retaliation against one tells "others that they engage in protected activity at their peril").

Defendants instead only dispute causation, raising a variety of arguments that are either contradicted by the record or based on misapplications of law.

1. Defendants first assert that there is no causal connection between Plaintiffs' protected speech and the EO. Br. 14. But this is squarely contradicted by the White House Fact Sheet, which, as the District Court pointed out, expressly "condemned unions who criticized the President and expressed support only for unions who toed the line." Add.20. The Fact Sheet acknowledges that the EO was issued in response to "hostile Federal unions" who had "declared war on President Trump's agenda." SA59-60. Leaving no doubt as to what this "hostile" activity was, the Fact Sheet

quotes from an article published by AFGE detailing First Amendment activities it had engaged in—such as filing lawsuits, lobbying Congress, and making public statements—opposing a wide range of President Trump's policies. SA60 (quoting SA28); SA 68 (same). The Fact Sheet also calls out the "VA's unions" for filing grievances challenging "Trump's policies." SA60. And it closes with the clear message that collective bargaining rights will be based on how supportive the union is of the President's agenda: "President Trump supports constructive partnerships with unions who work with him." *Id.*; *see also* SA112-13 (describing press statement linking exclusions to individual unions' grievance activity). The record therefore contains direct evidence—no second guessing required—of a causal link between the EO and Plaintiffs' First Amendment activity.

Defendants' only response to this clear expression of animus is to advance the extraordinary proposition that a union's protected speech is a "wholly legitimate consideration" in determining whether to eliminate collective bargaining rights under § 7103(b). The text of § 7103(b) does not permit exclusions based on whether the union representing employees at an agency is supportive of the President's policies, and Defendants provide no legal support for their position.[4] It bears

[4] The two cases Defendants cite are retaliatory arrest cases, where the Court notes that a criminal defendant's statements may be relevant to an officer's "split-second judgments" to find probable cause for an arrest. *Nieves v. Bartlett*, 587 U.S. 391, 401 (2019); *Reichle v. Howards*, 566 U.S. 658, 668 (2012).

repeating that the "union[] activities" Defendants assert "undermine national security," Br. 16, are *constitutionally-protected speech and petitioning*. If the security of the nation were threatened by private citizens criticizing the President's domestic policy initiatives, the First Amendment would lose all meaning. Defendants' attempt to define "national security" as political fealty to the President is antithetical to the First Amendment and "the system of government the First Amendment was intended [to] protect, a democratic system whose proper functioning is indispensably dependent on the unfettered judgment of each citizen on matters of political concern." *Elrod v. Burns*, 427 U.S. 347, 372 (1976) (cleaned up).

2. Defendants next contend that because the EO invokes § 7103(b), courts can inquire no further without encroaching on the "President's role making national-security determinations." Br. 14. But courts "'do not defer to the Government's reading of the First Amendment, even when' national security interests are at stake." *Twitter, Inc. v. Garland*, 61 F.4th 686, 699 (9th Cir. 2023) (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 34 (2010)). Even "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004); *Washington v. Trump*, 847 F.3d 1151, 1163 (9th Cir. 2017) ("[F]ederal courts routinely review the constitutionality of—and even invalidate—actions taken by the executive to promote national security, and have

done so even in times of conflict.").[5] "Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart. For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment." *United States v. Robel*, 389 U.S. 258, 264 (1967).

Nor can Defendants rely on any "presumption of regularity." Br. 14-15. Defendants cite *AFGE v. Reagan*, 870 F.2d 723 (D.C. Cir. 1989), but that court specifically recognized that the presumption is inapplicable where there is evidence of "actual irregularity." *Id.* at 728. As the District Court found, the record here contains substantial evidence of "actual irregularity," including the vast overbreadth of the EO, the jagged line drawing among bargaining units within the same agency, and the contemporaneous statements in the Fact Sheet. Add.21-22.[6]

[5] *Webster v. Doe*, 486 U.S. 592, 603 (1988), is not to the contrary, as there, notwithstanding that the National Security Act committed decision-making to the CIA Director's discretion, that decision was still subject to review for "constitutional claims."

[6] Defendants' contention that the District Court's analysis was erroneous because some of the excluded agencies *could* have been legitimately excluded, Br. 15-16, misunderstands the law. "Otherwise lawful government action may nonetheless be unlawful if motivated by retaliation" for First Amendment protected activity. *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 869 (9th Cir. 2016).

3. Next, Defendants contend that even if Plaintiffs established a *prima facie* case of retaliation, the District Court failed to address Defendants' "evidence" that the President would have issued the same EO even absent the retaliatory motive. Br. 19. The glaring defect with Defendants' argument is that they submitted *no* evidence at the preliminary injunction stage, let alone any evidence purporting to demonstrate that the EO would have targeted the same unions even if they were supportive of the President's agenda—a proposition directly contradicted by the closing words of the Fact Sheet.

Indeed, the only "additional evidence" Defendants cite is their declaratory judgment complaint in Texas against various AFGE affiliates. *Id.* Complaint allegations are, of course, not "evidence," and in any event, that complaint only reinforces the retaliatory animus motivating the EO. *See* SA66-68, ¶¶78, 83, 172.

Furthermore, although the Fact Sheet is sufficient to negate the proposition that the President would have issued the same EO absent retaliatory animus, the unprecedented and stunning overbreadth of the EO further negates that proposition. As the District Court recognized, the Order's exclusionary scope is orders of magnitude wider than any prior order, Add.20-21, sweeping in agencies with no discernible nexus to national security. That is a telling indicator that the Order is the product of animus. And erasing any doubt on that score is that the Order combines its vast over-inclusiveness with surprising under-inclusiveness in carving out law-

enforcement employees working *at the very same agencies*.[7] *See*, *e.g.*, *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 774 (2018) ("wildly underinclusive" exclusions raise "serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint"). It is difficult to see how that strange mixture of over- and under-inclusiveness could be the result of a decision-making process that was free of retaliatory animus and easy to see how it reflects the precise animus overtly expressed in the Fact Sheet.

4. Finally, Defendants briefly assert that Plaintiffs' retaliation claim must be evaluated under a "highly constrained" standard of judicial review, in which the court may only consider whether the President provided a "facially legitimate and bona fide" reason. Br. 20. This deferential standard is taken from *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972), and applies to executive action denying foreign nationals entry into the United States. *See Trump v. Hawaii*, 585 U.S. 667, 703 (2018). The authority the President may wield over foreign nationals seeking entry to the United States is simply not analogous to the President's Congressionally defined labor-relations role under Chapter 71. The Supreme Court has never applied this standard to executive actions outside that limited context—as this Court has

[7] To drive home the point, the EO carves out law enforcement employees *except* those working at the Bureau of Prisons, where Plaintiff AFGE represents all bargaining unit employees. SA108 ¶5.

recognized, *see Andrade-Garcia v. Lynch*, 828 F.3d 829, 834-35 (9th Cir. 2016)—and it would turn the doctrine on its head to apply it to executive action solely directed at *domestic* organizations.

Defendants' attempt to analogize this case to *Trump v. Hawaii* is off base for other reasons as well. In *Hawaii*, the Court considered to what extent prior "*extrinsic* statements—many of which were made before the President took the oath of office"—could be used to "probe the sincerity of the stated justifications" of a policy that was "facially neutral." 585 U.S. at 702 (emphasis added). That stands in stark contrast to the EO here. This EO is not facially neutral given the vast overbreadth and jagged line drawing in the Order, nor can it be divorced from the Fact Sheet, which makes clear the Order is targeted at federal unions deemed "hostile" to the President's agenda. The Fact Sheet is not an "extrinsic" statement like the ones at issue in *Hawaii*, but rather the White House's official explanation of the very EO at issue. Defendants cannot run away from its content.[8]

II. Defendants Have Not Established Irreparable Injury

A second, independent, reason this motion should be denied is that Defendants have failed to show that the injunction will cause them irreparable harm. To obtain

[8] In yet another attempt to move the legal goalposts, Defendants cite *Board of County Commissioners v. Umbehr*, 518 U.S. 668, 685 (1996). Br. 13-14. *Umbehr*, however, *rejected* the government's argument that it has extra "flexibility" to retaliate against independent contractors. And, in any event, it has no bearing here, where the Plaintiffs are not independent contractors.

a stay, Defendants must demonstrate that irreparable harm "is probable, not merely possible." *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020). Defendants cannot meet that burden "by submitting conclusory factual assertions and speculative arguments that are unsupported in the record." *Id.* at 1059-60.

To begin, several of the declarations contain no statements about irreparable harm, Add.42-43; Add.93-94; Add.107-08; Add.109-10, and thus as to those agencies, Defendants have provided no evidence of harm, irreparable or otherwise. Other declarants claim that restoring the Chapter 71 framework will cause administrative burdens such as additional payroll processing and paperwork. *See*, *e.g.*, Add.102-03 ¶5(b)–(f). But "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended…are not enough" for a stay. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020). Indeed, Defendants do not even demonstrate that these administrative tasks—a return to the status quo that, for many affected agencies, was in place for decades—create substantial burdens. For example, nearly every declaration states that it would be a burden to restart dues deduction, but several agencies report having restarted dues deduction at least once since the EO was issued. *See* Add.31-32 (USCIS, ICE, USDA); Add.67 ¶6(b).

As for Defendants' attempts to show harm to national security by complying with the preliminary injunction, they are both conclusory and wildly speculative. For example, Declarant Olowski (State) suggests that the injunction "*risks* slowing down

the Secretary's resource allocation decisions," and speculates that "*if* as a consequence of meddling by labor unions like the Plaintiffs the Secretary is delayed or prevented from" moving employees between offices, "American citizens will suffer irreparable harms to their physical safety." Add.38-39 ¶5(b) (emphases added). Olowski states that the State Department recently facilitated emergency flights "to bring Americans home who might otherwise have been killed by an Iranian missile or a Palestinian terrorist," but offers no explanation as to why restoring labor protections that have existed for decades would impede such an operation, *id.*, particularly in light of existing statutory protections. *See* 5 U.S.C. § 7106(a)(2)(D) (management right "to take whatever actions may be necessary to carry out the agency mission during emergencies").

Declarant Ballance (HHS) states summarily that "operational and strategic capacities…will be seriously impacted" by the injunction, due to unidentified "roadblocks" that "*may* delay program execution." Add.59 ¶6(b) (emphasis added). She points to the importance of "swift evaluation and approval of vaccines and treatments during emergencies, like the COVID-19 pandemic," but never explains how restoring the exact labor relations system present during that pandemic would interfere with another swift response. *Id.* ¶6(c). Declarant Michael Cogar's (DoD) predictions are equally speculative. *See* Add.45-46 ¶5(c) (changes "*could* result in interruptions to and longer wait times") (emphasis added).

Defendants highlight Declarant Brunstein's statement that the CBA "has provisions…that significantly limit the way in which ICE" can provide "24/7" legal support to agents in the field, Add.72 ¶5(b), but the record undercuts that assertion in two ways. First, in the very next sentence Brunstein states that ICE does not believe those CBA provisions apply to the situation at all. *Id.* And Brunstein does not mention that the ICE CBA includes a provision allowing for "expedited implementation" of operational changes in urgent situations without pre-implementation bargaining. *See Dep't of Homeland Sec., Immigration & Customs Enf't*, 67 FLRA 501 (2014) (cited at Br. 17).

Defendants' failure to put forward specific evidence of harm is even more notable considering that several Defendants were previously enjoined from enforcing the EO while the D.C. Circuit decided a motion for stay pending appeal. Order, *NTEU v. Trump*, No. 1:25-cv-00935 (D.D.C. Apr. 25, 2025), Dkt. No. 32 (restoring pre-EO labor relations status quo for OPM, DOJ, HHS, Energy, EPA, and Treasury). As Defendants note, the D.C. Circuit granted a stay pending appeal on May 16, 2025, but nowhere in Defendants' declarations is any instance of alleged irreparable harm that occurred during the time the injunction remained in effect. *See* Add.34-36 (OPM); Add.54-56 (DOJ); Add.57-60 (HHS); Add.79-82 (Energy); Add.87-89 (EPA); Add.48-50 (Treasury (U.S. Mint)).

Finally, Defendants assert that they have been harmed because the District Court encroached on the "national-security prerogatives statutorily entrusted to the President." Br. 2, 6-7. However, as this Court has repeatedly held, that sort of "institutional injury" does not itself constitute irreparable harm to the Government. *See, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) ("[I]t is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles."); *see also Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020); *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018). Rather, to show irreparable harm, Defendants must point to specific evidence that a temporary return to the pre-order status quo will have a genuine impact on agencies' ability to safeguard our national security. *Sierra Club v. Trump*, 929 F.3d 670, 705 (9th Cir. 2019) (declining, absent evidence of harm, to stay an injunction pausing construction of the border wall); *Washington*, 847 F.3d at 1168 (declining to stay an injunction that paused an executive order restricting immigration); *contrast Newsom v. Trump*, No. 25-3727, 2025 WL 1712930, at *14 (9th Cir. June 19, 2025) (granting a stay based on contemporaneous evidence of specific incidents of violence to federal officers and property). Defendants' failure to do so requires denial of the motion, "regardless of the petitioner's proof regarding the other stay factors." *Doe #1*, 957 F.3d at 1058.

III. The District Court Correctly Held That Plaintiffs Face Irreparable Harm In the Absence of an Injunction

Incredibly, after submitting numerous declarations admitting that agencies are implementing the EO, Defendants proceed to ignore that evidence and argue that "[a]ny asserted losses of bargaining power are 'speculative'" and that any harm for unions "would materialize only *after* an agency terminates a collective-bargaining agreement." Br. 21 (emphasis in original) (citing *NTEU v. Trump*, No. 25-5157, 2025 WL 1441563, at *1 (D.C. Cir. May 16, 2025) (en banc petition pending)). Defendants' position requires turning a blind eye to both binding precedent and the extensive evidence in the preliminary injunction record. *See* Add.22-25.

As an initial matter, the D.C. Circuit motion panel's decision in *NTEU* is inapposite for two reasons. First, the injunction at issue in *NTEU* was not based on a First Amendment violation, and thus the panel did not consider the harmful chilling effects on speech that the District Court recognized here. *See* Add.18-19. Second, as Defendants' newly proffered evidence demonstrates, the panel majority's decision was based on a misunderstanding of the facts that is squarely refuted by the record here. The *NTEU* panel found that the union would not suffer irreparable harm absent an injunction because the Government had already "voluntarily imposed" limits upon itself such that the EO was "already-paused." *NTEU*, 2025 WL 1441563, at *1 n.2. Defendants' stay request is premised on the opposite contention—that the EO has been implemented so substantially that they would be harmed from having to

"return their workplaces to their pre-Executive Order status." Dkt. 63 at 6.

In any event, Defendants do not meaningfully contest the District Court's well-supported findings that Plaintiffs face a "threat of 'extinction'" in the absence of an injunction. *See* Add.22-23. Nor do they engage with Ninth Circuit precedent that the impairment of First Amendment freedoms constitutes irreparable harm. *See* SA2 (citing *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022)); SA113 (collecting evidence of the chilling effect of the EO on Plaintiffs and their members).

And Defendants' *own evidence* shows that Plaintiffs had lost statutory and contractual labor rights before the District Court granted preliminary relief, which this Court has recognized as irreparable harm. *See Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1192 (9th Cir. 2011).[9] Defendants' insistence that they were merely ignoring CBAs instead of officially "terminating" them is a distinction without a difference. Row after row of Defendants' "Exhibit 1" asserts that the relevant agency has not *formally* terminated its CBAs, while at the same time admitting that it has stopped allotting dues, granting official time, and/or processing grievances—all of which are binding terms of the CBAs. Add.31-33. It is simply not credible to

[9] Defendants' contention that the loss of bargaining and representation rights does not constitute irreparable harm is contrary to this Court's decision in *Small*. The out-of-circuit cases on which they rely, Br. 23, are both inconsistent with *Small* and factually distinguishable from the sweeping loss of rights caused by the EO.

simultaneously claim that an agency is harmed because this Court's preliminary injunction "requires ICE to comply with certain CBAs," Dkt. 63 at 6, while insisting that Plaintiffs suffer no harm until an agency officially decrees that a CBA is "terminated."[10]

Similarly, Defendants represent that all Defendant agencies but three still "recognize unions as exclusive reps." Add.31-33. But the record shows that those same agencies are refusing to negotiate with unions, respond to information requests, bargain over changes to conditions of employment, or include union representatives in disciplinary meetings. *See supra* at 3-4; *see also* Add.35-36 ¶5(b); Add.46 ¶ 5(d); Add.72 ¶6(c)-(d); Add.82 ¶¶6(e)-(f), 7. Indeed, at least two of Defendants' declarations describe unilaterally removing members from a bargaining unit. Add.35 ¶4 n.2; Add.101-03 ¶5. And as for Defendants' speculation that any harm is reparable "because the FLRA or a court could reinstate the agreements and undo any changes to working conditions," Br. 22, the Court should not credit that conclusory statement given Defendants' declarations detailing its plans for restructuring agencies and terminating employees. *See, e.g.*, Add.35-36 ¶5(b) (RIF and

[10] Defendants assert that one of the CBAs that had been cancelled was "reinstated…over two months ago," Br. 22 n.4, but subsequent to the purported "reinstatement" notice, the agency has continued to treat the CBA as no longer in effect and has declared that "all labor obligations are in abeyance" as a result of the EO. *See* SA151-52 ¶¶6-10.

reassignment of employees); *see also* SA143-45 (RIF-in-progress); SA114-19 (harms to VA employees).

IV. Equitable Factors Weigh Against a Stay

In granting the preliminary injunction, the District Court correctly found that the balance of equities and public interest favored Plaintiffs. Add.25-26. Plaintiffs' meritorious First Amendment claim "tips the public interest sharply in [their] favor because it is always in the public interest to prevent the violation of a party's constitutional rights." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). And as the District Court recognized, "Congress has declared that 'labor organizations and collective bargaining in the civil service are in the public interest,'" and "[t]he government has not articulated a good reason to conclude otherwise." Add.26 (quoting 5 U.S.C. § 7101(a)).

CONCLUSION

The Court should deny Defendants' motion.

Dated: July 9, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this response complies with Federal Rules of Appellate Procedure 27(d)(1)(E) and 27(d)(2)(A) and Circuit Rules 27-1(d) and 32-3 because it is proportionally spaced, has a typeface of 14 points, and contains 5,600 words.

Dated: July 9, 2025

/s/ Ramya Ravindran
Ramya Ravindran

No. 25-4014

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States, et al.*,

Defendants-Appellants.

On Appeal from Order of the United States District Court
for the Northern District of California,
U.S. District Court Action No. 3:25-CV-03070-JD

SUPPLEMENTAL ADDENDUM TO OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

EXPEDITED HEARING REQUESTED

AFGE Local 446 v. Nicholson, 475 F.3d 341, 347-48 (D.C. Cir. 2007) (district court had jurisdiction because the challenged action was "expressly outside the FLRA's purview" and the union is "presumptively entitled to judicial review of its claim").

Here, the President's order excludes an agency "from coverage under this chapter." 5 U.S.C. § 7103(b)(1). The FLRA has held that it lacks jurisdiction to hear cases when such an exclusion occurs. *U.S. Att'ys Off. S. Dist. of Texas & AFGE Loc. 3966*, 57 FLRA 750 (2002). As such, this Court is the proper forum to challenge the Exclusion Order.

II. Plaintiffs and Their Members Are Suffering Irreparable Injury Due to the Exclusion Order and its Implementation

Without an injunction, Plaintiffs face immediate irreparable harm due to the denial of their constitutional rights. "It is axiomatic that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Fellowship of Christian Athletes*, 82 F.4th at 694; *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) ("Irreparable harm is relatively easy to establish in a First Amendment case. The plaintiff need only demonstrate the existence of a colorable First Amendment claim."). The chilling effect on the speech of unions and their members, especially as they now must lobby for restoration of bargaining rights from the VA and Defense Secretaries and convince the Secretary of Transportation (and other agency heads) that they will be cooperative with the President's agenda to maintain their bargaining rights, *see* Ronneberg Decl. ¶¶ 15-17 (describing chilled speech at FAA resulting from Order), cannot be remedied at the end of this litigation. Similarly, the deprivation of Fifth Amendment due process rights also "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (internal quotation omitted).

Plaintiffs' members are also facing irreparable harm. The Exclusion Order has stripped them of their exclusive representative and CBA rights. "[T]he value of the right to enjoy the benefits of union representation is immeasurable in dollar terms once it is delayed or lost." *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1192 (9th Cir. 2011); *see also Cefalo v. Moffett*, 1971

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF MARY-JEAN BURKE

DECLARATION OF MARY-JEAN BURKE

I, Mary-Jean Burke, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am a physical therapist at Richard L. Roudebush VA Medical Center in Indianapolis, Indiana. I was hired to provide in-patient physical therapy in an acute care setting. I have worked for the Department of Veterans Affairs for 29 years.

3. I have been the First Executive Vice President for the National Veterans Affairs Council (NVAC) of the American Federation of Government Employees since 2007.

4. NVAC represents nationwide bargaining units of approximately 300,000 professional and non-professional employees who work at nearly every administration and component of the Department of Veterans Affairs, including the Veterans Health Administration, Veterans Benefits Administration, National Cemetery Administration, and operational components such as, but not limited to, the Office of Information & Technology, Office of Finance, Office of Emergency Management, and the VA History Office. The largest number of AFGE-represented workers are employed at urban hospitals and rural clinics under the Veterans Health Administration; these employees include physicians, dentists, pharmacists, physical and occupational therapists, housekeepers, engineers, custodians, cooks, and numerous other healthcare and support staff. Represented workers in other VA administrations and components include cemetery workers, gardeners, archivists, security officers, claim processors, clerical workers, firefighters, IT professionals, bookkeepers, and numerous other civil servants. On its face, the March 27, 2025 Executive Order titled "Exclusions from Federal Labor Management Relations Programs" ("Executive Order") appears to cover all of the workers in NVAC's bargaining units other than police and firefighters.

5. NVAC's mission is to support and advocate for the federal employees who take care of our nation's veterans, including working for a safe and fair workplace for all members. Nearly 40 percent of NVAC's members are themselves veterans. As the exclusive bargaining

representative of these workers, NVAC provides many services to all bargaining unit employees. Core functions of the Union include working in a mutually respectful partnership with the Department of Veterans Affairs to secure a fair and reasonable master collective bargaining agreement ("MCBA"); negotiating implementation of new policies during the term of the MCBA; filing and prosecuting grievances (locally and nationally) against the agency to enforce the terms and conditions of the MCBA; representing workers in arbitration and before professional standards boards; participating in safety inspections and negotiating safety abatements; and providing guidance and support to members navigating USERRA, EEO, and other federal processes.

6. The Executive Order will have an immediate adverse effect on the Union's ability to provide these services to unit members and to accomplish its mission. The Executive Order will also have an immediate adverse impact on workers in the bargaining unit.

7. If the Union is no longer the exclusive bargaining representative of the unit, the Union cannot enforce the MCBA on behalf of members. AFGE has a bargaining relationship with the agency going back to 1982. The current MCBA is effective as of August 8, 2023; it has a term of three years with automatic one-year renewals after that. The MCBA provides important rights and protections to workers at the Department of Veterans Affairs, including:

a. Sets terms and conditions for working hours, overtime, sick leave, holidays, and paid time off for workers in the unit.

b. Outlines processes for fair reassignment, relocation, shift change, and telework decisions.

c. Ensures the Union can participate in safety inspections and imposes safety and health requirements to ensure the welfare of both workers and patients.

d. Establishes protections for workers regarding reduction-in-force ("RIF") actions and procedures.

e. Imposes procedures for disciplinary actions against workers and creates guardrails for the use of surveillance and monitoring in disciplinary proceedings.

f. Guarantees employees a reasonable opportunity of 90 days to address identified performance concerns before the agency takes adverse action.

g. Provides for an Employee Assistance Program for individuals who have problems associated with alcohol, drug, marital, family, legal, financial, stress, attendance, and other personal concerns.

h. Establishes alternative dispute resolution, grievance, and arbitration procedures for employees and the Union to resolve disputes with the agency over employment matters.

i. Provides for official time, which allows bargaining unit employees to perform union representation activities during certain amounts of time the employee otherwise would be in a duty status, without loss of pay or charge to annual leave.

Without the Union to represent them and enforce the MCBA, the workers will not have the benefit of those rights and protections going forward. I understand that the agency is directed to rescind the MCBA under the Executive Order.

8. There are currently 12 pending national grievances filed this year under the MBCA and dozens of pending grievances to vindicate individual worker rights that will go unresolved if the Executive Order is implemented. I—and other Union officials—have spent considerable time researching and discussing these grievances with members, agency leadership, and the public. The national grievances include grievances related to the agency's decisions to:

a. Bypass the Union and refuse to bargain in good faith regarding the "fork in the road" deferred resignation program;

b. Repudiate MCBA provisions providing for telework, issue a unilateral return-to-office directive, and summarily delay employees' requests for telework as a reasonable accommodation;

c. Defy MCBA provisions and arbitrator rulings providing employees 90 days to improve performance;

d. Refuse to bargain in good faith regarding implementation of VA Accountability & Whistleblower Protection Act procedures;

e. Implement mass terminations of probationary employees at the direction of the Office of Personnel Management;

f. Unilaterally apply a new VA Flag Display Policy to Union bulletin boards and offices;

g. Direct employees to respond to OPM emails titled "what did you do last week?" without bargaining in good faith or compensating employees on non-duty status;

9. NVAC's staff and activities are funded through members' voluntary dues, the vast majority of which are paid through payroll deduction from their pay. If NVAC can no longer receive dues through payroll deduction under the Executive Order, that will make it significantly more difficult for the Union to continue to function and to provide the services and protections to unit members listed above.

10. Official time is very important to enable bargaining unit workers with union roles to perform representative activities on behalf of their coworkers while on government time. I, and other union officers, use official time to

a. Represent workers in the researching and drafting of national and individual grievances and in proceedings before arbitrators, disciplinary boards, and the Federal Labor Relations Authority

b. Assist employees with investigations and navigating payroll, USERRA, EEO, and workers compensation processes;

c. Participate in safety inspections and negotiate with the agency regarding health and safety risk abatement strategies;

d. Negotiate the MCBA and implementation of new initiatives, such as deploying new technologies or changing telework policies, during the term of the MCBA.

11. Taking union representatives off official time will hamstring NVAC's ability to perform its fundamental functions of representing VA employees in their daily workplace lives.

12. The Executive Order is having a chilling effect on workers' speech and activity at the VA. I know personally that without union advocates, workers may be subject to arbitrary discipline, unfair policies, and unsafe working conditions; as NVAC advocates for VA employees, I fear that worsened working conditions for our members is also likely to result in worse care for our nation's veterans. Without the protections of the MCBA, agency management would be able to retaliate against those who speak out against such conditions. From my interactions with other VA employees, I believe many workers will feel pressure to conform to the administration's political views and be reluctant to raise health and safety concerns or otherwise criticize agency management, for fear of further retaliation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed April 1, 2025, in Washington, D.C.

Signed by:
06AD13C4700A4B7...

Mary-Jean Burke

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF THOMAS ANDREW HUDDLESTON

DECLARATION OF THOMAS ANDREW HUDDLESTON

I, Thomas Andrew Huddleston, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the Director of Communications for the American Federation of Government Employees, AFL-CIO ("AFGE"), a labor organization and unincorporated association that represents approximately 800,000 federal civilian employees through its affiliated councils and locals in every state in the United States. I have been the Director of Communications since 2019. In my role as Director of Communications, I am responsible for overseeing and directing AFGE's press and public relations strategy.

3. Since the inauguration, AFGE has been a high-profile and vocal opponent of President Trump's administration and the administration's actions harming federal workers. To date, AFGE has filed nine legal cases challenging the administration's actions. That litigation has received nationwide press attention, and administration officials have publicly responded to and attacked the litigation. Although the lawsuits are in their beginning stages, AFGE and its union allies have achieved early success though temporary restraining orders and preliminary injunctions halting some of the administration's actions.

4. AFGE has also engaged in extensive public speech regarding the administration's policies affecting federal workers. AFGE's leadership has been quoted extensively in press articles and on national television, voicing AFGE's disapproval of the administration's actions, emphasizing AFGE's commitment to opposing those policies, and calling on others to join them.

5. A true and correct copy of the March 3, 2025, article published by AFGE titled, "What AFGE Is Doing: A Recap of AFGE's Major Actions Against Trump's Attacks on Civil Service," which is available at and was downloaded from AFGE's publicly available website at the following link, https://www.afge.org/article/what-afge-is-doing-a-recap-of-afges-major-actions-against-trumps-attacks-on-civil-service-2/, is attached hereto as **Exhibit 1.** This article

was issued from my department and I was responsible for assigning the work and editing the article.

Lawsuit Against Elimination of Civil Service Protections

6. On January 20, 2025, President Trump signed an executive order titled "Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce,"[1] which reinstates an executive order from President Trump's first term stripping civil service employment protections from a wide swath of federal workers, including many AFGE members.

7. On January 29, 2025, AFGE filed suit alongside the American Federation of State, County and Municipal Employees ("AFSCME") against Defendants Donald Trump, Charles Ezell, Acting Director of the Office of Personnel Management ("OPM"), and OPM, challenging the executive order as unlawful. *See AFGE v. Trump*, Compl., 1:25-cv-00264 (D.D.C. Jan. 29, 2025).

8. AFGE released a public statement announcing the lawsuit: "AFGE is filing suit with our partner union today to protect the integrity of the American people's government. Together, we can stop the efforts to fire hundreds of thousands of experienced, hard-working Americans who have dedicated their careers to serving their country and prevent these career civil servants from being replaced with unqualified political flunkies loyal to the president, but not the law or Constitution."[2]

9. The national media has covered AFGE's lawsuit, including the union's allegations that the administration's "scheme seeks to put politics over professionalism, contrary to the laws and values that have defined our career civil service for more than a century."[3]

Lawsuit to Prevent DOGE From Accessing Sensitive Agency Data (Treasury Department)

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[1] *See* www.whitehouse.gov/presidential-actions/2025/01/restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce/.

[2] https://www.afge.org/publication/public-service-unions-file-lawsuit-challenging-trump-administration-efforts-to-politicize-the-civil-service/

[3] *See* https://www.newsweek.com/donald-trump-unions-public-input-2024476; *see also* https://www.reuters.com/world/us/trumps-plan-ease-firing-federal-workers-challenged-by-union-2025-01-29/

10. In late January, it came to light that Elon Musk and the "Department of Government Efficiency" temporary organization ("DOGE") were seeking access to sensitive data held by the Department of Treasury.[4]

11. On February 3, 2025, AFGE filed suit alongside Alliance for Retired Americans and Service Employees International Union ("SEIU") against Defendants Secretary of Treasury, Department of Treasury, and Bureau of the Fiscal Service. *See Alliance for Retired Americans v. Bessent*, Case No. 1:25-cv-313 (D.D.C. Feb. 3, 2025). The suit challenges the defendants' disclosure of personal and financial information contained in Defendants' records to Elon Musk and other members of the "Department of Government Efficiency" ("DOGE").

12. When the lawsuit was filed, AFGE issued a statement condemning the disclosure: "It is disgraceful that the Trump administration has allowed unelected billionaires and their lackeys unfettered access to the personal and financial information of Americans. Together, we can stop this violation of American citizens' privacy."[5]

13. The D.C. District Court issued a partial temporary restraining order restricting DOGE access to the data. The order was later lifted and litigation is ongoing.

14. The national media has covered AFGE's lawsuit, including the union's allegations that Treasury Secretary Bessent "took punitive measures against officials who sought to protect that information from improper access and allowed DOGE full access to the data,"[6] and "[t]he scale of the intrusion into individuals' privacy is massive and unprecedented."[7]

Lawsuit Against "Fork in the Road" Directive

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[4] *See* www.finance.senate.gov/chairmans-news/wyden-demands-answers-following-report-of-musk-personnel-seeking-access-to-highly-sensitive-us-treasury-payments-system

[5] https://www.afge.org/publication/advocacy-group-unions-sue-treasury-department-over-illegal-doge-data-access/; see also https://www.citizen.org/news/advocacy-group-unions-sue-treasury-department-over-illegal-doge-data-access/

[6] https://www.axios.com/2025/02/04/treasury-sued-doge-sensitive-information-musk-trump

[7] https://www.politico.com/news/2025/02/03/unions-sue-block-musk-treasury-payment-00202243

15. On January 28, 2025, OPM sent an email to nearly all federal workers with the subject line "Fork in the road."[8] The email offered deferred resignation to AFGE members and other federal employees, in an apparent effort to shrink the size of the federal workforce.

16. On February 4, 2025, AFGE filed suit alongside AFSCME and the National Association of Government Employees ("NAGE") against Defendants Charles Ezell, in his official capacity, and OPM, alleging that the "fork" directive is unlawful. *See AFGE v. Ezell*, Case No. 1:25-cv-10276 (D. Mass. Feb. 04, 2025).

17. The day the lawsuit was filed, AFGE issued a public statement condemning the "fork" directive: "AFGE is bringing this suit with our partners today to protect the integrity of the government and prevent union members from being tricked into resigning from the federal service," said AFGE National President Everett Kelley. "Federal employees shouldn't be misled by slick talk from unelected billionaires and their lackeys. Despite claims made to the contrary, this deferred resignation scheme is unfunded, unlawful, and comes with no guarantees. We won't stand by and let our members become the victims of this con."[9]

18. On February 6, 2025 the District Court of Massachusetts issued a temporary restraining order blocking the deferred resignation deadline. That same day, OPM issued a memo to the heads of all federal agencies directing them to submit a list of all federal employees "who received less than a 'fully successful' performance rating in the past three years" and to identify the terms of any applicable collective bargaining agreement that would "impede ... the agency's ability to swiftly separate low-performing employees."[10]

19. Following the February 6, 2025 temporary restraining order, AFGE issued a public statement: "'We are pleased the court temporarily paused this deadline while arguments are heard about the legality of the deferred resignation program,' Everett Kelley, president of

[8] *See* www.opm.gov/fork/original-email-to-employees/
[9] https://www.afge.org/publication/trump-administration-fork-directive-ultimatum-unlawful-as-written-unions-urge-court-to-find/
[10] chcoc.gov/sites/default/files/OPM%20Memo%20Request%20for%20Agency%20Performance%20Management%20Data%202-6-2025%20FINAL.pdf.

American Federation of Government Employees, the largest union of federal workers in the country, said in a statement. 'We continue to believe this program violates the law, and we will continue to aggressively defend our members' rights.'"[11]

20. Dozens of nationwide news outlets covered the court win with many reporting on AFGE's statements.[12]

21. Later in February, AFGE and its allies organized a series of demonstrations drawing federal workers and their allies to the Capitol and OPM's offices in Washington, D.C., where they protested the "fork in the road" directive and other administration efforts to dramatically and arbitrarily reduce the federal workforce. The Washington Post covered the protests and AFGE's lawsuit.[13]

22. On February 12, the court issued an order permitting the deferred resignation initiative to go forward. AFGE President Kelley issued a public statement confirming AFGE's commitment to opposing the directive: "Importantly, this decision did not address the underlying lawfulness of the program. We continue to maintain it is illegal to force American citizens who have dedicated their careers to public service to make a decision, in a few short days, without adequate information, about whether to uproot their families and leave their careers for what amounts to an unfunded IOU from Elon Musk."[14]

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[11] https://www.afge.org/publication/judge-blocks-implementation-of-trumps-deferred-resignation-offer/

[12] https://www.npr.org/2025/02/05/nx-s1-5286341/federal-employees-trump-deadline; https://www.cnn.com/2025/02/06/politics/federal-worker-resignation-deadline-trump/index.html; *see also* https://www.nbclosangeles.com/news/national-international/judge-extends-freeze-on-trumps-plan-to-get-millions-of-federal-workers-to-resign/3629310/; https://www.govexec.com/workforce/2025/02/judge-extends-pause-deferred-resignation-deadline/402890/; https://www.cbsnews.com/news/judge-temporarily-blocks-implementation-deferred-resignation-program; https://www.washingtonpost.com/dc-md-va/2025/02/06/deferred-resignationan-program-deadline/; https://www.nytimes.com/2025/02/10/us/politics/trump-judge-deferred-resignation-program.html; https://www.newsweek.com/judge-temporarily-halts-donald-trumps-plan-push-out-federal-workers-2027443.

[13] https://www.washingtonpost.com/dc-md-va/2025/02/11/federal-workers-rally-cuts-buyouts/

[14] https://www.afge.org/publication/afge-responds-to-fork-ruling-denying-preliminary-injunction-on-procedural-grounds/

23. President Kelley has appeared multiple times on national television to criticize the "fork in the road" directive. *See* MSNBC Chris Jansing Reports: '*If you take the fork, you're destined to get the knife': Union Pres. calls Trump buyouts a 'sham'* (Feb. 6, 2025) ("I don't think that [the fork in the road directive] is valid. I called it a sham from the beginning, and the evidence is showing that that's really what's going on here.");[15] CNN News Central with Boris Sanchez: *2M Federal Workers Face Choice on Whether to Resign* (Feb 7, 2025) ("I think that DOGE is completely illegal. … I have never seen such chaotic situations in my lifetime and it's simply because you have people that don't understand the federal system trying to regulate the federal system.");[16] CNBC Squawk Box: *AFGE President: Federal employees are being 'hoodwinked' and 'fooled' by Trump admin's buyout offer* (Feb 7, 2025);[17] MSNBC The Weekend: *Labor Unions Push Back Against Federal Worker Firings* (Feb 22, 2025).[18]

Lawsuit to Prevent DOGE From Accessing Sensitive Agency Data (Labor, Health and Human Services, CFPB)

24. On February 5, 2025, AFGE brought a lawsuit seeking to protect the confidential information of federal workers housed at the Department of Labor, Department of Health and Human Services, and the Consumer Financial Protection Bureau from being disclosed improperly to DOGE. AFGE filed suit alongside other unions and nonprofit organizations against Defendants Department of Labor, Department of Health and Human Services, Consumer Financial Protection Bureau, DOGE, and their acting leadership. *See AFL-CIO v. Department of Labor*, Case No. 1:25-cv-00339-JDB (D.D.C. Feb. 5, 2025).

25. This lawsuit has been widely covered by the national media, including coverage of the union's allegations that "DOGE's behavior repeats itself across virtually every agency it

[15] https://www.msnbc.com/chris-jansing-reports/watch/-if-you-take-the-fork-you-re-destined-to-get-the-knife-union-pres-calls-trump-buyouts-a-sham-231306309679
[16] https://app.criticalmention.com/app/#clip/view/2ede80c1-88d0-4046-9b5f-b7f4b6f4a62d?token=95b20931-091a-4801-a8e5-340838dc13e0
[17] https://www.cnbc.com/video/2025/02/07/afge-president-federal-employees-are-being-hoodwinked-and-fooled-by-trump-admins-buyout-offer.html
[18] https://app.criticalmention.com/app/#/report/aa1d2e9d-ab5f-49c9-a17b-1fe890dd1395

enters: swooping in with new DOGE staff, demanding access to sensitive systems, taking employment action against employees who resist their unlawful commands, and then beginning to re-work the agencies at their will."[19]

26. On March 10, 2025, the Court granted the union plaintiffs expedited pre-preliminary injunction discovery into DOGE.

Lawsuit to Prevent Dismantling of USAID

27. Starting on January 20, 2025, and continuing thereafter, the Trump administration has taken a series of actions to abruptly halt and then close down the United States Agency for International Development ("USAID").[20]

28. On February 6, 2025, AFGE filed a lawsuit along with the American Foreign Service Association against Defendants Donald Trump, Department of State, U.S. Agency for International Development, Treasury Department, and the Secretaries of State and Treasury. *See American Foreign Service Association v. Trump*, Case No. 1:25-cv-352 (D.D.C. Feb. 6, 2025). The lawsuit challenges actions by President Trump and the administration to dismantle USAID.

29. In news articles, AFGE condemned the administration's actions: "The men and women of USAID deserve a government that values and understands their contributions, not one that leaves them high and dry and unable to pursue their important work after a hostile takeover," said Everett Kelley, AFGE National President. "We will stand up for our members and all

[19] https://www.politico.com/news/2025/02/05/labor-department-lawsuit-doge-00202644; see also https://news.bloomberglaw.com/daily-labor-report/union-coalition-sues-to-block-doge-labor-department-data-access; https://thehill.com/business/5128870-afl-cio-lawsuit-against-elon-musk; https://www.courthousenews.com/unions-sue-doge-labor-department-to-block-access-to-worker-and-musk-competitor-data/; https://www.democracydocket.com/news-alerts/federal-unions-sue-doge-over-department-of-labor-data-access/; https://www.reuters.com/world/us/union-asks-judge-block-elon-musks-doge-labor-dept-systems-2025-02-05/; https://www.law360.com/employment-authority/labor/articles/2293771/musk-can-t-access-dol-data-labor-groups-say; https://apnews.com/article/social-security-trump-administration-acfdd0d7a53b7e5a1b5105baa456c5d0

[20] *See* https://www.federalregister.gov/documents/2025/01/30/2025-02091/reevaluating-and-realigning-united-states-foreign-aid

USAID workers who deliver aid across the globe and contribute to a safer, healthier world for all Americans."[21]

30. The D.C. District Court initially granted a temporary restraining order against the defendants. After the court denied a preliminary injunction, AFGE issued a public statement confirming its commitment to challenging the dismantling of USAID: "Today's ruling is a setback but we remain committed to our USAID members and the valuable work they do. We will continue to fight the administration's illegal efforts to dismantle USAID," said AFGE President Everett Kelley.[22]

31. The lawsuit has received national media attention, including coverage of AFGE's statements.[23]

Lawsuit to Prevent DOGE From Accessing Sensitive Agency Data (OPM)

32. On February 11, 2025, AFGE filed a lawsuit seeking to halt the disclosure of federal employees' personal data in OPM files to DOGE. AFGE filed suit alongside the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, and current and former federal employees against OPM, Charles Ezell, DOGE, Elon Musk, and other administration defendants. *See AFGE v. OPM*, Case No. 1:25-cv-01237 (S.D.N.Y. Feb. 11, 2025). The lawsuit has been reported in the press.[24]

Lawsuit Seeking Reinstatement of Terminated Probationary Employees

33. On February 13, 2025, OPM directed federal agencies to fire essentially all employees still on probation.[25]

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[21] https://www.insidernj.com/government-employee-unions-sue-trump-administration-for-shutting-down-usaid/

[22] https://www.afge.org/article/afge-allies-vow-to-continue-fight-to-save-usaid/

[23] https://www.politico.com/news/2025/02/21/judge-approval-mass-recall-usaid-overseas-workers-trump-administration-00205575; https://www.scrippsnews.com/politics/president-trumps-first-100-days/labor-groups-sue-over-the-dismantling-of-usaid

[24] https://www.upi.com/Top_News/US/2025/02/12/new-DOGE-lawsuit/3611739343070/

[25] *See* https://federalnewsnetwork.com/workforce/2025/02/opm-fires-probationary-employees-after-deferred-resignation-deadline/.

34. AFGE's National President Kelley publicly condemned the firing as unlawful: "This administration has abused the probationary period to conduct a politically driven mass firing spree, targeting employees not because of performance, but because they were hired before Trump took office. … AFGE will fight these firings every step of the way. We will stand with every impacted employee, pursue every legal challenge available, and hold this administration accountable for its reckless actions. Federal employees are not disposable, and we will not allow the government to treat them as such."[26]

35. On February 20, 2025, AFGE filed suit alongside AFSCME, United Nurses Associations of California/Union of Health Care Professionals, the State of Washington, and nonprofit organizations against Defendants OPM and Charles Ezell, challenging OPM's order. *See AFGE v. Office of Personnel Management,* Second Amended Compl., 3:25-cv-01780-WHA (N.D. Cal. March 11, 2025).

36. The Northern District of California issued a temporary restraining order and then a preliminary injunction directing OPM to rescind its order and ordering the agencies to put terminated employees back to work. AFGE's statements about the victory were reported in the nationwide press. To the BBC, President Kelley "called the ruling a victory for Americans who were 'illegally fired' from their jobs by an agency with 'no authority to do so."[27] In USA Today, President Kelly called the decision "an important initial victory" for the people who were recently fired: "These are rank-and-file workers who joined the federal government to make a difference in their communities, only to be suddenly terminated due to this administration's disdain for federal employees and desire to privatize their work," he said.[28]

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[26] https://www.afge.org/publication/afge-president-everett-kelley-condemns-trump-administrations-mass-firing-of-federal-employees/

[27] https://www.bbc.com/news/articles/clydd7zeye7o

[28] https://www.usatoday.com/story/news/politics/2025/02/27/judge-blocks-trump-administration-firing-probationary-employees/80754368007/; *see also* https://www.afge.org/publication/federal-court-finds-firing-of-probationary-federal-employees-illegal/; https://www.afge.org/publication/federal-court-orders-reinstatement-of-fired-probationary-federal-employees/

37. On March 14, 2025, after Judge William Alsup issued a preliminary injunction granting the unions' request to reinstate unlawfully fired probationary workers, President Trump's advisor, Elon Musk, retweeted a photo of Judge Alsup, stating that unless "the absolute worst judges get impeached, we don't have real democracy in America."[29]

38. On March 16, 2025, Fortune Magazine observed that "[u]nions have played a major role in legal challenges to the mass firing of federal workers."[30]

39. On March 17, 2025, President Trump described the unions' lawsuit and Judge Alsup's decision as "absolutely ridiculous . . . a very dangerous thing for our country." Referring to the reinstated union members, President Trump said without support "these are people in many cases they don't show up for work . . . a judge want us to pay 'em even if they don't know if they exist . . . and I don't know if that's going to be happening."[31]

40. Dozens of press outlets covered the lawsuit and AFGE's public statements.[32]

Lawsuit Challenging Termination of TSA Officers' Union Contract

41. On March 7, 2025, the Department of Homeland Security announced it was ending collective bargaining for the Transportation Security Administration's ("TSA")

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[29] See https://x.com/elonmusk/status/1900399743517548571

[30] *See* https://fortune.com/2025/03/16/union-leader-lee-saunders-afscme-federal-worker-layoffs-trump-elon-musk

[31] https://www.foxnews.com/politics/dangerous-order-liberal-judge-rehire-federal-workers-should-go-scotus-trump-says.

[32] *See, e.g.*, https://apnews.com/article/federal-employees-firing-lawsuit-trump-probation-unions-4a9384c21e408df85ca17dfac5b9dc93; https://thehill.com/regulation/court-battles/5160886-federal-employee-unions-lawsuit-elon-musk/; https://www.eenews.net/articles/unions-sue-over-probationary-employee-terminations/; https://www.reuters.com/legal/labor-groups-sue-trump-administration-over-mass-firings-probationary-employees-2025-02-20/; https://www.cbsnews.com/news/judge-rules-mass-firings-federal-probationary-employees-likely-illegal/; https://www.nbcnews.com/news/amp/rcna194131; https://www.axios.com/2025/02/28/trump-federal-employees-firing-court-judge; https://www.salon.com/2025/02/28/does-not-have-any-authority-whatsoever-rules-admins-mass-firings-likely-illegal/; https://www.bizjournals.com/sanfrancisco/news/2025/03/13/government-agencies-trump-judge-william-alsup-sf.html; https://abcnews.go.com/Politics/judge-order-fired-probationary-federal-employees-reinstated/story?id=119759494

Transportation Security Officers[33]

42. AFGE issued a public statement condemning the termination: "Our union has been out in front challenging this administration's unlawful actions targeting federal workers, both in the legal courts and in the court of public opinion. Now our TSA officers are paying the price with this clearly retaliatory action. Let's be clear: this is the beginning, not the end, of the fight for Americans' fundamental rights to join a union. AFGE will not rest until the basic dignity and rights of the workers at TSA are acknowledged by the government once again." President Kelley said: "I call on all patriotic and freedom-loving Americans to contact your elected officials and demand they take action immediately to stop these attacks."[34]

43. On March 13, 2025, AFGE and AFGE Local 1121, alongside the Communications Workers of America and Association of Flight Attendants, filed suit against Defendants Kristi Noem, Department of Homeland Security, Adam Stahl, and the Transportation Security Administration challenging the termination. *See AFGE v. Noem*, Case No. 2:25-v-00451 (W.D. Wash. Mar. 13, 2025). The lawsuit challenges the Department of Homeland Security's attempt to rescind its collective bargaining agreement between AFGE and TSA, which covers 47,000 TSA employees.

44. The same day as the lawsuit, AFGE issued a public statement opposing the cancellation of the TSA contract: "This attack on our members is not just an attack on AFGE or transportation security officers. It's an assault on the rights of every American worker … Tearing up a legally negotiated union contract is unconstitutional, retaliatory, and will make the TSA experience worse for American travelers."[35]

45. The national media reported on AFGE's lawsuit and AFGE's statements. For instance, Politico reported on President Kelley's statement that the cancellation "is merely a

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[33] https://www.dhs.gov/news/2025/03/07/dhs-ends-collective-bargaining-tsas-transportation-security-officers-enhancing
[34] https://www.afge.org/publication/eliminating-tsa-officers-union-is-clear-retaliation-afge-says/
[35] https://www.afge.org/publication/unions-file-lawsuit-against-dhs-to-stop-the-illegal-termination-of-transportation-security-officers-collective-bargaining-agreement/

pretext for attacking the rights of regular working Americans across the country because they happen to belong to a union."[36] The New York Times and Reuters reported on the lawsuit's allegations that "This retaliatory action is in accord with a broader Trump administration policy of terminating contracts in retaliation for protected speech."[37]

Lawsuit to Prevent Dismantling of Voice of America

46. On March 14, 2025, President Trump issued an executive order eliminating, among six other agencies, the U.S. Agency for Global Media, which operates Voice of America.[38]

47. The next day, AFGE President Kelley issued a statement condemning the elimination of Voice of America: "Voice of America was founded to spread the truth and fight propaganda from lawless authoritarian regimes—so it's no surprise that the Trump administration is trying to dismantle it. This blatant political takeover isn't just an attack on our members' jobs—it's an assault on press freedom, journalistic integrity, and democracy the world over."[39]

48. On March 21, 2025, AFGE filed suit alongside AFSCME, the American Foreign Service Association, NewsGuild-CWA, Reporters without Borders, and individual journalists against the U.S. Agency for Global Media and its senior leaders. *See Widakuswara v. Lake*, 1:25-cv-02390-JPO (S.D.N.Y. March 21, 2025). The suit challenges the Trump administration's decision to abruptly shutter Voice of America, lock out journalists, cancel grants, and end its broadcasts.

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[36] https://www.politico.com/news/2025/03/07/trump-tsa-screener-union-void-00217623#:~:text=%E2%80%9CThey%20gave%20as%20a%20justification,%E2%80%9D

[37] https://www.reuters.com/world/us/trump-administration-sued-ending-union-bargaining-tsa-officers-2025-03-13/; *see also* https://www.nytimes.com/2025/03/13/us/politics/federal-workers-union-lawsuit-tsa.html

[38] https://www.whitehouse.gov/presidential-actions/2025/03/continuing-the-reduction-of-the-federal-bureaucracy/

[39] https://www.afge.org/publication/journalists-federal-workers-and-unions-file-lawsuit-to-challenge-closure-of-us-agency-for-global-media/

49. When the court issued a temporary restraining order prohibiting the government from dismantling the international broadcasting network or terminating employees that have been placed on administrative leave, AFGE publicly praised the injunction as "a decisive victory for press freedom and a sharp rebuke to an administration that has shown utter disregard for the principles that define our democracy."[40]

50. National media outlets reported on AFGE's lawsuit to keep Voice of America open and on AFGE's statements.[41]

Other Public Criticism and Speech Activity in Opposition to the Administration

51. AFGE's public criticisms of the Trump Administration have not been limited to the subjects of its lawsuits. AFGE has been among the administration's most consistent and outspoken critics**.** AFGE's criticisms have been widely reported in the nationwide press.

52. In January 2025, President Kelley appeared on national television criticizing President Trump's cuts to federal DEI programs. *See* MSNBC The ReidOut: *Trump doesn't know what DEI is—so his attacks will hurt veterans, labor leader says* (Jan. 22, 2025);[42] MSNBC PoliticsNation: *AFGE President Everett Kelley: 'This president told us this is exactly what he was going to do'* (Jan. 26, 2025).[43] ABC News: *Government employee union president reacts to Trump's new DEI directives* (Jan. 23. 2025).[44]

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[40] https://www.reuters.com/business/media-telecom/us-judge-temporarily-blocks-trump-firing-voice-america-staff-2025-03-28/#:~:text=,an%20attorney%20for%20the%20plaintiffs

[41] *See, e.g.*, https://www.washingtonpost.com/politics/2025/03/22/voice-america-lawsuit-trump-kari-lake/; https://www.npr.org/2025/03/21/nx-s1-5336351/voice-of-america-trump-lawsuit-kari-lake-voa; https://www.reuters.com/legal/voice-america-employees-sue-trump-administration-over-shuttered-us-funded-news-2025-03-21/; https://apnews.com/article/voice-america-free-press-trump-lawsuit-lake-6c88792addbfd651d1d06b8705fd8e10; https://www.theglobeandmail.com/world/article-voice-of-america-employees-sue-trump-administration-over-shuttered-us/ https://www.theglobeandmail.com/world/article-voice-of-america-employees-sue-trump-administration-over-shuttered-us/

[42] https://www.msnbc.com/the-reidout/watch/trump-asks-federal-agencies-to-submit-plan-by-jan-31-for-dismissing-workers-in-dei-roles-230030917632

[43] https://www.msnbc.com/politicsnation/watch/-this-president-told-us-this-is-exactly-what-he-was-going-to-do-says-afge-president-230309445755

[44] https://abcnews.go.com/US/video/government-employee-union-president-reacts-trumps-new-dei-118049920

53. On February 19, 2025, AFGE issued a statement condemning the Trump Administration's efforts to dismantle the Social Security Administration: "The American people deserve better than broken promises and a hostile takeover of Social Security by unaccountable billionaires …. We need to protect Social Security from this scheme—not just for today's seniors, but for future generations."[45]

54. In late February 2025, the national press reported AFGE's criticism of the Musk email asking federal employees to respond to the question "What did you do last week?" with five bullet points or face dismissal.[46] AFGE President Kelley wrote a letter informing OPM Acting Director Ezell: "The email fails to identify any legal authority permitting OPM to demand the requested information. OPM's actions conflict with laws delegating the authority for the management of federal employees to their respective agencies and do not comport with OPM's own regulations and guidance."[47] In the press, President Kelley condemned Musk's request for federal employees to account for the work they did in the past week or face dismissal as "cruel and disrespectful."[48]

55. On March 5, 2025, AFGE issued a statement condemning the administration's plans to slash 83,000 VA positions: "Until Elon Musk and Donald Trump came on the scene, America never turned its back on our veterans and their families. Their reckless plan to wipe out the VA's ability to deliver on America's promise to veterans will backfire on millions of veterans and their families who risked their lives in service for our country."[49] On March 26, AFGE members staged a public protest outside Brooklyn VA Medical Center, where President Kelley addressed the crowd: "We gather here at Brooklyn VA Medical Center not just as

[45] https://www.afge.org/publication/afge-president-everett-kelley-criticizes-trump-administration-and-elon-musk-over-efforts-to-dismantle-ssa/
[46] https://www.npr.org/2025/02/23/nx-s1-5306366/musk-federal-worker-email-confusion
[47] https://www.afge.org/globalassets/documents/2025-docs/np-kelley-letter-to-ezell.pdf
[48] https://www.npr.org/2025/02/23/nx-s1-5306366/musk-federal-worker-email-confusion
[49] https://www.afge.org/publication/afge-president-everett-kelley-outraged-over-veterans-affairs-plan-to-fire-83000-additional-employees/

individuals but as a united front against the relentless attack on our veterans and the dedicated workers who serve them."[50]

56. On March 18, 2025, AFGE President Kelley wrote an op-ed in Newsweek, in which he argued that "Elon Musk and his Department of Government Efficiency (DOGE) have been on the job for less than two months, but the early results are nothing short of disastrous. These include a series of airplane safety incidents, cancelled appointments at the VA, long lines outside national parks, and abandoned medical research. Through it all, there is an overriding sense that the world's richest man is using his power over President Donald Trump to steal from the public coffers and enrich himself. … To create a more efficient and effective federal government, the first thing we should do is fire Elon Musk and close his DOGE."[51]

57. On March 20, 2025, AFGE warned that "Trump's Directive to Abolish Education Department Will Destroy Education in America," adding that "The Department of Education plays a crucial role supporting our students and their families at schools and universities in every community across this nation, and President Trump's directive to eliminate this small but mighty agency would destroy our education system and devastate future generations of students."[52]

58. AFGE has organized, or helped its affiliates organize, several public protests in response to actions by the Trump administration.[53]

The Trump Administration's Public Responses

59. In a February 12, 2025 post on Truth Social, President Trump responded to lawsuits brought by unions and their allies by claiming "Billions of Dollars of FRAUD, WASTE,

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[50] https://www.brooklynpaper.com/brooklyn-va-rally-trump-cuts/

[51] https://www.newsweek.com/poor-performing-probationary-employee-elon-musk-must-go-opinion-2046116

[52] https://www.afge.org/publication/trumps-directive-to-abolish-education-department-will-destroy-education-in-america-union-says/

[53] https://www.freep.com/story/news/politics/2025/03/01/fired-federal-workers-michigan-protest-trump-musk/80831297007/; https://www.wrtv.com/news/local-news/officers-are-upset-tsa-workers-rally-at-indy-airport-to-restore-union-protections; https://www.stlpr.org/economy-business/2025-03-08/federal-labor-union-rally-florissant-doge-job-terminations; https://coloradosun.com/2025/03/27/denver-epa-protest-american-federation-of-government-employees-trump/

and ABUSE" and complaining that "certain activists and highly political judges want us to slow down, or stop."[54]

60. On February 16, 2025, President Trump posted on Truth Social an article titled "Dems and Judges Shredding Article II Are A Threat To Democracy," which criticized a coalition of "blue states, labor unions, and non-profit organizations [that] have descended on federal courts up and down the East Coast seeking to halt President Donald Trump's agenda."

61. After Musk reposted a tweet on March 13, 2025, that stated, "Stalin, Mao and Hitler didn't murder millions of people. Their public sector workers did," AFGE President Kelley defended public employees: "The implication that the American citizens working at your local VA hospital or Social Security office are worse than Hitler, Stalin, or Mao – history's most despicable masterminds of genocide and mass murderer – is totally disconnected from reality. … That this baseless accusation comes from the single most influential person in our government should alarm every citizen." Other national news outlets covered Musk's tweet.[55]

62. In a March 28, 2025, interview with Fox News, Musk responded to a question about the success of unions and other plaintiffs securing TROs and preliminary injunctions by blaming the "very far left bias" of the D.C. Circuit Court and suggesting that those benefiting from the rulings must be personal friends with the judges who have issued rulings adverse to the government. Musk concluded, "it sounds like corruption to me."[56]

63. On March 29, 2025, the New York Times reported on the March 27, 2025 Executive Order "Exclusions from Federal Labor Management Relations Programs.[57] **A White House spokesperson quoted in the article confirmed: "The goal [of the order] is to stop**

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[54] https://www.thetimes.com/us/american-politics/article/donald-trump-lashes-out-truth-social-elon-musk-083qpsld8.

[55] *See, e.g.*, https://www.nytimes.com/2025/03/14/technology/elon-musk-x-post-hitler-stalin-mao.html; https://www.usatoday.com/story/news/politics/2025/03/14/elon-musk-hitler-federal-workers/82402023007/; https://www.msn.com/en-in/news/world/elon-musk-resharing-post-saying-hitler-didn-t-murder-millions-sparks-controversy/ar-AA1AUXCY;

[56] *See* https://www.newsweek.com/elon-musk-doge-team-give-update-social-security-fox-news-interview-2051814.

[57] https://www.nytimes.com/2025/03/29/us/politics/federal-worker-unions-doge.html

employees in certain security-related agencies from unionizing in ways that disrupt the president's agenda."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed April 3, 2025, in Washington, D.C.

_____

Thomas Andrew Huddleston

EXHIBIT 1

What AFGE Is Doing: A Recap of AFGE's Major Actions Against Trump's Attacks on Civil Service

March 03, 2025

Categories: The Insider (https://www.afge.org/articles/?Category=84)

It's been only six weeks since President Trump took office, but the damage to our government and the U.S.'s standing in the world has been massive. AFGE and our members, however, are fighting back. Here's a quick recap of the major actions we have taken:

1. **Probationary employees:** We filed a lawsuit (/article/afge-files-lawsuit-against-opm-for-illegal-mass-firings-of-probationary-employees/) against the administration for its illegal mass firings of probationary employees. A federal judge on Feb. 27 ruled (/publication/federal-court-finds-

firing-of-probationary-federal-employees-illegal/) that the mass firings were unlawful, saying OPM has no authority to fire employees employed by other agencies.

2. **USAID bill:** We worked with members of Congress to introduce a bill, **H.R. 1196 (https://www.congress.gov/bill/119th-congress/house-bill/1196)**, to prohibit the use of federal funds to eliminate the U.S. Agency for International Development (USAID). The agency was one of the first and biggest targets of the Trump administration, which has proceeded to **end (https://www.reuters.com/world/us/usaid-workers-say-goodbye-headquarters-trump-drastically-cuts-foreign-aid-2025-02-27/)** more than 90% of its foreign aid contracts. AFGE and allies are pursuing the next step of a **lawsuit (/article/afge-allies-vow-to-continue-fight-to-save-usaid/)** that seeks to stop the administration's illegal attempt to shut down USAID. The recent decision by a judge to allow the Trump administration to put employees on leave was not on the merit of the case but rather jurisdiction – that the case should be heard in federal labor court. In addition to the lawsuit, we're also working with Local 1534 which represents USAID employees, to file grievances over its violations of the labor-management contract and appeals to the Merit Systems Protection Board (MSPB) for unlawful terminations of employees. To keep our members informed of the current situation including lawsuits that affect them, AFGE created a new website for USAID employees at **www.afge.org/usaid (/take-action/campaigns/we-are-afge-strong/usaid-strong/)**. The website also provides resources such as ways they can fight back the attack on their agency, Executive Action Toolkit, RIF FAQ, Probationary FAQ, education resources, and more.

3. **Musk's emails:** Elon Musk's Office of Personnel Management (OPM) **backtracked (https://www.govexec.com/workforce/2025/02/opm-says-musk-demand-feds-report-accomplishments-voluntary/403221/?oref=ge-mini-feed)** on its email requiring federal workers to list five things they did the past week or risk termination after AFGE **threatened (/publication/afge-president-everett-kelley-response-to-elon-musks-demand-for-federal-workers-justify-their-jobs-or-resign/)** to challenge any unlawful terminations of our members. AFGE issued a statement and provided **guidance (/take-action/campaigns/we-are-afge-strong/executive-action-toolkit/guidance-opm-email/)** to members on the issue right after Musk sent the email that caused confusion and stress among the federal workforce. Musk sent another email the following week. AFGE reiterated our stance.

4. **Legally binding contracts:** For years, AFGE has prepared our locals to protect members in the event a future president tried to politicize the federal workforce. Our council and local leaders have put in place several safeguards against the politicization of the workforce and the work our members do in negotiated, legally-binding contracts. The AFGE EPA Council 238, for example, **signed (https://afge238.org/news/press-release-afge-council-238-reaches-new-contract-with-the-epa/)** a contract last year with a provision protecting scientific integrity.

5. **Grievances:** We're working with councils and locals in drafting local and national grievances against actions that violated our contracts.

6. **Fighting back:** AFGE's councils and locals have been working hard to protect members from illegal efforts to shut down their agencies and cut staff. Trump's attacks are unprecedented, but we are not taking it lying down. The AFGE council representing Social Security Administration (SSA) employees, for example, was largely successful in shielding the workers from Trump's

early attacks and is now working to fight Trump's **plan (https://prospect.org/health/social-security-administration-could-cut-half-its-workforce/)** to cut staff by 50%.

7. **Schedule F:** We filed a **lawsuit (/publication/public-service-unions-file-lawsuit-challenging-trump-administration-efforts-to-politicize-the-civil-service/)** against the administration for its efforts to politicize the civil service through Schedule F, now renamed Schedule Career/Policy.
8. **DOGE:** We filed a **lawsuit (/publication/advocacy-group-unions-sue-treasury-department-over-illegal-doge-data-access/)** against the administration for sharing confidential data with the so-called Department of Government Efficiency (DOGE) run by Elon Musk. As a result, a judge partially **blocked (/article/judge-partially-blocks-doge-data-access-in-response-to-lawsuit-by-afge-allies/)** DOGE's access to the Treasury Department's payment systems.
9. **DOGE:** We filed a **lawsuit (/article/afge-allies-file-suit-against-trump-omb-over-doge/)** against the administration for violating a law requiring that an advisory committee such as the Department of Government Efficiency (DOGE) be fairly balanced in its membership and points of view.
10. **DOGE:** We filed a **lawsuit (https://www.asppa-net.org/news/2025/2/doge-puts-dol-in-its-sights-labor-groups-push-back/)** against the administration for violating the Privacy Act and Administrative Procedures Act when DOGE tried to access sensitive data at the Department of Labor and dismantle and restructure federal agencies unilaterally. A judge Feb. 27 **ordered (https://www.nbcnews.com/politics/doge/judge-orders-doge-employee-testify-lawsuit-trump-administration-rcna194145)** DOGE to testify.
11. **Fork directive:** We filed a **lawsuit (/publication/trump-administration-fork-directive-ultimatum-unlawful-as-written-unions-urge-court-to-find/)** against the administration for removing career public service workers and replacing them with partisan loyalists through the Fork Directive. A judge **paused (/article/judge-blocks-implementation-of-fork-directive-as-requested-by-afge-allies/)** the deadline for the deferred resignation program as a result. Even though the judge eventually refused to further pause the deadline, we were able to delay the deadline to allow members to make a decision. The case is still ongoing as the judge did not rule on the underlying lawfulness of the program but procedural grounds, arguing the union had no direct stake.
12. **Executive Action toolkit:** AFGE released a **toolkit (/take-action/campaigns/we-are-afge-strong/executive-action-toolkit/)** for members and locals to use in response to Trump's anti-worker executive orders. The toolkit includes guidance and templates and will be updated regularly.
13. **Online clearing house:** AFGE and allies have launched an online clearing house to share best practices and provide assistance to federal workers in understanding and exercising their rights. **Civil Service Strong (https://www.civilservicestrong.org/)** provides information about employee rights, legal representation, whistleblowing, and more. It explains the process to file a discrimination complaint through the Equal Employment Opportunity Commission and the role of the Merit Systems Protection Board in protecting the civil service from political interference and upholding merit principles. The resource center will soon launch a centralized

hub for individuals facing harassment by private individuals, or fearing firing, reassignment, or retaliation.

14. **Town halls:** We held and participated in internal and external national, local, council, and district town halls with AFGE members, supporters, and elected officials discussing how AFGE is fighting and sharing best practices on how others can support our fight.
15. **Public responses:** AFGE continues to educate the public about the impact of these anti-worker policies on federal employees and the American people who rely on them to provide the services they have paid for and deserve. AFGE leaders have been giving interviews to the media and have been quoted extensively on the danger of these policies.
16. **Legislative efforts and rallies:** AFGE has been educating members of Congress on the real-world impact of Trump's anti-worker directives on federal workers and the American people they serve in the hopes that they will work to nullify them through legislation. After Election Day, we began tracking statements and policy positions related to the federal workforce issued by President-elect Trump, congressional leaders, and think tanks supporting the incoming administration and gaming out the potential scope and impact of changes that the Trump administration and the 119th Congress could seek to make to the federal workforce. We expect the next 18 months to pose the gravest threat to the nonpartisan, merit-based civil service system since the system was established in 1883 and revised in the 1978 Civil Service Reform Act. We have also been working closely with our allies on Capitol Hill, in both the Republican and Democratic parties, to protect federal workers' jobs, pay, and benefits.

Join us and fight back!

Joining AFGE (https://join.afge.org/) is easy. It takes only a few minutes!

Recent AFGE News:

AFGE Will Challenge Trump's Illegal Directive Outlawing Federal Unions (/link/2b5e1ab4282142278520fa5a20eef88f.aspx)

March 31, 2025

(/link/2b5e1ab4282142278520fa5a20eef88f.aspx)

AFGE will challenge the Trump administration for illegally attempting to strip over one million federal workers of collective bargaining rights and rip up union contracts.

Read More (/link/2b5e1ab4282142278520fa5a20eef88f.aspx)

Chaos and Corruption Weekly Digest: Week 10 (/link/638f6319f5e5459aa2b411b5f4b5e3bc.aspx)

March 31, 2025

(/link/638f6319f5e5459aa2b411b5f4b5e3bc.aspx)

Week 10 saw Trump's biggest attack on the labor movement in history: his illegal attempt to outlaw federal unions and end union contracts.

Read More (/link/638f6319f5e5459aa2b411b5f4b5e3bc.aspx)

GOP Lawmakers Push Through Legislation That Would Let Trump Abolish Any Agency without Congressional Oversight (/link/46a4f41a0f1e459ba6328171a7fd328b.aspx)

March 31, 2025

(/link/46a4f41a0f1e459ba6328171a7fd328b.aspx)

President Trump has many willing partners in Congress, and it was evident on March 25 when Republican members of the House Oversight and Government Reform Committee marked up four anti-federal worker bills.

Read More (/link/46a4f41a0f1e459ba6328171a7fd328b.aspx)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCICO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF EVERETT KELLEY

DECLARATION OF EVERETT KELLEY

I, Everett Kelley, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the National President of the American Federation of Government Employees, AFL-CIO ("AFGE"), a labor organization and unincorporated association that represents approximately 800,000 federal civilian employees through its affiliated councils and locals in every state in the United States. AFGE federal employee members include nurses caring for our nation's veterans in the Department of Veterans Affairs, workers protecting human health and the environment, scientists conducting critical research, civilian employees in the Department of Defense supporting our military personnel and their families, correctional officers maintaining safety in federal facilities, health care workers serving on military bases, and employees of the Social Security Administration making sure retirees receive the benefits they have earned.

3. I have been National President of AFGE since 2020. Prior to that, I served in other national and local union leadership roles. I was also a federal government employee for 34 years, working at Anniston Army Depot in Alabama. I have been a proud member of AFGE since 1981.

4. AFGE advocates on behalf of its members and seeks to promote dignity, safety, and fairness for all government employees. Our core functions include providing support, guidance, and resources to our affiliates, which are the officially recognized exclusive representatives of federal employees in various bargaining units. AFGE is dedicated to fighting for dignity, safety, and fairness on the job for the workers in its bargaining units, and to promoting efficiency and the improvement of government service so that government can more effectively serve the American people.

5. AFGE represents more than 50,000 federal employees in the State of California, at agencies including, but not limited to, the Department of Veterans Affairs, the Small Business

Administration, the Environmental Protection Agency, and the Department of Defense. AFGE has several affiliates that represent employees in the San Francisco Bay Area, including employees at the San Francisco Veterans Health Care System, the Palo Alto VA Medical Center, and various Social Security Field offices and military installations.

6. Membership in AFGE is voluntary.

7. The March 27, 2025 Executive Order titled "Exclusions from Federal Labor Management Relations Programs" ("Executive Order") is causing harm to AFGE, AFGE's affiliated locals and councils, and AFGE's members.

8. AFGE represents approximately 660,000 employees working in the agencies to which the Executive Order's restrictions on collective bargaining and exclusive union representation apply. AFGE's affected members work in the Department of Health and Human Services, Department of Veterans Affairs, Department of the Interior, Department of Energy, Department of Agriculture, Department of Commerce, Environmental Protection Agency, National Science Foundation, United States Agency for International Development, Nuclear Regulatory Commission, International Trade Commission, General Services Administration, Department of Housing and Urban Development, Department of State, Department of Defense, Department of Homeland Security, Department of Justice, Department of Transportation, Office of Personnel Management, Department of Labor, Department of Education, and Social Security Administration.

9. The Executive Order strips AFGE member workers in those agencies of fundamental collective bargaining rights, of their exclusive bargaining representatives, and of the rights and protections that are provided in their collective bargaining agreements. By eliminating those rights and protections, the Executive Order cripples AFGE's ability to fulfill its mission of advocating for better working conditions for federal workers.

10. AFGE's activities and staff are funded through our members' voluntary dues, most of which are paid through payroll deduction from their pay. If AFGE can no longer receive dues through payroll deduction under the Executive Order, that will drastically reduce AFGE's

revenue and make it substantially more difficult for AFGE to advocate on behalf of its members and provide support, guidance, and resources to our affiliates

11. Under the Executive Order, numerous AFGE local unions or councils will likely cease to exist. Many other bargaining units will be eliminated or severely diminished in size. Based on decades of experience as a union leader, I know that a union's bargaining power derives from the number of employees it represents at an agency. Our voice as an organization is the collective voice of our members and the employees we represent. If a union cannot secure and defend a collective bargaining agreement on behalf of its members, it has very little ability to attract members and advocate effectively for workers at a given employer. By abolishing collective bargaining agreements and representational rights for almost all employees at these agencies, the Executive Order severely diminishes AFGE's and its affiliates' ability to represent workers at those agencies.

12. AFGE and its affiliates did not receive any prior notice, before the issuance of the Executive Order, of the Administration's intention to eliminate statutory collective bargaining rights from employees in the agencies listed above. Nor have AFGE or its affiliates received notice of the underlying unclassified evidence purportedly supporting the Administration's determination that those employees should be excluded from collective bargaining due to "national security" concerns. If AFGE and its affiliates had received notice, we would have objected and demonstrated why collective bargaining rights for these employees do not implicate national security concerns.

13. These injuries suffered by AFGE and its members are ongoing and imminent and will persist unless the Court intervenes.

14. AFGE has been a staunch opponent of the many actions taken by President Trump's Administration that harm federal workers, their families, and the public who rely on services provided by those workers. AFGE is a plaintiff in several recent and ongoing lawsuits challenging those actions. I am aware that these lawsuits have received national attention in the press.

15. AFGE has also issued many public statements that are critical of the current Administration's policies, including statements reported by the national media and in press releases on our website. In my role as AFGE president, I have often provided quotes or otherwise participated in making these statements. For instance, I am frequently quoted by nationwide press outlets; I regularly provide statements for AFGE's press releases; I have written an op-ed for a national publication and a letter to federal officials, all challenging the Administration's policies.

16. I have also regularly appeared on national television, including on networks CNN, MSNBC, and CNBC, as well as on local stations, to discuss and criticize the Administration's policies.

17. A true and correct copy of the March 27, 2025 Executive Order 14251 titled "Exclusions From Federal Labor-Management Relations Programs," which is available at and has been downloaded from the official U.S. government website of the White House at the following link, https://www.whitehouse.gov/presidential-actions/2025/03/exclusions-from-federal-labor-management-relations-programs/, is attached hereto as **Exhibit 1.**

18. A true and correct copy of the March 27, 2025 memo by the U.S. Office of Personnel Management titled "Guidance on Executive Order *Exclusions from Federal Labor-Management Programs*," which is available at and has been downloaded from the official government website of the U.S. Office of Personnel at the following link, https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-executive-order-exclusions-from-federal-labor-management-programs.pdf, is attached hereto as **Exhibit 2.**

19. A true and correct copy of the March 27, 2025 White House publication titled "Fact Sheet: President Donald J. Trump Exempts Agencies with National Security Missions from Federal Collective Bargaining Requirement," which is available at and has been downloaded from the official U.S. government website of the Whitehouse at the following link, https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-exempts-

agencies-with-national-security-missions-from-federal-collective-bargaining-requirements/, is attached hereto as **Exhibit 3.**

20. A true and correct copy of the complaint filed in the U.S. District Court for the Western District of Texas in the lawsuit captioned *United States Department of Defense, et al. v. American Federation of Government Employees* (W.D. Tex. No. 6:25-cv-119), which is available at and was downloaded from the official court website at https://ecf.txwd.uscourts.gov, is attached hereto as **Exhibit 4.**

21. A true and correct copy of the post made by Elon Musk, @elonmusk, at 7:28 p.m. Pacific time on February 12, 2025, on X.com, which is available at and was downloaded from X.com at the link, https://x.com/elonmusk/status/1889879302965191056, and the embedded post from X user @DefiyantlyFree that Musk's post had reposted, which is available by clicking on Musk's post and was downloaded from X.com at the link, https://x.com/DefiyantlyFree/status/1889874712714416563, are attached hereto as **Exhibit 5.**

22. A true and correct copy of the post made by Elon Musk, @elonmusk, at 10:24 a.m. Pacific time on February 11, 2025, which is available at and was downloaded from X.com at the link, https://x.com/elonmusk/status/1889380095015465272, attached hereto as **Exhibit 6.**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed April 3, 2025, in Washington, D.C.

Everett B. Kelley

EXHIBIT 1

EXCLUSIONS FROM FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAMS

Executive Orders

March 27, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 7103(b)(1) of title 5 and 4103(b) of title 22, United States Code, to enhance the national security of the United States, it is hereby ordered:

Section 1. Determinations. (a) The agencies and agency subdivisions set forth in section 2 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of title 5, United States Code, cannot be applied to these agencies and agency subdivisions in a manner consistent with national security requirements and considerations.

(b) The agency subdivisions set forth in section 3 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Subchapter X of Chapter 52 of title 22, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

Sec. 2. Additional National Security Exclusions. Executive Order 12171 of November 19, 1979, as amended, is further amended by:

(a) In section 1-101, adding “and Section 1-4” after “Section 1-2” in both places that term appears.

(b) Adding after section 1-3 a new section 1-4 that reads:

“1-4. *Additional Exclusions*.

1-401. The Department of State.

1-402. The Department of Defense, except for any subdivisions excluded pursuant to section 4 of the Executive Order of March 27, 2025, entitled 'Exclusions from Federal Labor-Management Relations Programs.'

1-403. The Department of the Treasury, except the Bureau of Engraving and Printing.

1-404. The Department of Veterans Affairs.

1-405. The Department of Justice.

1-406. Agencies or subdivisions of the Department of Health and Human Services:

(a) Office of the Secretary.

(b) Food and Drug Administration.

(c) Centers for Disease Control and Prevention.

(d) Administration for Strategic Preparedness and Response.

(e) Office of the General Counsel.

(f) Office of Refugee Resettlement, Administration for Children and Families.

(g) National Institute of Allergy and Infectious Diseases, National Institutes of Health.

1-407. Agencies or subdivisions of the Department of Homeland Security:

(a) Office of the Secretary.

(b) Office of the General Counsel.

(c) Office of Strategy, Policy, and Plans.

(d) Management Directorate.

(e) Science and Technology Directorate.

(f) Office of Health Security.

(g) Office of Homeland Security Situational Awareness.

(h) U.S. Citizenship and Immigration Services.

(i) United States Immigration and Customs Enforcement.

(j) United States Coast Guard.

(k) Cybersecurity and Infrastructure Security Agency.

(l) Federal Emergency Management Agency.

1-408. Agencies or subdivisions of the Department of the Interior:

(a) Office of the Secretary.

(b) Bureau of Land Management.

(c) Bureau of Safety and Environmental Enforcement.

(d) Bureau of Ocean Energy Management.

1-409. The Department of Energy, except for the Federal Energy Regulatory Commission.

1-410. The following agencies or subdivisions of the Department of Agriculture:

(a) Food Safety and Inspection Service.

(b) Animal and Plant Health Inspection Service.

1-411. The International Trade Administration, Department of Commerce.

1-412. The Environmental Protection Agency.

1-413. The United States Agency for International Development.

1-414. The Nuclear Regulatory Commission.

1-415. The National Science Foundation.

1-416. The United States International Trade Commission.

1-417. The Federal Communications Commission.

1-418. The General Services Administration.

1-419. The following agencies or subdivisions of each Executive department listed in section 101 of title 5, United States Code, the Social Security Administration, and the Office of Personnel Management:

(a) Office of the Chief Information Officer.

(b) any other agency or subdivision that has information resources management duties as the agency or subdivision's primary duty.

1-499. Notwithstanding the forgoing, nothing in this section shall exempt from the coverage of Chapter 71 of title 5, United States Code:

(a) the immediate, local employing offices of any agency police officers, security guards, or firefighters, provided that this exclusion does not apply to the Bureau of Prisons;

(b) subdivisions of the United States Marshals Service not listed in section 1-209 of this order; or

(c) any subdivisions of the Departments of Defense or Veterans Affairs for which the applicable Secretary has issued an order suspending the application of this section pursuant to section 4 of the Executive Order of March 27, 2025, entitled 'Exclusions from Federal Labor-Management Relations Programs.'"

Sec. 3. Foreign Service Exclusions. Executive Order 12171, as amended, is further amended by:

(a) In the first paragraph:

(i) adding "and Section 4103(b) of Title 22," after "Title 5"; and

(ii) adding "and Subchapter X of Chapter 52 of Title 22" after "Relations Program.".

(b) Adding after section 1-102 a new section 1-103 that reads:

"1-103. The Department subdivisions set forth in section 1-5 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Subchapter X of Chapter 52 of title 22, United States Code, cannot be applied to those subdivisions in a manner consistent with national security requirements and considerations. The subdivisions set forth in section 1-5 of this order are hereby excluded from coverage under Subchapter X of Chapter 52 of title 22, United States Code."

(c) Adding after the new section 1-4 added by section 2(b) of this order a new section 1-5 that reads:

"1-5. Subdivisions of Departments Employing Foreign Service Officers.

1-501. Subdivisions of the Department of State:

(a) Each subdivision reporting directly to the Secretary of State.

(b) Each subdivision reporting to the Deputy Secretary of State.

(c) Each subdivision reporting to the Deputy Secretary of State for Management and Resources.

(d) Each subdivision reporting to the Under Secretary for Management.

(e) Each subdivision reporting to the Under Secretary for Arms Control and International Security.

(f) Each subdivision reporting to the Under Secretary for Civilian Security, Democracy, and Human Rights.

(g) Each subdivision reporting to the Under Secretary for Economic Growth, Energy, and Environment.

(h) Each subdivision reporting to the Under Secretary for Political Affairs.

(i) Each subdivision reporting to the Under Secretary for Public Diplomacy.

(j) Each United States embassy, consulate, diplomatic mission, or office providing consular services.

1-502. Subdivisions of the United States Agency for International Development:

(a) All Overseas Missions and Field Offices.

(b) Each subdivision reporting directly to the Administrator.

(c) Each subdivision reporting to the Deputy Administrator for Policy and Programming.

(d) Each subdivision reporting to the Deputy Administrator for Management and Resources.".

Sec. 4. Delegation of Authority to the Secretaries of Defense and Veterans Affairs. (a) Subject to the requirements of subsection (b) of this section, the Secretaries of Defense and Veterans Affairs are delegated authority under 5 U.S.C. 7103(b)(1) to issue orders suspending the application of section 1-402 or 1-404 of Executive Order 12171, as amended, to any subdivisions of the departments they supervise, thereby bringing such subdivisions under the coverage of the Federal Service Labor-Management Relations Statute.

(b) An order described in subsection (a) of this section shall only be effective if:

(i) the applicable Secretary certifies to the President that the provisions of the Federal Service Labor-Management Relations Statute can be applied to such subdivision in a manner consistent with national security requirements and considerations; and

(ii) such certification is submitted for publication in the *Federal Register* within 15 days of the date of this order.

Sec. 5. Delegation of Authority to the Secretary of Transportation. (a) The national security interests of the United States in ensuring the safety and integrity of the national transportation system require that the Secretary of Transportation have maximum flexibility to cultivate an efficient workforce at the Department of Transportation that is adaptive to new technologies and innovation. Where collective bargaining is incompatible with that mission, the Department of Transportation should not be forced to seek relief through grievances, arbitrations, or administrative proceedings.

(b) The Secretary of Transportation is therefore delegated authority under section 7103(b) of title 5, United States Code, to issue orders excluding any subdivision of the Department of Transportation, including the Federal Aviation Administration, from Federal Service Labor-Management Relations Statute coverage or suspending any provision of that law with respect to any Department of Transportation installation or activity located outside the 50 States and the District of Columbia. This authority may not be further delegated. When making the determination required by 5 U.S.C. 7103(b)(1) or 7103(b)(2), the Secretary of Transportation shall publish his determination in the *Federal Register.*

Sec. 6. Implementation. With respect to employees in agencies or subdivisions thereof that were previously part of a bargaining unit but have been excepted under this order, each applicable agency head shall, upon termination of the applicable collective bargaining agreement:

(a) reassign any such employees who performed non-agency business pursuant to section 7131 of title 5 or section 4116 of title 22, United States Code, to performing solely agency business; and

(b) terminate agency participation in any pending grievance proceedings under section 7121 of title 5, United States Code, exceptions to arbitral awards under section 7122 of title 5, United States Code, or unfair labor practice proceedings under section 7118 of title 5 or section 4116 of title 22, United States Code, that involve such employees.

Sec. 7. Additional Review. Within 30 days of the date of this order, the head of each agency with employees covered by Chapter 71 of title 5, United States Code, shall submit a report to the President that identifies any agency subdivisions not covered by Executive Order 12171, as amended:

(a) that have as a primary function intelligence, counterintelligence, investigative, or national security work, applying the definition of "national security" set forth by the Federal Labor Relations Authority in *Department of Energy, Oak Ridge Operations, and National Association of Government Employees Local R5-181*, 4 FLRA 644 (1980); and

(b) for which the agency head believes the provisions of Chapter 71 of title 5, United States Code, cannot be applied to such subdivision in a manner consistent with national security requirements and considerations, and the reasons therefore.

Sec. 8. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

March 27, 2025.

NEWS

ADMINISTRATION

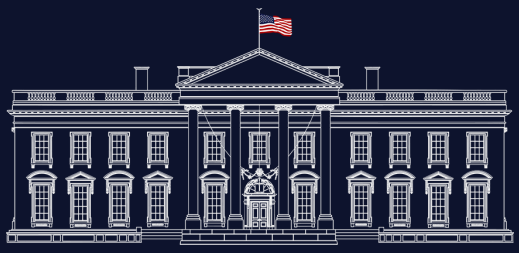
ISSUES

CONTACT

VISIT

GALLERY

EOP



THE WHITE HOUSE

1600 Pennsylvania Ave NW
Washington, DC 20500

Privacy

Style Guide

EXHIBIT 2

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM

TO:	Heads and Acting Heads of Departments and Agencies
FROM:	Charles Ezell, Acting Director, U.S. Office of Personnel Management
DATE:	March 27, 2025
RE:	Guidance on Executive Order *Exclusions from Federal Labor-Management Programs*

On March 27, 2025, President Trump signed an executive order entitled *Exclusions from Federal Labor-Management Relations Programs* (*Exclusions*). This order invoked the President's authority under 5 U.S.C § 7103(b)(1) and 22 U.S.C. § 4103(b) to exempt agencies and agency subdivisions from the provisions of the Federal Service Labor-Management Relations Statute and the Foreign Service Labor-Management Relations Statute (individually and collectively, the FSLMRS).[1] The President's Executive Order directs that the FSLMRS will no longer apply to the following agencies and agency subdivisions (collectively, the "covered agencies and subdivisions"):

- The Department of Defense;
- The Department of State;
- The Department of the Treasury, except the Bureau of Engraving and Printing;
- The Department of Veterans Affairs (VA);
- The Department of Justice, except certain components of the U.S. Marshals Service;
- Subdivisions of the Department of Homeland Security:
  - Departmental Headquarters components;
  - U.S. Citizenship and Immigration Services;
  - Immigration and Customs Enforcement;
  - U.S. Coast Guard;
  - The Cybersecurity and Infrastructure Security Agency; and
  - The Federal Emergency Management Agency;

[1] These provisions are codified in chapter 71 of title 5, United States Code, and subchapter X of chapter 52 of title 22, United States Code.

- Subdivisions of the Department of Health and Human Services:
  - Office of the Secretary;
  - Office of the General Counsel;
  - Food and Drug Administration;
  - Centers for Disease Control and Prevention;
  - The Administration for Strategic Preparedness and Response;
  - The National Institute for Allergy and Infectious Diseases, National Institutes of Health; and
  - Office of Refugee Resettlement, Administration for Children and Families.

- The Department of Energy, except the Federal Energy Regulatory Commission;

- Subdivisions of the Department of the Interior:
  - Office of the Secretary;
  - Bureau of Land Management;
  - Bureau of Safety and Environmental Enforcement;
  - Bureau of Ocean Energy Management;

- Subdivisions of the Department of Agriculture:
  - The Food Safety and Inspection Service;
  - The Animal and Plant Health Inspection Service;

- The International Trade Administration within the Department of Commerce;

- The Environmental Protection Agency;

- The U.S. Agency for International Development;

- The Nuclear Regulatory Commission;

- The National Science Foundation;

- The International Trade Commission;

- The Federal Communications Commission;

- The General Services Administration; and

- The Office of the Chief Information Officer (CIO) in each Executive department, as well as the CIO offices for the U.S. Office of Personnel Management (OPM) and the Social Security Administration, and any other agency or subdivision that has information

resources management duties as the agency or subdivision's primary duty.[2]

By operation of 5 U.S.C. § 7103(b) and *Exclusions*, covered agencies and subdivisions are no longer subject to the collective-bargaining requirements of chapter 71 of part III, subpart F of title 5 (5 U.S.C. §§ 7101-7135). Consequently, those agencies and subdivisions are no longer required to collectively bargain with Federal unions. Also, because the statutory authority underlying the original recognition of the relevant unions no longer applies, unions lose their status as the "exclusive[ly] recogni[zed]" labor organizations for employees of the agencies and agency subdivisions covered by *Exclusions*.[3]

Agencies should consult with their General Counsels as to how to implement the President's directive in *Exclusions*. Agencies should also begin to consider and implement the changes described below and any others that agencies deem necessary, consistent with the President's national security determination. OPM highlights some common provisions of agency CBAs that may be inconsistent with the President's policies and management priorities.

I. Performance Accountability

Merit system principles codified at 5 U.S.C. § 2301(6) direct agencies to separate employees who cannot or will not improve their performance to meet required standards. This often does not occur. When asked what happens to poor performers in their work unit, a plurality of Federal employees respond that they "remain in the work unit and continue to underperform."[4] Only a quarter of agency supervisors report that they are confident they could remove a seriously underperforming employee.[5]

Strengthening performance accountability in the Federal workforce is a high priority of President Trump and his Administration. The President believes that he must be able to effectively supervise Federal employees to take care that the law is faithfully executed and to protect America's national security. Shortly after taking office the President issued multiple directives to facilitate the separation of underperforming employees.[6]

Agency CBAs often create procedural impediments to separating poor performers beyond those required by statute or regulation. Covered agencies and subdivisions should seek to bring

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[2] The Executive Order excludes the immediate employing offices of police and firefighters. It also provides a process for the Secretaries of Defense and Veterans Affairs to retain collective bargaining in subdivisions of their agencies if they certify that doing so does not impair national security.

[3] *Cf.* 5 U.S.C. § 7111(a) ("An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative . . . ."), *id.* § 7114(a)(1) (authorizing the exclusively recognized labor organization to "negotiate collective bargaining agreements covering[] all employees in the unit.")

[4] https://www.opm.gov/fevs/reports/opm-fevs-dashboard/.

[5] U.S. Merit Systems Protection Board, *Remedying Unacceptable Employee Performance in the Federal Civil Service* (June 18, 2019), at p. 15.

[6] *See* Executive Order 14171 of Jan. 20, 2025 (*Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce*); Memorandum of January 20, 2025 (*Restoring Accountability for Career Senior Executives*); Executive Order 4211 of Feb. 12, 2025 (*One Voice for America's Foreign Relations*).

their policies into alignment with the specific Administration priorities below.

A. Limit PIPs to 30 Days.

The Civil Service Reform Act (CSRA) requires agencies to provide underperforming employees with an opportunity to demonstrate acceptable performance before dismissing them under chapter 43 of title 5, United States Code.[7] These opportunity periods are commonly known as Performance Improvement Periods (PIPs). Executive Order 13839 of May 25, 2018. (*Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*) generally standardized PIPs at 30 days. Executive Order 14003 of January 22, 2021 (*Protecting the Federal Workforce*) rescinded Executive Order 13839 and directed agencies to reverse policies effectuated under it. Under this directive, agencies increased PIPs from 30 days to 60 to 120 days. However, Executive Order 14171 of January 20, 2025 (*Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce*) revoked Executive Order 14003 and directed agencies to reverse disciplinary and unacceptable-performance policies effectuated pursuant to it.

Prior OPM guidance has explained that Executive Order 14171 now requires agencies to return to the policies of Executive Order 13839.[8] Agencies are accordingly required to, consistent with applicable law, return PIPs to 30 days. Where a CBA requires PIPs of more than 30 days, agencies must generally wait until such CBAs expire or otherwise terminate before shortening PIPs.[9] After covered agencies and subdivisions terminate CBAs that require PIPs of more than 30 days, they should take prompt action to reduce PIPs for former bargaining unit employees to no more than 30 days.

B. Use Chapters 43 and 75 for Performance-Based Removals.

Covered agencies and subdivisions are required to revert their discipline and unacceptable performance policies to those set in the first Trump Administration under Executive Order 13839. This includes the directive to use the procedures of chapter 75 of title 5, United States Code, in addition to chapter 43 (discussed above), to separate employees for unacceptable performance in appropriate cases.[10]

Chapter 75 actions do not require a PIP but bear a higher burden of proof than chapter 43 actions. Many agency CBAs functionally prohibit using chapter 75 procedures by requiring PIPs for all performance-based separations. Covered agencies and subdivisions that have terminated their CBAs should thereafter use chapter 75 procedures to separate underperforming employees without PIPs in appropriate cases. Agencies may continue to use chapter 43 procedures in appropriate cases.

C. VA Should Resume Use of Section 714.

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[7] 5 U.S.C. 4202(c)(6).
[8] OPM, *Guidance on Revocation of Executive Order 14003* (Feb. 7, 2025).
[9] 5 U.S.C. 7116(a)(7).
[10] See section 2(h) of Executive Order 13839.

In 38 U.S.C. § 714, Congress gave VA special authority to remove some employees for poor performance without a PIP and with a lower burden of proof than chapter 43 actions. The Biden Administration discontinued use of section 714 authority after an arbitrator held that VA could not renegotiate its CBA to eliminate contractual PIPs. VA should, upon termination of its CBA, consider whether to resume use of section 714 authority in appropriate cases. Where facts and circumstances warrant, VA should cease providing covered employees with PIPs before separating them for poor performance under section 714.

D. Discontinue Grievance Participation.

In keeping with the provisions of the FSLMRS, CBAs provide for binding arbitration of union grievances, including disputes over whether personnel actions were justified.[11] To implement *Exclusions*, agencies should cease participating in grievance procedures after terminating their CBAs. To the extent that covered agencies and subdivisions are litigating grievances before an arbitrator when they terminate their CBAs, they should discontinue participation in such proceedings upon termination. Agencies can and should compensate arbitrators for work performed prior to the termination of the CBA, but not for any work performed thereafter. Agencies should not participate in further grievance arbitration proceedings following termination of their CBAs.

II. Effective and Efficient Government

It is the policy of the President and his Administration to eliminate waste, bloat, and insularity within agencies and operate them more efficiently. Covered agencies and subdivisions should therefore take the following actions after terminating their CBAs.

A. Disregard Contractual RIF Articles.

The President has directed agencies to prepare large-scale reductions in force (RIFs).[12] OPM previously provided guidance about agency collective bargaining obligations when undertaking RIFs.[13] Covered agencies and subdivisions that terminate their CBAs are advised that this guidance will no longer apply. After terminating their CBAs, covered agencies and subdivisions should conduct RIFs consistent with applicable statutory and regulatory requirements, but without regard to provisions in terminated CBAs that go beyond those requirements.

B. Return to In-Person Work.

The President considers returning agency employees to in-person work necessary for effective and efficient agency operations. The President issued a memorandum generally requiring

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[11] 5 U.S.C. § 7121.
[12] OPM, *Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative* (February 26, 2025).
[13] OPM, *Guidance on Collective Bargaining in Connection with Reductions in Force* (March 12, 2025).

in-person work on the first day of his Administration.[14] OPM guidance has explained that substantive telework levels and the substantive determination of which positions are eligible for telework or remote work are non-negotiable management rights.[15] However, agency CBAs sometimes impose procedural restrictions on agency return to work policies that do not violate non-negotiable management rights. Upon termination of these CBAs, covered agencies and subdivisions should swiftly implement the President's directives in *Return to In-Person Work*.

C. Use Agency Resources for Agency Business.

The FSLMRS permits unions to negotiate to allow agency employees to perform union representational work instead of agency business during their official duty hours.[16] Contractual authorization for "taxpayer-funded union time" terminates when agency CBAs are terminated. Additionally, employees no longer have representational activities to conduct once their agency or subdivision has been excluded from the FSLMRS coverage. *Exclusions* requires agencies to promptly return such employees to performing solely agency business. Upon termination of any CBAs that require taxpayer-funded union time, agencies should reassign employees on union time to duties that solely include agency business.

Many agency CBAs similarly provide Federal unions with free use of agency resources (such as office space) or commit the agency to cover certain union expenses (such as the cost of travel and per diems). Following termination of CBAs that require such subsidies, covered agencies and subdivisions should promptly discontinue them and use agency resources only for agency business.

D. End Allotments Through Agency Payroll Systems.

The FSLMRS requires agencies to deduct union dues from employees' pay upon request.[17] Agency resources are expended to set up those payroll deductions and process payments, and many agency CBAs contractually commit agencies to making such allotments according to specified procedures. When a covered agency terminates its CBAs, those contractual commitments no longer apply, and the covered agency should terminate allotments except where required by statute. Agency employees may make other arrangements for dues payments if they wish to do so. However, agency resources ordinarily should not be expended to facilitate payment of union dues.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Chiefs of Staff

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[14] Memorandum of January 20, 2025 (*Return to In-Person Work*).
[15] OPM, *Guidance on Collective Bargaining Obligations in Connection with Return to In-Person Work* (February 3, 2025).
[16] 5 U.S.C. 7131(d), 22 U.S.C. 4118(d)(4).
[17] 5 U.S.C. 7115, 22 U.S.C. 4118(a).

EXHIBIT 3

Fact Sheet: President Donald J. Trump Exempts Agencies with National Security Missions from Federal Collective Bargaining Requirements

The White House

March 27, 2025

PROTECTING OUR NATIONAL SECURITY: Today, President Donald J. Trump signed an Executive Order using authority granted by the Civil Service Reform Act of 1978 (CSRA) to end collective bargaining with Federal unions in the following agencies with national security missions:

- ***National Defense.*** Department of Defense, Department of Veterans Affairs (VA), the National Science Foundation (NSF), and Coast Guard.
  - VA serves as the backstop healthcare provider for wounded troops in wartime.
  - NSF-funded research supports military and cybersecurity breakthroughs.
- ***Border Security.*** Department of Homeland Security (DHS) leadership components, U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, the Department of Justice's (DOJ) Executive Office of Immigration Review, and the Office of Refugee Resettlement within the Department of Health and Human Services (HHS).
- ***Foreign Relations.*** Department of State, U.S. Agency for International Development, Department of Commerce's International Trade Administration, and U.S. International Trade Commission.
  - President Trump has demonstrated how trade policy is a national security tool.
- ***Energy Security.*** Department of Energy, Nuclear Regulatory Commission, Environmental Protection Agency, and Department of Interior units that govern domestic energy production.

- The same Congress that passed the CSRA declared that energy insecurity threatens national security.

- ***Pandemic Preparedness, Prevention, and Response.*** Within HHS, the Secretary's Office, Office of General Counsel, Centers for Disease Control and Prevention, Administration for Strategic Preparedness and Response, Food and Drug Administration, and National Institute of Allergy and Infectious Diseases. In the Department of Agriculture, the Office of General Counsel, Food Safety and Inspection Service, and Animal and Plant Health Inspection Service.
  - COVID-19 and the recent bird flu have demonstrated how foreign pandemics affect national security.
  - VA is also a backstop healthcare provider during national emergencies, and served this role during COVID-19.
- ***Cybersecurity.*** The Office of the Chief Information Officer in each cabinet-level department, as well as DHS's Cybersecurity and Infrastructure Security Agency, the Federal Communications Commission (FCC), and the General Services Administration (GSA).
  - The FCC protects the reliability and security of America's telecommunications networks.
  - GSA provides cybersecurity related services to agencies and ensures they do not use compromised telecommunications products.
- ***Economic Defense.*** Department of Treasury.
  - The Federal Labor Relations Authority (FLRA) defines national security to include protecting America's economic and productive strength. The Treasury Department collects the taxes that fund the government and ensures the stable operations of the financial system.
- ***Public Safety.*** Most components of the Department of Justice as well as the Federal Emergency Management Agency.
- ***Law Enforcement Unaffected***. Police and firefighters will continue to collectively bargain.

ENSURING THAT AGENCIES OPERATE EFFECTIVELY: The CSRA enables hostile Federal unions to obstruct agency management. This is dangerous in agencies with

national security responsibilities:

- Agencies cannot modify policies in collective bargaining agreements (CBAs) until they expire.
    - The outgoing Biden Administration renegotiated many agencies' CBAs to last through President Trump's second term.
- Agencies cannot make most contractually permissible changes until after finishing "midterm" union bargaining.
    - For example, the FLRA ruled that ICE could not modify cybersecurity policies without giving its union an opportunity to negotiate, and then completing midterm bargaining.
- Unions used these powers to block the implementation of the VA Accountability Act; the Biden Administration had to offer reinstatement and backpay to over 4,000 unionized employees that the VA had removed for poor performance or misconduct.

SAFEGUARDING AMERICAN INTERESTS: President Trump is taking action to ensure that agencies vital to national security can execute their missions without delay and protect the American people. The President needs a responsive and accountable civil service to protect our national security.

- Certain Federal unions have declared war on President Trump's agenda.
    - The largest Federal union describes itself as "fighting back" against Trump. It is widely filing grievances to block Trump policies.
    - For example, VA's unions have filed 70 national and local grievances over President Trump's policies since the inauguration—an average of over one a day.
- Protecting America's national security is a core constitutional duty, and President Trump refuses to let union obstruction interfere with his efforts to protect Americans and our national interests.
- President Trump supports constructive partnerships with unions who work with him; he will not tolerate mass obstruction that jeopardizes his ability to manage agencies with vital national security missions.

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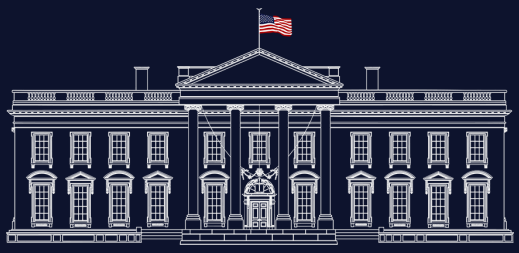

THE WHITE HOUSE

1600 Pennsylvania Ave NW
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Privacy

Style Guide

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF AGRICULTURE; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; UNITED STATES DEPARTMENT OF JUSTICE; UNITED STATES SOCIAL SECURITY ADMINISTRATION; UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, *Plaintiffs*; v. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, DISTRICT 10; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES COUNCIL 238; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES COUNCIL 222; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES COUNCIL OF PRISON LOCALS C-33; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES VA COUNCIL; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCALS 779; 1004; 1033; 1364; 1367; 1920; 2142; 2356; 681; 1903; 2771; 3523; 3941; 1003; 3320; 1030; 1298; 1637; 2459; 3809; 3828; 4044; 1038; 1454; 1633; 1822; 1934; 2437; 2836; 3511; and 3922, *Defendants*.	No. 6:25-cv-119

COMPLAINT FOR DECLARATORY RELIEF

PRELIMINARY STATEMENT

1. Since taking office, two of President Trump's top priorities for his Administration have been to improve the efficiency and efficacy of the federal workforce, and to promote the national security of the United States. Unfortunately, many Executive Branch departments and agencies have been hamstrung in advancing both of those important efforts by restrictive terms of collective bargaining agreements (CBAs), including those negotiated or amended in the waning days of the prior Administration to tie the new President's hands.

2. These CBAs significantly constrain the Executive Branch. Indeed, their content and timing indicate they were intended to do just that, extending for as long as five years and past the end of the President's term, signed just following an election loss to keep a new Administration from taking charge of union relations and agency supervision on its own terms.

3. Some of these "midnight" CBAs restrict return-to-work policies. Others effectively delegate important decision-making to unaccountable private arbitrators in the form of grievance adjudication. Virtually all limit the power of the President and his Executive Branch officials to promptly identify and address underperformance, thus impeding the President's Take Care Clause responsibility under Article II of the Constitution. And for agencies and employees that work on national security matters, these CBAs also impinge on the President's efforts to protect the United States from foreign and domestic threats.

4. Public servants, appointees, and officials come to work every day advancing the public interest, serving the American people, and furthering the President's agenda with energy. Like every large workforce, they deserve strong leadership and accountability that recognizes great

advancing the country's national security, intelligence, counterintelligence and investigative work. Plaintiff agencies therefore wish to rescind or repudiate them.

78. As a general matter, and as discussed in more detail below, these CBAs give hostile unions powerful tools to prevent changes to agency operations they oppose. These CBAs likewise interfere with the President's ability to oversee the Executive Branch and limit his authority to oversee agents executing and implementing initiatives related to his core executive power, including as to national security.

79. CBAs operate as binding legal instruments that take precedence over conflicting agency regulations. Agencies cannot even implement government-wide rules and regulations—including executive orders—that conflict with extant CBAs. Policies embedded in a CBA are thus locked in place until the agreement expires and, if it has a continuance clause, is fully renegotiated.

80. The Biden Administration renegotiated many CBAs to last through most or all of President Trump's second term. This means the Trump Administration cannot alter agency policies on, *e.g.*, performance accountability, that are embedded in CBAs, even if the President believes they are a serious impediment to effective agency operations and thus national security.

81. Bargaining obligations also stall many policy changes. Even if an agency wants to alter working conditions in ways that do not violate a CBA, it must give its union an opportunity to negotiate over the change. If the union chooses to bargain, the agency cannot make any changes until midterm bargaining concludes—a process that can easily take a year or more.

82. FLRA case law is filled with decisions holding that agencies could not implement unilateral changes without seeking preclearance from union representatives or completing midterm bargaining. For example, the FLRA ruled that ICE committed an unfair labor practice by failing to bargain before changing cybersecurity practices (by cutting off access to personal e-mail accounts on work computers after learning that they were a vector for cyber attacks). The FLRA

similarly ruled that the VA could not use its new expedited removal procedures, granted by Congress under 38 U.S.C. § 714, without completing midterm bargaining with its unions. As a result, the VA had to offer reinstatement and backpay to over 4,000 AFGE-represented employees who had been removed.

83. In short, unions that oppose an administration's agenda can freeze the status quo in place for a year or more by demanding midterm bargaining and dragging it out. Unions hostile to the President's agenda can thus block or at least significantly delay the implementation of management policies that he considers necessary to ensure the effective and efficient operations of agencies—including, as relevant here, agencies with investigative and national security responsibilities. That, in turn, undermines the President's authority to supervise his agents and threatens our Nation's security.

84. The President cannot effectively execute the laws or promote national security if his supervision of agents engaged in national security, intelligence, counterintelligence, or investigative missions is stymied by intrusive bargaining agreements and continuous bargaining obligations. Congress therefore recognized the President's power to exempt agencies or sub-agencies from the statutes authorizing such bargaining agreements.

A. Department of Defense

85. The Air Force Material Command (AFMC) is a component of DOD that is covered by the Executive Order. AFMC manages installation and mission support, discovery and development, test and evaluation, and life cycle management services and sustainment for every major Air Force weapon system.

86. The Army and Air Force Exchange Service is a component of DOD that is covered by the Executive Order. The Army and Air Force Exchange Service supports deployed troops with products and services.

172. But Defendants assuredly will not agree that the CBAs can be lawfully rescinded or repudiated. Indeed, the National Council of the AFGE has explained that it is "fighting back" against any presidential efforts to streamline the federal workforce and will take steps to litigate against President "Trump's Attacks on Civil Service." *What AFGE Is Doing: A Recap of AFGE's Major Actions Against Trump's Attacks on Civil Service* (March 3, 2025), https://www.afge.org/article/what-afge-is-doing-a-recap-of-afges-major-actions-against-trumps-attacks-on-civil-service-2/.

173. There is accordingly a concrete and immediate dispute over the rights of the parties, leaving Plaintiff agencies with uncertainty regarding their power to terminate the subject CBAs pursuant to the Executive Order. A declaratory judgment is thus appropriate to ratify that Plaintiffs need not continue abiding by the personnel, salary, promotion, and other policies imposed by the subject CBAs.

174. The Court should declare that Plaintiff agencies do have the power and authority under the Executive Order to rescind or repudiate the subject CBAs. The Executive Order was lawful under 5 U.S.C. § 7103(b). Through the Executive Order, the President has determined that Plaintiffs agencies have "as a primary function intelligence, counterintelligence, investigative, or national security work." 5 U.S.C. § 7103(b)(1)(A). The President has further determined that the provisions of 5 U.S.C. Chapter 71 cannot be applied to each such "agency or subdivision in a manner consistent with national security requirements and considerations." *Id.* § 7103(b)(1)(B). The Executive Order thus properly excludes those agencies and subdivisions thereof from coverage under 5 U.S.C. Chapter 71.

175. Because Plaintiff agencies have been properly excluded from coverage under 5 U.S.C. Chapter 71, Plaintiff agencies are free to rescind or repudiate CBAs that were previously negotiated with Defendants' unions. The statutory provisions that make CBAs binding on

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03070-JD

DECLARATION OF COREY LANHAM

DECLARATION OF COREY LANHAM

I, Corey Lanham, declare as follows:

1. I have knowledge of the facts set forth herein and, if called as a witness to testify to these facts, could competently do so.

2. I am the National Bargaining Director for California Nurses Association/National Nurses Organizing Committee/National Nurses United ("NNOC/NNU" or "Union"). I have worked at NNOC/NNU since 2003. I first worked as an organizer and then as a labor representative. In 2017, I became NNOC/NNU's Mid-Atlantic Director, and in this position my duties included supervising of labor representatives responsible for the Union's collective bargaining relationship with the Department of Veterans Affairs ("VA"). In 2022, I became NNOC/NNU's National Collective Bargaining Director and remain in this position today. In this position, I have ultimate responsibility for the Union's collective bargaining relationship with the VA.

3. Joseph Henry is NNOC/NNU's Assistant Collective Bargaining Director for the VA Division. I am Mr. Henry's direct supervisor. As Mr. Henry's supervisor, I regularly receive reports from him, provide direction to him, review correspondence and other documents, and make decisions concerning matters affecting RNs employed at the VA. Mr. Henry works in NNOC/NNU's headquarters located in Oakland, California.

4. NNOC/NNU is a labor organization and nonprofit corporation headquartered at 155 Grand Ave., Oakland, California 94612. NNOC/NNU represents approximately 140,000 RNs, including 90,000 registered nurses ("RNs") employed in California.

5. NNOC/NNU's mission is to improve RNs' workplace standards through collective bargaining and to reform our national healthcare system so that all patients have access to safe and high-quality care, regardless of ability to pay.

6. NNOC/NNU bargains and enforces contracts with healthcare employers that include health and safety standards, adequate staffing, fair and equitable policies and procedures, sustainable wages, and protections for RNs as patient advocates. NNOC/NNU also provides expertise on nursing practice and industrial health and safety. NNOC/NNU advocates for preserving and improving our public health infrastructure.

7. NNOC/NNU represents a bargaining unit of approximately 16,000 registered nurses ("RNs") employed at the VA. These RNs work at 23 different VA facilities across 13 states. Approximately 1000 RNs employed at the San Diego VA are part of this bargaining unit. RNs with remote work arrangements are also in NNOC/NNU's bargaining unit. This includes nurses who live and work in Alameda, Marin, and Santa Clara counties in California.

8. NNOC/NNU and the VA are parties to a collective bargaining agreement covering these RNs. It has a term of May 26, 2023 through May 26, 2026.

9. VA RNs represented by NNOC/NNU provide care to our nation's Veterans, through a broad range of services, including but not limited to inpatient and outpatient services, care at and away from the bedside, working in units ranging from critical care units to in-home services, and also providing patient education. The RNs in NNOC/NNU's bargaining unit are civilians.

10. NNOC/NNU has vocally opposed Trump's agenda by supporting the right to medical care for transgender patients and the right of patients to receive care in hospitals without threat of deportation. NNOC/NNU has been vocally opposed to gutting public health infrastructure, including the termination of federal health workers, cuts to Medicaid, and the confirmations of Robert F. Kennedy, Jr. and Mehmet Oz to critical health policy positions.

11. NNOC/NNU has organized rallies of RNs to protest staffing cuts in the VA as well as cuts to Medicaid and Medicare, and has organized meetings with members of Congress on these issues.

12. NNOC/NNU has filed approximately 18 grievances against the VA since January 20, 2025. These include grievances over retaliation for union activity, discrimination, and unilateral changes to working conditions, This includes two national grievances filed over key Trump administration priorities: the cancelation of alternate workplace agreements and the "5 bullet points" memo.

13. On or about January 21, 2025, Trump issued a Presidential Memo on "Return to In-Person Work." On January 24, 2025, Acting VA Secretary Collins issued a memo providing that the VA's telework policy would be revised and that all VA employees would be required to work

at an agency worksite. The VA subsequently issued a bulletin on Return to In-Person Work, setting forth timelines for terminating remote work agreements. Approximately 1,700 VA RNs represented by NNOC/NNU have entered into alternate workplace agreements. They primarily field calls from veterans who are seeking medical treatment and who do not live near a VA hospital. On or about March 20, NNU/NNOC Assistant Director Joseph Henry, who works in our Oakland, California office, filed a national grievance on this issue.

14. NNOC/NNU and the VA were scheduled to bargain over the return to in-person work issue on April 2, 2025. Prior to bargaining, Agency Lead Ryan Fulcher emailed Joseph Henry to cancel this bargaining session without explanation.

15. On February 22, 2025, RNs employed by the VA received an email from hr@opm.gov with the subject line "What did you do?" The body of the email said "Please reply to this email with approx. 5 bullets of what you accomplished last week and cc your manager. Please do not sent any classified information, links, or attachments. Deadline is Monday at 11:50EST." That same day, Elon Musk Tweeted that "Failure to respond" to the email "will be taken as a resignation." On February 28, 2025, OPM sent another email to VA RNs with the subject line "What did you do last week? Part II," with similar instructions to the February 22 email, but with the addition "Going forward, please complete the above talk each week." NNOC/NNU members found the emails insulting and dehumanizing. RNs spend their days providing direct patient care at the bedside of veterans. RNs chart all of their patient care in real time, in addition to providing timely reports to supervisors, so the idea that they are required report their work tasks to an anonymous email address under threat of termination is especially insulting. On or about March 21, 2025, NNOC/NNU Assistant Director Joseph Henry, who works in our Oakland, California office, filed a national grievance on this issue.

16. The Trump Administration has already demonstrated its hostility toward VA RNs who engage in concerted activity. In February 2025, approximately 20 RNs employed at the Hines VA Medical Center in Chicago, IL, delivered a petition to their supervisor to raise concerns over staffing and other safety concerns at the hospital. In an unprecedented move, several days after the petition was delivered, at least six RNs were issued criminal citations and are being

prosecuted in federal court. The VA has never before responded to NNOC/NNU members' concerted activity by having them criminally prosecuted.

17. On March 27, 2025, I learned of an Executive Order entitled "Exclusions from Federal Labor Management Relations Programs," that purported to exclude hundreds of thousands of workers, including VA employees, from collective bargaining protections ("Exclusion Order"). I learned of the Executive Order through an article in the online political news magazine "The Hill." NNOC/NNU did not receive any prior notice of the Executive Order before it was issued. NNOC/NNU was not given an opportunity to rebut the national security assertion prior to the Executive Order being implemented.

18. On February 13, 2025, the Atlanta Regional Director of the Federal Labor Relations Authority ("FLRA") Brent Hudspeth scheduled a hearing in a pending representation case filed by NNOC/NNU. NNOC promptly began preparing for the hearing. On March 28, 2025, Re gional Director Hudspeth sent a letter providing: "On March 27, 2025, President Donald J. Trump issued an Executive Order, Exclusions from Federal Labor-Management Relations Programs. As the Federal Labor Relations Authority examines the impact of the Order, YOU ARE HEREBY notified that I am postponing this hearing indefinitely." A true and correct copy of that letter is attached hereto as Exhibit A.

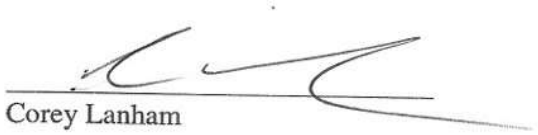
19. NNOC/NNU's members who work in VA hospitals have been very alarmed by the Exclusion Order, and responding to RNs concerns has taken considerable union resources since the order issued. This includes fielding questions from RNs about the Exclusion Order, developing a plan to advocate for the best possible outcome for members employed by the VA, and organizing, producing materials to communicate the Union's position on the Exclusion Order, and organizing a rally in opposition to the Exclusion Order. The staff and resources used in these efforts would otherwise be used to improve RNs' workplace standards, and promote safe conditions for nurses and their patients.

20. VA RNs do not provide care to active duty service members or perform any other service connected to national security. More than 48% of the patient population within the VA system have service-related disabilities. Nearly half (46.3%) of the patients in the VA system are

over the age of 65 and 84% are over the age of 45. This information is available in the National Healthcare Quality and Disparities Report: Chartbook on Healthcare for Veterans, available at: https://www.ncbi.nlm.nih.gov/books/NBK578553/.

I declare under penalty of perjury under the laws of the Maryland that the foregoing is true and correct.

Executed on April 3, 2025, at Rockville, Maryland.



Corey Lanham

EXHIBIT A

NITED TATE OF AMERICA
EFORE THE FEDERAL LA OR RELATION A THORITY
ATLANTA RE ION

Department of Veterans Affairs
Tuscaloosa Veterans Affairs Medical Center
Tuscaloosa, Alabama
(Agency)

Case No. AT-RP-25-0008

and

California Nurses Association/
National Nurses Organizing Committee,
National Nurses United, AFL-CIO
(Labor Organization/Petitioner)

ORDER O T ONIN HEARIN INDEFINATELY

On February 13, 2025, I issued a Notice of Hearing in the above-captioned case. The hearing is scheduled for Tuesday, April 8, 2025 via Microsoft Teams. On March 27, 2025, President Donald J. Trump issued an Executive Order, Exclusions from Federal Labor-Management Relations Programs. As the Federal Labor Relations Authority examines the impact of the Order, YOU ARE HEREBY notified that I am postponing this hearing indefinitely.

Dated March 28, 2025

Federal Labor Relations Authority

/Brent S. Hudspeth/
Brent S. Hudspeth
Regional Director, Atlanta Region

Service Sheet

ER ICE HEET

I certify that on March 28, 2025, I served the parties listed below a copy of the **Ord r H r I d** issued by Brent S. Hudspeth, Regional Director, by email.

Karen S. Rodgers, Esquire
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David Willhoite, Legal Counsel
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National Nurses United, AFL-CIO
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Charlotte A. Dye, Deputy General Counsel
Office of the General Counsel
Federal Labor Relations Authority
1400 K Street, Third Floor
Washington, D.C. 20424-0001

MELISSA HARDY
Digitally signed by MELISSA HARDY
Date: 2025.03.28 15:55:35 -04'00'

LEON DAYAN (State Bar No. 153162)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF TIFFANY RICCI

DECLARATION OF TIFFANY RICCI

I, TIFFANY RICCI, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the Director of Communications for AFSCME. In that role, I am responsible for overseeing AFSCME's comments to the press about matters of public concern. As part of that work, I maintain active awareness of all court filings made by AFSCME.

3. AFSCME is a national labor organization and unincorporated membership association headquartered at 1625 L Street N.W., Washington, D.C. 20036. AFSCME is the largest trade union of public employees in the United States, with around 1.4 million members organized into approximately 3,400 local unions, 58 councils and other affiliates in 46 states. AFSCME, through its affiliate District Council 20 and its 18 constituent federal government local unions, as well as AFSCME affiliate United Nurses Association of California/Union of Healthcare Professionals (UNAC), represents about 10,000 federal civilian employees in agencies and departments across the federal government.

4. Since January 20, 2025, AFSCME has engaged in extensive speech and petitioning activity opposing actions by the President and his administration. Much of this activity has received substantial attention in the nationwide press and has drawn public responses from administration officials. Although many of the lawsuits are in the earliest stages, AFSCME and its union allies have secured multiple temporary restraining orders (TROs) and preliminary injunctions against President Trump's unlawful actions.

Lawsuit Against Elimination of Civil Service Protections

5. On Inauguration Day, President Trump signed an executive order titled "Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce,"[1] which effectively reinstates the "Schedule F" executive order from President Trump's first term stripping civil service employment protections from a wide swath of federal workers, including some AFSCME

[1] *See* www.whitehouse.gov/presidential-actions/2025/01/restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce/.

members.

6. AFSCME filed suit alongside the American Federation of Government Employees (AFGE) against Donald Trump, Charles Ezell, and the Office of Personnel Management (OPM) challenging the Schedule F executive order as unlawful. *See AFGE v. Trump*, Compl., 1:25-cv-00264 (D.D.C. Jan. 29, 2025).

7. AFSCME immediately and publicly criticized the Schedule F executive order, with AFSCME President Lee Saunders stating, "Donald Trump began his presidency by signing executive orders that undermine public service workers' voice on the job and the very principles of civil service which have been established for more than a century to keep politics out of public service. Putting the job security of nonpartisan, dedicated public service workers in the hands of billionaires and anti-union extremists is unacceptable; it's also what Project 2025 promised to do. The workers who keep our communities running deserve better than attacks on their freedoms on day one. While we had hoped for better, we're not going to sit by and take these attacks. AFSCME will be mobilizing, organizing and working with our partners to protect workers' seat at the table and essential public services."[2] After AFSCME filed its lawsuit, Saunders issued a statement criticizing the executive order as "a shameless attempt to politicize the federal workforce by replacing thousands of dedicated, qualified civil servants with political cronies," and AFSCME "was born in the fight for a professional, non-partisan civil service."[3]

8. National media outlets covered AFSCME's lawsuit, including an excerpt alleging that the administration's "scheme seeks to put politics over professionalism, contrary to the laws and values that have defined our career civil service for more than a century,"[4] and a statement from AFSCME President Saunders criticizing President Trump's administration and stating, "[o]ur communities will pay the price if these anti-union extremists are allowed to undo decades

[2] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-workers-deserve-better-than-attacks-on-day-one.
[3] *See* https://www.afscme.org/press/releases/2025/public-service-unions-file-lawsuit-challenging-trump-administration-efforts-to-politicize-the-civil-service.
[4] *See* https://www.newsweek.com/donald-trump-unions-public-input-2024476.

of progress by stripping these workers of their freedoms."[5]

Lawsuit Against "Fork in the Road" Directive

9. On January 28, 2025, OPM sent an email to nearly all federal workers with the subject line "Fork in the road."[6] The email offered deferred resignation to AFSCME members and other federal employees, in an apparent effort to shrink the size of the federal workforce.

10. AFSCME filed suit alongside AFGE and the National Association of Government Employees (NAGE) against Charles Ezell, in his official capacity, and the Office of Personnel Management challenging the "fork in the road" directive and seeking to stop the purge of qualified professionals from the federal government workforce. *See AFGE v. Ezell*, Compl., 1:25-cv-10276 (D. Mass. Feb. 04, 2025).

11. The day the lawsuit was filed, AFSCME issued a public statement decrying the "fork in the road" directive as "the latest attempt by the Trump-Vance administration to implement Project 2025's dangerous plans to remove career public service workers and replace them with partisan loyalists."[7]

12. On February 6, the court issued a temporary restraining order blocking the deferred resignation deadline. That same day, OPM issued a memo to the heads of all federal agencies directing them to submit a list of all federal employees "who received less than a 'fully successful' performance rating in the past three years" and to identify the terms of any applicable collective bargaining agreement that would "impede . . . the agency's ability to swiftly separate low-performing employees."[8]

13. Following the February 6 TRO, AFSCME issued a public statement committing to "move this case forward until federal workers receive the respect they deserve."[9] Dozens of news

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[5] *See* https://www.reuters.com/world/us/trumps-plan-ease-firing-federal-workers-challenged-by-union-2025-01-29/.
[6] *See* www.opm.gov/fork/original-email-to-employees/.
[7] *See* https://www.afscme.org/press/releases/2025/trump-administration-fork-directive-unlawful-as-written-unions-urge-court-to-find.
[8] *See* chcoc.gov/sites/default/files/OPM%20Memo%20Request%20for%20Agency%20Performance%20Management%20Data%202-6-2025%20FINAL.pdf.
[9] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-on-fork-directive-lawsuit-we-must-continue-to-stop-the-purge-of-federal-workers

outlets covered the court win with many reporting on AFSCME's statements.[10]

14. Later in February, AFSCME and its allies participated in a series of demonstrations drawing federal workers and their allies to the Capitol and OPM's offices in Washington, D.C., where they protested the "fork in the road" directive and other administration efforts to dramatically and arbitrarily reduce the federal workforce. The Washington Post covered the protests and AFSCME's lawsuit.[11]

15. On February 13, the court issued an order permitting the deferred resignation initiative to go forward. AFSCME President Saunders issued a public statement announcing that AFSCME and its union allies "remain committed to stopping this illegal attack on the freedoms of public service workers. . . Today may be a step back, but we won't back down."[12]

Lawsuits to Prevent DOGE From Accessing Sensitive Agency Data

16. In late January, it came to light that Elon Musk and the "Department of Government Efficiency" temporary organization (DOGE) were seeking access to sensitive data held by the Department of Treasury, Department of Labor, Social Security Administration, and other federal agencies.[13]

17. AFSCME filed a pair of suits, alongside other unions and nonprofit organizations, against DOGE, the Social Security Administration, Department of Labor, Department of Health & Human Services, Consumer Financial Protection Bureau, U.S. Digital Service, and acting agency heads, seeking to immediately halt DOGE's access to sensitive agency systems and data.

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[10] *See, e.g.*, https://www.nbclosangeles.com/news/national-international/judge-extends-freeze-on-trumps-plan-to-get-millions-of-federal-workers-to-resign/3629310/; https://www.govexec.com/workforce/2025/02/judge-extends-pause-deferred-resignation-deadline/402890/; https://www.cbsnews.com/news/judge-temporarily-blocks-implementation-deferred-resignation-program; https://www.washingtonpost.com/dc-md-va/2025/02/06/deferred-resignationan-program-deadline/; https://www.nytimes.com/2025/02/10/us/politics/trump-judge-deferred-resignation-program.html; https://www.newsweek.com/judge-temporarily-halts-donald-trumps-plan-push-out-federal-workers-2027443.

[11] *See* https://www.washingtonpost.com/dc-md-va/2025/02/11/federal-workers-rally-cuts-buyouts/.

[12] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-we-remain-committed-to-fighting-illegal-attacks-on-worker-freedoms.

[13] *See* www.finance.senate.gov/chairmans-news/wyden-demands-answers-following-report-of-musk-personnel-seeking-access-to-highly-sensitive-us-treasury-payments-system.

See AFSCME v. Social Security Administration, First Amended Compl., 1:25-cv-00596-ELH (D. Md. March 7, 2025); *AFL-CIO v. U.S. Dep't of Labor*, First Amended Compl., 1:25-cv-00339-JDB (D.D.C. Feb. 11, 2025). The district court in Maryland issued a temporary restraining order requiring DOGE to delete social security data in its possession and cease accessing or disclosing social security data. While the district court in D.C. did not issue a TRO, it has ordered Defendants to submit to preliminary discovery by AFSCME and its co-plaintiffs over the objection of Defendants.

18. AFSCME publicly criticized DOGE's attempt to access sensitive agency data on multiple occasions, with AFSCME President Saunders stating on February 5, "It's not surprising that Elon Musk has ordered his DOGE cronies to storm the Department of Labor next. He has always seen working people as a threat. From blatant union busting at Tesla to skyrocketing worker injuries at SpaceX, Musk views his workers as expendable. Now, he has turned his attention to workers across the country. The Department of Labor fights to protect all working people – from stopping wage theft, discrimination and workplace violence to enforcing overtime, FMLA and whistleblower protection laws. People's sensitive data should not be put at risk on the whims of an un-elected billionaire who has been given unchecked power. That's why AFSCME joined a lawsuit filed today to protect the public against DOGE accessing the DOL's information. Musk can try to rob us of our freedoms, but he'll have to go through unions and working people first."[14]

19. AFSCME also participated in a demonstration on February 5 outside of the Department of Labor's headquarters in Washington, D.C., to protest DOGE's infiltration of the agency's systems. The protest was covered by domestic and international media, and Elon Musk was reported to have moved a DOGE meeting that was scheduled to take place at the Department of Labor that day.[15] On March 14, AFSCME also hosted a demonstration outside the federal courthouse in Baltimore, rallying AFSCME members and retirees in opposition to DOGE accessing social security data on the same day AFSCME's attorney sought (and obtained) a TRO.

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[14] *See* https://www.afscme.org/press/releases/2025/saunders-on-doge-targeting-the-department-of-labor-musk-will-have-to-go-through-unions-and-working-people.

[15] *See, e.g.*, https://inthesetimes.com/article/elon-musk-trump-doge-labor-department; https://www.theguardian.com/us-news/2025/feb/05/elon-musk-doge-labor-department-protest;

This demonstration was covered by local and national media.[16]

20. On February 13, AFSCME issued another statement from Saunders: "Together with our union partners and allies, we filed a lawsuit to protect working people from billionaires stealing their data. Elon Musk thinks his wealth and political contributions give him the right to disregard the law and masquerade as an elected official—but he is not. Working people deserve a government that will protect their privacy and hold corporations that break the law accountable. We call on the courts to address this unlawful corruption and ensure that our government remains for the people."[17] On February 22, AFSCME announced its lawsuit challenging DOGE's efforts to access social security data, criticizing Musk as "an unelected billionaire who has no right to access the benefits working people have paid into. We won't allow him to undermine the promise that we can all retire with dignity one day; that if we ever get hurt on the job and are unable to work, we won't go hungry. Social Security insurance belongs to taxpayers, not Musk — no matter how rich he is. We must stop him from gaining unfettered access to our future."[18]

21. On March 20, AFSCME issued a statement celebrating the court's TRO in the case restricting DOGE access to SSA data: "This is a major win for working people and retirees across the country. The court saw that Elon Musk and his unqualified lackeys present a grave danger to Social Security and have illegally accessed the data of millions of Americans. . . . AFSCME is proud to have led the case against this power grab that threatens the economic well-being of millions of seniors and people with disabilities. And we will continue to fight to protect Social Security for current and future generations."[19]

22. AFSCME's statements in opposition to DOGE accessing sensitive agency data, its

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[16] *See, e.g.*, https://apnews.com/article/social-security-lawsuit-trump-doge-musk-4ecd670b2dacb46ee139cb20471a3932; https://mms.tveyes.com/MediaCenterPlayer.aspx?u=aHR0cDovL21lZGlhY2VudGVyLnR2ZXllcy5jb20vZG93bmxvYWRnYXRld2F5LmFzcHg%2FVXNlcklEPTEwNzc3MTgmTURJRD0yMzIzODAyMiZNRFNlZWQ9NTk4OSZUeXBlPU1lZGlh.

[17] *See* https://www.afscme.org/press/releases/2025/unions-expand-suit-to-block-elon-musk-from-accessing-private-data-at-dol-hhs-and-cfpb

[18] *See* https://www.afscme.org/press/releases/2025/suit-filed-in-new-challenge-retirees-unions-seek-to-block-doges-unprecedented-unlawful-social-security-data-power-grab.

[19] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-the-court-agrees-hands-off-social-security.

lawsuits, and its protests were widely reported in the media.[20]

Lawsuit Seeking Reinstatement of Terminated Probationary Employees

23. On February 13, 2025, OPM directed federal agencies to fire virtually all employees still on probation.[21]

24. On February 20, AFSCME filed suit alongside AFGEUNAC and nonprofit organizations against the Office of Personnel Management and Charles Ezell challenging the order to fire probationary employees. *See AFGE v. Office of Personnel Management*, Second Amended Compl., 3:25-cv-01780-WHA (N.D. Cal. March 11, 2025). The court has issued a preliminary injunction directing OPM to rescind its order and ordering the agencies to put terminated employees back to work.

25. AFSCME released multiple public statements regarding the lawsuit, criticizing OPM's order to fire federal workers "on false pretenses" and in violation of federal law[22] and describing the mass firings as "yet another unlawful attempt by this billionaire-run administration to gut public services without regard to the health and safety of our communities . . .We will keep fighting these attacks on their freedoms that threaten everything from food safety to national security to health care."[23]

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[20] *See, e.g.*, https://thehill.com/business/5128870-afl-cio-lawsuit-against-elon-musk; https://www.courthousenews.com/unions-sue-doge-labor-department-to-block-access-to-worker-and-musk-competitor-data/; https://www.democracydocket.com/news-alerts/federal-unions-sue-doge-over-department-of-labor-data-access/; https://www.reuters.com/world/us/union-asks-judge-block-elon-musks-doge-labor-dept-systems-2025-02-05/; https://www.law360.com/employment-authority/labor/articles/2293771/musk-can-t-access-dol-data-labor-groups-say; https://apnews.com/article/social-security-trump-administration-acfdd0d7a53b7c5a1b5105baa456c5d0; https://www.washingtonpost.com/politics/2025/03/20/doge-blocked-social-security-judge/; https://www.cbsnews.com/news/doge-social-security-administration-judge-blocks/; https://www.forbes.com/sites/mollybohannon/2025/03/20/judge-blocks-doge-from-accessing-social-security-data/; https://www.barrons.com/articles/judge-blocks-doge-social-security-data-d63085f8; https://www.cnbc.com/2025/03/20/judge-bars-musks-doge-team-from-social-security-records.html;

[21] *See* https://federalnewsnetwork.com/workforce/2025/02/opm-fires-probationary-employees-after-deferred-resignation-deadline/.

[22] *See* https://www.afscme.org/press/releases/2025/public-service-unions-and-state-democracy-defenders-fund-challenge-unlawful-mass-federal-firings.

[23] *See* https://www.afscme.org/press/releases/2025/coalition-of-unions-small-businesses-veterans-and-conservation-organizations-seek-injunction-to-prevent-unlawful-firings.

26. AFSCME issued public statements celebrating the court's orders putting unlawfully terminated federal employees back to work, on February 27 stating, ""We know this decision is just a first step, but it gives federal employees a respite. While they work to protect public health and safety, federal workers have faced constant harassment from unelected billionaires and anti-union extremists whose only goal is to give themselves massive tax breaks at the expense of working people. We will continue to move this case forward with our partners until federal workers are protected against these baseless terminations."[24] And on March 13 stating, "Public service workers are the backbone of our communities in every way. Today, we are proud to celebrate the court's decision which orders that fired federal employees must be reinstated and reinforces they cannot be fired without reason. This is a big win for all workers, especially AFSCME members of the United Nurses Associations of California and Council 20, who will be able to continue their essential work at the Department of Agriculture, Veterans Affairs Department, and other agencies."[25]

27. On March 14, after Judge William Alsup issued a preliminary injunction granting the unions' request to reinstate unlawfully fired probationary workers, President Trump's advisor, Elon Musk, retweeted a photo of Judge Alsup, stating that unless "the absolute worst judges get impeached, we don't have real democracy in America."[26]

28. On March 16, Fortune Magazine observed that "[u]nions have played a major role in legal challenges to the mass firing of federal workers" and published an interview with AFSCME President Saunders.[27] There, Saunders criticized President Trump's and Musk's anti-worker policies, stating, "People are being laid off indiscriminately. People are being fired. Their rights are being taken away from them. Services that the American people relied upon are being cut, and they're proposing to do a lot more damage." Saunders committed to "continu[ing] to put

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[24] https://www.afscme.org/press/releases/2025/federal-court-finds-firing-of-probationary-federal-employees.

[25] https://www.afscme.org/press/releases/2025/federal-court-orders-reinstatement-of-fired-probationary-federal-employees.

[26] *See* https://x.com/elonmusk/status/1900399743517548571.

[27] *See* https://fortune.com/2025/03/16/union-leader-lee-saunders-afscme-federal-worker-layoffs-trump-elon-musk.

the full force of the union behind filing these kinds of lawsuits" and "continu[ing] to talk about what this administration is trying to do to hurt working people."

29. On March 17, President Trump described the unions' lawsuit and Judge Alsup's decision as "absolutely ridiculous . . . a very dangerous thing for our country." Referring to the reinstated union members, President Trump said without support "these are people in many cases they don't show up for work . . . a judge want us to pay 'em even if they don't know if they exist . . . and I don't know if that's going to be happening."[28]

30. Dozens of press outlets covered the lawsuit and AFSCME's public statements.[29]

Lawsuit to Prevent Dismantling of Voice of America

31. On March 14, President Trump issued an executive order eliminating, among six other agencies, the U.S. Agency for Global Media, which operates Voice of America.[30]

32. The next day, AFSCME President Saunders issued a public statement criticizing the executive order: "AFSCME members at Voice of America work tirelessly to provide objective and reliable news media to citizens across the globe. Their work – delivered in nearly 50 different languages – is a symbol of how a free press should operate. And last night, the administration just moved to shut them down and other important agencies as part of a slash-and-burn effort to destroy public services no matter the cost to working families or our communities. . . . Our union has been fighting these efforts to undermine the integrity of a nonpartisan, qualified public service. And we

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[28] *See* https://www.foxnews.com/politics/dangerous-order-liberal-judge-rehire-federal-workers-should-go-scotus-trump-says.

[29] *See, e.g.*, https://apnews.com/article/federal-employees-firing-lawsuit-trump-probation-unions-4a9384c21c408df85ca17dfac5b9dc93; https://thehill.com/regulation/court-battles/5160886-federal-employee-unions-lawsuit-elon-musk/; https://www.eenews.net/articles/unions-sue-over-probationary-employee-terminations/; https://www.reuters.com/legal/labor-groups-sue-trump-administration-over-mass-firings-probationary-employees-2025-02-20/; https://www.cbsnews.com/news/judge-rules-mass-firings-federal-probationary-employees-likely-illegal/; https://www.nbcnews.com/news/amp/rcna194131; https://www.axios.com/2025/02/28/trump-federal-employees-firing-court-judge; https://www.salon.com/2025/02/28/does-not-have-any-authority-whatsoever-rules-admins-mass-firings-likely-illegal/; https://www.bizjournals.com/sanfrancisco/news/2025/03/13/government-agencies-trump-judge-william-alsup-sf.html; https://abcnews.go.com/Politics/judge-order-fired-probationary-federal-employees-reinstated/story?id=119759494

[30] https://www.whitehouse.gov/presidential-actions/2025/03/continuing-the-reduction-of-the-federal-bureaucracy/

will continue to fight to protect workers against these thinly veiled attempts to politicize and eliminate the essential work they do."[31]

33. On March 21, 2025, AFSCME filed suit alongside AFGE, the American Foreign Service Association, NewsGuild-CWA, Reporters without Borders, and individual journalists against the U.S. Agency for Global Media and its senior leaders challenging the administration's decision to close Voice of America, lock out journalists, cancel grants, and end the station's broadcasts. *See Widakuswara v. Lake*, Compl., 1:25-cv-02390-JPO (S.D.N.Y. March 21, 2025). On March 28, the court issued a temporary restraining order.

34. National media outlets reported on AFSCME's lawsuit to keep Voice of America alive.[32]

Lawsuit to Prevent Closure of the Department of Education

35. On March 11, 2025, the Trump Administration announced its plans to fire 1,300 workers at the Department of Education.[33] On March 20, President Trump issued an executive order titled "Improving Education Outcomes by Empowering Parents, States, and Communities" with the stated intent of closing the Department of Education.[34]

36. On March 24, 2025, AFSCME affiliates joined lawsuits challenging this dismantling. AFSCME Council 3 filed a lawsuits alongside the NAACP, National Education Association, and others, while AFSCME Council 93 joined a lawsuit with AFT, SEIU, the American Association of University Professors, local school districts, and students against Donald Trump, Linda McMahon, and the Department of Education challenging the administration's efforts to close the agency. *See Somerville Public Schools v. Trump*, Compl., 1:25-cv-10677 (D.

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[31] https://www.afscme.org/press/releases/2025/afscmes-saunders-we-will-continue-to-stand-with-workers-and-fight-these-efforts-to-destroy-public-service

[32] *See, e.g.*, https://www.washingtonpost.com/politics/2025/03/22/voice-america-lawsuit-trump-kari-lake/; https://www.npr.org/2025/03/21/nx-s1-5336351/voice-of-america-trump-lawsuit-kari-lake-voa; https://www.reuters.com/legal/voice-america-employees-sue-trump-administration-over-shuttered-us-funded-news-2025-03-21/; https://apnews.com/article/voice-america-free-press-trump-lawsuit-lake-6c88792addbfd651d1d06b8705fd8e10,

[33] *See* https://www.nytimes.com/2025/03/11/us/politics/trump-education-department-firings.html.

[34] *See* https://www.whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities/.

Mass. March 24, 2025); *NAACP v. United States*, Compl., 8:25-cv-000965-DLB (D. Md. March 24, 2025).

37. AFSCME criticized the mass firings at the Department of Education and administration efforts to shutter the agency. On March 11, AFSCME President Saunders stated, "These mass layoffs are Project 2025 in action, and they have one goal – to make it easier for billionaires and anti-union extremists to give themselves massive tax breaks at the expense of working people. Today's announcement from the Department of Education is just the beginning of what's to come. . . . Elections may have consequences, but we will not sit by while billionaires like Elon Musk and Linda McMahon tear apart public services piece by piece. We will keep speaking out and finding ways to fight back."[35] On March 20, Saunders issued a statement: "Dismantling the Department of Education has nothing to do with improving public schools and everything to do with starving them of the resources to succeed, all so billionaires can swoop in and turn America's great equalizer into their next great profit generator. . . . Shutting down the Department of Education amounts to one giant hit job on America's working families. Beyond the impact on students, it will jeopardize the jobs and livelihoods of millions of teachers, custodians, food service workers, school nurses, school bus drivers, instructional support professionals and their families. . . . Our children deserve better, and AFSCME's 1.4 million members are getting organized and fighting back."[36]

38. AFSCME affiliates who are plaintiffs in these cases also issued critical statements. On March 24, AFSCME Council 3 President Patrick Moran stated: "Congress created the Department of Education, and Congress controls its future — not billionaires Marylanders never voted for. This illegal move to bypass our elected representatives would be devastating to our state's public schools. Department of Education funding supports AFSCME Council 3 members in their essential work every day. It helps bus drivers get students in rural areas to school on time, ensures cafeteria workers can deliver consistent meals to students in low-income areas, keeps

[35] https://www.afscme.org/press/releases/2025/afscmes-saunders-on-mass-layoffs-at-the-department-of-education-this-is-project-2025-in-action

[36] https://www.afscme.org/press/releases/2025/afscmes-saunders-shutting-down-the-department-of-education-amounts-to-one-giant-hit-job-on-americas-working-families.

custodial workers on staff to ensure public schools are safe environments, supports disability and English as a second language school services, and more. Without this funding, we lose essential school workers — and our most vulnerable students will pay the price."[37] The same day, AFSCME Council 93 Executive Director Mark Bernard issued a public statement: "The Executive Order abolishing the Department of Education is not only illegal, but—as is to be expected from this administration—just plain cruel."[38]

39. National and local media outlets in Boston and Maryland have covered the lawsuits and statements opposing the dismantling of the Department of Education.[39]

Other Public Criticism and Speech Activity in Opposition to the Administration

40. AFSCME's public criticisms of the Trump Administration have not been limited to the subjects of its lawsuits; AFSCME has been among the administration's most consistent and outspoken critics since Inauguration Day.

41. On January 28, AFSCME President Saunders described the administration's freeze of federal funding as "a blatant overreach of presidential powers that comes straight from Project 2025" and criticized President Trump's pick of Russel Vought as an Office of Management and Budget Director who "will immediately seek to slash public services to hand out trillions in tax cuts to his wealthy friends."[40]

42. On February 10, AFSCME issued a public statement criticizing cuts to USAID and furloughs of Department of Agriculture employees, "Because of these extremist actions, not only will people abroad go hungry, but American farmers will be left high and dry with no one to buy

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[37] https://afscmemd.org/press-room/coalition-sues-trump-administration-dismantling-department.
[38] https://democracyforward.org/updates/doe-challenge-032425/.
[39] *See, e.g.*, https://www.nytimes.com/2025/03/24/us/trump-education-department-lawsuit.html; https://www.usatoday.com/story/news/education/2025/03/24/trump-education-department-lawsuits-teachers-union-school/82636301007; https://www.bostonherald.com/2025/03/24/schools-fight-trump-on-education-cuts/; https://www.masslive.com/news/2025/03/mass-school-districts-unions-sue-president-trump-over-education-dept-dismantling.html; https://www.wbur.org/news/2025/03/24/lawsuit-boston-department-education-trump; https://www.baltimoresun.com/2025/03/24/education-department-lawsuit/.
[40] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-on-the-federal-funding-freeze-this-is-a-blatant-overreach-straight-from-project-2025.

their crops. This is only the beginning of billionaires' campaign to gut public services so they can hand over trillions in tax cuts to their wealthiest friends. It is shameful, and we will consider all our options to stop these actions."[41]

43. On February 12, AFSCME criticized President Trump's "workforce optimization initiative," which expressly seeks to shrink the size of the federal workforce, with AFSCME President Saunders stating, "It is unsurprising that an administration run by billionaires is eliminating oversight and firing dedicated federal workers. They know federal workers protect the public against corporate abuse and won't allow them to use taxpayer dollars as their own personal slush fund. So, instead of trying to improve the lives of working people, they are creating a staffing crisis in the public service that hurts children, seniors, people with disabilities, working people and those most vulnerable. We won't stand for it, and we will keep fighting back."[42]

44. On February 13, AFSCME publicly opposed the confirmation of Robert F. Kennedy, Jr. as Secretary of Health & Human Services, issuing a statement: "Front-line health care workers need a leader at HHS who shares their values – someone who believes, as they do, in safeguarding public health. But Robert F. Kennedy Jr.'s values could not be further from the front lines. Instead of increasing our communities' access to vital care, he is only interested in increasing profits for his billionaire backers. . . We will keep organizing to make sure that Kennedy and his anti-worker friends don't get in the way of [AFSCME's members'] essential work."[43]

45. On February 15, AFSCME issued a statement criticizing a Department of Transportation memo directing highway funding to communities with higher birth and marriage rates as "absurd," "arbitrary," and "a cudgel to push states and localities to fall in line on the president's policies."[44]

46. On March 3, AFSCME issued a statement opposing the confirmation of Linda

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[41] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-workers-and-communities-are-paying-the-price-of-the-administration-dismantling-federal-agencies.
[42] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-federal-workers-protect-the-public-thats-why-theyre-under-attack.
[43] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-front-line-health-care-workers-need-a-leader-at-hhs-who-shares-their-values-not-rfk-jr.
[44] *See* https://www.afscme.org/press/releases/2025/afscme-saunders-federal-funding-for-transportation-should-not-be-used-as-a-cudgel-against-communities.

McMahon as Secretary of the Department of Education: "Billionaires led by Elon Musk are hellbent on dismantling the U.S. Department of Education, and wrestling mogul Linda McMahon is ready and willing to do their bidding.... Children and public school workers will suffer the cost of understaffed schools, larger classroom sizes, and fewer extracurricular opportunities – all to give tax cuts to the wealthy. But AFSCME members won't stand for it. They are among the millions of workers across this nation who have dedicated their careers to educating and supporting America's children and youth. They don't do it to get rich – they do it because they believe in the next generation, and we will be standing together against any attack on students."[45]

47. On March 11, AFSCME publicly criticized the administration's decision to remove collective bargaining rights from Transportation Security Agency employees: "AFSCME stands in solidarity with the 47,000 unionized TSA agents, many of whom are veterans, whose freedom to collectively bargain is under assault by anti-union extremists. TSA agents use their voice on the job to improve their working conditions and ensure that we all can enjoy safe air travel. When they're no longer free to speak without fear of retaliation, we jeopardize public safety and lose out on their valuable knowledge. We know this retaliatory attack is just the beginning. If they can strip TSA agents of their freedom to join a union, they will continue to threaten the collective bargaining rights of all workers. Together, with AFGE and the labor movement, we will continue to organize against these attacks on our workplaces and communities."[46]

48. On March 15, AFSCME President Saunders described President Trump's decision to end the $15 minimum wage for federal contractors as the "latest example" of "billionaires in the White House continu[ing] to find new ways to enrich themselves at the expense of working people . . . This move is nothing more than an anti-worker measure to take money out of working peoples' pockets, undermine their voice on the job and punish anyone who tries to speak out about unfair, unsafe working conditions."[47]

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[45] *See* https://www.afscme.org/press/releases/2025/afscmes-saunders-children-and-workers-will-suffer-the-cost-of-linda-mcmahons-plans-to-cut-education.

[46] https://www.afscme.org/press/releases/2025/afscmes-saunders-this-retaliatory-attack-on-tsa-agents-jeopardizes-public-safety

[47] https://www.afscme.org/press/releases/2025/afscmes-saunders-cutting-wages-for-workers-and-undermining-unions-is-a-promise-broken.

The Trump Administration's Public Responses

49. In a February 12 post on Truth Social, President Trump responded to lawsuits brought by unions and their allies by claiming "Billions of Dollars of FRAUD, WASTE, and ABUSE" and complaining that "certain activists and highly political judges want us to slow down, or stop."[48]

50. On February 16, President Trump posted on Truth Social an article titled "Dems and Judges Shredding Article II Are A Threat To Democracy," which criticized a coalition of "blue states, labor unions, and non-profit organizations [that] have descended on federal courts up and down the East Coast seeking to halt President Donald Trump's agenda.

51. Presidential advisor Elon Musk reposted on X (formerly Twitter) a post attacking a coalition of institutions as conducting a "coordinated hit job" against President Trump's agenda. The post called out Plaintiffs AFGE, AFSCME, and NFFE directly by name and claimed "[a]lmost every single lawsuit that has been filed against the second Trump administration has come from this group" and "[t]his is the organization that coordinates all of the lawsuits against the administration." When reposting the attack, Musk added the comment "Interesting".

52. After Musk reposted a tweet on March 13 that stated, "Stalin, Mao and Hitler didn't murder millions of people. Their public sector workers did," AFSCME President Lee Saunders defended public employees who chose to "mak[e] our communities safe, healthy, and strong over getting rich," and criticized Musk as having "no idea what real people go through every day. That's why he's so willing to take a chainsaw to people's jobs, Medicaid, Social Security and Medicare."[49] Other national news outlets covered Musk's tweet and AFSCME's response.[50]

53. In a March 28, 2025, interview with Fox News, Musk responded to a question about

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[48] https://www.thetimes.com/us/american-politics/article/donald-trump-lashes-out-truth-social-elon-musk-083qpsld8.

[49] *See* https://www.rollingstone.com/culture/culture-news/musk-holocaust-public-workers-union-1235296401/.

[50] *See, e.g.*, https://www.nytimes.com/2025/03/14/technology/elon-musk-x-post-hitler-stalin-mao.html; https://www.usatoday.com/story/news/politics/2025/03/14/elon-musk-hitler-federal-workers/82402023007/; https://www.msn.com/en-in/news/world/elon-musk-resharing-post-saying-hitler-didn-t-murder-millions-sparks-controversy/ar-AA1AUXCY;

the success of unions and other plaintiffs securing TROs and preliminary injunctions by blaming the "very far left bias" of the D.C. Circuit Court and suggesting that those benefiting from the rulings must be personal friends with the judges who have issued rulings adverse to the government. Musk concluded, "it sounds like corruption to me."[51]

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 3rd day of April 2025 in Washington, D.C.

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[51] *See* https://www.newsweek.com/elon-musk-doge-team-give-update-social-security-fox-news-interview-2051814.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03070-JD

DECLARATION OF STEVEN K. URY

DECLARATION OF STEVEN K. URY

I, Steven K. Ury declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the General Counsel of the Service Employees International Union ("SEIU"). I have been employed by SEIU for 22 years and served as General Counsel for the past two years. My office is located at the SEIU headquarters at 1800 Massachusetts Ave., N.W., Washington, D.C. 20036.

A. SEIU is an Organization of Diverse Working People United by the Belief in the Dignity and Worth of Workers and the Services They Provide.

3. SEIU represents approximately two million members in healthcare, the public sector, and property services. SEIU has over 150 affiliates across the United States, Puerto Rico, and Canada. In California, SEIU and our 17 local affiliates represent approximately one million workers in 58 counties across the state. In the Northern District of California, SEIU and our affiliates represent over 200,000 workers. SEIU members include physicians, technicians, long-term care workers, janitors, security officers, airport workers, librarians, childcare workers, educators, fast food workers, city, county, state, and federal employees, and many more.

4. Our work is guided by our vision for a just society where all workers are valued and all people respected—no matter where we are from or the color of our skin, where all families and communities can thrive, and where we leave a better and more equitable world for generations to come.[1]

5. To achieve this vision, SEIU's work is centered on forging a multi-racial, multi-generational, multi-lingual labor movement that builds worker power through unions, raises standards in workplaces and in communities, and—crucially—seeks to end poverty wages forever.[2]

[1] *See* SEIU 2024 Constitution and Bylaws, SEIU Mission Statement 5, available at https://www.seiu.org/docs/2024SEIUConstitution&BylawsEnglish.pdf.
[2] *Id.*

6. Accordingly, SEIU supports workers in organizing their workplaces, and helps workers enforce their rights through agencies at the state and federal level, including through the National Labor Relations Board ("NLRB"), the Equal Employment Opportunity Commission ("EEOC"), and the Occupational Safety and Health Administration ("OSHA"). After SEIU or an affiliate has been recognized as the workers' democratically-chosen exclusive representative, the union—through the workers—negotiates collective bargaining agreements that set wages, benefits, and working conditions. On average, union workers' wages are 11.2% higher than their nonunion counterparts, and 96% of union workers have employer-provided health insurance as compared to only 69% of nonunion workers.[3] SEIU and our affiliates enforce these collective bargaining agreements ("CBAs") through grievance and arbitration procedures set forth in the CBAs. We frequently negotiate for labor-management committees in which workers and their employers can jointly address other issues of mutual concern, as well. SEIU and our affiliates also advocate for local, state, and federal laws, regulations, policies, and programs that advance our members' interests.

B. SEIU and/or our Affiliates Represent Approximately 80,000 Federal Sector Employees Across Many Federal Agencies.

7. SEIU, together with our affiliates, represent approximately 80,000 federal sector employees in the United States, including nurses, doctors, other healthcare workers, police officers, first responders, office workers, scientists, engineers, analysts, maintenance workers, and many more.

8. SEIU and/or our affiliates represent workers at many federal agencies, including the Department of Veterans Affairs ("VA"), the National Institutes of Health ("NIH"), the Department of Transportation, the Department of the Interior, and the Environmental Protection Agency ("EPA"). SEIU and/or our affiliates represent approximately 28,000 employees at the

[3] AFL-CIO, *Union Facts: The Value of Collective Voice*, available at https://aflcio.org/formaunion/collective-voice (last visited on Apr. 3, 2025).

VA, an agency singled out by the White House as a purported example of the federal unions' "war on President Trump's agenda."[4]

9. The White House is correct that the work of these agencies is vital, but not because of President Trump's pretextual contention that their work implicates national security concerns. Rather, their work is crucial because the public, including SEIU members across industries, rely on these agencies to implement, administer, and enforce laws duly enacted by Congress. For instance, SEIU members depend on the EPA to set and enforce clean air and safe water standards. SEIU members, specifically essential healthcare workers, trusted the NIH to fund research on COVID-19 transmission risks, impacts on health and health care access, and social and behavioral interventions to reduce virus transmission during the pandemic.

10. SEIU members employed at the VA, in particular, provide a range of important services to veterans, including other SEIU members. Our members provide medical and mental health care to veterans, including as licensed practical nurses, health technicians, radiology technicians, ultrasound technicians, advanced medical support assistants, medical support assistants, patient administrative service providers, food service workers, cooks, housekeepers, dental assistants, van drivers, and police officers. SEIU and/or our affiliates also represent Information Technology employees who operate systems that manage veterans' benefits and pensions. We likewise represent program analysts who develop, coordinate, and maintain financial systems (accounting, budgeting, financial reporting), coordinate and synthesize financial data, advise on financial policies and procedures, and review and report on program accomplishments in financial terms. These jobs are critical to the effective and efficient delivery of services to the nation's veterans.

11. In California, specifically, SEIU represents approximately 1,700 employees at the VA San Diego Hospital and area clinics.

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[4] The White House, *Fact Sheet: President Donald J. Trump Exempts Agencies with National Security Missions from Federal Collective Bargaining Requirements* (Mar. 27, 2025) https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-exempts-agencies-with-national-security-missions-from-federal-collective-bargaining-requirements/ (last visited Apr. 3, 2025).

12. SEIU's other federal employees in California are represented by SEIU affiliate, National Association of Government Employees ("NAGE"), as further set forth in their accompanying Declaration to the pending Motion.

C. SEIU has Publicly Opposed the Trump Administration's Attacks on Working People and their Unions.

13. At SEIU's 2024 quadrennial Convention, which preceded the November presidential election, SEIU members resolved to build power to raise standards in our industries and communities, bargain better contracts, and win our fights for immigration, climate, healthcare, and racial justice.

14. Many of the Trump Administration's actions are frontal assaults on SEIU's core principles. As a result, SEIU, our affiliates, and our members have vigorously exercised—and continue to exercise—our constitutionally-protected speech and petitioning rights to oppose actions taken by the Trump Administration and Republican Congressmembers that advance an anti-worker, anti-democratic agenda.

15. For instance, SEIU posted 23 press releases to our publicly-available website since Trump's inauguration on January 20, 2025.[5] Twenty-two of these releases criticized actions taken by the Trump Administration and/or Republican Congressmembers, and explained the devastating consequences of these actions on working people. SEIU and our members have spoken out to oppose Trump's Day One Executive Orders,[6] freezes to federal grants that hurt working families,[7] cancellation of Temporary Protective Status for Venezuelan and Haitian

[5] My declaration focuses on SEIU's post-election speech and petitioning activities. However, there is a substantial and well-documented public record reflecting SEIU's endorsement of President Trump's opponent, Kamala Harris, and our investment of substantial resources to support her campaign. *See, e.g.,* April Verrett, Newsweek, *SEIU President: Kamala Harris Stands for America's Workers: Opinion* (Aug. 30, 2024), available at https://www.newsweek.com/seiu-president-kamala-harris-stands-americas-workers-opinion-1946898 (last visited Apr. 3, 2025); Francis Wilkinson, Bloomberg, *Harris' Secret Weapon is a Security Guard in Philly* (Oct. 29, 2024), available at https://www.bloomberg.com/opinion/articles/2024-10-29/harris-needs-philadelphia-voters-to-show-up-to-win-pennsylvania (last visited Apr. 3, 2025).

[6] SEIU, *SEIU Statement on Donald Trump's Day One Executive Actions* (Jan. 20, 2025), available at https://seiu.org/2025/01/seiu-statement-on-donald-trumps-day-one-executive-actions (last visited Apr. 3, 2025).

[7] SEIU, *SEIU's Verrett: Trump's Order to Freeze Federal Grants Hurts Working Families* (Jan. 28, 2025), available at https://seiu.org/2025/01/seius-verrett-trumps-order-to-freeze-federal-grants-hurts-working-families (last visited Apr. 3, 2025).

immigrants,[8] DOGE's unprecedented access to personal data and government computer systems,[9] threats to Medicaid funding,[10] and the administration's efforts to dismantle the Department of Education.[11] Notably, just 13 days before the issuance of President Trump's executive order entitled "Exclusions from Federal Labor-Management Programs" ("Exclusion Order"), SEIU issued a press release criticizing the cancellation of the Transportation Security Administration ("TSA") workers' union contract, which impacted AFGE members.[12] And just one day prior to the issuance of the Exclusion Order, SEIU condemned the Trump Administration for detaining immigrants with lawful status, including an SEIU member, in retaliation for their constitutionally-protected First Amendment activity.[13]

16. SEIU leaders have also expressed the union's opposition to President Trump's attacks on working people in many news outlets. For instance, SEIU President April Verrett has addressed the detrimental impact of federal sector terminations on affected workers and their families, and to entire communities that rely on services provided by federal agencies. President Verrett also spoke about an SEIU lawsuit filed against the so-called Department of Government

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[8] SEIU, *SEIU's Sáenz: Venezuelans with Temporary Protected Status contribute to our economy in countless ways - sending them back is not only cruel, it's senseless* (Feb. 3, 2025), available at https://seiu.org/2025/02/seius-saenz-venezuelans-with-temporary-protected-status-contribute-to-our-economy-in-countless-ways-sending-them-back-is-not-only-cruel-its-senseless (last visited Apr. 3, 2025); SEIU, *SEIU's Verrett: Ripping Away TPS for Haitian Immigrants is a Direct Attack on Working Families, Our Economy* (Feb. 20, 2025), available at https://seiu.org/2025/02/seius-verrett-ripping-away-tps-for-haitian-immigrants-is-a-direct-attack-on-working-families-our-economy (last visited Apr. 3, 2025).

[9] *See e.g.,* SEIU, *Unions Expand Suit to Block Elon Musk from Accessing Private Data at DOL, HHS and CFPB* (Feb. 13, 2025), available at https://seiu.org/2025/02/unions-expand-suit-to-block-elon-musk-from-accessing-private-data-at-dol-hhs-and-cfpb (last visited Apr. 3, 2025).

[10] *See e.g.,* SEIU, *SEIU Members Nationwide Rally, Flood Congressional Town Halls During In-District Week of Action to Demand No Cuts to Medicaid* (Mar. 19, 2025), available at https://seiu.org/2025/03/seiu-members-nationwide-rally-flood-congressional-town-halls-during-in-district-week-of-action-to-demand-no-cuts-to-medicaid (last visited Apr. 3, 2025).

[11] *See e.g.,* SEIU, *SEIU President April Verrett Condemns Executive Order to Dismantle Department of Education as Attack on Students and Working Families* (Mar. 20, 2025), available at https://seiu.org/2025/03/seiu-president-april-verrett-condemns-executive-order-to-dismantle-department-of-education-as-attack-on-students-and-working-families-2 (last visited Apr. 1, 2025).

[12] SEIU, *SEIU's Verrett: Cancelling TSA contract cheats brave workers who keep our skies safe* (Mar. 14, 2025), available at https://seiu.org/2025/03/seius-verrett-canceling-tsa-contract-cheats-brave-workers-who-keep-our-skies-safe (last visited Apr. 3, 2025).

[13] SEIU, *Statement by SEIU President April Verrett on Tufts Graduate Student Detained by ICE* (Mar. 26, 2025), available at https://seiu.org/2025/03/statement-by-seiu-president-april-verrett-on-tufts-graduate-student-detained-by-ice (last visited Apr. 3, 2025).

Efficiency ("DOGE"), explaining that, absent court intervention, Elon Musk could potentially access confidential Department of Labor complaints against his own companies. President Verrett was also quoted in a USA Today article about the devastating consequences posed by Trump's threats to deport immigrants, including those in the caregiving industry who provide crucial services that enable elderly individuals and individuals with disabilities to live with dignity in their homes.[14]

17. SEIU has also joined other social justice, civil rights, and labor organizations in issuing letters publicly opposing President Trump's nominees to key posts, including Pam Bondi's nomination for U.S. Attorney General, Linda McMahon's nomination for Secretary of the Department of Education, Russell Vought's nomination for Director of the U.S. Office of Management and Budget, Bill Pulte's nomination as U.S. Federal Housing Director, Harmeet Dhillon's nomination as Assistant Attorney General for Civil Rights in the Department of Justice, and Paul Atkins' nomination to serve as Chair of the U.S. Securities and Exchange Commission.[15]

18. SEIU has routinely posted our opposition to various Trump Administration actions to our publicly accessible social media channels, including Bluesky, X (formerly Twitter), Instagram, and Facebook.[16] SEIU affiliates likewise shared SEIU's social media posts, and created their own posts criticizing the Trump Administration's harmful attacks on working people.

D. SEIU has Filed and/or Participated in Numerous High-Profile Lawsuits Challenging Actions Taken by the Trump Administration.

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[14] Rachel Barber, USA Today, *The caregiving industry relies on immigrants. These workers fear deportation under Trump* (Mar. 9, 2025), available at https://www.usatoday.com/story/money/2025/03/09/immigrant-caregivers-fear-deportation-under-trump/80869591007/ (last visited Apr. 3, 2025).

[15] *See, e.g.,* Letter from the Leadership Conference on Civil and Human Rights, *Oppose the Nomination of the Honorable Pamela Jo Bondi to be Attorney General of the United States* (Jan. 28, 2025), available at https://civilrights.org/wp-content/uploads/2025/01/Civil-Rights-Community-Bondi-Opposition.pdf (signatories also include Plaintiffs AFL-CIO and American Federal of State, County & Municipal Employees).

[16] SEIU Bluesky handle, https://bsky.app/profile/seiu.org; SEIU X (formerly Twitter) handle, https://x.com/SEIU; SEIU Instagram handle, https://www.instagram.com/seiu_org/?hl=en, SEIU Facebook handle, https://www.facebook.com/SEIU/ (last visited Apr. 3, 2025).

19. In addition to engaging in protected speech, SEIU and/or our affiliates have filed numerous high-profile lawsuits against the Trump Administration.

20. In *AFL-CIO v. DOL*, SEIU, along with Plaintiffs American Federal of State, County & Municipal Employees ("AFSCME") and American Federation of Government Employees ("AFGE") along with several other plaintiffs, are challenging DOGE's unprecedented access to the Department of Labor, the Department of Health and Human Services, and the Consumer Financial Protection Bureau.[17] The Plaintiffs allege *ultra vires* action, and violations of the Administrative Procedure Act and the Privacy Act. In accordance with the district court's order, we are currently engaged in discovery.

21. In *Alliance for Retired Americans v. Bessent*, SEIU, along with AFGE and other plaintiffs, are challenging DOGE's unprecedented access to the Department of the Treasury as a violation of both the Privacy Act and the Internal Revenue Code.[18]

22. In *Somerville Public Schools v. Trump*, SEIU, along with AFSCME Council 93 and other plaintiffs, are challenging the dismantling of the Department of Education for violating separation of powers, the Take Care Clause, and the Administrative Procedure Act, in addition to constituting *ultra vires* action.[19]

23. NAGE, an SEIU affiliate, is one of the plaintiffs in *AFGE v. Ezell*, which challenges the "fork in the road" directive.[20]

24. SEIU also filed an *amicus curiae* brief in support of the plaintiff states and unnamed physicians in *Washington v. Trump*, a challenge to President Trump's Executive Order banning gender-affirming care for youth and minors.[21] In our brief, SEIU explained the untenable situation healthcare providers face: to fulfill their ethical duty to provide life-saving care to their patients or risk the threat of criminal prosecution and the loss of critical funding to their health systems. The plaintiffs prevailed on their motion for a temporary restraining order. The district

[17] No. 1:25-cv-00339 (D.D.C.).
[18] No. 1:25-cv-00313 (D.D.C.).
[19] No. 1:25-cv-10677 (D. Mass.).
[20] No. 1:25-cv-10276 (D. Mass.).
[21] No. 2:25-cv-00244 (W.D. Wash.).

court subsequently granted, in part, the plaintiffs' motion for preliminary injunction. The federal government defendants are currently appealing that order.

E. SEIU and our Affiliates are Suffering Irreparable Harm from the Exclusion Order.

25. The Exclusion Order and the accompanying Fact Sheet have damaged and will continue to damage SEIU, our affiliates, and our members. The Exclusion Order and the accompanying Fact Sheet have also disrupted and will continue to impede our ability to represent SEIU members.

26. The majority of SEIU and/or our affiliates' federal sector members are subject to the Exclusion Order. Losing the CBAs themselves will irreparably harm SEIU, as they are the result of decades of relationship-building between the union and agency management where both parties have worked together with the mutual goal of advancing the agency's mission for the benefit of the public. In negotiating these CBAs, the union made concessions in exchange for better workplace conditions and protections for our members. Without the CBAs, this valuable labor-management relationship will be lost as will the gains and protections for SEIU's members.

27. Among the CBA protections that will be lost are those that govern how an agency can conduct a reduction in force ("RIF"). Those CBA provisions, which address notice and bargaining unit worker rights during and after a RIF, are essential to SEIU at this moment when mass RIFs are being carried out throughout the federal government and are affecting SEIU members. At the VA alone, RIFs are expected to lay off 80,000 workers.[22]

28. SEIU's ability to represent our members at this time when mass RIFS are being carried out against them will be severely affected by the loss of the CBA RIF protections for which SEIU and our affiliates bargained.

29. As required by federal statute, SEIU's CBAs all contain a Negotiated Grievance Procedure ("NGP"). This procedure establishes a mutually agreed upon process whereby the

[22] *See* Stephen Groves, AP News, *Trump administration plans to cut 80,000 employees from Veterans Affairs, according to internal memo* (Mar. 5, 2025) available at https://apnews.com/article/veterans-affairs-cuts-doge-musk-trump-f587a6bc3db6a460e9c357592e165712 (last visited Apr. 3, 2025).

union and the agency may efficiently resolve matters premised, not only on CBA provisions, but also on other agreed upon sources of authority such as rules, regulations, and statute.

30. The NGP is a key component of the labor-management relationship that advances the mission of agencies throughout the federal government where SEIU members are employed. It is also an essential avenue for cooperative problem-solving that SEIU regularly employs to address workplace matters.

31. Eliminating the NGP will significantly impair SEIU's ability to represent its members during this period of severe workplace upheaval.

32. The Exclusion Order also does away with SEIU offices and communications at federal agencies. Union offices are SEIU's physical presence where members gather, communicate, and engage in mutual aid. SEIU's communications through workplace methods such as email are a key way in which members organize themselves to act collectively to maintain dignified working conditions and uphold the quality of federal services.

33. Eliminating SEIU workplace offices and communications serves to erase SEIU from the workplace and attacks the bond between SEIU and our members.

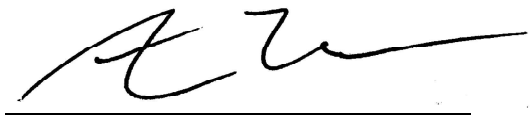
34. The Exclusion Order also seeks to eliminate payroll deduction. Accordingly, the Exclusion Order will immediately eliminate most of the revenue SEIU and/or our affiliates receive from executive branch employees. Dues are used to support negotiations, bargaining, and enforcement of CBAs, which are essential to promoting productive labor relations, maintaining labor peace, and delivering effective, quality services to the public.

35. Signing up members on alternative forms of payment, such as recurring deductions from their bank accounts, is a timely and costly endeavor. Such deductions require compliance with technical federal laws and regulations. Even if SEIU and/or our affiliates are able to sign members up on recurring deductions, there will be a lag time during which no dues will be remitted to the union.

36. Moreover, it is certainly possible that, without the guarantee of a CBA protections, some members may forego union membership, meaning that dues revenue would cease altogether, particularly if they feel federal unions are being targeted by their employer.

37. For the foregoing reasons, SEIU, its affiliates, and our members will suffer irreparable harm unless the Exclusion Order is enjoined.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed April 3, 2025, in Washington, D.C.



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF BRANDY WHITE

DECLARATION OF BRANDY WHITE

I, Brandy White, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am a Facilities Assistant at the Federal Correctional Complex in Forest City, Arkansas. I have worked for the Bureau of Prisons ("BOP") for nearly 22 years, since 2004. BOP is an agency in the Department of Justice. Prior to my current position, I was a Health Information Technician for approximately 8 years. As a Facilities Assistant, I conduct a variety of administrative tasks for the facility to ensure operations run smoothly. A couple of my most frequent tasks include submitting work and maintenance orders for when bureau staff work on the facility, and input and track facility workers' and inmates' pay, time, and attendance. Additionally, I am regularly augmented to perform correctional officer work to help fill in for officer vacancies, for an average of one shift every other week.

3. I am the President of the American Federation of Government Employees Council of Prison Locals 33 ("CPL-33"). I have been the Council President since August of 2023. Prior to my current role, I served as the Council Secretary-Treasurer for six years. I am also a member of AFGE Local 922. I have been a member of AFGE for 21 years. Shortly after I first joined the union, I was elected as the Secretary-Treasurer for AFGE Local 922 and served in that role for about 12 years.

4. CPL-33 represents a bargaining unit of approximately 30,000 civil servants who work for the BOP. These employees cover a variety of positions including, but not limited to, correctional officers, psychologists, teachers, food service workers, recreation staff, and case managers in 122 facilities across the country. These bargaining unit members work to help inmates fulfill their sentences and debts to society in a productive manner by, among other things, providing education, technical training, mental health services, and case management. BOP bargaining unit members strive to reduce recidivism of federal inmates through these vital

duties. The March 27, 2025, Executive Order titled "Exclusions from Federal Labor Management Relations Programs" ("Executive Order") covers all workers in CPL-33.

5. CPL-33's mission is to advocate for and promote the interests of bargaining unit members in their federal employment, including working for a safe and fair workplace for all members. As the exclusive bargaining representative for all bargaining unit employees in the BOP, CPL-33, AFGE, provides many services to all bargaining unit members. Core functions of the Union include collective bargaining with the agency to obtain a fair and reasonable collective bargaining agreement ("CBA"); filing and negotiating grievances against the agency to enforce the terms and conditions of the CBA; pursuing arbitrations on behalf of workers to enforce the CBA; providing regular trainings to constituent locals; and providing other support, guidance, and resources to bargaining unit employees. CPL-33 is also very active in advocating for improved working conditions on Capitol Hill – such as for greater safety measures and staffing levels.

6. The Executive Order will immediately and severely harm CPL-33's ability to provide these services to unit members and to accomplish its mission.

7. If CPL-33 is no longer the exclusive bargaining representative of the unit, the CPL-33 cannot enforce the CBA against the agency. The CBA, which is effective from July 2014 to May 2029, provides important rights and protections to workers. For instance, the CBA

a. Sets terms and conditions for overtime, sick leave, holidays, and paid time off for workers in the unit.

b. Imposes safety and health requirements to ensure the welfare of workers in their place of employment.

c. Establishes protections for workers regarding reduction-in-force ("RIF") actions and procedures.

d. Imposes procedures for and limitations on disciplinary and adverse actions against workers.

e. Provides for an Employee Assistance Program for individuals who have problems associated with alcohol, drug, marital, family, legal, financial, stress, attendance, and other personal concerns.

f. Establishes grievance and arbitration procedures for employees and the Union to resolve disputes with the agency over employment matters.

g. Provides for official time, which allows bargaining unit employees to perform union representation activities during government time as reasonable and necessary.

h. Sets hours of work, establishes seniority of members, and outlines the bidding process for shift work.

Without CPL-33 to represent them and enforce the CBA, the workers will not have the benefit of those rights and protections going forward. I understand that the agency is also likely to rescind the CBA under the Executive Order.

8. CPL-33's staff and activities are funded through members' voluntary dues. If the Council can no longer receive dues under the Executive Order, the Council will not be able to continue to function or provide any of its services or protection to the members listed above.

9. If CPL-33's officers can no longer perform representational activities on official time in the office, it will be much more difficult, if not impossible, for the Union to fulfill its basic representational duties. Official time is one of the most important pieces to enabling Union representatives to prepare for and participate in the arbitrations, EEO cases, workers compensation cases, and other proceedings and negotiations that they handle on behalf of workers in the bargaining unit. It is also important for Union representatives to be able to meet with members in the office to hear and address workplace concerns.

10. At least two locals in CPL-33 have already been stripped of official time, with the Agency ordering one of these locals to vacate their union office within two days. As a result, local officers are forced to use personal leave to conduct official union business and to continue providing representational activities. In addition, I am aware of at least two grievance

arbitrations on behalf of members in CPL-33 that have been canceled by the Agency due to the Executive Order.

11. The Executive Order is chilling workers' speech and activity. I know from personal experience that without the protections of the CBA and the Union as our exclusive representative, workers will be afraid to raise concerns over workplace conditions with the agency. The BOP is already understaffed, and workers' safety will be jeopardized in an already hazardous job. Additionally, because this Executive Order targets federal unions and their employees, I am hesitant to criticize the administration or voice contrary political views, for fear of additional repercussions. I understand from my interactions with other federal union employees that many of them feel the same way.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed April 3, 2025, in Forest City, Arkansas.

Brandy White

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

900057, at *3 (N.D. Cal. Mar. 24, 2025). And it is Article III courts, not the FLRA, who possess the comparative expertise to resolve constitutional claims about the President's authority.

II. Plaintiffs' First Amendment Claim is Likely to Succeed

A. The Exclusion Order Unconstitutionally Retaliates Against Plaintiffs

As detailed in Plaintiffs' opening brief, the Fact Sheet accompanying the Exclusion Order expressly states that the Order was issued in response to "hostile Federal unions" who had "declared war on President Trump's agenda." Kelley Decl., Ex. 3 at 2-3. Leaving no room for doubt as to what this "hostile" activity was, the Fact Sheet quotes from an article published by AFGE detailing actions opposing a wide range of President Trump's policies such as filing lawsuits, lobbying members of Congress, and making public statements, and calls out unions who have filed grievances challenging "Trump policies." *Id.* at 3.[4] The White House further suggests that the dividing line between which employees would lose bargaining rights and which would keep them was whether the union representing those employees would "work with" the President. *Id*. And reinforcing that the Exclusion Order was based on union opposition to the President's agenda, and not the § 7103(b) statutory criteria, is both the massive overbreadth of the list of excluded agencies, *see infra* § III.2, as well as the jagged line drawing contained in the Order itself, *see* Memo in Supp. of Pls.' Mot. for Prelim. Inj. 22 ("Pls.' Br.").

Applying the directive that bargaining rights should be based on the union's support of the President's agenda, the Secretary of Veterans Affairs exercised authority delegated under the Exclusion Order and reinstated collective bargaining rights *by union*.[5] A VA spokesperson confirmed that these unions were selected for reinstatement because they had filed "no or few grievances," while Plaintiffs "AFGE, NAGE, NNU and SEIU by contrast are using their authority"

[4] Defendants unsurprisingly do not dispute that filing lawsuits, lobbying, and public statements are protected activity. While they assert that an employee grievance on matters of private concern may not be protected activity, Gov't Br. 26, they ignore that the grievances alleged to necessitate the Exclusion Order involve, by the President's own words, opposition to "Trump policies," and therefore do involve matters of public concern. Moreover, the *Pickering* doctrine applies to government actions as *employer*; it does not dilute First Amendment protection against retaliatory actions in the government's role as *sovereign*, such as the Exclusion Order. *See Connick v. Myers*, 461 U.S. 138, 147 (1983).

[5] *See* Order Suspending the Application of Section 1-402 or 1-404 of Executive Order 12171, 90 Fed. Reg. 16427 (Apr. 17, 2025).

under the FSLMRS "to broadly frustrate the administration's ability to manage the agency."[6]

Thus, Plaintiffs have demonstrated the requisite chilling effect. Given the clear instruction to differentiate between unions based on their support of the President's agenda, unions would be chilled from engaging in future speech or petitioning opposing the President's policies. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited."). And the record shows that employees covered by the Order are reluctant to criticize the administration or voice opposition to the President's policies as a result of the Order. *See* Braden Decl. ¶ 11; Nelson Decl. ¶ 11; Niemeier-Walsh Decl. ¶ 12; Ruddy Decl. ¶ 13; Green Decl. ¶ 15; B. White Decl. ¶ 11; Cameron Decl. ¶ 15; Robinson Decl. ¶ 23.

In response, Defendants make a series of arguments, all of which require the Court to disregard the clear contemporaneous statements explaining the rationale for the Exclusion Order. First, Defendants contend that the Order is entitled to a "presumption of regularity" because it is "facially valid" and "within the lawful authority of the executive." Defs.' Opp'n to Mot. for Prelim Inj. 23 ("Gov't Br."). This is both contradicted by the factual record, *see infra* at 8, and significantly misunderstands the law. Congress did not authorize the President to exclude agencies if the unions representing employees at those agencies engaged in speech and petitioning opposing the President's agenda. That would read the First Amendment out of the Constitution. This Order is one of the clearest examples of a facially *invalid* executive order because the President's improper motive is stated in an official document accompanying that very order. The government's position rests on the false premise that "national security" is equivalent to the President's agenda. If the security of the *nation* were threatened by private citizens expressing opposition to the President's domestic policy initiatives through legal channels, the First Amendment loses all substance. The law is in fact the opposite: political speech critical of the government occupies "the highest rung of the hierarchy of First Amendment values." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982). No matter the scope of authority Congress gave to the President in § 7103, it cannot

[6] Erich Wagner, *VA Is Selectively Enforcing Trump's Order Stripping Workers of Union Rights*, Government Executive (Apr. 18, 2025), https://www.govexec.com/workforce/2025/04/va-selectively-enforcing-trumps-order-stripping-workers-union-rights/404694/.

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SAN FRANCISCO DIVISION

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v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF THOMAS DARGON, JR.

DECLARATION OF THOMAS DARGON, JR.

I, Thomas Dargon, Jr., declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the Deputy General Counsel for the American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council ("VA Council"). The VA Council is an independent bargaining council within the AFGE national union representing employees at the U.S. Department of Veterans Affairs ("VA") and their constituent AFGE local unions. It is the largest consolidated bargaining unit in the federal government, representing approximately 310,000 bargaining unit employees in more than 1,000 facilities across the country. The VA Council represents employees in each VA administration, and its bargaining unit covers hundreds of positions, including, but not limited to, physicians, registered nurses, dentists, physician assistants, social workers, psychologists, physical therapists, medical support assistants, nursing assistants, health technicians, social science specialists, housekeepers, police officers, veterans service representatives, cemetery caretakers, plumbers, and electricians.

3. As Deputy General Counsel, I supervise a group of attorneys and professional staff. I served on the VA Council's negotiating team during the renegotiation of AFGE's nationwide collective bargaining agreement ("CBA") with VA. I also provide representation and general assistance to local unions and bargaining unit employees to pursue statutory appeals as well as grievances under the CBA to enforce their statutory and contractual rights, including through binding arbitration and exceptions to the Federal Labor Relations Authority ("FLRA"). Through the duties of my position, I am familiar with the CBA as well as the many services provided by AFGE. I am also familiar with the harm that will be done to VA employees if they are forced to go without their CBA or if AFGE is no longer recognized as their exclusive representative, even for a few months.

4. The CBA contains countless substantive terms negotiated on behalf of VA employees that cannot be unilaterally changed by VA without first bargaining in good faith with the union. These include terms that are specifically important to VA employees in their day-to-

day work, such as guaranteed time off between shifts, mandatory lunch breaks, mandatory rest periods for employees working overtime, ninety-day performance improvement plans, "temporary promotion" pay for employees assigned to perform higher-graded duties, and a long list of detailed provisions guaranteeing that employees will be provided with adequate safety equipment and a safe working environment. The CBA also provides enforcement mechanisms to ensure that VA complies with those provisions, such as union notification requirements, a request-for-information procedure that allows local unions access to important safety-related records, and a negotiated grievance and arbitration procedure should VA fail to meet its obligations under the CBA, federal law, government-wide regulation, or VA policy.

5. In the absence of the CBA and the right to collectively bargain, VA could make unilateral changes to conditions of employment, and employees will be deprived of the negotiated grievance procedure that allows them to bring complaints about workplace disputes before a neutral third party, namely an independent arbitrator appointed through the Federal Mediation and Conciliation Service. Moreover, because there is a contractual time limit to pursue grievances under the CBA, those rights will not be recoverable at a later date.

6. The CBA also provides for "official time" consistent with 5 U.S.C. § 7131, which union representatives can use to perform their representational duties during the workday. I am aware that certain VA facilities within the Veterans Benefits Administration are no longer recognizing or approving official time for certain AFGE representatives—a directive that has been communicated to local unions.

7. One concrete benefit of official time is allowing union representatives to resolve payroll-related disputes, which are particularly complex at VA. The rules governing VA employee pay are extremely nuanced. Frontline employees as well as human resources, payroll, and management officials often misunderstand employee entitlements to shift differentials, premium pay, overtime pay, and hazard pay. The payment of timely and correct compensation also depends on how employees are coded in the various VA human resources and payroll systems, including whether they are eligible for pay entitlements under the Fair Labor Standards Act ("FLSA") or those set forth in Title 5 and Title 38 of the U.S. Code. Union representatives at

the VA are specially trained to assist employees to recognize and correct complex payroll issues. Union representatives routinely succeed in assisting employees to rectify underpayments, either through making an informal request to responsible human resources, payroll, or management officials, or by pursuing a formal grievance on behalf of individual employees or groups of similarly situated employees. When an underlying payroll error impacts a larger population of VA employees, the VA Council may elect to pursue a national level grievance under the CBA on behalf of the bargaining unit. The VA Council's national level grievances under the CBA and resulting arbitration awards have resulted in the recovery of hundreds of millions of dollars in back pay in recent years.

8. Union representatives can assist employees and perform representational duties during the workday because the Federal Service Labor-Management Relations Statute ("Statute") and the CBA provide for official time. Should VA employees be without official time under the Statute or their CBA—even for a short period—many of the 310,000 VA employees represented by AFGE will not be able to rectify payroll errors, resolve workplace disputes, or utilize the negotiated grievance procedure to obtain relief they are owed from neutral third-party arbitrators. Moreover, because grievances must be filed within 30 calendar days of the underlying violation, those rights will not be recoverable even if the CBA is later restored.

9. VA employees who are deprived of the CBA may also miss out on upward mobility and career advancement opportunities. For example, the CBA includes both reassignment and merit promotion provisions to ensure that qualified, internal candidates will be considered first for vacant positions. Should a VA employee be deprived of a career advancement opportunity because the CBA is not in effect, that particular opportunity will be permanently lost.

10. The CBA also includes important procedural protections for employees facing discipline. For example, the CBA reinforces VA employees' statutory "Weingarten rights," which, upon request, allow a union representative to represent employees in any investigatory examination that could reasonably result in disciplinary action. In my experience, the majority of employees who are facing an investigation or disciplinary action avail themselves of their right

to representation, which is seen as one of the most important services the union provides.

11. Another major representational duty that union officials perform during official time is advising and representing employees who are facing disciplinary action, such as admonishments, reprimands, suspensions, demotions, and removals from the federal service. Given the administration's stated desire to "swiftly terminate" civil servants it deems to be "poor performing employees," there will be an increased demand for the union's services moving forward. Recently, VA unilaterally implemented a number of new workplace rules that will likely lead to increased discipline for employees. This includes rules that impede employees' free speech, such as the so-called "flag policy" that bans most non-military affinity group flags from VA facilities, another rule barring employees from including pronouns or their role as a union representative in VA email signatures, and another rule implementing employee surveillance tools on government equipment. Notably, the CBA prohibits the electronic recording of conversations between employees and management officials without mutual consent. Due to VA's unilateral implementation of these workplace rules in violation of the CBA, and absent immediate relief, employees may be subjected to more disciplinary action.

12. Moreover, the CBA provides VA employees with access to the negotiated grievance and arbitration procedure to appeal the merits of adverse personnel actions to a neutral third-party arbitrator, which is not available under VA's administrative grievance procedure wherein VA appoints its own internal "grievance examiner." Statutory appeals to independent agencies like the Equal Employment Opportunity Commission, Office of Special Counsel, and Merit Systems Protection Board are only available in limited circumstances, and even so, are limited in scope and available relief. In short, unless it involves a claim of discrimination or reprisal, VA employees covered by the Title 5 personnel system, including more than 230,000 VA workers represented by AFGE, can only obtain neutral third-party arbitrator review of the merits of disciplinary action (i.e., admonishments, reprimands, or suspensions of 14 calendar days or less) by utilizing the CBA's negotiated grievance procedure. Likewise, unless it involves a claim of discrimination or reprisal, VA employees covered by the Title 38 personnel system, including more than 80,000 physicians, dentists, registered nurses, physician assistants,

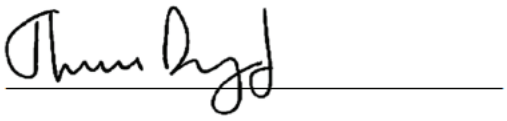
optometrists, podiatrists, chiropractors, and expanded-function dental auxiliaries represented by AFGE, can only obtain neutral third-party arbitrator review of the merits of adverse or major adverse actions by utilizing the CBA's negotiated grievance procedure.

13. While management retains the right to hire, fire, or discipline employees, the CBA provides protections to ensure that employees are afforded the right to union representation, as well as a comprehensive process to respond to proposed discipline and later appeal wrongful discipline to a neutral third-party arbitrator. If VA employees are forced to go without the CBA's protections and access to the negotiated grievance procedure, even for a short time, employees will be deprived of their choice of forum and their right to seek review before a neutral third-party arbitrator. That is an injury will cause irreparable harm to those employees.

14. In short, the CBA provides many procedural and substantive rights to VA employees that if lost, even for a short time, will cause irreparable harm to those employees.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: May 7, 2025



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

SUPPLEMENTAL DECLARATION OF RANDY L. ERWIN

SUPPLEMENTAL DECLARATION OF RANDY L. ERWIN

I, Randy L. Erwin, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.

2. I am the National President of the National Federation of Federal Employees, IAM, AFL-CIO ("NFFE"). NFFE is a national labor organization and unincorporated membership organization headquartered in Washington, D.C. NFFE is America's first civil service federal employee union. NFFE is an affiliate of the International Association of Machinists and Aerospace Workers (IAM).

3. I have been the National President of NFFE since 2016. Prior to that, I served in other national leadership roles at NFFE. I have been a proud member of NFFE-IAM since 2002.

4. By virtue of my job duties, I am familiar with NFFE's finances. I regularly review monthly dues statements and membership figures. It is important that I know the information in those reports because the amount of revenue received by NFFE and its affiliates determines the union's capacity to organize and represent employees.

5. NFFE has been harmed by the Executive Order in several ways. First, absent relief from the Order, many of NFFE's local affiliates will likely cease to exist as it did with the benefit of collective bargaining rights. Dozens of bargaining units will either be effectively eliminated without Agency recognition, or severely diminished in size as a result of the sweeping loss of bargaining rights and recognition across the federal government.

6. The Executive Order has also deprived NFFE of the authority to bargain on behalf of employees at excluded agencies, including the right to receive advance notice of changes to conditions of employment, initiate bargaining over conditions of employment, and engage in mid-term bargaining over terms and conditions of employment at those agencies. NFFE has had difficulty enforcing the substantive and procedural protections NFFE bargaining for in its collective bargaining agreements with the excluded agencies. And when excluded agencies violate or ignore the substantive and procedural protections in those agreements – as they are already doing, at OPM's instruction – NFFE will be unable to pursue grievances or seek

assistance from the FLRA.

7. I am personally aware of a RIF process already underway at the General Services Administration, an excluded agency where NFFE represents employees. Stripped of its bargaining rights, NFFE will be blocked when it seeks to enforce the applicable regulations and contractual rights that apply in these scenarios. Even if NFFE eventually obtains relief, at that point NFFE bargaining units could be drastically reduced or eliminated.

8. On April 8, 2025, after I signed my initial declaration in this case, the Chief Human Capital Officers Council ("CHCOC"), an interagency forum led by the OPM Director, distributed a Frequently Asked Questions document ("FAQs") instructing agencies how to implement the Executive Order and OPM Memorandum. The FAQs instruct excluded agencies to ignore the rights and obligations of their unionized employees, as set forth in statute and in the collective bargaining agreements. Agencies are generally complying with OPM's instructions and refusing to process grievances filed by NFFE, including holding arbitration hearings, refusing to provide advance notice of changes or negotiating with NFFE on negotiable changes, rescinding official time and union office space, and refusing to withhold and allot voluntary dues from employee paychecks to NFFE. For example, Passports Services within the Department of State has refused to bargain over work schedule changes. The GSA has refused to provide information or bargain on two negotiable subjects: return to work and the reduction-in-force which is in process. The Department of the Air Force has notified us that all negotiations, discussions, or actions related to collective bargaining agreements, grievances, or responses to requests for information concerning any labor related issues are held in abeyance. Thus, NFFE is unable to perform its representational responsibilities and basic role of a union at excluded agencies, to the detriment of the federal employees it represents.

9. Because a majority of NFFE's dues-paying members work for the Excluded Agencies, the Exclusion Order has had a substantial impact on NFFE's finances now that several agencies have implemented the Executive Order, the OPM memorandum and the administration's policy to terminate dues allotments.

10. NFFE's operations are funded solely by members who pay dues to be members of

the union, almost exclusively through Agency payroll deduction. Dues allotments are required by statute and by enforceable provisions we incorporated within our collective bargaining agreements. If the Executive Order remains in effect, NFFE anticipates it may lose approximately $5,500,898 of revenue per year that it previously received from dues paid through payroll deduction.

11. For the two-week pay period ending March 8, 2025 the last full pay period fully unimpacted by the Executive Order – NFFE received a total of $363,363 in withheld dues from various federal employers. For that pay period, allotted dues accounted for more than 99% of all dues-related revenue received by NFFE for federal bargaining units.

12. By contrast, in the most recent pay period for which NFFE has full information, ending April 19, 2025, NFFE received only $151,791 in allotted dues, a reduction of 58.2%.

13. I stated in my first Declaration, "NFFE currently does not have a mechanism to maintain membership of union members replacing Agency payroll deduction." In April 2025, NFFE launched a system to sign up employees directly for dues withholding via personal credit card or bank account draft. NFFE has assigned the majority of staff to focus exclusively on converting memberships from dues allotment to direct dues, which has meant staff time and substantial financial resources have been diverted. Rather than expending time and dues revenue toward regular representational duties, NFFE has invested in the dues conversion project.

14. Although NFFE has made and will continue to make a concerted effort to offset a portion of losses by transitioning members from dues allotment to direct dues, NFFE's total dues-related revenue for the April 19, 2025 pay period alone, decreased by $126,966.

15. If we are able to maintain receiving direct dues on this level for the next year, NFFE will lose $3,301,116 in revenue to fund its operations.

16. If, however, NFFE continues to be prevented from serving as the exclusive bargaining representative of the employees it represented on March 26, 2025, we anticipate many members will decline to pay or stop paying dues directly to NFFE because NFFE is no longer recognized as the exclusive representative for them in the workplace. Most members joined when NFFE was actively representing our federal sector members through negotiating

collective bargaining agreements and assisting employees with enforcing them. We assert contractual and statutory rights on behalf of our federal sector members by filing grievances, unfair labor practice charges, or other complaints through our negotiated grievance procedure or with various federal agencies, including the Federal Labor Relations Authority, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority. NFFE files litigation on employees' behalf in the courts. We also advocate on Capitol Hill and in the media on issues of importance to federal workers and to veterans. Many members may choose not to convert to direct dues because the Executive Order has changed the union's authority and standing and limited our leverage and enforcement tools.

17. We have heard from members who are concerned about NFFE losing strength and bargaining power because of the threat of diminished membership and smaller bargaining units.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 7, 2025

Randy L. Erwin

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

SUPPLEMENTAL DECLARATION OF EVERETT KELLEY

SUPPLEMENTAL DECLARATION OF EVERETT KELLEY

I, Everett Kelley, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the elected National President of the American Federation of Government Employees, AFL-CIO ("AFGE"), a national labor organization and unincorporated association that represents approximately 800,000 federal civilian employees through its affiliated councils and locals in every state, Puerto Rico, Washington, D.C., and the Indo-Pacific region. AFGE federal employee members include health care workers caring for our nation's veterans in the Department of Veterans Affairs, workers protecting human health and the environment, scientists conducting critical research, civilian employees in the Department of Defense supporting our military personnel and their families, correctional officers maintaining safety in federal facilities, health care workers serving on military bases, and employees of the Social Security Administration making sure retirees receive the benefits they have earned.

3. AFGE is the largest federal-sector union in the United States.

4. I have been National President of AFGE since 2020. Prior to that, I served in other national and local union leadership roles. I was also a federal government employee for 34 years, working at Anniston Army Depot in Alabama. I have been a proud member of AFGE since 1981.

5. By virtue of my job duties, I am familiar with AFGE's finances. I regularly review monthly dues statements and membership figures. It is important that I know the information in those reports because the amount of revenue received by AFGE and its affiliates determines the union's capacity to organize and represent employees.

6. Per the AFGE Constitution, the National President is also a member of the 15-person National Executive Committee ("NEC"). The NEC is the governing body that makes policy decisions for the national union. I was present at the NEC meeting on April 24, 2025, at which the NEC determined that the catastrophic drop in revenue caused by the Executive Order and OPM Memorandum meant that AFGE would need to lay off more than half of its staff

nationwide.

The Executive Order Has Crippled AFGE's Ability to Advocate for its Members.

7. AFGE estimates that approximately 660,000 (more than three-quarters) of the federal employees it represented prior to the March 27, 2025, Executive Order are employed at agencies and subdivisions that were affected by the Executive Order. Those employees, according to both the Executive Order and the OPM Memorandum that was issued on the same day, no longer have the right to collectively bargain with their employer by and through AFGE.

8. AFGE has been harmed by the Executive Order in several ways. First, absent relief from the Order, many of AFGE's local affiliates and national councils will likely cease to exist. Hundreds of bargaining units will either be eliminated completely as a result of the sweeping loss of bargaining rights across the government.

9. The Executive Order has also deprived AFGE of the authority to bargain on behalf of employees at excluded agencies, including the right to receive advance notice of, and engage in mid-term bargaining over, changes to terms and conditions of employment at those agencies. Nor can AFGE enforce the substantive and procedural protections AFGE bargained for in its collective-bargaining agreements with the affected agencies. And when excluded agencies violate or ignore the substantive and procedural protections in those agreements—as they are already doing, at OPM's instruction—AFGE will be unable to pursue grievances or appeal to the FLRA.

10. Those rights are especially important now because the administration has announced plans to undertake large-scale reductions-in-force ("RIFs") across the government. Indeed, those planned RIFs are the very first item highlighted in the "Effective and Efficient Government" section of the OPM Memorandum, which instructs excluded agencies that they should plan and implement those RIFs "without regard to provisions in terminated CBAs." I am personally aware of several RIF processes that are already underway at the excluded agencies where AFGE represents employees, including at the Department of Health and Human Services and the Department of State. Stripped of its bargaining rights, AFGE cannot safeguard its members' rights or enforce the RIF procedures it previously negotiated with the affected

agencies. In other words, even if AFGE eventually obtains relief, it could return to find many of its bargaining units severely reduced or even cleaned out entirely.

11. After I signed my initial declaration in this case on April 3, 2025, the Chief Human Capital Officers Council ("CHCOC"), an interagency forum led by the OPM Director, distributed a Frequently Asked Questions document ("FAQs") instructing agencies how to implement the Executive Order and OPM Memorandum. The FAQs were initially distributed to the affected agencies on April 8, 2025, then updated on April 22, 2025. A true and correct copy of the April 22, 2025, version of the FAQs is attached to this declaration as Exhibit A.

12. The FAQs expressly instruct affected agencies and subdivisions to ignore the rights and obligations of their unionized employees, as set forth in both Chapter 71 and in their collective-bargaining agreements with unions like AFGE. For example, the FAQs instruct agencies to refuse to process grievances, Ex. A at A3, A4, A19, A25, withdraw from dispute resolution procedures, *id.* at A5, suspend all bargaining, *id.* at A15, A28, A31, and rescind union office space and official time, *id.* at A18. Crucially, the FAQs specifically advise the affected agencies that they may make unilateral changes to terms and conditions of employment without consulting with or bargaining with unions like AFGE. See *id.* at A24. Even if AFGE obtains relief from the Executive Order in the future, it will have lost its opportunity to bargain over those changes.

13. Across the government, excluded agencies have complied with the instructions in the FAQs. Agencies are refusing to process grievances (including by placing ongoing grievances in abeyance), taking the position that the FLRA lacks jurisdiction to adjudicate appealed arbitration awards and ULPs, refusing to meet with AFGE representatives, rescinding official time and union office space, and refusing to withhold and allot voluntary dues from employee paychecks. Bargaining has stopped. In short, AFGE is no longer able to perform the basic role of a union at the affected agencies and subdivisions, to the detriment of more than a half-million federal employees.

The Executive Order Has Damaged AFGE's Ability to Represent Employees.

14. As a direct result of the Executive Order, AFGE is the bargaining representative

for about 660,000 fewer federal employees than prior to March 27, 2025. As I wrote in my first Declaration, a union's bargaining power derives from the number of employees it represents at an agency. Accordingly, the Executive Order has severely diminished the ability of AFGE and its affiliates to represent workers at the affected, including those who work for subdivisions whose Chapter 71 rights have not been stripped away.

15. That decrease in bargaining power are compounded by the fact that Section 7 of the Executive Order specifically contemplates that other agencies and subdivisions (particularly those that are represented by "hostile" federal unions) will also be excluded from coverage under Chapter 71—a not-so-subtle threat that AFGE in particular remains vulnerable to further retribution.

16. Many leaders and rank-and-file members of AFGE have contacted me to express fear that if the union continues to speak out against the Executive Order and OPM Memorandum—or any of the administration's policies—that more AFGE members could lose their unions in retaliation. I am also aware that many local affiliates that were not directly affected by the Executive Order and OPM Memorandum have become more cautious about raising workplace issues in the wake of the order, let alone speaking out in public about the administration's policies.

17. I am also personally concerned that the administration may further retaliate against AFGE.

The Financial Impact of the Executive Order is an Existential Threat to AFGE.

18. As a public sector union, AFGE is financed almost exclusively by voluntary dues. A majority of AFGE's dues-paying members work at the excluded agencies. Revenue from voluntary dues made up more than 90% of AFGE's operating budget in 2024. The Exclusion Order and OPM Memorandum, by immediately stripping union representation from approximately 660,000 employees that were previously represented by AFGE, and by ordering the cessation of the primary method through which AFGE collects dues from employees at the affected agencies, has created a sudden and catastrophic drop in AFGE's revenues.

19. To provide some background: in addition to empowering federal workers to

organize and select an exclusive representative, the FSLMRS requires agency payroll providers to deduct voluntary union dues from employees' pay upon request and remit that money to their union. This process is commonly referred to as "dues allotment."

20. The vast majority of AFGE's collective-bargaining agreements—and all of its national contracts that were negotiated directly with an agency—include a belt-and-suspenders provision that also requires the allotment of voluntary dues.

21. When the Executive Order excluded the affected agencies and subdivisions from Chapter 71, it eliminated the statutory requirement that the affected agencies allot dues to AFGE. The OPM Memorandum, which was issued on the same day as the Executive Order, went further, stating that the administration's policy is to affirmatively cease all dues allotment for those employees, regardless of whether they are separately mandated by a collective-bargaining agreement: "[w]hen a covered agency terminates its CBAs, those contractual commitments no longer apply, and the covered agency should terminate allotments except where required by statute."

22. In the weeks since the Executive Order was issued, excluded agencies and subdivisions across the government have followed OPM's instructions, taken the position that the statutory and contractual requirement to allot dues no longer applies to them, and ceased dues allotment. Although there has been some initial uncertainty on the part of the affected agencies in how to implement the Order, over the past weeks AFGE's dues allotment has slowed to a relative trickle.

23. For the two-week pay period ending March 28, 2025—the day after the issuance of the Executive Order—AFGE received a total of $4,195,052 in withheld dues from various federal employers, a substantial portion of which AFGE then distributed to affiliate locals and councils in order fund their operations. In total, allotted dues accounted for about two-thirds of all dues-related revenue received by AFGE for that pay period.

24. By contrast, in the most recent pay period, ending April 25, 2025, AFGE received only $752,686 in allotted dues, a reduction of more than 82%. Although AFGE has made a concerted effort to offset a portion of those losses by convincing members to pay dues by other

means, AFGE's total dues-related revenue, for the April 25, 2025, pay period alone, decreased by more than $2.9 million as compared to the pay period ending on March 28.

25. If losses continue on that trajectory over the next year, AFGE and its affiliates would lose over $75 million in revenue to fund its operations—a number that does not include lost revenues for those locals who choose to collect dues directly.

26. A substantial portion of those losses will be both unavoidable and unrecoverable, for several reasons:

27. First, based on more than three decades of experience as a union member and leader, I understand that AFGE's members do not pay dues out of charity, but in exchange for the value they receive from the union's services as exclusive representative. Surely many members will decline to pay voluntary dues to AFGE when AFGE is no longer empowered to bargain on employees' behalf, enforce a collective-bargaining agreement, or be the exclusive representative in workplace disputes.

28. Second, although AFGE is permitted to collect dues directly from employees whose dues are no longer allotted following the Executive Order and is working to transition as many members as possible to that system, AFGE will not be able to effect that transition at scale. For one thing, the affected members who are most inclined to make that transition have already done so. Also, as explained above, employees have less reason to pay dues to an organization that cannot serve as their exclusive representative. Finally, reaching out to now-unrepresented employees and convincing them to sign up for direct payment of dues is a massive and time-intensive organizing project that will be impossible given AFGE's revenue loss and resulting cuts to the necessary staff.

The Order Has Already Forced AFGE to Undertake a Crippling Reduction in Force.

29. On April 24, 2025, the National Executive Council held an emergency meeting in Washington, D.C. to discuss the Executive Order and the resulting collapse in the union's revenue. I was personally present at that meeting.

30. At that meeting, the NEC approved a massive reduction-in-force of AFGE's operating staff—cutting its staff from 355 budgeted positions to just 151, a reduction of nearly

60%. The NEC stated that the reduction in force was necessary for the union "to remain financially solvent."

31. In other words, less than one month after the Executive Order was issued, and before the union has even felt its full effects, AFGE has already been forced to authorize the layoff of more than half of its staff. In its 93-year history, AFGE has never been forced to make such a drastic reduction in its own capacity.

32. AFGE has already begun the process of laying off staff members in accordance with the NEC's directive.

33. These layoffs will have immediate effects on AFGE's ability to perform its core functions, even for those federal employees who have not yet been affected by the Executive Order.

34. Here are some examples of reductions of key staff, as reflected in AFGE's current plans for the reduction in force that was ordered by the NEC:

a. National Organizers. Absent preliminary relief, AFGE will be forced to reduce its Membership and Organizing Department by more than 75%. Those cuts will primarily consist of National Organizers. Although National Organizers are employed by the Office of the President, they operate throughout the country to increase and maintain membership in the union. National Organizers are subject-matter experts on matters involving union petitions, election procedures, and other issues related to organizing labor unions in the public sector. Organizers also serve as liaisons between field staff, locals, and headquarters. National Organizers would also be responsible for overseeing and coordinating the transition of dues payment from the pre-Executive-Order dues allotment process to direct contributions—a task that would be a massive lift under the best circumstances, but which will be nearly impossible for the newly-downsized department.

b. District Staff. Absent preliminary relief, AFGE will also be forced to reduce its District-level staff by more than 50%, from 121 positions to 56. Some of those reductions will be to attorneys in the field. Many will be to AFGE's National

Representatives. That loss will be devastating for AFGE's members across the country, who rely on the District Staff that are assigned to their region. Attorneys in the field provide legal guidance to local affiliates and their members, to ensure compliance and help represented employees navigate legal issues that may arise in the course of representation. National Representatives oversee governance of the locals in their assigned district, investigate unfair labor practices and internal disciplinary matters, represent employees in complex grievances and arbitrations, provide training and education to local officers, and advise on the negotiation and content of CBAs and side letters with agency employers. From the point of view of represented employees, District Staff are the day-to-day face of the national union. The loss of half of their number will cripple AFGE's ability to serve both its members and the non-member employees it represents.

c. Field Services and Education. Absent immediate relief, AFGE will be forced to reduce its Field Service and Education staff by approximately 75%. These employees fall into two primary roles. Many are experts in bargaining, often leading the bargaining process for AFGE's largest, council-level contracts. Those contracts are nationwide, requiring a negotiator with the bandwidth and expertise to understand the issues for locals at different locations across the country. Other Field Service and Education employees are education specialists. AFGE has nearly 1,000 locals, and at least 15,000 union leaders in a variety of official and unofficial roles. These employees are responsible for conceiving and delivering a coordinated union leader campaign, then tracking the results of that program. Without an effective training program, AFGE's leadership structure will be unable to effectively represent both its members and the non-members it represents.

d. In addition to the above, AFGE has been forced to order further reductions, including deep cuts to the back-office staff at headquarters, from human resources to IT. In one case, AFGE was forced to lay off an employee who had worked at AFGE for 31 years.

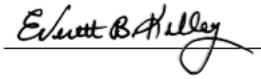
35. These reductions represent permanent and irreversible damage to AFGE. Even if AFGE's revenues are restored at some point in the future, it will be unable to rebuild the institutional knowledge and experience it is losing right now. Nor will it be able to recover the goodwill of members who experience AFGE's reduced ability to provide representation.

36. The NEC pronouncement provides that should "circumstances change" as to the Executive Order, the reduced "staffing levels will be reevaluated by the NEC."

37. As the National President of AFGE, I am aware that if things continue on their current course, there is a genuine danger that AFGE will cease to exist in its current form, possibly within months. In short, I believe the Executive Order is an existential threat to AFGE.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: May 7, 2025



Everett B. Kelley

Exhibit A

Frequently Asked Questions

Executive Order 14251:
"Exclusions from Federal Labor-Management Relations Programs"

Q1: What do agencies need to do to terminate applicable CBAs?

A1: Agencies should not terminate any CBAs until the conclusion of litigation or further guidance from OPM directing such termination. Agencies should review relevant case law and consult with their General Counsels regarding next steps with any existing CBAs. See *Department of Labor*, 70 FLRA 27 (FLRA 2016).

Q2: Should agencies decertify bargaining units of covered agencies or subdivisions?

A2: No, agencies should not file any decertification petitions until litigation regarding *Exclusions* has been resolved. **Only after the litigation is final and the Administration has assessed the implications of its outcome** should agencies consider filing Federal Labor Relations Authority (FLRA) petitions. Upon the conclusion of the litigation as conveyed by the White House Counsel's Office and OPM, agencies may file decertification clarifying that bargaining units include only those positions not exempted from collective-bargaining requirements under *Exclusions*. Agencies should consult their General Counsels for updates on the litigation, and before taking steps to file a decertification petition in compliance with the *Exclusions* order.

Q3: Should agencies amend current filings for exceptions to arbitration awards where an arbitrator ordered relief for a bargaining unit covered under *Exclusions*?

A3: Agencies should ask the FLRA to hold these cases in abeyance pending the outcome of litigation, where practicable. In cases with pending deadlines for submissions, agencies should ask the FLRA to suspend or extend those deadlines until the conclusion of the litigation. If the FLRA does not suspend deadlines or hold cases in abeyance agencies should take the position that the union lacks standing as it is not recognized as a result of *Exclusions*.

Q4: In any ongoing proceedings in which an agency is asked to submit a statement of position regarding an unfair labor practice charge under investigation by the FLRA, should agencies submit a statement?

A4: Yes. The statement should mention, and agencies should identify for the appropriate FLRA regional office, the Administration's position that the relevant agency or agency subdivision is no longer subject to provisions of the Federal Service Labor-Management Relations Statute (FSLMRS) per the *Exclusions* order. Under that position, the union no longer has standing to file a charge or the FLRA to issue a complaint.

Q5: Should agencies and agency subdivisions covered by *Exclusions* continue to participate in the FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO) with labor unions representing police officers, security guards, and firefighters? What about bargaining units comprised of other occupations?

A5: Agencies may continue collective bargaining activities, including dispute resolution efforts with CADRO and other third-party proceedings with unions representing police officers, security

guards, and firefighters, provided that these unions continue to be recognized consistent with *Exclusions*. However, for matters involving a dispute for any unit that represents positions now excluded under Executive Order 12171, as amended, agencies should continue those dispute resolution activities only if they are doing so independently of any requirements of a CBA and not relying on any provisions of Chapter 71 to compel their participation.

Q6: Should agencies change the bargaining unit status codes on employees' SF-50s?

A6: Not at this time. Agencies should wait until litigation is resolved before doing so.

Q7: What is meant by the term "subdivision?"

A7: The term "subdivision" refers to any organization, office, or component that is subordinate to an agency or department head, as well as any division within those organizations, offices, or components.

Q8: What is meant by Section 2 of Executive Order 14251 (*Exclusions*) where it states: "the immediate, local employing offices of any agency police officers, security guards, or firefighters…"

A8: This means an agency or subdivision that directly supervises and employs such employees at the local level. Although this category will generally include purely the law enforcement officers in question, in some cases this may also include the administrative staff who support law enforcement operations.

Q9: What actions should agencies take regarding bargaining units that represent both (i) employees in positions *not* subject to exclusion (e.g., police officers, security guards, firefighters) and (ii) agency employees now *excluded* under the President's new directive?

A9: Agencies should preserve the rights of employees not excluded from collective bargaining including by continuing to participate in third-party procedures (e.g., arbitrations) that are focused solely on conditions of employment, contractual and statutory obligations, or other matters limited to these employees. For employees no longer included in a bargaining unit, agencies should follow the direction provided in this guidance. If agencies need further guidance, please contact OPM at awr@opm.gov.

Q10: If an employee is no longer permitted to join or form a labor organization under the FSLMRS, may he or she strike against the Government while serving as a federal employee?

A10: Under 5 U.S.C. § 7311, employee strikes against the Government of the United States are prohibited for all Federal employees, irrespective of whether they are in a bargaining unit.

Q11: Can grievances initially filed under a negotiated grievance process (5 U.S.C. 7121) be transitioned to an administrative grievance process?

A11: Yes. Agencies may transfer a grievance initially filed under a negotiated grievance procedure to its internal administrative grievance procedure provided the matter is not excluded by the agency's administrative grievance procedure and the grievant timely requests to transition to the administrative grievance procedure.

Q12: Are unions ineligible as employee representatives under the FSLMRS permitted to establish consultative relationships with agencies pursuant to 5 C.F.R. Part 251?

A12: OPM's regulations "[provide] a framework for consulting and communicating with **non-labor organizations** representing Federal employees and with other organizations on matters related to agency operations and personnel management." *See* 5 C.F.R. Part 251 (emphasis added). A union is a "labor organization," as defined in 5 U.S.C. 7103(a)(4), and is therefore, not covered by 5 C.F.R. Part 251 whether they represent bargaining unit employees at an agency or not.

Q13: With announcement of the new Executive Order, *Exclusions*, are covered agencies still required to submit data to OPM regarding taxpayer-funded union time (TFUT), collective bargaining costs, and other labor relations data points?

A13: Yes. Please continue to collect and timely submit agency labor relations data as requested, even if the agency or subdivision therein is now exempted from the provisions of the FSLMRS.

Q14: What should we do with agreements that are pending Agency Head Review (AHR) and cover newly excluded agencies, subdivisions, or partial groups?

A14: Agencies should exercise their agency head authority under 5 U.S.C. § 7114(c) to disapprove any agreement currently undergoing review for units that are no longer recognized within a covered agency or subdivision. Agencies should cite to *Exclusions* or, if applicable, the presidential memorandum *Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President*, as their basis for disapproval. For agreements that include positions not subject to exclusion from collective bargaining (e.g., police officers, security guards, firefighters), agencies should conduct AHR as they normally would. Lastly, for agreements that include a mix of excluded and included units, agencies should continue AHR and include a note that the agreement only covers those not excluded by Executive Order 14251 and that the agreement has no applicability to other employees.

Q15: For agencies that are currently bargaining with unions, are there any concerns with solidifying and executing agreements such as tentative agreements or memoranda of understandings or agreements (MOUs or MOAs)?

A15: Agencies should suspend such negotiations until the conclusion of litigation, meaning bargaining sessions should be placed on hold along with implementation of changes to conditions of employment that were being bargained. Where agencies need only execute an agreement through a ministerial act (e.g., signing an agreement), agencies may proceed to do so provided that any such agreement is consistent with the policy priorities of the Trump Administration.

Q16: In Section 2 of *Exclusions,* 1-419 states: "The following agencies or subdivisions of each Executive department listed in section 101 of title 5, United States Code, the Social Security Administration, and the Office of Personnel Management: (a) Office of the Chief Information Officer (OCIO). (b) any other agency or subdivision that has information resources management duties as the agency or subdivision's primary duty." Does this apply to all OCIO offices within an agency not listed in *Exclusions*?

A16: This provision applies only to CIO offices in the Executive Departments (*see* 5 U.S.C. 101), OPM, and the Social Security Administration, as well as the subordinate agencies and offices

under those Departments/agencies.

Q17: What does information resources management mean as used in Section 2 of *Exclusions*?

A17: The Paperwork Reduction Act defines "information resources management" at 44 U.S.C. § 3502(7), as "the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public."

April 22, 2025 Additional Questions and Answers

Q18: How should agencies handle union time and office space provided to union representatives who are no longer in a recognized unit?

A18: Agencies and subdivisions covered by *Exclusions* must reclaim any agency space, furniture, equipment (e.g., computers, phones), and other resources previously utilized by labor unions for representational activities and repurpose those resources for agency business only. Employees of covered agencies and subdivisions who were previously authorized to use taxpayer-funded union time are no longer permitted use of such time and should only be conducting agency-assigned work during their scheduled duty time. Supervisors should not approve any time and attendance records that include requests for and use of taxpayer-funded union time. For agencies and subdivisions not subject to exclusion from collective bargaining, agencies can allow for use of union time and office space as they normally would.

Q19: What if an arbitration is already scheduled for an agency or subdivision now excluded under Executive Order 14251?

A19: The agency should request that the arbitrator hold the case in abeyance pending the outcome of litigation regarding *Exclusions*. If unable to delay the hearing, the agency should take the position that in accordance with *Exclusions,* the union is no longer the exclusive representative and there is no jurisdiction before the arbitrator.

Q20: How does *Exclusions* impact unions' consultation rights under the FSLMRS?

A20: The FSLMRS grants labor unions consultation rights under 5 U.S.C. §§ 7113 and 7117(d) on substantive changes to conditions of employment at the national, subnational, and government-wide basis, respectively. Agencies should assess and determine whether labor unions meet the requirements under 5 C.F.R. Part 2426 and take appropriate action with the appropriate FLRA Regional Office where it believes labor unions no longer meet the eligibility criteria for consultation rights. Before taking action, agencies should consult their General Counsel and coordinate with the Department of Justice.

Q21: Section 7 of *Exclusions* requires all agency heads with employees covered by Chapter 71, to identify any agency subdivisions with a primary function of intelligence, counterintelligence, investigative, or national security work, that are not covered by Executive Order 12171, as amended. Does this only apply to agencies defined in 5 U.S.C. 101?

A21: Section 7 is not limited to those agencies defined under 5 U.S.C. 101 or those listed in *Exclusions*. Rather, every agency head should review their respective missions and identify any

subdivisions with a primary function of intelligence, counterintelligence, investigative, or national security work.

Q22: Some employees no longer have union dues or other fees deducted from their government paychecks for union-provided benefits/insurance (e.g., dental, vision, etc.). Is this cessation of payroll deductions considered a life-changing event that would allow employees to opt into federal benefits coverage?

A22: Employees should consult with the union or insurance provider from whom they were receiving benefits (i.e., non-FEDVIP plans) regarding coverage questions. If confirmed to have lost coverage, this would be considered a Qualifying Life Event that allows enrollment in a FEDVIP plan outside of Open Season. The individual has from 31 days before to 60 days after the event to enroll. More information is available here: Dental and Vision | BENEFEDS.

Q23: May agencies communicate with unions representing employees who are still recognized under Executive Order 14251 (e.g., police officers, security guards, firefighters) or otherwise still recognized under 5 U.S.C. 71?

A23: Yes. Unions who have bargaining unit employees that are not excluded under the Executive Order, maintain recognition under Chapter 71 of Title 5, U.S. Code. Therefore, normal labor-management communication and engagement should continue.

Q24: How should an agency handle an impending change in conditions of employment for employees now excluded by the Executive Order? How should an agency respond to a union inquiry regarding a change in conditions of employment?

A24: An agency or subdivision covered by *Exclusions*, can implement the change without completing negotiations. Agencies may respond to a demand to bargain by a labor union by acknowledging receipt and informing the union that it will hold in abeyance their request pending the outcome of litigation over Executive Order 14251.

Q25: What should an agency do if it receives a grievance from the union for an individual or unit that is no longer recognized in accordance with *Exclusions*?

A25: For units that are no longer recognized within a covered agency or subdivision, agencies should acknowledge receipt, inform the union that the grievance is being held in abeyance pending litigation for *Exclusions*, and provide a date the agency plans to update them. For grievances that include positions not subject to exclusion from collective bargaining (e.g., police officers, security guards, firefighters), agencies should conduct their negotiated grievance procedures as they normally would.

Q26: Should an agency continue to allow union representation in Weingarten meetings and formal discussions with employees excluded under Executive Order 14251?

A26: No. Agencies should continue to invite unions to formal discussions and honor requests for Weingarten meeting representation only for employees not excluded from collective bargaining under Executive Order 14251.

Q27: If a CBA is set to rollover for units no longer recognized, but the agreement has also not

been terminated, what do we do?

A27: In this circumstance, the agency may notify the union that it is terminating the CBA and that any negotiations regarding a successor agreement are being held in abeyance due to *Exclusions* and associated litigation.

Q28: If an agency notified a union prior to *Exclusions* that it was terminating a labor-management forum and the union requests to negotiate, how should the agency respond?

A28: On March 27, 2025, OPM issued guidance requiring agencies to abolish labor-management forums, committees, and councils at the agency-wide and organizational levels. Many of these forums were established under Executive Order 14119, which was rescinded under Executive Order 14236 in March 2025. The guidance also noted that where the establishment or use of labor-management forums, committees, and councils are incorporated into the terms of any CBA, agencies should seek to renegotiate those terms at the earliest practicable juncture consistent with the policies of this Administration. If a unit that is no longer recognized under *Exclusions* seeks to negotiate over the termination of a forum, the agency should deny the request to bargain since the unit is no longer recognized.

Q29: The agency has received unsolicited messages from unions requesting consideration under Section 4 of *Exclusions*, which requires the Departments of Defense and Veterans Affairs to submit any suspensions of *Exclusions* application to the Federal Register within 15 days of the order. How should the agency respond?

A29: The agency should acknowledge receipt only and not make any statements regarding the substance of the communication.

Q30: Are all OCIOs or equivalents excluded from collective bargaining?

A30: Executive Order 14251 excludes the OCIO in "agencies or subdivisions of each Executive department listed in section 101 of title 5, United States Code," and in the Social Security Administration and OPM.

Q31: Should agencies respond to union Requests for Information (RFIs) from units that are now excluded in accordance with the *Exclusions* order?

A31: If the RFI is filed as a request under 5 U.S.C. 7114(b)(4), agencies should hold the request in abeyance pending the outcome of the litigation.

Q32: How should agencies respond to questions regarding union dues?

A32: If an excluded employee asks about continuing union dues, the agency should inform the employee that union dues allotments through a government payroll provider are not authorized at this time and that if they wish to continue paying union dues nonetheless, they may contact their union.

Q33: How should agencies handle union dues allotments?

A33: In taking steps to implement *Exclusions*, agencies may pause the collection of union dues

allotments for those agencies or subdivisions identified in *Exclusions* while litigation is ongoing. However, agency payroll providers should not unilaterally terminate all union dues allotments without first consulting with their customer agencies. Instead, agency payroll providers should contact their customer agencies to identify which labor unions and employees are excluded from collective bargaining by *Exclusions* and limit the termination of dues allotments to those unions and employees.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

SUPPLEMENTAL DECLARATION OF MICAH NIEMEIER-WALSH

SUPPLEMENTAL DECLARATION OF MICAH NIEMEIER-WALSH

I, Micah Niemeier-Walsh, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.

2. I am an Industrial Hygienist at the National Institute for Occupational Safety & Health ("NIOSH"), in the Department of Health and Human Services. I am also the Vice President of the American Federation of Government Employees Local 3840 ("Local 3840" or the "Union").

3. Local 3840 represents a bargaining unit of 215 civil servants who work for NIOSH.

4. On April 1, 2025, the agency announced a wide-scale reductions-in-force ("RIF") that would reduce the overall number of employees at NIOSH by 93%.

5. On May 2, 2025, HHS provided the bargaining unit employees notice that almost all employees were placed on administrative leave and that our official termination date would be July 2, 2025. Approximately 97% of the bargaining unit represented by AFGE Local 3840 has received a RIF notice.

6. NIOSH's RIF has been done without regard for the collective bargaining agreement ("CBA") between Local 3840 and the Centers for Disease, Control and Prevention, National Institute for Occupational Safety and Health. For example, the CBA provides that the agency must provide a reason for the proposed RIF and that the Union must be given an opportunity to negotiate over the impact and implementation of a RIF, as well as that the agency must create a retention list in the event employees are returned to work in the future. None of the rights provided by the CBA were afforded to employees by NIOSH. The Union demanded bargaining over the impact and implementation of the RIF and submitted an information request, both of which the agency ignored. The Union also filed a grievance outlining the ways in which the RIF was done in violation of the CBA, but the agency has failed to respond to the grievance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 7, 2025

Micah Niemeier-Walsh

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SUPPLEMENTAL DECLARATION OF LEE SUTTON

SUPPLEMENTAL DECLARATION OF LEE SUTTON

I, Lee Sutton, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the Federal Director of the National Association of Government Employees, Inc., also known as the National Association of Government Employees, SEIU Local 5000 ("NAGE"). NAGE, a national labor organization, is incorporated in the state of Delaware. NAGE is also an affiliate of the Service Employees International Union, SOC, CLC. NAGE's national headquarters is located at 159 Thomas Burgin Parkway, Quincy, Massachusetts, 02169. I have served as Federal Director since November 2017. Professionally, I am known as Lee Blackmon.

3. NAGE represents approximately 62,400 civilian employees working in Excluded Agencies, including DOD, VA, and EPA, across the United States.

4. Voluntary dues through payroll deduction are the financial backbone of the NAGE federal sector labor union, enabling it to effectively advocate for members' rights and working conditions. Unlike private sector unions, federal sector unions cannot require membership or mandatory dues. Unions like NAGE are obligated to provide fair representation to employees in the bargaining unit, as outlined in the applicable collective bargaining agreement, regardless of their dues-paying status.

5. NAGE services for its members, including the support staff that provide services to members, are funded through dues. Since March 27, 2025, the Department of Defense, Veterans Affairs, and Environmental Protection Agency have ceased collecting member dues through automatic payroll deduction for employees covered by the Exclusion Executive Order. These cuts to dues, if sustained, will result in the loss of approximately $4 million dollars in annual receipts. Eventually, these losses will likely result in reductions in services and staff.

6. Since March 27, 2025, the Department of Veterans Affairs has delayed or failed to respond to NAGE grievances, requests for information, and demands to bargain and has asserted it is unilaterally placing at least one matter in abeyance as a result of the Executive Order.

7. A NAGE Local Unit serving over 1,500 Air Force bargaining employees, was informed by the applicable personnel office that they will not follow the collective bargaining agreement because the Executive Orders prevents them from responding to all union matters.

8. Another NAGE Local Unit serving over 800 Air Force bargaining unit employees, was informed on May 5, 2025, by the Labor Relations Officer, that in the next day or so, it will receive notice from the agency further implementing the Executive Order. The notice "will affect official time, Weingarten [rights] and formal discussions, info[rmation] requests, [and] grievances," as well as government provided space and equipment provided for the purpose representational functions of the union.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed May 6, 2025, in Clinton, Maryland.

Lee Sutton

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NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

DECLARATION OF RACHEL PÉREZ-BAUM

DECLARATION OF RACHEL PÉREZ-BAUM

I, Rachel Pérez-Baum, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.
2. I am the Vice President of Local 2021 of the National Federation of Federal Employees ("NFFE"). NFFE is a national labor organization and unincorporated membership organization. Local 2021 is headquartered in North Chili, New York.
3. NFFE represents our federal sector members through negotiating Collective Bargaining Agreements ("CBAs") and assisting employees with enforcing them. We assert contractual and statutory rights on behalf of our federal sector members by filing grievances, unfair labor practice charges, or other complaints through our negotiated grievance procedure or with various federal agencies, including the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority. NFFE files litigation on employees' behalf in the courts. We also advocate on Capitol Hill and in the media on issues of importance to federal workers and to veterans.
4. NFFE Local 2021 represents approximately 112 employees working at the Animal Plan Health Inspection Service ("APHIS") Animal Care within the Department of Agriculture. We encompass two areas within that division: A) Animal Welfare Operations, which does animal welfare inspections at facilities that use animals for commercial purposes, such as breeders, zoos and research facilities; and B) Horse Protection, which looks for signs of soring (applying painful substances to horses to exaggerate their gait). These activities have no relation to national security.
5. On April 1, 2025, the Agency sent an email to the Local 2021 bargaining unit stating that they would terminate dues withholding, eliminate official time designations and reassign

employees who use it, refuse to participate in grievance or arbitration proceedings, and consider the Collective Bargaining Agreement ("CBA") between Local 2021 and APHIS ineffectual. Although approximately two weeks later, on April 17, APHIS sent an email rescinding that notice and claiming that the CBA was not terminated, their actions subsequent to that email have continued to disregard the clear requirements of the CBA and treat the CBA as being no longer in effect.

6. Since the CBA's reinstatement, the Agency has not withheld dues, approved official time designations, followed grievance procedures, or notified the Union of new employee hires, violating Articles 33, 31, 28 and 8, respectively. Instead, the Agency has taken the position that "all labor obligations are in abeyance" as a result of Executive Order 14251.

7. The Agency suspended dues withholding on promulgation of Executive Order 14251 on March 27, 2025 and has not processed dues withholding from the promulgation of the Executive Order through June 24, 2025 and continuing, with the exception of pay period eight (between April 20 and May 3, 2025).

8. Since the promulgation of Executive Order 14251 on March 27, 2025, the Agency has refused to approve official time despite clear language in the CBA. On two occasions after April 17, 2025, members of Local 2021 requested official union time and were delayed in receiving final responses from the Agency. On June 9, the Local 2021 Secretary-Treasurer requested official union time for officer tasks. The following day, Human Resource Specialist-Labor Management Employee Relations ("LMER") Jason Moore at APHIS denied the request in the following email:

> "SUBJECT: Re: union official time request, week of June 9, 2025
>
> Presently, **all labor obligations are in abeyance.** As we await additional guidance from the Agency, requests for official time should be denied with the

expectation that employees should only be working on agency assigned work during duty hours." (emphasis added).

9. Since the promulgation of Executive Order 14251 on March 27, 2025, the Agency has refused to participate in routine grievance meetings and procedures pursuant to the CBA. On May 23, 2025, I, in my capacity as NFFE Local 2021 Vice President, emailed LMER Staff Jason Moore requesting to reschedule a previously cancelled grievance meeting in light of the April 17 reinstatement of the CBA. Moore denied the request twice in the following two emails:

   a. "SUBJECT: Re: Immediate Need for Help/Guidance

   The grievance meeting for Ms. Radel is currently in abeyance pending further labor obligations guidance from the Agency."

   b. "SUBJECT: Re: Immediate Need for Help/Guidance

   No update to provide from the email sent on May 23, 2025, **labor actions are currently still in abeyance.**" (emphasis added).

10. NFFE has not been notified of the hiring of approximately five new employees and consequently has not been given the opportunity to hold an orientation session during normal working hours in accordance with the CBA. This orientation notifies them of the CBA and their rights as members.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed July 3, in Arapahoe, North Carolina.

Rachel Pérez-Baum