IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FOREIGN SERVICE ASSOCIATION, *Plaintiff*, v. DONALD TRUMP, et al., *Defendants*.	)	Civil Action No. 25-cv-1030-PLF

PLAINTIFF AMERICAN FOREIGN SERVICE ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. Rs. Civ. P. 56 and 65, Plaintiff American Foreign Service Association ("AFSA") moves for summary judgment. AFSA respectfully submits a that there are no genuine issues of material fact with respect to the claims set forth in the Complaint and that AFSA is entitled to judgment as a matter of law on all of those claims.

As detailed in the accompanying Statement of Undisputed Facts and as explained in the accompanying Memorandum in Support, President Donald J. Trump issued Executive Order No. 14,251, *Exclusion from Labor-Management Relations Programs* on March 27, 2025. The Executive Order strips collective bargaining rights from hundreds of thousands of federal employees across the federal government, including the foreign service. Section 3 of the Executive Order removes all foreign service employees who work for the Department of State and the U.S. Agency for International Development from the coverage of Subchapter X of Chapter 52 of the Foreign Service Act ("Act"), which is also known as the Foreign Service Labor Management Relations Statute ("Subchapter X"). In so doing, the Executive Order exceeds the President's

authority, and is ultra vires, by improperly amending or repealing Subchapter X as to those the overwhelming portion of foreign service employees. The Executive Order also violates the First Amendment because the President admittedly issued the order in retaliation for AFSA's exercise of its First Amendment rights.

For these reasons, as explained further in the accompanying memorandum, AFSA respectfully requests that the Court grant this motion for summary judgment and enter the relief requested in the proposed order.

DATED: August 4, 2025

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFF AMERICAN FOREIGN SERVICE ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

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FLRA ..... Federal Labor Relations Authority

FAM ..... Foreign Affairs Manual

FCS ..... Foreign Commercial Service

FSA ..... Foreign Service Act

FSGB ..... Foreign Service Grievance Board

FSLRB ..... Foreign Service Labor Relations Board

Federal Service LMR Statute ..... Federal Service Labor-Management Relations Statute

Foreign Service LMR Statute ..... Foreign Service Labor-Management Relations Statute

OPM ..... Office of Personnel Management

RIF ..... Reduction in Force

SMF ..... Statement of Undisputed Material Facts

USAGM ..... U.S. Agency for Global Media

USAID ..... U.S. Agency for International Development

INTRODUCTION

President Donald J. Trump issued Executive Order No. 14,251, *Exclusions from Federal Labor Management Programs* on March 27, 2025. Defendant Trump invoked Section 4103(b) of the Foreign Service Act ("FSA"), 22 U.S.C. § 4103(b) to exclude the Foreign Service employees who work for the State Department and United States Agency for International Development ("USAID") from the labor-management provisions set forth in Subchapter X of Chapter 52 of the FSA ("Subchapter X"). 22 U.S.C. §§ 4101, *et seq.* In so doing, Trump excluded ninety-seven percent (97%) of all active-duty Foreign Service employees from Subchapter X's coverage. Those employees lost the right to organize a union and bargain collectively through their union. Plaintiff American Foreign Service Association served as their collective bargaining agreement at the time President Trump issued Exec. Order No. 14,251. After March 27, ninety-seven percent (97%) of AFSA's active-duty membership lost their rights to have AFSA as their representative.

The President lacks unbridled discretion to exclude Foreign Service employees or their agency employers from Subchapter X. Instead, Congress placed two specific conditions on the President's authority in Section 4103(b) of the FSA: *viz.*, (1) the subdivision must have "as a primary function intelligence, counterintelligence, investigative, or national security work"; *and* (2) Subchapter X's provisions "cannot be applied to that subdivision in a manner consistent with national security requirements and considerations." 22 U.S.C. § 4103(b).

While President Trump recited both conditions *verbatim* in Section 3 of Exec. Order No. 14,251, his White House also issued a "Fact Sheet" that elaborated on the reasons for the President's actions. *Fact Sheet: President Donald J. Trump Exempts Agencies with Nat'l Sec. Missions from Fed'l Coll. Barg. Requirements* (Mar. 27, 2025), https://perma.cc/26AL-73TZ ("Fact Sheet"). These reasons focused more on whether collective bargaining was consistent with the

President's "agenda," as opposed to any "national security requirements and considerations." *Compare* Fact Sheet *with* 22 U.S.C. § 4103(b). The Fact Sheet fixates upon how "certain Federal unions have declared war on President Trump's agenda," declaring that "President Trump refuses to let union obstruction interfere with his efforts to protect Americans and our national interests." Fact Sheet, *supra.* Examples of this "obstruction" include the renegotiation of collective bargaining agreements and the filing of grievances "to block Trump's policies." *Id.* The White House concludes its missive with, "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." *Id.*

This Court unquestionably has subject matter jurisdiction to review Exec. Order No. 14,251. *Am. Fed'n of Gov't Emps. v. Reagan*, 870 F.2d 723, 726-28 (D.C. Cir. 1989); *see also Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996); *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988). As explained below, the undisputed material facts establish that the Executive Order is not only *ultra vires*, but also violative of AFSA's First Amendment rights. Given these facts, AFSA is entitled to judgment as a matter of law, as well as its requested declaratory judgment and permanent injunctive relief.

BACKGROUND

I. AFSA'S REPRESENTATION OF FOREIGN SERVICE EMPLOYEES

AFSA has served as the exclusive collective bargaining representative of Foreign Service employees who work for the Department of State and USAID for over fifty years, since 1973. Statement of Undisputed Material Facts ("SMF") ¶¶ 3, 10. In 1980, Congress enacted the FSA to codify collective bargaining rights for Foreign Service employees upon explicitly finding that those rights served the public interest. SMF ¶¶ 17-18. AFSA has represented Foreign Service

employees through times of war and national security crises, including the September 11, 2001 terrorist attacks and the war in Iraq that began in 2003. SMF ¶ 23. During those times, AFSA continued to bargain with the Department of State and other agencies on subjects where bargaining was permitted by statute, Naland Decl. ¶ 5. President George W. Bush never determined that collective bargaining by Foreign Service employees was inconsistent with national security. SMF ¶ 24. Prior to March 27, 2025, no President had ever invoked the exception in Section 4103(b) of the FSA to exclude *any* Foreign Service employees from collective bargaining prior to March 27, 2025, as discussed in more detail *infra* at 13-15.

II. AFSA DEFENDS FOREIGN SERVICE EMPLOYEES FROM ATTACKS BY THE TRUMP ADMINISTRATION

From the beginning of his second administration, President Donald J. Trump ("Trump" or the "President") has attacked the Foreign Service and the agencies it serves – and AFSA has fought back. An executive order issued on January 20, 2025, the day of Trump's second inauguration, directed an immediate pause in foreign development assistance. SMF ¶ 25. On February 4, 2025, USAID announced that almost all of its personnel would be placed on administrative leave and that Foreign Service employees would be recalled from international posts. SMF ¶ 27.

Between January 20, 2025 and March 27, 2025, AFSA repeatedly and publicly spoke out to challenge the Trump administration's attacks on the Foreign Service. AFSA issued a total of eight press releases criticizing the administration's actions, such as dismantling USAID and USAGM, disrespecting the work of the Foreign Service, ordering the destruction of classified documents related to litigation over the dismantling of USAID, and removing diversity, equity, inclusion, and accessibility as factors used in performance evaluations at the Department of State. SMF ¶¶ 26, 28, 31, 35-43. AFSA described the administration's actions as, among other things,

"abrupt," "reckless," "hurried and callous," causing "alarm," and an "affront to the constitutional balance of powers." *Id.*

AFSA's press releases and statements by its officers were quoted in multiple nationally circulated media outlets, including NPR, *The New York Times*, CNN, NBC, and CBS. SMF ¶ 45; Gamer Decl. ¶ 14, Ex. 9. Then-AFSA President Thomas Yazdgerdi and AFSA USAID Vice President Randall Chester appeared for interviews with the media, including on CBS *60 Minutes*, CNN's *The Lead with Jake Tapper*, and PBS News Hour, and gave other on-the-record interviews to additional media outlets. SMF ¶¶ 47-49. AFSA's Director of Communications also provided comments in response to certain of the dozens of requests AFSA received from journalists for comment about the Trump Administration's actions affecting Foreign Service employees and lawsuits that AFSA filed against the Administration. SMF ¶ 46.

AFSA also turned to the courts to advocate for its members. On February 6, 2025, AFSA and another union filed a lawsuit against Trump, State, USAID, and others, seeking a declaratory judgment that Trump's dismantling of USAID is unconstitutional and injunctive relief directing the reopening of USAID and the recall of employees. *Am. Foreign Svc. Ass'n v. Trump*, No. 1:25-cg-00352 (D.D.C.) (Compl., ECF No. 1). SMF ¶¶ 29-30.

Within a week of AFSA filing this lawsuit, Trump issued Executive Order No. 14,211, *One Voice for America's Foreign Relations*, 90 Fed. Reg. 9,831 (Feb. 12, 2025), which directed the Secretary of State to "reform the Foreign Service" and to change personnel standards "to ensure a workforce that is committed to the faithful implementation of the President's foreign policy." SMF ¶¶ 32-34. In other words, Trump demanded that the current system be restructured so that employees perceived as disloyal to him can be fired. AFSA told *The New York Times* in response to this Executive Order that it would "always defend the integrity and nonpolitical nature of the

Foreign Service." Gamer Decl. Ex. 9. And AFSA continued to fight for its members. On March 21, 2025, AFSA and others filed another lawsuit seeking to enjoin the Trump Administration's efforts to disband the USAGM, which employs sixteen Foreign Service members. *See Widakusawara v. Lake*, No. 1:25-cv-02390 (S.D.N.Y., ECF No. 1, Compl.; subsequently transferred to D.D.C., No. 1:25-cv-887-RCL). SMF ¶ 44.

III. TRUMP ISSUES EXECUTIVE ORDER 14,251 TO EXCLUDE STATE AND USAID EMPLOYEES FROM COLLECTIVE BARGAINING, AND DECLARES THAT HE ISSUED THE ORDER OUT OF HOSTILITY TO UNIONS WHO OPPOSE HIM

On March 27, 2025, Trump issued Executive Order No. 14,251, entitled *Exclusions from Federal Labor-Management Relations Programs*. 90 Fed. Reg. 14,553. Section 3 of the Executive Order invokes Section 4103(b) to exclude all of the Foreign Service employees who work for State and USAID from the coverage of the Foreign Service LMR Statute. SMF ¶¶ 54-57, 60-61. This amounts to an exclusion of ninety-seven percent (97%) of the total number of active-duty Foreign Service employees represented by AFSA as of April 1, 2025. SMF ¶¶ 58-59, 62-65. Section 2 of the Executive Order excludes numerous agencies and agency subdivisions from coverage under the Federal Service LMR Statute, but exempts police officers, firefighters, and others, allowing those unions perceived as favorable to Trump to continue to collectively bargain with the employees' employers. SMF ¶¶ 51-53.

The White House also issued a "Fact Sheet" on March 27 about Executive Order No. 14,251. SMF ¶¶ 66. The Fact Sheet explains the exclusions of State and USAID simply by asserting that "President Trump has demonstrated how trade policy is a national security tool." SMF ¶ 67. But the Fact Sheet goes on to disparage collective bargaining and unions who have advocated for their members by opposing the administration's actions, declaring that:

- Collective bargaining "enables hostile Federal unions to obstruct agency management,"

which "is dangerous in agencies with national security responsibilities"

- "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"
- "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"

SMF ¶¶ 69-71. The Fact Sheet confirms that "[p]olice and firefighters will continue to collectively bargain," presumably due to their "constructive partnerships" with President Trump. SMF ¶ 68.

Also on March 27, the Acting Director of the Office of Personnel Management ("OPM") issued a memorandum to heads of departments and agencies providing guidance on implementing the Executive Order. Charles Ezell, *Guidance on Executive Order Exclusions from Federal Labor-Management Programs*, OPM (Mar. 27, 2025), https://perma.cc/Z2ZJ- Y8U7 ("OPM Guidance"). The OPM Guidance instructs the departments and agencies whose employees are excluded by the Executive Order, including State and USAID, to terminate their collective bargaining agreements ("CBAs"), conduct reductions in force without regard to CBA provisions, to cease participating in grievance procedures under CBAs, to discontinue the use of official time for union officers to perform representative duties, to discontinue the use of agency office space for unions, and to terminate the deduction of union dues from employees' pay. *Id.*; *see also* SMF ¶¶ 72-81.

IV. STATE AND USAID IMPLEMENT THE EXECUTIVE ORDER TO THE DETRIMENT OF AFSA

State and USAID have taken the actions directed by the OPM Guidance, causing existential harm to AFSA. On March 31, the State Department's Chief Negotiator sent an email to AFSA representatives announcing that State "hereby terminates the Framework Agreement with AFSA

and will no longer recognize AFSA as an exclusively recognized labor organization." SMF ¶ 83. The email also announced that State would "cease all further payroll dues allotments immediately," that "all recurring meetings between AFSA and the Department are cancelled," that official time for AFSA officers to conduct union business would end immediately, and that AFSA must vacate its office at the Department. *Id*. State promptly took these actions. SMF ¶¶ 84-85.

Accordingly, State has refused to bargain with AFSA over issues on which it would have been required to bargain prior to the Executive Order, except for a brief period of time while the preliminary injunction ordered by this court was in effect. State announced its intention to conduct a sweeping reorganization of its workforce, to include RIFs, on April 22, 2025. SMF ¶ 87. In anticipation of this reorganization, State informed AFSA on May 30, 2025 that it was proposing changes to the provisions in the Foreign Affairs Manual ("FAM") governing the procedures for conducting RIFs, which would drastically narrow the competitive area to be used in determining which employees would be retained from a global competitive area to an office-by-office competitive area. SMF ¶¶ 88-89. While the injunction was in effect, State met with AFSA a couple of times to discuss the RIF regulations, and AFSA made proposals regarding the regulations.[1] SMF ¶¶ 90-91. But immediately after the D.C. Circuit issued an order staying the injunction, State informed AFSA that "[g]iven the stay…we will not be engaging further with AFSA on this matter at this time." SMF ¶ 92. State unilaterally changed the provisions in the FAM to include an office-by-office competitive area on June 23, 2025, the same day it refused to further negotiate with AFSA. SMF ¶ 93. Just a few weeks later, on July 11, 2025, State sent RIF notices to 246 Foreign Service employees were serving in domestic assignments as of May 29. SMF ¶ 94.

[1] Management retains statutory rights to take actions including conducting RIFs and making assignments but must bargain with AFSA over "procedures" and "appropriate arrangements for employees adversely affected by the exercise of" management rights. 22 U.S.C. § 4105.

State also unilaterally removed provisions of the anti-bullying policy in 3 FAM 1540 *et seq*. that defined bullying and placed responsibility on supervisors to report and address it. SMF ¶ 97. AFSA filed an implementation dispute (essentially a grievance filed by the union) to challenge these changes. SMF ¶ 97. While the preliminary injunction was in effect, State and AFSA engaged in settlement negotiations, but on June 30, 2025, State informed AFSA that it would dismiss the implementation dispute because the stay of the preliminary injunction "effectively strips AFSA of its status as the exclusive bargaining representative" and "nullifies the implementation dispute and thus negates any opportunity to settle." SMF ¶¶ 98-99.

State also unilaterally published Core Precepts for 2025-2028, which set forth criteria for tenure and promotion decisions. SMF ¶ 103. State added a new requirement of "fidelity" (which was not part of the 2022-2025 precepts that AFSA had negotiated with State), defined to include "protecting and promoting executive power under Article II" – *i.e.*, fidelity to the President. SMF ¶¶ 96, 104-105. State also has failed to provide AFSA with information that its agreements with AFSA previously required it to provide regarding the number of promotions available in the upcoming promotion cycle. SMF ¶¶ 101-102. And State abruptly canceled the assignment details of approximately 200 employees without providing AFSA with notice and an opportunity to bargain over procedures and appropriate arrangements for the affected employees. SMF ¶ 100. AFSA has been without recourse to challenge these actions—which are exactly the type of contract violations that AFSA would have opposed if given the chance—because of its loss of exclusive representative status and the repudiation of its collective bargaining agreements.

The vast majority of AFSA's members paid dues by payroll deduction before March 27, 2025. SMF ¶ 107. After that date, both State and USAID terminated the deduction of dues. SMF ¶ 108-111. AFSA has encouraged members to sign up to pay dues directly to AFSA, but only 8,300

members have done so.[2] SMF ¶¶ 112-113. AFSA already has lost 7,808 dues-paying active-duty and retiree members who have chosen not to sign up for direct payment of dues. SMF ¶¶ 114-116.

The financial losses to AFSA are staggering. As of June 30, 2025, AFSA's year-to-date dues revenue was $891,320 below projections that were made before the Department of State and USAID ceased deduction of union dues. SMF ¶ 121. Due to this loss in revenue, AFSA has had to reduce its operating costs, including reducing the publication of *The Foreign Service Journal*, canceling hiring for a previously approved new position, and deciding not to fill three vacant positions. AFSA's staffing levels are already down by fifteen percent. SMF ¶¶ 123-125. AFSA has relied on its emergency fund to meet operating expenses as a short-term solution but cannot use that fund indefinitely. SMF ¶ 126.

Making matters worse, the end of official time for AFSA officers including the President and State Vice President has forced officers to either find full-time Foreign Service work assignments (and perform union work only outside of business hours) or retire (if they are eligible to do so) so that they can perform full-time union duties. SMF ¶¶ 127-129, 131. Newly elected President Dinkelman chose to retire because he could not otherwise perform his union duties. SMF ¶ 131. AFSA will incur significant expenses ($109,600.68 per year) to pay the difference between President Dinkelman's annuity and his former salary. SMF ¶ 132. But AFSA has determined that it cannot pay this difference for AFSA State President Rohit Nepal, who is attempting to find a work assignment but may be forced to retire if he cannot secure an assignment. SMF ¶¶ 127-130, 134; *see also infra* at 10, 36.

[2] State appears to be interfering with AFSA's efforts to convert its members to direct payment of dues by blocking its computers and systems from accessing the page on AFSA's website where members can sign up to pay dues, even though employees are permitted to use State computers for limited non-work purposes. SMF ¶¶ 117-119. State is not blocking similar websites; it allows access to a page to donate to the Fraternal Order of Police. SMF ¶ 120.

V. THE EXECUTIVE ORDER CHILLS THE FIRST AMENDMENT RIGHTS OF AFSA OFFICERS AND THE FOREIGN SERVICE EMPLOYEES IN THE BARGAINING UNIT, WHO FEAR FURTHER RETALIATION

With its blatant hostility to unions who advocate for their members, Executive Order 14,251 has caused AFSA's officers and the Foreign Service employees AFSA represents to fear further retaliation for engaging in protected rights. On May 7, 2025, an AFSA Governing Board member resigned from their elected officer position, explaining that they were resigning because "I cannot continue to serve without feeling that I would be subjecting my family to an avoidable risk of further disruption," *i.e.*, that they feared adverse action from their government employer if they continued in their union position. SMF ¶ 135.

AFSA State VP Nepal is searching for an assignment and fears that, because of his association with AFSA and his service as a union officer, State will retaliate against him by rejecting his bids for new assignments or involuntarily assigning him to an unsuitable post. SMF ¶ 130. He believes that retaliation will be even more likely if he opposes or challenges the actions of the Department of State or the Trump administration while performing his union duties. SMF ¶ 130. The possibility of retaliation is a factor affecting his decision whether to retire to perform his union duties, even though retirement would end his Foreign Service career earlier than planned and adversely affect his finances. Nepal Decl. ¶¶ 7, 13.

Foreign Service employees in the bargaining units represented by AFSA also have expressed concerns about retaliation if they exercise their rights. After Executive Order 14,251 issued, an employee declined an AFSA attorney's offer to attend a security clearance update interview, explaining that "in today's climate I am questioning whether I want the subject interview to note AFSA legal attendance" given "the administration's…stance on bargaining units." Fallon-Lenaghan Decl. ¶ 13 & Ex. 1. Another employee chose to retain outside counsel despite having

been represented by AFSA for two years on a matter relating to a suspended security clearance, given uncertainty about how much sway AFSA would have with the government in light of the Executive Order. Second Parikh Decl. ¶ 5.

This hesitation is an unsurprising response to the Trump Administration's resounding signals that those who oppose its actions will face adverse consequences. The Department of State rewrote the rules to expressly condition promotions and tenure decisions upon "fidelity" to the President's use of his executive powers, making clear that those who challenge Trump will jeopardize their careers. SMF ¶¶ 103-105. In another such signal, the Department of State informed AFSA in May 2025 that it would not participate in AFSA's annual awards ceremony—which AFSA and the Department of State had co-sponsored for nearly fifty years to recognize Foreign Service members for their contributions, including engaging in constructive dissent during their employment. Second Sigfusson Decl. ¶ 7; Third Yazdgerdi Decl. ¶ 17. This year, the Deputy Secretary of State altered the status quo upon taking issue with the identity and actions of one of the award recipients, Third Yazdgerdi Decl. ¶ 17, much like Trump revoked collective bargaining rights because of frustration with AFSA and other unions' challenges to his agenda.

VI. PROCEDURAL BACKGROUND

AFSA filed a complaint in this court on April 7, 2025, alleging non-statutory causes of action that Executive Order No. 14,251 is *ultra vires* because it violates the Foreign Service LMR Statute and constitutional principles of separation of powers (Counts 1 and 2), and that the Executive Order was issued in retaliation for AFSA's exercise of its First Amendment rights (Count 3). ECF No. 1. AFSA promptly moved for a preliminary injunction against the implementation of the Executive Order, which this Court granted on May 14. ECF Nos. 36, 37. The Court concluded that AFSA had demonstrated a likelihood of success on the merits of the claim that the Executive

Order was *ultra vires* because the evidence "reflects retaliatory motive" for the Executive Order, and the exclusion of the entire Department of State and USAID was "plainly unreasonable" because it "would essentially render Section 4103(b) meaningless." ECF No. 37 at 28. The Court also concluded that AFSA had established that it would suffer irreparable harm absent a preliminary injunction, in the form of "the loss of bargaining power and statutory protections for the right to collectively bargain" and "significant losses in revenue…[that] threaten the very existence of the union." *Id.* at 32.

Defendants moved for a stay pending appeal of the preliminary injunction before both this Court and the D.C. Circuit. This Court soundly denied the motion to stay, ECF No. 47, but an emergency motions panel of the D.C. Circuit (the "Panel") granted a stay upon concluding that Defendants were likely to succeed on the merits and to suffer harm absent a stay. Case No. 25-5184, 2025 WL 1742853 (D.C. Cir.. Jun. 20, 2025). However, the Panel's opinion, which is a preliminary decision that is not binding on this Court, is not persuasive because it conflicts with clearly established D.C. Circuit precedent. *See infra* at 20-21. Applying that precedent, this Court correctly determined that AFSA was likely to succeed on the merits of its claims, and this Court should likewise conclude that AFSA is entitled to summary judgment on the merits.

LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "'The mere existence of some alleged factual dispute between the parties' will not defeat summary judgment; 'the requirement is that there be no genuine issue of material fact.'" *Holcomb v. Powell*, 433 F.3d 889, 895 (D.C. Cir. 2006) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)). "A fact is 'material' if a dispute over it might affect the outcome of a suit

under governing law…. An issue is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Id*. (quoting *Anderson*, 477 F.3d at 248).

ARGUMENT

I. THE PRESIDENT'S EXECUTIVE ORDER NO. 14,251 IS ULTRA VIRES

A. Collective Bargaining in the Executive Branch

Collective bargaining in the Executive Branch began in the early 1960s originated with Executive Orders issued by Presidents Kennedy and Nixon. *See* Exec. Order No. 11491, 34 Fed. Reg. 17605 (Oct. 29, 1969); Exec. Order No. 10988, 27 Fed. Reg. 551 (Jan. 17, 1962). These Executive Orders identified which employees had the right to organize and bargain collectively, as well as established the process through which they could bargain with their federal employers.

Congress supplanted the Executive Order system in 1978 by passing the Federal Service Labor-Management Relations Statute ("Federal Service LMR Statute"), 5 U.S.C. §§ 7101, *et seq.*, and in 1980 by passing the Foreign Service Labor-Management Relations Statute ("Foreign Service LMR Statute"), 22 U.S.C. §§ 4101 *et seq*. (collectively "LMR Statutes"). By codifying collective bargaining into the LMR Statutes, "Congress unquestionably intended to strengthen the position of federal unions and to make the collective-bargaining process a more effective instrument of the public interest than it had been under the Executive Order regime." *Bur. of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 107 (1983).

Moreover, Congress expressly recognized that the rights of federal employees to organize and bargain collectively "safeguard[] the public interest" and "contribute[] to the effective performance of public business…," which means that "labor organizations and collective bargaining…are in the public interest." 5 U.S.C. § 7101; 22 U.S.C. § 4101. Congress therefore crafted the coverage of the LMR statutes broadly. It defined covered "employees" to include any

individual "employed in an agency" under the Federal Service LMR Statute, 5 U.S.C. § 7103(a)(2)(A), or "a member of the [Foreign] Service…," 22 U.S.C. § 4102(8), with certain narrow exceptions in the Foreign Service LMR Statute. Congress defined covered "agencies" very broadly in the Federal Service LMR Statute, 5 U.S.C. § 7103(a)(3), while it specifically identified five covered Departments and agencies that employ Foreign Service employees in the Foreign Service LMR Statute. 22 U.S.C. § 4103(a). Where Congress wrote with broad strokes, it was mindful of the outer limits. For example, Congress tailored the coverage of the Federal Service LMR Statute to exclude certain agencies that engaged in intelligence, counterintelligence, investigative or national security work. 5 U.S.C. § 7103(a)(3). Similarly, Congress tailored the coverage of the Foreign Service LMR Statute to exclude certain categories of employees, such as those who perform criminal or national security investigations. 22 U.S.C. § 4112.

Thereafter, Congress provided the President with limited authority to further refine the scope of the LMR Statutes. Both the Federal Service LMR Statute and the Foreign Service LMR statute provide that the President may issue an executive order to exclude "any agency or subdivision thereof" (Federal Service LMR Statute) or "any subdivision of the Department" (Foreign Service LMR Statute). 5 U.S.C. § §7103(b)(1)(A) & (B); 22 U.S.C. §§ 4103(b)(1) & (2). Congress placed two, similarly worded conditions on the President's authority in both LMR Statutes: (1) that the agency or subdivision thereof (or subdivision of the Department) "has as a primary function intelligence, counterintelligence, investigative, or national security work"; *and* (2) the statute's provisions "cannot be applied" to the agency or subdivision "in a manner consistent with national security requirements and considerations." *Id.*

Presidents have since issued Executive Orders that exclude narrow subdivisions of agencies from the coverage of the *Federal Service LMR Statute*.[3] The broadest of these orders is Executive Order 12,171, which "excluded agency subdivisions plainly related to national security, most of which were in the Departments of the Army, Navy, and Air Force, with a number of subdivisions specified at a high level of granularity." *Am Fed. of Gov't Emps. v. Trump*, No. 3:25-cv-03070, 2025 WL 1755442, at *5 (N.D. Cal. Jun. 24, 2025). Subsequent orders invoked 5 U.S.C. § 7103(b) to remove specific agencies or subdivisions. *See*, *e.g.*, Exec. Order No. 13,039, 62 Fed. Reg. 12,529 (exclusion of Naval Special Warfare Development Group from the Federal Service LMR Statute).

By contrast, no President has previously excluded Foreign Service employees from the scope of the Foreign Service LMR Statute. After the statute's passage, the State Department's Director, Office of Employee Relations for State, John A. Collins, sent a letter on June 17, 1981 to then-President of AFSA, Anthea S. DeRouvelle. SMF ¶ 21. Collins advised DeRouvelle that, despite Section 1003(b) of the FSA (which is 22 U.S.C. § 4103(b)), there would be no exclusions of foreign service employees from Subchapter X when the FSA became law. And while Presidents have since issued about a dozen Executive Orders excluding civil service employees from the coverage of the Federal Service LMR Statute, none of those orders invoked 22 U.S.C. § 4103(b) to exclude Foreign Service employees from the Foreign Service LMR Statute.

[3] Exec. Order No. 12,171, 44 Fed. Reg. 66565 (Nov. 19, 1979); Exec. Order No. 12,338, 47 Fed. Reg. 1,369 (Jan. 11, 1982); Exec. Order No. 12,410, 48 Fed. Reg. 13,143 (Mar. 28, 1983); Exec. Order No. 12,559, 51 Fed. Reg. 18,761 (May 20, 1986); Exec. Order No. 12,632, 53 Fed. Reg. 9,852 (Mar. 23, 1988); Exec. Order No. 12,666, 54 Fed. Reg. 1,921 (Jan. 12, 1989); Exec. Order No. 12,671, 54 Fed. Reg. 11,157 (Mar. 14, 1989); Exec. Order No. 12,681, 54 Fed. Reg. 28,997 (Jul. 6, 1989); Exec. Order No. 12,693, 54 Fed. Reg. 40,629 (Sep. 29, 1989); Exec. Order No. 13,039, 62 Fed. Reg. 12,529 (Mar. 11, 1997); Exec. Order No. 13,252, 67 Fed. Reg. 1,601 (Jan. 7, 2002); Exec. Order No. 13,480, 73 Fed. Reg. 73,991 (Nov. 26, 2008); Exec. Order No. 13,760, 82 Fed. Reg. 5,325 (Jan. 12, 2017).

B. The President Invokes the LMR Statutes to Issue Exec. Order No. 14,251

1. The President's Authority Generally

President Donald J. Trump issued Executive Order No. 14,251, *Exclusions from Federal Labor-Management Programs*, on March 27, 2025. Trump grounded the order, not upon the President's powers set forth in Article II of the Constitution, but on the authority given to him by Congress in the Federal Service LMR Statute, 5 U.S.C. § 7103(b)(1), *and* the Foreign Service LMR Statute, 22 U.S.C. § 4103(b). As noted above, the LMR Statutes allow the President to exclude agencies or subdivisions thereof, in the case of the Federal Service LMR Statute, or just subdivisions, in the case of the Foreign Service LMR Statute. However, Congress specifically limited that authority to where (1) the entity has a primary function that involves intelligence, counterintelligence, investigative or national security work; and (2) that statute could not be applied in a manner that is consistent with national security requirements and considerations.

It is axiomatic that the President must comply with the statutory limitations that Congress places upon his authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) ("*Sawyer*"); *Panama Refining Co. v. Ryan*, 293 U.S. 388, 431-432 (1935) ("*Ryan*"); *Am. Fed'n of Gov't Emps. v. Reagan*, 665 F. Supp. 31, 32 (D.D.C. 1987) ("*Reagan I*"), *rev'd on other grounds*, 870 F.2d 723 (D.C. Cir. 1989). As the Supreme Court observed:

> If it could be said that from the four corners of the statute any possible inference could be drawn of particular circumstances or conditions which were to govern the exercise of the authority conferred, the President could not act validly without having regard to those circumstances and conditions. And findings by him as to the existence of the required basis of his action would be necessary to sustain that action, for otherwise the case would still be one of an unfettered discretion as the qualification of authority would be ineffectual.

Ryan, 293 U.S. at 431.[4] Here, the President cannot simply exclude civil service or Foreign Service employees from the coverage of the LMR Statutes because of "national security." Both statutes limit the President's authority. 5 U.S.C. § §7103(b)(1)(A) & (B); 22 U.S.C. §§ 4103(b)(1) & (2).

2. The Court's Jurisdiction to Review the President's Actions

Jurisdiction exists to review the President's exercise of his authority under the Federal Service LMR Statute to exclude employees pursuant to 5 U.S.C. § 7103(b). *Am. Fed'n of Gov't Emps. v. Reagan*, 870 F.2d 723, 726-28 (D.C. Cir. 1989) ("*Reagan II*") (reversing lower court's decision on Exec. Order No. 12,559, which invoked 5 U.S.C. § 7103(b)(1) on the merits); *Reagan I*, 665 F. Supp. at 32 (granting challenge to Exec. Order No. 12,559 on its merits, which invoked 5 U.S.C. § 7103(b)(1)). These decisions also provide the jurisdiction to review the President's exclusion of Foreign Service employees pursuant to 22 U.S.C. § 4103(b).

The decisions in *Reagan I* and *Reagan II* are part of a larger body of legal precedent that establishes a non-statutory cause of action to review the President's issue of an executive order. *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996). The court reached this conclusion in *Reich*, relying not only on its prior precedent, *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988), but also a longstanding line of Supreme Court decisions. *Reich*, 74 F.3d at 1327-28. *See also Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958); *Harmon v. Brucker*, 355 U.S. 579, 581-82 (1958); *Stark v. Wickard*, 321 U.S. 288, 310 (1944); *American Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 108-10 (1902). "The message of this line of cases is clear enough," observed the D.C. Circuit: "courts will 'ordinarily presume that Congress intends the

[4] Although *Ryan* involved a challenge to the constitutionality of a delegation of power by Congress to the President, the Supreme Court nevertheless observed that, assuming a constitutional delegation of authority, "it would still be necessary for the President to comply with those conditions and to show that compliance as the ground of his [action]." *Ryan*, 293 U.S. at 431-32.

executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command.'" *Reich*, 74 F.3d at 1328 (quoting *Bowen v. Mich. Academy of Family Phys.*, 476 U.S. 667, 681 (1986)). In other words, "[t]he responsibility of determining the limits of statutory grants of authority . . . is a judicial function entrusted to the courts by Congress." *Id.* at 1327 (quoting *Wickard*, 321 U.S. at 310).

Judicial review of the President's conduct extends beyond "actions that run afoul of the Constitution or which contravene direct statutory prohibitions" to encompass other "statutory limitations on governmental authority." *Reich*, 74 F.3d at 1332. "It does not matter whether the unlawful action arises because the disputed [action] defies the plain language of a statute or because the [President's] construction is utterly unreasonable and thus impermissible." *Aid Ass'n for Lutherans v. U.S. Postal Service,* 321 F.3d 1166, 1174 (D.C. Cir. 2003). And even where a statute grants "very broad discretion" to the President, "[c]ourts remain obligated to determine whether [those] statutory restrictions have been violated." *Mt. States Legal Found. v. Bush*, 306 F.3d 1132, 1136–37 (D.C. Cir. 2002). A court's review is available to enforce any "discernible" limits on executive discretion that are not vague or ambiguous. *Nat'l Ass'n of Postal Supervisors v. U.S. Postal Serv.*, 26 F.4th 960, 970-72 (D.C. Cir. 2022).

3. The Nature of the Court's Review

In *Reagan II*, the D.C. Circuit addressed the nature of review with respect to the President's invocation of 5 U.S.C. § 7103(b)(1) through an executive order. *Reagan II*, 870 F.2d at 727-28. The court relied upon the Supreme Court's decision in *Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 32-33 (1827). The Court held in *Mott* that, "[w]hen the president exercises an authority confided to him by law, the presumption is that it is exercised in pursuance of law," adding "[e]very public officer is presumed to act in obedience to his duty, until the contrary is shown." *Mott*, 25 U.S. at

32-33. This is the presumption of regularity. *Reagan II*, 870 F.2d 728. The court noted that the presumption can be rebutted by evidence that the President "was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention to them." *Id.*

Thus, the President must exercise his authority consistent with the structure and purposes of the LMR Statutes. *Reich*, 74 F.3d at 1330-31. If he fails to do so, *i.e.*, the President was indifferent to the purposes of the LMR Statutes or violated those statutes, then the presumption of regularity is rebutted. *Reich*, 74 F.3d at 1330-31; *Reagan II*, 870 F.2d at 728. The burden shifts to the government to establish that its actions were consistent with the LMR Statutes. *Romero v. Tran*, 33 Vet. App. 252, 261 (2021) (Once a presumption of regularity is rebutted "the Government is put to proof."); *see also United States v. Roses Inc.*, 706 F.2d 1563, 1567 (Fed. Cir. 1983) ("If it appears irregular, it is irregular, and the burden shifts to the proponent to show the contrary."); *United States v. Brudney*, 463 F.2d 376, 377-78 (9th Cir. 1972) (after defendant charged with refusing military service established irregularity in draft call sequence, "the presumption of administrative regularity stood rebutted and the prosecution had to assume the burden of justifying by affirmative evidence the bypassing of" other individuals who should have been called earlier).

Judicial review of irregular Presidential actions is vital to protecting the constitutional separation of powers. "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb . . . " *Sawyer*, 343 U.S. at 637 (Jackson, J., concurring). The President "may not decline to follow a statutory mandate . . . simply because of policy objections." *In re Aiken Cty.*, 725 F.3d 255, 259 (D.C. Cir. 2013) (Kavanaugh, J.). "The Congress can and often does cabin the discretion it grants the President, and it remains the responsibility of the judiciary to ensure that the President acts within those limits." *Am. Forest Res. Council v. United States*, 77 F.4th 787, 797 (D.C. Cir. 2023). The court's duty to review whether

the President violated a statute applies even where the President invokes "national security" to justify his actions. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) ("Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role."); *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 827 (9th Cir. 2017) ("When confronting a statutory question touching on subjects of national security and foreign affairs, a court does not adequately discharge its duty by pointing to the broad authority of the President and Congress and vacating the field without considered analysis").

Nothing changes with the D.C. Circuit's emergency motions panel's decision in *Am. Foreign Svc. Ass'n v. Trump*, Case No. 25-5184, 2025 WL 1742853 (D.C. Cir. Jun. 20, 2025). The panel opined in dicta that, "it is unclear whether *ultra vires* review is available at all" because "the President is not an agency." *Id.* at *2. This observation fails to acknowledge the D.C. Circuit's own binding precedent in *Reich* and *Dart*. The panel also suggested that "our review must be exceedingly deferential" because the President purportedly relied on national security concerns. *Id.* at *3.[5] This ignores the Judicial Branch's role in our separation of powers. *Holder*, 561 U.S. at 34; *Sawyer*, 343 U.S. at 587. Congress limited the President's authority by placing conditions on his ability to exclude employees from the LMR Statutes. 5 U.S.C. § 7103(b); 22 U.S.C. § 4103(b). If excessive deference eliminates any check on the President's compliance with those conditions, then "no barrier would remain to the executive ignoring any and all Congressional authorizations if he deemed them, no matter how conscientiously, to be contrary to the needs of the nation." *Local 2677, Am. Fed'n of Gov't Emps. v. Phillips*, 358 F. Supp. 60, 77 (D.D.C. 1973). Such an outcome

[5] The panel relied on *Dalton v. Specter*, 511 U.S. 462, 474 (1994) and *Chicago & Southern Air Lines v. Waterman Steamship Corp.*, 333 U.S. 103 (1948), for its deferential standard. But those cases are distinguishable because the statutes at issue gave unlimited discretion to the President. Section 4103 does not offer such unlimited discretion because it contains specific criteria that govern the President's decision.

"would undermine public confidence in the very edifice of government as it is known under the Constitution." *Youngstown Sheet & Tube Co. v. Sawyer*, 103 F. Supp. 569, 577 (D.D.C. 1952), *aff'd*, 343 U.S. 579 (1952).

In any event, the emergency panel's decision does not bind this Court. *Indus. Bank of Washington v. Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968) (a preliminary ruling is not a merits determination, but instead is the exercise of the court's "discretion upon the basis of a series of estimates"). The Court should follow the D.C. Circuit's binding precedent, from *Reagan* to *Reich*, to address whether AFSA has rebutted the presumption of regularity underlying Exec. Order No. 14,251. As explained in the next section, AFSA has successfully rebutted that presumption, with the Defendants' assistance.

C. AFSA Has Rebutted the Presumption of Regularity Underlying Executive Order 14,251

This Court has already found "clear evidence" to rebut the presumption of regularity with respect to Exec. Order No. 14,251. ECF No. 37, slip op.at 19. First, the Executive Order has an "unprecedented scope that seemingly conflicts with Congress's intent" by excluding almost all Foreign Service employees from coverage under the Foreign Service LMR Statute. *Id.* at 19-20. Second, the Executive Order was issued alongside "contemporaneous statements contained in the White House Fact Sheet and OPM Guidance," which "reflects retaliatory motive towards certain unions." *Id.* at 19, 21 (quoting *NTEU v. Trump*, No. 25-cv-935, 2025 WL 1218044, at *10 (D.D.C. Apr. 28, 2025), *stay granted on other grounds*, No. 25-5157, 2025 WL 1441563 (D.C. Cir. May 16, 2025)). The Court correctly concluded that, taken together, this evidence "reflected that the President was either indifferent to or acted in contravention of the requirements of" the Foreign Service LMR Statute. *Id.* at 19-20. The same evidence establishes that the presumption of regularity is rebutted as a matter of law for purposes of summary judgment.

1. Executive Order No. 14,251's "Unprecedented Scope" Rebuts the Presumption of Regularity Because it Contravenes Congress' Expressed Statutory Intent to Protect Collective Bargaining in the Foreign Service

The Foreign Service LMR Statute reflects "the Congressional intent of extending the protections of collective bargaining broadly because '[l]abor organizations and collective bargaining … are in the public interest.'" ECF No. 37, slip op. at 5 (quoting 22 U.S.C. § 4101). *See also* 22 U.S.C. §§ 4101(1), (3) (collective bargaining by members of the Foreign Service "safeguards the public interest" and promotes "an effective and efficient Government"). Congress realized this intent by granting collective bargaining rights to most Foreign Service employees, carving out only certain narrow exceptions to the coverage of the Foreign Service LMR Statute. 29 U.S.C. § 4112. *See also supra* at 13-14.

While Congress gave the President limited authority to make further exclusions in Section 4103(b), the text of the statute makes clear that exclusions from the statute's coverage must be the exception, not the rule. Section 4103(b) only permits exclusions of "any *subdivision* of the Department from coverage under this subchapter." Such exclusions could only occur where (1) the subdivision "has as a primary function intelligence, counterintelligence, investigative or national security work"; *and* (2) the statute's provisions "cannot be applied" to the subdivision "in a manner consistent with national security requirements and considerations." 22 U.S.C. 4103(b).

Rather than exclude *a subdivision* of a Department, President Trump excluded *all subdivisions* of two Departments, *viz.*, the State Department and USAID, thereby effectively removing both Departments from the coverage of the Foreign Service LMR Statute, 22 U.S.C. § 4103(a). President Trump's actions have far greater consequences: he also removed ninety-seven percent (97%) of all Foreign Service employees from the coverage of the Foreign Service LMR

Statute.[6] Yet, "[a] statutory exemption cannot swallow the rule." *Sinclair Wyoming Ref. Co. LLC v. Env't Prot. Agency*, 114 F.4th 693, 711 (D.C. Cir. 2024); *accord, Cuomo v. Clearing House Ass'n*, 557 U.S. 519, 530 (2009); *Pac. Gas & Elec. Co. v. FERC*, 113 F.4th 943, 949 (D.C. Cir. 2024). Section 3 of the Executive Order is "in plain disregard of the elementary rule requiring that exceptions from a general policy which a law embodies should be strictly construed; that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the enactment." *Spokane & Inland Empire R.R. Co. v. United States*, 241 U.S. 344, 350 (1916).

By stripping collective bargaining rights away from the overwhelming majority of Foreign Service employees, President Trump demonstrated that he "was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention of them." *Reagan II*, 870 F.2d at 728. The President seemed more concerned about effectively repealing the Foreign Service LMR Statute with respect to those employees, which was echoed in statements made contemporaneously with the issuance of Exec. Order No. 14,251, namely a White House Fact Sheet and the Office of Personnel Management's "Guidance."

2. The Fact Sheet and OPM Guidance Published Alongside Exec. Order No. 14,251 Reveal the President's "Retaliatory Motive" for Excluding the Department of State and USAID from the Foreign Service LMR Statute.

As this Court correctly found, the White House issued a Fact Sheet alongside Exec. Order No. 14,251 that reveals the President's "retaliatory motive to punish unions for the 'war' they have 'declared on President Trump's agenda.'" *NTEU*, 2025 WL 1218044, at *11 (quoting Fact Sheet at 3). Indeed, the Fact Sheet devolves into an unwavering, animus-fueled screed about how

[6] The other three percent (3%) are Foreign Service employees who work for the Department of Agriculture, the Department of Commerce, and the Broadcast Board of Governors, now known as the U.S. Agency for Global Media ("USAGM").

collective bargaining under the LMR statutes interferes with the President's *agenda*, with statements such as the following:

- "The [Civil Service Reform Act] enables hostile federal unions to obstruct agency management."
- "Agencies cannot modify policies in collective bargaining agreements (CBAs) until they expire," adding "[t]he outgoing Biden Administration renegotiated many agencies' CBAs to last throughout President Trump's second term."
- "Certain Federal unions have declared war on President Trump's agenda,"
- "The largest Federal union describes itself as 'fighting back' against Trump," adding "[i]t is widely filing grievances to block Trump policies" and providing an example of "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."
- "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."

Fact Sheet at 3. Any doubt about what the President decided when issuing Exec. Order No. 14,251 was erased when, shortly after the order's issuance, a White House spokesperson confirmed that the Order was designed to cripple unions who were opposing the President's policies: "The goal [of the Exclusion Order] is to stop employees in certain security-related agencies from unionizing *in ways that disrupt the president's agenda*."[7]

[7] Rebecca Davis O'Brien, *Trump Order Could Cripple Fed'l Worker Unions Fighting DOGE Cuts*, New York Times, https://www.nytimes.com/2025/03/29/us/politics/federal-worker-unions-doge.html (Mar. 29, 2025) (emphasis added).

The President's focus on unions who "obstruct" or "disrupt" Trump's agenda, rather than on whether the application of the LMR Statutes is consistent with national security, explains why some unions – who represent employees in the excluded departments, agencies or subdivisions thereof – did not lose their collective bargaining rights. The Executive Order selectively excludes police and firefighter unions from exemption. Exec. Order No. 14,251, § 2, subsec. 1-499. The Fraternal Order of Police endorsed President Trump for election in 2024.[8] The International Association of Fire Fighters ("IAFF") withheld an endorsement sought after by his opponent.[9] In addition, while the Order excludes numerous agencies and subdivisions of the Department of Homeland Security from the coverage of the Federal Service LMR Statute, it omits Customs and Border Protection, who also endorsed the President in last year's election.[10] Exec. Order. No. 14,251 § 2, subsec. 1-407.

There is more. Section 4 of the Executive Order includes a delegation of authority to the Secretary of Veterans Administration and the Secretary of the Defense Department to restore collective bargaining rights to subdivisions of their Departments. On April 17, Secretary Collins restored collective bargaining rights, *to particular unions*, not to particular subdivisions. 90 Fed. Reg. 16427 (Apr. 17, 2025). A Department spokesperson explained that bargaining rights were restored, not because continued bargaining was "consistent with national security requirements and considerations," but because these unions were compliant with the President's agenda:

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[8] *See* Frat. Order of Police, https://fop.net/2024/09/fop-endorses-trump/ (last visited Jul. 26, 2025).

[9] Alexandra Marquez and Nnamdi Egwuonwu, *Firefighters Union IAFF Declines to Endorse a Candidate*, https://www.nbcnews.com/politics/2024-election/firefighters-union-iaff-declines-endorse-presidential-candidate-rcna173918 (last visited Aug. 4, 2025).

[10] American Presidency Project, https://www.presidency.ucsb.edu/documents/trump-campaign-press-release-national-border-patrol-council-endorses-president-trump-joe/ (last visited Jul. 26, 2025).

> "The unions in the exempted units have posed no or minimal hinderance to VA operations," he said. "They have filed no or few grievances against VA and they have not proved an impediment to the department's ability to effectively carry out its mission . . . AFGE, NAGE, NNU and SEIU by contrast are using their authority under the Federal Service Labor-Management Relations Statute to broadly frustrate the administration's ability to manage the agency."[11]

As this court found, the discriminatory implementation of the Executive Order by the Secretary of Veterans affairs "bolsters the Court's earlier conclusion…that the White House Fact sheet and other contemporaneous evidence 'reflects retaliatory motive towards certain unions.'" ECF No. 37, slip op. at 21 (quoting *NTEU*, 2025 WL 1218044,*10).

The impact of the President's retaliatory motive and his actions are outlined in the Office of Personnel Management's Guidance. *Guidance on Executive Order Exclusions from Federal Labor-Management Programs*, OPM (Mar. 27, 2025), https://perma.cc/Z2ZJ-Y8U7 ("OPM Guidance"). Agencies and subdivisions "are no longer subject to collective bargaining requirements", and, thus, they "are no longer required to bargain with collectively with Federal unions." OPM Guidance at 3. Agencies can disregard collective bargaining agreements (including those recently renegotiated by the Biden Administration) when it comes to reductions in force. *Id.* at 4. Agencies could deprive unions of resources, such as official time or office space, and end the allotment of dues. *Id.* at 6.

In the end, deference should not be given to the indefensible. Even if the President may only have to recite the statute's language when issuing an executive order invoking an exclusion in the LMR Statute, *Reagan II*, 870 F.2d at 727, the Court can read everything written or spoken by the President and his administration on the question of excluding employees from the LMR

[11] Erich Wagner, *VA is Selectively Enforcing Trump's Order Stripping Workers of Union Rights*, Gov. Exec., (https://www.govexec.com/workforce/2025/04/vaselectively-enforcing-trumps-order-stripping-workers-union-rights/404694/) (last visited July 31, 2025).

Statutes. *Talbott v. United States*, 775 F. Supp. 3d 283, 326-27 (D.D.C. Mar. 18, 2025), *on appeal*, No. 25-5087 (D.C. Cir.). President Trump and his administration went out of their way to disseminate *why* Executive Order No. 14,251 was issued; and, in doing so, they volunteered the very evidence that establishes the irregularity of the order. *See Hartman v. Moore*, 547 U.S. 250, 263-264 (2006) (observing, with regard to the "longstanding presumption of regularity accorded to prosecutorial decisionmaking," that "[a] prosecutor's disclosure of retaliatory thinking on his part, for example, would be of great significance in addressing the presumption….").

This Court properly considered all of the evidence to find that the presumption of regularity underlying Exec. Order No. 14,251 was rebutted. As it explained in *NTEU*, 2025 WL 1218044, at *10 (Apr. 28, 2025), Executive Order 14,251:

> . . . strips collective bargaining rights from two-thirds of the federal workforce… In other words, justifying the sweeping Executive Order by pointing to the "obstruct[ion] to agency management" caused by "hostile Federal unions" is better understood as a disagreement with Congress's decision to extend collective bargaining rights to the federal workforce broadly, rather than a determination that such rights cannot be applied in a "manner consistent with national security requirements and considerations." See 5 U.S.C. § 7103(b)(1)(B)…. In sum, there is clearly an inconsistency. Congress determined that collective bargaining rights for the majority of the federal workforce was "in the public interest," yet the Executive Order strips these rights from a majority of the federal workforce. This certainly provides evidence that the "President was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention of them" in his invocation of the Section 7103(b) exclusion.

Id.; *see also* ECF No. 37, slip op. at 19-20.

If Congress intended to give the President unlimited discretion to exclude agencies from the coverage of the LMR Statutes, then it would not have included the criteria concerning "primary function" and "consisten[cy] with national security" in those statutes. 5 U.S.C. § 7103(b); 22 U.S.C. § 4103(b). The existence of these statutory limitations means that the President must comply with them. Compliance does not include the use of the exceptions to eliminate the

Congressional enactment. If it did, then the President could effectively repeal legislation, which runs afoul of Articles I and II of the Constitution. As set forth above, President Trump effectively sought to repeal the LMR Statutes. With respect to the Foreign Service LMR Statute, the President excluded entire Departments – *i.e.*, the State Department and USAID – and, in doing so, ninety-seven percent (97%) of all Foreign Service employees. Given the admittedly retaliatory reasons of the President and his administration for doing so, as opposed to legitimate national security concerns, Executive Order No. 14,251 is *ultra vires*.

D. Defendants Cannot Re-Establish Any Regularity or Validity to Exec. Order No. 14,251

Having lost the presumption of regularity, and in light of the obvious *ultra vires* nature of Exec. Order No. 14,251, the burden shifts to the Defendants to prove that the Executive Order is consistent with Section 4103(b) and not *ultra vires*. The Defendants cannot satisfy this burden. This court correctly concluded that the Executive Order is *ultra vires* because the President "applied overly broad interpretations of" the terms "primary function" and "national security" in Section 4103(b). ECF No. 37, slip op. at 22-28. Nothing has changed since that decision.

1. 22 U.S.C. § 4103(b)(1)

Section 4103(b)(1) permits the President to exclude subdivisions from the Foreign Service LMR Statute if "the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work." Defendants have never argued that State and USAID perform intelligence, counterintelligence, or investigative work. Rather, as the Court recognized, Defendants argue that the "primary function" requirement is satisfied because the Department's subdivisions have work in "a plethora of areas," some of which involve "national security." ECF No. 37, slip op. at 23. However, the real question, as phrased by the Court, was whether this

"plethora" of cited work constituted the "primary function" of the entire Department that involves "national security." *Id.* The Court rejected that argument, *id.* at 24, and for good reason.

With any presumption of regularity having been rebutted, the Defendants cannot simply rely upon generalized claims about who does what and whether it is national security. The Court explained that the Defendants "omitted the critical step of explaining why each of those categories of work are the 'primary function' of the agency." ECF No. 37, slip op. at 24, (quoting *NTEU*, 25 WL 1218044, at *14). This omission means that the President used an overly broad interpretation of "primary function" or disregarding the language of Section 4103(b)(1) altogether when issuing the Executive Order. Either way, the Defendant's position provides additional evidence that the President "was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention to them" when he issued Exec. Order No. 14,251. *Reagan II*, 870 F.2d at 828.

The Court should reject any attempt by the Defendants to create justifications in place of where none existed at the time the Executive Order issued. *Washington v. Trump*, 768 F. Supp. 3d 1239, 1274 (W.D. Wash. 2025) (rejecting defendant's "post hoc rationalizations and justifications that are nowhere to be found in the [Executive] Order's text"). Neither the President's Executive Order, the White House's Fact Sheet, nor any other utterance at the time of the Executive Order offer any basis for the Defendants' current arguments. The Court should reaffirm that Exec. Order No. 14,251 is *ultra vires* because, in part, the Defendants' overly broad interpretation of "primary function" cannot be reconciled with 22 U.S.C. § 4103(b).

2. 22 U.S.C. § 4103(b)(2)

Section 4103(b)(2) requires a finding that the provisions of the Foreign Service LMR Statute *cannot* be applied to a subdivision "in a manner consistent with national security and considerations." 22 U.S.C. § 4103(b)(2). As with the "primary function" requirement, the

Defendants take an overly broad interpretation of "national security," stretching the term to cover "work directly related to production and preservation of the military, economic, and productive strength of the United States." ECF No 37, slip op. at 24-25 (cleaned up).

This Court has recognized that the Supreme Court has held that national security exemptions in agency personnel statutes cannot be so broad as to permit "an exception to the general personnel laws" to "be utilized effectively to supersede those laws." *Cole v. Young*, 351 U.S. 536, 547 (1956). In *Cole v. Young*, the Supreme Court interpreted a statute authorizing the heads of certain agencies to take unreviewable adverse personnel actions "when deemed necessary in the interests of national security." *Id.* at 538. A food and drug inspector employed by the Food and Drug Administration was terminated under this exemption due to his alleged "close association" with individuals reported to be Communists. *Id.* at 540. The Court concluded that "the term 'national security' is used in the Act in a definite and limited sense" and concerns "only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression," rather than activities promoting "the general welfare." *Id.* at 543-44. The Court noted that the statute at issue "reflects Congress' concern for the procedural rights of employees" and that "if Congress intended the term to have such a broad meaning that all positions in the Government could be said to be affected with the 'national security,' the result would be that the 1950 Act, though in form but an exception to the general personnel laws, could be utilized effectively to supersede those laws." *Id.* at 547.

The Defendants attempt to render Section 4103(b) meaningless by arguing that collective bargaining is inconsistent with a definition of "national security" that far exceeds *Cole v. Young*. The Court properly rejected these efforts. ECF No. 37, slip op. at 25-26; *see also NTEU*, 2025 WL

1218044, at *16. Its basis echoes established caselaw, *viz.*, decisions like *Cole v. Young* that refuse to allow an exception to swallow the rule. *See supra* at 29; *see also supra* at 22-23, 27.

The Court also rejected any effort by the Defendants to distinguish *Cole v. Young* from this case. ECF No. 37, slip op. at 26-27. In so doing, the Court followed fundamental principles of statutory construction: that a term in a statute, like "national security," must be interpreted consistently with Congressional intent in passing the statute. *Id.* "Congress could not have been clearer in passing the [Foreign Service LMR] Statute," the Court observed, "for the protections of the Statute to extend broadly to the covered departments and agencies in the foreign service." *Id.* at 28. That clear intent led this Court to find the Defendants' arguments to be "plainly unreasonable," because such contentions would – as they did with respect to Section 4103(b)(1) – render Section 4103(b)(2) meaningless. *Id.*

Moreover, the LMR Statutes themselves provide more than sufficient evidence of why they are consistent with a properly defined "national security."[12] The statutes have expansive management rights clauses that preclude bargaining over a range of issues, including management's right "to determine the mission, budget, organization, number of employees, and internal security practices of the agency," to "assign work," and, importantly, "to take whatever actions may be necessary to carry out the agency mission during emergencies." 22 U.S.C. § 4105(a); 5 U.S.C. § 7106(a). An agency may implement changes in conditions of employment when that immediate implementation is "consistent with the necessary functioning of the agency, such that a delay in implementation would have impeded the agency's ability to effectively and

[12] AFSA is not asking this Court to substitute its judgment for that of the President on national security needs. Instead, AFSA seeks to correct the President's misunderstanding or misrepresentation of the bargaining obligations under the Foreign Service LMR Statute, as set forth in the Fact Sheet and elsewhere, with the actual language of the Congressional enactment.

efficiently carry out its mission." *SPORT and Dept. of Air Force, Edwards AFB*, 68 F.L.R.A. 9, 10-11 (2014), *recon. denied*, 68 F.L.R.A. 107 (2014) (agency properly furloughed employees without completing implementation bargaining).

Finally, history has shown that collective bargaining at State and USAID is consistent with national security requirements and considerations. In 1971, President Nixon issued an Executive Order granting collective bargaining rights to Foreign Service employees because "the effective participation by the men and women of the Foreign Service in the formation of personnel policies and procedures affecting the conditions of their employment is essential to the efficient administration of the Foreign Service." Exec. Order 11,636, *Emp.-Mgmt. Rels. in the Foreign Serv.* (Dec. 17, 1971). In 1980, Congress enacted Subchapter X of the Foreign Service Act ("FSA"), also known as the Foreign Service Labor-Management Relations Statute, to guarantee those rights in law. The next year, the Department of State informed AFSA that there was no need for exclusions from the statute—indicating that collective bargaining did not pose a national security risk for any Foreign Service Employees. Through ten (10) presidencies (including the first Trump Administration), seventeen (17) Secretaries of State and twenty-one (21) Administrators/ acting Administrators of U.S Agency for International Development ("USAID") have recognized and bargained with the American Foreign Service Association ("AFSA") during the Vietnam War, the Cold War, the fall of the Soviet Union, 9/11, and the War on Terror, as well as during the war in Afghanistan, which is the longest war the United States has ever fought.

II. THE EXECUTIVE ORDER VIOLATES AFSA'S FIRST AMENDMENT RIGHTS

A. The Executive Order Retaliates Against AFSA for Its Exercise of Its Free Speech and Petitioning Rights

It is beyond debate that "the First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech." *Lozman v. City of Riviera Beach*,

585 U.S. 87, 90 (2018). The First Amendment protects "not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right." *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000). "[R]etaliation by the government that is motivated, at least in part, by a lawsuit or constitutionally protected speech may violate the First Amendment." *Fabiano v. Hopkins*, 245 F. Supp. 2d 305, 310 (D. Mass. 2003), *aff'd,* 352 F.3d 447 (1st Cir. 2003). Government action constitutes retaliation in violation of the First Amendment where a plaintiff (1) "engaged in conduct protected under the First Amendment," (2) the government "took some retaliatory action sufficient to deter a person of ordinary firmness in [the plaintiff's] position from speaking again," and (3) there is "a causal link between the exercise of a constitutional right and the adverse action taken." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (quoting *Banks v. York*, 515 F. Supp. 2d 89, 111 (D.D.C. 2007)).

First, AFSA unquestionably engaged in activity protected by the First Amendment before the President issued Executive Order 14,251. AFSA issued eight press releases criticizing actions taken by Trump and his administration and provided additional comments to reporters. SMF ¶¶ 26, 28, 31, 35-43, 46. AFSA challenged the dismantling of USAID, the abrupt recall of employees from international posts, the disbandment of USAGM, and the removal of Diversity, Equity, Inclusion and Accessibility as factors used in performance evaluations and promotions at the State Department. *Id.* AFSA characterized the actions of the President and his administration as actions "reckless," "unlawful," "alarm[ing]," and "do[ing] a disservice to…the country." SMF ¶¶ 26, 28, 31, 35-43. AFSA officers also appeared for interviews on televised media publications, including *60 Minutes* and *The Lead With Jake Tapper*, and in written news articles in multiple nationally circulated publications. SMF ¶¶ 45-46; Gamer Ex. 9. Issuing press releases and participating in media interviews are classic exercises of the right to free speech.

AFSA has exercised not only its right of free speech, but also its right to petition the government. AFSA filed two lawsuits against Trump and administration officials challenging the dismantling of USAID and USAGM. SMF ¶¶ 29, 44. *See also Am. Foreign Svc. Ass'n v. Trump*, No. 1:25-cg-00352 (D.D.C. filed Feb. 6, 2025); *Widakusawara v. Lake*, No. 1:25-cv-887-RCL (D.D.C. filed Mar. 21, 2025). This conduct is protected by the First Amendment. *See*, *e.g.*, *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 517 (2002) (observing "right to petition" is "one of the most precious of the liberties safeguarded by the Bill of Rights"). There is also no question that lawsuits like those filed by AFSA have enraged President Trump. On March 6, 2025, the White House issued a Fact Sheet directing federal agencies to seek bonds from plaintiffs who obtain preliminary injunctive relief under Fed. R. Civ. P. 65(c) because "[a]ctivist groups file meritless suits for fundraising and political gain," and "activist judges"[13] issue "sweeping injunctions."[14]

Second, the Executive Order chills protected speech "sufficient[ly] to deter a person of ordinary firmness in [AFSA's] position from speaking again." Exec. Order No. 14,251 eliminates statutory collective bargaining rights that AFSA and ninety-seven percent (97%) of its active-duty members have exercised for fifty years. Defendants have rescinded recognition of AFSA as the exclusive representative of its members, which was followed by the refusal to bargain with AFSA, the repudiation and modification of collectively bargained agreements, and the cessation of union dues deductions. AFSA has been unable to negotiate with the Department of State on issues of dire importance to its membership, including procedures and appropriate arrangements for widescale RIFs, cancellation of work assignments, promotion criteria, and anti-bullying protections. SMF

[13] The Fact Sheet also suggests that "President Trump's judges," who are "superstar[s]" and are allegedly "rated the least partisan," would not enjoin his administration.

[14] White House Fact Sheet, https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-ensures-the-enforcement-of-federal-rule-of-civil-procedure-65c/

¶¶ 87-105. AFSA has lost nearly 8,000 members and nearly $900,000 in dues revenue, forcing AFSA to cut operating costs and reduce its staffing levels by fifteen percent. SMF ¶¶ 108-116, 121-126. And AFSA officers no longer can perform full-time union representational duties while remaining employed in the Foreign Service. SMF ¶¶ 127-131.

The significant damage, which implicates AFSA's ability to represent Foreign Service employees and those employees' continued employment with the Federal government, certainly "chill[s] a person of ordinary firmness" from engaging in speech and petitioning activity that is critical of President Trump's agenda. *AFGE v. Noem*, No. C25-451 MJP, 2025 WL 1557270, at *15 (W.D. Wash. June 2, 2025) ("[A] person of ordinary firmness would reasonably be deterred from engaging in further litigation if he or she feared loss of job-related benefits."); *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 868-70 (9th Cir. 2016) (eliminating fee collection and remittance in response to First Amendment activity chills speech). The fact that the President himself engaged in the retaliation further intensifies coercive effect of the Executive Order. "The power that a government official wields" is a relevant factor in assessing the deterrence effect of the adverse action. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 191 (2024). And, "the greater and more direct the government official's authority, the less likely a person will feel free to disregard a directive from the official." *Id.* at 191-92. President Trump's issuance of Exec. Order No. 14,251, dripping with animus and retaliatory motive, is enough "to deter a person of ordinary firmness in [AFSA's] position from speaking again." *Am. Bar Ass'n v. U.S. Dep't of Just.*, No. 25-CV-1263 (CRC), 2025 WL 1388891, at *7 (D.D.C. May 14, 2025) (quoting *Perkins Coie LLP v. U.S. Dep't of Justice*, No. 25-716 (BAH), 2025 WL 1276857, at *30 (D.D.C. May 2, 2025), *appeal filed*, No. 25-5241 (D.C. Cir.)).

Moreover, the President's threat of retaliation has caused AFSA's officers and members to

refrain from exercising their First Amendment rights or to fear retaliation for exercising those rights. AFSA State Vice President Rohit Nepal is attempting to perform his union duties in the face of concerns that the Department of State will retaliate for his advocacy by refusing to give him a work assignment or intentionally assigning him to an unsuitable post. SMF ¶¶ 127-130. Nepal must decide whether to retire or remain a Foreign Service employee and how to perform his union duties; he has courageously spoken out in this litigation, but another person in his position could reasonably choose to remain silent. Others have made the opposite choice to disassociate with AFSA. One of AFSA's Executive Board members resigned from their position, citing concerns that if they continued to advocate for the Union as an officer, they and their family would suffer from retaliatory employment action. SMF ¶ 135. Foreign Service employees in the bargaining unit represented by AFSA have declined representation by AFSA's attorneys, citing concerns about how using AFSA representation would affect the government's decisions in their cases. Fallon-Lenaghan Decl. ¶ 3; Second Parikh Decl. ¶ 5.

In addition, AFSA represents Foreign Service employees at other agencies not covered by the Executive Order – so AFSA officers must decide how to represent those employees under the looming threat of further potential exclusions. SMF ¶ 1. After the Executive Order issued, two of these agencies, FCS and APHIS, terminated the deductions of dues from Foreign Service employees for several months, in a stark reminder that harm to AFSA can spread beyond employees at State and USAID. Miele Decl. ¶ 6.

Finally, AFSA's "constitutional speech was the 'but for' cause of the defendants' retaliatory action." *Doe v. District of Columbia*, 796 F.3d 96, 107 (D.C. Cir. 2015). The White House's Fact Sheet showcases this causation with statements about "hostile" federal unions having "declared war on President Trump's agenda." Fact Sheet, *supra.* Courts have found such vitriol in White

House missives to constitute direct evidence of retaliatory intent. *See Perkins Coie LLP*, 2025 WL 1276857, at *33 ("the fact sheet says it all: plaintiff [is]…targeted because of plaintiff's 'partisan lawsuits'"); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Office of the President,* No.1:25-cv-00917-RJL, 2025 WL 1502329, at *13-15 (D.D.C. May 27, 2025) (relying on White House statements in fact sheet issued alongside executive order in finding retaliation), *amended*, 2025 WL 2105262 (D.D.C. June 26, 2025), *appeal filed* No. 25-5277 (D.C. Cir.). Where the President openly declares that animus motivated his actions, the Court need not look any further than his own words. *Talbott*, 775 F. Supp. 3d at 326-27 (finding that executive order and fact sheet on ban of transgender troops from the military "is soaked in animus and dripping with pretext").

As a federal district court found while considering a First Amendment challenge brought by multiple unions to Executive Order 14,251:

> [T]he Fact Sheet expressed a clear point of view that is hostile to federal labor unions and their First Amendment activities….The Fact Sheet called out federal unions for vocal opposition to President Trump's agenda. It condemned unions who criticized the President and expressed support only for unions who toed the line. It mandated the dissolution of long-standing collective bargaining rights and other workplace protections for federal unions deemed oppositional to the president….All of this is solid evidence of a tie between the exercise of First Amendment rights and a government sanction.

Am. Fed'n of Gov't Emps. v. Trump, No. 25-cv-03070, 2025 WL 1755442, at *11 (N.D. Cal. Jun. 24, 2025), *stay granted*,[15] No. 25-4014, 2025 WL 2180674 (9th Cir. Aug. 1, 2025). AFSA is a union that has criticized the President and vocally opposed his attacks on the Foreign Service. The

[15] In issuing a stay of the district court's preliminary injunction, an emergency motions panel of the Ninth Circuit concluded that the Executive Order likely would have been issued even absent the union's protected speech, but this defies logic and completely disregards the Executive Order's selective targeting of unions who opposed the Trump administration's actions and exempting of unions who supported Trump, which cannot be explained by anything other than retaliatory animus. 2025 WL 2180674, at *4. The panel's decision therefore is not persuasive. It also is not binding precedent even within the Ninth Circuit for the reasons discussed *supra* at 21.

Fact Sheet could not be any clearer that the Executive Order was issued in retaliation for AFSA and other unions' exercise of their First Amendment rights.

While the court need look no further than the President's own words, additional circumstantial evidence reinforces the retaliatory nature of Exec. Order No. 14,215. This evidence includes timing, the pretextual nature of the order, and a broader pattern of retaliation against AFSA. The temporal proximity between AFSA's second lawsuit against the administration (filed on March 21) and the Executive Order (issued March 27) is sufficiently close that it evidences retaliatory motive. *BEG Investments, LLC v. Alberti*, 144 F. Supp. 3d 16, 22 (D.D.C. 2015) (quoting *Singletary v. District of Columbia*, 351 F.3d 519, 525 (D.C. Cir. 2005)). The pretextual character of the Executive Order can be found in its allowance of "police officers, security guards, and firefighters" to continue to collectively bargain while other employees *of the same agencies* lost bargaining rights. *Noem*, 2025 WL 1557270, at *15 ("the Trump Administration has treated other unions who have not challenged his actions more favorably—a fact that further shows animus" and demonstrates "a pattern of ongoing retaliation"); *Am. Bar Ass'n*, 2025 WL 1388891, at *8 ("the government's differential treatment of other grantees suggests this justification is pretextual"). This "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 774 (2018); *see also Coszalter*, *v. City of Salem*, 320 F.3d 968, 977-78 (9th Cir. 2003) (retaliation can be shown by evidence that proffered reasons for the adverse action were "false and pretextual").

Furthermore, Exec. Order No. 14,251 is not the President's first retaliatory attack on what he views as a disloyal Foreign Service. Within days after AFSA obtained a temporary restraining order halting the placement of USAID employees on administrative leave and expedited

evacuation of USAID employees overseas in *Am. Foreign Serv. Ass'n et al. v. Trump*, No. 1:25-cv-00352 (D.D.C.), President Trump issued another Executive Order, "One Voice for America's Foreign Relations," to reshape the Foreign Service into a compliant "workforce of patriots." Exec. Order No. 14211, 90 Fed. Reg. 9831 (Feb. 18, 2025). This Order directed the Secretary of State to revamp the recruiting, performance, evaluation, and retention standards for the Foreign Service to ensure their fealty to the President. *Id.,* Sec. 5. The Order warns that "[f]ailure to faithfully implement the President's policy is grounds for professional discipline" and that even permits the Secretary of State to refer any offenders in the Foreign Service *directly to the President* in lieu of customary discipline. *Id.,* Sec. 2, 4. This is a radical destruction of the core principles of the Foreign Service, which include "that career diplomats should be hired based on their qualifications and expertise, not their political views, and that dissent should be welcomed and not punished." *See* Michael Crowley, *New Trump Exec. Order Calls for 'Reform' to U.S. Diplomatic Corps.*, New York Times, available at https://www.nytimes.com/2025/02/12/us/politics/trump-foreign-service.html (last visited Jul. 26, 2025) (quoting AFSA's statement that AFSA would "always defend the integrity and nonpolitical nature of the Foreign Service so that our members can continue to serve the American people.") When AFSA continued to speak out against the "One Voice" Executive Order and other actions by the administration, the President ratcheted up the consequences of failing to "faithfully implement" his policies by stripping nearly all of Foreign Service employees of their collective bargaining rights.

B. The Executive Order Represents Viewpoint Discrimination in Violation of the First Amendment

The Executive Order also violates the First Amendment in more ways than one; it also violates the Constitution by discriminating against federal unions based on viewpoint. "At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is

uniquely harmful to a free and democratic society." *Vullo*, 602 U.S. at 187. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Viewpoint discrimination is "an egregious form of content discrimination," and thus the government "must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

As detailed *supra* on pages 5-6 and 23-28, President Trump and his administration have repeatedly admitted that they are removing collective bargaining rights from federal unions who have opposed the President's policies. They have also clearly conveyed the converse: that those unions who choose to "work with" the President can continue to bargain collectively on behalf of their members. *Id.* Thus, it is undeniable that the Exclusion Order discriminates based on viewpoint by targeting unions who have been critical of President Trump's agenda and have publicly expressed those views through constitutionally protected speech and petitioning activity.

The government "cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors." *Vullo*, 602 U.S. at 180; *see also Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). Such actions are even more problematic where, as here, the viewpoint discrimination is directed at those who have challenged the legality of the President's expansive assertions of executive authority through normal constitutionally protected channels. *Rosenberger*, 515 U.S. at 829 ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."). As the Court has cautioned, "[w]e must be vigilant" when the government takes coercive action to "in effect insulate its own laws from legitimate judicial challenge." *Legal Servs. Corp. v.*

Velazquez, 531 U.S. 533, 548 (2001). Therefore, the Court should find that Executive Order No. 14,251 violates the First Amendment due to viewpoint discrimination.

III. DECLARATORY AND PERMANENT INJUNCTIVE RELIEF ARE NECESSARY TO PREVENT ONGOING AND FUTURE HARM

Finally, AFSA closes with its request that, not only should the Court issue a declaratory judgment that Exec. Order No. 14,251 is *ultra vires* and a violation of the First Amendment, but the Court should also permanently enjoin the implementation and enforcement of Executive Order No. 14,251, as well as the OPM Guidance. To obtain a permanent injunction, AFSA must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law … are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay, Inc. v. MercExchange*, 547 U.S. 388, 391 (2006); *Zukerman v. USPS*, 64 F.4th 1354, 1364 (D.C. Cir. 2023).

A. AFSA Will Suffer Further Irreparable Harm Without a Permanent Injunction That Cannot Redressed by Remedies at Law

Courts often consider the first two factors together because "irreparable injury … is merely one possible 'basis for showing the inadequacy of the legal remedy." *Nat'l Mining Ass'n v. U.S. Army Corps of Engr's*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (citation omitted). Injuries caused to employees and their union representative by the loss of collective bargaining are both immeasurable and irreparable, which easily satisfy these injunctive standards. *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1191 (9th Cir. 2011); *SEIU Health Care Michigan v. Synder*, 875 F. Supp. 2d 710, 723-24 (E.D. Mich. 2012); *Levine v. C & W Mining Co.*, 465 F. Supp. 690. 694 (N.D. Ohio 1979), *aff'd in relevant part*, *modified in other part*, 610 F.2d 432 (6th Cir. 1979).

The Court previously granted a preliminary injunction upon finding that AFSA will suffer irreparable harm from "the loss of bargaining power and statutory protections for the right to collectively bargain," as well as from "significant losses in revenue…that threaten the very existence of the union." ECF No. 37, slip op. at 32. Since the stay of that preliminary injunction, AFSA has faced ever-worsening harms because it lacks the ability to serve as the exclusive representative of its members at a time when employees at the Department of State face unprecedented reductions in force and the dismantling of USAID continues.

The Department of State has unilaterally altered sections of the FAM, which previously were negotiated with AFSA, by (1) weakening anti-bullying procedures and protections, SMF ¶ 97 & Parikh Ex. 1 and (2) changing the competitive area used in conducting RIFs from a global area to an office-by-office system. SMF ¶¶ 88-93. This last change is particularly detrimental, as the Department of State has eliminated entire offices without giving the employees who happen to be assigned to those offices a chance to compete for other assignments. SMF ¶ 95, Third Yazdgerdi Decl. ¶ 10. Department of State Foreign Service assignments typically last only three years and employees rotate posts frequently across the world, so the office-by-office competitive area is especially arbitrary and unfair. ECF No. 10-2, Yazdgerdi First Decl. ¶¶ 14-15; ECF No. 10-3, Wong Decl. ¶ 6. Indeed, the Department of State sent RIF notices on July 11 even to employees who had already received new assignments or even transferred to new assignments, simply because they had been in an office to be eliminated several weeks earlier. SMF ¶ 95. AFSA is powerless to challenge these actions that are affecting a large percent of its membership. The Department of State has refused to negotiate RIF procedures and dismissed an implementation dispute on the anti-bullying FAM changes on the ground that AFSA is no longer the employees' exclusive representative. SMF ¶¶ 92, 99. The Department of State also has unilaterally altered criteria for

tenure and promotion decisions to add requirements that candidates exhibit "fidelity" to the President's use of executive power. SMF ¶¶ 103-105. And the Department of State has refused to provide AFSA with information that it previously was required to share, preventing AFSA from ensuring that the upcoming promotion process is fairly administered. SMF ¶ 101.

As the Court predicted, AFSA has also lost significant revenue. AFSA has lost nearly $900,000 in dues revenue and has already had to reduce staffing and other operating expenses. *See supra* at 9. Although employees can pay dues directly to AFSA, less than half of AFSA's membership as of the time the Executive Order was implemented has chosen to continue paying dues. SMF ¶¶ 113-114. If AFSA cannot serve as the exclusive representative of employees at the Department of State or USAID, the benefits of membership will significantly decrease for those employees. AFSA continues to fight for its members' collective bargaining rights through this litigation, but if AFSA does not ultimately obtain a permanent injunction against the implementation of Executive Order 14,251, it expects additional losses of dues-paying members.

B. The Balance of Hardships and Public Interest Favor a Permanent Injunction

Given AFSA seeks to enjoin governmental defendants, courts merge the final two factors. *Zukerman*, 64 F.4th 1364. These factors also favor the issuance of a permanent injunction. Starting with the obvious, "the government cannot suffer harm from an injunction that merely ends an unlawful practice." *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 57-58 (D.D.C. 2020). To the contrary, there is a "substantial public interest" in having courts ensure that the Executive Branch complies with the law. *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

The foregoing principles remain true even when the government invokes "national security." "History abundantly documents the tendency of the Government – however, benevolent or benign its motives – to view with suspicion those who most fervently dispute its policies. . . ."

Mitchell v. Forsyth, 472 U.S. 511, 523 (1985) (quoting *United States v. U.S. Dist. Ct. for the E. D. Mich.*, 407 U.S. 297, 314 (1972)). In such cases, the Government acts against dissenters by invoking "vague concepts" like "domestic security" or "national security." *Id.* This case illustrates what the Government can do when it harbors malevolent motives, such as the anti-union animus that drips of the pages of the Fact Sheet or that are uttered by White House spokespeople. *See supra* at 23-28. President Trump and the rest of the Defendants have seized upon "national security" as a pretext, seeking to protect their own agenda over safeguarding the public interest. 22 U.S.C. § 4101. A permanent injunction will restore the public's interest, as well as ensure the effective performance of government business in accordance with the laws passed by Congress.

C. The Court Should Enjoin Exec. Order No. 14,251 and the OPM Guidance Permanently

Finally, the Court should enjoin Executive Order No. 14,251, along with the OPM Guidance that implements the order, because, as noted above, the Defendants' efforts represent not just an effort to inflict irreparable injury upon AFSA and Foreign Service employees, but an effort by the President to repeal in part an Act of Congress. This violation of the separation of powers doctrine, which is weaved throughout this dispute, takes center stage at this moment.

The Constitution clearly defines the roles of legislature, executive and judiciary. Article 1 empowers Congress to enact laws, such as the Federal Service LMR Statute and the Foreign Service LMR Statute. Const., Art. I, Sec. 1. Article II vests the President with the responsibility to "take Care that the Laws be faithfully executed. . . ." *Id.*, Art. II, Sec. 3. This responsibility does not carry with it the power to amend or repeal laws that the President does not want to execute. *Sawyer*, 343 U.S. at 587 (1952). If the President believes that a Congressional enactment interferes with his Article II responsibilities, then he needs to go back to Congress to address the issue. The President cannot simply undo the law, directly or indirectly, expressly or implicitly, by seeking to

have an exception swallow the entire statute. Nor can the President retaliate against people and organizations who exercise their rights under the First Amendment to the Constitution.

When the President acts in derogation of his responsibility in Article II, undermining Congressional authority in Article I, it becomes the obligation of courts under Article III to resolve the controversy. Const., Art. III, Sec. 2. This authority is not circumscribed by the invocation of "national security" by the President (or, for that matter, Congress). "To deny inquiry into the President's power in a case like this, because of the damage to the public interest to be feared from upsetting its exercise by him, would in effect always preclude inquiry into the challenged power, which presumably only avowed great public interest brings into action." *Sawyer*, 343 U.S. at 596 (Frankfurter, J. concurring). "Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." *Id.* at 638 (Jackson, J. concurring).

The issuance of a permanent injunction not only restores the labor-management systems established by Congress, but it also preserves the separation of powers that is vital to our overall constitutional system, as well as protects the exercise of rights guaranteed by the First Amendment, such as the freedom of speech and the freedom of assembly. Therefore, the Court should enjoin Section 3 of the Injunction, as well as the OPM Guidance.

CONCLUSION

For the foregoing reasons, AFSA's motion for summary judgment should be granted on all claims, and the Court should enter the proposed order for declaratory judgment and permanent injunctive relief.

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Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FOREIGN SERVICE ASSOCIATION, *Plaintiff*, v. DONALD TRUMP, et al., *Defendants*.	)	Civil Action No. 25-cv-1030-PLF

PLAINTIFF AMERICAN FOREIGN SERVICE ASSOCIATION'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Fed. R. Civ. P. 56(c)(1)(A) and Local Rule 7(h)(1), Plaintiff American Foreign Service Association ("AFSA") submits that the following material facts are not in dispute:

I. AFSA, STATE AND USAID

A. The American Foreign Service Association

1. Plaintiff American Foreign Service Association ("AFSA") is a labor organization that represents 17,618 Foreign Service employees at five agencies: State, USAID, Foreign Commercial Service ("FCS"), Foreign Agricultural Service ("FAS"), United States Agency for Global Media ("USAGM"), and the Animal and Plant Health Inspection Service ("APHIS"). ECF No. 10-2, First Declaration of Thomas Yazdgerdi ("Yazdgerdi First Decl.") ¶ 3.

2. AFSA negotiates or consults with the agencies set forth in paragraph 1 on a wide range of personnel issues including but not limited to assignment procedures, tenure and promotion board procedures, agency-level grievance and discipline procedures, time-in-class and time-in-

service rules, procedures for awarding Meritorious Service Awards, and procedures relating to when investigatory interviews of employees may be recorded. ECF No. 10-2, Yazdgerdi First Decl. ¶ 9.

B. The Department of State

3. On January 22, 1973, AFSA was certified as the exclusive bargaining representative of all Foreign Service employees of the State Department. ECF No. 10-2, Yazdgerdi First Decl. ¶ 4; ECF No. 10-3, Declaration of Tina Wong ("Wong Decl.") ¶ 3.

4. AFSA represents a world-wide bargaining unit consisting of all Foreign Service employees who work for State except confidential employees, management officials, employees engaged in personnel work other than in a purely personal capacity, employees engaged in criminal or national security investigations, and employees who audit the work of individuals to ensure their functions are discharged with honesty and integrity. ECF No. 10-2, Yazdgerdi First Decl. ¶ 5; ECF No. 10-3, Wong Decl. ¶ 3.

5. Foreign Service employees who work for State are professional, nonpartisan diplomats whose work includes, but is not limited to, assisting individual U.S. citizens overseas; negotiating with foreign government representatives; processing visa applications; promoting U.S. business and economic interests globally; representing U.S. art and culture; and communicating U.S. policy goals to international media. ECF No. 10-2, Yazdgerdi First Decl. ¶ 1.

6. Foreign Service employees are assigned to one of five "cones" – management, consular, economic, political, or public diplomacy – and their tasks vary within each "cone." ECF No. 10-2, Yazdgerdi First Decl. ¶ 1.

7. Foreign service employees who serve as specialists have an area of specialty such as facilities management, medical information technology, office management, construction engineering, security, and many others. ECF No. 10-2, Yazdgerdi First Decl. ¶ 1.

8. AFSA and State entered into a new, updated Framework Agreement on July 15, 2019, which is the collective bargaining agreement that covers the Foreign Service employees. ECF No. 10-2, Yazdgerdi First Decl. ¶ 6, & Ex. 1; ECF No. 10-3, Wong Decl. ¶ 7.

9. The Framework Agreement addresses AFSA's ability to serve as the exclusive bargaining representative, including sections that provide 100 percent (100%) official time to the AFSA President and Vice President, office space in the Harry S. Truman building at no cost to AFSA, the use of State's electronic mail systems to communicate with members, the Union's right to information, the Union's right to dues allotment (or deduction), and the Union's right to notice and an opportunity to bargain over changes to conditions of employment. ECF No. 10-2, Yazdgerdi First Decl. ¶ 6 & Ex. 1 at 9, 11, 13-24; ECF No. 10-3, Wong Decl. ¶ 7.

C. United States Agency for International Development

10. AFSA was certified as the exclusive bargaining representative on January 22, 1973 of the Foreign Service employees who work for USAID. ECF No. 10-4, Declaration of Randall Chester ("Chester Decl.") ¶ 3.

11. AFSA represents a world-wide bargaining unit consisting of all Foreign Service employees who work for USAID except confidential employees, management officials, employees engaged in personnel work other than in a purely personal capacity, employees engaged in criminal or national security investigations, and employees who audit the work of individuals to ensure their functions are discharged with honesty and integrity. ECF No. 10-4, Chester Decl. ¶ 3.

12. A USAID Foreign Service employee, also known as a "development diplomat," designs, implements, and evaluates development projects and programs, often working with local communities, organizations, and governments to deliver effective development results. Members working for USAID are primarily focused on promoting development and humanitarian assistance in partner countries. ECF No. 10-4, Chester Decl. ¶ 4.

13. USAID Foreign Service employees design, implement, and evaluate projects that may include providing humanitarian aid, supporting infrastructure development, strengthening healthcare systems, and improving health outcomes, improving education opportunities, promoting private sector development and small businesses, increasing agriculture productivity, linking US business to new market opportunities, and improving delivery of government services in host countries. ECF No. 10-4, Chester Decl. ¶ 4.

14. USAID Foreign Service employees often have technical expertise in specific areas like public health, economic growth, democracy and governance, education, or agriculture, which allows them to design and manage complex projects worth tens of millions of dollars, ensuring that funds are used effectively and efficiently. Finally, Foreign Service employees work closely with local communities, organizations, and governments to develop strategies and partnerships that ensure effective development outcomes. ECF No. 10-4, Chester Decl. ¶ 4.

15. AFSA and USAID entered into a new Framework Agreement on December 7, 2022. ECF No. 10-4, Chester Decl. ¶ 7.

16. The Framework Agreement addresses the use of official time by the AFSA USAID Vice President, the union's right to office space and dues withholding. ECF No. 10-4, Chester Decl. ¶¶ 7, 14, 15.

II. THE LABOR-MANAGEMENT RELATIONS PROGRAM IN THE FOREIGN SERVICE

17. The labor-management relations program that governs the Foreign Service – as well as the collective bargaining relationships between AFSA, on the one hand, and State or USAID, on the other hand – is set forth in Subchapter X of Chapter 52 of the Foreign Service Act of 1980 ("FSA"), hereinafter referred to as "Subchapter X." 22 U.S.C. §§ 4101 *et seq.*

18. Congress expressly declared in the FSA that unions and collective bargaining in the Foreign Service "are in the public interest and are consistent with the requirement of an effective and efficient Government." 42 U.S.C. § 4101.

19. Congress drafted Subchapter X to apply to State, USAID, the Department of Agriculture, the Department of Commerce, and the Broadcast Board of Governors, now known as the U.S. Agency for Global Media ("USAGM"). 22 U.S.C. § 4103(a).

20. Congress drafted an exception to the coverage of Subchapter X to provide that the President may issue an Executive order to exclude "any subdivision of the Department from coverage under this subchapter if the President determines that … (1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and (2) the provisions of this subchapter cannot be applied to that subdivision in a manner consistent with national security requirements." 22 U.S.C. §§ 4103(b)(1) & (2).

21. On June 17, 1981, The Director, Office of Employee Relations for State, John A. Collins, sent a letter to the then-President of AFSA, Anthea S. DeRouvelle, in which Collins states that, notwithstanding Section 1003(b) of the FSA (which is 22 U.S.C. § 4103(b)), there would be no exclusions from Subchapter X when the FSA became law. ECF No. 10-7, Declaration of Sharon Papp ("Papp Decl.") ¶ 4 & Ex. 3.

22. Between June 17, 1980 (when Congress passed the FSA) and March 26, 2025, no U.S. President ever issued an executive order invoking Section 4103, 22 U.S.C. § 4103(b), to exclude a subdivision of a Department from Subchapter X.

23. AFSA has been the exclusive representative of employees at the Department of State and USAID during national security crises and wars, including the September 11, 2001 terrorist attacks and the war in Iraq that began in 2003. Declaration of John Naland ¶¶ 2, 5-7.

24. During this timeframe and thereafter, President George W. Bush, as well as Secretaries of State Colin Powell and Condoleezza Rice, never found that collective bargaining with AFSA as the Foreign Service employees' collective bargaining representative to be inconsistent with national security. Naland Decl. ¶ 7.

III. AFSA'S REPRESENTATION OF FOREIGN SERVICE EMPLOYEES

25. On January 20, 2025, President Donald J. Trump ("Trump") issued Executive Order 14,169, 90 Fed. Reg. 8,619 (Jan. 20, 2025). Exec. Order 14,169 directs an immediate "90 day pause in United States foreign development assistance for the assessment of programmatic efficiencies and consistency with United States foreign policy." *Id.*

26. On February 3, 2025, AFSA issued a press release criticizing "[t]he abrupt displacement of dozens of Foreign Service Officers on administrative leave without notice and proper justification" and "strongly object[ing] to the administration's decision to dismantle" USAID. Declaration of Elizabeth ("Nikki") Gamer ("Gamer Decl.") ¶ 5, Ex. 1.

27. On or about February 4, 2025, USAID issued the following announcement on its website, https://www.usaid.gov (Feb. 4, 2025):

> On Friday, February 7, 2025, at 11:59 pm (EST) all USAID direct hire personnel will be placed on administrative leave globally, with the exception of designated personnel responsible for mission-critical functions, core leadership and specially

> designated programs. Essential personnel expected to continue working will be informed by Agency leadership by Thursday, February 6, at 3:00pm (EST).
>
> For USAID personnel currently posted outside the United States, the Agency, in coordination with missions and the Department of State, is currently preparing a plan, in accordance with all applicable requirements and laws, under which the Agency would arrange and pay for return travel to the United States within 30 days and provide for the termination of PSC and ISC contracts that are not determined to be essential. The Agency will consider case-by-case exceptions and return travel extensions based on personal or family hardship, mobility or safety concerns, or other reasons. For example, the Agency will consider exceptions based on the timing of dependents' school term, personal or familial medical needs, pregnancy, and other reasons. Further guidance on how to request an exception will be forthcoming.
>
> Thank you for your service.

28. On February 5, 2025, AFSA released a press release describing the recall of USAID Foreign Service employees as a "reckless move" that "weakens America's presence abroad." Gamer Decl. ¶ 6, Ex. 2.

29. On February 6, 2025, AFSA and another union filed a lawsuit in the United States District Court for the District of Columbia, naming President Donald Trump, State, USAID, and others as defendants. *Am. Foreign Svc. Ass'n v. Trump*, No. 1:25-cv-00352 (Compl., ECF No. 1).

30. In the lawsuit, AFSA sought a declaratory judgment that Trump's dismantling of USAID is unconstitutional, as well as injunctive relief directing the defendants to cease shutting down USAID, reopen the department, and recall employees to work. *Id.* (ECF No. 1.)

31. On February 7, 2025, AFSA issued a press release announcing that it had filed "a lawsuit challenging the unprecedented effort to dismantle" USAID, reiterating the "devastating impact" of the "destabilizing decision" to dismantle the agency. Gamer Decl. ¶ 7, Ex. 3.

32. On February 12, 2025, President Trump issued Executive Order No. 14,211, *One Voice for America's Foreign Relations*, 90 Fed. Reg. 9,831 (Feb. 12, 2025).

33. Trump declared the following "policy" in Section 2 of Exec. Order No. 14,211:

> All officers or employees charged with implementing the foreign policy of the United States must under Article II do so under the direction and authority of the President. Failure to faithfully implement the President's policy is grounds for professional discipline, including separation. The personnel procedures of executive departments and agencies (agencies) charged with implementing the President's foreign policy must therefore provide an effective and efficient means for ensuring that officers and employees faithfully implement the President's policies.

Id. at 9,831.

34. President Trump also declared "Foreign Service Reform" in Section 5 of Executive Order No. 14,211, which includes in part:

> (a) The Secretary shall, consistent with applicable law, reform the Foreign Service and the administration of foreign relations to ensure faithful and effective implementation of the President's foreign policy agenda.
>
> (b) The Secretary shall, consistent with applicable law, implement reforms in recruiting, performance, evaluation, and retention standards, and the programs of the Foreign Service Institute, to ensure a workforce that is committed to faithful implementation of the President's foreign policy.
>
> (c) In implementing the reforms identified in this section, the Secretary shall, consistent with applicable law, revise or replace the Foreign Affairs Manual and direct subordinate agencies to remove, amend, or replace any handbooks, procedures, or guidance.

90 Fed. Reg. at 9831-32.

35. On February 22, 2025, AFSA issued a press release criticizing Defendant Office of Personnel Management ("OPM") and OPM's acting Administrator Charles Ezell ("Ezell") for the requirement that Foreign Service employees provide OPM with a weekly summary in "five bullets" of their work during the week. Gamer Decl. ¶ 8, Ex. 4.

36. The February 22 release reads, "[t]o disparage public servants by making them prove their value through this OPM email exercise does a disservice to them and to the country they love and work tirelessly to represent." *Id.*

37. The February 22 release adds, "AFSA will vigorously oppose any unlawful effort to terminate or diminish the work or sacrifice of Foreign Service members." *Id.*

38. On February 23, 2025, AFSA issued a press release responding to the latest administrative leave notice sent to Foreign Service employees at USAID, stating that:

> AFSA is deeply disappointed by the administration's hurried and callous decision to keep our dedicated public servants in limbo. Time and again, our members have shared how these reckless choices and the dehumanizing rhetoric directed at them have caused untold harm to their personal and professional lives. Our nation's diplomats and development professionals—who sometimes put their lives on the line in service to their country—have not been treated with the respect, dignity, and support they deserve and have earned.
>
> Gamer Decl. ¶ 9, Ex. 5.

39. On March 11, 2025, AFSA expressed "alarm[ ]" in a press release "that USAID has directed the destruction of classified and sensitive documents may be relevant to ongoing litigation regarding the termination of USAID employees and the cessation of USAID grants." Gamer Decl. ¶ 10, Ex. 6.

40. On March 15, 2025, AFSA issued a press release challenging the Trump Administration's efforts to disband the U.S. Agency of Global Media ("USAGM"), which employs sixteen (16) Foreign Service employees. Gamer Decl. ¶ 11, Ex. 7.

41. The March 15 press release argued that "[u]nilaterally stripping a congressionally established agency of its core functions amounts to an affront to the constitutional balance of powers," and warned that dismantling USAGM "weakens the nation's ability to counter disinformation, promote objective journalism, and engage global audiences at a time when these efforts are more vital than ever." Gamer Decl. ¶ 11, Ex. 7.

42. On March 19, 2025, AFSA issued a press release criticizing State's removal of Diversity, Equity, Inclusion and Accessibility ("DEIA") as factors used in performance evaluations and promotions in the Foreign Service." Gamer Decl. ¶ 12, Ex. 8.

43. The March 19 press release notes that the use of DEIA factors in performance evaluations and promotions had been negotiated in good faith between AFSA and State, and that "any changes to the tenure and promotion system must be subject to collective bargaining as required by law." Gamer Decl. ¶ 12, Ex. 8.

44. On March 21, 2025, AFSA and others filed a lawsuit in the United States District Court for the Southern District of New York seeking to enjoin the Trump Administration's disbandment of the USAGM. *See Widakusawara v. Lake*, No. 1:25-cv-02390 (S.D.N.Y., ECF No. 1, Compl.) This case has since been transferred to the U.S. District Court for the District of Columbia. No. 1:25-cv-887-RCL.

45. Between January 20, 2025 and March 27, 2025, multiple media publications, including *The New York Times*, NPR, CBS, CNN, and others quoted AFSA's press releases or statements by its officers. Gamer Decl. ¶ 14, Ex. 9.

46. Between January 20, 2025 and March 27, 2025, AFSA received dozens of requests for comment from journalists about the Trump Administration's actions affecting Foreign Service employees and lawsuits that AFSA filed against the Administration, and AFSA's Director of Communications has responded to requests on behalf of AFSA. Gamer Decl. ¶ 15.

47. Between January 20, 2025 and March 27, 2025, several international, national and local media outlets requested to interview AFSA officers, including then-President Thomas Yazdgerdi and then-USAID Vice President for USAID Randall Chester, both of whom provided interviews to the media. Gamer Decl. ¶ 15.

48. In his capacity as AFSA's Vice President for USAID, Randall Chester communicated with a variety of media sources to discuss the negative actions of the Trump Administration and the profound impact of these actions on the personal and professional lives and families of AFSA's constituents, including that he appeared for interviews on CNN, PBS News Hour, and CBS 60 Minutes, gave on-the-record interviews to Canadian Broadcasting Service, BBC, ABC, and NBC, and provided multiple interviews on background to various print and electronic media. Chester Decl. ¶¶ 21-23.

49. In his capacity as AFSA's President, Thomas Yazdgerdi appeared on February 7, 2025, for an interview on *The Lead with Jake Tapper*, a CNN production, where Yazdgerdi discussed President Trump's dismantling of USAID and AFSA's lawsuit to challenge that dismantling. Yazdgerdi First Decl. ¶ 25.

IV. PRESIDENT TRUMP'S ISSUANCE OF EXECUTIVE ORDER NO. 14,251

50. President Donald J. Trump issued an executive order on March 27, 2025 entitled Exclusions from Federal Labor-Management Relations Programs. Exec. Order No. 14,251, 90 Fed. Reg. 14,553 (Mar. 27, 2025).

51. The President determined in Section 1(a) of the Executive Order that the agencies and agency subdivisions set forth in Section 2 of the Order "have as a primary function intelligence, counterintelligence, investigative, or national security work," and 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." *Id.*, Sec. 1(a).

52. Section 2 of the President's Executive Order lists the agencies and agency subdivisions that the President determined should be excluded from the federal labor-management relations program set forth in Chapter 71, see 5 U.S.C. §§ 7101 et seq. *Id.*, Sec. 2.

53. Section 2 of the Executive Order sets forth the following exemptions:

> 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….

Exec. Order No. 14,251, Sec. 2.

54. The President invoked Section 4103, 22 U.S.C. § 4103(b) in Section 1(b) of the Executive Order to determine that the agency subdivisions identified in Section 3 of the Order "have as a primary function intelligence, counterintelligence, investigative, or national security work," and 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." *Id.*, Sec. 1(b).

55. Section 3 of the Executive Order lists the agency subdivisions that the President determined should be excluded from the federal labor-management relations program set forth in Subchapter X of Chapter 52 of title 22, United States Code ("Subchapter X"). *Id.*, Sec. 3.

56. President Trump designated the following subdivisions of State in Section 3 of the Executive Order:

(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.

57. The subdivisions of State identified in Section 3 of Executive Order No. 14,251 constitute the entirety of the Department of State. Exec. Order No. 14,251, Sec. 3.

58. Section 3 of the Executive Order No. 14,251 excludes all of the 14,699 Foreign Service employees who work for State domestically and abroad, from the coverage of Subchapter X of Chapter 52 of the Foreign Service Act ("FSA"). ECF No. 10-3, Wong Decl. ¶ 4.

59. Of the 14,699 Foreign Service employees who work at State, 11,949 were dues-paying members of AFSA as of April 1, 2025. ECF No. 10-3, Wong Decl. ¶ 4; Declaration of Christine Miele ("Miele Decl.") ¶ 3.

60. President Trump designated the following subdivisions of USAID in Section 3 of Executive Order No. 14,251:

(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.

61. The subdivisions of USAID identified in Section 3 of Executive Order No. 14,251 constitute the entirety of USAID. Exec. Order No. 14,251, Sec. 3.

62. Section 3 of Executive Order No. 14,251 excludes all of the 2,465 Foreign Service employees who work for USAID, domestically and abroad, from the coverage of Subchapter X of Chapter 52 of the FSA. ECF No. 10-4, Chester Decl. ¶ 4.

63. Of the 2,465 Foreign Service employees who work at USAID, 2,254 employees were dues-paying members of AFSA as of April 1, 2025. ECF No. 10-4, Chester Decl. ¶ 4; Miele Decl. ¶ 3.

64. Taken together, the Foreign Service employees excluded by Executive Order No. 14,251 – 17,164 employees in total – amount to ninety-seven (97%) percent of the total number of Foreign Service employees in bargaining units represented by AFSA – 17,618 employees in total – under Subchapter X of Chapter 52 of the FSA. ECF No. 10-2, Yazdgerdi First Decl. ¶ 3; ECF No. 10-3, Wong Decl. ¶ 4; ECF No. 10-4, Chester Decl. ¶ 4.

65. As of April 1, 2025, the active-duty dues-paying members at State and USAID – 14,203 Foreign Service employees in total – constituted ninety-seven percent (97%) of AFSA's active-duty employee membership of 14,593 employees. ECF No. 10-2, Yazdgerdi First Decl. ¶ 3; ECF No. 10-3, Wong Decl. ¶ 4; ECF No. 10-4, Chester Decl. ¶ 4. AFSA's total membership at that time, including retiree members, was 18,506. Miele Decl. ¶ 3.

V. THE WHITE HOUSE RELEASES A "FACT SHEET" ABOUT EXECUTIVE ORDER NO. 14,251

66. The White House issued a "Fact Sheet" on March 27, 2025 about Executive Order No. 14,251. *Fact Sheet: President Donald J. Trump Exempts Agencies with Nat'l Sec. Missions from Fed'l Coll. Barg. Requirements* (Mar. 27, 2025), https://perma.cc/26AL-73TZ ("Fact Sheet").

67. In explaining the exclusions of State and USAID from labor-management relations programs, the White House writes the following in the Fact Sheet:

Foreign Relations. Department of State, U.S. Agency for International Development, Department of Commerce, International Trade Administration and U.S. International Trade Commission.

- President Trump has demonstrated how trade policy is a national security tool.

Fact Sheet, *supra*.

68. The White House confirmed in the Fact Sheet that "[p]olice and firefighters will continue to collectively bargain." *Id.*

69. The White House declares in the Fact Sheet that the Civil Service Reform Act, whose labor-management relations program is similar to Subchapter X, "enables hostile Federal unions to obstruct agency management." *Id.* The Fact adds that, "[t]his is dangerous in agencies with national security responsibilities[.]" *Id.*

70. The White House further writes in the Fact Sheet that "[c]ertain Federal unions have declared war on President Trump's agenda." *Id.* To support this claim, the White House notes that "[t]he largest Federal union describes itself as 'fighting back' against Trump. It is widely filing grievances to block Trump policies." *Id.*

71. The White House continues, "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." *Id.*

VI. THE OFFICE OF PERSONNEL MANAGEMENT RELEASES "GUIDANCE" ABOUT EXECUTIVE ORDER NO. 14,251

72. Charles Ezell, Acting Director of the Office of Personnel Management ("OPM"), issued a memorandum on March 27, 2025 to heads of departments and agencies providing guidance on implementing the Executive Order. Charles Ezell, *Guidance on Executive Order*

Exclusions from Federal Labor-Management Programs, OPM (Mar. 27, 2025), https://perma.cc/Z2ZJ- Y8U7 ("OPM Guidance").

73. According to the OPM Guidance, the agencies and subdivisions set forth in Section 2 of the Executive Order "are no longer subject to the collective bargaining requirements of chapter 71," and the unions representing bargaining unit employees at those agencies have "los[t] their status" as the exclusive representatives for those employees. *Id.* at 3.

74. The subdivisions set forth in Section 3 of the Executive Order are also not subject to the collective bargaining requirements of Subchapter X, and AFSA, who represents employees at State and USAID, has lost its exclusive representative status as a result of the order. *Id.*

75. The OPM Guidance provides in its initial section, entitled "Performance Accountability," that "[s]hortly after taking office the President issued multiple directives to facilitate the separation of underperforming employees." *Id.* OPM opines in this section that "[a]gency CBAs often create procedural impediments to separating poor performers beyond those required by statute or regulation." *Id.*

76. The OPM Guidance further provides that, to implement the Executive Order, "agencies should cease participating in grievance procedures after terminating their [collective bargaining agreements] (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." *Id.* at 5.

77. The OPM Guidance further observes, under the heading "Disregard Contractual RIF Articles," that "[t]he President has directed agencies to prepare large-scale reductions in force (RIFs)." *Id.*

78. The OPM Guidance instructs heads and acting heads of covered agencies and departments that "[a]fter 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." *Id.*

79. The OPM Guidance also directs heads and acting heads of agencies and departments to discontinue the use of official time (dubbed "taxpayer-funded union time"), which employees use to perform responsibilities as union representatives, once the covered agency or department terminates the CBA. *Id.* Covered agencies and Departments should reassign those employees to agency business. *Id.*

80. The OPM Guidance also directs covered agencies and departments to discontinue the provision of office space to unions and the coverage of certain union expenses (*e.g.*, travel and per diem) after the termination of the CBAs. *Id.*

81. The OPM Guidance further directs that, once the CBA is terminated, covered agencies and departments "should terminate" the allotment or deduction of union dues from employees' pay "except where required by statute." *Id.*

VII. THE IMPLEMENTATION OF EXECUTIVE ORDER NO. 14,251 WITH RESPECT TO THE FOREIGN SERVICE

82. On March 28, 2025, USAID issued a new Reduction-in-Force ("RIF") notice to most of the USAID Foreign Service employees. ECF No. 10-4, Chester Decl. ¶ 18.

83. On March 31, 2025, the State Department's Chief Negotiator sent an e-mail to AFSA representatives that read:

> On Thursday, March 27, 2025, the President issued an Executive Order (EO), entitled "Exclusions from Federal Labor-Management Relations Programs." In compliance with the EO, effective immediately, the Department hereby terminates the Framework Agreement with AFSA and will no longer recognize AFSA as an exclusively recognized labor organization.

> The Department will cease all further payroll dues allotments immediately. Additionally, all recurring meetings between AFSA and the Department are cancelled. Official time for the AFSA President, AFSA State VP, and the additional AFSA representative on 100% official time under the terms of Article 5, Section 3(b) of the Framework Agreement will end at the close of business today. We encourage these employees to be in contact with their CDO [Career Development Officers] to pursue appropriate follow-on assignments.
>
> AFSA elections may not proceed using agency space or government equipment (i.e., .gov messaging). AFSA must also remove all material from and vacate AFSA's Department-provided office suite in HST by COB April 4. AFSA's access to the suite will end no later than Friday, April 4.

ECF No. 10-3, Wong Decl. ¶ 12; ECF No. 10-2, Yazdgerdi First Decl. ¶ 10 & Ex. 4.

84. Between March 31, 2025 and this court's order granting a preliminary injunction on May 14, 2025, State ceased all communications and meetings with AFSA and its representatives concerning Foreign Service employees' working conditions. ECF No. 10-2, Yazdgerdi First Decl. ¶ 10; ECF No. 10-3, Wong Decl. ¶¶ 8, 12.

85. Both State and USAID have eliminated the ability of AFSA's officers to represent Foreign Service employees during work hours by taking away the officers' official time. ECF No. 10-3, Wong Decl. ¶ 20; ECF No. 10-4, Chester Decl. ¶ 15; ECF No. 10-5, Declaration of Asgeir Sigfusson ("Sigfusson First Decl.") ¶¶ 14-15.

86. The Foreign Service Greivance Board ("FSGB") has informed AFSA that the FSGB no longer considers AFSA the exclusive representative of employees at State and USAID, and that the FSGB will no longer require that AFSA receive courtesy copies of filings, orders, and decisions in grievance proceedings unless the grievant has specifically designated AFSA as their representative. ECF No. 10-6, Parikh Decl. ¶¶ 6, 8, Ex. 1.

VIII. EFFECTS OF THE EXECUTIVE ORDER ON AFSA AND ITS MEMBERS

87. On April 22, 2025, the Department of State announced a "reorganization" that would include reductions in force ("RIFs"). Third Declaration of Thomas Yazdgerdi ¶ 4 ("Third Yazdgerdi Decl.").

88. On May 30, 2025, the Department of State sent AFSA officers an email containing proposed changes to the RIF regulations in the Foreign Affairs Manual ("FAM"). Third Yazdgerdi Decl. ¶ 5 & Ex. 1.

89. The changes included redefining the competitive area for RIFs from a worldwide competitive area to an office-by-office competitive area, whereas the then-effective FAM required that "The competitive area for a RIF will not be limited to a specific post, region, or bureau. All members in a competition group, regardless of location, will be reviewed and placed on a retention register." *Id.*

90. While this court's preliminary injunction was in effect, a team of AFSA officers and staff met with Department of State officials on June 17, 2025 and June 20, 2025 to negotiate State's proposed changes to the RIF procedures. Third Yazdgerdi Decl. ¶ 6.

91. During these meetings and in written correspondence, AFSA made proposals to mitigate the effects of RIFs on Foreign Service members, such as requiring that individuals serving in positions that would be eliminated be provided with a reasonable time and opportunity to bid on new assignments, and that the Department continue to use a global competitive area in conducting any RIFs, instead of the office-by-office competitive area that the Department had proposed. Third Yazdgerdi Decl. ¶ 7.

92. On June 23, 2025, a Department of State attorney who attended the June 20 negotiation session sent an email to AFSA regarding the negotiations on the RIF procedures, which

stated that that "[g]iven the stay issued by the Court of Appeals, DC Circuit on Friday, June 20, which allowed the continued implementation of the President's Executive Order on Exclusions from Federal Labor Management Programs, we will not be engaging further with AFSA on this matter at this time." Third Yazdgerdi Decl. ¶ 9 & Ex. 2.

93. Also on June 23, 2025, the Department of State published a revised version of the FAM, which defined competitive area on an office-by-office basis. Third Yazdgerdi Decl. ¶ 10.

94. The Department of State sent RIF notices to 246 employees on July 11, 2025. Third Yazdgerdi Decl. ¶ 10. *See also* State Department enacts widespread layoffs, cutting 1,353 staff as part of reorganization, CBS NEWS (July 12, 2025), https://www.cbsnews.com/news/state-department-trump-administration-start-layoffs-in-coming-days/.

95. Employees received RIF notices if they had been assigned to an office slated for reorganization or elimination as of May 29, 2025 – even if the employees had obtained new assignments scheduled to start in the near future or had already transferred to their next assignment by July 11, 2025. Third Yazdgerdi Decl. ¶ 10.

96. In March 2025, the Department of State unilaterally changed the Core Precepts for promotion and tenure decisions, which it previously had negotiated with AFSA, to remove criteria related to diversity, equity, inclusion, and accessibility. Third Yazdgerdi Decl. ¶¶ 19-20 & Exs. 4-5.

97. On June 9, 2025, AFSA filed an implementation dispute with the Department of State regarding unilateral changes that State made to the anti-bullying policy set forth in 3 FAM 1540 *et seq*. Second Declaration of Neera A. Parikh ("Second Parikh Decl.") ¶ 3, Ex. 1.

98. The Department of State and AFSA engaged in settlement negotiations on the implementation dispute while the preliminary injunction issued by this Court was in effect. Second Parikh Decl. ¶ 4, Ex. 2.

99. On June 30, 2025, an attorney-adviser in the State Department's Bureau of Global Talent Management/Grievance Office informed AFSA that the Department of State was ending settlement negotiations and dismissing the implementation dispute on the anti-bullying policy:

> I was preparing to send you a proposed settlement agreement when the DC Circuit's decision came down. That decision effectively strips AFSA of its status as the exclusive bargaining representative. We believe it nullifies the implementation dispute and thus negates any opportunity to settle. We plan on issuing a dismissal of the implementation dispute.

Second Parikh Decl. ¶ 4, Ex. 2.

100. Also on June 30, 2025, AFSA learned that the Department of State had summarily and without prior notice to AFSA canceled the assignment details of 200 Foreign Service employees who were assigned to work at organizations outside of the Department of State. Third Yazdgerdi Decl. ¶¶ 14-15.

101. Prior to the convening of annual promotion boards each summer (before this year), the Department of State has historically provided AFSA with the number of available promotions, broken down by grade and cone/specialty, pursuant to the "Safeguard Agreement" between AFSA and State. Third Yazdgerdi Decl. ¶ 16; ECF No. 10-2, Yazdgerdi Decl. ¶ 13.

102. After Executive Order 14,251 issued, the Department of State failed to provide AFSA with the number of available promotions. Third Yazdgerdi Decl. ¶ 16.

103. AFSA's President learned on July 7, 2025 that the Department of State had unilaterally published Core Precepts for 2025-2028, which set forth criteria for tenure and promotion decisions, without negotiating with AFSA. Third Yazdgerdi Decl. ¶ 18.

104. The 2025-2028 Core Precepts contain a new precept of "fidelity," which was not part of the 2022-2025 Core Precepts. Third Yazdgerdi Decl. ¶ 18, Exs. 3-5.

105. "Fidelity" is defined in the 2025-2028 Core Precepts to include acting "for the Constitution of the United States by protecting and promoting executive power under Article II." Ex. 3 at 2.

106. Prior to March 27, 2025, the federal departments and agencies employing AFSA members automatically deducted union membership dues from the paychecks of employees who had authorized such deductions and remitted those dues directly to AFSA. Miele Decl. ¶ 4.

107. Before March 27, 2025, the vast majority of AFSA's active-duty members (13,478 out of 14,593) paid dues by payroll deductions. ECF No. 10-2, Yazdgerdi Decl. ¶ 3; Miele Decl. ¶ 4.

108. After Executive Order 14,251 issued on March 27, 2025, the Department of State and USAID terminated the automatic deduction of dues from AFSA's active-duty members. Miele Decl. ¶ 5.

109. State also has terminated dues deductions from the annuity payments to AFSA's retiree members, including retirees from all agencies employing Foreign Service members. Miele Decl. ¶¶ 4-5.

110. USAID resumed the deduction of dues for one pay period while this court's preliminary injunction was in effect, but stopped the dues deductions again after the D.C. Circuit stayed the preliminary injunction. Miele Decl. ¶ 5.

111. The Department of State never resumed the deduction of dues. Miele Decl. ¶ 5.

112. AFSA has sent communications to its members encouraging them to pay dues directly to AFSA through AFSA's website or by check, following the terminations of automatic dues deductions described above. Miele Decl. ¶ 7.

113. Only 8,300 members have converted to direct payment of dues. Miele Decl. ¶ 7.

114. As of July 29, 2025, AFSA's total membership had decreased to 10,698 – a decrease of 7,808 dues-paying active-duty and retiree members from the 18,506 at the time the Executive Order was first implemented. Miele Decl. ¶ 3.

115. As of July 29, 2025, AFSA had 5,835 members at the Department of State, 1,056 at USAID, 212 at FCS, 127 at FAS, 26 at APHIS, 11 at USAGM, and 3,431 retiree members. Miele Decl. ¶ 3.

116. Between July 1, 2025 and July 29, 2025, AFSA "lapsed" the memberships of State, USAID, and retiree members who had not signed up for the direct payment of dues, so those individuals are no longer listed as members as of July 29, 2025. Miele Decl. ¶ 8.

117. Members have reported to AFSA that Department of State-issued computers block the portion of AFSA's website that permits members to sign up to pay dues directly, with a "403 Access Denied" error message. Miele Decl. ¶¶ 9-12.

118. On July 24, 2025, AFSA State VP Rohit Nepal encountered a 403 Access Denied error message upon attempting to use his Department of State-issued computer to access the AFSA webpage where members can sign up to pay dues. Declaration of Rohit Nepal ("Nepal Decl.") ¶ 14, Ex. 1.

119. Nepal did not encounter the same error message upon attempting to access the AFSA direct payment system from a personal device on the same day. Nepal Decl. ¶ 14.

120. Nepal successfully accessed a link to donate to the Fraternal Order of Police from his Department of State computer on July 24, 2025. Nepal Decl. ¶ 15.

121. As of June 30, 2025, AFSA's year-to-date dues revenue was $891,320 below projections that were made before the Department of State and USAID ceased deduction of union dues. Naland Decl. ¶ 9.

122. AFSA has lost $766,629 in projected dues revenue from active-duty employees and $124,691 in projected dues revenue from the Foreign Service pensions of retirees who are members of AFSA. Naland Decl. ¶ 9.

123. Due to this loss in revenue, AFSA has already had to reduce its operating costs. Since the start of 2025, AFSA has cancelled hiring for an approved new position and allowed three longtime staff positions to remain vacant after the employees in those positions resigned. Naland Decl. ¶ 10.

124. AFSA has no plans to fill those positions, leaving staffing levels down 15 percent from 2024. *Id.*

125. AFSA also reduced the publication of *The Foreign Service Journal* from ten to six issues per year to save on printing and mailing costs, resulting in a corresponding decline in advertising revenue. *Id.*

126. AFSA has been able to meet its other operating expenses only by drawing down on its Operating Reserve emergency fund, but AFSA cannot continue to rely on that fund indefinitely. Naland Decl. ¶ 11.

127. Newly elected AFSA State Vice President Rohit Nepal, who began his term of office on July 15, 2025, is an active-duty employee of the Department of State who is currently

without a Foreign Service work assignment but will eventually have to return to a full-time work assignment to remain employed. Nepal Decl. ¶¶ 2, 9.

128. When Nepal decided to run for union office, the AFSA State Vice President position was on 100% official time, meaning that the Department of State paid the salary for the position while the AFSA State Vice President performed union duties full-time. Nepal Decl. ¶ 3.

129. Now that the Department of State has ended official time for union officers, Nepal will have to either obtain a full-time Foreign Service work assignment to remain an active-duty employee and perform his union duties outside of business hours, or retire from the Foreign Service to continue serving as the AFSA State VP. Nepal Decl. ¶¶ 4, 6, 7.

130. Nepal is concerned that, because of his association with AFSA and his service as an AFSA officer, the Department of State will retaliate against him by rejecting his bids for assignments or involuntarily assigning him to an unsuitable post—especially if he opposes or challenges the actions of the Department of State or the Trump administration while performing his union duties. Nepal Decl. ¶¶ 12-13.

131. After official time for AFSA officers ended because of Executive Order 14,251, newly elected AFSA President John Dinkelman chose to retire from the Department of State so that he could serve full-time in his union position, because it would be impossible to perform all of the duties of the AFSA President while simultaneously working in a full-time Foreign Service assignment for the Department of State. Declaration of John Dinkelman ("Dinkelman Decl.") ¶ 3; Naland Decl. ¶ 12.

132. The AFSA Governing Board voted to pay the difference between President Dinkelman's former government salary and his annuity as a Foreign Service retiree, which is about

fifty percent of his salary. Naland Decl. ¶ 12; Nepal Decl. ¶ 8. This will cost AFSA $109,600.68 per year. Naland Decl. ¶ 12.

133. AFSA does not have sufficient financial resources to pay the salary of all officers who lost their official time. Naland Decl. ¶ 13.

134. The AFSA Governing Board has determined that if the AFSA State Vice President, Rohit Nepal, retires to perform union work full-time, AFSA will not be able to pay the difference between his former government salary and his annuity as a Foreign Service retiree. Naland Decl. ¶ 13.

135. On May 7, 2025, one of AFSA's elected Governing Board members resigned from their elected officer position, explaining that they were resigning because "I cannot continue to serve without feeling that I would be subjecting my family to an avoidable risk of further disruption," *i.e.*, that they feared adverse action from their government employer if they continued to serve in their union position. Second Sigfusson Decl. ¶ 4 & Ex. 1.

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Respectfully submitted,

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