

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

**AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS, *et al.*,**

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 1:25-cv-02445-PLF

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

The government’s opposition does not provide a persuasive reason for the Court to depart from its recent analysis of the same legal issues and preliminary injunction factors in *Federal Education Association v. Trump* (“*FEA*”), No. CV 25-1362-PLF, 2025 WL 2355747 (D.D.C. Aug. 14, 2025). Indeed, the equities weigh more strongly in favor of preliminary relief than when the Court issued the *FEA* preliminary injunction. The government does not dispute that, in August 2025, the government changed its position and will no longer voluntarily refrain from repudiating collective bargaining agreements (“CBAs”) pending the outcome of litigation about the Executive Order’s validity. Federal agencies have started to formally repudiate their CBAs, refuse to accept grievances (rather than hold them in abeyance), and inform Plaintiffs’ bargaining unit employees they have no contractual rights, cannot have union representation in disciplinary proceedings, and risk criminal liability for engaging in union activities, even when off-duty. *See* PI Mem. at 1–2, 6–7, 19–21 (Doc. 27-1). The government does not dispute this or disavow those statements.

ADDITIONAL DEVELOPMENTS

After the preliminary injunction motion was filed, President Trump issued Executive Order No. 14343, Further Exclusions from the Federal Labor-Management Relations Program, 90 Fed. Reg. 42683 (Aug. 28, 2025) (“EO 14343”). EO 14343 strips tens of thousands of federal workers at additional agencies of their collective bargaining rights based on 5 U.S.C. §7103(b). Those agencies are: “Units in the Bureau of Reclamation with primary responsibility for operating, managing, or maintaining hydropower facilities”; “International Trade Administration”; “Office of the Commissioner for Patents and subordinate units, Patent and Trademark Office”; “National Environmental Satellite, Data, and Information Service”;

“National Weather Service”; “National Aeronautics and Space Administration” and “United States Agency for Global Media.” 90 Fed. Reg. at 42683.¹

The issuance of EO 14343 confirms that the government’s interpretation of 5 U.S.C. §7103(b) would permit the President to repeal the Federal Service Labor Management Relations Statute (“FSLMRS”) in its entirety. That could not have been Congress’ intent in providing statutory protections for federal employee collective bargaining in 1978, rather than leaving the issue to executive branch discretion.

ARGUMENT

I. This Court has jurisdiction.

The government argues that Congress intended to withdraw district court jurisdiction and channel challenges to the Executive Order to the Federal Labor Relations Authority (“FLRA”). Opp. at 8–13 (Doc. 37). The Court has considered and rejected this argument several times, most recently in *FEA*. The government’s opposition provides no reason to change that conclusion.

The only post-*FEA* decision that the government cites is *National Treasury Employees Union v. Vought*, No. 25-5091, 2025 WL 2371608 (D.C. Cir. Aug. 15, 2025). But *Vought* did not involve an executive order that excluded the plaintiffs from the relevant administrative review schemes. The *Vought* Court concluded that the plaintiff unions’ injuries “flow[ed] from their members’ loss of employment,” and that those injuries were redressable by the FLRA and the Merit Systems Protection Board, so “a specialized-review scheme governs such claims and ousts

¹ Three lawsuits challenging EO 14343 have already been filed: *National Weather Service Employees Organization v. Trump*, No. 1:25-cv-02947-PLF, *National Treasury Employees Union v. Trump*, No. 1:25-cv-02990-PLF, and *AFSCME v Trump*, No. 1:25-cv-03306-PLF.

the district courts of their arising-under jurisdiction.” 2025 WL 2371608, at *5. By contrast, the FLRA is not available to Plaintiffs here because the Executive Order takes away the FLRA’s jurisdiction. Nothing in *Vought* calls this Court’s prior analysis into question.

The government also continues to insist that Congress intended to provide for “meaningful review” of challenges to the Executive Order through channels that are unrealistic. According to the government, Plaintiffs should file grievances against agencies for violating their CBAs and take the grievances to arbitration and then to the FLRA. Opp. at 11 (“These issues fall well within the Statute’s broad definition of ‘grievance.’”). But the government does not dispute that the defendant agencies refuse to process grievances because of the Executive Order. *See, e.g.*, Biggs Decl. ¶18, Ex. 3, at 6 (Doc. 27-3) (stating that no grievances will be accepted). Similarly, the government urges that a complaint that “the relevant agencies have not complied with FSLMRS requirements” is “a quintessential ULP charge, which the FLRA General Counsel prosecutes.” Opp. at 11. But there is no FLRA General Counsel; the Executive Order removes Plaintiffs from the FSLMRS (and, therefore, from the General Counsel’s jurisdiction); and the General Counsel’s failure to issue a complaint is not reviewable by the FLRA. *See FEA PI Reply* at 5–7 (*FEA Doc. 29*) (citing the relevant authorities).

Moreover, even if a challenge to the Executive Order could reach the FLRA, the purpose of requiring administrative channeling is “to allow an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies.” *Akiachak Native Cmty. v. U.S. Dep’t of Interior*, 827 F.3d 100, 114 (D.C. Cir. 2016) (quoting *Parisi v. Davidson*, 405 U.S. 34, 37 (1972)). The FLRA would not do any of that here because the Executive Order takes away the FLRA’s jurisdiction. The “ultimate question” being answered by the *Thunder Basin* analysis is

“how best to understand what Congress has done—whether the statutory review scheme, though exclusive where it applies, reaches *the claim in question*.” *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 186 (2023) (emphasis supplied). The “claim[s] in question” here are not the type of claims that Congress intended to withdraw from district court jurisdiction and give to the FLRA.

II. Plaintiffs are likely to prevail on the merits.

A. Plaintiffs’ *ultra vires* claim is likely to succeed.

1. As the government acknowledges, this Court already analyzed the relevant legal issues and concluded that the Executive Order should be considered as a whole and will likely be invalidated as *ultra vires* action. Opp. at 14. The government does not provide any reason why that same analysis does not apply fully to the *ultra vires* claim in this case.

The government asserts that the Plaintiffs here are “ignor[ing] the guidance the D.C. Circuit has *subsequently* provided on these very issues.” *Id.* (emphasis supplied). But the government does not cite any post-*FEA* authority. This Court was aware when it issued its preliminary injunction order in *FEA* that a D.C. Circuit panel had issued a stay pending appeal (not a merits decision) in *American Foreign Service Association v. Trump*, No. 25-5184, 2025 WL 1742853 (D.C. Cir. June 20, 2025), which concerns the Foreign Service Act of 1980. The government discussed that stay order in its opposition in *FEA*, and this Court cited and quoted the stay order in its decision. *See FEA*, 2025 WL 2355747, at *8. The government offers nothing new here.²

² At the time this brief is filed, a D.C. Circuit panel is considering the government’s motion for a stay pending appeal of the *FEA* preliminary injunction.

The government’s opposition also confirms that the government’s interpretation of Section 7103(b) would allow the President to repeal the FSLMRS entirely. In the government’s view, for example, the Environmental Protection Agency (“EPA”) has a “primary function” of “national security work,” 5 U.S.C. §7103(b)(1)(A), because, *inter alia*, “EPA policymaking regarding renewable energy sources has substantial effects on national security by promoting use of products, such as electric vehicle batteries, that could increase the United States’s dependence on foreign adversaries like China” and “EPA efforts with fossil fuel use have a direct bearing on America’s economic and productive capacity, and thus U.S. national security.” Molina Decl. ¶¶4.b–c (Doc. 37-4). Analogous assertions could be made about *every* cabinet-level agency. *See Nat’l Treasury Emps. Union v. Trump (“NTEU”),* 780 F. Supp. 3d 237, 259–62 (D.D.C. 2025). Yet Congress chose to cover these agencies in the FSLMRS, and the government does not point to any subsequent events that have changed the agencies’ essential missions.

2. Plaintiffs are also likely to prevail on their claim that the Executive Order is *ultra vires* because it does not conform with how Section 7103(b)(1) authority must be exercised. The government asserts that the Executive Order shows that “the President determined” that the two statutory factors (“primary function” and “cannot be applied”) are satisfied with respect to “each specified agency or subdivision.” Opp. at 18. But the Executive Order does not exclude “each specified agency or subdivision” from the FSLMRS because it does not exclude police, firefighter, and security guard units. Under 7103(b)(1)’s plain text, if the President intends to exclude subdivisions on a granular level, the President must make Section 7103(b)(1) determinations on a granular level. He cannot determine that an entire agency, considered as a whole, meets the criteria for exclusion when the entire agency is not being excluded. This makes a difference because Section 7103(b)(1) requires a determination that the excluded subdivision

(not the non-wholly excluded agency in which it resides) has a “primary” national security purpose. *See FEA*, 2025 WL 2355747, at *12 (explaining why the “level[]” at which the analysis is conducted may affect the conclusion).

The government’s argument about the exceptions from the Executive Order also provides further support for the conclusion that the Executive Order as a whole is *ultra vires* because it could not have been based on an individualized application of the statutory factors. In the government’s view, the President determined that the FSLMRS cannot be applied to multiple cabinet-level agencies for national security reasons, except for every “office” within every agency—regardless of whether the “office” is even “a complete or formal component of an agency,” *Opp.* at 21—that happens to employ a police officer, firefighter or security guard. The government’s opposition does not even attempt to offer a rationally conceivable basis for such distinctions that have any connection whatsoever to national security.

B. Plaintiffs’ First Amendment claim is likely to succeed.³

The government contends that some Plaintiffs have not presented evidence that they engaged in protected conduct. *Opp.* at 23. But all the Plaintiff unions are affiliated with Plaintiff American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) and make per capita contributions to the AFL-CIO to serve as a voice for its affiliated unions. Ginsburg Decl. ¶¶2–3, 29 (Doc. 27-2). The AFL-CIO (and its larger affiliates) have continually spoken out against actions taken by the President and filed lawsuits to challenge his administration’s actions. *See, e.g., id.* ¶¶15–16; McNeil Decl. ¶¶ 26–27 (Doc. 27-4). The other Plaintiffs’ association or

³ The government points out that a district court injunction based on a First Amendment challenge to the Executive Order was stayed pending appeal by a Ninth Circuit panel. *Opp.* at 22. A Ninth Circuit judge subsequently asked for briefing on whether the stay decision should be reheard en banc. Doc. 57, *AFGE v. Trump*, No. 25-4014 (9th Cir.). At the time this brief is filed, the issue whether to grant en banc review is pending in the Ninth Circuit.

perceived association with the AFL-CIO is protected by the First Amendment. *Keyishian v. Bd. of Regents*, 385 U.S. 589, 605–06 (1967); *Heffernan v. City of Paterson*, 578 U.S. 266, 272 (2016). Moreover, declining to support the President’s political goals is protected activity. *Galli v. New Jersey Meadowlands Comm’n*, 490 F.3d 265, 275 (3d Cir. 2007) (“political unaffiliation, or ‘failure to support’ the official or party in power[] creates a constitutionally protected interest under the First Amendment”).

The government urges that the White House Fact Sheet issued with the Executive Order does not provide evidence of a retaliatory motive because Fact Sheets are “are not direct statements of the President.” Opp. at 24. But elsewhere in its brief, the government concedes that the Fact Sheet conveys the President’s policy “objective” and reasoning. Opp. at 25. In assessing retaliatory motive, courts routinely consider contemporaneous official documents explaining the reasons for government action. See, e.g., *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 184, 193–194 (2024) (considering official “guidance letters” and agency’s press release in assessing retaliation); *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 159 (D.D.C. 2025) (“the fact sheet says it all: plaintiff [is]...targeted because of plaintiff’s ‘partisan lawsuits’”); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of President*, 784 F. Supp. 3d 127, 153–55 (D.D.C. 2025) (relying on Fact Sheet in finding retaliation), *amended sub nom. Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, No. CV 25-917 (RJL), 2025 WL 2105262 (D.D.C. June 26, 2025).

The government claims that the Fact Sheet and Executive Order do not evidence any causal connection between protected activity and the President’s action. Opp. at 23–25. To the contrary, as stated in the opening memorandum, the Fact Sheet expressly states that the Executive Order was issued in response to “hostile Federal unions” who had “declared war on

President Trump’s agenda.” PI Mem. at 13–14. The Executive Order itself also evidences retaliation. The Executive Order strips collective bargaining rights from the vast majority of the federal workforce, while preserving those rights for law enforcement unions that have been political supporters of the President. PI Mem. at 13. *See Benton v. Laborers’ Joint Training Fund*, 121 F. Supp. 3d 41, 61 (D.D.C. 2015) (“evidence that a similarly situated employee who did not engage in protected activity received more favorable treatment is probative of pretext”). The Executive Order excludes bargaining units that have had continuous union representation for more than 50 years without any interference with national security considerations. PI Mem. at 15. A retaliatory motive is the only motive that explains the sweep of the Executive Order.⁴

Finally, the government asserts that it will show that the President would have reached the same decision had the protected conduct never occurred. *Opp.* at 25–26; *Mazaleski v. Treusdell*, 562 F.2d 701, 715 (D.C. Cir. 1977) (the government carries the burden to show it would have reached the same decision). But the government will not be able to carry that burden because of the breadth of the Executive Order. The government also has not made a serious effort to dispute the evidence provided by Plaintiffs and relied upon by this Court in *NTEU, FEA*, and *Am. Foreign Serv. Ass’n v. Trump* (“*AFSA*”), 783 F. Supp. 3d 248 (D.D.C. 2025), showing that retaliation for protected conduct was the motivation for the Executive Order. Instead, the government wraps itself in the presumption of regularity, which this Court already concluded has

⁴ The Executive Order is also part of a pattern of presidential proclamations and executive orders that invoke “national security” to punish and chill institutions that do not support the President’s political agenda. *See, e.g., President & Fellows of Harvard Coll. v. United States Dep’t of Homeland Sec.*, No. 25-CV-11472-ADB, 2025 WL 1737493 (D. Mass June 23, 2025) (enjoining implementation of presidential proclamation entitled “Enhancing National Security by Addressing Risks at Harvard University”); *Perkins Coie*, 783 F. Supp. 3d 105 (enjoining implementation of executive order entitled “Addressing Risks from Perkins Coie LLP”).

been rebutted. *FEA*, 2025 WL 2355747, at *9–11; *NTEU*, 780 F. Supp. 3d at 253–57; *AFSA*, 783 F. Supp. 3d at 264–65.

The government points to *Trump v. Hawaii*, 585 U.S. 667, 684 (2018) to argue that the Court must blindly defer to the President’s asserted national security determinations. Opp. at 25–26. But, as this Court has explained, *Trump v. Hawaii* involved a different statute that, unlike Section 7103(b)(1), exudes deference to the President. *FEA*, 2025 WL 2355747, at *9 (“Section 7103(b)(1) plainly does not confer the same ‘broad’ grant of authority as was at issue in [*Trump v. Hawaii*].”). As such, here the Court can compare the scope of the Executive Order with the text of Section 7103(b)(1). The comparison makes clear that the Executive Order could not have been based on an application of the statute.

Finally, the government cites *Nieves v. Bartlett*, 587 U.S. 391 (2019) and *Reichle v. Howards*, 566 U.S. 658 (2012), for the proposition that protected speech can be a “wholly legitimate consideration” underlying official action. Opp. at 25. But *Nieves* and *Reichle* involved retaliatory arrests and prosecutions, contexts with “complex causal inquiries” that make it “particularly difficult to determine whether the adverse government action was caused by the officer’s malice or the plaintiff’s potentially criminal conduct.” *Nieves*, 587 U.S. at 402; *see also Reichle*, 566 U.S. at 668. Those considerations are not present here.

C. Plaintiffs’ Fifth Amendment claim is likely to succeed.

1. The government does not dispute that the Fifth Amendment includes an equal protection component. The rational basis standard is not demanding, but the government’s opposition fails to offer any legitimate and rationally conceivable basis for excluding all workers employed at every subdivision in six cabinet-level departments from the FSLMRS, except for all offices within those departments that employ police, firefighters, or security guards. The

government simply intones the standard for rational-basis review without offering any rational basis for the line the Executive Order draws. *See* Opp. at 30. That is not enough. *See, e.g., M.K. v. Tenet*, 99 F. Supp. 2d 12, 31 (D.D.C. 2000) (“[T]he CIA fails to identify a legitimate government interest to which the classification in the Notice rationally relates, nor does the CIA explain how the classification relates to such an interest. These matters are not self-evident... The court will therefore deny the defendants’ motion to dismiss the plaintiffs’ equal-protection claims.”).

The government further argues that an equal protection claim cannot be based on the same retaliatory motive that underlies Plaintiffs’ First Amendment claim. Opp. at 30–31. There is a circuit split on whether retaliation constitutes invidious discrimination for equal protection purposes, and the D.C. Circuit does not appear to have addressed this issue. Plaintiffs submit that the Second Circuit’s analysis—that “retaliation is a form of discrimination” cognizable under the Fifth Amendment’s equal protection component—is persuasive and should be adopted here. *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 82 (2d Cir. 2015); *see also Beechwood Restorative Care Ctr. v. Leeds*, 436 F.3d 147, 155 (2d Cir. 2006).

2. The government contends that Plaintiffs cannot prevail on Fifth Amendment due process claims because their CBAs do not create any property interests. Opp. at 28. That is incorrect. Many courts have held that public employees’ collective bargaining agreements create constitutionally protected property interests in maintaining public employment. *See, e.g., Brock v. Roadway Exp., Inc.*, 481 U.S. 252 (1987); *Dee v. Borough of Dunmore*, 549 F.3d 225, 230 (3d Cir. 2008) (“[Public employee] had a constitutionally protected property interest based on the terms of the CBA.”); *Jackson v. Roslyn Bd. of Educ.*, 652 F. Supp. 2d 332, 341 (E.D.N.Y. 2009) (collecting cases); *Int’l Union, United Gov’t Sec. Officers of Am. v. Clark*, 706 F. Supp. 2d 59, 67

(D.D.C. 2010), *aff'd sub nom. Barkley v. U.S. Marshals Serv. ex rel. Hylton*, 766 F.3d 25 (D.C. Cir. 2014); *cf. San Bernardino Physicians' Servs. Med. Grp., Inc. v. San Bernardino Cnty.*, 825 F.2d 1404, 1409 (9th Cir. 1987) (reasoning that, unlike an ordinary contract, an employment contract can be protectible by the Fourteenth Amendment based on the importance of the interest to the employee).⁵

The Plaintiffs' CBAs are part of the "bundle of sticks" that protects bargaining unit employees' tenure as public employees. The CBAs provide employees with the right to union representation during any disciplinary process that could result in the loss of public employment. *See, e.g.*, Kathryn Jones Decl. at 47 (Doc. 37-2) (CBA provision that "the Union must be given the opportunity to be present at any examination of a unit Employee by a representative of Management in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action"); *id.* at 95–96 (employee has right to union representation in connection with a proposed adverse action, including termination of employment). CBAs also provide employees with the right to progressive discipline. *See, e.g.*, *id.* at 28–29 ("Only when prior warning, disciplinary, or adverse action has failed to correct an offending employee, or when an Employee has committed a particularly serious first offense may removal/termination action be taken."); *see Goodisman v. Lytle*, 724 F.2d 818, 820 (9th Cir. 1984) ("A constitutionally protected interest has been created ... if the procedural requirements

⁵ Unlike collective bargaining agreements, routine and ordinary commercial contracts fall short of an "entitlement" necessary to establish a constitutionally protected property interest. *See generally Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *New Vision Photography Program, Inc. v. D.C.*, 54 F. Supp. 3d 12, 29 (D.D.C. 2014) ("The Supreme Court 'has never held that government contracts for goods and services create property interests protected by due process.'"). The cases the government cites involve bid awards, government grants, and routine commercial contracts.

are intended to be a ‘significant substantive restriction’ on the [government’s] decision making.”).

The government asserts that, even if the Executive Order destroys property interests, Plaintiffs will be unable to show that the issuance of the Executive Order involved the type of egregious action or deliberate flouting of law necessary to support a substantive due process claim. Opp. at 27. To the contrary, for the same reasons the presumption of regularity has been rebutted, Plaintiffs are likely to prevail in showing that the sweeping Executive Order patently exceeded the President’s authority and was issued for improper purposes.

III. Plaintiffs and their members will suffer irreparable harm.

For the same reasons this Court found irreparable harm in *FEA*, Plaintiffs and their members will suffer serious irreparable harm absent preliminary relief. *See FEA*, 2025 WL 2355747, at *15-18. Plaintiffs have presented overwhelming evidence to show that, although Defendant agencies were purporting to refrain from repudiating their CBAs, they have been disregarding key CBA provisions, including by refusing to participate in negotiated grievance and arbitration processes, ceasing to provide union representatives with official time or office space to conduct representational activities, and refusing to meet with union representatives. PI Mem. at 19 (citing declarations). The government does not dispute this evidence. This Court has recognized that such “actions, taken together, essentially terminate the respective collective bargaining agreements and thus cause irreparable harm.” *FEA*, 2025 WL 2355747, at *16.

The evidence of irreparable harm, moreover, is stronger here than in *FEA*. The government does not dispute that the Office of Personnel Management (“OPM”) changed its position at the beginning of August 2025 and authorized agencies to repudiate their CBAs. *See*

PI. Mem. at 19 (citing declarations).⁶ The government does not dispute that Plaintiffs’ members will lose, among other things, protections against reduction-in-force actions; erasure of previously bargained-for work schedules, leaves, and health and safety standards; and elimination of union representation in disciplinary proceedings. Such harms to Plaintiffs’ members are irreparable. *See, e.g.*, Biggs Decl. ¶¶11–16 (describing how EPA scientists who raised whistleblower concerns have been placed on administrative leave and are denied union representation); *cf. FEA*, 2025 WL 2355747, at *17 (“a favorable ruling cannot, for example, ‘retroactively help the member who has gone into a disciplinary meeting without the counsel of their union’” (citation omitted)).

The government also does not dispute that, after OPM changed its guidance about repudiating CBAs, Plaintiffs’ members are being told that they have no contract rights and no right to union representation and that bargaining unit employees risk criminal conflict of interest charges for engaging in union activity on off-duty time. *See* PI Mem. at 21. The government’s sole response is to urge that it is purely speculative that Plaintiffs’ members’ speech will be chilled. *Opp.* at 37. But the record evidence shows that this is not speculative at all. *See, e.g.*, Biggs Decl. ¶20 (recounting how IFPTE Local 20’s members informed the Local that, in the absence of CBA protections, “they feared retaliation for participating in union activity, signing a declaration, or otherwise participating directly in this litigation”). The government also does not

⁶ The government urges that Plaintiffs’ unexplained “delay” in seeking a preliminary injunction calls into question whether Plaintiffs will suffer irreparable harm. *Opp.* at 31–32. But there was no unexplained delay. As Plaintiffs stated in the introduction to their opening memorandum, a D.C. Circuit panel stayed the preliminary injunction in *NTEU* on the ground that the union plaintiff’s claimed irreparable harm was too “speculative” because the government stated that it was refraining from repudiating CBAs. OPM then changed its position—without explanation—in August 2025. Ginsburg Decl. ¶¶24–27, Ex. 11 (OPM guidance updated August 13, 2025 to authorize agencies’ immediate repudiation of CBAs). Plaintiffs promptly moved for a preliminary injunction.

dispute that, absent preliminary relief, other Defendant agencies will communicate the same message to Plaintiffs' members.

The damage to the Plaintiff unions' core mission and membership rolls caused by implementation of the Executive Order is not just monetary and cannot be retroactively remedied. *See FEA*, 2025 WL 2355747, at *16 (because employee interest in unions diminishes when union power is disrupted, judicial relief "must come quickly"); *see also Franks Bros. Co. v. NLRB*, 321 U.S. 702, 704 (1944) (that disruption of collective bargaining disturbs "employees' morale, deters their organizational activities, and discourages their membership in unions" long recognized). The government does not dispute that, absent preliminary relief, the Plaintiff unions will lose their status entirely vis-à-vis the bargaining units.

For all these reasons, the government is wrong to suggest that the harm to Plaintiffs and their members in the absence of preliminary relief will be purely monetary and redressable later and wrong to argue that the Court would be "negat[ing] the irreparable harm requirement" in granting preliminary relief. *Opp.* at 37.

IV. The balance of equities and public interest favor Plaintiffs.

The government provides no persuasive reason for the Court to depart from its conclusion in three previous cases that the balance of the equities and assessment of the public interest weigh in favor of preliminary relief. *NTEU*, 780 F. Supp. 3d at 266–67; *AFSA*, 783 F. Supp. 3d at 272; *FEA*, 2025 WL 2355747, at *18–19. As in those other cases, a preliminary injunction would "merely require the government to function as it has for over half a century" with respect to the Plaintiff unions. *FEA*, 2025 WL 2355747, at *19; *see, e.g., id.* at *18 ("[T]he government 'cannot suffer harm from an injunction that merely ends an unlawful practice'" (internal citation omitted)). An injunction is also consistent with Congress's finding that

“collective bargaining rights and federal unions [are] ‘in the public interest.’” *NTEU*, 780 F. Supp. 3d at 267 (quoting 5 U.S.C. §7101(a)(1)). The government’s legal arguments about the balance of equities and public interest were all considered in *FEA* and there have been no relevant legal developments since then.

The government’s supporting declarations merely show hostility to collective bargaining (which Congress found is in the public interest) and to the run-of-the-mill terms of CBAs to which the Defendant agencies themselves voluntarily agreed and have followed for decades. *See, e.g.*, Kathryn Jones Decl. ¶6.a (referring to a 1998 CBA that the agency has been extending on a year-to-year basis for more than 20 years). The declarations state that some personnel time would need to be allocated to dealing with unions and that CBAs provide union representatives with official time and office space to represent workers pursuant to the FSLMRS. *See* Cogar Decl. ¶8 (Doc. 37-1); Kathryn Jones Decl. ¶9; Trznadel Decl. ¶8 (Doc. 37-3); Molina Decl. ¶9. The agencies’ budgets contemplate those costs.

The government also greatly exaggerates the impact of the FSLMRS on agency flexibility. The statute contains a broad management-rights provision that preserves agency authority “to determine the mission, budget, organization, number of employees, and internal security practices of the agency,” to “assign work,” and “to take whatever actions may be necessary to carry out the agency mission during emergencies.” 5 U.S.C. §7106(a). Further, an agency need not complete bargaining before changing conditions of employment when 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 efficiently carry out its mission.” *Sport Air Traffic Controllers Org. and Dep’t of Air Force, Edwards AFB*, 68 F.L.R.A. 9, 10–11 (Oct. 14, 2014), *recon. denied*, 68 F.L.R.A. 107 (Dec. 2, 2014) (agency

properly furloughed employees without completing implementation bargaining). Finally, even when an agency is found to have committed an unfair labor practice by failing to bargain over the impact and implementation of a change before it is made, the FLRA may forgo ordering the agency to restore the *status quo ante* as a remedy if that would disrupt and impair the efficiency and effectiveness of an agency's operations. *Dep't of the Air Force, 913th Air Wing, Willow Grove Air Reserve Station*, 57 F.L.R.A. 852, 858 (June 14, 2002).

V. A nominal bond is appropriate.

The government's request for a bond of \$15,365,144 should be rejected. Trial courts have "broad discretion" to determine "the appropriate amount of an injunction bond, including the discretion to require no bond at all." *Simms v. D.C.*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal citation and quotation marks omitted). This Court has previously ordered the union plaintiffs in challenges to the Executive Order to post a bond in the amount of \$100 pursuant to Rule 65(c) of the Federal Rules of Civil Procedure. *See FEA*, 2025 WL 2355747, at *19. Such a nominal bond is equally appropriate here.

Defendants base their proposed bond amount on the costs they estimate of "reestablishing labor relations" with the Plaintiff unions. *Opp.* at 41; *see also* Cogar Decl. ¶10 (costs of paying union representatives for "official time," CBA administration and negotiation, processing grievances through arbitration, and providing union office space); Kathryn Jones Decl. ¶11 (similar); Molina Decl. ¶10 (similar). But these would not be "costs and damages sustained" by Defendants, Fed. R. Civ. P. 65(c), as such amounts were accounted for in the agency Defendants' budgets that were approved before the Executive Order was implemented. Defendants are merely complaining about the need to devote personnel time and office space to complying with their legal obligations. That does not justify Defendants' requested bond.

Moreover, as the Court noted in *FEA*, Defendants have “taken actions that have placed serious financial strain on the [u]nion Plaintiffs, such as by terminating the automatic deduction of dues and reducing the value the [u]nion Plaintiffs can provide their members.” 2025 WL 2355747, at *19; *see* Ginsburg Decl. ¶21 (“The sudden and unilateral suspension of payroll deduction will, as a practical matter, result in the irreparable loss of dues revenue.”); Biggs Decl. ¶10 (similar); Norman Decl. ¶5 (Doc. 27-14) (“The failure to deduct dues has threatened the Locals’ ability to provide [] member services.”); Ciszewski Decl. ¶11 (Doc. 27-6) (similar); Edward Jones Decl. ¶18 (Doc. 27-5) (similar); McNeil Decl. ¶16 (similar); Vokac Decl. ¶6 (Doc. 27-8) (similar); Sporn Decl. ¶¶12–13 (Doc. 27-11) (similar). “Requiring a significant bond” would therefore conflict with “the principles of the right to seek judicial review of unlawful government action.” *FEA*, 2025 WL 2355747, at *19 (citation and internal quotation omitted); *see also Nat’l Endowment for Democracy v. U.S.*, No. 25-cv-00648-DLF, 2025 WL 2305477, at *7 (D.D.C. Aug. 11, 2025) (“It makes little sense to exacerbate the financial strain by requiring the [plaintiff] to post bond.”). Only a nominal bond should be required here.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant their motion for a preliminary injunction and enjoin the enforcement and implementation of the Exclusion Order.

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Respectfully submitted,

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** Pro hac vice motion to be filed