IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLIANCE FOR RETIRED AMERICANS, *et al.*,

Plaintiffs,

v.

SCOTT BESSENT, *in his official capacity as Secretary of the Treasury*, *et al.*,

Defendants.

Case No. 1:25-cv-00313-CKK

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

ADMINISTRATIVE AND EXECUTIVE MATERIALS

OTHER AUTHORITIES

INTRODUCTION

Plaintiffs bring this novel and unsupported challenge to the Executive Branch's power to carry out its functions in accordance with the President's priorities. Plaintiffs' claims have no legal merit. Plaintiffs lack standing because they have not pointed to any legally cognizable injury, much less irreparable harm that would support preliminary injunctive relief, and there is no basis for the Court to involve itself in the decisionmaking with respect to which Treasury Department employees are granted access to the Bureau of the Fiscal Service's systems and data. The Court should also decline Plaintiffs' attempt to use the Administrative Procedure Act ("APA") to circumvent the remedies available under the Privacy Act and the Internal Revenue Code, which provide adequate remedies for any violation of those statutes for Plaintiffs' members. Even if Plaintiffs could pass those threshold barriers—and they cannot—Plaintiffs have failed to show that Defendants are acting in violation of either the Privacy Act or the Internal Revenue Code, or that Defendants have acted arbitrarily or capriciously.

Defendants ask that the Court deny Plaintiffs' motion for a preliminary injunction and that the Court's February 6, 2025 Order be dissolved.

BACKGROUND

I. THE BUREAU OF THE FISCAL SERVICE

The Bureau of the Fiscal Service ("BFS") is a component of the Department of the Treasury, established in October 2012 by then-Secretary of the Treasury Timothy Geithner, which consolidated two previously separate bureaus. *Treasury Order Establishing the Bureau of the Fiscal Service*, 78 Fed. Reg. 31,629 (May 24, 2013) (Treasury Order 136-01). The Secretary's order combined the former Bureau of the Public Debt and the Financial Management Service into

the BFS and established the role of BFS Commissioner to execute the functions for which the heads of those bureaus were previously responsible. *Id.*

Among other responsibilities, BFS is responsible for "manag[ing] the government's accounting, central payment systems, and public debt, and . . . serv[ing] as the central payment clearinghouse for most payments to and from federal agencies." Declaration of Thomas H. Krause, Jr. ("Krause Decl.") ¶ 5. BFS disburses the majority of the government's payments, more than $5 trillion per year. *Id*. BFS's payment systems include, among others, the Payment Automation Manager ("PAM") System, which is the federal government's largest system for receiving payment files and processing payments; the Secure Payment System ("SPS"), a system through which paying agencies securely create, certify, and submit payment files to Treasury; the Automated Standard Application for Payments ("ASAP"), a recipient-initiated electronic payment and information system; and the Central Accounting and Reporting System ("CARS"), which federal agencies use to account for their spending. Declaration of Joseph Gioeli III ("Gioeli Decl.") ¶¶ 6-11.

II. THE UNITED STATES DOGE SERVICE

On January 20, 2025, President Trump signed Executive Order 14,158, which directs changes to the previously established United States Digital Service designed to implement the President's agenda of "improv[ing] the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems." 90 Fed. Reg. 8441, § 4 ("USDS EO"). The USDS EO also redesignated the United States Digital Service as the Department of Governmental Efficiency Service, or U.S. DOGE Service. *Id.* § 3(a). Similarly, it established a "U.S. DOGE Service Temporary Organization" within the Executive Office of the President pursuant to 5 U.S.C. § 3161, which will terminate on July 4, 2026. USDS EO § 3(b). Agency

heads are required under the USDS EO to establish within their respective agencies a DOGE Team of at least four employees, which may include Special Government Employees. *Id.* § 3(c).

The USDS EO directs USDS to collaborate with Executive agencies to modernize the technology and software infrastructure of the federal government to increase efficiency and productivity as well as ensure data integrity. *Id.* § 4. With respect to the Department of the Treasury, the need to modernize and ensure data integrity is uniquely critical: the Government Accountability Office ("GAO") has identified "problems in accounting for transactions between federal agencies," resulting in potentially improper payments totaling approximately $2.7 trillion dollars. *See* GAO Report, "Financial Statement Audit: Bureau of the Fiscal Service's FY22 Schedules of the General Fund" (March 30, 2023), *available at* https://www.gao.gov/products/gao-23-104786 (last visited Feb. 11, 2025). Similarly, GAO has identified areas for improvement in BFS's systems related to identifying and tracing transactions to determine whether they were complete and properly recorded in the correct general ledger accounts and line items within the Schedules of the General Fund. *Id.* In particular, GAO has found inconsistent reporting, lack of traceability, and need for improved controls within CARS. *Id.*

To accomplish its objectives, the USDS EO directs USDS to work with relevant agency heads, and vice versa, to ensure USDS has access to "unclassified agency records, software systems, and IT systems" to the "extent consistent with law." USDS EO § 4(b). At all times, the USDS EO instructs, USDS must "adhere to rigorous data protection standards." *Id.*

III. REVIEW OF BFS PAYMENT SYSTEMS TO EFFECTUATE THE USDS EO

Thomas Krause is an employee of the Treasury Department and is the DOGE Team lead at the agency ("Treasury DOGE Team"). Krause Decl. ¶ 2. His position at Treasury as Senior

Advisor for Technology and Modernization was created to effectuate the mission of DOGE by reducing and eliminating improper and fraudulent payments; waste, fraud, and abuse; and improving the accuracy of financial reporting. Krause Decl. ¶ 2. Currently, Mr. Krause is the only Treasury DOGE Team member. *Id.* ¶ 3. Although Mr. Krause coordinates with officials at USDS and provides them with regular updates on the team's progress, he is not an employee of USDS. Krause Decl. ¶ 4. Instead, he is an employee of Treasury. Declaration of Michael J. Wenzler ("Wenzler Decl.") ¶ 5. Mr. Krause was appointed as a Consultant to Treasury pursuant to 5 U.S.C. § 3109, which is a civil service appointment, on January 23, 2025, and designated by Treasury's Designated Agency Ethics Officer as a Special Government Employee (SGE) under 18 U.S.C. § 202. Wenzler Decl. ¶¶ 3-4. Treasury is in the process of hiring Mr. Krause in the same role under temporary Transitional Schedule C. *See* Wenzler Decl. ¶ 8. Mr. Krause's Schedule C appointment has not yet occurred, but will likely occur in the near future. Mr. Krause retains the ethics designation of Special Government Employee. *Id.*

Mr. Krause's role on the Treasury DOGE Team is to find ways to use technology to make the Treasury Department more effective, more efficient, and more responsive to the policy goals of the current Administration. Krause Decl. ¶ 4. As part of the President's DOGE efforts, Mr. Krause's mandate is to understand how BFS's end-to-end payment systems and financial reporting tools work, recommend ways to update and modernize those systems to better identify improper and fraudulent payments, and better allow federal agencies to quickly adapt to changing conditions. *Id.* ¶ 10.

Mr. Krause has never had any direct access to any BFS payment system. His only access to those systems was so-called "over the shoulder" access to review activity others performed in the system or data others accessed from the system. *Id.* ¶ 16. Although his access is permitted to

continue under this Court's February 6, 2025 Order, *see* Order, ECF No. 13, under the terms of a temporary restraining order entered in the U.S. District Court for the Southern District of New York, Mr. Krause is currently prohibited from having *any* access to BFS payment systems or certain payee data. Memorandum Opinion and Order, *State of New York v. U.S. Dep't of the Treasury*, 25-CV-01144 (JAV), ECF No. 28 (Feb. 11, 2025) (explaining the modified terms of the temporary restraining order entered on February 8, 2025); *see also* Krause Decl. ¶ 16.

A second Treasury DOGE Team member, Marko Elez, began working at the Treasury Department on January 21, 2025, but resigned from his role on February 6, 2025. Krause Decl. ¶ 3; Wenzler Decl. ¶ 9. Treasury appointed Mr. Elez as a Special Advisor for Information Technology and Modernization under Treasury's authority for temporary transitional Schedule C appointments under the Civil Service Regulations. Wenzler Decl. ¶ 9; *see also* 5 C.F.R. § 213.3302. In this role, Mr. Elez was a Treasury employee tasked with working closely with engineers at BFS on information technology matters in service of BFS's mission to promote financial integrity and operational efficiency of the federal government through accounting, financing, collection, payment, and other relevant BFS services. Krause Decl. ¶ 3. As part of precautions developed to mitigate risk associated with the Treasury DOGE Team's work, Mr. Elez's access to BFS systems was subject to close supervision and a number of security measures. Gioeli Decl. ¶ 11-13. Included in those measures was a limitation that Mr. Elez would receive only "read-only" access to the systems, which allows users to view and query information and data but does not allow for any changes to that information and data within the source system. *Id.* ¶¶ 13, 16.

BFS discovered on the morning of February 6, 2025, that the access provided to Mr. Elez on the prior day (February 5, 2025) to one payment system—SPS—was briefly and mistakenly

configured by career BFS employees to include "read/write" permissions instead of "read-only." *Id.* ¶ 20. According to review of BFS logs of Mr. Elez's activity, the only time Mr. Elez logged into the system with such privileges was on February 5, prior to this Court's Order. *Id*. A forensic investigation was immediately initiated, and that initial investigation confirmed that no unauthorized actions had taken place, and his access was promptly corrected to "read-only." To the best of Defendants' knowledge, Mr. Elez never knew that he briefly had "read/write" permissions for the SPS database, and Mr. Elez never took any action to exercise the "write privileges" to modify anything within the SPS database. *Id.* ¶ 20. Indeed, Mr. Elez never logged into the system during the time that he had read/write privileges, other than during a virtual walk-through with him that occurred on February 5. *Id.* ¶¶ 19-20.[1]

In addition to Mr. Elez's access to BFS payment systems, Mr. Elez was provided with copies of certain BFS information and source code with which to work in a secure environment, or "sandbox," on his BFS-provided device. Gioeli Decl. ¶¶ 11-12, 16. Mr. Elez never "wrote" code directly to (or otherwise directly altered) any BFS systems, nor does BFS have any reason to believe that Mr. Elez transmitted any BFS data or other information outside the federal government. *Id.* ¶¶ 16, 20-21; Krause Decl. ¶ 16. As described in the Krause and Robinson Declarations, the Treasury DOGE Team and BFS career employees were directed to undertake a process that would transmit certain payment information to the State Department, in connection with verifying that certain payments complied with President's January 20, 2025 Executive Order titled "Reevaluating and Realigning United States Foreign Aid." *See* Krause Decl. ¶¶ 17-20;

[1] The forensic analysis is ongoing to confirm the details of Mr. Elez access to and usage of BFS systems, including reviewing logs of his activity both on his laptop and within the systems. Gioeli Decl. ¶¶ 20-21. Defendants will promptly inform the Court if further facts develop relevant to the claims in this case or Defendants' compliance with the February 6 Order or to the Defendants' representations in this case.

Declaration of Vona S. Robinson ("Robinson Decl.") ¶¶ 11-12. Mr. Elez's duties involved helping set up this process, including by assisting in automating the manual review of the payment files. [2]

On February 6, 2025, Mr. Elez submitted his resignation from his role at Treasury. *Id.* ¶ 22. On that same day, he turned in his government-issued laptops, access card, and other government devices; his BFS systems access was terminated; and he has not conducted any work related to the BFS payment systems since that date. *Id.*

IV. THIS LITIGATION

Plaintiffs filed suit on February 3, 2025. Compl., ECF No. 1. The Complaint includes three causes of action. In Count One, Plaintiffs allege that Defendants acted contrary to law in violation of the APA. Specifically, Plaintiffs allege that Defendants have "implemented a system" for disclosing records containing Plaintiffs' members personal information in violation of Privacy Act of 1974, and further by sharing Plaintiffs' members' tax returns and tax return information in violation of Internal Revenue Code, 26 U.S.C. § 6103. Compl. ¶¶ 45-53. In Count Two, Plaintiffs allege that Defendants violated the APA by "fail[ing] to engage in reasoned decisionmaking when they implemented a system under which Elon Musk or other individuals associated with DOGE could access [BFS's] records for purposes other than those authorized by the Privacy Act, [BFS's systems of records notices ("SORNs")], and the Internal Revenue Code. *Id.* ¶ 56. Count Three consists of Plaintiffs' claim that "permitting Elong Musk and/or other individuals associated with DOGE" to access BFS records was in excess of Defendants' statutory authority. *Id.* ¶¶ 58-59.

[2] At the February 5, 2025 hearing, counsel for Defendants were unaware that Mr. Elez had ever been given more than "read-only" access, or that Mr. Elez may have taken part in helping disseminate information from BFS systems outside of Treasury as part of the new State Department review process. Defendants apologize to the Court that those facts were unclear to counsel at the time of the hearing.

Plaintiffs filed a motion for temporary restraining order on February 5, seeking to enjoin Defendants "from disclosing information about individuals to individuals affiliated with the so-called Department of Government Efficiency" and to require Defendants "to retrieve and safeguard any such information that has already been obtained by DOGE or individuals associated with it." Pls.' Mem in Supp of Mot. for TRO ("TRO Mem."), ECF No. 8-1.

The Court held a hearing on Plaintiffs' motion on February 5, during which the Court raised scheduling for briefing to address Plaintiffs' claims in the context of a preliminary injunction rather than a temporary restraining order. The Court gave Plaintiffs the opportunity to file a separate motion for preliminary injunction, but Plaintiffs opted to rest on their previously filed papers, Feb. 5 Hrg. Tr. at 45:4-6, and, accordingly, the Court converted their motion for a temporary restraining order into one for a preliminary injunction, *see* Order, ECF No. 13. Following the hearing, the parties agreed to entry of an order requiring Defendants to refrain from providing access to any payment record or payment system of records maintained by or with BFS, with exceptions for Mr. Krause and Mr. Elez—provided that their access to payment records will be "read only"—and other to Treasury employees who are not Special Government Employees, and as permitted by 5 U.S.C. § 552a(b)(2)-(13) and the Internal Revenue Code. The Court entered the parties proposed order, which remains in effect until such time as the Court rules on Plaintiffs' motion for preliminary injunction. ECF No. 13.

STANDARD OF REVIEW

"The standard for issuance of the extraordinary and drastic remedy of a temporary restraining order or a preliminary injunction is very high." *Jack's Canoes & Kayaks, LLC v. Nat'l Park Serv.*, 933 F. Supp. 2d 58, 75 (D.D.C. 2013) (citation omitted). An interim injunction is "never awarded as of right," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and

"should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion," *Cobell v. Norton*, 391 F. 3d 251, 258 (D.C. Cir. 2004).

A party moving for any preliminary injunction must demonstrate all of the following factors: "(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction is not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction."' *Jack's Canoes*, 933 F. Supp. 2d at 75-76 (quoting *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995)). Where, as here, the government is opposing a motion for emergency injunctive relief, the third and fourth factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

Plaintiffs are not entitled to the relief they seek. They are not likely to succeed on the merits because they lack standing to bring their claims. The APA, too, poses a threshold obstacle to Plaintiffs' claims. Because they have not identified final agency action, they have no cause of action. Plaintiffs' APA claims would also fail even if the Court were to reach them. And Plaintiffs have not demonstrated irreparable harm, or that the balance of the equities favors them. Their motion should be denied.

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs Lack Article III Standing.

"The first component of the likelihood of success on the merits prong usually examines whether the plaintiffs have standing." *Barton v. District of Columbia*, 131 F. Supp. 2d 236, 243 n.6 (D.D.C. 2001). The doctrine of standing, an essential aspect of the Article III case-or-controversy requirement, demands that a plaintiff have "a personal stake in the outcome of the

controversy [so] as to warrant his invocation of federal-court jurisdiction[.]" *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (citation omitted). At its "irreducible constitutional minimum," the standing doctrine requires a plaintiff, as the party invoking the Court's jurisdiction, to establish three elements: (1) a concrete and particularized injury-in-fact, either actual or imminent, (2) a causal connection between the injury and defendants' challenged conduct, and (3) a likelihood that the injury suffered will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted). Facts demonstrating each of these elements "must affirmatively appear in the record" and "cannot be inferred argumentatively from averments in the [plaintiff's] pleadings." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (citation omitted); *see also Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002).

An organization can assert standing either on its own behalf (organizational standing) or on behalf of its members (associational, sometimes called representational, standing). *See Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996)). Plaintiffs do not rely on alleged injury to the organizations themselves, but rather to the privacy interests of their members. TRO Mem. at 15; Compl ¶¶ 39-44; *see also* Feb. 5, 2025 Hrg. Tr. 18-19.

Under a theory of associational standing, Plaintiffs must, therefore, establish that at least one of their members would have "standing to sue in his or her own right." *Am. Library Ass'n v. FCC*, 401 F.3d 489, 492 (D.C. Cir. 2005). To do so, Plaintiffs must establish injury-in-fact as to those members, which requires that their injury must have already occurred or be likely to occur soon." *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 381 (2024). The injury must be "certainly impending," "allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)).

Here, Plaintiffs allege only one form of injury, that "Defendants have allowed third parties unlawful access to Plaintiffs' members' private information." TRO Mot. at 15. To be clear, however, there has been no "third party" access, as only authorized government officials accessed the information at issue. *See infra.* But even assuming—solely for purposes of the injury-in-fact analysis, *see, e.g.*, *Warth*, 422 U.S. at 502—that there had been such access, Plaintiffs still fail to establish standing.

Even unauthorized access alone would not give rise to an actual, concrete harm sufficient to establish standing. The Supreme Court's decision in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), leaves no doubt that a statutory violation is not, by itself, a cognizable Article III injury. *Id.* at 426-27. Rather, "[o]nly those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that . . . defendant over that violation in federal court. *Id.* at 427 (emphasis in original). And the Supreme Court has instructed that "[i]n determining whether an intangible harm constitutes injury in fact . . . it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340-41 (2016); *see also TransUnion*, 594 U.S. at 424-25.

In order for Plaintiffs to establish some concrete harm on behalf of their members, they would need to show not just *access* to their members' information, but that the information had been disclosed in a way that causes them harm, such as a public disclosure. *See Hunstein v. Preferred Coll. & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1240, 1245-50 (11th Cir. 2022) (en banc) (no cognizable injury from disclosure of private information where plaintiff's information was sent from hospital to collection agency because disclosure was not public); *id.* at 1246 (citing cases); *Farst v. AutoZone, Inc.*, 700 F. Supp. 3d 222, 231-32 (M.D. Pa. 2023) (discussing the tort and

distinguishing *Bohnak*); Rest. 2d of Torts § 652D ("Publicity given to private life"); *see also TransUnion*, 594 U.S. at 434 n.6 ("Many American courts did not traditionally recognize intra-company disclosures as actionable publications for purposes of the tort of defamation.") (citations omitted).

It is clear that there has been no public disclosure here; instead, there has been (at most) an exchange internal to the federal government. *Barclift v. Keystone Cred. Servs., LLC*, 585 F. Supp. 3d 748, 758-59 (E.D. Pa. 2022) ("Even assuming that the employees of the mailing vendor read Barclift's personal information, sharing her personal information with 'a small group of persons is not publicity.'" (citation omitted)), *aff'd*, 93 F.4th 136, 146 (3d Cir. 2024) ("Like our sister circuits, we conclude that the harm from disclosures that remain functionally internal are not closely related to those stemming from public ones."). Plaintiffs do not allege—much less establish—that the employees with access to the BFS systems have disclosed any information in a way that causes tangible harm, such as publicly. There is thus no cognizable injury from the employees' access, and *Council on American-Islamic Relations v. Gaubatzi*, 667 F. Supp. 2d 67 (D.D.C. 2009), on which Plaintiffs rely, is easily distinguishable. *Id.* at 76 ("CAIR has provided evidence that Defendants have caused [their] material to be used and publicly disclosed.").

Plaintiffs also suggest harm in the form of an infringement of their members' "expectation" their information will remain private. TRO Mem. at 14. That concern is echoed in the declarations Plaintiffs submitted on February 11. *See, e.g.*, Declaration of Carol Rosenblatt ("Rosenblatt Decl."), ECF No. 16-2 ¶ 10 ("I have trusted the government to maintain the privacy of my information and to only use my information for lawful purposes."); Declaration of Jeanette L.

McElhaney, ECF No. 16-3 ¶ 10 (same); Declaration of Barbara Casey, ECF No. 16-4 ¶ 10 (same).[3] This claim amounts to an allegation that Plaintiffs' members expected their information to be handled in a certain way, and it was not. Plaintiffs cite no authority for this standing theory of harm to expectations, or facts supporting any claim that those expectations were reasonable, as they have the burden to do. The absence of any on-point authority is perhaps unsurprising: were it enough for a plaintiff to establish standing simply by alleging that the holder of her personal information used it in a manner contrary to her subjective expectations, the limits the Supreme Court has carefully established to govern when disclosure of information constitutes injury-in-fact, including the requirement to identify a historical analogue, would be obliterated. *See generally TransUnion*, 594 U.S. 413.

Finally, Plaintiffs say that the allegedly "unauthorized" access to BFS systems harms Plaintiffs' members by "increasing the opportunity for further dissemination" of their personal information. TRO Mem. at 15. This supposition is too speculative on its own to support standing, and is contradicted by the declarations in the record regarding the extensive security mitigation measures Treasury has employed. *See* Gioeli Decl. ¶¶ 11-15; Krause Decl. ¶ 15.

B. Plaintiffs Cannot Prevail on their APA Claims.

1. Plaintiffs Do Not Challenge Final Agency Action.

Plaintiffs' claims under the APA fail to satisfy several threshold prerequisites. Compl. ¶¶ 45-57. As an initial matter, the law is clear that the APA does not permit "judicial review over everything done by an administrative agency." *Fund for Animals, Inc. v. U.S. Bureau of Land*

[3] Plaintiffs' supplemental declarations also include statements that the individuals are "disturbed, anxious, and frustrated" that the government has violated their trust, in the view of the declarants. *See, e.g.*, Rosenblatt Decl. ¶ 10. Such feelings, even if they are objectively reasonable, are not sufficient to constitute a concrete harm. *See In re Sci. Applications Int'l Corp. (SAIC) Backup Tape Data Theft Litig.*, 45 F. Supp. 3d 14, 26 (D.D.C. 2014).

Mgmt., 460 F.3d 13, 19 (D.C. Cir. 2006) (quotation omitted). Rather, APA review is limited to "final agency action." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61-62 (2004) (quoting 5 U.S.C. § 704) ("*SUWA*").

Plaintiffs attempt to meet that requirement by asserting that Treasury implemented a "new policy" to "disregard[] [BFS's] privacy safeguards and authorize[] individuals associated with the so-called 'Department of Government Efficiency [ ] to access [BFS's] payment systems." TRO Mem. at 1; *see also id.* at 14 (claiming a reversal of the "Department's longstanding policy fully protecting individuals' personal information"). Even assuming, *arguendo*, the existence of such a policy—which is untrue, *see* Gioeli Decl. ¶ 23—Plaintiffs have not established that any such policy constitutes final agency action. That is because agency action is final when it (1) "mark[s] the consummation of the agency's decisionmaking process" and (2) is "one by which rights or obligations have been determined, or from which legal consequences will flow." *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590, 597 (2016) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)).

Here, final agency action is absent based on the second prong alone. Decisions regarding whom among their workforce agencies grant systems access, based on their assessment of those employees' need for access for the performance of their duties—and the risk mitigation measures agencies put in place to ensure appropriate safeguarding of government systems and information—is a routine matter of internal government operation that has no "legal consequences" for Plaintiffs. Nor does it determine any rights Plaintiffs have. Every day, government agencies make decisions to grant data or systems access to their employees. It is true that all of those decisions carry some inherent risk of misuse or abuse. But Plaintiffs plead no facts to suggest any Treasury or BFS policy prohibits granting access to Treasury employees such as Mr. Krause or Mr. Elez on the

basis of their appointment status (e.g., Schedule C) nor their ethics designations (e.g., SGE), or on the conditions that such access was granted here, given the multiple risk mitigation measures BFS put in place. *See* Gioeli Decl ¶¶12-14. Nor do they plead that any policy concerning access by "political" appointees or SGEs previously existed and that such policy was changed. Indeed, no such policies have been identified. *Id*. ¶ 23. This is the type of day-to-day operation of governmental programs that does not fall into APA review. *See SUWA*, 542 U.S. at 63-64.

Even if the Treasury DOGE Team's access to BFS systems was final vis-à-vis the agency, it creates no immediate legal effects for the Plaintiffs, and so is not final with respect to them and therefore does not meet the requirements of the second prong. *See Public Citizen v. U.S. Trade Representative*, 5 F.3d 549, 551 (D.C. Cir. 1993) (describing the second prong as "whether the result of [the agency's decisionmaking] process will directly affect *the parties*." (emphasis added) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992)). The mere fact that some negative consequence for Plaintiffs could eventually theoretically flow from the agency's internal operation decision, such as an improper disclosure of data, does not establish finality or "directly affect" Plaintiffs, particularly when no such downstream consequence for Plaintiffs has actually occurred. By analogy, an agency's decision to give an employee a work computer is not itself final agency action, even if the employee might conceivably use the computer to effect final agency action (*e.g.*, in approving or denying benefits).

2. Plaintiffs Have an Adequate Alternative Remedy.

Plaintiffs' APA claims fail for the additional, independent reason that the statute does not apply where there is "[an]other adequate remedy in any court." 5 U.S.C. § 704. This statutory provision "makes it clear that Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action." *Bowen v. Massachusetts*, 487 U.S.

879, 903 (1988). An "adequate remedy," in turn, is available where a statutory review provision allows for "de novo district-court review" of the agency action challenged, *El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. U.S. Dep't of Health & Hum Servs.*, 396 F.3d 1265, 1270 (D.C. Cir. 2005), even where the relief available under the statutory provision is not identical to APA relief, *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009). Stated differently, where an agency action is subject to review in some manner under a statutory review scheme, then the general rule is that action must be reviewed within the confines of that scheme, because the mode of review established by the statutory review scheme is presumed exclusive. This is true even where a statutory review scheme provides only for review of issues by certain parties; other parties are presumptively precluded from obtaining review of those issues under the APA. *See Block v. Community Nutrition Institute*, 467 U.S. 340, 349 (1984) ("[W]hen a statute provides a detailed mechanism for judicial consideration of particular issues at the behest of particular persons, judicial review of those issues at the behest of other persons may be found to be impliedly precluded.").

Under these principles, Plaintiffs are not entitled to challenge purported violations of the Privacy Act and the Internal Revenue Code under the APA, because each statute provides an adequate alternative remedy for persons entitled to sue under those statutes.

a. Privacy Act of 1974

The Privacy Act establishes "a comprehensive and detailed set of requirements" for federal agencies that maintain systems of records containing individuals' personal information. *Fed. Aviation Admin. v. Cooper*, 566 U.S. 284, 287 (2012). Section (g) of the Privacy Act provides for a limited subset of civil remedies, and Plaintiffs' allegations do not fall within these carefully demarcated limits. Civil remedies are available—and thus the United States' sovereign immunity

has been waived—in four circumstances: (1) when the agency "makes a determination . . . not to amend an individual's record in accordance with his request," (an "Amendment Action"), 5 U.S.C. § 552a(g)(1)(A), (2) when the agency refuses to comply with an individual's request for access to her records, (an "Access Action"), *id.* § 552a(g)(1)(B), (3), when the agency fails to maintain an individual's records "with such accuracy, relevance, timeliness, and completeness" as is necessary for a government action and "consequently a determination is made which is adverse to the individual," (a "Benefits Action"), *id.* § 552a(g)(1)(C), or (4) where the government "fails to comply with any other provision of this section . . . in such a way as to have an adverse act on an individual," (an "Other Action") *id.* § 552a(g)(1)(D). For Benefits Actions or Other Actions, a plaintiff may recover "actual damages sustained by the individual as a result of the refusal or failure," subject to a $1,000 statutory minimum, but only if the "agency acted in a manner which was intentional and willful" and if that plaintiff could prove "actual damages," which is "limited to proven pecuniary or economic harm." *Cooper*, 566 U.S. at 291 299.

As to injunctive relief specifically, the Act allows for injunctive relief in only two narrow circumstances: (1) to order an agency to amend inaccurate, incomplete, irrelevant, or untimely records, 5 U.S.C. § 552a(g)(1)(A), (g)(2)(A); and (2) to order an agency to allow an individual access to his records, *id.* § 552a(g)(1)(B), (g)(3)(A). Injunctive relief, as the D.C. Circuit has recognized, is not available for any other situation arising out of the Privacy Act. *See Sussman v. U.S. Marshal Serv.*, 494 F.3d 1106, 1122 (D.C. Cir. 2007) ("We have held that only monetary damages, not declaratory or injunctive relief, are available to § 552a(g)(1)(D) plaintiffs . . . .") (citing *Doe v. Stephens*, 851 F.2d 1457, 1463 (D.C. Cir. 1988)); *see also Cell. Assocs., Inc. v. Nat'l Insts. of Health*, 579 F.2d 1155, 1161-62 (9th Cir. 1978).

Given the Privacy Act's comprehensive remedial scheme, courts in this District have repeatedly recognized that "a plaintiff cannot bring an APA claim to obtain relief for an alleged Privacy Act violation." *Westcott v. McHugh*, 39 F. Supp. 3d 21, 33 (D.D.C. 2014); *see also Tripp v. Dep't of Defense*, 193 F. Supp. 2d 229, 238 (D.D.C. 2002); *Poss v. Kern*, No. 23-cv-2199 (DLF) 2024 WL 4286088, at *6 (D.D.C. Sept. 25, 2024) (citing cases). That is consistent with the principle that "[w]here [a] 'statute provides certain types of equitable relief but not others, it is not proper to imply a broad right to injunctive relief.'" *Parks v. IRS*, 618 F.2d 677, 84 (10th Cir. 1980) (citing *Cell. Assocs.*, 579 F.2d at 1161-62).

This is especially true with the Privacy Act because Congress "link[ed] particular violations of the Act to particular remedies in a specific and detailed manner[,]" which "points to a conclusion that Congress did not intend to authorize the issuance of [other] injunctions." *Cell Assocs.*, 579 F.2d at 1159. Indeed, as the Ninth Circuit concluded, were injunctive relief available for violations of the Privacy Act generally, "the detailed remedial scheme adopted by Congress would make little sense. We think it unlikely that Congress would have gone to the trouble of authorizing equitable relief for two forms of agency misconduct and monetary relief for all other forms if it had intended to make injunctions available across the board." *Id.* at 1160. Plaintiffs' efforts to obtain an agency-wide injunction by channeling Privacy Act claims through the APA would be an end run around these common-sense principles and should be rejected.

b. Internal Revenue Code

For similar reasons, it would be inappropriate to allow Plaintiffs to use the APA to create an end-run around the remedial scheme provided in the Internal Revenue Code for violations of 26 U.S.C. § 6103. Congress created a waiver of sovereign immunity for violations of § 6103 by authorizing only civil damages against the United States in 26 U.S.C. § 7431. Specifically, § 7431

authorizes a right of action against the United States if "any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information . . . in violation of section 6103." 26 U.S.C. § 7431(a)(1). Damages are authorized in the sum of "the greater of" (a) $1,000 for each unauthorized disclosure of a return or return information, or (b) the actual damages sustained by the plaintiff plus punitive damages for willful disclosures or disclosures that result from gross negligence. *Id.* § 7431(c). Civil damages under § 7431 is the sole remedy that Congress provided for a violation of § 6103, and it does not authorize injunctive relief. *See generally id.*; *see also Henkell v. United States*, No. 96-2228, 1998 WL 41565, at *5 (E.D. Cal. Jan. 9, 1998) (explaining that § 7431 does not authorize injunctive relief).[4]

Given the civil damages available to individuals whose return information is disclosed in violation of § 6103—which is part of the complex statutory scheme Congress created in the Internal Revenue Code— there is another adequate remedy available, and Plaintiffs are not entitled to injunctive relief through the APA. *Cf. Agbanc Ltd. v. Berry*, 678 F. Supp. 804, 807 (D. Ariz. 1988) (concluding that § 7431 provides an adequate remedy at law that precludes equity jurisdiction).

* * *

Congress's creation of comprehensive remedial schemes in the Privacy Act and the Internal Revenue Code, as discussed above, forbids the relief Plaintiffs seek under the APA. That runs into another problem under the APA—the APA's waiver of sovereign immunity, which does not apply "if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. As the Supreme Court has stated, the purpose of this carve-out waiver

[4] In addition, however, Congress has imposed criminal penalties for willful violations of § 6103, which are punishable as a felony and by dismissal from Federal service. 26 U.S.C. § 7213(a)(1).

is to prevent plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012). "When Congress has dealt in particularity with a claim and has intended a specified remedy—including its exceptions—to be exclusive, that is the end of the matter; the APA does not undo the judgment." *Id.* Just so here. Congress has set out the exclusive remedies for violations of the Privacy Act and in the Internal Revenue Code in the respective statutes. The APA does not provide a waiver of sovereign immunity to evade those considered judgments.

3. Plaintiffs Have Not Shown a Violation of the Privacy Act.

In arguing that Defendants have acted contrary to law, Plaintiffs first identify, and primarily rely on, the Privacy Act as the alleged statutory violation. *See* TRO Mem. at 12-13. But Plaintiffs have not plausibly alleged that a violation of the Privacy Act has occurred. Plaintiffs recognize, as they must, that Privacy Act-covered records may be shared if an exception within the statute applies. *See* TRO Mem. at 12. And the Privacy Act specifically permits disclosure "to those officers and employees of the agency . . . who have a need for the record in the performance of their duties" 5 U.S.C. § 552a(b)(1), as well as for a "routine use" (5 U.S.C. § 552a(b)(3)). The Privacy Act-covered records at issue were made here were disclosed to Treasury "employees" in accordance with exception (b)(3) and to other federal agencies under routine uses exceptions specified in the applicable System of Records Notice.

The Treasury DOGE Team members—or other future SGEs or Schedule C personnel who may do the work that Plaintiffs seek to block access from—are "officers" or "employees" of the Treasury Department, who "have a need for the records in the performance of their duties." *See* Krause Decl. ¶ 2 (explaining need).

To the extent Plaintiffs may attempt in their reply brief to distinguish SGEs and Schedule C personnel from "officers and employees" within the meaning of the Privacy Act, that purported

distinction would be unconvincing. The Privacy Act applies to "employees," without qualification. 5 U.S.C. § 552a(b)(1). SGE is an ethics designation that applies to employees who meet certain eligibility criteria, specifically:

> officer[s] or employee[s] of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who [are] retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis[.]

18 U.S.C. § 202(a). Similarly, Schedule C personnel (commonly referred to as "political appointees") are individuals "appointed to the civil service" and are "employees" of the federal government. *See* 5 U.S.C. §§ 2103, 2105. Accordingly, the system and data access provided to the Treasury DOGE team falls squarely within the Privacy Act's general authorization for intra-agency information sharing in furtherance of employees' duties, *see* 5 U.S.C. § 552a(b)(1); no "routine use" exception is required.[5]

Furthermore, disclosure of payment records to other federal agencies that occurred as a result of the Treasury DOGE Team's work to facilitate identification of payments that may have been improper under the President's Executive Orders, *see* Krause Decl. ¶¶ 17-20, Robinson Decl. ¶¶ 8-10, were permissible under published routine uses under the System of Record Notice (SORN). *See* 5 U.S.C § 552a(b)(3); *Privacy Act of 1974; System of Records*, 85 Fed. Reg. 11,776 (Feb. 27, 2020). Disclosure within the federal government that occurred in connection with the process to assist agencies in complying with the President's Executive Order on foreign aid, which

[5] Plaintiffs also contend that no "routine use" exception authorizes the disclosures by or to Mr. Krause and Mr. Elez because of the passage of time since the SORN was published. See TRO Mem. at 13. However, such notices are forward-looking, explaining the circumstances under which records may be disclosed in the future pursuant to 5 U.S.C. § 552a(b)(3). Because the disclosures fit within the existing SORN routine uses, they are authorized. It is circular, moreover, to claim that application of any of the various uses published in that notice would necessarily "circumvent" the Privacy Act. *Id.*

was approved by Treasury leadership on January 26, 2025 and implemented between January 27, 2025 and February 10, 2025 (Krause Decl. ¶¶ 17-20; Robinson Decl. ¶¶ 8-10), was therefore permissible under the Routine Uses in the Payment Record SORN. Routine Use 17 permits disclosure to a federal agency "for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, federal funds." 85 Fed. Reg. 11,780. Treasury transmitted payment records to the Department of State to facilitate the agency's identification of payments that were subject to the pause required by the Executive Order and, thus, may not have been proper for the payor agency to certify as well as payments that were entitled to a waiver and could properly be paid. *See* Krause Decl. ¶¶ 17-20. The process was implemented at the "pre-certification" or "pre-edit" phase, when other checks designed to identify potentially improper payments are performed, such as comparison of payments against the Do Not Pay working system. *See id*. Like with Do Not Pay process, Treasury shared payment records identified through its review process to provide relevant agencies the opportunity to determine whether to ultimately certify a payment for processing.

4. Plaintiffs Have Not Shown a Violation of the Internal Revenue Code.

Plaintiffs next turn—very briefly—to the set of statutory protections applicable to tax returns or return information in § 6103 of the Internal Revenue Code. TRO Mem. at 13. But Plaintiffs' argument fails because an exception to the general rule of § 6103(a) applies for "[d]isclosure to certain Federal officers and employees for purposes of tax administration." 26 U.S.C. § 6103(h). Indeed, "officers and employees of the Department of the Treasury" may obtain returns and return information if their "official duties require such inspection or disclosure for tax administration purposes." *Id.* "Tax administration," in turn, is defined to include "the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws." *Id.* § 6103(b)(4)(A)(i). The payment systems at issue in this case

disburse the vast majority of government payments, including tax refunds. *See* Fiscal Service Overview, *available at* https://www.fiscal.treasury.gov/about.html (last visited Feb. 12, 2025).

The Treasury DOGE Team satisfied these statutory conditions for access to returns and return information. They were, to start, employees of the Treasury Department. Krause Decl. ¶¶ 1-2. And their "official duties" included serving as Treasury DOGE Team members who were "spearheading advances in Treasury's technology infrastructure, financial management systems, and cybersecurity initiatives," "overseeing the modernization of Treasury's legacy systems," and "collaborating with Treasury's Chief Information Officer (CIO) to help strengthen Treasury's cybersecurity protocols to protect its critical financial systems and mitigate risks." *Id.* ¶ 2. Indeed, some of the Treasury DOGE Team's duties related to GAO concerns regarding improper payments generally, and one of the programs GAO identified with a high risk of improper payments is IRS's Earned Income Tax Credit refunds. *Id.* ¶ 8. Moreover, the returns and return information subject to the protections of § 6103 pass through (and are stored on) the very same systems that is the Treasury DOGE Team is responsible for improving. Just like all of the other Treasury employees, contractors, and others who work every day to maintain and improve the operation of these critical payment systems, they therefore had the requisite need to obtain § 6103 material in the exercise of their official duties.

5. Plaintiffs Have Not Shown *Ultra Vires* Agency Action.

Plaintiffs also purport to bring a non-APA *ultra vires* claim that Treasury officials acted beyond their statutory authority. TRO Mem. at 12-13. Even assuming the common-law *ultra vires* doctrine still exists in suits against the federal government, *but see Apter v. Dep't of Health & Human Servs.*, 80 F.4th 579, 593 (5th Cir. 2023) ("[U]nder our precedent, Congress apparently 'did away with the ultra vires doctrine and other fictions surrounding sovereign immunity' when

it amended the APA in 1976.") (quoting *Geyen v. Marsh*, 885 F.2d 1303, 1307 (5th Cir. 1985)), Plaintiffs' non-APA arguments are identical to their APA "contrary to law" arguments. *See* TRO Mem. at 11-12. Those arguments fail for the same reasons discussed above.

6. Plaintiffs Cannot Show That Defendants Acted Arbitrarily or Capriciously.

Plaintiffs have also failed to show a likelihood of success on their claim that Defendants acted arbitrarily or capriciously. The gravamen of Plaintiffs' argument is that Treasury should not have permitted the Treasury DOGE Team to access BFS systems because of Defendants' "legal obligations under federal law." *See* TRO Mem. at 13-14. But that is just a restatement of Plaintiffs' contrary to law arguments. Because it was lawful for the Treasury DOGE Team to access BFS systems, for the reasons explained above, the premise of Plaintiffs' argument is faulty. Nor is there any basis for Plaintiffs' unsupported claim that Defendants "ignored the reliance and expectation interests" of individuals whose information is contained in BFS systems. TRO Mem. at 14. As described herein, Mr. Krause is, and Mr. Elez was, an employee of Treasury when they had access to those systems, and Plaintiffs cannot show how employee access is inconsistent with any reasonable expectation interests.

Finally, to the extent the Treasury Department was required to explain its (nonexistent) change in position, it has done so here. The Treasury DOGE Team was tasked by Treasury leadership with implementing technical improvements in Treasury systems. Krause Decl. ¶ 2. They had good reason, then, to have access to BFS payment systems, even if others might have managed the Treasury's systems differently. *See Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983).

II. PLAINTIFFS HAVE NOT SHOWN IRREPARABLE HARM.

Plaintiffs cannot obtain an injunction without establishing that they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. This showing is

not optional: "[t]he failure to demonstrate irreparable harm is 'grounds for refusing to issue a preliminary injunction, even if the other three factors . . . merit such relief.'" *Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 50 (D.D.C. 2011) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). "In this Circuit, a litigant seeking a preliminary injunction must satisfy 'a high standard' for irreparable injury." *ConverDyn v. Moniz*, 68 F. Supp. 3d 34, 46 (D.D.C. 2014) (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297). For all the reasons Plaintiffs have failed to show cognizable injury for the purposes of Article III standing, they have necessarily failed to show any irreparable injury.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH IN DEFENDANTS' FAVOR.

As the Krause Declaration, and GAO reports to which it refers, detail, there are important reasons to improve and modernize BFS systems to avoid making improper or fraudulent payments on the order of billions of dollars. Krause Decl. ¶¶ 7-9. The Treasury DOGE Team's efforts, as led by Mr. Krause, are intended to assess and reform the technical systems so as to improve their ability to prevent this misspending of federal funds. There is plainly a public interest served by enabling them to do so. There is also a strong public interest in the President, duly elected, implementing through Executive Branch departments the policy objectives he was elected to implement.

Against this public interest, Plaintiffs offer only a rehash of their unconvincing arguments regarding irreparable harm and likelihood of success on the merits. TRO Mem. at 18-19. Plaintiffs have not even shown injury sufficient for standing, much less irreparable harm.

CONCLUSION

For the foregoing reasons, Defendants ask that the Court deny Plaintiffs' motion for preliminary injunction, and that the Order entered on February 6, 2025 be dissolved.

Dated: February 12, 2025

Respectfully submitted,

BRETT A. SHUMATE
Acting Assistant Attorney General
Civil Division

MARCIA BERMAN
Assistant Director
Federal Programs Branch

/s/ Bradley P. Humphreys
BRADLEY P. HUMPHREYS
Senior Trial Counsel
ANNA DEFFEBACH
Trial Attorney
Federal Programs Branch
Civil Division, Department of Justice
1100 L Street, NW
Washington, DC 20005
Telephone: (202) 305-0878
Bradley.Humphreys@usdoj.gov

Counsel for Defendants

Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Alliance for Retired Americans, *et al.* *Plaintiffs*, *v.* Bessent, *et. al.* *Defendants*.	1:25-cv-00313-CKK

I, Thomas H. Krause, Jr., declare under penalty of perjury:

1. I am employed as the Senior Advisor for Technology and Modernization at the Department of the Treasury. I started serving in this role on January 23, 2025. This role is currently unpaid, and I am not seeking compensation, as permissible by law. I am also designated as a Special Government Employee (SGE). While in this Treasury role, I have also maintained my employment as Chief Executive Officer (CEO) of Cloud Software Group, Inc., which is a privately held company comprised of several enterprise software businesses. Treasury's ethics office determined, based on my role as an SGE, that this arrangement was permissible. In addition to serving as Senior Advisor for Technology and Modernization, on February 5, 2025, the Treasury Secretary delegated the performance of duties of the Fiscal Assistant Secretary to me, although I have not yet assumed those duties.
2. My role at Treasury as Senior Advisor for Technology and Modernization was created to help effectuate the mission of the President's Department of Government Efficiency (DOGE). Under the President's January 20, 2025 Executive Order establishing the U.S. DOGE Service (USDS/DOGE) as a temporary organization within the Executive Office of the President that

seeks to maximize governmental efficiency and productivity, the President directed each Agency Head to establish a DOGE team of at least four employees, which may include Special Government Employees, within 30 days. In this role, I am responsible, among other duties, for reducing and eliminating improper and fraudulent payments; waste, fraud, and abuse; and improving the accuracy of financial reporting. To that end, I am focused on improving the controls, processes, and systems that facilitate payments and enable consolidated financial reporting. I serve as the DOGE team lead for the Treasury Department (Treasury DOGE Team).

3. Currently, I am the only Treasury DOGE team member. A second Treasury DOGE team member, Marko Elez, began working at the Treasury Department on January 21, 2025, but resigned from his role on February 6, 2025. Marko Elez is a highly qualified software engineer who previously worked at several of Elon Musk's companies, including SpaceX and X (formerly Twitter). In January, USDS/DOGE recommended to me, and to incoming Treasury leadership, that Mr. Elez be selected as the Treasury DOGE Team's technical team member. Treasury hired Mr. Elez as a Special Advisor for Information Technology and Management. In this role, Mr. Elez was a Treasury employee tasked with working closely with engineers at the Bureau of the Fiscal Service (BFS) on information technology (IT) matters in service of BFS's mission to promote financial integrity and operational efficiency of the federal government through accounting, financing, collection, payment, and other relevant BFS services. On February 6, 2025, Mr. Elez submitted his resignation from this role.[1] On that same day, he turned in his Treasury laptop, BFS laptop, access card, and other

[1] Treasury is seeking to hire a new candidate to fill Mr. Elez's previous role. However, we will ensure that any such new hire complies with relevant court orders, including the TRO in this case to the extent it applies when that person is onboarded.

government devices; his BFS systems access was terminated; and he has not conducted any work related to the BFS payment systems since that date.

4. Although I coordinate with officials at USDS/DOGE, provide them with regular updates on the team's progress, and receive high-level policy direction from them, I am not an employee of USDS/DOGE. My role on the Treasury DOGE Team is to find ways to use technology to make the Treasury Department more effective, more efficient, and more responsive to the policy goals of this Administration.

5. Although I have not yet assumed the duties of the Fiscal Assistant Secretary, in this role, I will be the official primarily responsible for overseeing the activities of the Bureau of the Fiscal Service (BFS), which manages the government's accounting, central payment systems, and public debt, among other tasks, and which serves as the central payment clearinghouse for all payments to and from federal agencies. BFS is responsible for disbursing the majority of U.S. Government payments, valued at more than $5 trillion annually.

6. I bring to my work at Treasury a wealth of experience from my long and successful business career in the technology industry, helping make major software enterprises more efficient, effective, innovative, and profitable. As noted above, I am currently the CEO of Cloud Software Group, one of the largest privately held enterprise software companies globally. Over the last two years, we have dramatically improved the company's effectiveness and efficiency by, among other things, improving our business processes and integrating and modernizing our technology systems. Prior to my employment at Cloud Software Group, I spent over a decade at Broadcom, where I was an executive officer serving as CFO and most recently as President of Broadcom Software. Broadcom is one of the most valuable companies in the world today and was built largely by acquiring underperforming

semiconductor and enterprise software businesses and improving their effectiveness and efficiency. I am proud of this work, and I bring this focus on effectiveness and efficiency to my work for the Treasury Department and in service of the President's DOGE mission, to help maximize value for the American taxpayer and make our Government better for future generations.

7. As illustrated by several reports released by the Government Accountability Office (GAO), we have our work cut out for us. On January 16, 2025, GAO released a report entitled "Financial Audit: FY2024 and FY2023 Consolidated Financial Statements of the U.S. Government." In the report, GAO summarizes that they were not able to determine if the Financial Report of the U.S. Government is fairly presented. Among other reasons, GAO highlighted "problems in accounting for transactions between federal agencies." GAO found many material weaknesses including "the federal government's inability to determine the full extent to which improper payments, including fraud, occur and reasonably assure that appropriate actions are taken to reduce them." GAO also reported that Treasury and Office of Management and Budget (OMB) officials expressed their continuing commitment to addressing the problems this report outlines. In short, the GAO report identifies the Federal government's inability to account for all of the improper payments including waste, fraud and abuse across federal agencies.

8. On September 10, 2024, the GAO released a report entitled "Payment Integrity: Significant Improvements are Needed to Address Improper Payments and Fraud." The report found that since 2003, cumulative improper payments[2] by executive branch agencies have totaled about

[2] Improper payments and fraudulent payments are related but distinct concepts. An improper payment is a payment that should not have been made, or that was made with an incorrect amount; fraudulent payments occur due to willful misrepresentation. All fraudulent payments are improper, but not all improper payments are fraudulent.

$2.7 *trillion* dollars. Some of GAO's top concerns included fraudulent or improper Earned Income Tax Credit refunds, Social Security payments, unemployment insurance payments, and Medicare and Medicaid payments. In fiscal year 2023 alone, federal agencies estimated $236 billion in improper payments across more than 70 federal programs. In addition, GAO estimated that the total annual financial losses across the government from fraud are between $233 and $521 billion. These numbers are truly staggering—billions and billions in hard-earned American taxpayer dollars are being misspent every year. GAO highlighted a number of steps that Congress and federal agencies could take to help reduce fraud and improper payments, including that "[a]gencies should improve oversight to ensure that funds aren't paid to ineligible recipients" and that "[a]gencies should improve their collection and use of data for preventing and detecting fraud."

9. Similarly, GAO has identified areas for improvement in BFS's systems related to identifying and tracing transactions to determine whether they were complete and properly recorded in the correct general ledger accounts and line items within the Schedules of the General Fund. *See* GAO Report, "Financial Statement Audit: Bureau of the Fiscal Service's FY22 Schedules of the General Fund" (March 30, 2023). Specifically, GAO has found inconsistent reporting, lack of traceability, and need for improved controls with the Treasury's Central Accounting and Reporting System (CARS), which federal agencies use to track their spending for budgetary and accounting purposes. These kinds of improvements and others can enhance BFS's ability to ensure accountability in the spending of taxpayer dollars.

10. BFS is well positioned to help agencies and the federal government holistically understand and take stock of the problems GAO has reported on, and assist agencies in the government-wide mission to stop fraudulent and improper payments, including by enhancing our ability

to help agencies identify payments that may potentially be directed to fraudulent accounts, payments to individuals or entities which may be barred from receiving government payments, payments that are potentially improperly sent to deceased individuals, may have a mismatch between payee and account data, or have other indicators of problems.

11. For this reason, an important aspect of the President's DOGE efforts has been to quickly place me into the Treasury Department so I can understand how BFS's end-to-end payment systems and financial report tools work, recommend ways to update and modernize those systems to better identify potentially improper and fraudulent payments, and find ways for BFS to assist federal agencies in responding to statutes, regulations, and Executive Orders that affect the Government's payment authorities and spending priorities.

12. As soon as I arrived at the Treasury Department, I met with Treasury leadership to begin operationalizing the Treasury DOGE Team's work. This early work included: (1) initiating conversations with BFS regarding our shared payment integrity and efficiency goals, and setting up a plan to achieve those goals; and (2) ensuring that the Treasury DOGE Team was leveraging its unique technological expertise to help operationalize the President's policy priorities for the early days of the Administration, including by helping identify payments that may be improper under his new Executive Orders.

13. Coming out of these early conversations, on January 26, 2025, BFS initiated a 4-6 week payment process engagement plan ("engagement") in which BFS would support the Treasury DOGE Team in understanding payment processes and identifying opportunities to advance payment protection, government efficiency, and fraud reduction goals. The objective of the engagement is to gain insight into the full, end-to-end payment process across multiple BFS

payment systems, and to identify data gaps that, if resolved, would make the system to work more efficiently and securely.

14. One initial goal of the engagement was to ensure that all payments through BFS's payment systems included Treasury Account Symbols (TAS) and Business Event Type Codes (BETCs), which are used to identify what type of payment and accounts each payment request is associated with. These are the kinds of enhanced controls suggested in the March 30, 2023 GAO Report. BFS has three separate primary payments systems (PAM, ASAP, ITS.gov) that support payments on behalf of nearly 250 agencies. These payment systems feed into CARS, which is a system that agencies use to track how payments should be accounted for budgetary purposes. PAM, or Payment Automation Manager, is the most widely used of BFS's payment systems. Within PAM, there are two types of payments, known as Type A and Type B—Type A is for high value, low volume payments, while Type B applies to lower value, higher volume payments. At present, a significant number of Type B payments are often missing TAS and BETC codes, meaning that payor agencies are required to modify the payment records in CARS well after payments have been certified and processed. As a result, I believe that certain of these payments cannot be accounted for accurately in CARS, and cannot be correctly connected in CARS to particular programs or purposes even after the money has been spent. The Treasury DOGE Team agreed to help address this issue as part of its preliminary work plan, in support of its goal of modernizing and identifying efficiencies.

15. Because an important part of our work was to understand the full end-to-end payment process, across multiple payment systems, this work required review of the source code for BFS's payment systems and databases across multiple BFS payment systems as well as the

ability to review sensitive payment data. The Treasury Secretary, through his Chief of Staff, approved the engagement in the early days of the new Administration. Because such access could present risks, including potential disruptions to BFS's payments systems, cybersecurity vulnerabilities, insider threat risks, and other risks that are inherent to any user access to sensitive IT systems, BFS recommended multiple mitigation measures. While these measures could not fully guarantee that the risks would not materialize, they would significantly reduce their likelihood. BFS and the DOGE Team implemented a number of mitigation measures, including physical and technical controls, instructions on proper data handling and safeguarding, and BFS staff oversight, to protect sensitive data and minimize the potential of disruptions to systems from the DOGE Team's work, as further explained in the accompanying Declaration of Joseph Gioeli.

16. The engagement remains in its initial stages—the Treasury DOGE Team was still in the process of being granted the agreed-upon levels of access to BFS databases and source code when Mr. Elez resigned. To my knowledge, as of the date of his resignation, Mr. Elez had access to and was analyzing copies of the source code for certain BFS payment systems in a secure, contained environment that was not connected to any production or test environments; thus, Mr. Elez had no ability to change BFS payments or the BFS payment system. Further, Mr. Elez had read-only access to the PAM and SPS[3] payment databases, subject to the agreed-upon mitigations and BFS oversight. My only access to these systems was so-called "over the shoulder" access to watch as other people were working within the systems or with data from the system. However, on February 8, 2025, an Order issued in this

[3] As noted in the Gioeli Declaration, I understand from BFS that there was briefly an error that provided Mr. Elez read/write access to the SPS system, but that Mr. Elez did not access that system during that time, and was likely unaware that he had any such read/write access.

case restricted my access to certain BFS data and systems. I have received guidance on compliance with that Order from Treasury attorneys and am complying with that guidance.

17. As part of the Treasury DOGE Team's efforts to assist payor agencies in identifying payments that may have been improper under the President's Executive Orders, we received direction from Treasury leadership that the Treasury DOGE Team and BFS help agencies effectuate the President's Executive Orders requiring pauses to certain types of financial transactions, including with respect to foreign development assistance. Specifically, under the President's January 20, 2025 Executive Order, entitled "Reevaluating and Realigning United States Foreign Aid," the President required that agencies pause all foreign development assistance for assessment of programmatic efficiencies and consistency with United States foreign policy. Section 3(e) of the order authorized the Secretary of State to issue waivers that would authorize specific payment programs to move forward notwithstanding the pause.

18. The Treasury DOGE Team, with assistance from BFS, was well positioned to facilitate the State Department's review of potentially applicable payments to determine if an exemption under Section 3(e) applied. Upon direction from Treasury leadership, we worked with BFS to identify particular categories of payments potentially implicated by the Executive Order, that should be reviewed by the State Department prior to payment, consistent with the Executive Order's requirements.

19. Specifically, the Treasury DOGE Team and BFS developed a process that would allow the State Department to review such payments prior to the payor agency's certification of the payments for BFS processing. In the normal course, when an agency initially provides a payment file to BFS through its PAM system, BFS conducts certain reviews of that file

(known as "pre-edit") before requesting that the agency certify the payment, after which point the file is processed through BFS's systems. An example of a check that occurs during the pre-certification phase is to compare the payments in the file against the Do Not Pay working system, which is used to identify payments that may be improper or fraudulent. If transaction(s) in a payment file lead to a match when screened through the Do Not Pay working system, BFS notifies the submitting agency, which is given an opportunity to reexamine the payment file to determine whether to ultimately certify it for processing.

20. Our work to implement the President's foreign aid Executive Order was intended to operate similarly. The plan we implemented included identifying payments files in the pre-edit phase, prior to certification and processing, that may fall within the scope of the Executive order and, thus, require review by the State Department, as the authorized agency under the Executive Order, to determine whether they fall within the scope of the Executive Order but should receive a waiver, or whether instead the payor agency should pause the payment pursuant to the Executive Order. Starting on January 31, 2025, BFS and the Treasury DOGE Team collaborated to operationalize this process for the State Department, by identifying incoming payments that matched certain Treasury Account Symbols (TAS) associated with foreign aid payments, and flagging those payments for the State Department for review consistent with the Executive Order. BFS and the Treasury DOGE Team emphasized to the State Department that its review of identified payments should be conducted within one business day to minimize delays where payment should be authorized. At no point did BFS refrain from transmitting a payment that had been duly certified by the payor agency, because, once certified, BFS is obliged to process the payment. As described further in the Declaration of Vona S. Robinson filed concurrent with my declaration, only two sets of

payments have thus far been flagged through this process; the first, on February 7, 2025was determined by the State Department not to fall within the scope of the Executive Order. Those payments proceeded as planned. The second, on February 10, was flagged for the State Department and later canceled by the requesting agency.

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

Executed on: 2/11/25

Signed: 

Thomas H. Krause, Jr.
Senior Advisor for Technology and Modernization
United States Department of the Treasury

Exhibit 2

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Alliance for Retired Americans, *et al.* *Plaintiffs*, *v.* Bessent, *et. al.* *Defendants*.	Case No. 1:25-cv-313-CKK

I, Joseph Gioeli III, declare under penalty of perjury:

1. I currently serve as the Deputy Commissioner for Transformation and Modernization in the Bureau of the Fiscal Service (Bureau or BFS), in the U.S. Department of the Treasury (Treasury), and have been employed in this role since 2023. I report to the Commissioner of the Bureau. I am a career civil servant. Prior to my current position, I also served as the Bureau's Chief Technology Officer from 2017-2020 and its Chief Information Officer from 2020-2023. I have been employed at the Bureau for over seven years.
2. In my current role, I oversee, among other things, the Bureau's Office of Information and Security Services (ISS). ISS promotes the integrity and operational efficiency of the federal government's financial infrastructure that is within Treasury's responsibility, while ensuring the security of that infrastructure and the information it contains. In my position, I oversee the Chief Information Officer, who has authority over the security of and access to these systems. I have extensive knowledge of the Bureau's technology investments, as well as the related technology and cybersecurity strategies that support our enterprises.

3. I also understand the security posture of these systems, the types of data that generally transact through these systems, and their criticality to the national critical infrastructure. I am also familiar with Bureau requirements around access to sensitive systems.

4. In my current role, I have been involved in the Bureau's efforts to develop and implement a 4- to 6-week payment process engagement plan ("engagement") in which the Bureau would support Treasury employees from the Treasury DOGE Team in understanding payment processes and identifying opportunities to advance payment integrity and fraud reduction goals. The Treasury DOGE Team involved in this engagement consisted of Thomas Krause and Marko Elez. To date, to the best of my knowledge, Mr. Elez has been the only individual on the Treasury DOGE Team who has been provided direct access to BFS payment systems or source code. Mr. Krause had "over the shoulder" access by which he could view BFS payment systems or source code while they were being accessed by another person with the required access and permissions. I understand that Mr. Elez had provided Mr. Krause with updates about his work, which may have occasionally included screenshots of payment systems data or records, but Mr. Krause did not receive direct access to BFS payment systems or source code.

5. BFS has multiple payment and accounting systems that are responsible for different tasks and processes, which are involved in BFS's engagement with the DOGE team. These include Payment Automation Manager (PAM), Secure Payment System (SPS), Automated Standard Application for Payments (ASAP), International Treasury Services (ITS.gov), and the Central Accounting and Reporting System (CARS).

6. PAM is the primary application used by Treasury to process payments for disbursement, and it includes several components. PAM's "file system" is where payment files are transferred

from initiating agencies before processing and certification, sometimes referred to as its "landing zone." Once certified by the initiating agency certifying official, PAM's "payment processing system" processes the payments consistent with the instructions within the file. The PAM payment process is described in more detail in the accompanying declaration of Vona S. Robinson.

7. ASAP is a recipient-initiated electronic payment and information system; this means that it is a payment system that allows recipients to draw down funds from an established account for that recipient.

8. SPS is a system through which paying agencies securely create, certify, and submit individual payment files to Treasury; it is also typically used for one-time large dollar amount transactions.

9. International Treasury Services.gov (ITS) allows federal agencies to make international payments, which are often used, for example, to provide Social Security benefit payments to Americans living abroad.

10. Finally, the Central Accounting and Reporting System (CARS) is the electronic system for recording the federal government's financial data on an agency's spending and provides streamlined agency reporting for accounting purposes.

11. The scope of work as envisioned in the engagement plan required access to Fiscal Service source code, applications, and databases across all these Fiscal Service payment and accounting systems and their hosting environments. This broad access presented risks, which included potential operational disruptions to Fiscal Service's payment systems, access to sensitive data elements, insider threat risk, and other risks that are inherent to any user access

to sensitive IT systems. In light of these risks, BFS and Treasury Departmental Office employees developed mitigation strategies that sought to reduce these risks.

12. These measures included the requirement that Mr. Elez be provided with a BFS laptop, which would be his only method of connecting to the Treasury payments systems, both in connecting with the source code repository and for his read-only access of the systems. He had previously been provided a Treasury laptop from the Department shortly after he onboarded, but due to Bureau security policy, that device was restricted from accessing the BFS systems and services he had requested. BFS used several cybersecurity tools to monitor Mr. Elez's usage of his BFS laptop at all times and continuously log his activity. Additionally, the Bureau enabled enhanced monitoring on his laptop, which included the ability to monitor and block website access, block the use of external peripherals (such as USB drives or mass storage devices), monitor any scripts or commands executed on the device, and block access to cloud-based storage services. Additionally, the device contained data exfiltration detection, which alerts the Bureau to attempts to transmit sensitive data types. The laptop is also encrypted in accordance with Bureau policy, which, if the laptop were stolen or lost, would prevent unauthorized users from accessing data contained within the laptop.

13. Additional mitigation measures that were adopted included that Mr. Elez would receive "read-only" access to the systems, and that any reviews conducted using the "read-only" access would occur during low-utilization time periods, to minimize the possibility of operational disruptions. While providing a single individual with access to multiple systems and data records accessed here was broader in scope than what has occurred in the past, this read-only approach is similar to the kind of limited access the Bureau has provided to

auditors for other Treasury non-payment systems, though even in those scenarios the availability of production data was significantly limited.

14. Further, it was agreed that in the near-term only a single Treasury employee, Mr. Elez, would be designated as the "technical team member" who would exercise this read-only access. The Bureau would provide safeguarding and handling instructions for Treasury data for the duration of the project, and ISS personnel instructed Mr. Elez and Mr. Krause that no Treasury information and data could leave the Bureau laptop for the duration of the engagement, consistent with what was outlined in the engagement plan. The Treasury DOGE Team also agreed that, at the end of the project, it would provide the Bureau with an attestation statement that any copies of Treasury information made would be properly destroyed, and confirmation that no suspicious or unauthorized access to Bureau information or data had occurred during the engagement.

15. Overall, BFS and Treasury leadership were fully aware of the risks presented by Mr. Elez's work and sought to mitigate those risks to the extent possible through the measures just described.

16. On January 28, 2025, the Bureau provided Mr. Elez with the Bureau laptop and with copies of the source code for PAM, SPS, and ASAP in a separate, secure coding environment known as a "secure code repository" or "sandbox." Mr. Elez could review and make changes locally to copies of the source code in the cordoned-off code repository; however, he did not have the authority or capability to publish any code changes to the production system or underlying test environments. This repository was separate from Fiscal Service's typical code development environment, and unlike the usual code development environment, this

new repository was segmented, to ensure that no changes to the operative source code could be made.

17. On February 3, 2025, consistent with the engagement plan and mitigation measures developed, Mr. Elez was provided with read-only access, through his Bureau laptop, to the certain BFS systems. The read-only access that Mr. Elez was provided gives the user the ability to view and query information and data but does not allow for any changes to that information and data within its source system. While this reduces risk, it does not fully eliminate the risks identified in the assessment (for example, the risk of overburdening the system with a complex read-only query). Specifically, Mr. Elez was provided read-only access to the Payment Automation Manager (PAM) Database, Payment Automation Manager (PAM) File System, and, subsequently on February 5, the Secure Payment System (SPS) Database.

18. ISS configured his network access and assisted him in setting up the necessary tools to connect to the PAM database on February 3. His access was closely monitored by multiple BFS administrators throughout the process on February 3. That same day, he received a "walk-through" demonstration of two BFS payment systems, the PAM database and the PAM file system (the system that controls the payment file "landing zone" discussed above), to see how the systems worked. He logged in with his read-only access to these systems on February 3 during this "walk-through" demonstration. The Bureau is in the process of reviewing the logs of Mr. Elez's activity on his Bureau laptop, and this review remains ongoing. Based on the preliminary log reviews conducted to date, it appears that on February 3, Mr. Elez copied two USAID files directly from the PAM database to his BFS laptop; on February 4 and 5, Mr. Elez accessed the PAM file system; and on February 5, Mr. Elez

accessed the PAM payment processing database. These activities are consistent with the read-only access that Mr. Elez was provided and did not change or alter any BFS payment system or record within their source systems. As noted, reviews of Mr. Elez's work are still actively occurring; I do not have any more detail to provide at this time about his activities with respect to PAM.

19. Due to scheduling constraints, Mr. Elez was unable to meet with Bureau personnel to set up his access to the SPS database until February 5. On that date, lSS held a virtual walk-through session to help him to connect to the SPS database. He accessed this database exclusively under the supervision of Bureau database administrators in a virtual walkthrough session. According to the preliminary review of logs the Bureau has conducted to date, it appears Mr. Elez accessed the SPS database only once during that walk-through demonstration on February 5. It does not appear that he accessed the database again. As part of the ongoing review, additional log reviews are currently underway to confirm this. Mr. Elez never logged into ASAP, CARS, or ITS.gov, as technical access to those systems was never established for him.

20. On the morning of February 6, it was discovered that Mr. Elez's database access to SPS on February 5 had mistakenly been configured, by a career BFS employee, to have read/write permissions instead of read-only. A forensic investigation was immediately initiated by database administrators to review all activities performed on that server and database. The initial investigation confirmed that all of Mr. Elez's interactions with the SPS system occurred within the supervised, walk-through session and that no unauthorized actions had taken place. His access was promptly corrected to read-only, and he did not log into the system again after his initial virtual over-the-shoulder session on February 5. To the best of

our knowledge, Mr. Elez never knew of the fact that he briefly had read/write permissions for the SPS database, and never took any action to exercise the "write" privileges in order to modify anything within the SPS database—indeed, he never logged in during the time that he had read/write privileges, other than during the virtual walk-through – and forensic analysis is currently underway to confirm this.

21. As noted above, the Bureau used several cybersecurity tools to monitor Mr. Elez's usage and continuously log his activity. While forensic analysis is still ongoing, Bureau personnel have conducted preliminary reviews of logs of his activity both on his laptop and within the systems and at this time have found no indication of any unauthorized use, of any use outside the scope that was directed by Treasury leadership, or that Mr. Elez used his BFS laptop to share any BFS payment systems data outside the U.S. Government.

22. On February 6, 2025, Mr. Elez submitted his resignation as a Treasury employee. After the Bureau received written notification from the Department confirming his resignation, it revoked or removed all physical and logical access and recovered all Treasury equipment, including his Treasury Departmental Offices and Bureau laptops, Treasury Departmental Offices government cell phone, and Treasury building access cards.

23. I have consulted with other BFS officials familiar with our access policies, and to date we have not identified any BFS policies (in effect either currently or prior to January 20, 2025) that disallow Federal employees from accessing the BFS payment and accounting systems identified above on the basis that they hold non-career (or political) appointments or are Special Government Employees.

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

Executed on: 2/12/25

Signed: _____

Joseph Gioeli III

Deputy Commissioner of Transformation and Modernization

Bureau of the Fiscal Service

United States Department of the Treasury

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLIANCE FOR RETIRED AMERICANS, *et al.*, Plaintiffs, v. SCOTT BESSENT, *in his official capacity as Secretary of the Treasury, et al.*, Defendants.	Civil Action No. 25-0313 (CKK)

DECLARATION OF MICHAEL J. WENZLER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

I, Michael J. Wenzler, declare the following to be a true and correct statement of facts:

1. I am the Associate Chief Human Capital Officer for Executive and Human Capital Services at the Departmental Offices of the Department of the Treasury (Treasury). In this capacity, I am responsible for leading and overseeing the development and delivery of the full range of human resources services to managers, supervisors, and employees of Treasury's Departmental Offices. This includes, but is not limited to, appointing, onboarding, and providing executive resources support to Departmental Offices senior executives, senior level executives, non-career executives, Schedule C appointees, and Presidential appointees. I have held this position since January 28, 2024. Prior to this role, I served at the U.S. Mint, and I have been employed at the Treasury Department since April 2020.

2. The purpose of this declaration is to set forth information related to Treasury's

MW 2/12/2025

employment of Thomas H. Krause, Jr., and Marko Elez. The statements made herein are based on my personal knowledge and review of documents and information furnished to me in the course of my official duties.

3. On January 23, 2025, Thomas H. Krause, Jr., was appointed under 5 U.S.C. § 3109 as a Consultant for Treasury (Departmental Offices, Office of the Chief of Staff) with the title of Senior Advisor for Technology and Modernization. Thomas executed his appointment affidavit and affirmed his oath of office on January 23, 2025 and onboarded at Treasury the same day. Consultants appointed under 5 U.S.C. § 3109 are Federal civil service employees under 5 U.S.C. § 2105. *See* 5 C.F.R. § 304.101. A consultant appointed under 5 U.S.C. § 3109 may be employed without pay. *See* 5 C.F.R. § 304.102(h). Thomas waived compensation in writing and is serving unpaid.

4. Thomas is designated as a Special Government Employee (SGE) under 18 U.S.C. § 202. An SGE is an officer or employee who is retained, designated, appointed, or employed, to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

5. On February 3, 2025, I executed human resources forms associated with Thomas's appointment ("appointment documentation") in my role as the Appointing Official. It is common during transitions between administrations, when many individuals are onboarding in a short period of time, for such appointment documentation to be executed after the individual's employment at Treasury begins. Subsequent review of the appointment documentation I executed on February 3, 2025 identified an error in the identified period of Thomas's appointment. Specifically, the February 3, 2025 documentation erroneously stated that Thomas's start date was February 9, 2025. As described above, Thomas has been a Treasury employee

2/12/2025

since January 23, 2025. Accordingly, on February 10, 2025, I executed revised appointment documentation for Thomas, which reflects the correct appointment term of January 23, 2025 to March 24, 2025.

6. The Summary of Duties for Thomas's appointment states that: "The Senior Advisor will work very closely with the Office of Fiscal Assistant Secretary and Fiscal Service - and in particular the Office of the Commissioner to execute Fiscal's mission of promoting the financial integrity and operational efficiency of the federal government through exceptional accounting, financing, collections, payments, and shared services. The Senior Advisor shall focus on key issues for Fiscal, including but not limited to: (1) Operational Resiliency; (2) Advancing Governmentwide Payment Integrity; (3) Critical Modernization Programs; (4) lmproving the Payment Experience; and (5) TreasuryDirect User Credential Costs. The Senior Advisor shall work closely with key internal, external, and interagency stakeholders to execute Fiscal's mission."

7. 5 C.F.R. § 304.102(b) defines a consultant as "a person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience." 5 C.F.R. § 304.103(c) defines a consultant position as "one that requires providing advice, views, opinions, alternatives, or recommendations on a temporary and/or intermittent basis on issues, problems, or questions presented by a Federal official." Agencies may not employ consultants to preform managerial or supervisory work. *See* 5 C.F.R. § 304.103(b).

8. At the request of the Treasury Chief of Staff (hiring manager), my office is pursuing the employment of Thomas as the Senior Advisor for Technology and Modernization under a Temporary Transition Schedule C appointment (*see* 5 C.F.R. § 213.3302; U.S. Office of

2/12/2025

Personnel Management Memorandum for Heads of Executive Departments, Independent Agencies, Inspectors General and the Council of the Inspectors General on Integrity and Efficiency dated January 8, 2025). Thomas will retain his ethics designation as an SGE under his Schedule C appointment. Upon appointment, Thomas will work closely with the Chief of Staff, the Under Secretary for Domestic Finance, and the Office of Fiscal Assistant Secretary and Fiscal Service to lead the development, execution, and management of the information technology and technological modernization efforts and programs for the Department of the Treasury and the internal management of the Department and its bureaus – including the Bureau of the Fiscal Service – as it relates to technology. Mr. Krause's new Schedule C appointment to this position has not yet occurred, but will likely occur in the near future.

9. On January 21, 2025, Treasury appointed Marko Elez as Special Advisor for Information Technology and Modernization (Treasury Departmental Offices, Office of the Chief of Staff), under Treasury's authority to establish temporary transitional Schedule C positions. *See* 5 C.F.R. § 213.3302. Appointments under this authority may be made for a period not to exceed 120 days with one extension of an additional 120 days. As described herein, Marko was a Treasury employee between January 21 and February 6, 2025.

10. The Position Description for Marko states that his roles and responsibilities included conducting "special and confidential studies on a variety of strategies and issues related to Treasury's information technology," and identifying, analyzing, and making "recommendations to strengthen Treasury's hardware and software."

11. Although Marko could have been designated as an SGE because the appointment was to perform temporary duties either on a full-time or intermittent basis for not more than 130 days, the Treasury department Ethics office *did not* designate Marko as a Special Government

2/12/2025

Employee, meaning that Marko had to comply with additional ethics requirements that are not required for SGE positions.

12. On February 6, 2025, Marko resigned from his position. He is no longer employed by the Department of the Treasury.

2/12/2025

I declare the foregoing to be true and correct, upon penalty of perjury.

Dated: 2/12/2025

Signed

Michael J. Wenzler

Associate Chief Human Capital Officer

for Executive and Human Capital Services

Departmental Offices of the Department of the Treasury

Exhibit 4

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Alliance for Retired Americans, *et al.* *Plaintiffs*, *v.* Bessent, *et. al.* *Defendants*.	Case No. 1:25-cv-313-CKK

I, Vona S. Robinson, declare under penalty of perjury:

1. I currently serve as the Deputy Assistant Commissioner for Federal Disbursement Services at the Bureau of the Fiscal Service (BFS or the Bureau). I have been employed in this role since October 2022; prior to that, I served as Executive Director Federal Disbursement Services from February 2019 to October 2022. I report to Linda Chero, Assistant Commissioner, Disbursing and Debt Management. I am a career civil servant.
2. In my current role, I oversee, among other things, the Bureau's Federal Payment Operations. My office is responsible for disbursing 87.8% of the U.S. Government's payments valued at 5.46 trillion dollars annually. My office works closely with BFS's Office of Transformation and Modernization, which is headed by Deputy Commissioner Joseph Gioeli. Mr. Gioeli's office is responsible for the integrity, operational efficiency, and security of the technological infrastructure, whereas the Office for Disbursement Services is responsible for overseeing the business processing of payment requests that come into BFS's payment systems.

3. In this role, I have extensive knowledge of the Fiscal Service business processes for the disbursement of federal payments. Information in this declaration is based on my personal knowledge and information made available to me in the course of my official duties. I provide this declaration in support of Defendants' opposition to Plaintiffs' Motion for a Temporary Restraining Order in the above-captioned case.
4. As described in the accompanying Declaration of Joseph Gioeli, BFS has multiple payment systems that are responsible for different tasks and processes; multiple of these systems are involved in BFS's engagement with the Treasury Department of Government Efficiency (DOGE) team. As relevant to the topics discussed in this declaration, Payment Automation Manager (PAM) is the primary application used by Treasury to process payments for disbursement, and it includes several component sub-systems, as discussed below. Secure Payment System (SPS) is another payment processing system, through which agencies securely create, certify, and submit payment files to Treasury; it is also typically used for one-time large dollar amount transactions.
5. Within PAM, PAM's "file system" receives payment files from payor agencies into its "landing zone," which is the existing system that ingests payment files before agencies certify the payments for processing. When payment files come into the "landing zone," they are transferred to the PAM application where the payment file is validated and a pre-edit report is generated and sent back to the Federal Agency that contains, among other things, information about potentially improper or fraudulent payments. The Federal Agency uses this report to certify the payments in the SPS system, after which the payments are processed consistent with the instructions within the file.

6. I am familiar with the Bureau's efforts to develop and implement a 4-6 week payment process engagement plan ("engagement") in which the Bureau would support the Treasury DOGE Team—which I understand consisted of Tom Krause and Marko Elez, until Mr. Elez's resignation on February 6, 2025. I understand that the purpose of the engagement was to understand BFS payment processes and identify opportunities to advance payment integrity and fraud reduction goals.
7. I am also aware of Treasury leadership's decision to approve a process that would assist agencies in complying with the President's January 20, 2025 Executive Orders requiring that certain types of foreign aid-related payments be paused, and I am familiar with the Treasury DOGE Team's collaboration with BFS staff, including some within my office, to help effectuate this decision.
8. I understand that, on or about January 26, 2025, Treasury leadership approved a process that would assist agencies in complying with the President's January 20, 2025 Executive Order on foreign aid. Specifically, the Bureau was directed to develop a process to identify all USAID payment files within the PAM file system's "landing zone," to flag those payments for the State Department as potentially implicated by the President's foreign aid Executive Order, prior to their entry into the PAM payment processing systems. Before this process could get fully underway, however, on January 27, Treasury leadership informed BFS that State Department had decided to intercept the USAID files prior to the initial submission to BFS, and therefore it would not be necessary to continue

to flag any USAID payment files for the State Department's review. Between January 26 and the revised decision on January 27, BFS did not receive any USAID payment files. [1]

9. On January 27, 2025, the Office of Information and Security Services (ISS), a component of BFS, established the secure portal that would allow the authorized State Department officials to retrieve copies of the identified payment files consistent with the authorized process.

10. On January 31, the Bureau was directed to (1) identify incoming specific Agency payment files to the "landing zone" that met 4 specified Treasury Account Symbol (TAS)[2] codes,—I understand that those TAS codes had been associated with categories of payments that were not USAID payments, but which nonetheless may have been covered under the foreign aid Executive Order; (2) create a copy of the payment files with those TAS codes—the original payment files would remain in the landing zone to ensure payment integrity; (3) move those copies into a separate folder (the "MoveIT" folder) where they could be sent to authorized officials at the State Department for review; (4) deliver the copies to authorized staff at the State Department through a secure portal that was limited in access to certain designated Department of State officials, for same-day

[1] Several USAID payment files *were* received later, on February 4 and February 5—BFS received a separate authorization email from the USAID copying State Department indicating that the files should move forward as scheduled, which they did. No USAID payment files were received after February 5.

[2] A TAS is an identifier for a particular agency's account, which typically is associated with a an individual agency appropriation, receipt, or other fund account. One TAS code was associated with the Millenium Challenge Corporation (MCC) and three TAS codes were associated with certain payments from the Department of Health and Human Services (HHS). These included two sub-accounts labeled "Refugee and Entrant Assistance, Admin for Children and Families," one account labeled "Gifts and Donations Office of Refugee Resettlement, Admin for Children and Families," and one account labeled "Refugee Resettlement Assistance, Administration for Children and Families, Health and Human Services."

review, and (5) allow those State Department officials to determine whether the Executive Order required a pause, or whether the original payment files should move forward into PAM's processing system for disbursement according to Treasury's normal payment processes.

11. At the outset, I understand that BFS career staff queried the PAM file system manually to identify payment files and shared those payment files with Mr. Elez for review through the MoveIT folder. I further understand that, at some point after January 31, Mr. Elez assisted in automating the manual review of the payment files.

12. On the afternoon of February 6, 2025, Mr. Elez resigned, and his electronic devices were returned to BFS and the Treasury Department.

13. On the morning of February 7, four payment files were flagged with a TAS associated with the "Refugee and Entrant Assistance, Admin for Children and Families" account, indicating that the State Department review should be conducted. At 2 p.m., the State Department indicated that the files could be processed normally, as the State Department determined it did not have authority over the payments under the Executive Order. The four payment files were then processed in the normal course that same day.

14. On February 10, the Department of Interior (DOI), Interior Business Center, which is a federal shared services provider and provides Financial Management Services among other things to Federal Agencies, submitted a international certified payment request on behalf of Millennium Challenge Corporation. The payment was forwarded to State Department for further review consistent with the established process. At approximately 2:00 pm eastern, the DOI certifying official (not the State Department representative) requested Fiscal Service to not process the payment.

15. As of February 10, we have ensured that the State Department review process will not proceed for payment requests within the scope of the TRO order issued in *New York v. Trump*, No. 1:25-cv-39-JJM-PAS (D.R.I.).

16. To the best of my knowledge, BFS has not failed to disburse any payment duly certified by a payor agency as a result of the Treasury DOGE Team's work. To date, no payments, with the exception of the single MCC payment mentioned above, have been delayed or canceled by the payor agency as a result of the re-routing and review process described herein.

I swear upon penalty of perjury that the foregoing is true and correct.

Dated: 2/12/2025

Vona S. Robinson

Vona S. Robinson

Deputy Assistant Commissioner – Federal Disbursement Services

Bureau of the Fiscal Service

U.S. Department of the Treasury

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLIANCE FOR RETIRED AMERICANS, *et al.*,

Plaintiffs,

v.

SCOTT BESSENT, *in his official capacity as Secretary of the Treasury*, *et al.*,

Defendants.

Case No. 1:25-cv-00313-CKK

[PROPOSED] ORDER

Upon consideration of Plaintiffs' motion for a preliminary injunction, Defendants' opposition, and Plaintiffs' reply, and the entire record herein, it is hereby Ordered that Plaintiffs' motion is DENIED.

It is further ordered that the Order entered by the Court on February 6, 2025 is hereby DISSOLVED.

SO ORDERED.

Dated: _____

_____
Hon. Colleen Kollar-Kotelly
United States District Judge