

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

	)	
STATE OF NEW MEXICO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:25-CV-00429
	)	
ELON MUSK, in his official capacity, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

During today’s hearing, the Court asked counsel for Defendants for further information regarding (i) whether any federal employee terminations took place at the end of last week; and (ii) any future plans by the non-Defendants identified in the States’ revised TRO (the Office of Personnel Management, the Department of Education, the Department of Labor, the Department of Health and Human Services, the Department of Energy, the Department of Transportation, and the Department of Commerce) to engage in any widespread layoffs or personnel actions within the next fourteen days. Defendants are aware that that a select set of agencies in fact terminated a number of employees at the end of last week. Defendants cannot make a programmatic representation at this juncture about how each of the seven non-Defendants noted above may go about personnel actions over the next two weeks.

But as the attached declaration of Joshua Fisher explains, Elon Musk “has no actual or formal authority to make government decisions himself”—including personnel decisions at individual agencies. Decl. ¶ 5. He is an employee of the White House Office (not USDS or the U.S. DOGE Service Temporary Organization); and he only has the ability to advise the President, or communicate the President’s directives, like other senior White House officials. *Id.* ¶¶ 3, 5. Moreover, Defendants

are not aware of any source of legal authority granting USDS or the U.S. DOGE Service Temporary Organization the power to order personnel actions at any of the agencies listed above. Neither of the President's Executive Orders regarding "DOGE" contemplate—much less furnish—such authority. *See* "Establishing and Implementing the President's Department of Government Efficiency," Exec. Order No. 14,158 (Jan. 20, 2025); "Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative," Exec. Order 14,210 (Feb. 11, 2025).

Dated: February 17, 2025

Respectfully submitted,

BRETT A. SHUMATE

Acting Assistant Attorney General, Civil Division

/s/ Joshua E. Gardner

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* Mr. Graver has been unable to obtain e-filing privileges with the Court, due to the outage on Friday, and the current holiday weekend. He has provided his Notice of Appearance to Chambers, and will file it on the docket as soon as filing-privileges are granted.

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ELON MUSK, in his official capacity, et al.,

Defendants.

Case No. 1:25-cv-00429

DECLARATION OF JOSHUA FISHER

I, Joshua Fisher, pursuant to the provisions of 28 U.S.C. § 1746, declare, under penalty of perjury, as follows:

1. I make these statements based on personal knowledge and knowledge obtained in the course of my official duties.
2. I am the Director of the Office of Administration. I have held that position since January 20, 2025. In that capacity, I am personally involved in the appointment of special government employees. I have personal knowledge of Mr. Elon Musk's employment status with the federal government.
3. Mr. Musk is an employee of the White House Office. He holds that position as a non-career Special Government Employee ("SGE").
4. In that job, Mr. Musk is a Senior Advisor to the President. It is not uncommon for the President to have Senior Advisors who are SGEs. For instance, Anita Dunn was an influential Senior Advisor to President Biden, while serving as an SGE.
5. In his role as a Senior Advisor to the President, Mr. Musk has no greater authority than other senior White House advisors. Like other senior White House advisors, Mr. Musk has no

actual or formal authority to make government decisions himself. Mr. Musk can only advise the President and communicate the President's directives.

6. The U.S. DOGE Service is a component of the Executive Office of the President. The U.S. DOGE Service Temporary Organization is within the U.S. DOGE Service. Both are separate from the White House Office. Mr. Musk is an employee in the White House Office. He is not an employee of the U.S. DOGE Service or U.S. DOGE Service Temporary Organization. Mr. Musk is not the U.S. DOGE Service Administrator.

Dated: Washington, D.C.

February 17, 2025


Joshua Fisher
Director
Office of Administration