

No. 26-\_\_\_\_\_

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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IN RE ELON MUSK, in his official capacity; UNITED STATES DOGE SERVICE; DEPARTMENT OF GOVERNMENT EFFICIENCY; UNITED STATES DEPARTMENT OF STATE; UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT; MARCO RUBIO, in his official capacity; PETER MAROCCO, in his official capacity; JEREMY LEWIN, in his official capacity; KENNETH JACKSON, in his official capacity; and AMY GLEASON, in her official capacity,

Petitioners.

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**PETITION FOR A WRIT OF MANDAMUS TO THE  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND**

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## INTRODUCTION AND SUMMARY

The federal government respectfully requests that this Court issue a writ of mandamus to block the depositions of Elon Musk, Amy Gleason, Peter Marocco, and Jeremy Lewin, each a current or former high-ranking Executive Branch official.

This suit, brought by former employees and contractors of the U.S. Agency for International Development (USAID), alleges that the agency was dismantled and its employees dismissed in violation of the Appointments Clause and the separation of powers. Other courts have recognized the fatal legal defects in similar suits, including lack of standing and statutory jurisdiction. Indeed, when this Court previously stayed the preliminary injunction entered by the district court, it recognized the fundamental mismatch between plaintiffs' alleged injuries, the asserted legal violations, and the requested remedies. *See* Ct. App. Doc. 18, Case No. 25-1273, at 12-14 (Stay Op.).<sup>1</sup> Nevertheless, the district court denied the government's motion to dismiss, refused to certify dispositive legal questions for interlocutory appeal, and then authorized plaintiffs to take wide-ranging and intrusive discovery. Yet the legal justification for that discovery—or any discovery at all—is deeply flawed: plaintiffs'

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<sup>1</sup> That appeal remains pending.

Appointments Clause and separation-of-powers claims fail for purely legal reasons and require no factual development to resolve.

The government so far has complied with the wholly improper fishing expedition that the district court authorized. It produced more than 2,500 pages of documents, responded to nearly two dozen interrogatories, and has not opposed making several officials—including agency representatives under [Federal Rule of Civil Procedure 30\(b\)\(6\)](#)—available for deposition. But even overbroad discovery must have some limit. And as this Court, the Supreme Court, and every other court of appeals to address the question have stressed, the separation of powers itself imposes such a limit.

Under settled principles, as a matter of respect for the autonomy of the Executive Branch and practical necessity to the operation of government, high-ranking Executive Branch officials cannot be compelled to sit for depositions in civil litigation absent “extraordinary circumstances.” *Franklin Sav. Ass’n v. Ryan*, [922 F.2d 209, 211](#) (4th Cir. 1991); *see also, e.g., In re U.S. Dep’t of Educ.*, [25 F.4th 692, 703](#) (9th Cir. 2022). Civil discovery into the innermost operations of the White House—such as allowing plaintiffs to depose a former Senior Advisor to the President, or the current head of an office within the Executive Office of the President—is even more plainly problematic. *See Cheney v. U.S. Dist. Ct.*

*for D.C.*, 542 U.S. 367, 380-81 (2004) (emphasizing “the Executive Branch’s interests in maintaining the autonomy of its office” and “[t]he high respect that is owed to the office of the Chief Executive” in civil discovery).

The government therefore respectfully requests that this Court issue a writ of mandamus directing the district court to vacate its February 4, 2026, order and grant the government’s motion for a protective order. Musk, Gleason, Marocco, and Lewin are all high-ranking Executive Branch officials entitled to the doctrine’s protections: Musk was a Senior Advisor to the President; Gleason is Acting Administrator of the United States DOGE Service, a component of the Executive Office of the President; Marocco was Acting USAID Deputy Administrator; and Lewin was USAID Deputy Administrator and Chief Operating Officer. Plaintiffs seek these officials’ testimony about their actions in these roles.<sup>2</sup>

Courts routinely recognize that mandamus is appropriate to preclude the deposition in civil litigation of such senior White House and agency officials. Plaintiffs come nowhere near presenting the sort of extraordinary

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<sup>2</sup> While the government’s motion for a protective order addressed Musk, Marocco, and Lewin, the district court since indicated that the reasoning in the February 4 order applies to Gleason as well. *See* Tr. of Proceedings at 72:17-22 (Feb. 5, 2026).

circumstances that could warrant deposing a Senior Advisor to the President, the current head of a White House component, or two of the senior-most officials at an Executive agency in the wake of a presidential transition. *See, e.g.*, Order, *In re Murthy*, No. 22-30697 (5th Cir. [Jan. 5, 2023](#)) (blocking deposition of former White House Press Secretary); *In re United States (Bernanke)*, [542 F. App'x 944, 948](#) (Fed. Cir. 2013) (blocking deposition of Chairman of the Federal Reserve Board). Such depositions are supposed to be a last resort. Yet the district court allowed these depositions to proceed even before other discovery efforts were exhausted, and without any meaningful showing that alternatives would be inadequate. Permitting these depositions in such circumstances defies the judicial consensus that for decades, across Administrations, has protected the Executive Branch from similar abuse of litigation processes.

The palpable defects in plaintiffs' complaint underscore the absence of extraordinary circumstances and the need for this Court's intervention. Among other problems, the proposed depositions seek information that pertains, at most, to abstract legal claims that plaintiffs lack standing to assert. In denying the government's motion to dismiss, the district court relied solely on plaintiffs' adverse personnel actions to provide the injury-in-fact necessary for standing. Yet the proposed testimony, like plaintiffs'

claims more broadly, is wholly untethered to those injuries. The court pointed to only two specific USAID decisions—namely, the closure of USAID’s headquarters building and the taking down of its website—in identifying a need for deposition testimony. But those actions did not injure plaintiffs, and in all events there is no basis to depose Elon Musk or other White House or senior agency leaders to resolve any such claims.

Although mandamus relief is “drastic and extraordinary,” it is warranted where there are “no other adequate means” to obtain redress, the applicant shows a “clear and indisputable” right to relief, and relief “is appropriate under the circumstances.” *Cheney*, [542 U.S. at 380-81](#).

Because those conditions are satisfied here, this Court should issue a writ of mandamus.

The government respectfully requests a ruling by March 2, 2026. The contested depositions have not yet been scheduled, but they are anticipated to begin as early as March 5, and discovery is scheduled to close on March 31. *See* D. Ct. Doc. 193.

## STATEMENT

1. In January 2025, the President issued an executive order to improve the federal government’s efficiency. Exec. Order No. 14,158, [90 Fed. Reg. 8441 \(Jan. 29, 2025\)](#). That order implemented the President’s

Department of Government Efficiency (DOGE) agenda by renaming the U.S. Digital Service as the United States DOGE Service (USDS) and establishing a USDS Administrator in the Executive Office of the President. *Id.* at 8441. The same day, the President issued an executive order to pause foreign aid and review related programs for compliance with U.S. interests. Exec. Order No. 14,169, [90 Fed. Reg. 8619 \(Jan. 30, 2025\)](#). Over the following weeks, the Executive Branch reduced USAID's activities while the Secretary of State commenced that review. For example, the USAID headquarters building and website were closed, and many employees were placed on administrative leave. D. Ct. Doc. 150 at 4-6.

In March 2025, the State Department notified Congress of the results of the Secretary's review, advising that certain USAID functions would be "realigned" to the Department and others would end. *See* D. Ct. Doc. 150 at 7-8. Similarly, many USAID personnel were notified that they would be terminated pursuant to a reduction-in-force (RIF), effective in July or September 2025. *Id.* at 7.

**2.** Until recently, plaintiffs worked for USAID as employees and personal services contractors. In February 2025, they filed a complaint in district court seeking declaratory and injunctive relief against Elon Musk, USDS, and DOGE. They alleged that they experienced changes to their

working conditions and ultimately were terminated. They claimed that these actions were part of a broader effort to shut down the agency, and they sought to challenge that effort as contrary to the Appointments Clause and the separation of powers. D. Ct. Doc. 1 at 40-43.

In March 2025, the district court entered a preliminary injunction. That order broadly prohibited defendants from, among other things, taking “any action” “relating to the shutdown of USAID.” D. Ct. Doc. 75 at 2. The court held that plaintiffs had standing based on their personnel actions, which it traced to defendants because of the “significant influence” allegedly exercised by Musk and DOGE officials. D. Ct. Doc. 73 at 18-24. The court identified two likely Appointments Clause violations premised on the building and website closures, but did not explain how these asserted violations caused plaintiffs’ alleged injuries. *Id.* at 27-31. The court further held that “dismantling and eliminating USAID” likely violates the separation of powers. *Id.* at 41-44.

This Court quickly stayed the preliminary injunction pending appeal. Judge Quattlebaum, joined by Judge Niemeyer, concluded that the government “made a strong showing” on every stay factor. Stay Op. 2. As relevant to jurisdiction, the panel emphasized the improper scope of the injunction, explaining that it went “well beyond” the individual plaintiffs,

their alleged injuries, or the identified legal violations. Stay Op. 12-15. For example, plaintiffs failed to identify an Appointments Clause violation that injured them: Apart from concrete personnel actions, plaintiffs' alleged injuries were "remote and speculative." Stay Op. 11. And none of those personnel actions formed the basis of the asserted Appointments Clause violations, which rested solely on the building and website closures. Stay Op. 7. Critically, "the terminations of contracts, the administrative leave decisions and the [RIFs]" were "approved or ratified" by USAID officials. Stay Op. 6-7. The panel likewise rejected plaintiffs' separation-of-powers claim, noting plaintiffs "failed, in part, to name the [allegedly] unconstitutional actors as defendants." Stay Op. 9. The panel cautioned that courts should exercise "power only when so authorized," in cases that involve "actual injuries to actual parties." Stay Op. 12-15. The court ran afoul of those limits, the panel concluded, by mandating "vast and detailed actions related to the operation of USAID, an Executive agency." Stay Op. 14-15.

This Court also held that the government "made a strong showing" that plaintiffs' claims were unlikely to succeed on the merits. Stay Op. 6. With respect to the Appointments Clause, the Court held that, "[b]ased on the current record," there is a "strong likelihood that [Musk] functioned as

an advisor to the President, carrying out the President's policies of shrinking government and reducing spending, not as an Officer who required constitutional appointment." Stay Op. 8. Similarly, the Court found "no strong likelihood of success on the merits of a separation of powers claim against a defendant who the district court found to be acting without authority and who the government claims is not an Officer of the United States." Stay Op. 9.

Judge Gregory concurred only in the result. He concluded that plaintiffs "may have demonstrated a likelihood of success on the merits," but that "[t]hese Plaintiffs, suing these Defendants, cannot obtain the relief that they seek." Stay Op. 16, 43.

**3.** In April 2025, plaintiffs amended their complaint to add defendants, among other things. D. Ct. Doc. 93. The government moved to dismiss. D. Ct. Doc. 110. Shortly thereafter, plaintiffs again amended their complaint, D. Ct. Doc. 135, and the district court treated the government's pending motion as directed to that complaint. This Court placed the preliminary injunction appeal in abeyance "for the district court to resolve the motion to dismiss or otherwise issue any subsequent appealable order." Ct. App. Doc. 33, Case No. 25-1273, at 1.

In August 2025, the district court denied the government’s motion to dismiss. D. Ct. Doc. 150. That decision recapitulated much of the reasoning underlying the court’s preliminary injunction. Critically, the court identified only one type of Article III injury alleged by plaintiffs: “interruptions to the ordinary course of their employment,” including placement on administrative leave and termination pursuant to a RIF. *Id.* at 32-34. The court then allowed plaintiffs to assert legal violations that did not cause those injuries and to seek wholly untethered remedies. *Id.* at 39-47. The court further held that plaintiffs’ claims are not subject to mandatory statutory frameworks that Congress created to govern federal-personnel disputes, despite identifying personnel actions as plaintiffs’ only cognizable injuries. *Id.* at 9-30. The court concluded that plaintiffs “alleged plausible claims for relief,” reasoning that the “analysis” in its prior decision granting a preliminary injunction “largely establishes” that plaintiffs “met the pleading standard of Rule 12(b)(6),” *id.* at 39-47—despite this Court having largely rejected that analysis, Stay Op. 6-9.

The government moved for leave to pursue an interlocutory appeal under [28 U.S.C. § 1292\(b\)](#). The government noted that the court’s order could “unlock discovery into a former close, personal advisor to the President and a component of the Executive Office of the President,

creating significant separation of powers concerns and potentially resulting in burdensome discovery disputes that may be avoided through a swift resolution of the issues on appeal.” D. Ct. Doc. 166-1 at 4. Nevertheless, the district court refused to certify the order for possible interlocutory appeal or stay discovery, thereby retaining jurisdiction over this case until final judgment. D. Ct. Docs. 196, 197.

4. Since this Court stayed the preliminary injunction, discovery has proceeded in district court and remains ongoing. Plaintiffs have received substantial discovery, including four depositions, thousands of pages of documents, and responses to nearly two dozen interrogatories.

Plaintiffs have taken depositions of three former USAID officials in the Senior Executive Service and a former USAID detailee. They include Jason Gray, who served as USAID Chief Information Officer and briefly in early 2025 as USAID Acting Administrator; Brian McGill and John Voorhees, who were in charge of building security at USAID; and Gavin Klinger, former USAID detailee. Plaintiffs also sought depositions of PJ Butler, former Domestic Security Branch Chief in the USAID Office of Security; Luke Farritor, former USAID detailee; Amy Gleason, Acting USDS Administrator; Elon Musk, former Senior Advisor to the President; Peter Marocco, former Acting USAID Deputy Administrator; and Jeremy Lewin,

former USAID Deputy Administrator for Policy and Programming and Chief Operating Officer. Plaintiffs further sought depositions under Rule 30(b)(6) of USAID and the State Department.

Plaintiffs also have received extensive written discovery. The government has produced more than 2,500 pages of documents and responded to 19 interrogatories addressed to the State Department and Secretary Rubio, two interrogatories addressed to USAID, and two interrogatories addressed to USDS and Gleason.

5. The government moved for a protective order to prevent the depositions of Musk, Marocco, and Lewin. While the government had complied with many of plaintiffs' discovery requests, the government urged that these high-ranking officials "should not, absent extraordinary circumstances, be called to testify." D. Ct. Doc. 189-1 at 2. Critically, plaintiffs failed to "exhaust alternatives" before seeking these depositions, such as serving interrogatories, proposing stipulations, or deposing other witnesses. *Id.* at 4-5.

On February 4, 2026, the district court denied the protective order without a hearing. D. Ct. Doc. 200 at 2 (Op.). The court first set forth its understanding of the relevant doctrine, which prohibits deposition testimony from high-ranking Executive Branch officials absent

“extraordinary circumstances.” The court asserted that this Court uniquely limits this doctrine to cases where “the deposition seeks testimony about mental processes or the reasons for taking official actions.” Op. 3-4 (citation omitted). The court concluded that the government’s motion “fails in part because Plaintiffs do not seek deposition testimony on the mental processes used in, and the reasons for, agency decisions.” Op. 4-5.

Alternatively, the district court held that a protective order was unwarranted even under the broader prohibition applied by other courts of appeals. Op. 5. The court reasoned that it was “at best unclear” whether Musk, Marocco, and Lewin qualify as “high-ranking government officials,” noting that they were not Senate-confirmed heads of cabinet-level agencies. *Id.* The court further noted that Musk “has left government service” and Marocco and Lewin “no longer serve in their former roles” at USAID. Op. 5-6. The court also considered it “not dispositive” that Musk served as a Senior Advisor to the President, noting that plaintiffs sought his testimony “in relation to” his alleged roles at USDS and USAID. Op. 6.

The district court further concluded that “extraordinary circumstances justify the depositions.” Op. 6. The court noted that plaintiffs’ Appointments Clause claim is “based on the allegation that Musk made certain decisions relating to the shutdown and dismantling of

USAID” without authorization or ratification, and thus found a “need for testimony” about “Musk’s role,” “the timing” of his and others’ placement in various positions, and the deponents’ alleged involvement in “decisions relating to the shutdown and dismantling of USAID, such as the specific decisions to shut down USAID Headquarters and the USAID website.” *Id.* The court further determined that there were no alternative means to secure this information and rejected written discovery as inadequate. Op. 7-8.

At a status conference on February 5, 2026, the government asked the district court to clarify whether its order governs the proposed deposition of Amy Gleason, Acting USDS Administrator. As the government noted, plaintiffs did not request to depose Gleason until after briefing on the protective order was complete, but her deposition would implicate similar issues. Tr. of Proceedings at 72:4-12 (Feb. 5, 2026). The court indicated that its prior ruling was “law of the case.” *Id.* at 72:17-22.

### **ARGUMENT**

The district court’s order far exceeds the recognized bounds of discovery against high-ranking Executive Branch officials and upends a judicial consensus that for decades, across Administrations, has protected those officials from abuse of litigation processes. Although there is no

justification for any of the depositions authorized by the district court, the government nonetheless has not opposed many of them. The government also produced more than 2,500 pages of documents and responded to nearly two dozen interrogatories. The government respectfully requests, however, that this Court issue a writ of mandamus to block the depositions of Elon Musk, Amy Gleason, Peter Marocco, and Jeremy Lewin. These are senior Executive Branch officials who, as a matter of inter-Branch comity and practical necessity, should not be deposed in civil litigation absent “extraordinary circumstances.” *Franklin Sav. Ass’n v. Ryan*, [922 F.2d 209, 211](#) (4th Cir. 1991). No such circumstances are present here.

Decisions approving depositions of such senior Executive Branch officials are exceedingly rare. The district court’s decision to do so here is especially unwarranted, where plaintiffs made no showing that the testimony they seek is “essential to the case,” *In re U.S. Dep’t of Educ.*, [25 F.4th 692, 703](#) (9th Cir. 2022). The matters at issue are all plainly amenable to written discovery. And in all events, plaintiffs’ claims require no discovery to know that they fail as a matter of law. The government respectfully requests this Court’s assistance in restoring the proper boundaries on discovery in government litigation.

Mandamus relief is warranted where the applicant has “no other adequate means” to obtain redress, the applicant shows a “clear and indisputable” right to relief, and this Court is satisfied that relief “is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, [542 U.S. 367, 380-81](#) (2004); see *Gray Media Grp., Inc. v. Loveridge*, [155 F.4th 330, 337-38](#) (4th Cir. 2025). The government readily satisfies those requirements here.

**A. Mandamus Is Appropriate To Block Depositions Of High-Level Executive Branch Officials Absent Extraordinary Circumstances.**

1. This Court and others have long held that compelling the testimony of high-ranking government officials is justified only in “extraordinary circumstances.” *Franklin*, [922 F.2d at 211](#) (citing *Simplex Time Recorder Co. v. Secretary of Lab.*, [766 F.2d 575, 586](#) (D.C. Cir. 1985)). That is because “the compelled appearance of a high-ranking officer of the executive branch in a judicial proceeding implicates the separation of powers,” *In re United States (Jackson)*, [624 F.3d 1368, 1372](#) (11th Cir. 2010), and “[t]he duties of high-ranking executive officers should not be interrupted by judicial demands for information that could be obtained elsewhere,” *In re Cheney*, [544 F.3d 311, 314](#) (D.C. Cir. 2008) (per curiam). Such depositions also “create[] ‘a tremendous potential for abuse

or harassment.” *K.C.R. v. County of Los Angeles*, [2014 WL 3434257](#), at \*3 (C.D. Cal. July 11, 2014). Thus, “a district court should rarely, if ever, compel the attendance of a high-ranking official in a judicial proceeding.” *Jackson*, [624 F.3d at 1376](#).

Courts, including this Court, repeatedly have granted mandamus relief to enforce this rule. “When [extraordinary] circumstances are not present, mandamus is appropriate to prevent a district court from compelling an official’s appearance.” *In re McCarthy*, [636 F. App’x 142, 143](#) (4th Cir. 2015) (EPA Administrator) (citing *U.S. Bd. of Parole v. Merhige*, [487 F.2d 25](#) (4th Cir. 1973) (Parole Board members); *Jackson*, [624 F.3d at 1372-73](#) (EPA Administrator); *Cheney*, [544 F.3d at 314](#) (Vice President’s Chief of Staff)); *see, e.g., In re Paxton*, [60 F.4th 252, 258-59](#) (5th Cir. 2023) (Texas Attorney General); *U.S. Dep’t of Educ.*, [25 F.4th at 692](#) (former Secretary of Education); *In re Commodity Futures Trading Comm’n*, [941 F.3d 869, 873](#) (7th Cir. 2019) (Commodity Futures Trading Commission Chairman, Commissioners, and staff); *In re United States (Bernanke)*, [542 F. App’x 944, 948](#) (Fed. Cir. 2013) (Chairman of the Federal Reserve Board); *In re United States (Holder)*, [197 F.3d 310, 314](#) (8th Cir. 1999) (Attorney General and Deputy Attorney General); *In re FDIC*, [58 F.3d, 1055 1060](#) (5th Cir. 1995) (three FDIC Board members); *In*

*re Clinton*, [973 F.3d 106, 121](#) (D.C. Cir. 2020) (former Secretary of State); *see also In re Dep't of Commerce*, [586 U.S. 956](#) (2018) (Secretary of Commerce).

“Extraordinary circumstances” are absent where the proposed depositions are not “essential to the case.” *U.S. Dep't of Educ.*, [25 F.4th at 703](#). Thus, this Court has overturned a district court’s finding of extraordinary circumstances where there were “alternative” methods to obtain the desired information. *See McCarthy*, [636 F. App'x at 144](#). Such methods may exist where information “can be sought from alternative witnesses” or “in another form.” *In re Bryant*, [745 F. App'x 215, 220](#) (5th Cir. 2018) (per curiam).

The “separation of powers” concerns raised by all high-level Executive Branch depositions, *Jackson*, [624 F.3d at 1372](#), are further heightened in the context of White House deponents. In *Cheney*, [542 U.S. 367](#), the Supreme Court explained that discovery directed to the Office of the Vice President raised “special considerations” regarding “the Executive Branch’s interests in maintaining the autonomy of its office,” the “energetic performance” of the Commander-in-Chief’s “constitutional responsibilities,” and “[t]he high respect that is owed to the office of the Chief Executive.” *Id.* at 382, 385. The Court further found “no support for

the proposition that the Executive Branch ‘shall bear the burden’ of invoking executive privilege” on a “particularized” basis in the course of discovery. *Id.* at 388.

2. The district court clearly and indisputably erred in its refusal to grant the government’s motion for a protective order predicated on this consensus body of judicial authority.

The court first mistakenly believed that the “exceptional circumstances” rule applies only where a deposition “seeks testimony about mental processes or the ‘reasons for taking official actions.’” Op. 3-4 (quoting *McCarthy*, [636 F. App’x at 143](#)). While probing the mental processes of high-ranking Executive officials is indeed an impermissible basis for discovery in civil litigation, *see Franklin*, [922 F.2d at 211](#) (citing *United States v. Morgan*, [313 U.S. 409](#) (1941)), the separation-of-powers concerns raised by depositions of senior White House officials and agency leadership hardly evaporate if a plaintiff forgoes inquiring about thought processes, *see, e.g., In re Office of the Utah Att’y Gen.*, [56 F.4th 1254, 1259](#) (10th Cir. 2022) (per curiam) (noting that extraordinary circumstances are required to depose officials “concerning issues relating to their official duties”); *Bogan v. City of Boston*, [489 F.3d 417, 423-24](#) (1st Cir. 2007) (prohibiting the Mayor of Boston’s deposition for purpose of seeking

“evidence that the Mayor directly ordered” certain action). As noted, demands for such testimony are problematic for many reasons, including the intrusion on the autonomy and independence of a coordinate Branch; the inevitable distraction of busy senior government leaders from official duties; and the potential for abuse and harassment. Those concerns are implicated whenever a plaintiff seeks to depose high-ranking officials about their official duties.

The district court’s approach would have startling implications. Under the court’s view, a plaintiff could depose *any* Executive Branch official, regardless of seniority or necessity, so long as the plaintiff disclaims an intent to question the official about his mental processes. The Vice President’s chief of staff could be deposed to testify about the Vice President’s habits or travel itinerary; the Secretary of State could be deposed to testify about what he said or heard at diplomatic events; the Secretary of Labor could be deposed to testify about whether she really signed a final rule. To describe that theory is to refute it. The court’s approach would open the door to precisely the type of intrusive discovery that the courts of appeals, across Administrations, have consistently blocked.

The district court misread this Court’s precedent as supporting its approach. As noted, this Court has correctly recognized that a high-ranking government official generally “will not be compelled to testify about his mental processes.” *Franklin*, [922 F.2d at 211](#). But this Court certainly has not held that high-ranking officials may be deposed for any other purpose. In both cases cited by the district court, this Court simply blocked depositions of senior officials on the record before it. *See McCarthy*, [636 F. App’x at 143-45](#); *Franklin*, [922 F.2d at 211](#). Moreover, *McCarthy* did not involve a deposition that centered on mental processes. There, the plaintiff sought to depose an agency administrator to explain “an apparent conflict between [the agency’s] position in its summary judgment motion and its position before Congress.” *McCarthy*, [636 F. App’x at 143](#). That conflict concerned whether the agency “made any evaluations of job losses” under a particular statute. *Id.* at 144. The requested testimony—like the testimony plaintiffs seek here—thus concerned actions that agency officials did or did not take; it did not probe any official’s mental decision-making processes.

**B. Musk, Gleason, Marocco, And Lewin Are High-Ranking Executive Branch Officials.**

The district court also clearly and indisputably erred in its alternative application of the correct legal standard. Musk, Gleason, Marocco, and Lewin are all “high-ranking” current and former Executive Branch officials

whose testimony may not be compelled absent extraordinary circumstances.

1. Start with the White House officials. Musk, prior to his departure from government service, was a Senior Advisor to the President and an employee of the White House Office. His testimony is sought in his alleged official capacity “as the *de facto* leader of DOGE” (*i.e.*, USDS), a component of the Executive Office of the President. D. Ct. Doc. 135 at 2. And Gleason is the current Acting USDS Administrator.

Senior White House officials like Musk and Gleason plainly qualify for protection from testimony under the body of law discussed above. *See, e.g., Cheney*, 544 F.3d at 314 (Vice President’s Chief of Staff); Order, *In re Murthy*, No. 22-30697 (5th Cir. Jan. 5, 2023) (former White House Press Secretary); Order, *In re Murthy*, No. 22-30697 (5th Cir. Nov. 21, 2022) (Deputy Assistant to the President); *Alexander v. FBI*, 186 F.R.D. 1, 3-4 (D.D.C. 1998) (Assistant to the President); *United States v. Newman*, 531 F. Supp. 3d 181, 190-91 (D.D.C. 2021) (former Deputy Counsel and Deputy Assistant to the President). Deposing a Senior Advisor to the President or the head of a White House component would intrude on the President’s performance of his constitutional duties, triggering substantial separation-of-powers concerns. *See Cheney*, 542 U.S. at 383.

The same is true for senior agency leaders like Marocco and Lewin, both of whom served as a Deputy USAID Administrator.<sup>3</sup> That position is second-in-command to the head of the agency and is a Senior Executive, Level 4 position. *See* S. Comm. on Homeland Sec. & Governmental Affs., 118th Cong., *Policy and Supporting Positions* 200 (2024), <https://perma.cc/25LJ-GZTU>. Courts routinely apply the doctrine to senior officials like these who exercise significant authority but fall just below the head of the agency. *See, e.g., Holder*, [197 F.3d at 311](#) (Deputy Attorney General); *Lederman v. New York City Dep't of Parks & Recreation*, [731 F.3d 199, 203-04](#) (2d Cir. 2013) (former Deputy Mayor); *Simplex*, [766 F.2d at 586-87](#) (Regional Administrator of the Occupational Safety and Health Administration, among others); *In re Office of Inspector Gen., R.R. Ret. Bd.*, [933 F.2d 276, 278](#) (5th Cir. 1991) (Inspector General of Railroad Retirement Board); *Church of Scientology of Bos. v. IRS*, [138 F.R.D. 9, 12](#) (D. Mass. 1990) (Director of Exempt Organizations Technical Division, National Office of the Internal Revenue Service, a “Senior

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<sup>3</sup> Historically, the position of Deputy Administrator has been occupied by either one or two individuals. When the position is divided in two, the occupants’ titles are Deputy Administrator for Policy and Programming and Deputy Administrator for Management and Resources. *See* D. Ct. Doc. 135 at 23. Marocco occupied both roles as Acting Deputy Administrator, while Lewin occupied only the first. *See id.*; D. Ct. Doc. 77-1 at 4.

Executive, Level 4 position”); *United States v. Sensient Colors, Inc.*, [649 F. Supp. 2d 309, 321](#) (D.N.J. 2009) (EPA Regional Administrator for Region 2); *Low v. Whitman*, [207 F.R.D. 9, 12](#) (D.D.C. 2002) (Deputy Chief of Staff to EPA Administrator). Courts also regularly apply the doctrine to officials at agencies like USAID that are of sub-cabinet rank. *See, e.g., FDIC*, [58 F.3d at 1060](#) (three FDIC Board members); *In re United States (Kessler)*, [985 F.2d 510, 512-13](#) (11th Cir. 1993) (per curiam) (Commissioner of the Food and Drug Administration); *United States v. Wal-Mart Stores*, [2002 WL 562301](#), at \*1 (D. Md. 2002) (former Chair of Consumer Product Safety Commission).

**2.** The district court offered no valid basis to treat the proposed deponents as anything other than high-ranking officials entitled to protection from deposition under well-established principles.

The court first erred in suggesting that only Senate-confirmed cabinet secretaries qualify as high-ranking officials. Op. 5. That is a peculiar objection with respect to senior White House officials like Gleason and Musk, whose proximity to the President at the heart of the Executive Branch warrants at least the degree of judicial respect and accommodation that is due to cabinet officials. *See Cheney*, [542 U.S. at 380-81](#) (emphasizing “the Executive Branch’s interests in maintaining the

autonomy of its office” and “[t]he high respect that is owed to the office of the Chief Executive” in civil discovery). Cases involving depositions of senior White House officials are exceedingly rare because few litigants try to seek such depositions and even fewer district courts allow them. As noted, however, in the rare circumstances in which such depositions have been ordered, the courts of appeals have not hesitated to grant mandamus. *See, e.g., Cheney*, [544 F.3d at 314](#) (Vice President’s Chief of Staff).

As to Marocco and Lewin, the district court’s reasoning is likewise mistaken. The court opined that “USAID was not a cabinet-level agency, none of the designated officials were the head of that agency, and several were operating in an informal or acting role.” Op. 5. As already explained, however, courts regularly preclude the deposition of senior officials like Marocco and Lewin who exercise significant authority but fall just below the head of the agency—whether or not the agency is cabinet-level. Indeed, “the rationale applicable to the protection of agency heads is equally applicable” to other high-ranking officials. *Alexander*, [186 F.R.D. at 4](#). And the district court cited no authority whatsoever for its view that acting officials are subject to open-ended depositions and civil discovery merely because they serve in an acting capacity. Such a rule would perversely invite judicial scrutiny of sensitive high-level Executive Branch decision-

making occurring at the very start of a President's term, as happened here, because a President has little choice but to rely on acting officials in his first few months in office.

The district court also erred in its belief that the depositions could go forward because Musk “has left government service” and Marocco and Lewin have moved into different government roles. Op. 5-6. Protections against depositions concerning official acts remain regardless of whether the official has left government service or his previous position. The courts of appeals are united on this point, recognizing that the concerns animating the rule “hardly become[] inapplicable upon an official's departure” from office. *See, e.g., U.S. Dep't of Educ.*, [25 F.4th at 705](#) (former Secretary of Education); Order at 3, *In re Murthy*, No. 22-30697 (5th Cir. [Jan. 5, 2023](#)) (former White House Press Secretary); *Lederman*, [731 F.3d at 203-04](#) (former Deputy Mayor); *Clinton*, [973 F.3d at 121](#) (former Secretary of State); *see also Bernanke*, [542 F. App'x at 949](#). “The threat of having to spend their personal time and resources preparing for and sitting for depositions could hamper and distract officials from their duties while in office,” and if allowed after they “leave office, overwhelming and unnecessary discovery could also discourage them from taking that office in

the first place or leaving office when there is controversy.” *U.S. Dep’t of Educ.*, [25 F.4th at 705](#).

Finally, with respect to Musk, the court committed two additional errors. The court first reasoned that Musk would not be deposed regarding his role “as a Senior Advisor to the President,” but rather, “in relation to his separate role as the [alleged] head of DOGE or an unofficial role at USAID.” Op. 6. As noted, DOGE (*i.e.*, USDS) is a component of the Executive Office of the President. Musk, like Gleason, plainly qualifies for protection from testifying regarding his White House role, whether as Senior Advisor to the President or in some other putative capacity. *See supra* p. 22. The court also offered no basis to parse Musk’s alleged “unofficial role at USAID” from his official role “as a Senior Advisor to the President.” If anything, the court’s interest in such a distinction suggests that the court *does* intend to allow plaintiffs to inquire about Musk’s “mental processes” to understand the capacity in which Musk did or did not take various actions. In this and other respects, allowing depositions of senior White House officials based on plaintiffs’ suppositions about alleged “unofficial role[s]” in another Executive Branch agency would strike at the core of the separation-of-powers concerns that animate discovery protections in this context.

The district court further reasoned that “any concerns about intrusion on the President’s constitutional role can be addressed through limitations on the subject matter of the deposition.” Op. 6. But as the Supreme Court has explained, such assurances are insufficient. The question is not merely one of privilege, but of the constitutional autonomy and independence of the Executive Branch and of the burden on senior Executive officials. In *Cheney*, the Court held that the President could not be required to “bear the burden’ of invoking executive privilege” on a “particularized” basis during discovery, or even to prepare a privilege log. [542 U.S. at 388](#). Likewise, the Eleventh Circuit issued a writ of mandamus to quash an order directing the Commissioner of the Food and Drug Administration “to be available for thirty minutes” by telephone. *Kessler*, [985 F.2d at 511-13](#). As the Eleventh Circuit later explained, even given that significant limitation, “compelling the testimony of the Commissioner of the Food and Drug Administration ‘would have [had] serious repercussions for the relationship between two coequal branches of government.’” *Jackson*, [624 F.3d at 1372](#) (quoting *Kessler*, 985 F.2d at 513).

**C. There Are No “Extraordinary Circumstances” Here.**

The district court also manifestly erred in holding that “extraordinary circumstances justify the depositions.” Op. 6. The court allowed plaintiffs

to jump straight to deposing high-ranking government officials without showing that these officials possess essential information that cannot be obtained elsewhere. The court's abdication of its gatekeeping function is clear and indisputable error.

1. To show extraordinary circumstances, plaintiffs must demonstrate, among other things, that the information they seek is “not obtainable from another source.” *Holder*, [197 F.3d at 313-14](#). This Court has granted mandamus to enforce this rule where the plaintiffs failed to show that there was “no alternative” to deposing a high-ranking official. *McCarthy*, [636 F. App'x at 144](#). Plaintiffs have not shown that deposition testimony from Musk, Gleason, Marocco, or Lewin is necessary to obtain any of the information they seek, let alone that all four depositions are essential.

Existing discovery offers one such alternative. Plaintiffs seek testimony “on Musk’s role in relation to DOGE and USAID, the timing of his placement in certain roles, and the timing of the placement of USAID officials such as Marocco and Lewin in certain positions,” as well as “evidence on the identity of the decisionmakers and the timing of certain key decisions relating to the shutdown and dismantling of USAID, such as the specific decisions to shut down USAID Headquarters and the USAID

website.” Op. 6. But plaintiffs have already taken four depositions of agency officials who may be able to shed light on these matters, including Jason Gray, who served primarily as USAID Chief Information Officer; Brian McGill and John Voorhees, former employees in the Senior Executive Service who were in charge of building security at USAID; and Gavin Kliger, former USAID detailee.

Moreover, additional written discovery offers a clear alternative to deposing high-ranking officials. Questions about who made certain decisions and when are easily susceptible to being posed through interrogatories. Indeed, plaintiffs “disavowed questioning these witnesses in depositions about their mental processes,” Op. 5, underscoring that their questions are amenable to written discovery. If plaintiffs identify deficiencies in written discovery, they may be resolved through conferral and amendment, or stipulations without deposition. But plaintiffs skipped these steps entirely, declining to serve additional interrogatories, pursue stipulations, or finish deposing other witnesses who may provide the information they seek. Pending depositions include those of USAID and the State Department under Rule 30(b)(6)—an alternative that this Court has found sufficient in similar circumstances. *See McCarthy*, [636 F. App’x at 144](#). The district court did not even mention these depositions, much

less explain why they are insufficient. It is plainly inappropriate to depose high-ranking government officials when plaintiffs have not exhausted these obvious alternatives.

2. The district court offered no basis to find these alternatives inadequate. With respect to other officials who have been or will be subject to deposition, the court did not explain why they could not answer questions, if asked, about decisions to close USAID's headquarters building and website—the only specific actions identified as relevant by the district court. The court reasoned that “the identified witnesses likely have personal, first-hand knowledge of facts relevant and essential to the resolution of this case.” Op. 7. The critical question, however, is whether the high-ranking officials sought to be deposed *uniquely* possess that knowledge. If ordinary relevance were the standard, then plaintiffs could depose *any* high-ranking official simply by arguing that the person possessed information that might shed light on their claims.

The district court also erred in concluding that written discovery would be inadequate because, if “orders were given orally” to take certain actions at USAID, then “oral testimony of the officials present when the decisions were made” would provide “the only evidence on these questions.” Op. 8. That is a non sequitur. There is no reason that

discovery responses concerning an alleged oral order could not be provided through answers to written interrogatories.

The district court declared that plaintiffs “have submitted requests for stipulations and interrogatories to which Defendants have not responded adequately or at all,” Op. 7-8, but the court did not identify any specific inadequacies in the government’s responses. The government has diligently responded to plaintiffs’ discovery requests, including, among other things, 19 interrogatories addressed to the State Department and Secretary Rubio, two interrogatories addressed to USAID, and two interrogatories addressed to USDS and Gleason. Nor did the court explain how any deficiencies in prior stipulations or interrogatories could render *live testimony* necessary, before plaintiffs have served additional interrogatories, deposed other witnesses, or sought other relief, such as through a motion to compel.

In short, the district court simply failed to conduct any serious analysis regarding the need to depose these high-ranking officials. The court seemed to believe that it was sufficient that the depositions might shed some light on the issues in this case. But that is manifestly inadequate under precedents establishing that high-level officials may be deposed only in extraordinary circumstances.

**3.** The district court also clearly erred in authorizing these depositions in light of the fatal legal defects in plaintiffs' complaint. Plaintiffs cannot "obtain discovery from high government officials" because they fail to "show an entitlement to the relief sought in the case." *Holder*, [197 F.3d at 314](#); *see also Merhige*, [487 F.2d at 29](#) (granting mandamus to prevent depositions where "the complaint rests upon" a "tenuous jurisdictional basis").

This case challenges efforts to restructure the Nation's foreign aid programs. Plaintiffs broadly challenge those efforts as violating the Appointments Clause and the separation of powers, inviting the district court to require "vast and detailed actions related to the operation of USAID, an Executive agency." Stay Op. 14. Yet plaintiffs' only potentially cognizable injuries are personnel actions. Plaintiffs lack standing to assert their sweeping claims, which challenge a slew of agency actions that did not cause their alleged injuries and which seek broad remedies untethered to those injuries. *See TransUnion LLC v. Ramirez*, [594 U.S. 413, 431](#) (2021) ("[P]laintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek.").

This Court upheld these principles when it stayed the district court's preliminary injunction pending appeal. That decision recognized the

fundamental mismatch between plaintiffs' alleged injuries, the asserted legal violations, and the requested remedies. Stay Op. 12-14. The stay panel properly criticized the court's order as extending "well beyond granting relief to the individual plaintiffs who brought this lawsuit" and for ordering relief that was "unnecessary to address the alleged harms." Stay Op. 12-13. For example, despite finding that "the administrative leave and contract termination decisions were not unconstitutional" because "USAID officials approved or ratified" those decisions, the court ordered "inappropriate" remedies aimed at those very actions. Stay Op. 13-14.

The district court repeated these errors in finding that the proposed depositions are "essential" to plaintiffs' claims, finding a "specific need" for testimony about Musk's involvement in "decisions relating to the shutdown and dismantling of USAID, such as the specific decisions to shut down USAID Headquarters and the USAID website." Op. 6-7. None of these facts is at all related to plaintiffs' alleged injuries. In denying the government's motion to dismiss, the court held that plaintiffs had standing based on just one theory of injury—namely, that plaintiffs "suffered 'interruptions to the ordinary course of their employment,'" including placement on administrative leave and termination. D. Ct. Doc. 150 at 32-34. But the court did not find a need to depose high-ranking officials about

those personnel actions. Instead, the court found a need to identify who made other decisions, focusing solely on the building and website closures. Because plaintiffs lack standing to challenge those closures—actions that did not injure them—information about those actions cannot be “essential” to their legal claims.

Moreover, while plaintiffs may have standing to challenge the concrete personnel actions that they experienced, those claims are subject to mandatory statutory frameworks that deprive the district court of subject-matter jurisdiction. Congress enacted the Civil Service Reform Act and the Foreign Service Act to provide “a comprehensive system for reviewing personnel action taken against federal employees.” *United States v. Fausto*, [484 U.S. 439, 455](#) (1988); *U.S. Info. Agency v. Krc*, [989 F.2d 1211, 1217](#) (D.C. Cir. 1993). Congress likewise enacted the Contract Disputes Act to create “a comprehensive procedural framework for the resolution of disputes arising from contracts with the federal government.” *Atterbury v. U.S. Marshals Serv.*, [805 F.3d 398, 404](#) (2d Cir. 2015). Plaintiffs’ claims are squarely covered by these frameworks, as another court held in two cases brought by employee and contractor unions challenging the alleged closure of USAID. *American Foreign Serv. Ass’n v. Trump*, [792 F. Supp. 3d 116](#) (D.D.C. 2025).

Additional defects in plaintiffs' claims abound. With respect to the Appointments Clause, there is no dispute that most of the challenged actions (including the only actions that allegedly injured plaintiffs) have been ratified by duly appointed officials, which cures any Appointments Clause violation. *See* Stay Op. 6-7. Their claim therefore is based solely on the building and website closures—decisions well in the past. Stay Op. 7. Even if some plaintiff could show that these two actions injured them in violation of the Appointments Clause, it is speculative that a declaration to that effect would redress any such injury at this point. And there would be no basis for the prospective relief that plaintiffs seek based on Musk's prior alleged actions, given that Musk has left government service. Furthermore, even if the merits were properly presented, further discovery is unnecessary to reject this claim. It is premised on the assertion that Musk acted as an officer of the United States. U.S. Const. art. II, § 2, cl. 2. That question turns on whether Musk exercised "significant authority pursuant to the laws of the United States," which he did not. *Buckley v. Valeo*, 424 U.S. 1, 126 (1976). Further discovery into his informal influence in the Executive Branch is thus immaterial.

Plaintiffs also fail to state a separation-of-powers claim. They assert that USAID has been dismantled contrary to various statutes, but that is a

statutory claim, not a constitutional claim. *See Dalton v. Specter*, [511 U.S. 462, 473](#) (1994); *Sustainability Inst. v. Trump*, [2026 WL 157120](#), at \*10 (4th Cir. [Jan. 21, 2026](#)). Plaintiffs have not even attempted to satisfy the requirements to bring such a claim under the Administrative Procedure Act or otherwise. Regardless, the district court did not identify any way in which the proposed depositions are “essential” to plaintiffs’ separation-of-powers claim. Indeed, plaintiffs previously agreed that there is “no genuine issue of material fact” with respect to this claim. D. Ct. Doc. 159 at 1. No matter what plaintiffs learn regarding Musk’s alleged involvement in the building and website closures, that information would not establish a separation-of-powers violation.

The district court rejected these and other arguments when it denied the government’s motion to dismiss. The government promptly sought permission to pursue an interlocutory appeal, to enable this Court to evaluate the fundamental legal defects in plaintiffs’ claims before the court proceeded with intrusive and unnecessary discovery. The court denied that motion. But its refusal to provide that vehicle for appellate review does not render the instant depositions “essential.” Those depositions are wholly unwarranted and this Court’s intervention is necessary.

## CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

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February 2026

## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this petition complies with the requirements of Federal Rule of Appellate Procedure 21(d) and 32(c) because it has been prepared in 14-point Georgia, a proportionally spaced font, and that it complies with the type-volume limitation of Federal Rule of Appellate Procedure 21(d)(1) because it contains 7,741 words, according to Microsoft Word.

*s/ Cynthia Barmore*  
Cynthia Barmore

## CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I electronically filed the foregoing petition with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. I served the petition by email on the following counsel for plaintiffs:

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