

No. 25-1273

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

J. DOE 1, et al.,

Plaintiffs-Appellees,

v.

ELON MUSK, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland

**EMERGENCY MOTION FOR A STAY PENDING APPEAL AND FOR AN
IMMEDIATE ADMINISTRATIVE STAY PENDING DISPOSITION OF
THE STAY MOTION**

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INTRODUCTION

The government respectfully asks this Court to stay—beginning with an immediate administrative stay—the preliminary injunction issued by the district court on March 18, 2025, which unduly restricts the ability of Executive Branch officials to operate the U.S. Agency for International Development (USAID). In a decision that upends long-established precedent, the district court enjoined a Senior Advisor to the President (Elon Musk) and a component of the Executive Office of the President (the U.S. Department of Government Efficiency Service (USDS)), from providing a range of advice and support to USAID. And, as the district court subsequently clarified, the injunction bars duly-appointed USAID officials—including USAID’s effective Chief Operating Officer—from running USAID if they previously worked on a USAID team interacting with those White House officials. This is an extraordinary intrusion on a coordinate branch, and immediate relief is necessary.

The district court based its injunction on two conclusions that were fundamentally flawed. *First*, the court wrongly held that Musk’s ability to influence agency policy renders him an “Officer” under the Appointments Clause requiring Senate confirmation. An individual with sizable influence who holds no office and wields no formal authority is not an “Officer.” A contrary rule would undermine every President’s ability to work with trusted advisors. *Second*, the

district court invented a free floating “separation-of-powers” claim that superintends agencies by evaluating which kinds of operations and how many agency decisions cross an undefined constitutional line. A court cannot group together a range of disparate agency actions and declare, without examining the legality of any particular action, that the whole is greater than the sum of its parts and therefore unconstitutional.

The district court’s clarification that its injunction bars USAID’s Chief Operating Officer, Jeremy Lewin, from running USAID further underscores the error of the court’s analysis and effectively prevents the agency from operating. Lewin is not a defendant in this litigation and has never worked for USDS. Rather, he has served as a policymaker at USAID and was recently delegated the duties of Deputy Administrator and Chief Operating Officer. Enjoining Lewin on the ground that he previously interacted with White House advisors cannot be squared with the logic of the court’s own ruling that USAID must be run by USAID officials.

Any injunction that prevents the government from carrying out its legally authorized functions imposes an irreparable injury. USAID must take various actions in the very near future, including some that address the concerns that plaintiffs have emphasized. The government therefore respectfully requests an immediate administrative stay and a ruling on this motion by **Tuesday, March 25 at 5pm** to enable the Acting Solicitor General to decide whether to seek Supreme

Court review if necessary. At the very least, an immediate stay allowing Lewin to perform his legally authorized duties as a USAID official is required to ensure the agency can continue to function. Plaintiffs oppose this motion.

STATEMENT

A. Factual Background

1. USAID was initially established by Executive Order as “an agency in the Department of State.” *Administration of Foreign Assistance & Related Functions*, Exec. Order No. 10,973, § 102, 26 Fed. Reg. 10,469, 10,469 (Nov. 7, 1961). Congress subsequently recognized USAID as an “independent establishment” but declared the USAID Administrator to be “under the direct authority and foreign policy guidance of the Secretary of State.” 22 U.S.C. §§ 6563, 6592. The Department of State and USAID jointly administer various foreign assistance. *See, e.g., id.* §§ 2346(b), 6563.

Upon taking office, President Trump paused foreign development assistance to ensure that the United States’ provision of foreign aid is aligned with American interests. *See Reevaluating & Realigning United States Foreign Aid*, Exec. Order No. 14,169, 90 Fed. Reg. 8619 (Jan. 30, 2025). Secretary of State Rubio subsequently directed a “pause[]” on most “new obligations of funding, pending a review, for foreign assistance programs funded by or through the [State] Department and USAID.” Doc. 28-2 at 8 (alterations in original) (quotation marks

omitted). President Trump designated Secretary Rubio as USAID's Acting Administrator, who, in turn, designated Peter Marocco, (an official at Department of State) as Deputy Administrator. *Id.* at 7; Doc. 73 at 99. Secretary Rubio then informed Congress that Deputy Administrator Marocco would "begin the process of engaging in a review and potential reorganization of USAID's activities." Doc. 73 at 11 (Op.) (quotation marks omitted). The record explains that Secretary Rubio and Deputy Administrator Marocco authorized numerous actions to restructure USAID and its operations. Doc. 77-2, ¶¶ 2-6.

2. On January 20, the President renamed the U.S. Digital Service and established within the Executive Office of the President the United States, the Department of Governmental Efficiency Service (USDS), to report to the White House Chief of Staff. *Establishing & Implementing the President's "Department of Government Efficiency,"* Exec. Order No. 14,158, §§ 1, 3(b), 90 Fed. Reg. 8441 (Jan. 29, 2025) (E.O.). The President further directed that the heads of all Executive Branch agencies "establish within" each agency a "DOGE Team," selected by agency heads. *See id.* §§ 3(c), 4.

The record explains that President Trump designated Amy Gleason as the Acting Administrator of USDS, Op. 35-36, and that Musk does not serve as the USDS Administrator and is not an employee of USDS. Doc. 28-2 at 28. "Mr. Musk is an employee of the White House" and a "Senior Advisor to the President."

Id. at 28, ¶¶ 3-4. In that capacity, Musk “has no actual or formal authority to make government decisions himself,” and “can only advise the President and communicate the President’s directives.” *Id.* at 29, ¶ 5.

USAID established a USAID DOGE Team led by Jeremy Lewin, who previously served as a Senior Advisor and Director for Strategy and Programs at USAID. Doc. 77-2. The remaining team members were “detailed to USAID from other federal agencies, not USDS.” Doc. 28-2 at 17, ¶ 26. USAID DOGE Team members “assisted in recommending and implementing” the personnel and contract actions authorized by Secretary Rubio and Deputy Administrator Marocco. Doc. 77-2, ¶ 7. The record explains that DOGE Team members were “always under the direction and supervision” of USAID leadership. *Id.*

B. Prior Proceedings

1. Plaintiffs—current and former USAID employees or contractors—brought this action against Elon Musk and USDS. They allege that these defendants are principally responsible for a range of actions at USAID in violation of the Appointments Clause and separation-of-powers principles. Doc. 14 at 36-40.

2. On March 18, 2025, the district court granted plaintiffs’ motion for a preliminary injunction. The court held that plaintiffs were likely to succeed on both of their claims. First, the court held that Elon Musk is an improperly appointed Officer of the United States. Op. 24-36. Acknowledging that even “[p]laintiffs

agree that Musk has no formal legal authority to make the decisions at issue,” Op. 31, the court explained “that most of the major actions taken at USAID that could be deemed to be an exercise of significant authority” were “approved by USAID officials,” “even if initiated, suggested, or directed by Musk” or USAID’s “DOGE Team Members,” Op. 26; *see also* Op. 26-27 (detailing specific decisions made by USAID leadership).

But the court focused on the fact that the preliminary injunction record did not contain “specific orders” or other explanations describing the closure of USAID’s headquarters and website. Op. 27 (quotation marks omitted). Based on that absence of evidence and the fact that Musk made statements about closing down USAID, the court inferred that “Musk appears to have been involved” in closing the building. Op. 28. Relying on its belief that defendants took other actions regarding other agencies, the court concluded that “Musk made the decisions to shutdown USAID’s headquarters and website even though he ‘lacked the authority to make that decision,’” Op. 28-29 (emphasis omitted).

The court then held that Musk is an improperly appointed Officer of the United States. Although the court recognized the undisputed fact that “Musk has no formal legal authority to make the decisions at issue,” the court nonetheless concluded that some unspecified quanta of significant influence can transform a White House advisor into an Officer who must be Senate confirmed. Op. 31. And

because USDS “was established by the DOGE Executive Order,” Op. 32, and White House officials have referred to several people other than Musk as being “a leader of DOGE,” Op. 33, the court concluded that Musk occupies an office “as the leader of DOGE,” Op. 33-36.

Although the district court viewed its Appointments Clause holding as sufficient to establish a likelihood of success on the merits, the court further held that plaintiffs are likely to succeed on their separation-of-powers claim. Op. 37-53. The court did not hold that any particular employment, contract, or grant decision was improper. But the court concluded that in aggregate, the challenged personnel and contract actions amounted to having “eliminated” USAID because the current personnel status means that “USAID appears to be unable to perform its core functions.” Op. 39-40 (quotation marks omitted). The court concluded that “actions to dismantle USAID violate the [s]eparation of [p]owers because they contravene congressional authority relating to the establishment of an agency.” Op. 51.

The court held that plaintiffs are suffering irreparable injury from (i) the “reputational harm[]” caused by Musk’s “statements about USAID and its personnel,” (ii) the “potential public disclosure of personal, sensitive, or classified information,” and (iii) “security risks” to certain plaintiffs stationed abroad. Op. 56-60. The court stated that the requested injunction “would not be directed at

USAID, which is not a party to this case, and thus would not impact its ability to act, including in relation to foreign policy interests.” Op. 62.

The district court’s injunction requires defendants to “reinstate” plaintiffs’ access to various USAID electronic systems and enjoined them from disclosing plaintiffs’ personal information. Doc. 75, ¶ 2(a), (b). The court further enjoined defendants from taking various actions related to employee or contract terminations or shutdowns of buildings or computer systems. *Id.* ¶ 2(c). And it enjoined defendants from taking “any other actions relating to USAID without the express authorization of a USAID official with legal authority to take or approve the action.” *Id.* ¶ 2(d).

3. The next day, the government moved to clarify or modify the injunction to ensure that Jeremy Lewin could carry out his duties and operate the agency. Doc. 77. The motion explained that Secretary Rubio, prior to the issuance of the preliminary injunction, had delegated to Lewin the duties of Deputy Administrator of USAID. *Id.* at 1. The accompanying declaration explained that Lewin has been “serv[ing] as a policymaker at USAID since January 28, 2025” in senior roles and that he is “not” and has “never been, an employee of Elon Musk or USDS.” Doc. 77-2, ¶¶ 3, 9. The declaration clarified that in his capacity as a USAID official, he was the “DOGE Team Lead at USAID for a period of time,” but he is

“no longer the DOGE Team Lead” or “otherwise a member of the DOGE Team.”

Id. ¶ 9.

Because the district court’s preliminary injunction defined as “Defendants” any person “who at any time” had served as “a DOGE Team Lead or DOGE Team Member,” Doc. 75 at 1, the government asked the court to clarify or, if necessary, modify the injunction to ensure that Mr. Lewin was not enjoined “from engaging in a wide range of work he is otherwise authorized—and tasked—to perform” as Deputy Administrator, Doc. 77 at 2. In particular, the government pointed to the “line” the district court had drawn “between actions taken by Defendants, and those taken (or ratified) by USAID officials.” *Id.* The government also explained that “any delay or frustration” of Lewin’s “ability to authorize certain activities at USAID may imperil the delivery of USAID’s essential aid programming and may potentially place USAID personnel posted overseas in harm’s way.” *Id.*; *see also* Doc. 77-2, ¶¶ 11-15.

4. The district court denied the motion. Doc. 79. The court declared that “[e]xcluding Lewin” from the injunction “would undermine” the purpose of the injunction to bar from agency decisions “all individuals with a past or present affiliation with Defendants or DOGE” who are “the most likely perpetrators of constitutional violations” and to “prevent the circumvention of the injunction.” *Id.* at 1. Opining that “USAID functions can be accomplished through other

authorized USAID officials in conjunction with the recusal of any enjoined individuals,” *id.* at 1-2, the court also claimed to “reserve[] the right to modify the Preliminary Injunction to expand the definition of Defendants should additional personnel actions have the effect of circumventing the Preliminary Injunction,” *id.* at 2.

ARGUMENT

In considering a request for a stay pending appeal, this Court considers the movant’s likelihood of success on the merits and the impact on the parties and the public interest from granting or denying a stay. *See Nken v. Holder*, 556 U.S. 418, 426 (2009). All factors favor a stay.

I. At A Minimum, The Preliminary Injunction Should Be Stayed To Permit USAID’s Chief Operating Officer To Conduct USAID Business.

The government respectfully requests that this Court at the very least stay the preliminary injunction as it applies to Jeremy Lewin, a USAID official to whom Secretary and Acting Administrator Rubio has delegated the authorities of the Deputy Administrator for Policy and Programming and the Chief Operating Officer for USAID. This Court need not reach the merits of the district court’s legal conclusions to recognize that enjoining Lewin has no basis in law and inflicts significant irreparable harm on the government. Even accepting the district court’s preliminary injunction on its own terms, the injunction should not reach Lewin.

Lewin and other USAID officials are not defendants in this action. And Lewin is indisputably a USAID official tasked with carrying out USAID's functions by USAID's most senior official, Acting Administrator (and Secretary) Rubio. The district court's core reasoning, as well as its decision not to enjoin a range of past USAID decisions that "USAID either approved or ratified," Op. 65, is focused on ensuring that USAID is run by USAID officials. But the court blocked exactly that from happening. That the court would prefer a different individual to run USAID is not a sufficient basis upon which to proceed.

The district court's conclusion that Lewin should be enjoined as a prophylactic means of shielding USAID from Musk or USDS is similarly unpersuasive. The record shows that Lewin is "not" and has "never been, an employee of Elon Musk or USDS." Doc. 77-2, ¶¶ 3, 9. Agency DOGE Teams are "establish[ed] within" each agency and are not part of USDS, E.O. § 3(c). And Lewin is also "no longer the DOGE Team Lead" or "otherwise a member of the DOGE Team." Doc. 77-2, ¶ 9. The court's decision to enjoin any person "who at any time" had served as "a DOGE Team Lead or DOGE Team Member," Doc. 75 at 1, is prophylaxis built upon prophylaxis that improperly reaches individuals who are not defendants in this action. The fact that the district court is candidly requiring recusal of particular USAID officials selected by the USAID Acting

Administrator only underscores the extraordinary intrusiveness of the preliminary injunction.

The irreparable injury inflicted by the preliminary injunction is particularly clear when applied to Lewin. Lewin explained that Secretary Rubio “has authorized” various “steps and actions to be taken in connection with the ongoing restructuring and other matters related to the operation and management of USAID.” Doc. 77-2, ¶¶ 11, 12. The declaration further explains that Lewin has important background on USAID’s recent restructuring and that other than Secretary Rubio, only Lewin has the “authority” to carry out those responsibilities. *Id.* ¶¶ 3, 6-7, 12, 15. And especially in view of the Secretary of State’s other very “significant responsibilities,” it is unreasonable “to expect the Agency Head to personally approve every such action or request.” *Id.* ¶ 15.

Additionally, some of the functions that Lewin must perform are meant to protect the very equities on which the district court relied when issuing its injunction. Lewin has explained that “[a]ny delay or frustration of [his] ability to authorize” various “actions may imperil the delivery of USAID’s essential aid programming and may potentially place USAID personnel posted overseas in harm’s way.” Doc. 77-2, ¶ 13; *see id.* ¶ 14 (discussing Lewin’s responsibilities to “secure the effective delivery” of an “HIV relief program,” and “ensure that USAID’s critical global health supply chain remains intact”). Lewin has also

explained that he “may need to take certain personnel actions in connection with the orderly administration of the restructuring, or to secure the continued safety of [USAID] personnel and confidentiality of Agency information.” *Id.* ¶ 16.

II. The Entire Preliminary Injunction Should Be Stayed.

A. Plaintiffs’ Appointment Clause claim lacks merit.

The Appointments Clause of the Constitution provides the method for appointing “Officers of the United States.” U.S. Const. art. II, § 2, cl. 2. Principal officers must be appointed by the President with Senate confirmation, while Congress may vest the appointment of inferior officers in the President alone, the courts of law, or by the heads of Executive departments. *Id.* Individuals are officers, and thus must receive a constitutional appointment, when they occupy a continuing position that is vested with the authority to “exercis[e] significant authority pursuant to the laws of the United States.” *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 506 (2010) (alteration in original) (quotation omitted). The district court erred by holding that Elon Musk is likely an officer.

1. The record establishes that Musk is not an officer because he does not exercise “significant authority pursuant to the laws of the United States.” *Freytag v. Commissioner*, 501 U.S. 868, 881 (1991). The district court acknowledged agreement among the parties that “Musk has no formal legal authority to make the

decisions at issue.” Op. 31. That should have been the end of the matter. But the court instead relied on what it viewed as Musk’s significant influence, believing that “Musk appears to have been involved” in closing the USAID headquarters building and “made the decisions to shutdown USAID’s headquarters and website even though he ‘lacked the authority to make that decision,’” Op. 28-29 (quoting Doc. 28 at 18).

This kind of purely advisory role falls far short of anything that has been recognized as “significant authority” for officer status. Musk does not, for example, possess statutory or regulatory authority to issue “final decision[s]” that “bind[] the Executive Branch.” *United States v. Arthrex, Inc.*, 594 U.S. 1, 23 (2021). Nor can he “make policy” for the Executive Branch by virtue of any statutory or regulatory authority. *See Designation of Acting Director of the Office of Management and Budget*, 27 Op. O.L.C. 121, 123 (2003). Neither plaintiffs nor the district court have identified any such authority granting binding legal effect to any recommendations made by Musk without the further approval and action of other executive officers.

Presidents, moreover, have historically “created advisory groups composed of private citizens ... to meet periodically and advise them (hence the phrase ‘kitchen cabinets’).” *Association of American Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 908 (D.C. Cir. 1993). And Presidents and other senior

Executive Branch officials have long relied on chiefs of staff and a host of other sometimes-powerful advisers. Although the President can direct duly appointed officers of the United States to take particular actions, the President may also choose to rely on a close advisor to identify such actions. Article II gives the President “the flexibility to organize his advisers and seek advice from them as he wishes,” *id.* at 909, as well as use those advisors to communicate his decisions. “Agency policymaking is not a ‘rarified technocratic process, unaffected by political considerations or the presence of Presidential power.’” *Department of Commerce v. New York*, 588 U.S. 752, 781 (2019).

Presidential advisers can, in practice, be highly influential, communicating high-level decisions and predicting the preferences of their principals. *Cf. Percoco v. United States*, 598 U.S. 319, 330-31 (2023). And because they work closely with and are trusted by principals, their independent judgment may also carry significant sway. Even a cabinet official who disregards a senior White House advisor’s urging may do so at his own peril. But powerful advisers are not officers: significant or even decisive influence “does not offend the Appointments Clause so long as [a] duly appointed official has final authority.” *Andrade v. Regnery*, 824 F.2d 1253, 1257 (D.C. Cir. 1987). The district court’s recognition that “Musk has no formal legal authority to make the decisions at issue,” Op. 31, should therefore have been dispositive.

The court seems to have recognized as much when it correctly rejected plaintiffs' reliance on a range of challenged actions that "were actually approved by USAID officials." Op. 26. But the district court then erred when it held that Musk is an officer because the court believed that he "made" two "decisions" (closing an office and shutting down a website) "even though he 'lacked the authority'" to do so. Op. 28-29 (emphasis omitted). This reasoning was mistaken twice over.

Most importantly, for the purposes of determining whether someone is an Officer of the United States, "authority" is decisive. The question is whether the individual "exercise[s] significant authority pursuant to the laws of the United States." *Free Enter. Fund*, 561 U.S. at 506; *see also Lucia v. SEC*, 585 U.S. 237, 248-249 (2018). The question is not who "conceive[d of] and even carr[ied] out policies." *Andrade*, 824 F.2d at 1257. Someone who "had complete responsibility for crafting and executing" decisions, *id.*, is still not an officer if he "lacked the authority," Op. 28 (emphasis and quotation marks omitted), to make the formal decision.

Additionally, the district court wrongly shifted the burden of proof from the plaintiffs to the government. *See Speech First, Inc. v. Sands*, 69 F.4th 184, 202 (4th Cir. 2023), *vacated on other grounds*, 144 S. Ct. 675 (2024). The court demanded that the government establish who made each of a wide range of fast-moving

decisions. The government presented evidence as to “most of the major actions taken at USAID.” Op. 26-27. But in the absence of such evidence, the court effectively assumed plaintiffs’ view of the facts. *See* Op. 28. That is an error.

2. Because plaintiffs failed to establish that Musk exercises significant authority under the laws of the United States, this Court need go no further to conclude plaintiffs cannot succeed on any Appointments Clause challenge. But such a claim fails for the additional reason that Musk does not occupy an office, *i.e.*, “a ‘continuing’ position established by law.” *Lucia*, 585 U.S. at 245. The district court identified nothing with the force of law establishing an office. The Appointments Clause does not apply to the exercise of *de facto* power separate from a legally established office. And, in any event, the concept of an “office” “embraces the ideas of tenure, duration, emolument, and duties.” *United States v. Hartwell*, 73 U.S. (6 Wall.) 385, 393 (1867). Musk’s position as a “Senior Advisor” does not meet that standard.

To be an office, the position at issue must be continuing, *i.e.*, it must not be “personal to a particular individual.” *United States v. Donziger*, 38 F.4th 290, 297 (2d Cir. 2022). Here, there is no indication that Musk’s particular role as a “Senior Advisor to the President” will outlast his tenure. *See United States v. Maurice*, 26 F. Cas. 1211, 1214 (Marshall, Circuit Justice, C.C.D. Va. 1823) (explaining that an office has “duties [that] continue, though the person be changed”). Presidents have

long selected advisors based on their “identity”—and thus “who cannot simply be replaced” by others—precisely because the President depends on those advisors’ personalized advice and judgment. *Donziger*, 38 F.4th at 297.

Moreover, Musk is a “non-career Special Government Employee,” Doc. 28-2 at 28, a status that lacks the duration and emoluments characteristic of offices. As defined by statute, “special Government employee[s]” are necessarily time-limited in their service. *See* 18 U.S.C. § 202(a). While some nonpermanent positions can qualify as offices, *see Morrison v. Olson*, 487 U.S. 654, 671 n.12 (1988), the sharply limited duration of Musk’s status as a Special Government Employee indicates that his position is not an office. *Cf. Special Government Employee Serving as Paid Consultant to Saudi Company*, 40 Op. O.L.C. 1, 8-9 (2016) (explaining that the special government employee at issue “d[id] not appear to hold the essential features of a federal office—in particular, ‘tenure,’ ‘duration,’ and ‘continuous duties’”).

The district court did not advance its position by denominating Musk “*de facto* USDS Administrator.” Op. 35 (quotation marks omitted). The Appointments Clause is concerned with the formal powers vested in an office, not an individual’s perceived informal influence. *See Freytag*, 501 U.S. at 881 (looking to the statute for an office’s “duties,” and noting that court-appointed special masters are not officers in part because their “duties and functions are not delineated in a statute”).

Far from supporting the district court’s conclusion, the suggestion that Musk may exercise influence at two levels of remove—first by influencing the USDS and then by using that role to influence agencies—weighs against, not in favor of, concluding that he occupies an office.

B. Plaintiff’s additional “separation-of-powers” claim lacks merit.

The district court similarly erred in perceiving a separation-of-powers violation. Although plaintiffs named no USAID officials as defendants, the district court appeared to take account of decisions made by USAID officials in deciding this claim. Op. 65. It is therefore doubtful that plaintiffs’ alleged injuries are “fairly traceable” to the named “defendant[s]’ allegedly unlawful conduct,” *California v. Texas*, 593 U.S. 659, 680 (2021) (quotation omitted)), or that an order directed to Musk and the other named defendants would redress any such injury. *See also Doe v. Virginia Dep’t of State Police*, 713 F.3d 745, 755 (4th Cir. 2013) (citation omitted) (explaining that it is “problematic when third persons not party to the litigation must act in order for an injury to arise or be cured”). If nothing else, serious questions about standing make the likelihood of success on the merits “more unlikely.” *Munaf v. Geren*, 553 U.S. 674, 690 (2008) (emphasis omitted).

Plaintiffs’ nebulous separation-of-powers claim also lacks merit. Plaintiffs allege that “DOGE itself” has “coercive power over federal agencies,” which disrupts the proper “chain of command” and “statutory delegation[s]” in the

Executive Branch, and that “[t]he lack of any formal appointment, congressional authorization, or duties that are clearly defined in law” is itself unconstitutional. Doc. 14, ¶¶ 76-81. To the extent that this claim depends on the status of USDS and its authority over USAID, it appears to be largely derivative of the Appointments Clause theory and lacks merit for the same reasons. Indeed, plaintiffs’ allegations that a White House component wields “coercive” rather than formal power and operates without formally established duties further underscores that neither Musk nor others at DOGE are Officers of the United States.

In any event, the district court’s belief that various actions “eliminated” USAID, Op. 39-40, does not give rise to a freestanding constitutional violation. Agencies have “broad discretion to choose how best to marshal [their] resources and personnel to carry out [their] delegated responsibilities.” *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007). This is especially true in the foreign-policy sphere, where the President retains inherent Article II authority. *See, e.g., American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003). Individuals who wish to challenge specific USAID actions may do so, subject to the various requirements of Article III and the Administrative Procedure Act (APA). *See, e.g., City of New York v. U.S. Dep’t of Def.*, 913 F.3d 423, 431 (4th Cir. 2019) (explaining that the APA authorizes challenges to discrete agency actions and not “broad programmatic attack[s]” (quotation marks omitted)).

But plaintiffs’ attempt to transform unalleged and unproven statutory violations into a constitutional claim should be rejected. Even proven statutory violations are not also separation-of-powers problems. *See Dalton v. Specter*, 511 U.S. 462, 474 (1994) (stressing the “distinction between claims that an official exceeded his statutory authority ... and claims that he acted in violation of the Constitution”). And courts cannot superintend agency operations by declaring the sum of agency actions unconstitutional based on a view of what constitutes an agency’s “core functions” and what quantity and sorts of operational challenges amount to having “eliminated” an agency. *See Op.* 39-40. This novel theory has no basis in precedent and no discernible bounds. It is also disconnected from the preliminary injunction in this case, which does not require USAID to resume since-halted operations.

C. The balance of equities favor a stay.

The equitable factors strongly favor a stay pending appeal of the entire injunction. The district court’s injunction is “an improper intrusion by a federal court into the workings of a coordinate branch of the Government,” *INS v. Legalization Assistance Project of the L.A. Cty. Fed’n of Labor*, 510 U.S. 1301, 1305-1306 (1993) (O’Connor, J., in chambers); *see Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), and causes harm every day it is in effect.

The injunction micromanages agency operations by requiring recusal of particular USAID employees and scrutinizing email access for employees and contractors. *See* Doc. 75 at 1-2. And it bars the President’s chosen advisors from taking “any action” or engaging in “any work” “relating to” a host of activities, *see id.* at 2. *See, e.g., Valentine v. Collier*, 978 F.3d 154, 165 (5th Cir. 2020) (finding irreparable harm where injunction taxes agency’s “resources” and “hinders” its “flexibility”). Worse still, as the district court’s subsequent clarification makes clear, the injunction superintends the Acting Administrator’s selection of senior agency officials, by imposing court-established “recusal” rules. Doc. 79 at 1-2. And, as discussed, the effect of the injunction is to prevent the agency from functioning. Indeed, the district court threatened to enlarge the scope of its order by “expand[ing] the definition of Defendants should additional personnel actions have the effect of circumventing the Preliminary Injunction.” Doc. 79 at 2.

On the other side of the ledger, plaintiffs have not established irreparable injury warranting extraordinary relief. The district court relied on the allegations of certain plaintiffs stationed abroad who have lost access to USAID’s electronic systems. Op. 55. But USAID is already acting to ensure that overseas employees “will retain access to Agency systems and to diplomatic and other resources” until they return to the United States, Op. 56 (quotation marks omitted), and therefore the preliminary injunction is unnecessary to address that harm. Plaintiffs’

purported reputational injuries also do not warrant an injunction. Plaintiffs have not identified any actual or likely reputational injury stemming from Musk's statements regarding USAID. *See id.* And even if they did, plaintiffs do not explain how prospective relief will remedy harms from public statements that have already been made.

CONCLUSION

The government respectfully requests an immediate administrative stay and a ruling on this motion by **Tuesday, March 25 at 5pm.**

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing response to a motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,145 words. It also complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27 because this response has been prepared in Word for Microsoft 365 in Times New Roman 14-point font, a proportionally spaced typeface.

/s/ Graham White
GRAHAM WHITE

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2025, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

/s/ Graham White

GRAHAM WHITE