

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

CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON,

[REDACTED]

Plaintiff,

v.

U.S. DOGE SERVICE,
736 Jackson Pl. NW
Washington, DC 20503,

JOHN DOE, in their official capacity as
Administrator of the U.S. DOGE Service
736 Jackson Pl. NW
Washington, DC 20503,

ELON MUSK, in his official capacity,
c/o Executive Office of the President
1600 Pennsylvania Avenue NW
Washington, DC 20500,

OFFICE OF MANAGEMENT AND BUDGET,
725 17th Street NW
Washington, DC 20503,

RUSSELL VOUGHT, in his official capacity as
Director, Office of Management and Budget
725 17th Street NW
Washington, DC 20503,

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,
700 Pennsylvania Avenue NW
Washington, DC 20408, and

Case No. _____

MARCO RUBIO, in his official capacity as Acting
Archivist of the United States,
700 Pennsylvania Avenue NW
Washington, DC 20408,

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) hereby sues Defendants the United States DOGE Service (“USDS”); John Doe, in their official capacity as Administrator of the U.S. DOGE Service; Elon Musk, in his official capacity; Office of Management and Budget (“OMB”); Russell Vought, in his official capacity as Director of OMB; the National Archives and Records Administration (“NARA”); and Marco Rubio, in his official capacity as Acting Archivist of the United States and alleges as follows:

INTRODUCTION

1. The Trump Administration’s so-called “Department of Government Efficiency” vowed to operate with “maximum transparency.”¹ It has done the opposite. Since President Trump first announced its creation in November 2024, and even after he formally established it by executive order as “the United States DOGE Service” (“USDS”),² the entity has worked in the shadows—a cadre of largely unidentified actors, whose status as government employees is unclear, controlling major government functions with no oversight. USDS has provided no

¹ Elon Musk (@elonmusk), X (Nov. 12, 2024, 9:13 PM), <https://x.com/elonmusk/status/1856520760656797801> (“All actions of the Department of Government Efficiency will be posted online for maximum transparency.”).

² See Establishing and Implementing the President’s “Department of Government Efficiency”, Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 20, 2025).

meaningful transparency into its operations or assurances that it is maintaining proper records of its unprecedented and legally dubious work.

2. USDS is purely a creation of executive order. No statute authorizes its existence or operations. And yet, USDS wields shockingly broad power over all manner of federal functions—far exceeding its limited legal authority. In just a few weeks, USDS has, among other things:

- a. effectively taken control of and directed the actions of the Office of Personnel Management, the agency responsible for the administration of around 2.3 million Executive Branch employees;³
- b. taken credit for cancelling billions of dollars in federal contracts across multiple agencies;⁴
- c. gained control of the computer system of the Consumer Financial Protection Bureau after OMB closed the agency's headquarters and ordered its 1,700 employees to stop working;⁵

³ Brian Bennett, *This Obscure Office Is at the Center of Elon Musk's Efforts to Harness Federal Data*, TIME (Feb. 7, 2025), <https://time.com/7213990/elon-musk-doge-opm/>; Off. of Pers. Mgmt., FY 2024 Annual Performance Report, <https://www.opm.gov/about-us/2024-annual-performance-report/opm-overview/>; Off. of Pers. Mgmt., Federal Workforce Data, <https://www.fedscope.opm.gov/> (last visited Feb. 19, 2025).

⁴ Charles Creitz, *DOGE announces more than \$1B in savings after canceling 104 federal DEI contracts*, FOX News (Jan. 31, 2025), <https://www.foxnews.com/politics/doge-announces-more-than-1b-savings-after-canceling-104-federal-dei-contracts>; *Savings*, Dep't of Gov't Efficiency, <https://www.doge.gov/savings> (last visited Feb. 19, 2025).

⁵ Jason Leopold & Evan Weinberger, *DOGE-Backed Halt at CFPB Comes Amid Musk's Plans for 'X' Digital Wallet*, Bloomberg (Feb. 10, 2025), <https://www.bloomberg.com/news/features/2025-02-10/doge-backed-halt-at-cfpb-comes-amid-musk-s-plans-for-x-digital-wallet>; Stacy Cowley, *36 Hours After Russell Vought Took Over Consumer Bureau, He Shut Its Operations*, N.Y. Times (Feb. 9, 2025), <https://www.nytimes.com/2025/02/09/business/vought-cfpb-musk-trump.html>.

- d. executed a potentially unlawful plan to destroy an independent agency authorized by Congress, the U.S. Agency for International Development, leading to the estimated loss of almost 52,000 American jobs and a global humanitarian crisis;⁶
- e. secured potentially illegal access to systems containing highly restricted and confidential data, including classified material and millions of Americans' personal information, across more than a dozen agencies;⁷
- f. gained potentially illegal access to a highly sensitive payment system used by the Treasury Department to disburse trillions of dollars every year;⁸ and
- g. enlisted and claimed authority to summon federal law enforcement in the form of the U.S. Marshals Service to achieve its ends.⁹

⁶ Anna Maria Barry-Jester & Brett Murphy, *In Breaking USAID, the Trump Administration May Have Broken the Law*, ProPublica (Feb. 9, 2025), <https://www.propublica.org/article/usaid-trump-musk-destruction-may-have-broken-law>.

⁷ Chas Danner, *All the Federal Agencies DOGE Has Gotten Access To*, NY Mag. (Feb. 10, 2025), <https://nymag.com/intelligencer/article/doge-elon-musk-what-federal-agencies-access-lawsuits.html>; Aileen Graef & Veronica Stracqualursi, *Homeland Security Secretary Noem says DOGE team has access to agency data*, CNN (Feb. 9, 2025), <https://www.cnn.com/2025/02/09/politics/noem-homeland-security-doge-musk-cnntv/index.htm>; Tony Romm, *DOGE targets Consumer Financial Protection Bureau as Musk tweets 'RIP'*, Wash. Post (Feb. 7, 2025), <https://www.washingtonpost.com/business/2025/02/07/cfpb-doge-trump-musk-chopra/>; Ellen Knickmeyer, *Elon Musk says President Donald Trump has 'agreed' USAID should be shut down*, Associated Press (Feb. 2, 2025), <https://apnews.com/article/doge-musk-trump-classified-information-usaid-security-35101dee28a766e0d9705e0d47958611>.

⁸ Fatima Hussein, *Elon Musk's DOGE commission gains access to sensitive Treasury payment systems: AP sources*, AP News (Feb. 1, 2025), <https://apnews.com/article/donald-trump-elon-musk-doge-treasury-5e26cc80fcb766981cea56afd57ae759>; Andrew Duehren et al., *Elon Musk's Team Now Has Access to Treasury's Payments System*, N.Y. Times (Feb. 1, 2025), <https://www.nytimes.com/2025/02/01/us/politics/elon-musk-doge-federal-payments-system.html>.

⁹ Andrew Roth, *Doge v USAid: how Elon Musk helped his acolytes infiltrate world's biggest aid agency*, The Guardian (Feb. 5, 2025), <https://www.theguardian.com/us-news/2025/feb/05/musk->

3. Federal law requires USDS to operate transparently. As an “establishment in the executive branch of the Government (including the Executive Office of the President),” 5 U.S.C. § 552(f)(1), that exercises “substantial independent authority,” USDS must disclose its records under the Freedom of Information Act (“FOIA”) and preserve its records under the Federal Records Act (“FRA”). See *CREW v. Off. of Admin.*, 566 F.3d 219, 224 (D.C. Cir. 2009). Defendants, however, have refused to comply with Plaintiff’s FOIA requests for USDS records and repeated demands for records preservation under the FRA.

4. Shining a light on USDS’s secretive operations strikes at the heart of FOIA’s “basic purpose” to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *Nat’l Lab. Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The American people have a right to know how USDS is managing (or mismanaging) their tax dollars and their data, how it is exercising its authority to influence government operations, whether conflicts of interest in USDS leadership are impacting its work, and the extent to which it is operating outside of its slim legal mandate. And the public interest is heightened by the unprecedented nature and scale of USDS’s operations. USDS must comply with federal transparency laws, regardless of whether it is a fully governmental body or a mix of public and private actors. See *Elec. Privacy Info. Ctr. v. Nat’l Sec. Comm’n on A.I.*, 466 F. Supp. 3d 100 (D.D.C. 2020) (holding that entity was subject to both FOIA and the Federal Advisory Committee Act).

5. Plaintiff therefore seeks declaratory and injunctive relief requiring Defendants to comply with Plaintiff’s FOIA requests and promptly disclose the requested records, to fully

[doge-takeover-usaid](#); Ruth Marcus, *Pardon me: What were the folks at DOGE thinking?*, Wash. Post (Jan. 23, 2025), <https://www.washingtonpost.com/opinions/2025/01/23/doge-jan-6-marshals-federal-judges/>.

comply with the FRA's preservation requirements, and to initiate enforcement action through the Attorney General to recover any lost or destroyed USDS records.

6. Because of the urgent public interest in uncovering information about USDS's secretive operations before the congressional appropriations process concludes in March, and because of the unaddressed concerns regarding USDS's preservation of records in the midst of its pervasive efforts to control the levers of government, Plaintiff is filing a motion for a preliminary injunction requiring Defendants to (1) release responsive records sufficiently in advance of the March 14 expiration of the current continuing resolution, no later than March 10, 2025, and (2) require preservation of relevant records pending litigation.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under FOIA, 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 702.

8. The Court further has jurisdiction pursuant to 28 U.S.C. § 1361, which grants original jurisdiction to the district courts of "any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

9. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff Citizens for Responsibility and Ethics in Washington ("CREW") is a non-partisan, non-profit government watchdog organization committed to protecting the rights of citizens to be informed about the activities of government officials and agencies and to ensuring ethics, transparency, and integrity in government. To advance its mission, CREW uses a

combination of research, litigation, and advocacy. As part of its research, CREW routinely uses government records made available to it under FOIA, the Federal Advisory Committee Act, and other federal laws, and widely disseminates those records to the public. As detailed below, CREW has several pending FOIA requests for records relating to USDS and will submit more requests in the future. CREW has a strong operational interest in Defendants' compliance with their recordkeeping obligations under the FRA. The unlawful destruction, alienation, or removal of federal records relevant to CREW's work impedes its ability to fulfill its mission and its informational rights under FOIA.

11. Defendant USDS is an agency within the meaning of 5 U.S.C. § 552(f)(1), 5 U.S.C. § 551(1), and 44 U.S.C. § 2901(14). USDS operates under the supervision and direction of the USDS Administrator. USDS has possession and control of the requested records and is responsible for fulfilling Plaintiff's FOIA requests.

12. Defendant John Doe is the Administrator of USDS. To date, the federal government has not identified who, if anyone, formally holds the position of USDS Administrator.

13. Defendant Elon Musk is a Special Government Employee of the Executive Branch and is sued in his official capacity only. On information and belief, Mr. Musk functionally directs and oversees USDS's operations and is its de facto Administrator.

14. Defendant Office of Management and Budget ("OMB") is an agency within the meaning of 5 U.S.C. § 552(f)(1), 5 U.S.C. § 551(1), and 44 U.S.C. § 2901(14). OMB has possession and control of the requested records and is responsible for fulfilling Plaintiff's FOIA requests.

15. Defendant Russell Vought is the Director of the Office of Management and Budget and is sued in his official capacity only.

16. Defendant National Archives and Records Administration (“NARA”) is an agency within the meaning of 5 U.S.C. § 551(1), and 44 U.S.C. § 2901(14). NARA operates under the supervision and direction of the Archivist of the United States.

17. Defendant Marco Rubio is the Acting Archivist of the United States and is sued in his official capacity only.

LEGAL FRAMEWORK

The Freedom of Information Act

18. FOIA, 5 U.S.C. § 552, requires federal agencies to release requested records to the public unless one or more specific statutory exemptions apply.

19. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency’s determination of which the requested records it will release, which it will withhold and why, and the requester’s right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

20. FOIA also requires agencies to promulgate regulations that provide for expedited processing of FOIA requests where the requester demonstrates a “compelling need” as well as in “other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). The FOIA defines “compelling need” to include requests “made by a person primarily engaged in disseminating information” where there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v)(II).

21. OMB regulations require expedited treatment in cases where OMB determines, among other things, that “[t]here is an urgency to inform the public about an actual or alleged

Federal Government Activity,” 5 C.F.R. § 1303.40(e)(1)(ii), or “[t]here are possible questions, in a matter of widespread and exceptional public interest, about the Government’s integrity which affect public confidence,” *id.* § 1303.40(e)(1)(iv).

22. Agencies are required to make a determination on a request for expedited processing within 10 calendar days “after the date of the request.” 5 U.S.C. § 552(a)(6)(E)(ii)(I); *see also* 5 C.F.R. § 1303.40(e)(4) (“OMB will decide whether to grant a request for expedited processing and will notify the requester within 10 calendar days after the date of the request.”); 36 C.F.R. § 1250.28(d) (“[NARA] will respond to your request for expedited processing within 10 calendar days of our receipt of your request to expedite.”). Once expedited processing is granted, agencies must process the request “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii); *see also* 5 C.F.R. § 1303.40(e)(4); 36 C.F.R. § 1250.28(d).

23. An agency’s failure to respond within 10 calendar days to a request for expedited processing is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(E)(ii)(I)–(iii); *CREW v. DOJ*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020).

24. Agency decisions to deny or affirm denial of a request for expedited processing are subject to judicial review “based on the record before the agency at the time of the determination.” 5 U.S.C. § 552(a)(6)(E)(iii).

The Federal Records Act

25. The FRA governs the creation, management, and disposal of federal records. *See* 44 U.S.C. §§ 2101, *et seq.*; §§ 2901, *et seq.*; §§ 3101, *et seq.*; and §§ 3301, *et seq.* It seeks to ensure the “[a]ccurate and complete documentation of the policies and transactions of the Federal Government.” 44 U.S.C. § 2902(1).

26. The FRA requires federal agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” 44 U.S.C. § 3101.

27. The FRA further requires agencies to “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” 44 U.S.C. § 3102. The agency’s records management program “shall provide for,” among other things, “effective controls over the creation and over the maintenance and use of records in the conduct of current business.” *Id.* § 3102(1).

28. Federal records cannot be destroyed without NARA’s approval. *See* 44 U.S.C. § 3314; *Pub. Citizen v. Carlin*, 184 F.3d 900, 902 (D.C. Cir. 1999). NARA can authorize the destruction of records by an agency only by approving either a schedule governing the disposition of specified agency records, *see* 44 U.S.C. §§ 3303a(a), or a general records schedule listing types of records held by multiple agencies, *id.* 3303a(d).

29. The FRA generally requires that federal records, including those generated in personal electronic messaging accounts, be preserved in a government recordkeeping system. To that end, the statute prohibits agency officials from “creat[ing] or send[ing] a record using a non-official electronic messaging account unless such officer or employee—(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.” 44 U.S.C. § 2911(a).

30. To prevent the unlawful destruction or removal of records, the FRA creates a “system of administrative enforcement.” *Armstrong v. Bush*, 924 F.2d 282, 294 (D.C. Cir. 1991). If an agency head becomes aware of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency,” the agency head “shall notify the Archivist” and “with the assistance of the Archivist shall initiate action through the Attorney General for the recovery” of those records. 44 U.S.C. § 3106(a); *see also* 36 C.F.R. § 1230.14 (detailing how agencies “must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA”).

31. Similarly, “[t]he Archivist shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to the Archivist’s attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law.” 44 U.S.C. § 2905(a).

32. If the agency head “does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action . . . or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.” 44 U.S.C. § 3106(b); *see also id.* § 2905(a) (“In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.”).

33. The FRA’s “mandatory enforcement provisions” reflect Congress’s judgment that “marshalling the law enforcement authority of the United States [is] a key weapon in assuring record preservation and recovery.” *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 956 (D.C. Cir. 2016).

34. Under NARA regulations, “[u]nlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.” 36 C.F.R. § 1230.3(b). “The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both.” *Id.* § 1230.12 (citing 18 U.S.C. §§ 641, 2071).

The Administrative Procedure Act

35. The APA provides that a “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

36. The term “agency action” includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

37. A court reviewing a claim under 5 U.S.C. § 702 “shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706. The reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed” and “hold unlawful and set

aside agency action, findings, and conclusions found to be—arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* §§ 706(1), (2)(A).

38. In the FRA context, the APA authorizes claims challenging the failure of an agency and NARA to initiate a DOJ enforcement action pursuant to 44 U.S.C. § 3106 and § 2905(a). *See Judicial Watch*, 844 F.3d at 954.

Mandamus

39. Where a Plaintiff can “demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists,” *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016), “[t]he district courts shall have original jurisdiction” to compel performance of the duty by issuing a writ of mandamus. 28 U.S.C. § 1361.

FACTUAL ALLEGATIONS

Establishment of DOGE and USDS

40. On November 13, 2024, President-elect Donald Trump announced the formation of the “Department of Government Efficiency” (“DOGE”).¹⁰ The announcement stated that Elon Musk and Vivek Ramaswamy would lead the agency and that its mission would be to “pave the way for [the Trump] Administration to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies.”¹¹

41. Messrs. Musk and Ramaswamy described DOGE’s strategic plan in an article that they co-authored and published in the Wall Street Journal, vowing that they would “advise

¹⁰ Donald J. Trump (@realDonaldTrump), X (Nov. 13, 2024, 6:21 AM), <https://x.com/realDonaldTrump/status/1856658569124262092>.

¹¹ *Id.*

DOGE at every step to pursue three major kinds of reform: regulatory rescissions, administrative reductions and cost savings.”¹²

42. Messrs. Musk and Ramaswamy also stated that DOGE would operate with “embedded appointees” at various federal agencies to develop its recommendations for “reform.”¹³ They pledged to identify and provide a list of “thousands” of unlawful regulations so that President Trump could “nullif[y]” them, pursue “mass head-count reductions across the federal bureaucracy” to “identify[] pinpoint executive actions that would result in immediate savings for taxpayers,” and to conduct “[l]arge-scale audits” to reform the “procurement process.”¹⁴

43. Mr. Musk repeatedly stated that his goal is to use DOGE to cut \$2 trillion out of the federal budget.¹⁵

44. DOGE formed and began operating before President Trump’s inauguration on January 20, 2025. Those working under its auspices prior to President Trump’s inauguration included close business associates of Mr. Musk.¹⁶

¹² Elon Musk & Vivek Ramaswamy, *Elon Musk and Vivek Ramaswamy: The DOGE Plan to Reform Government*, WSJ (Nov. 20, 2024),

https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020?mod=hp_opin_pos_0.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Alex Gangitano, *Musk: Cutting \$2T through DOGE ‘best-case outcome’*, The Hill (Jan. 9, 2025), <https://thehill.com/homenews/administration/5076095-elon-musk-doge-2t-spending-cut-goal/>; Justin Lahart and Rosie Ettenheim, *Musk Wants \$2 Trillion of Spending Cuts. Here’s Why That’s Hard.*, Wall St. J. (Nov. 26, 2024), <https://www.wsj.com/politics/policy/government-spending-doge-elon-musk-trump-administration-60477bc5>.

¹⁶ Donald J. Trump (@realDonaldTrump), Truth Social (Dec. 4, 2024, 12:50 PM), <https://truthsocial.com/@realDonaldTrump/posts/113595819146944245>; Josh Gerstein, *Trump’s next White House counsel is ‘the exception to the rule’ of Trump lawyers*, Politico (Nov. 11, 2024), <https://www.politico.com/news/2024/11/18/trump-william-mcginley-white-house-counsel-00190101>; Ken Thomas et al., *Inside the Early Days of DOGE*, Wall St. J. (Jan. 17, 2025), <https://www.wsj.com/politics/policy/doge-federal-reform-musk-ramaswamy-118a3833>;

45. Its operations prior to President Trump’s inauguration included “sending representatives to agencies across the federal government . . . to begin preliminary interviews” with agency officials, including officials at “the Treasury Department, the Internal Revenue Service and the departments of Homeland Security, Veterans Affairs, and Health and Human Services.”¹⁷

46. During this period, individuals associated with DOGE conducted DOGE’s work using the ephemeral messaging application Signal.¹⁸ Signal is widely used for its auto-delete functionality, which allows users to set Signal to automatically and permanently delete messages and their associated metadata.¹⁹

47. DOGE did not publicly disclose the identities or positions of its personnel, and neither DOGE nor those who publicly associated themselves with it disavowed its use of Signal in the course of conducting DOGE’s business.

48. Shortly after his inauguration on January 20, 2025, President Trump signed Executive Order 14158, Establishing and Implementing the President’s “Department of Government Efficiency” (“USDS EO”).²⁰ The USDS EO renamed the United States Digital

The All-In Podcast (@theallinpod), X (Feb. 7, 2025, 9:44 PM), <https://x.com/theallinpod/status/1888056229294965223> (Antonio Gracias describing his part-time work with DOGE); *Antonio Gracias*, Valor Equity Partners, <https://www.valorep.com/team/antonio-gracias> (last visited Feb. 13, 2025).

¹⁷ Faiz Siddiqui et al., *DOGE is dispatching agents across U.S. government*, Wash. Post (Jan. 10, 2025), <https://www.washingtonpost.com/business/2025/01/10/musk-ramaswamy-doge-federal-agencies/>.

¹⁸ Theodore Schleifer & Madeleine Ngo, *Inside Elon Musk’s Plan for DOGE to Slash Government Costs*, N.Y. Times (Jan. 23, 2025), <https://www.nytimes.com/2025/01/12/us/politics/elon-musk-doge-government-trump.html>.

¹⁹ *Set and manage disappearing messages*, Signal Support, <https://support.signal.org/hc/en-us/articles/360007320771-Set-and-manage-disappearing-messages> (last visited Feb. 18, 2025).

²⁰ Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 29, 2025).

Service as the United States DOGE Service and reorganized it within the Executive Office of the President.²¹

49. The United States Digital Service was previously a component of OMB, and its operations were supervised by OMB’s Deputy Director of Management.²²

50. The USDS EO established the role of the U.S. DOGE Service Administrator (the “USDS Administrator”) in the Executive Office of the President, reporting to the White House Chief of Staff.²³

51. On information and belief, Mr. Musk exercises actual control over USDS’s functions and operations. Although the Trump administration has not publicly identified the USDS Administrator and has claimed that Mr. Musk is not an employee of USDS,²⁴ on February 19, 2025, President Trump said during a speech, “I signed an order creating the Department of Government Efficiency and put a man named Elon Musk in charge.”²⁵ Even without President

²¹ *Id.*

²² See The U.S. Digital Service, Report to Congress – December 2016 at 4 (2016), <https://www.usds.gov/resources/USDS-2016-Impact-Report.pdf> (explaining that “[a]t its creation, USDS was administratively placed within the Office of the Federal CIO,” but later reorganized within OMB and directly supervised by “the Deputy Director of Management”); see also U.S. Gov’t Accountability Off., GAO-22-104492, Information Technology: Digital Service Programs Need to Consistently Coordinate on Developing Guidance for Agencies (Dec. 10, 2021), <https://www.gao.gov/products/gao-22-104492> (characterizing U.S. Digital Service as a component within OMB); U.S. Gov’t Accountability Off., GAO-16-602, Digital Service Programs: Assessing Results and Coordinating with Chief Information Officers Can Improve Delivery of Federal Projects (Aug. 15, 2016), <https://www.gao.gov/products/gao-16-602> (same).

²³ USDS EO, 90 Fed. Reg. at 8441.

²⁴ See Declaration of Joshua Fisher, *New Mexico v. Musk*, No. 25-cv-00429 (D.D.C. Feb. 17, 2025), ECF No. 24-1.

²⁵ *President Trump Remarks at the FII Priority Summit*, C-SPAN (Feb. 19, 2025), <https://www.c-span.org/program/white-house-event/president-trump-remarks-at-fii-priority-summit/655974>.

Trump’s admission, Mr. Musk’s extensive public statements and conduct demonstrate that he is operating as the de facto administrator.²⁶

52. The USDS EO purports to authorize USDS “to implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity.”²⁷

53. The USDS EO also purports to establish “within USDS, in accordance with section 3161 of title 5, United States Code, a temporary organization known as ‘the U.S. DOGE Service Temporary Organization,’” which is headed by the USDS Administrator and mandated to terminate on July 4, 2026.²⁸ The USDS EO states that the temporary organization “shall be dedicated to advancing the President’s 18-month DOGE agenda.”

54. The USDS EO requires the establishment of “DOGE Teams” within each agency, mandating that

[i]n consultation with USDS, each Agency Head shall establish within their respective Agencies a DOGE Team of at least four employees, which may include Special Government Employees, hired or assigned within thirty days of the date of this Order. Agency Heads shall select the DOGE Team members in consultation with the USDS Administrator. Each DOGE Team will typically include one DOGE Team Lead, one engineer, one human resources specialist, and one attorney. Agency Heads shall ensure that DOGE Team Leads coordinate their work with USDS and advise their respective Agency Heads on implementing the President’s DOGE Agenda.²⁹

55. The USDS EO does not delegate any statutory authority to USDS.

56. Another executive order directs the Assistant to the President for Domestic Policy, in consultation with the USDS Administrator, the Director of OMB, and the Director of

²⁶ See *infra* ¶¶ 84-87.

²⁷ USDS EO, 90 Fed. Reg. at 8441.

²⁸ *Id.*

²⁹ *Id.*

the OPM, to develop “a Federal Hiring Plan that brings to the Federal workforce only highly skilled Americans dedicated to the furtherance of American ideals, values, and interests.”³⁰

57. A separate presidential memorandum orders “a freeze on the hiring of Federal civilian employees, to be applied throughout the executive branch” and directs the Director of OMB, in consultation with the USDS Administrator and Director of OPM, to “submit a plan to reduce the size of the Federal Government’s workforce through efficiency improvements and attrition,” which, when issued by OMB, would lift the hiring freeze for all agencies “with the exception of the Internal Revenue Service (IRS).”³¹ The hiring freeze at IRS will remain in effect “until the Secretary of the Treasury, in consultation with the Director of OMB and the Administrator of USDS, determines that it is in the national interest to lift the freeze.”³²

58. Another executive order, issued on February 11, 2025, entitled “Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization Initiative” requires that “[e]ach Agency Head shall develop a data-driven plan, in consultation with its DOGE Team Lead, to ensure new career appointment hires are in highest-need areas,” purports to empower “DOGE Team Leads” at each agency to decide whether “vacancies for career appointments . . . should not be filled,” and requires each agency “DOGE Team Lead” to provide the USDS Administrator “with a monthly hiring report for the agency.”³³

USDS’s Operations

59. In its short existence, USDS has wielded expansive power over all manner of federal operations—well exceeding its limited authority as a non-statutory entity. *See La. Pub.*

³⁰ Exec. Order No. 14170, 90 Fed. Reg. 8621, 8621 (Jan. 30, 2025).

³¹ Presidential Mem., 90 Fed. Reg. 8247, 8247 (Jan. 28, 2025).

³² *Id.*

³³ Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025).

Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986) (“An agency literally has no power to act . . . unless and until Congress confers power upon it.”).

60. USDS executed a potentially unlawful plan to destroy an independent agency authorized by Congress, the U.S. Agency for International Development, leading to the loss of nearly 52,000 American jobs and a global humanitarian crisis.³⁴

61. On February 3, Mr. Musk posted on his X account, “We spent the weekend feeding USAID into the wood chipper. Could gone [sic] to some great parties. Did that instead.”³⁵ A judge has temporarily enjoined the placement of USAID employees on leave.³⁶

62. USDS has touted its success in achieving the cancellation of more than \$1 billion in what it characterized as “DEI [diversity, equity, and inclusion] contracts” across 25 agencies, each of which has its own contracting authority.³⁷

63. USDS has effectively taken control of the Office of Personnel Management, the agency responsible for the administration of around 2.3 million Executive Branch employees.³⁸ In so doing, it has apparently gained unfettered access to a “massive trove” of the personal data of tens of millions of federal employees and applicants for federal jobs, including the “dates of birth, Social Security numbers, appraisals, home addresses, pay grades and length of service” of

³⁴ Barry-Jester & Murphy, *supra* note 6.

³⁵ Elon Musk (@elonmusk), X (Feb. 3, 2025, 1:54 AM), <https://x.com/elonmusk/status/1886307316804263979>.

³⁶ Kwan Wei Kevin Tan et al., *Judge blocks Trump, Musk's shutdown of USAID*, Business Insider (Feb. 7, 2025), <https://www.businessinsider.com/trump-musk-doge-usaid-shutdown-blocked-2025-2>.

³⁷ Creitz, *supra* note 4.

³⁸ Will Steakin & Laura Romero, *OPM, implementing Musk's DOGE plans, sends federal workers 2nd 'Fork in the Road' email*, ABC News (Feb. 3, 2025), <https://abcnews.go.com/US/opm-implementing-musks-doge-plans-sends-federal-workers/story?id=118401375>; Danner, *supra* note 7.

federal employees.³⁹ At the same time, it has locked civil servants who had previously maintained the data out of those systems.⁴⁰

64. USDS was also responsible for sending out “fork in the road” emails offering buyouts (or “deferred resignation”) to virtually every federal civilian employee.⁴¹ “Fork in the Road,” which then also became the title of the OPM page describing the buyout program to federal employees,⁴² was also the subject line of a 2022 company-wide email that Mr. Musk sent to his employees at Twitter that gave them an ultimatum to commit to being “extremely hardcore” or accept a three-month’s of severance pay, shortly after he purchased the company.⁴³

65. USDS has secured access to information technology systems with highly restricted and confidential data at numerous federal agencies, including OPM, USAID, the Centers for Medicare & Medicaid Services, the Department of Commerce, the Department of Education, the Department of Energy, the Federal Emergency Management Agency, the Department of Health and Human Services, the National Oceanic and Atmospheric

³⁹ Isaac Stanley-Becker et al., *Musk’s DOGE agents access sensitive personnel data, alarming security officials*, Wash. Post (Feb. 6, 2025), <https://www.washingtonpost.com/national-security/2025/02/06/elon-musk-doge-access-personnel-data-opm-security/>; Andrea Shalal & Doina Chiacu, *Musk’s DOGE agents access sensitive government personnel data, Washington Post reports*, Reuters (Feb. 6, 2025), <https://www.reuters.com/world/us/musks-doge-agents-access-sensitive-opm-personnel-data-washington-post-reports-2025-02-06/>.

⁴⁰ Tim Reid, *Exclusive: Musk aides lock workers out of OPM computer systems*, Reuters (Feb. 2, 2025), <https://www.reuters.com/world/us/musk-aides-lock-government-workers-out-computer-systems-us-agency-sources-say-2025-01-31/>.

⁴¹ Danner, *supra* note 7.

⁴² See Fork in the Road, OPM, <https://www.opm.gov/fork> (last visited Feb. 19, 2025).

⁴³ Victor Ordonez, *Commit ‘hardcore’ or leave, Elon Musk tells Twitter employees*, ABC News (Nov. 16, 2022), <https://abcnews.go.com/Business/commit-hardcore-leave-elon-musk-tells-twitter-employees/story?id=93411363>.

Administration, the Department of Treasury, the Department of Homeland Security, and the Consumer Financial Protection Bureau.⁴⁴

66. The USAID systems to which USDS gained access included to classified information,⁴⁵ and USDS then posted classified data on its website about the size and staff of the National Reconnaissance Office.⁴⁶

67. The systems to which USDS secured access at the Office of Personnel Management,⁴⁷ the Department of Education,⁴⁸ and the Federal Emergency Management Agency included sensitive personal data of large numbers of federal employees and private citizens.⁴⁹

⁴⁴ Danner, *supra* note 7; Aileen Graef & Veronica Stracqualursi, *Homeland Security Secretary Noem says DOGE team has access to agency data*, CNN (Feb. 9, 2025), <https://www.cnn.com/2025/02/09/politics/noem-homeland-security-doge-musk-cnntv/index.html>; Jennifer Jacobs, *DOGE gets access into Consumer Financial Protection Bureau as OMB's Russell Vought takes over as acting head of federal consumer watchdog agency*, CBS News (Feb. 8, 2025), <https://www.cbsnews.com/news/doge-access-consumer-financial-protection-bureau-omb-russel-vough-acting-head/>.

⁴⁵ Abigail Williams et al., *USAID security leaders removed after refusing Elon Musk's DOGE employees access to secure systems*, NBC News (Feb. 2, 2025), <https://www.nbcnews.com/politics/national-security/usaids-security-leaders-removed-refusing-elon-musks-doge-employees-acce-rcna190357>; Ellen Knickmeyer & Matthew Lee, *USAID security chiefs put on leave after trying to stop Musk's team from accessing classified info, officials say*, PBS News (Feb. 2, 2025), <https://www.pbs.org/newshour/politics/usaids-security-chiefs-put-on-leave-after-trying-to-stop-musks-team-from-accessing-classified-info-officials-say>.

⁴⁶ Jennifer Bendery, *Elon Musk's DOGE Posts Classified Data On Its New Website*, HuffPost (Feb. 14, 2025), https://www.huffpost.com/entry/elon-musk-doge-posts-classified-data_n_67ae646de4b0513a8d767112.

⁴⁷ Isaac Stanley-Becker et al., *Musk's DOGE agents access sensitive personnel data, alarming security officials*, Wash. Post (Feb. 6, 2025), <https://www.washingtonpost.com/national-security/2025/02/06/elon-musk-doge-access-personnel-data-opm-security/>.

⁴⁸ See Collin Binkley & Bianca Vázquez Toness, *Musk Team's Access To Student Loan Systems Raises Alarm Over Borrowers' Personal Information*, AP (Feb. 7, 2025), <https://apnews.com/article/education-department-trump-doge8c5bba3883b3d924b28114a4f291bec4>.

⁴⁹ Aileen Graef & Veronica Stracqualursi, *DOGE Team Has Access To FEMA Private Information On Those Who Received Disaster Relief Grants*, ACTION NEWS NOW (Feb. 9, 2025), <https://www.actionnewsnow.com/news/doge-team-has-access-to-fema-private->

68. The systems to which USDS has gained access at the Centers for Medicare & Medicaid Services⁵⁰ and the Department of Treasury include payment systems with sensitive financial data.⁵¹

69. At the Treasury Department, USDS has gained access to a highly sensitive payment system that Treasury uses to disburse trillions of dollars every year.⁵² At least one individual associated with USDS apparently had “read-write” access to the system for a period of time.⁵³

70. USDS secured access to at least some of these systems over the objections of agency personnel charged with their care and in contravention of safeguards required to access them.⁵⁴

71. On February 7, 2025, Mr. Musk posted via his X account, “What is this ‘Department of Education’ you keep talking about? I just checked and it doesn’t exist.”⁵⁵ Then

[information-onthose-who-received-disaster-relief-grants/article_9f408dd9-cffd-57ae-ab33-17b5e6d450a5.html](https://www.nytimes.com/2025/02/01/us/politics/elon-musk-doge-federal-payments-system.html).

⁵⁰ Anna Wilde Mathews & Liz Essley Whyte, *DOGE Aides Search Medicare Agency Payment Systems for Fraud*, Wall St. J. (Feb. 5, 2025), <https://www.wsj.com/politics/elon-musk-doge-medicare-medicaid-fraud-e697b162>.

⁵¹ Andrew Duehren et al., *Elon Musk’s Team Now Has Access to Treasury’s Payments System*, N.Y. Times (Feb. 1, 2025), <https://www.nytimes.com/2025/02/01/us/politics/elon-musk-doge-federal-payments-system.html>.

⁵² Hussein, *supra* note 8; Kate Gibson, *Elon Musk’s access to Treasury’s payment system is raising alarms. Here’s what to know.*, CBS News (Feb. 5, 2025), <https://www.cbsnews.com/news/musk-treasury-social-security-access-federal-payment-system-trump/>.

⁵³ Yeganeh Torbati et al., *Who’s working for Elon Musk’s DOGE?*, Wash. Post (Feb. 14, 2025), <https://www.washingtonpost.com/business/2025/02/14/doge-employees-list-staff-elon-musk/>; Danner, *supra* note 7.

⁵⁴ Ellen Knickmeyer, *USAID security leaders on leave after trying to keep Musk’s DOGE from classified info, officials say*, LA Times (Feb. 2, 2025), <https://www.latimes.com/world-nation/story/2025-02-02/usaid-security-leaders-on-leave-after-trying-to-keep-musk-doge-from-classified-info-officials-say>.

⁵⁵ Elon Musk (@Elon Musk), X (Feb. 7, 2025, 8:34 PM), <https://x.com/elonmusk/status/1888038615780909178>.

on February 10, 2025, USDS announced massive cuts at the Department of Education, totaling more than \$900 million.⁵⁶

72. USDS has also wielded substantial influence over federal law enforcement.

73. For instance, USDS personnel apparently caused the U.S. Marshals Service, which serves as the federal judiciary's enforcement and security arm, to pressure judges of this Court to speed up the release of individuals pardoned for crimes relating to the January 6, 2021 attack on the Capitol.⁵⁷

74. On February 1, 2025, representatives of USDS appeared at USAID's offices and demanded access to a sensitive compartmented information facility ("SCIF") that contained classified material for which they apparently lacked "high enough security clearance."⁵⁸ Two USAID security chiefs refused to grant them access because they understood themselves to be legally barred from doing so, and were threatened that United States Marshals would be called to grant the USDS representatives the access they demanded, and then placed on leave.⁵⁹

75. USDS has seized extensive control of and influence over the functions of the federal government described above without publicly disclosing its personnel, their positions, their roles, or their employment status vis-a-vis the federal government, including their civil service classifications, security clearances, or even if they are government employees.

⁵⁶ Zach Montague & Dana Goldstein, *Musk Team Announces Millions in Cuts to Education Dept. Amid Legal Pushback*, N.Y. Times (Feb. 11, 2025), <https://www.nytimes.com/2025/02/11/us/politics/musk-doge-education-data.html>.

⁵⁷ Marcus, *supra* note 9.

⁵⁸ Andrew Roth, *Senior USAID officials put on leave after denying access to Musk's Doge team*, The Guardian (Feb. 3, 2025), <https://www.theguardian.com/us-news/2025/feb/02/usaaid-officials-put-on-leave-musk-doge>; Ellen Knickmeyer, *Elon Musk says President Donald Trump has 'agreed' USAID should be shut down*, Associated Press (Feb. 3, 2025), <https://apnews.com/article/doge-musk-trump-classified-information-usaid-security-35101dee28a766e0d9705e0d47958611>.

⁵⁹ See Roth, *supra* note 58; Knickmeyer, *supra* note 58.

76. Indeed, USDS personnel have refused to identify themselves to government employees from whom they have demanded information about the workings of the government.⁶⁰

77. Mr. Musk indicated that individuals simply revealing the names of those associated with USDS could be committing a crime.⁶¹

78. According to a lawsuit brought by employees of the Office of Personnel Management and public reporting, individuals associated with USDS have installed a server from outside of the agency, creating concerns about proper records preservation.⁶²

79. USDS appears to be conducting official government business on the social media platform X, raising additional concerns about proper records preservation.⁶³ An X account purporting to be the official account of the “Department of Government Efficiency” was created in November 2024.⁶⁴ Upon the reorganization and renaming of the USDS on January 20, 2025,

⁶⁰ Conrad Quilty-Harper, *Musk’s DOGE Minions Refuse to Reveal Their Names When Grilling Civil Servants*, The Daily Beast (Feb. 4, 2025), https://www.thedailybeast.com/musks-doge-minions-refuse-to-reveal-their-names-when-grilling-civil-servants/?utm_source=twitter_owned_tdb&utm_medium=socialflow&via=twitter_page&utm_campaign=owned_social; Benjamin Siegel et al., *‘What’s going to break?’ DOGE staffers ‘scorching the earth’ as they reshape federal government*, ABC News (Feb. 6, 2025), <https://abcnews.go.com/Politics/whats-break-doge-staffers-scorching-earth-reshape-federal/story?id=118536035>.

⁶¹ Peter Suci, *DOGE Employees Identified On X – Doxing Or Case Of Free Speech?*, Forbes (Feb. 4, 2025), <https://www.forbes.com/sites/petersuci/2025/02/04/doge-employees-identified-on-x--doxing-or-case-of-free-speech/>.

⁶² Rebecca Beitsch, *OPM employees file suit to block use of new email system*, The Hill (Feb. 4, 2025), <https://thehill.com/homenews/administration/5126073-opm-email-system-battle/>; Dell Cameron, *Federal Workers Sue to Disconnect DOGE Server*, WIRED (Feb. 4, 2025), <https://www.wired.com/story/federal-workers-sue-over-doge-server/>.

⁶³ Kate Conger, *Elon Musk’s X Becomes Weapon in Government Cost Cutting*, N.Y. Times (Feb. 4, 2025), <https://www.nytimes.com/2025/02/04/technology/elon-musk-x-doge.html>.

⁶⁴ See generally, Department of Government Efficiency (@DOGE), X, <https://x.com/doge?lang=en>.

that account became the official account of the USDS. It routinely publishes posts promising action by USDS, announcing accomplishments by USDS, and responding to news coverage and criticisms of USDS.⁶⁵ The official website of USDS, doge.gov, not launched until February 12, bears the same logo as the X account, links directly to the X account, and its homepage is a feed of the X account's posts.⁶⁶

80. The official USDS X account accepts direct messages from X users. On November 14, 2024, that official account solicited job applicants to direct message the account with their information.⁶⁷ That solicitation is still posted and the account is still receiving direct messages, indicating that USDS has been conducting official business, including personnel decisions, via the X direct message function.

81. Mr. Musk also appears to be conducting official business from his X account, where he responded "Thank you, receipt via X acknowledged" after being sent, via X, a letter from a United States Attorney.⁶⁸ That letter explicitly indicated that it was "SENT VIA X: @elonmusk" to "Mr. Elon Musk[,], DOGE[,], United States Government."⁶⁹

82. USDS appears to also be either operating X accounts for other agencies or coordinating the use of USDS-related X accounts by other agencies. On February 16, 2025, USDS posted to X requesting that members of the public "[p]lease DM insight for reducing waste, fraud, and abuse, along with any helpful insights or awesome ideas, to the relevant DOGE

⁶⁵ See generally *id.*

⁶⁶ Dep't of Gov't Efficiency, <https://doge.gov/>; Faiz Siddiqui, *Musk's DOGE launches a website tracking size of federal workforce*, Wash. Post (Feb. 13, 2025), <https://www.washingtonpost.com/business/2025/02/13/elon-musk-doge-website/>.

⁶⁷ Department of Government Efficiency (@DOGE), X (Nov. 14, 2024, 10:03 AM), <https://x.com/DOGE/status/1857076831104434289>.

⁶⁸ Elon Musk (@elonmusk), X (Feb. 3, 2025, 11:49 AM),

<https://x.com/elonmusk/status/1886457064438030687>.

⁶⁹ *Id.*

affiliates (found on the Affiliates tab). For example, @DOGE_USDA, @DOGE_SSA, etc. We will add more affiliates over time.”⁷⁰

83. On information and belief, USDS’s continued secrecy regarding its composition and operations thwart the proper operation and purpose of the FRA by preventing discovery of USDS’s violations of the statute and reports of violations to NARA.

84. These facts and an extensive record of public statements by President Trump, his representatives, and Mr. Musk confirm that Mr. Musk is the de facto administrator of USDS. On November 12, 2024, President Trump named Mr. Musk as the leader of the Department of Government Efficiency, commonly referred to as “DOGE,” and what would eventually become USDS. Likewise, on December 22, 2024, President Trump said he would “create the new Department of Government Efficiency, headed by Elon Musk.” And on January 19, 2025, one day before creating USDS, President Trump said, “We will create the new Department of Government Efficiency, headed by a gentleman named Elon Musk.”⁷¹

85. On February 9, 2025, President Trump indicated that Mr. Musk hired personnel in his capacity when he said that Mr. Musk “comes in with a hundred very smart people.”⁷² In an

⁷⁰ Department of Government Efficiency (@DOGE), X (Feb. 16, 2025, 7:49 PM), <https://x.com/doge/status/1891288881674240070?s=46&t=-tkA4Plhw0ldXWGtY5kv1A>.

⁷¹ Aaron Blake, *The White House’s many contradictions on Musk running DOGE*, Wash. Post (Feb. 18, 2025), <https://www.washingtonpost.com/politics/2025/02/18/trump-musk-doge-contradictions/>. Mr. Ramaswamy ended his association with the Department of Government Efficiency and USDS on January 20, 2025, the day that USDS was created, after reportedly clashing with Mr. Musk. See Adam Gabbatt, *Vivek Ramaswamy quits ‘Doge’ cost-cutting program leaving Musk in charge*, The Guardian (Jan. 21, 2025), <https://www.theguardian.com/us-news/2025/jan/21/vivek-ramaswamy-quits-doge-elon-musk>. In an X post announcing his departure, he said “It was my honor to help support the creation of DOGE. I’m confident Elon & team will succeed in streamlining government.” Vivek Ramaswamy (@VivekGRamaswamy), X (Jan. 20, 2025), <https://x.com/VivekGRamaswamy/status/1881482161565618648>.

⁷² Blake, *supra* note 71.

interview on February 18, 2025, when President Trump was asked if Mr. Musk was his “tech support,” the President replied “No, no . . . He is much more than that . . . But he gets it done. He’s a leader[.]”⁷³ The President continued, quoting Mr. Musk, “‘You know, when you sign these executive orders, a lot of them don’t get done, and maybe the most important ones,’ and he [Mr. Musk] would take that executive order that I’d signed, and he would have those people go to whatever agency it was ‘When are you doing it? Get it done. Get it done.’ And some guy that maybe didn’t want to do it, all of a sudden, he’s signing[.]”⁷⁴

86. White House Press Secretary Karoline Leavitt has similarly identified Mr. Musk as the leader of USDS. Since USDS’s creation, she has publicly stated that President Trump “directed Elon Musk and DOGE” to investigate government kickbacks,⁷⁵ “directed Mr. Musk and the DOGE team to identify fraud at the Social Security Administration,”⁷⁶ and “tasked Elon Musk with administering his America first agenda[.]”⁷⁷

87. During a February 11, 2025 event in the Oval Office in which President Trump signed an executive order expanding USDS’s operations, Mr. Musk said, in response to questions, “Well, *we* actually are trying to be as transparent as possible. In fact, *we* post *our* actions to the DOGE handle on X [USDS’s official X account] and to the DOGE website [USDS’s official website]. So all of *our* actions are maximally transparent. In fact . . . I don’t

⁷³ *Interview of President Trump and Elon Musk By Sean Hannity, “The Sean Hannity Show,”* The White House (Feb. 18, 2025), <https://www.whitehouse.gov/remarks/2025/02/interview-of-president-trump-and-elon-musk-by-sean-hannity-the-sean-hannity-show/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Karoline Leavitt: Musk is best to ‘shake up’ Washington swamp,* Fox News (Feb. 17, 2025), <https://www.foxnews.com/video/6368980371112>.

know of a case where an organization has been more transparent than the DOGE organization.”⁷⁸ When asked “how closely you’re working with agency heads as you’re directing these cuts,” Mr. Musk replied, “Yeah, *we* work closely with agency heads . . . It’s not just *us* going in and doing things willy-nilly.”⁷⁹

Plaintiff’s Expedited FOIA Requests

88. On December 19, 2024, CREW submitted a FOIA request to OMB (“First OMB Request”) for records from November 5, 2024 to the date the request is processed reflecting communications between employees of OMB and various officials purporting to have an affiliation with DOGE, between employees of those agencies and individuals purporting to have an affiliation with the “Delivering Outstanding Government Efficiency Caucus,” communications within those agencies about “DOGE” and related terms, and other DOGE-related communications.

89. On December 20, 2024, OMB acknowledged receipt of the First OMB Request and assigned it tracking number 2025-373.

90. On January 24, 2025, CREW submitted an expedited FOIA request to OMB (“Second OMB Request”) and an expedited FOIA request to USDS (“USDS Request”) seeking records related to changes to the operations of the U.S. Digital Service, organizational charts, financial disclosures, and other information relevant to the newly-formed USDS. The USDS Request also sought “All communications between USDS personnel and personnel of any federal agency outside of the Executive Office of the President.”

⁷⁸ Chris Megerian, *WATCH: Trump makes appearance with Musk, signs executive order downsizing federal workforce*, PBS News (Feb. 11, 2025), <https://www.pbs.org/newshour/politics/watch-trump-makes-appearance-with-musk-signs-executive-order-downsizing-federal-workforce> (emphasis added).

⁷⁹ *Id.* (emphasis added).

91. CREW submitted the USDS Request through OMB's FOIA office.

92. On January 24, 2025, OMB acknowledged receipt of both the Second OMB Request, assigned number 2025-574, and the USDS Request, assigned number 2025-573.

93. On January 28, 2025, CREW submitted a request for expedited processing of the First OMB Request, citing the "urgency to inform the public about an actual or alleged Federal Government activity" and the fact that "[t]here are possible questions, in a matter of widespread and exceptional public interest, about the Government's integrity which affect public confidence." *See* 5 C.F.R. § 1303.40(e)(1)(ii), (iv).

94. On January 29, 2025, OMB granted expedited treatment for both the Second OMB Request and the USDS Request but did not commit to producing the documents by a date certain.

95. On February 7, 2025, CREW sent a letter to OMB and USDS, through the OMB FOIA office, requesting the production of the records requested in the Second OMB Request and the USDS Request sufficiently in advance of the March 14, 2025 expiration of the current continuing resolution fund the federal government, but no later than March 1, 2025.

96. CREW notified OMB and USDS in its February 7 letter that the records sought in the Second OMB Request and USDS Request, which are related to the structure and operations of USDS, are "critical for the American public to have an informed engagement with the appropriations process" that has already begun to unfold, prior to the expiration of the government's funding.

97. CREW noted in its February 7 letter that members of Congress had already publicly indicated that OMB's role in efforts to curtail government spending in tandem with USDS would be an important part of the public and congressional debate about how the

government would continue to be funded.⁸⁰ Mr. Musk has commented that the latest executive order on USDS “is the only way to balance the budget.”⁸¹ The value of responsive records would be significantly lessened after the appropriations process concludes—both for Americans in favor of and opposed to how USDS is impacting the spending practices of the federal government.

98. CREW further noted in its February 7 letter that USDS’s widely-reported conduct in controlling and disrupting the functions of the federal government increases, both in the appropriations process and generally, the need for the records sought by CREW immediately, and certainly in time for the public to have them during the appropriations process.

99. On February 11, 2025, CREW sent a letter to OMB requesting production of the records requested in the First OMB Request on the same grounds described in its February 7 letter because they, too, “are critical for the American public to have an informed engagement with the appropriations process.”

100. On February 14, 2025, OMB granted expedited treatment for the First OMB Request and acknowledged CREW’s letter of February 11 requesting that OMB produce the responsive records by March 1, but did not commit to produce the records by any date certain.

101. To date, OMB has not responded to CREW’s February 7 letter.

Defendants’ Failure to Address the Threatened Loss of USDS Records

102. In a January 15, 2025 letter, CREW requested that the Archivist and acting Director of OMB promptly comply with their statutory duties to investigate the potential

⁸⁰ See, e.g., Press Release, Congressman Hakeem Jeffries, Dear Colleague re: Ongoing House Democratic Caucus Activity (Feb. 3, 2025), <https://jeffries.house.gov/2025/02/03/dear-colleague-re-ongoing-house-democratic-caucus-activity/>.

⁸¹ Elon Musk (@elonmusk), X (Feb. 11, 2025, 9:02 PM), <https://x.com/elonmusk/status/1889495373024051513>.

unauthorized destruction of federal records of DOGE's Signal communications and initiate a DOJ enforcement to recover any records that might have been destroyed.

103. To date, neither NARA nor OMB have responded to this letter.

104. In a January 27, 2025 letter, CREW again requested that the Archivist, the acting Director of OMB, and the Administrator of USDS promptly comply with their statutory duties to investigate the potential unauthorized destruction of federal records of DOGE's Signal communications and initiate a DOJ enforcement to recover any records that might have been destroyed.

105. To date, NARA, OMB, and USDS have not responded to this letter.

106. On information and belief, no Defendant has initiated a DOJ enforcement action concerning the matters alleged above.

CLAIMS FOR RELIEF

Count One

Violation of FOIA – Wrongful Withholding of Records

As to USDS and OMB

(FOIA, 5 U.S.C. § 552(a)(3))

107. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

108. In its December 19, 2024 and January 24, 2025 FOIA requests, Plaintiff properly asked for records within the possession, custody, and control of Defendants.

109. Plaintiff further requested expedited processing of its FOIA requests.

110. Defendants have failed to process Plaintiff's requests expeditiously.

111. Defendants are wrongfully withholding records responsive to Plaintiff's requests.

112. By failing to timely release all requested records in full, Defendants are in violation of FOIA.

113. Plaintiff has constructively exhausted its administrative remedies.

Count Two
Violation of the FRA – Failure to Initiate a Record Recovery Action
As to All Defendants
(APA, 5 U.S.C. §§ 706(1), 706(2)(A))
(FRA, 44 U.S.C. §§ 3106, 2905)

114. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

115. The FRA imposes on USDS and OMB nondiscretionary duties to initiate an enforcement action through the Attorney General when the agency “knows or has reason to believe” of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction” of federal records within the agency’s legal ownership, custody, or control. 44 U.S.C. § 3106(a).

116. The FRA imposes on NARA a nondiscretionary duty to request that the Attorney General initiate an enforcement action (and so notify Congress) when a federal agency either (1) fails to initiate such an action “within a reasonable period of time after being notified” of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction” of federal records within the agency’s legal ownership, custody, or control, or (2) “is participating in, or believed to be participating in any such unlawful action.” 44 U.S.C. §§ 3106, 2905(a).

117. On information and belief, USDS has unlawfully deleted or failed to preserve federal records in violation of the FRA and NARA regulations, including but not limited to communications on Signal and emails from personal accounts.

118. Plaintiff alerted Defendants of the potential unlawful deletions on January 15, 2025, and again on January 27, 2025, and requested that Defendants take prompt remedial actions.

119. On information and belief, Defendants have taken no remedial actions in response to Plaintiff's requests.

120. On information and belief, Defendants have failed to initiate an FRA enforcement action through the Attorney General.

121. On information and belief, the deleted records have not been restored, recovered, retrieved, salvaged, or reconstructed.

122. The failure of Defendants to initiate an FRA enforcement action through the Attorney General is "agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A).

Count Three
Mandamus – Failure to Initiate a Record Recovery Action
As to All Defendants
(Mandamus, 28 U.S.C. § 1361)
(FRA, 44 U.S.C. §§ 3106, 2905)

123. Plaintiff repeats and incorporates by reference each of the foregoing allegations as if fully set forth herein.

124. As alleged above in paragraphs 25-34, the FRA imposes non-discretionary duties on Defendants with respect to USDS records.

125. As alleged above in paragraphs 76-83, Defendants have violated their non-discretionary duties under the FRA.

126. As alleged above in paragraphs 35-39, Plaintiff has a clear right to relief from Defendants' FRA violations.

127. To the extent that the Court finds that the APA does not authorize any of the relief sought herein, mandamus is Plaintiff's only adequate remedy.

128. Plaintiff is therefore entitled to a writ of mandamus compelling Defendants to comply with their non-discretionary duties under the FRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that Defendant USDS is an “agency” under 5 U.S.C. § 552(f)(1), 5 U.S.C. § 551(1), and 44 U.S.C. § 2901(14);
- (2) Declare that Plaintiff is entitled to expedited processing and disclosure of the requested records;
- (3) Enter a preliminary injunction directing Defendants to expeditiously and fully process Plaintiff’s FOIA requests and disclose all non-exempt records and a *Vaughn* index to Plaintiff by no later than March 10, 2025;
- (4) Enter a preliminary injunction directing Defendants to preserve all putative federal records at issue during the pendency of litigation;
- (5) Order Defendants to initiate an enforcement action through the Attorney General to recover any unlawfully destroyed federal records;
- (6) Provide for expeditious proceedings in this action;
- (7) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld and ensure compliance with this Court’s orders;
- (8) Award Plaintiff its costs and reasonable attorneys’ fees in this action; and
- (9) Grant such other relief as the Court may deem just and proper.

Dated: February 20, 2025

Respectfully submitted,

/s/ Nikhel S. Sus

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**Pro hac vice application forthcoming*