

[ORAL ARGUMENT NOT SCHEDULED]

NO. 25-5130

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

In re U.S. DOGE Service, *et al.*,

Petitioners.

On Petition for a Writ of Mandamus to the United States
District Court for the District of Columbia

**RESPONSE IN OPPOSITION TO PETITION
FOR A WRIT OF MANDAMUS**

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**Application for admission to
D.C. Circuit pending*

***Application for admission to
D.C. Circuit forthcoming*

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GLOSSARY

CREW	Citizens for Responsibility and Ethics in Washington
DOGE	United States DOGE Service
EOP	Executive Office of the President
FOIA.....	Freedom of Information Act
FRA.....	Federal Records Act
NSC	National Security Council
OA.....	Office of Administration
SIG.....	Senior Interagency Group

INTRODUCTION

The government is not entitled to the “drastic and extraordinary” remedy of mandamus. The district court properly exercised its broad discretion by ordering limited discovery on whether the U.S. DOGE Service (“DOGE”)—a new Executive Office of the President (“EOP”) component—is subject to the Freedom of Information Act (“FOIA”) and the Federal Records Act (“FRA”). Discovery to “shed light on” an EOP unit’s “authority and operations” can be “critical” to understanding whether it wields “substantial independent authority” and is “subject to FOIA.” *Citizens for Resp. & Ethics in Wash. (“CREW”) v. Off. of Admin. (“OA”)*, 566 F.3d 219, 225 (D.C. Cir. 2009) (discovery included 1,300 pages of documents and deposition of EOP unit director); *see also Armstrong v. EOP*, 90 F.3d 553, 560 (D.C. Cir. 1996) (citing EOP official’s deposition testimony). And “district court[s] [have] much room to shape discovery” on EOP units’ agency status. *OA*, 566 F.3d at 224.

These cases alone confirm the government’s position is not “*clearly mandated* by statutory authority or case law” and thus cannot satisfy the high bar for mandamus relief. *Illinois v. Ferriero*, 60 F.4th 704, 714(D.C. Cir. 2023) (emphasis added). But the petition also fails for

numerous other reasons.

Most fundamentally, the petition hinges on a mischaracterization of the EOP's structure and the separation powers principles of *Cheney v. District Court for D.C.*, 542 U.S. 367 (2004), which is both erroneous and forfeited because the government never pressed it below. Contrary to this newly-raised argument, *Cheney* does not shield *all* EOP components from discovery. Rather, *Cheney* “safeguard[ed] against unnecessary intrusion into the operation of the *Office of the President*” and the Office of the Vice President. 542 U.S. at 387 (emphasis added). The “discovery request in *Cheney* was directed at the *Vice President himself*[.]” and the “Court explained that ‘[w]ere the Vice President not a party,’” the outcome may have been different. *CREW v. Dep’t of Homeland Sec. (“DHS”)*, 532 F.3d 860, 865 (D.C. Cir. 2008) (quoting *Cheney*, 542 U.S. at 381) (emphasis added).

The petition fails to recognize that the “Office of the President” referenced in *Cheney* (also known as the White House Office) is a “distinct” and “smaller unit” of the EOP “comprised of such immediate advisers as the Chief of Staff and the White House Counsel.” *Jud.*

Watch, Inc. v. Dep't of Just., 365 F.3d 1108, 1109 n.1 (D.C. Cir. 2004).

DOGE is part of the EOP, but it is not part of the White House Office, and its Administrator does not report directly to the President. Exec. Order No. 14,158, 90 Fed. Reg. 8441 (Jan. 29, 2025).¹

The discovery here is not directed at the President, the Vice President, or their immediate staff. A15-28. And it expressly excludes communications with the President. A18. The discovery seeks facts concerning DOGE's control over federal agencies *outside of* the White House, which bear directly on DOGE's agency status under circuit precedent. *See OA*, 566 F.3d at 224; *Armstrong*, 90 F.3d at 560.

Because DOGE and its Administrator are not among "those in closest operational proximity to the President," *Cheney*, 542 U.S. at 381, the discovery here does not implicate *Cheney*. But even if it did, the government forfeited the argument by failing to raise it below. *Compare*

¹ The government incorrectly uses "Executive Office of the President" and "Office of the President" (*i.e.*, the White House Office) interchangeably, *see* Pet. 1, even though the latter is only a component of the former. To avoid confusion, CREW only uses "White House Office." *See Alexander v. FBI*, 691 F. Supp. 2d 182, 186 n.1 (D.D.C. 2010) (doing same), *aff'd*, 456 F. App'x 1 (D.C. Cir. 2011).

ADD128 (citing *Cheney* once to support narrowing discovery), *with* Pet. (citing *Cheney* 41 times to block all discovery).

The government also relies on the wrong standard in arguing that discovery is unnecessary to resolve DOGE's agency status. This Court has long applied a functional, not formal, test for determining whether EOP units are subject to FOIA, the Administrative Procedure Act, and other laws designed to check the Executive. *See Soucie v. David*, 448 F.2d 1067, 1071 (D.C. Cir. 1971). That test sensibly examines whether an EOP unit “could exercise substantial independent authority” and “*does in fact* exercise such authority.” *Armstrong*, 90 F.3d at 560 (emphasis added). Ignoring this binding precedent, the government pushes for a formalist inquiry. But not only does that contravene settled precedent, it would enable EOP units wielding significant power to evade critical transparency and accountability laws, so long as they do so under cover of broadly-worded executive orders. *See, e.g.*, 90 Fed. Reg. 8441 (empowering DOGE to “implement” an undefined “DOGE Agenda”).

The law forbids this charade. The district court reasonably determined—based on the language of relevant executive orders, the

Administration’s public statements, and reports of DOGE pervasively controlling federal agencies—that CREW is entitled to limited discovery into DOGE’s authority and operations. And the court carefully exercised its significant discretion by narrowing the discovery’s scope to highly relevant material. Nothing about that ruling was clearly and indisputably wrong.

Nor does the government have a “clear and indisputable” right to prevent the deposition of Acting DOGE Administrator Amy Gleason. Pet. 13. The government chose to submit two of Gleason’s declarations. Her second declaration is DOGE’s *only* evidence in support of its summary judgment motion, and the district court found that her testimony was “called into question by contradictory evidence in the record.” ADD047 (citing *Jud. Watch, Inc. v. Secret Serv.*, 726 F.3d 208, 215 (D.C. Cir. 2013)). This Court’s post-*Cheney* precedent and basic fairness entitle CREW to depose Gleason “to allow follow-up questioning on facts [DOGE] has itself put in evidence[.]” *In re Cheney*, 544 F.3d 311, 312-14 (D.C. Cir. 2008) (requiring depositions of Vice President’s Deputy Chief of Staff and National Archives official “to follow up on factual questions that [they] had put at issue in [their]

declarations”). The district court’s authorization of Gleason’s deposition was plainly correct and, at a minimum, well within its “broad discretion to manage the scope of discovery’ in FOIA cases.” *Hall & Assocs. v. Env’t Prot. Agency*, 956 F.3d 621, 629 (D.C. Cir. 2020) (citation omitted). In no event did the district court err so grievously to warrant mandamus relief.

The government’s privilege objections likewise provide no basis for the extraordinary writ. For starters, they are premature. The discovery order does not compel DOGE to disclose any privileged material. DOGE can assert privilege in the ordinary course and produce a log of its withholdings—just as other EOP components routinely do in discovery and FOIA litigation. *E.g., Pub. Citizen, Inc. v. Off. of Mgmt. & Budget*, 598 F.3d 865, 867 (D.C. Cir. 2010). *Cheney* affords DOGE no special immunity from that standard procedure. Nor is mandamus a proper vehicle for superintending discovery management.

The petition should be denied.

STATEMENT OF THE CASE

I. Factual Background.

On January 20, 2025, President Trump signed Executive Order 14,158, renaming the former United States Digital Service, previously housed in the Office of Management and Budget, the “United States DOGE Service”. 90 Fed. Reg. 8441. The EO established DOGE as a freestanding entity in the EOP, headed by an Administrator who reports to the White House Chief of Staff. *Id.* It also established, under 5 U.S.C. § 3161, “a temporary organization known as ‘the U.S. DOGE Service Temporary Organization’” within DOGE that is headed by the Administrator and “dedicated to advancing the President’s 18-month DOGE agenda.” *Id.* “DOGE agenda” is an undefined term used in multiple executive orders.

The EO broadly empowers DOGE “to implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity.” *Id.* It further requires the installation of “DOGE Teams” at agencies, appointed by each agency head in consultation with the DOGE

Administrator. *Id.* Agency heads are required to “ensure that DOGE Team Leads coordinate their work with [DOGE] and advise their respective Agency Heads on implementing the President’s DOGE Agenda.” *Id.* Agency Heads must also “take all necessary steps, in coordination with the [DOGE] Administrator and to the maximum extent consistent with law, to ensure [DOGE] has full and prompt access to all unclassified agency records, software systems, and IT systems.” *Id.*

A presidential memorandum provides that a government-wide hiring freeze shall remain in effect with respect to the Internal Revenue Service “until the Secretary of the Treasury, in consultation with the Director of OMB and the Administrator of [DOGE], determines that it is in the national interest to lift the freeze.” Presidential Mem., 90 Fed. Reg. 8247 (Jan. 28, 2025).

Another executive order empowers “DOGE Team Leads” at each agency to keep vacant career positions across the government, unless an agency head overrides their decision. Exec. Order 14,210, 90 Fed. Reg. 9669 (Feb. 11, 2025). It further requires each agency “DOGE Team

Lead” to provide the DOGE Administrator “with a monthly hiring report for the agency.” *Id.*

II. Procedural History.

Immediately after President Trump took office on January 20, 2025, DOGE reportedly began “spearhead[ing] efforts to terminate federal workers, programs, and contracts across the federal government.” A3. Public statements by the Administration and extensive reporting indicated the new entity was wielding “unprecedented” control over “vast swathes” of the government at a “remarkably swift[]” pace, and with “unusual secrecy.” ADD018, ADD025, ADD033, ADD036.

On January 24, 2025, CREW submitted an expedited FOIA request to DOGE seeking records shedding light on its secretive structure and operations. ADD055-64. Expedited processing was granted on January 29. ADD010-11.

On February 7, CREW requested that DOGE produce the requested documents by March 1 because members of Congress had signaled that DOGE’s takeover of federal operations would play a central role in negotiations to fund the government beyond March 14.

CREW PI Mot. Ex. J, ECF No. 2-12. Congress's focus on DOGE

increased sharply thereafter. CREW PI Mem. 1-10, ECF No. 2-1.

On February 20, CREW filed its complaint and preliminary injunction motion. The motion detailed DOGE's unprecedented operations and the resulting public outcry. CREW PI Mem. 1-12, 17-38. It argued that DOGE is wielding "substantial independent authority," making it a de facto "agency" subject to FOIA and the FRA. *Id.* at 18-25.

In opposing CREW's preliminary injunction motion, DOGE chose to make only cursory assertions—buried in two footnotes—that it was exempt from FOIA, and insisted that whether FOIA applied to it was "a question for the merits . . . once Defendants have had an opportunity to answer the complaint in the ordinary course" that "should not be decided in the context of a preliminary-injunction motion." PI Opp. 8 n.2, 20 n.4, ECF No. 10. In its reply, CREW narrowed the requests for which it sought relief. CREW PI Reply 6-20, ECF No. 13.

On March 10, the district court issued a preliminary injunction ordering, among other things, expedited processing of CREW's narrowed request to DOGE. PI Order, ECF No. 17. The district court concluded CREW was likely to establish that FOIA applies to DOGE

because it “is likely exercising substantial independent authority much greater than other EOP components held to be covered by FOIA.”

ADD027.

The government sought reconsideration and to stay the preliminary injunction pending resolution of an impending summary judgment motion on DOGE’s agency status, which the government claimed could be decided (inclusive of appeals) so quickly it would avert the irreparable injury underlying the injunction. *See* ADD045-46. Only then did the government argue, for the first time, that DOGE does not wield substantial independent authority, *see* ADD043, ADD051, despite acknowledging that this was “an important threshold legal issue” that CREW had briefed “at length in [the] preliminary injunction motion.” Defs.’ Recon. Mem. at 10-21, ECF No. 20-1.

The reconsideration motion relied on a sworn declaration from Acting DOGE Administrator Amy Gleason attesting that she is a full-time DOGE employee and its Acting Administrator (omitting her start date) and, in conclusory terms, that DOGE does not wield substantial independent authority and merely advises the President. *See generally* ADD065-69.

The district court denied that motion because, among other reasons, the government's arguments were ones "it deliberately chose to forego" earlier. ADD043. The district court stated that Gleason's declaration did not establish DOGE's agency status and her assertions about DOGE's operations and her role were "called into question by contradictory evidence in the record." ADD047 (quoting *Jud. Watch, Inc.*, 726 F.3d at 215). The district court twice repeated that it would entertain a Rule 56(d) motion if the government filed its early summary judgment motion, ADD042, ADD052, and previewed that Gleason's "declaration appears to be subject to factual disputes that may provide a basis for CREW to seek discovery under Rule 56(d)," ADD046-47.

The government moved for partial summary judgment later that day, disputing DOGE's agency status. *See generally* Defs.' Summ. J. Mem., ECF No. 24-1. Its only evidence of DOGE's operations was a second Gleason declaration, which repeated her contradicted assertions and revised the description of her role to omit the sworn statement from her first declaration that she was a full-time DOGE employee. *Compare*

ADD065-69 *with* ADD070-74.² Gleason’s second declaration again contained just two cursory sentences purporting to describe what DOGE actually does. ADD073.

CREW promptly moved for expedited discovery pursuant to Federal Rules of Civil Procedure 56(d) and 26, identifying specific factual issues relating to DOGE’s substantial independent authority, including numerous inconsistencies between Gleason’s second declaration and the public record. ADD084-90. CREW sought only limited discovery, tailored to determining whether DOGE is exercising substantial independent authority, including deposing Gleason to address her sworn statements.

The district court partially granted CREW’s motion, narrowing the written discovery and granting only two depositions, a Rule 30(b)(6) deposition of DOGE and a deposition of Gleason, because

(1) “Gleason’s declaration is the only factual evidence offered in support

² Gleason swore in her first declaration that she was a “full-time, government employee at [DOGE],” omitting that she had earlier accepted an appointment at the Department of Health and Human Services. ADD089-90. That only came to light through disclosures—which the government attempted to file under seal—in another case. *Id.*

of USDS's summary judgment motion," and (2) "parts of Gleason's declaration appear to be 'called into question by contradictory evidence in the record.'" A9 (citation omitted).

LEGAL STANDARD

Mandamus is "a drastic and extraordinary remedy reserved for really extraordinary causes." *In re Flynn*, 973 F.3d 74, 78 (D.C. Cir. 2020) (quoting *Cheney*, 542 U.S. at 380). The writ of mandamus should issue only if: (1) "the petitioner satisfies the burden of showing that his right to issuance of the writ is clear and indisputable"; (2) "the party seeking issuance of the writ has no other adequate means to attain the relief he desires"; and (3) "the issuing court, in the exercise of its discretion, is satisfied that the writ is appropriate under the circumstances." *Id.* (cleaned up).

ARGUMENT

I. The government does not have a "clear and indisputable" right to relief from the reasonably-scoped discovery order.

The government comes nowhere close to establishing a clear and indisputable right to relief. "To meet the 'clear and indisputable' requirement, the plaintiff must show that the challenged action is 'plainly and palpably wrong as a matter of law.' 'Accordingly, [this

Court] will deny mandamus even if a petitioner’s argument, though “packing substantial force,” is not clearly mandated by statutory authority or case law.” *Ferriero*, 60 F.4th at 714-15 (cleaned up).

The district court did nothing “plainly and palpably” wrong. The court soundly exercised its significant discretion by granting limited discovery tailored to address whether DOGE wields sufficient independent authority to make it subject to FOIA—a “threshold” question that the government acknowledged below is both “novel and significant.” Defs.’ Recon. Mem. 2-3.

“District courts have ‘broad discretion to manage the scope of discovery’ in FOIA cases,” and this Court “will overturn the exercise of that discretion ‘only in unusual circumstances.’” *Hall & Assocs.*, 956 F.3d at 629 (citations omitted). That discretion is at its apex where, as here, a party opposing a summary judgment motion “shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition[.]” Fed. R. Civ. P. 56(d)(2). Rule 56(d) motions “should be granted ‘almost as a matter of course unless the non-moving party has not diligently pursued discovery of the evidence.’” *Convertino v. Dep’t of Just.*, 684 F.3d 93, 99 & n.12 (D.C. Cir. 2012)

(citation omitted). And district courts have “significant discretion” in ruling on Rule 56(d) motions. *U.S. ex rel. Folliard v. Gov’t Acquisitions, Inc.*, 764 F.3d 19, 31 (D.C. Cir. 2014). The party challenging Rule 56(d) discovery must show “either a legal error in the District Court’s reasoning or a basis for this Court to conclude that the District Court’s action was ‘arbitrary, fanciful, or clearly unreasonable.’” *Jeffries v. Barr*, 965 F.3d 843, 855-56 (D.C. Cir. 2020) (citation omitted).

Review of a discovery order is even more limited in the mandamus context. “In the normal course, . . . mandamus is not available to review a discovery order. This is especially true when . . . granting such relief ‘would permit an application for review of a discovery order to serve in effect as a vehicle for interlocutory review of the underlying merits of the law suit.’” *In re EOP*, 215 F.3d 20, 23 (D.C. Cir. 2000) (citation omitted).

Under this highly deferential framework, the government falls far short of showing any “clear and indisputable” right to relief from the reasonably-scoped discovery order.

A. *Cheney* and the separation of powers do not bar the limited discovery ordered here.

The government's lead argument is that the discovery order violates separation of powers principles under *Cheney*. But *Cheney* does not limit the discovery here for three independent reasons: (1) the government forfeited its *Cheney* argument by failing to raise it below;

- a. *Cheney* does not apply to the discovery at issue, which is directed at DOGE, not the President, Vice President, or their immediate staff; and
- b. *Cheney* does not apply in this procedural posture, where the government's own litigation conduct triggered the need for discovery.

1. The government forfeited its separation of powers argument.

The government forfeited its separation of powers argument by failing to raise it at all in its opposition to CREW's Motion for Expedited Discovery. See *In re Abbott Lab's*, 96 F.4th 371, 382-83 (3d Cir. 2024) (holding that where "argument was raised for the first time in the filing of the Petition" for writ of mandamus, "[b]ecause the argument was not raised in the District Court, Petitioners have forfeited it"). "Forfeiture is the failure to make the timely assertion of a right," *Hamer v. Neighborhood Hous. Servs. Of Chi.*, 583 U.S. 17, 20 n.1 (2017) (cleaned up), and applies to constitutional objections, *Keepseagle v. Perdue*, 856

F.3d 1039, 1054 (D.C. Cir. 2017). Forfeiture occurs even when an issue is raised below, but in a cursory fashion. *See United States v. All Assets Held at Credit Suisse (Guernsey) Ltd.*, 45 F.4th 426, 433-34 (D.C. Cir. 2022); *OMYA, Inc. v. Fed. Energy Regul. Comm'n*, 111 F.3d 179, 181 (D.C. Cir. 1997).

Here, the government failed to make *any* argument regarding the separation of powers in opposing discovery before the district court—not even using the term—and cited *Cheney* only once, for the proposition that it *permitted discovery* so long as it accounted for the “high respect that is owed to the office of the Chief Executive.” ADD103 (quoting *Cheney*, 542 U.S. at 385). On this basis, the government acknowledged that *Cheney* permitted at least written discovery. *Id.* In the same discussion, the government further conceded that “*if* the Court concludes that depositions are needed, *Defendants do not object to the Court’s approval of a single 30(b)(6) deposition.*” ADD103-05 (second emphasis added). These concessions make clear that the government forfeited its (incorrect) argument that *Cheney* prohibits discovery here.

2. *Cheney* only applies to certain units of the Executive Office of the President, and DOGE is not one of them.

The government fundamentally mischaracterizes both the EOP's structure and *Cheney*'s scope. Properly understood, *Cheney* has no bearing on the discovery here because it is directed solely at DOGE—not the President, Vice President, or their immediate staff. A15-28. While DOGE is a unit of the EOP, it is not part of the White House Office (or, in *Cheney*'s terms, “the Office of the President”), and DOGE's Administrator does not report directly to the President. 90 Fed. Reg. 8441. DOGE also has its own email domain (@doge.eop.gov), which differs from the White House Office domain (@who.eop.gov). See CREW PI Mem. Ex. 1.1, ECF No. 10-2.

These distinctions render *Cheney* inapplicable. *Cheney* sought to “safeguard against unnecessary intrusion into the operation of the *Office of the President*” (*i.e.*, the White House Office), as well as the Office of the Vice President. 542 U.S. at 386-87 (emphasis added). Indeed, the “discovery request in *Cheney* was directed at the *Vice President himself*,” and the Court was especially concerned “that forcing *the Vice President* to assert executive privilege in the context of broad

discovery requests submitted during civil litigation would set ‘coequal branches of the Government . . . on a collision course.’” *DHS*, 532 F.3d at 866 (quoting *Cheney*, 542 U.S. at 389) (emphasis added).

As this Court has recognized, “no such danger exists” where, as here, discovery is sought not from the President, Vice President, or their immediate staff. *Id.*; see also *Cheney*, 542 U.S. at 381 (cautioning that the Court’s ruling may have been different “[w]ere the Vice President not a party in the case”). Other cases cited by the government involved damages claims against the *President himself*, see *Clinton v. Jones*, 520 U.S. 681, 684 (1997); *Nixon v. Fitzgerald*, 457 U.S. 731, 748 (1982), and thus are even less relevant than *Cheney*.

The White House Office holds a unique status based on its proximity to the President that sets it apart from other EOP units, including DOGE. The White House Office is a “distinct” and “smaller unit” of the EOP “comprised of such immediate advisers as the Chief of Staff and the White House Counsel. Although the Executive Office of the President is an agency subject to the FOIA, the [White House Office] is not.” *Jud. Watch*, 365 F.3d at 1109 n.1; see also *Meyer v. Bush*,

981 F.2d 1288, 1310 & n.2 (D.C. Cir. 1993) (Wald, J., dissenting) (distinguishing the White House Office from the broader EOP).

But EOP units *outside* of the White House Office and Office of the Vice President *can* be subject to FOIA, *e.g.*, Pet. 25, and routinely respond to discovery, *see, e.g.*, *OA*, 566 F.3d at 221, 225-26 (Office of Administration); *Armstrong*, 90 F.3d at 561 (National Security Council); *Competitive Enter. Inst. v. Off. of Sci. & Tech. Pol’y*, 185 F. Supp. 3d 26, 27 (D.D.C. 2016) (Office of Science and Technology Policy); *EPIC v. Off. of Homeland Sec.*, No. 02-cv-00620, ECF No. 11 (D.D.C. Dec. 26, 2002) (Office of Homeland Security). DOGE is similarly situated to these other EOP components. *See AFL-CIO v. Dep’t of Lab.*, No. 25-cv-339, 2025 WL 1129202, at *8 n.17 (D.D.C. Mar. 19, 2025) (ordering discovery from DOGE and deeming *Cheney* “readily distinguishable”).

Because DOGE is not part of the White House Office or Office of the Vice President, and because the discovery here is not directed at those offices or their immediate staff, *Cheney* does not apply.

3. *Cheney* does not apply because the government’s litigation conduct triggered the need for limited discovery.

This case and *Cheney* are distinguishable in another critical respect: the posture in which the government chose to raise the separation of powers. In *Cheney*, the government promptly raised the defense in a motion to dismiss as a threshold ground for dismissal. 542 U.S. at 376. This Court has thus construed *Cheney* to “stand for the general principle that mandamus may be warranted where valid threshold grounds for dismissal, denied by the district court, would obviate the need for intrusive discovery against the Vice President.” *In re Cheney*, 544 F.3d at 313.

Here we are in a far different “litigation posture.” *Id.* at 313-14. The government did not raise *Cheney* or the separation of powers as a threshold defense in a motion to dismiss. To the contrary, the government failed to raise the defense *at all* (and thus forfeited it, *supra* Part I.A.1). Meanwhile, it was the *government’s* decision to move for partial summary judgment and introduce contradictory evidence on DOGE’s agency status that triggered the need for limited discovery.

This case's posture is materially identical to *In re Cheney*, where this Court refused to categorically apply *Cheney* and the separation of powers "to vacate [a] district court's discovery order as an 'unprecedented' intrusion." 544 F.3d at 312. There, as here, the government did not file a motion to dismiss or raise any threshold legal defenses. *Id.* at 313. Instead, in both cases the government chose to submit evidence to support a factual argument that it was complying with federal law (the Presidential Records Act in *In re Cheney* and FOIA here). *See id.* at 312. Further, as here, the government waited until *after* the district court ordered discovery to "argue that the entire factual inquiry—which *it* raised—should be set aside in view of" its interpretation of precedent. *Id.* at 313. And in both this case and *In re Cheney*, the district court held that this "litigation posture necessitate[d] limited discovery to permit timely adjudication of the factual defense" that the government "has itself raised." *Id.* at 314.

This Court should follow the same path it did in *In re Cheney*: hold that *Cheney* does not prohibit discovery because of "the procedural record in the district court" and "the deference [this Court] owe[s] trial courts in the management of their cases." *Id.* at 313 (citation omitted).

B. The district court properly concluded that discovery is necessary to determine whether DOGE exercises substantial independent authority.

The government's effort to quash the discovery order is both an improper use of mandamus and contrary to every case on an EOP component's agency status cited by the parties. The government seeks to overturn a half century of precedent, nullify Rule 56(d), and compel the district court to abdicate its discretion over discovery and decide the government's summary judgment motion with its eyes closed to how DOGE actually operates. The discovery order was both necessary and narrowly tailored to properly evaluate DOGE's agency status.

Mandamus review of a "discovery order" cannot be used as "a vehicle for interlocutory review of the underlying merits of the lawsuit." *In re EOP*, 215 F.3d at 23 (citation omitted). Thus, the government's petition is not a proper vehicle to litigate the "underlying merits" question of whether DOGE wields substantial independent authority and thus is subject to FOIA. *See generally* Pet. (repeatedly claiming DOGE is a purely "advisory body"). The question, instead, is whether the district court clearly and indisputably erred in *granting discovery* on that question. It did not.

For decades, “[i]n determining whether an entity fits the agency definition under FOIA,” this Court has “generally employed a fact-specific functional approach” which was “first employed . . . in *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971).” *Cotton v. Heyman*, 63 F.3d 1115, 1121 (D.C. Cir. 1995). Since *Soucie* first required the “review [of] the origin *and functions*” of EOP components when evaluating their substantial independent authority, 448 F.2d at 1071 (emphasis added), this Court has consistently reaffirmed *Soucie*’s functional approach (including in cases cited by the government). *See OA*, 566 F.3d at 224-25; *Armstrong*, 90 F.3d at 560-61. The government wrongly asserts that “the Court has repeatedly answered that question solely by examining the formal authorities—like executive orders, statutes, or charter documents—that created the entity and set out its duties and responsibilities.” Pet. 22. This Court’s decisions do not countenance that approach, let alone require any Court to accept as fact DOGE’s bare assertions that it is a mere advisory entity.

In *OA*, for example, the Court described the question presented as “whether a unit is, *in fact*, an agency subject to FOIA.” 566 F.3d at 225 ((emphasis added). To answer, the Court looked not only

at OA's charter documents, but also analyzed "everything the Office of Administration does," *id.* at 224, because "an understanding" of OA's "authority *and operations* . . . [wa]s critical for determining whether OA is subject to FOIA." *Id.* at 225 (emphasis added). The Court concluded OA was not subject to FOIA because "nothing in the record indicate[d] that OA [1] *performs* or [2] is authorized to perform tasks other than operational and administrative support for the President and his staff." *Id.* (emphasis added). By distinguishing between the tasks OA was authorized to perform according to its charter documents and the tasks OA actually performed, the Court demonstrated that the substantial independence test goes beyond just the charter documents.

Similarly, in *Armstrong*, the Court evaluated whether the National Security Council ("NSC") was a FOIA agency by examining both whether it "could exercise substantial independent authority" *and* "*does in fact* exercise such authority." 90 F.3d at 560 (emphasis added). The Court considered numerous facts relating to the NSC's actual operations, including the extent to which the National Security Adviser works closely with the President and controls NSC staff, whether "the record suggest[ed] that the President has empowered the NSC staff to

direct the [Director of Central Intelligence] in any way,” and a staff member’s testimony regarding his “ability to issue instructions or directions to agencies” and how he conveyed decisions to them. *Id.* at 560-61.

The Court also examined how ambiguous delegations of authority to NSC were implemented. For example, although the plaintiff claimed that an executive order gave the NSC authority to resolve “disputes between agencies concerning the protection and declassification of classified information,” the NSC’s declassification reviews were in practice “really nothing more than the internal management of the information that the NSC generates in advising the President.” *Id.* at 561-62. In fact, the Court refused to credit another directive creating the Senior Interagency Group (“SIG”) because, although the directive authorized the SIG to “oversee the implementation of the goals and principles,” there was “nothing before [the Court] to confirm that the SIG *in fact* oversees anything or anyone.” *Id.* at 563 (emphasis added).

The government ignores these cases and cites others to argue that the district court was duty-bound to consider only DOGE’s charter

documents, but those cases confirm the propriety of the order. *See* Pet. 22.

The government first relies on an inversion of *Meyer*, 981 F.2d 1288, a case cited in *OA*, 566 F.3d at 222-23, and *Armstrong*, 90 F.3d at 558-61. *Meyer* reviewed whether the Task Force on Regulatory Relief was a FOIA agency by looking beyond the Executive Order creating it and analyzing its operations *in fact*, determining there was “no indication that [it] directed anyone, including OMB, to do anything.” 981 F.2d at 1294. Reaffirming its functionalist approach, the Court underscored that the Task Force was not independent, because, among other things, “the Task Force operated out of the Vice President’s office without a separate staff[.]” *Id.* at 1296.

Next, the government cites *Rushforth v. Council of Econ. Advisers*, 762 F.2d 1038 (D.C. Cir. 1985), where the Court examined whether the Council of Economic Advisors was a FOIA agency by analyzing its “functional roles” under *Soucie, id.* at 1041, ultimately determining that its charter did not support “any function save that of advising and assisting the President” *and* no evidence has “been brought forward to

show that some other function *in fact exists*.” *Id.* at 1043 (emphasis added).

Similarly, in *Sweetland v. Walters*, 60 F.3d 852 (D.C. Cir. 1995) (per curiam), the Court examined whether the Executive Residence was a FOIA agency by relying on a “catalogue of the Residence staff’s *functions*” from a Report of the Senate Appropriations Committee and not merely accepting the U.S. code description of “certain employees of the Executive Residence[’s] duties.” *Id.* at 853-54. Each of these cases undermines—rather than supports—the government’s position.

C. The district court did not abuse its significant discretion in ordering discovery under Rule 56(d).

The government argues that some of the discovery is so overbroad and burdensome that mandamus is justified. Not so. Because “summary judgment is premature unless all parties have ‘had a full opportunity to conduct discovery,’” this Court directs that 56(d) motions “should be granted ‘almost as a matter of course unless that non-moving party has not diligently pursued discovery of evidence’” *Convertino*, 684 F.3d at 99 (discussing Rule 56(d)’s precursor, Rule 56(f)) (cleaned up). The government’s exaggerated objections fail to meet its normal burden to establish that the discovery order was “arbitrary, fanciful, or clearly

unreasonable,” *Jeffries*, 965 F.3d at 855 (citation omitted), much less the higher bar for mandamus relief.

The petition omits all but a single reference to Rule 56(d), but the procedural history of this case makes clear: the discovery order was a direct and foreseeable consequence of the government’s litigation strategy. *Supra* pp. 10-13, Part I.A.3. Under these circumstances the district court would have abused its discretion if it did *not* order discovery pursuant to Rule 56(d) and this Court’s binding precedent on both the equitable determination of summary judgment motions; *see* Fed. R. Civ. P. 56(d); *Berkeley v. Home Ins. Co.*, 68 F.3d 1409, 1414 (D.C. Cir. 1995); *Convertino*, 684 F.3d at 99-100; *see also Jud. Watch*, 726 F.3d at 215; and the fact-intensive nature of determining EOP components’ agency status, *supra* Part II.B.

The district court recognized this Circuit has “permitted limited discovery in just these circumstances—to ascertain whether an entity is wielding independent authority sufficient to bring it within FOIA’s ambit.” A5 (collecting cases). Because “[t]he structure of [an agency] and the scope of its authority are critical to determining whether the agency is ‘wielding substantial authority independently of the President,’” and

“the answers to those questions are unclear from the record,” A6, the district court granted “limited discovery,” A3.

The district court narrowed the scope of the already limited discovery sought, exercising its substantial discretion. *See* A9-10, A12-13 (denying deposition of Steven Davis, discovery regarding DOGE’s document preservation practices and visitor access requests, and interrogatory regarding identities and hiring processes for DOGE’s administrators). The discovery order was sensibly tailored and squarely within the district court’s discretion under Rule 56(d) and within the scope of Rule 26(d)(1). *See Stella v. Mineta*, 284 F.3d 135, 147 (D.C. Cir. 2002).

The government regardless repeats many of the objections that the district court rejected, while raising a raft of insufficient and forfeited new objections under the guise of the separation of powers.

Interrogatory Nos. 6 and 8. The government has acknowledged that written discovery is “the least burdensome and most efficient approach” to discovery if, as is abundantly clear, discovery is permitted, *see* ADD103-05, and it has forfeited any claim that the separation of

powers compels alterations to the discovery here. *Supra* Part I.A.3.

Written discovery also was granted in similar cases. *Supra* Part I.A.2.

The government nevertheless objects to Interrogatories 6 and 8, which require DOGE to provide information regarding certain “recommendations” that DOGE and DOGE Teams—which are appointed in consultation with DOGE, and bound to coordinate with it—have made to federal agencies since January 20 regarding the cancellation or rescission of contracts, grants, leases, or similar instruments or adverse federal employment actions, and whether they were followed. The government primarily objects based on the deliberative process privilege, Pet. 17, 34-36, but those objections are both premature and insufficiently defined.

Because DOGE is not entitled to special treatment under *Cheney*, *supra* Part I.A, it must raise and log privilege objections in the ordinary course like other EOP components, *see, e.g., Pub. Citizen*, 598 F.3d at 867. Indeed, CREW’s discovery instructions and the district court’s order make clear that DOGE “may assert privilege in its discovery responses ‘as CREW’s proposed discovery requests explicitly instruct.’” A12.

Nor do the government's blanket deliberative process objections justify mandamus. "[T]he deliberative process privilege is 'dependent upon the individual document and the role it plays in the administrative process.'" *Jud. Watch, Inc. v. Dep't of Just.*, 20 F.4th 49, 55 (D.C. Cir. 2021) (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980)). Categorical assertions of privilege are thus improper.

The government insists that because the interrogatories seek "recommendations," the information is necessarily pre-decisional and irrelevant. But as the district court explained, "the line between a recommendation and directive is a blurry one," and "CREW is attempting to determine whether [DOGE's] purported recommendations are always followed (or almost always followed)," so the entire point of these interrogatories is to determine whether DOGE's purported recommendations were, in reality, directives. *See* A12.³ This information, along with other discovery regarding DOGE's reach into federal agencies, is the type of practical information about an

³ The government objects on a similar basis to a previous version of Interrogatory 9, Pet. 10, 36, to which the district court did not order DOGE to respond. *See* A12.

EOP component's operations that courts in this Circuit analyze in determining that component's agency status. *Supra* Part II.B-C.

Deposition of Amy Gleason. The government's arguments that *Cheney* precludes Gleason's deposition fail for the above reasons. *Supra* Part I.A. Moreover, the government's reliance on Gleason's testimony as a sword and its invocation of *Cheney* as a shield to those same facts is fundamentally unfair and inconsistent with this Court's approach to discovery. *Cf. In re Sealed Case*, 676 F.2d 793, 807 (D.C. Cir. 1982) (a "privileged person . . . cannot be allowed, after disclosing as much as he pleases, to withhold the remainder.").

This Court and others have required government declarants—including agency heads—to appear for deposition or cross-examination to answer questions about their sworn statements. *See, e.g., In re Cheney*, 544 F.3d at 312-14 (requiring deposition of Vice President's Deputy Chief of Staff and National Archives official "to follow up on factual questions that [they] had put at issue in [their] declarations"); *AFL-CIO v. Dep't of Lab.*, 2025 WL 1142495 (D.D.C. Feb. 27, 2025) ("It would be strange to permit defendants to submit evidence that addresses critical factual issues . . . without permitting plaintiffs to

explore those factual issues through very limited discovery.”); *Am. Fed. Gov’t Emps. v. OPM*, No. 25-cv-1780, ECF No. 89 (N.D. Cal. Mar. 10, 2025) (requiring testimony of agency head declarant); *Richie v. Vilsack*, 287 F.R.D. 103 (D.D.C. 2012) (government declarant). Such depositions are appropriate in FOIA cases where, as here, the district court finds a declarant’s sworn statements are “called into question by contradictory evidence in the record.” A9.

Because Gleason put her declarations in evidence, this case differs from those disallowing discovery as to government officials with “no apparent involvement in th[e] litigation.” *In re Cheney*, 544 F.3d at 313-14 (denying deposition of uninvolved official in the Office of the Vice President); *see also* Pet. 32.

The 30(b)(6) deposition—to which the government does not specifically object—is no substitute for CREW’s right to cross-examine Gleason on her declaration, particularly given the issues with it, *supra* pp. 10-11, and would be inconsistent with other cases where EOP components have disputed their agency status with sworn statements, *see, e.g., OA*, 566 F.3d at 224, and in recent discovery ordered on DOGE’s activities, *see AFL-CIO*, No. 15-cv-339 (D.D.C.), ECF No. 48.

Additional Objections. The government’s scattershot objections regarding DOGE’s obligation to provide information on DOGE Teams warrant little discussion. The district court noted the discovery merely requires DOGE to provide information about DOGE Teams—which by Executive Order are created in consultation with DOGE and required to coordinate with it in pursuit of the single, ambiguous goal of “implementing the President’s DOGE agenda”—in DOGE’s custody, control, and possession. A6-7, 11. Given that the DOGE EO explicitly requires coordination and the government’s summary judgment motion turns on how DOGE interacts with agencies, the district court did not clearly and palpably err by ordering such discovery. *Id.* at 5-6. Indeed, the district court noted that another court reached the same conclusion in ordering discovery regarding DOGE Teams (where the government has not sought mandamus). A7 (citing *AFL-CIO*, No. 25-cv-339, ECF No. 75, at 3 n.4).

Petitioner’s burden objections likewise lack merit. DOGE is not entitled to special treatment under *Cheney*. *Supra* Part I.A. And any burden from responding to expedited discovery is a problem of the

government's making. *Supra* pp. 10-13, Part I.A.3-B.2. Even in opposing discovery, the government did not propose narrower discovery or an alternative discovery schedule. *See generally* ADD096- 116.

Any claimed burden is further undermined by DOGE's official government website, which includes a detailed "Wall of Receipts" where DOGE continuously publishes its purported actions (or "recommendations") to slash federal agency leases, contracts, grants, and other spending.⁴ Responding to discovery relating to this already-compiled information should pose little burden to DOGE.

Equally meritless is the government's claim that the discovery ordered here contradicts *Cheney's* "admonition" against awarding plaintiffs "all the disclosure to which they would [have] be[en] entitled in the event they prevail[ed] on the merits." 542 U.S. at 388. This argument is forfeited because the government failed to raise it below. *See* ADD096-116. It is also wrong, for three reasons.

First, the primary relief sought in the complaint is for a declaratory judgment that DOGE is an agency subject to FOIA and the

⁴ *See* DOGE, *Savings*, <https://www.doge.gov/savings>.

FRA. *See* Compl., Prayer for Relief ¶ 1, ECF No. 1. That relief would subject DOGE to FOIA and the FRA on a forward-going basis—relief far broader than the mere disclosure of documents responsive to CREW’s discovery and FOIA requests. This case is thus akin to *In re Cheney*, where the Court held that the discovery did “not itself provide the relief sought in the complaint” because the “ultimate relief plaintiffs” sought was “a declaration on whether [the Office of the Vice President’s] classification policy is consistent with the [Presidential Records Act]—relief far beyond” the discovery ordered by the district court. 544 F.3d at 314.

Second, the discovery will provide CREW no relief on its FRA claim seeking to initiate an enforcement action to recover unlawfully destroyed federal records. *See* Compl. 34.

Third, the discovery does not cover all documents sought in CREW’s FOIA request. The discovery seeks more limited records on DOGE’s composition and communications. CREW’s FOIA request, by contrast, seeks memoranda, directives, and policies regarding DOGE operations, ethics pledges and waivers, financial disclosures, and a larger set of communications within DOGE and with federal agencies.

Compare ADD075-95, *with* ADD055-64.

II. The government has other adequate means to attain the relief it is seeking.

Mandamus is available only if “the party seeking issuance of the writ has no other adequate means to attain the relief he desires.” *In re Flynn*, 973 F.3d at 78. The government has had numerous other ways to obtain the relief sought in its petition, which, as noted above, “is really seeking relief from the results of its own decisions.” *Conax Florida Corp. v. United States*, 824 F.2d 1124, 1131 (D.C. Cir. 1987). “During the course of this litigation,” the government “made some strategic choices . . . that now appear improvident. The courts normally are not available to relieve parties from the operation of their own litigation strategies. [This Court should] find no reason to deviate from that salutary policy.” *Id.* at 1131-32.

If the government believed DOGE’s agency status could be resolved without discovery based on its charter documents, Pet. 22, then it should have moved to dismiss or for judgment on the pleadings on that basis. It did not. It took a different tack, for example, in *State of New Mexico v. Musk*, No. 25-cv-429 (D.D.C.), where the government’s

motion to dismiss led this Court to stay discovery pending resolution of that motion. *See In re: Elon Musk*, No. 25-5072, 2025 WL 926608, at *1 (D.C. Cir. Mar. 26, 2025).

The government also could have taken action to limit the scope of the discovery and the burden of responding to it on an expedited basis. The government could have supported its summary judgment motion with a more reliable declaration, including by a declarant it would have been willing to designate for a Rule 30(b)(6) deposition. Or it could have deferred moving for summary judgment and allowed discovery to proceed in the normal course. It also could have timely raised the myriad arguments it has forfeited, including proposing more tailored discovery or a different schedule, to the district court. The government did none of those things.

Additional remedies remain. First, the government may still assert the privileges it prematurely asserts here to prevent the inappropriate disclosure of information. *Supra* Part II.B.2. Second, the government can—as is the proper course—appeal an adverse final judgment. *In re EOP*, 215 F.3d at 23. The discovery order does not foreclose the government’s ability to dispute that

DOGE wields substantial independent authority—it will merely aid the district court’s analysis of that question. The mere grant of discovery here does not mean CREW will prevail in establishing DOGE’s agency status, as this Court’s precedents confirm. *OA*, 566 F.3d at 224 (holding EOP unit was not subject to FOIA based in part on discovery record); *Armstrong*, 90 F.3d at 560 (same).

III. A writ of mandamus is inappropriate under the circumstances.

For all the above reasons, this is plainly not a case where “the writ is appropriate under the circumstances.” *In re Flynn*, 973 F.2d at 78 (cleaned up). And while the government uses this long-shot petition to further delay the resolution of its pending partial summary judgment motion, CREW continues to be denied the relief it won in the preliminary injunction more than six weeks ago, *see generally* ADD001-37, but that is being held in abeyance until resolution of that motion, ADD045. All the while, DOGE continues to exercise its “substantial authority over vast swathes of the federal government” while refusing to provide CREW and the public with information about its operations that they urgently need. *See* ADD025, ADD031-34.

The circumstances of this case also distinguish it from *In re Elon Musk*, where a panel of this Court granted the government’s motion for an emergency stay of discovery relating to White House employee Elon Musk because “the district court was required to decide [defendants’ pending] motion to dismiss before allowing discovery” in aid of a forthcoming preliminary injunction motion. No. 25-cv-5072, 2025 WL 926608, at *1 (D.C. Cir. Mar. 26, 2025). Here, a preliminary injunction was issued weeks ago, the government did not move to dismiss but instead moved for summary judgment with supporting evidence, and the discovery order scrupulously avoids any incursion into the President’s immediate staff or advisers, *see generally* A4-28.

CONCLUSION

The petition should be denied.

Dated: April 25, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Response to Petition for a Writ of Mandamus complied with the type-volume limit of Fed. Rule of Appellate Procedure 21(d)(1) because it contains 7,795 words. It also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 21(d) and 32(c) because it was prepared using word-processing software in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ Nikhel S. Sus
NIKHEL S. SUS

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2025, I electronically filed the foregoing Response to Petition for Writ of Mandamus with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Counsel in the case are registered CM/ECF users.

/s/ Nikhel S. Sus
NIKHEL S. SUS

**CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES**

a. Parties and Amici.

All parties, intervenors, and amici appearing before the district court and in this Court are listed in the Certificate as to Parties in the government's Petition for Writ of Mandamus.

b. Rulings under Review.

The ruling at issue appears in the Certificate as to Parties in the government's Petition for Writ of Mandamus.

c. Related Cases.

Counsel is not aware of any related cases.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DOGE SERVICE, et al.,

Defendants.

Case No. 25-cv-511 (CRC)

MEMORANDUM OPINION

Government watchdog Citizens for Responsibility and Ethics in Washington (“CREW”) lodged two Freedom of Information Requests with the Office of Management and Budget (“OMB”) and one with the United States DOGE Service (“USDS”) seeking to learn more about USDS’s role in spearheading the mass firings and dramatic disruptions to federal programs that have punctuated the opening weeks of President Trump’s second term. OMB accepted CREW’s requests and agreed to process them on an expedited basis given the public importance of the records sought. USDS, on the other hand, refuses to process CREW’s request to it on the ground that USDS is not an “agency” subject to FOIA. CREW sued and simultaneously sought a preliminary injunction ordering USDS to take up its request and requiring both entities to produce responsive documents by today’s date in order to inform public debate on appropriations legislation now being considered by Congress.

Finding that USDS is likely covered by FOIA and that the public would be irreparably harmed by an indefinite delay in unearthing the records CREW seeks, the Court will order USDS to process CREW’s request on an expedited timetable and, after receiving proposals on a production schedule, to begin producing documents on a rolling basis as soon as practicable.

CREW has not established that it is entitled to disclosure by a date certain, however. The Court will therefore deny CREW's request for an order directing OMB and USDS to produce records by today. Finally, the Court will also order both entities to preserve all records that may be responsive to CREW's FOIA requests.

I. Background

A. Establishment of USDS During Presidential Transition

On November 13, 2024, President-elect Donald Trump announced the formation of the "Department of Government Efficiency," or "DOGE," "to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies." Colleen Long & Jill Colvin, *Trump says Musk, Ramaswamy will form outside group to advise White House on government efficiency*, AP News (Nov. 12, 2024), <https://apnews.com/article/donald-trump-president-elon-musk-vivek-ramaswamy-2f0f76bb6440231f2504b77cb117d988>. In the same X post, Trump identified technology billionaires Elon Musk and Vivek Ramaswamy as the incoming leaders of the new department. *Id.* Shortly thereafter, Musk and Ramaswamy published an opinion piece in the *Wall Street Journal*, in which they declared their intent to "advise DOGE at every step to pursue three major kinds of reform: regulatory rescissions, administrative reductions and cost savings." Elon Musk & Vivek Ramaswamy: *The DOGE Plan to Reform Government*, Wall St. J. (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>. Musk and Ramaswamy further pledged that DOGE would operate through "embedded appointees" at federal agencies and would identify "thousands" of unlawful regulations for repeal by the President. *Id.* And its proposed leaders revealed that, from its inception, a major objective of the new department would be "mass head-count reductions across

the federal bureaucracy.” *Id.* Musk later explained that using DOGE to cut \$2 trillion dollars from the federal budget would be the “best-case scenario.” 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/>.

USDS commenced operations prior to President Trump’s second inauguration on January 20, 2025. During the transition period, USDS employees reportedly communicated via the encrypted messaging application Signal, which is “is widely used for its auto-delete functionality.” Mot. for PI at 5. Through this function, users can set Signal to automatically and permanently delete text messages. Set and manage disappearing messages, Signal Support, <https://support.signal.org/hc/en-us/articles/360007320771-Set-and-manage-disappearing-messages>. (last visited Mar. 10, 2025). USDS employees reported being added to Signal groups after joining the organization, and on the eve of President Trump’s inauguration, “[p]eople involved in the operation [said] that secrecy and avoiding leaks is paramount, and much of its communication is conducted on Signal[.]” Theodore Schleifer & Madeleine Ngo, *Inside Elon Musk’s Plan for DOGE to Slash Government Costs*, NY Times, <https://www.nytimes.com/2025/01/12/us/politics/elon-musk-doge-government-trump.html> (Jan. 23, 2025); Vinay Hiremath Blog, *I am rich and have no idea what to do with my life* (last accessed Mar. 10, 2025), <https://vinay.sh/i-am-rich-and-have-no-idea-what-to-do-with-my-life/> [<https://perma.cc/BNR5-VT4G>].

B. USDS Executive Orders

On January 20, 2025, President Trump signed Executive Order 14158, Establishing and Implementing the President’s “Department of Government Efficiency.” Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 29, 2025). The Order “establishe[d] the Department of Government

Efficiency to implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity.” 90 Fed. Reg. at 8441. It renamed the United States Digital Service as the United States Doge Service and reorganized it within the Executive Office of the President (“EOP”). Id. The order also established a “temporary organization” under 5 U.S.C. § 3161 entitled “the U.S. DOGE Service Temporary Organization,” which is set to last for 18 months. Id. A USDS Administrator established in the Executive Office of the President, who reports to the White House Chief of Staff, was charged with heading this temporary organization. Id. Although the new administration did not reveal the name of the USDS Administrator for several weeks into its term, the White House ultimately identified Amy Gleason as occupying that role on February 25. See Ryan J. Foley, *Who is Amy Gleason, the person named DOGE’s acting administrator by the White House?*, AP News (Feb. 25, 2025), <https://apnews.com/article/doge-actingadministrator-amy-gleason-65af638e646fdd5dd6d5fcc5cc04a2e7>. The government has provided no information about the identity of the Administrator before Gleason.

The first USDS EO also directs agency heads to, in consultation with the USDS Administrator, “establish within their respective Agencies a DOGE Team of at least four employees.” 90 Fed. Reg. at 8441. Each team “will typically include one DOGE Team Lead, one engineer, one human resources specialist, and one attorney.” Id. These DOGE Teams must “coordinate their work with USDS and advise their respective Agency Heads on implementing the President’s DOGE Agenda.” Agency heads were also ordered to “ensure USDS has full and prompt access to all unclassified agency records, software systems, and IT systems.” Id.

A separate presidential memorandum instituting a hiring freeze on all federal civilian employees issued on January 20, 2025, also referenced USDS. Hiring Freeze, Presidential Mem.

(Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>. This memorandum directed the OMB Director, “in consultation with the Director of OPM and the Administrator of the United States DOGE Service to “submit a plan to reduce the size of the Federal Government’s workforce through efficiency improvements and attrition.” Id. Upon submission of this plan, the hiring freeze would lift except as to the Internal Revenue Service, as separate procedures governed that agency’s hiring freeze. Id.

On February 11, 2025, President Trump issued a second executive order related to USDS, titled “Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization Initiative.” Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025). The order 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.” 90 Fed. Reg. at 9670. It also instructed that “new career appointment hiring decisions” under these plans “shall be made in consultation with the agency’s DOGE Team Lead, consistent with applicable law.” Id. And agencies were directed not to “fill any vacancies for career appointments that the DOGE Team Lead assesses should not be filled, unless the Agency Head determines the positions should be filled.” Id. Neither of the USDS EOs delegates any statutory authority to the department, however.

C. USDS Operations to Date

To date, USDS has reportedly taken widescale action in service of its stated goals to reduce government spending and shrink the federal workforce. For instance, Mr. Musk claimed credit for placing large numbers of USAID employees on administrative leave in February, revelling that “We spent the weekend feeding USAID into the wood chipper.” Elon Musk (@elonmusk), X (Feb. 3, 2025, 1:54 AM), <https://x.com/elonmusk/status/18863073168042>

63979?s=46. Musk’s tweet came contemporaneously with severe cuts at USAID, which placed 2,140 employees on administrative leave by February 7 and planned to place another approximately 2,014 employees on leave shortly thereafter, “ultimately determine[ing] that approximately 611 staff were essential to carry out its statutory functions.” Am. Foreign Serv. Ass’n v. Trump, No. 1:25-cv-352 (CJN), 2025 WL 573762, at *2 (D.D.C. Feb. 21, 2025).

USDS, again through Musk, is also the reported architect of the “Fork in the Road” deferred resignation program intended to induce federal workers to quit. OPM sent this deferred resignation offer to all federal employees on January 28. Nat’l Treasury Emps. Union v. Trump, No. 25-CV-420 (CRC), 2025 WL 561080, at *2 (D.D.C. Feb. 20, 2025). Under the terms of the offer, employees who chose to resign would retain all pay and benefits, regardless of their daily workload, until September 30, 2025. Id. According to the White House, approximately 75,000 employees—roughly 3% of the federal civilian workforce—resigned. Id. News sources characterized the Fork in the Road program as “part of DOGE head Elon Musk’s effort to trim the size of government,” noting that the subject line “Fork in the Road” is “the same language Musk used when he slashed jobs at Twitter after taking over that company in 2022.” 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-federalworkers/story?id=118401375>.

USDS has likewise claimed credit for other cuts across the federal government since President Trump’s inauguration. For instance, the agency announced that “taxpayers will see just over a \$1 billion savings through the elimination of 104 diversity, equity and inclusion-related (DEI) contracts” with the government. 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. USDS also announced the termination of 89 Department of Education contracts related to the Institute of Education Sciences, totaling over \$900 million in cuts. 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#:~:text=Elon%20Musk's%20cost%2Dcutting%20effort,the%20Institute%20of%20Education%20Sciences.>

And in a move viewed by some as pernicious, USDS has obtained unprecedented access to sensitive personal and classified data and payment systems across federal agencies. For instance, USDS teams reportedly received access to “a massive trove of personal information for millions of federal employees” maintained by OPM and “sensitive Treasury data including Social Security and Medicare customer payment systems.” <https://apnews.com/article/donald-trump-elon-musk-doge-treasury-5e26cc80fcb766981cea56afd57ae759>; 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/>; Fatima Hussein, *Elon Musk’s DOGE commission gains access to sensitive Treasury payment systems: AP sources*, AP News (Feb. 1, 2025).

USDS personnel have also gained access to “information on all Americans who rely on Medicare and Medicaid, as well as countless consumers” from the Consumer Financial Protection Bureau, Department of Health and Human Services, and Department of Labor, among other agencies. Am. Fed’n of Lab. & Cong. of Indus. Organizations v. Dep’t of Lab., No. CV 25-0339 (JDB), 2025 WL 542825, at *1 (D.D.C. Feb. 14, 2025); 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-muskcnntv/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/>. And, over protests from a USAID security director who was later removed, USDS employees allegedly accessed classified information without the appropriate clearances. 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-musk-doge-employees-access-rcna190357>.

News reports also suggest that USDS has continued to conduct at least some operations outside official government systems. For instance, USDS and agency personnel reportedly communicated “primarily on the encrypted Signal app” as recently as February 27. Scott Patterson, et al., *Inside DOGE's Clash With the Federal Workforce*, Wall St. J. (Feb. 27, 2025), <https://www.wsj.com/politics/policy/inside-doge-elon-musk-government-employees-b87fc17a>. Musk has also used the social media platform X, which he owns, to solicit job applications for positions at USDS and seek public input on proposed government actions. Department of Government Efficiency (@DOGE), X (Nov. 14, 2024, 10:03 AM), <https://x.com/DOGE/status/1857076831104434289>; Kate Conger, *Elon Musk's X Becomes Weapon in Government Cost Cutting*, <https://www.nytimes.com/2025/02/04/technology/elon-musk-x-doge.html> (Feb. 4, 2025).

USDS's operations thus far have been marked by unusual secrecy in other ways, too. For instance, USDS reportedly installed an outside server at OPM to store government staffers'

personal information, including their names and email accounts. Dell Cameron, *Federal Workers Sue to Disconnect DOGE Server*, WIRED (Feb. 4, 2025), <https://www.wired.com/story/federal-workers-sue-over-doge-server/>. USDS employees have also reportedly declined to identify themselves to career officials on request. 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-reshapefederal/story?id=118536035>. Indeed, Musk has said that posters who released the names of USDS employees online “committed a crime.” 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/>.

D. CREW’s Three FOIA Requests

Concerned by the reports just discussed, CREW filed three FOIA requests seeking further information on USDS’s operations. CREW is a non-profit “committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics.” Mot. for PI, Ex. D (copy of USDS Request) at 8. The organization is primarily engaged in educating the public on issues related to the government and “routinely disseminates information obtained through FOIA to the public,” including on its website. *Id.* at 3.

On December 19, 2024, CREW submitted a FOIA request to OMB (“First OMB Request”) seeking (1) communications between “employees of OMB and various officials purporting to have an affiliation with DOGE;” (2) communications between employees of agencies and individuals affiliated with the “Delivering Outstanding Government Efficiency

Caucus;” (3) “communications within those agencies about ‘DOGE’ and related terms;” and (4) “other DOGE-related communications.” Compl. ¶ 88; Mot. for PI, Ex. A (copy of First OMB Request). CREW sought information dating back to November 5, 2024. Id. OMB acknowledged receipt of the First OMB Request and assigned it a tracking number on December 20. Compl. ¶ 89.

Next, on January 24, 2025, CREW submitted an expedited FOIA request to OMB (“Second OMB 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.” Id. ¶ 90; Mot. for PI, Ex. C (copy of Second OMB Request). The second request similarly focused on the time period beginning November 6, 2024, but also requested some records dating back until January 2014. Id. On the same day, CREW contacted the OMB FOIA Requester Service Center to ask how to submit a FOIA request directly to USDS and was directed to submit that request through OMB, too. Mot. for PI, Ex. D at 1 n.1. Accordingly, CREW also submitted an expedited FOIA request directly to USDS (“USDS Request”), which, along with the just-listed information, sought “[a]ll communications between USDS personnel and personnel of any federal agency outside of the Executive Office of the President.” Compl. ¶ 90; Mot. for PI, Ex. D. On January 24, OMB acknowledged receipt of both requests. Id. ¶ 92.

A few days later, on January 28, CREW sought 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.” Id. ¶ 93; see 5 C.F.R. 1303.40(e) (1)(ii), (iv). The next day, OMB granted expedited treatment for the Second OMB Request and the USDS request but did not commit to producing any

documents by a date certain. Id. ¶ 94. CREW sent follow-up letters to OMB on February 7 and February 11, requesting the records by March 1 in advance of the March 14 expiration of the current continuing resolution to fund the federal government. Id. ¶¶ 95, 99, 100. Then, on February 14, OMB granted expedited treatment for the First OMB Request as well. Id. ¶ 100.

Although OMB initially agreed to process the USDS request and granted it expedited treatment, it has since done an about face. After CREW sued, the government suggested that OMB had inadvertently accepted the USDS request. See Opp'n at 8–9 n.2. It further indicated that USDS had been reorganized as a “free-standing component of EOP that reports to the White House Chief of Staff.” Id. “As a result,” the government posits, “USDS is not subject to FOIA.” Id. The government confirmed at oral argument on CREW’s motion that neither OMB nor USDS itself intend to process the USDS request on that ground. Rough Tr. 3:23–4:4.

E. Procedural History

On February 20, CREW filed suit against Defendants USDS; John Doe, in his official capacity as Administrator of the U.S. DOGE Service; Elon Musk, in his official capacity; the Office of Management and Budget (“OMB”); Russell Vought, in his official capacity as Director of OMB; and the National Archives and Records Administration (“NARA”). CREW’s complaint includes three counts. Count One contends that Defendants violated FOIA by failing to expeditiously process CREW’s requests and timely release all requested records. Compl. ¶¶ 107–113. Count Two alleges that USDS has “unlawfully deleted or failed to preserve federal records” and that Defendants’ failure to initiate an enforcement action under the Federal Records Act (“FRA”) as a result violates the Administrative Procedure Act. Compl. ¶¶ 114–122. Count Three seeks a writ of mandamus based on substantially the same allegations. Compl. ¶¶ 123–28.

On the same day, CREW filed a motion for preliminary injunction seeking an Order requiring OMB and USDS to fully process and produce, by March 10, 2025, all non-exempt records as to all three of its requests. CREW seeks preliminary relief because it asserts that the public and Congress need the requested information in time to inform public debate over appropriations legislation after the current continuing resolution to fund the government expires on March 14. Mot. for PI at 1. The government filed an opposition on an expedited briefing schedule. Along with its reply, CREW submitted narrowed versions of its FOIA requests that purportedly “focus on the subsets of requested records most crucial to informing the public about USDS’s operations before March 14.” Reply at 12.

The narrowed OMB requests seek: “any and all communications between employees of OMB” and “Elon Musk or Steve Davis” or “any other individual purporting to represent, work for, or communicate on behalf of Elon Musk or Steve Davis” from November 6, 2024, to the present; “all memoranda, directives, or policies regarding changes to the operations of the former U.S. Digital Service, now renamed the U.S. DOGE Service” from January 20, 2025, to the present; “all communications with the office of the Administrator of USDS regarding actual or potential changes to USDS operations after President Trump assumed office on January 20, 2025[,]” from January 20, 2025, to the present; and all ethics pledges, waivers, and financial disclosures of USDS personnel employed by USDS on January 19, 2025. Reply, Attachment A at 1.

The narrowed USDS request seeks, in each case from January 20, 2025, to the present: “all memoranda, directives, or policies regarding changes to the operations of USDS”; organizational charts for USDS; ethics pledges, waivers and financial disclosures of USDS personnel; “all communications with the office of the Administrator of the USDS regarding

actual or potential changes to USDS operations”; and “all communications between USDS personnel and personnel of any federal agency outside of the Executive Office of the President regarding that agency’s staffing levels (including any effort to reduce staffing), treatment of probationary employees, contract and grant administration, access to agency information technology systems, or the authority of USDS in relation to that agency.” *Id.* at 2.

On March 7, 2025, the Court held a hearing on CREW’s motion. The Court will now deny the motion for a preliminary injunction directing OMB and USDS to process the three requests at issue by March 10, 2025. The Court will, however, grant CREW’s request for a preliminary injunction requiring expedited processing of the USDS request. And it will direct OMB and USDS to provide an estimate of the volume of responsive records within ten days and thereafter entertain proposals from the parties for an expedited rolling production schedule. Finally, the Court will grant CREW’s request for an Order requiring the Defendants to preserve all records that may be relevant to CREW’s FOIA requests.

II. Legal Standards

“A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (alterations in original) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011)). “[I]t is especially important for the movant to demonstrate a likelihood of success on the merits.” *Nat’l Head Start Ass’n v. U.S. Dep’t of Health & Hum. Servs.*, 297 F. Supp. 2d 242, 246 (D.D.C. 2004) (citing *Davenport v. Int’l Bhd. of Teamsters*, 166 F.3d 356, 360, 366 (D.C. Cir. 1999)). A preliminary injunction is an “extraordinary” remedy and so “should not be granted unless the movant, by a

clear showing, carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948 (2d ed. 1995)).

III. Analysis

CREW’s preliminary-injunction motion, which was filed just over two weeks ago, seeks an Order requiring OMB and USDS to fully process and produce, by today, March 10, 2025, all non-exempt records as to all three of its requests. As noted, although OMB initially agreed to process the USDS Request, the government informed the Court at oral argument that neither OMB nor USDS intends to process the USDS Request on the ground that USDS is not an “agency” under FOIA. Given these late-breaking developments, the Court inquired at the hearing whether CREW’s requested relief encompasses a preliminary order directing USDS (or OMB) to process the USDS request on an expedited basis as OMB originally agreed—but perhaps not by a date certain tied to Congress’s ongoing appropriations debate. Rough Tr. 12:5–14. CREW indicated that such an order would be within scope of the relief it seeks. Id. at 12:15–17. The Court agrees. Accordingly, the Court construes CREW’s request as seeking (1) processing and production by March 10, 2025, for all three requests; and (2) expedited processing of the USDS Request in the event the Court declines to order a date certain for completing that request.

The Court will deny the motion for a preliminary injunction directing OMB and USDS to process the three requests at issue by March 10, 2025. However, finding that CREW has established a likelihood of success on the merits of its argument that USDS is subject to FOIA and that indefinite delay in the release of the requested USDS records would cause CREW and

the public irreparable harm, the Court will grant CREW’s request for expedited processing of the USDS request, consistent with how OMB is presently treating the other two requests.

A. OMB Requests

The government has already granted expedited processing of both of CREW’s requests directed to OMB. Compl. ¶¶ 94, 100. Thus, as to those requests, CREW seeks only production by a date certain—March 10, 2025. CREW seeks the same as to the USDS Request as well as expedited processing. Unfortunately for CREW, it satisfies none of the factors entitling it to preliminary relief ordering production of its OMB requests by today’s date.

1. *Likelihood of Success on the Merits/Irreparable Harm*

An agency may grant expedited processing of FOIA requests “in cases in which the person requesting the records demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). When an agency grants such a request, it “shall process as soon as practicable any request for records to which the agency has granted expedited processing.” *Id.* § 552(a)(6)(E)(iii). When, as here, a requester seeks not just expedited processing but production of its requests by a date certain, it “must do more than just show a likelihood of success that it is entitled to the expedited processing of its requests.” *Brennan Ctr. for Just. at N.Y.U. Sch. of L. v. Dep’t of Com.*, 498 F. Supp. 3d 87, 99 (D.D.C. 2020). The requester must demonstrate, instead, “a likelihood that it is entitled to have processing finished” by the requested date certain. *Id.* “In other words, it must show that under the circumstances, ‘as soon as practicable,’ means by that date.” *Id.* (citation omitted).

The Court’s analysis of likelihood of success in such circumstances “tracks closely with its evaluation of irreparable harm.” *Id.* That is so because the question boils down to whether “the records requested” will “becom[e] stale after” the requested date and thus be “of little value

to inform the public of ongoing proceedings of national importance.” Id. (quotation marks omitted) (citation omitted). The Court will therefore consider these factors together in evaluating CREW’s request for processing of the OMB requests by March 10. The Court concludes, for the same reasons, that CREW has established neither a likelihood of success on the merits that the requested information will go stale after March 10 nor irreparable harm from failing to receive the documents until after the impending appropriations process has concluded.

CREW argues that the requested records are necessary “to inform the debate about the federal government’s funding and operations” that will take place after the current continuing resolution expires on March 14, 2025, because “USDS is at the heart of a larger debate about the Trump administration’s efforts to cut federal spending.” Mot. for PI at 25, 27. Although CREW’s argument mostly sounds in generalities, CREW contends that the narrowed subset of requested records reflects on whether, for instance, “OMB will use the apportionment process or any other authorities to withhold funding to implement DOGE’s prerogatives.” Reply at 14. CREW cites statements from legislators expressing interest in this question; for instance, Representative Brendan Boyle reportedly stated: “I don’t know how in the world I could possibly make an agreement with this White House to fund anything if then, the very next day after my vote, Elon Musk can just show up and close the agency.” Id. at 6 (citing Joe Perticone & Lauren Egan, *House Dems Wonder: Should We Burn It All Down?*, *The Bulwark* (Feb. 27, 2025), <https://perma.cc/AGG7-N9RT>). At oral argument, counsel for CREW attempted to put a finer point on its argument, explaining that legislators, although aware of USDS’s effects on the federal government thus far, need to “understand more about how DOGE is working, how it’s deciding to make the cuts it’s making, how very crucially it’s exercising influence and directing the actions of agencies.” Rough Tr. 22:12–15.

The Court takes the general point that members of Congress, in exercising their responsibilities as appropriators, should know what USDS is up to. And while the Court agrees that the requested records are important, it disagrees that they are so central to the impending appropriations process as to require their production by March 10, 2025. CREW acknowledges that the most likely outcome following the expiration of funding on March 14 is the passage of another continuing resolution to fund the government or a government shutdown, not individual appropriations bills covering each agency. Rough Tr. 25:7–10. The Court highly doubts that the specifics of how USDS has interacted thus far with OMB is crucial to the determination whether to continue funding the entire federal government. As CREW concedes, legislators already have sufficient information to conclude that USDS will likely influence OMB’s distribution of appropriated funds. Rough Tr. 21:8–13. Indeed, from the President’s Executive Orders, news reports, and USDS actions thus far already detailed by the Court, any rational legislator could conclude that USDS’s priorities include reducing the size of the federal workforce and that it will likely take further action to carry out those objectives.

Beyond this, the Court doubts that legislators urgently require, for example, communications between OMB employees and Musk, Steve Davis, and their representatives, or other communications or memoranda concerning “changes to the operations of” USDS to decide whether to continue funding the government. Reply, Attachment A at 1. To the extent legislators are concerned enough about USDS influence to shut down the government, they may already do that, and CREW provides few examples of specific information included in the requested records that might be relevant to that broad decision. And given that Congress is not considering whether to fund USDS itself, CREW’s request for ethics pledges or waivers and financial disclosure forms of USDS personnel seems particularly far afield. See id.

When pressed at oral argument, CREW indicated that legislators most pressing want to know which programs or agencies have been prioritized for further cuts. Rough Tr. 30:14–25. Such information, in CREW’s view, may lead a legislator who disapproves “not to vote for a” continuing resolution to keep funding the government. *Id.* at 30:1–2. But the Court discerns no limiting principle preventing this argument from requiring the production of all documents relevant to the executive branch’s priorities ahead of every single congressional appropriations vote. To be sure, the structure and influence of USDS appear to be unprecedented, and those factors, along with USDS’s outsized influence on the federal government, support expedited processing of these requests, as OMB has already acknowledged. Congress should certainly receive information about the structure of USDS in time to meaningfully respond to it, but CREW has provided little connective tissue between the requested records and the specific decision whether to continue funding the government after March 14. Congress’s appropriations power is continuous—as CREW acknowledges, Rough Tr. 18:9–11—and it may respond to information received about USDS’s operations through the passage of appropriations legislation after March 10.

Although some funding decisions may not be easily wound back, the appropriations process is much more fluid than one-off events that have very occasionally given rise to “date certain” preliminary injunctions in FOIA cases—such as a decennial census, *see Brennan Ctr.*, 498 F. Supp. 3d at 100; a congressional election, *Wash. Post v. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006); and a presidential impeachment proceeding, *Ctr. for Pub. Integrity v. U.S. Dep’t of Def.*, 411 F. Supp. 3d 5, 12 (D.D.C. 2019). Moreover, Congress’s appropriations power is not the only tool available to it to exert control over USDS. Although Congress as a whole has thus far shown no inclination to do so, it may pass other types of

legislation, for instance, or hold hearings and issue subpoenas to learn more about the department's structure and operations. The Court agrees that Congress and the public must receive the requested information "in a timely fashion" such that they can participate in these "ongoing public and congressional debates about issues of vital national importance," including so that Congress may exert its means of influence over USDS if it so chooses. Protect Democracy Project, Inc. v. U.S. Dep't of Def., 263 F. Supp. 3d 293, 301 (D.D.C. 2017) (citations omitted). But nothing about the impending opportunity to act on March 14 makes it so exceptional as to warrant the rare relief of immediate processing of the OMB Requests.

And the handful of cases in which courts in this district have ordered production by a date certain do not support CREW's position. In Brennan Center v. Department of Commerce, for instance, the requesters sought information related to the use of citizenship data to calculate the 2020 state-population totals used to apportion the United States House of Representatives. 498 F. Supp. 3d at 94. The court ordered production of the records by January 11, 2021, in time to use them by January 25, 2021—the date on which the 2020 census and reapportionment process would conclude. Id. at 100, 103. The court explained that after completion of the reapportionment process, "the value of the information sought by the Brennan Center to inform the public about these matters would be materially lessened or lost." Id. at 100.

In American Oversight v. United States Department of State, 414 F. Supp. 3d 182 (D.D.C. 2019) (Cooper, J.), the requester sought communications between (1) senior State Department officials and Rudolph W. Giuliani, President Trump's personal lawyer, and (2) State Department officials and the White House regarding the May 2019 recall of the former U.S. Ambassador to Ukraine. Id. at 183. This Court ordered production by a date certain because the requested records "potentially go to the heart of one of the issues that the Congress is

considering” in an ongoing impeachment inquiry: “Mr. Giuliani’s alleged efforts to enlist Ukraine’s assistance in furthering the President’s reelection prospects.” Id. at 186. Thus, the Court ordered the records to be produced in time for them to be used “while the impeachment process is ongoing.” Id. at 187.

Similarly, in Center for Public Integrity v. United States Department of Defense, 411 F. Supp. 3d 5 (D.D.C. 2019), a fellow court in this district ordered production of communications between DOD and OMB concerning DOD’s Ukraine Security Assistance Initiative that were closely related to the same ongoing impeachment inquiry. Id. at 7.. The court reasoned that “the primary value of the information lies in its ability to inform the public of ongoing proceedings of national importance”—the impeachment proceedings—and anything received after those proceedings concluded would be “stale information . . . of little value.” Id. at 12. Employing similar reasoning, another court in this district ordered production of relevant records by a date certain ahead of an upcoming congressional election. Wash. Post, 459 F. Supp. 2d at 75.

None of these cases supports production of the requested records here by March 10, even if that were possible.¹ Each case involved a singular event—a census, congressional election, or impeachment process—with an end date, after which the requested records would no longer have anything but “historical value.” Brennan Ctr., 498 F. Supp. 3d at 101. Here, on the other hand, as just explained, Congress’s ability to pass appropriations legislation and otherwise act in

¹ True, one court in this district ordered production of records relating to the Bush administration’s policy of conducting surveillance of domestic communications without prior authorization by a date certain for use in congressional debates “surrounding the legality of the Administration’s warrantless surveillance program.” Elec. Priv. Info. Ctr. v. Dep’t of Just., 416 F. Supp. 2d 30, 41 (D.D.C. 2006). But that case largely relied on a “presumption of agency delay raised by failing to respond to an expedited request within twenty days,” id. at 39, which the D.C. Circuit has since called into question in Citizens for Responsibility and Ethics in Washington v. Federal Election Commission, 711 F.3d 180, 189 (D.C. Cir. 2013).

response to USDS’s activities will not evaporate on March 14. Any information received about USDS will remain valuable and informative to congressional leaders, and the public in conversation with their representatives, as long as USDS exists—which it will, as it stands, for at least 18 months. 90 Fed. Reg. at 8441. Moreover, in each case, the link between the requested records—e.g., the government’s use of citizenship data and the reapportionment process—was much closer than the tenuous connection between the records requested and the appropriations process here.

CREW counters that “continued value of the information for other purposes [does] not diminish its value for the movant’s purposes.” Reply at 17. True. In Brennan Center, for instance, the court rejected the argument that the requested records could continue to inform public debate leading up to the 2030 census because “the debate the Brennan Center, and the public, are focused on concerns *this* census and *this* reapportionment process.” 498 F. Supp. 3d at 102. But the debate surrounding USDS is not so limited. CREW seeks the information so that the public and Congress may respond to USDS’s activities in a timely and ongoing manner, not so that they may do so only during the appropriations process taking place this week and thereafter wash their hands of USDS. CREW seeks the requested records so that Congress, with public input, may consider information about USDS’s structure and influence over OMB when making funding decisions. The information will not go “stale” for CREW’s own asserted purpose after March 10—to the contrary, it will likely remain valuable and relevant to all congressional funding decisions in the near future. This is a far cry from the circumstances at issue in Brennan Center and other cases where FOIA plaintiffs have obtained “date certain” preliminary injunctions, where information relevant to a particular event will have only “historical value” to future events. Id. at 101.

For these reasons, the Court concludes that CREW has not established a likelihood of success on the merits that it is entitled to processing of the OMB Requests by March 10. The Court's conclusion in this regard also disposes of CREW's claim of irreparable harm, as its two arguments largely overlap. See Mot. for PI at 25–29.

2. *The Balance of the Equities and the Public Interest*

These two factors “merge when the Government is the opposing party.” FBME Bank Ltd. v. Lew, 125 F. Supp. 3d 109, 127 (D.D.C. 2015) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)). Here, the balance of the equities and the public interest favor the government at least as to the request for production by March 10. It would be practically impossible for the government to process the requests by the date of this opinion, especially given that there are 35 expedited requests at OMB in the queue ahead of CREW's. See Opp'n, Decl. of Heather V. Walsh, ¶ 17. And since the Court has already concluded that CREW is not entitled to production by the requested date certain, no interest outweighs the insurmountable hardship to Defendants and other requesters.

B. USDS Request

The Court next turns to the USDS Request, which is differently situated from the OMB Requests because the government has declined to process this request at all. The Court concludes that CREW has established a likelihood of success on the merits that: (1) USDS is an agency subject to FOIA; and (2) its request is entitled to expedited processing consistent with the treatment provided to the two OMB requests. CREW has also shown that indefinite delay in the release of the requested USDS records would cause CREW irreparable harm. It is therefore entitled to preliminary relief ordering USDS to process the request on an expedited basis. For

the reasons already discussed, however, the Court will not order processing of the USDS request by March 10.

1. *Likelihood of Success on the Merits*

(1) USDS is Likely Subject to FOIA

The parties dispute whether USDS is an agency subject to FOIA. Mot. for PI at 21–25; Opp’n at 8–9 n.2. FOIA defines “agency” as “includ[ing] any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President).” 5 U.S.C. § 552(f)(1). Recall that USDS was “established in the Executive Office of the President.” 90 Fed. Reg. at 8441. To conclude that “an EOP unit is subject to FOIA,” there must be “a finding that the entity in question ‘wielded substantial authority independently of the President.’” Citizens for Resp. & Ethics in Wash. v. Off. of Admin., 566 F.3d 219, 222 (D.C. Cir. 2009) (citation omitted). If instead the unit’s “sole function is to advise and assist the President,” it is not an agency. Alexander v. FBI, 456 F. App’x 1, 1–2 (D.C. Cir. 2011) (quoting Kissinger v. Reps. Comm., 445 U.S. 136, 156 (1980)). The Court concludes that, on this preliminary record, CREW will likely succeed in demonstrating that USDS wields the requisite substantial independent authority.

Three sources of information point in this direction. First, the relevant executive orders appear to endow USDS with substantial authority independent of the President. The initial executive order “establishes the Department of Government Efficiency *to implement the President’s DOGE Agenda*, by modernizing Federal technology and software to maximize governmental efficiency and productivity.” 90 Fed. Reg. at 8441 (emphasis added). That order appears to give USDS the authority to implement the DOGE Agenda, not just to advise the

President in doing so. See Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Dep't of Lab., No. CV 25-0339 (JDB), 2025 WL 542825, at *3 (D.D.C. Feb. 14, 2025) (noting that USDS's mission as set forth in the Executive Order "is to 'implement' the President's modernization agenda, not simply to help him form it"). Moreover, President Trump's subsequent executive order directs that agencies "shall not fill any vacancies for career appointments that the DOGE Team Lead assesses should not be filled, unless the Agency Head determines the positions should be filled." 90 Fed. Reg. at 9669. This order grants the USDS Team Lead the power to keep vacant career positions open unless an agency overrides their decision. And the order appears to contemplate that this authority will be exercised independent of the President.

Second, Musk and the President's public statements indicate that USDS is in fact exercising substantial independent authority. At its inception, President Trump trumpeted that USDS would have the power to "to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies." Donald J. Trump (@realDonaldTrump), X (Nov. 13, 2024, 6:21 AM), <https://x.com/realDonaldTrump/status/1856658569124262092>. Musk, too, indicated that USDS would take aggressive action to pursue its agenda, explaining that USDS was focused on three areas of reform: "regulatory rescissions, administrative reductions and cost savings." Musk & Ramaswamy, supra. In the same article, Musk and Ramaswamy also suggested that USDS would have the power to identify regulations due for the chopping block. Id. More recently, Musk noted publicly that he plans to use USDS to reduce the federal budget by \$2 trillion. Gangitano, supra. Presumably, such a staggering result would require more than mere advice. Musk also took credit for the cuts at USAID, boasting: "We spent the weekend feeding USAID into the wood chipper." Elon Musk (@elonmusk), X (Feb. 3, 2025, 1:54 AM), <https://x.com/elonmusk/status/18863073168042639>

79. And in recent weeks, President Trump has praised Musk and DOGE for their efforts, noting that Musk “found hundreds of billions of dollars worth of fake contracts” and gave orders to “[c]ut 50%, 60%, 70%.” Taylor Penly, *Trump praises ‘real patriot’ Elon Musk for ‘opening a lot of eyes’ with DOGE*, Fox Business, <https://www.foxbusiness.com/media/trump-praises-real-patriot-elon-musk-opening-lot-eyes-doge> (Mar. 9, 2025). The President also reportedly “ordered cabinet secretaries to cooperate with DOGE on staffing.” *Id.* These statements and reports suggest that the President and USDS leadership view the department as wielding decision-making authority to make cuts across the federal government.

Third, USDS’s actions to date demonstrate its substantial authority over vast swathes of the federal government. Musk’s just-noted statement attributing the decimation of USAID to USDS was contemporaneous with the placement of nearly all USAID employees on administrative leave. *See Am. Foreign Serv. Ass’n*, 2025 WL 573762, at *2. The Court need not stretch to conclude that USDS likely drove the charge to shutter USAID, and conducting such mass firings evidently requires substantial authority. USDS also claimed to have eliminated 104 DEI-related contracts with the federal government, saving \$1 billion, and saving another \$900 million through the termination of 89 of the Department of Education’s contracts. Creitz, *supra*; Montague & Goldstein, *supra*. Canceling any government contract would seem to require substantial authority—and canceling them on this scale certainly does. Again, USDS reportedly is leading the charge on these actions, not merely advising others to carry them out. From these reports, the Court can conclude that USDS likely has at least some independent authority to identify and terminate federal employees, federal programs, and federal contracts. Doing any of those three things would appear to require substantial independent authority; to do all three surely does.

USDS has also gained access to sensitive data and payment systems across federal agencies, and potentially to classified information, even over the objection of officials within those agencies. 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/usaid-security-chiefs-put-on-leave-after-trying-to-stop-musks-team-from-accessing-classified-info-officials-say>. And USDS appears likely to have been responsible for the Fork in the Road deferred resignation offer sent to all federal employees, which mirrors Musk's prior actions at Twitter. Steakin & Romero, *supra*. Musk also directed the sending of emails to federal employees requiring them to respond with weekly lists of five bullet points summarizing their accomplishments. Alex Horton & Warren P. Strobel, *Musk's '5 Things' Email Mandate A 'Nightmare' Risk, Cyber Officials Say*, <https://www.washingtonpost.com/national-security/2025/03/07/doge-emails-cyber-command-intel/> (Mar. 7, 2025). USDS's power to override agency officials, swiftly gain access to agency systems, and impose job requirements on federal employees all further suggest substantial independent authority.

To determine whether an agency is subject to FOIA, courts also consider “whether it has a self-contained structure.” Meyer v. Bush, 981 F.2d 1288, 1293 (D.C. Cir. 1993). Per its establishing order, USDS has a defined staff: the USDS Administrator, a temporary organization operating within USDS, and DOGE teams that are embedded outside USDS within each executive branch agency. 90 Fed. Reg. at 8441. USDS also retains the authority to consult with agency heads regarding the selection of the outside USDS teams, thereby exerting influence over employees across federal agencies.

From all this, the Court concludes that in practice, USDS is likely exercising substantial independent authority much greater than other EOP components held to be covered by FOIA.² For instance, the Circuit held that the Office of Science and Technology exercised substantial independent authority because of its role evaluating federal research programs and advising the President on scientific policy. Soucie v. David, 448 F.2d 1067, 1073–75 (D.C. Cir. 1971). Similarly, the Circuit recognized that the Council on Environmental Quality, a three-member unit within EOP, was an agency subject to FOIA because it too was “independently authorized to evaluate federal programs,” by coordinating federal programs related to environmental quality, issuing guidelines to federal agencies on environmental impact statements, and issuing regulations for implementation of NEPA’s procedural provisions. Pac. Legal Found. v. Council on Env’t Quality, 636 F.2d 1259, 1262–63 (D.C. Cir. 1980). Based on its actions so far, USDS appears to have the power not just to evaluate federal programs, but to drastically reshape and even eliminate them wholesale.

The Court recognizes that much, though by no means all, of the evidence supporting its preliminary conclusion that USDS is wielding substantial independent authority derives from media reports. Yet, the Court finds it meaningful that in its briefing and at oral argument, USDS has not contested any of the factual allegations suggesting its substantial independent authority. To be sure, USDS claims it declined to make this argument because CREW’s “motion fails for multiple independent reasons.” Opp’n at 20 n.4. But, as the Court’s granting of partial

² Although President Trump recently told Cabinet secretaries that “that they — not billionaire adviser Elon Musk and his team — had control over which workers their agencies fire,” that statement standing alone cannot overcome all the other evidence of USDS’s substantial independent authority just discussed. Jeff Stein & Dan Diamond, *Trump Touted Sweeping Tariff, DOGE Plans — Then Adjusted as Backlash Grew*, Wash. Post, <https://www.washingtonpost.com/business/2025/03/09/trump-tariffs-doge-politics/> (Mar. 9, 2025).

preliminary relief indicates, USDS did not have a slam-dunk argument after all. And USDS cannot escape the consequences of refusing its opportunity to refute any of CREW's allegations suggesting that USDS is acting with substantial independent authority.³ The Court's conclusion accords with the observations made by its colleague in another case in this district, who opined that USDS's work in "coordinating teams across multiple agencies with the goal of reworking and reconfiguring agency data, technology, and spending" "is not the stuff of mere advice and assistance." Am. Fed'n of Lab. & Cong. of Indus. Orgs., 2025 WL 542825, at *3. For all these reasons, the Court concludes that USDS likely qualifies as an agency for the purposes of FOIA.

(2) CREW is Entitled to Expedited Processing of the USDS Request

The Court next turns to whether CREW has established a likelihood of success on the merits on whether it is entitled to expedited processing of the USDS Request. Here too, CREW comes out ahead.

"A party seeking expedited FOIA processing must establish a compelling need or show that he qualifies under another ground set out by the relevant agency for such treatment."

Brennan Ctr., 498 F. Supp. 3d at 97 (quotation marks omitted); 5 U.S.C. § 552(a)(6)(E)(i)(I)–(II).

Under the relevant provision, a "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); see 5 C.F.R.

³ Indeed, the Court wonders whether this decision was strategic. In other briefing before courts in this district, USDS has argued that it qualifies as an agency—for instance, for purposes of the Economy Act—when it suits it. See Am. Fed'n of Lab. & Cong. of Indus. Organizations, 2025 WL 542825, at *3. Thus "USDS becomes, on defendants' view, a Goldilocks entity: not an agency when it is burdensome but an agency when it is convenient." Id.

§ 1303.40(e)(1)(ii) (same). The applicable regulations further provide that requests will be expedited where OMB determines that “[t]here are possible questions, in a matter of widespread and exceptional public interest, about the Government’s integrity which affect public confidence.” 5 C.F.R. § 1303.40 (e)(1)(iv).

CREW sought expedited processing of the USDS request—which, recall, OMB initially granted—on the grounds of both urgency and widespread public interest. USDS Request at 2. The USDS Request easily qualifies for expedited treatment under either test. As to the first, CREW is primarily engaged in disseminating information to the public and “routinely disseminates information obtained through FOIA to the public,” including on its website. *Id.* at 2, 9. Next, in considering whether “urgency to inform the public concerning actual or alleged federal government activity” exists, courts consider three factors: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” Protect Democracy Proj. v. United States Dep’t of Just., 498 F. Supp. 3d 132, 139 (D.D.C. 2020).

Here, USDS’s structure and operations doubtless “concern a matter of current exigency” to the public. As just explained, USDS has been the subject of numerous news articles cited in this opinion and in the parties’ briefing—at least fifty, by the Court’s count. This “widespread media attention” suggests a matter of urgency. Protect Democracy Proj., 498 F. Supp. 3d at 140; see 28 C.F.R. § 16.5(e)(3) (“The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.”). Second, a delay would “compromise a significant recognized interest,” as discussed further below. If production of the USDS records is substantially delayed, the public and

Congress will be “precluded . . . from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of” a high-profile government action.

Protect Democracy Proj. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299 (D.D.C. 2017) (ellipsis in original). That conclusion is further bolstered by the Court’s irreparable harm analysis, see infra at 31–34. Third, there is no doubt that CREW’s request concerns federal government activity.

For essentially the same reasons, USDS’s activities qualify as “a matter of widespread and exceptional public interest.” Again, the many news articles on the subject indicate that USDS’s operations represent “a matter of immediate concern to the American public, given extensive media interest[.]” Ctr. for Pub. Integrity v. United States Dep’t of Def., 411 F. Supp. 3d 5, 11 (D.D.C. 2019). And the “more than fifty recent articles” cited by the parties is “considerably more than has sufficed in other cases[.]” Brennan Ctr., 498 F. Supp. 3d at 97. Moreover, reports that USDS personnel have gained access to sensitive data and payment systems, classified information without the appropriate clearances, and operate in secrecy using auto-deleting messaging apps like Signal, each call into question “the Government’s integrity, which need not suggest any dishonesty or intentional wrongdoing on Defendants’ part.” Id. at 97 (quotation marks omitted); see Schleifer & Ngo, supra (noting USDS staffers’ Signal use); Knickmeyer & Lee, supra (describing USAID officials’ objections to permitting USDS staff without the appropriate clearance to access classified information and their subsequent termination).

Accordingly, CREW is likely to succeed on the merits of its request for expedited processing of the USDS Request. Indeed, the agency’s prior decision to grant expedited treatment of this request only confirms the Court’s conclusion. See Compl. ¶ 94.

2. Irreparable Harm

Although the Court has concluded that CREW is entitled to expedited processing of the USDS Request, it cannot stop there. Because CREW seeks preliminary relief, the Court must also consider whether delay in processing its request on an expedited basis would cause irreparable harm. CREW has made that showing.

“The Supreme Court has observed that a public informed about its government’s actions is ‘a structural necessity in a real democracy.’” Brennan Ctr., 498 F. Supp. 3d at 101 (quoting Nat’l Archives & Recs. Admin. v. Favish, 541 U.S. 157, 172 (2004)). *Timely* awareness is equally necessary because “stale information is of little value.” Payne Enters. v. United States, 837 F.2d 486, 494 (D.C. Cir. 1988). Thus, “in a few rare FOIA cases” involving “ongoing proceedings of national importance,” courts in this district “have concluded that a delay in processing of a FOIA request would cause irreparable harm.” Brennan Ctr., 498 F. Supp. 3d at 101 (D.D.C. 2020) (citing Ctr. for Public Integrity, 411 F. Supp. 3d at 11–13 (collecting cases)).

If the Court does not grant preliminary relief to CREW, records responsive to the USDS request will not be released anytime soon, if ever. As the government stated at oral argument, USDS is not currently processing CREW’s request because it does not believe itself to be an agency. Rough Tr. 4:1–4. The time it would take to litigate that question on the merits and thereafter begin processing would likely result in a substantial delay of years, for all practical purposes imposing an indefinite delay. By that time, the Court suspects that the information may indeed be “stale,” or at least, significantly less useful than it once was. Accordingly, “the potential for irreparable harm under these circumstances exists because ongoing public and congressional debates about issues of vital national importance cannot be restarted or wound back.” Protect Democracy Proj., 263 F. Supp. 3d at 301 (quotation marks omitted).

Many of the facts establishing CREW’s entitlement to expedited processing, as just discussed, likewise indicate that an indefinite delay would result in irreparable harm. The USDS records sought are “directly tied to [] current, ongoing” actions by USDS, which “are of the highest national concern.” Ctr. for Pub. Integrity, 411 F. Supp. 3d at 12. The narrowed requests seek, for instance, “communications between USDS personnel and personnel of any federal agency outside of the Executive Office of the President regarding that agency’s staffing levels (including any effort to reduce staffing).” Reply, Attachment A at 1. Congressional leaders have repeatedly expressed interest in similar questions, sending letters to the White House Chief of Staff “seeking information about Mr. Musk’s role, USDS staff, what agencies USDS has accessed, and whether USDS has terminated or directed the termination of government employees[.]” Reply at 8. And USDS is reportedly considering further large-scale layoffs across federal agencies. Stein & Diamond, *supra*. The information sought in the USDS request is thus urgently needed to inform “debates about issues of vital national importance.” Protect Democracy Proj., 263 F. Supp. 3d at 300.

To be sure, the Court previously concluded that more information on USDS was not crucial to the specific upcoming appropriations process following the expiration of the continuing resolution on March 14. But that is so because, although irreparable harm will not result if the requested records are not *immediately* released, there is a point in the not-too-distant future when continued delay will indeed impose such harm. And taking a broader view of the tools available to it, Congress needs the requested information in a timely fashion to use it effectively.

The electorate also requires the expeditious production and publication of this information. Voters may seek to influence congressional representatives to take action

responsive to USDS at any point along the road. And “[t]he dissemination of information” sought by CREW would contribute “to an informed electorate capable of developing knowledgeable opinions and sharing those knowledgeable opinions with their elected leaders.” Ctr. for Pub. Integrity, 411 F. Supp. 3d at 12. But the information will only be useful to the electorate so long as USDS remains a topic of current national importance. Information released years down the road would come too late. At that point, further details about USDS’s operations and communications with federal agencies likely would be only “of historical value.” Brennan Ctr., 498 F. Supp. 3d at 101.

“Moreover, absent an expedited response to Plaintiff’s FOIA request, it is not clear to the Court that the public” or Congress “would otherwise have access to this relevant information.” Ctr. for Pub. Integrity, 411 F. Supp. 3d at 13. Congressional subpoenas for Musk to testify about USDS’s work have already been blocked, and the Court sees no reason to think they will ever succeed. Ivan Pereira & Jay O’Brien, *Republicans Block Musk from Congressional Subpoena as DOGE Continues to Access Government Data*, ABC News (Feb. 5, 2025), <https://abcnews.go.com/Politics/republicans-block-musk-congressional-subpoena-doge-continues-access/story?id=118487749>. To be sure, this indicates that not all Members of Congress, nor even a majority, desire access to the requested documents. But that does not change CREW’s and the public’s important interest in obtaining these records and discussing them with the Members that do.

A few final points bear mentioning. To begin, USDS’s actions to date have proceeded remarkably swiftly. In the less than two months since President Trump’s inauguration, USDS has reportedly caused 3% of the federal civilian workforce to resign, shuttered an entire agency, cut billions of dollars from the federal budget, canceled hundreds of government contracts,

terminated thousands of federal employees, and obtained access to vast troves of sensitive personal and financial data. USDS appears able to do this in part because of its access to many agency's IT systems, which help the department carry out its objectives at warp speed. 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/usaids-trump-musk-destruction-may-have-broken-law>. But the rapid pace of USDS's actions, in turn, requires the quick release of information about its structure and activities. That is especially so given the secrecy with which USDS has operated. For instance, the name of the USDS Administrator was not even released until February 25, more than month into the new administration. Ryan J. Foley, *Who Is Amy Gleason, The Person Named DOGE's Acting Administrator By The White House?*, AP News (Feb. 25, 2025), <https://apnews.com/article/doge-acting-administrator-amy-gleason-65af638e646fdd5dd6d5fcc5cc04a2e7>. Nor does USDS appear to have released much public information about its other personnel.⁴ See Yeganeh Torbati, et al., *Who's working for Elon Musk's DOGE?*, Wash. Post (Mar. 5, 2025), <https://www.washingtonpost.com/business/2025/02/14/doge-employees-list-staff-elon-musk/> (noting that exact titles, precise roles, and even which agencies some USDS personnel work for remains unknown). Moreover, the authority exercised by USDS across the federal government and the dramatic cuts it has apparently made with no congressional input appear to be unprecedented. All these factors together bolster the Court's conclusion that a years-long delay in processing the USDS Request would cause irreparable harm.

⁴ OPM regulations require that information like name and position title of most federal employees be available to the public. 5 C.F.R. § 293.311(a).

3. *The Balance of the Equities and the Public Interest*

The last two preliminary-injunction factors also weigh in CREW’s favor. These considerations need not detain the Court for long. Not only would the public benefit from participation in the “ongoing debate” discussed above, but an agency’s compliance with a mandatory statutory regime is presumably always in the public interest. Protect Democracy Proj., 263 F. Supp. 3d at 301. And given that USDS is apparently not processing any other requests, the Court doubts it would impose much of a burden on the department to expediently process CREW’s request.

CREW is therefore entitled to a preliminary injunction directing the expedited processing of the USDS Request. The Court will not order USDS to process the request by March 10, however, for the same reasons it declined to order production by the same date certain for the OMB Requests. See supra at 15–22.

C. Preservation Order

Finally, CREW seeks a records preservation order pending litigation. Mot. for PI at 38–40. “Federal courts have the inherent power to issue orders preserving information relevant to the claims and defenses brought before them.” United States ex rel. Staggers v. Medtronic, Inc., No. 1:15-CV-392-TSC-RMM, 2022 WL 4078969, at *2 (D.D.C. Sept. 6, 2022). CREW asks the Court to either exercise its inherent authority to enter a preservation order, or to enter such an order as a form of preliminary relief.

According to CREW, such an order is necessary because—despite Mr. Musk’s insistence that all USDS’s actions are “maximally transparent” and that he doesn’t “know of a case where an organization has been more transparent than the Doge organization,” *Elon Musk Appears With Trump And Tries to Claim ‘Doge’ Team Is Transparent*, Guardian (Feb. 11, 2025), <https://www.>

the guardian. com/us-news/2025/feb/11/elon-musk-trump-doge—USDS personnel “are not operating transparently and may well be ignoring their preservation obligations under the FRA.” Mot. for PI at 39. CREW points first to USDS’s use of non-governmental systems to conduct official business. For instance, USDS employees acknowledged using Signal, an encrypted messaging app with an auto-delete function, during the presidential transition period and into the new administration, as recently as February 27. Schleifer & Ngo, *supra*; Patterson, *supra*. Musk has also used the social media platform X to solicit job applications for USDS and to poll the public about courses of action that USDS is considering. 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>.

CREW also notes reports that USDS employees have refused to identify themselves when requested to do so by career officials, further suggesting that the agency is operating with unusual secrecy. Sarah Cahalan et al., *The People Carrying Out Musk’s Plans at DOGE*, N.Y. Times (Mar. 6, 2025), <https://www.nytimes.com/interactive/2025/02/27/us/politics/doge-staff-list.html>. Indeed, Musk tweeted that a poster who published the names of USDS employees “committed a crime.” Peter Suciu, *supra*. USDS also allegedly installed an “illegally connected server” at the U.S. Office of Personnel Management’s headquarters to store personally identifiable information about executive branch employees. Dell Cameron, *Federal Workers Sue to Disconnect DOGE Server*, WIRED (Feb. 4, 2025), <https://www.wired.com/story/federal-workers-sue-over-doge-server/>.

And although CREW requested “assurances of FRA compliance” from USDS, Defendants apparently did not respond. Mot. for PI. At oral argument, counsel for the government likewise was unable to provide such assurances to the Court. Rough Tr. 76:7–16.

This evidence gives rise to the possibility that representatives of the Defendant entities may not fully appreciate their obligations to preserve federal records. This is especially true for USDS, many of whose staffers are reported to have joined the federal government only recently and, to put it charitably, may not be steeped in its document retention policies. That being said, the Court need not make a finding of bad faith in order to enter a document preservation order. See CREW v. Off. of Admin., 593 F. Supp. 2d 156, 165 (D.D.C. 2009) (issuing preservation order without finding of bad faith). Accordingly, the Court will enter a preservation order as to all documents responsive to CREW's three FOIA requests pursuant to its inherent authority. Medtronic, 2022 WL 4078969, at *2.

IV. Conclusion

For these reasons, the Court will grant in part and deny in part CREW's motion for a preliminary injunction. As set forth in the accompanying Order, the Court will direct USDS to process CREW's request on an expedited basis but will stop short of ordering production of either the USDS or OMB Requests by March 10, 2025.

In accordance with its supervisory role, however, the Court will direct the government to file a status report by March 20, 2025, including the estimated number of documents responsive to CREW's three requests. The Court will further order the parties to meet and confer regarding a proposed processing and production timeline and to file by March 27 a joint status report proposing a schedule for expedited processing and rolling production of responsive records.



CHRISTOPHER R. COOPER
United States District Judge

Date: March 10, 2025

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

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DOGE SERVICE, et al.,

Defendants.

Case No. 25-cv-511 (CRC)

OPINION AND ORDER

Citizens for Responsibility and Ethics in Washington (“CREW”) filed two Freedom of Information Act (“FOIA”) requests with the Office of Management and Budget (“OMB”) and another request (the “USDS Request”) with the newly formed United States DOGE Service (“USDS”) seeking information about USDS. This unit within the Executive Office of the President has reportedly led the charge on personnel cuts across federal agencies, eliminated government contracts, and sent teams of employees to federal agencies to gain access to sensitive and classified data. CREW sought preliminary relief ordering production of all three of its requests by March 10, 2025, to enable Congress to use the requested information in its upcoming appropriations cycle.

On March 10, 2025, the Court declined to order production of any of CREW’s requested records requests by that date. But after the government indicated that it would not process the USDS Request at all, based on its view that USDS is not subject to FOIA, the Court entered a preliminary injunction finding that USDS is likely subject to FOIA and ordering production of the USDS Request based on an expedited schedule to be determined. The government now requests reconsideration of that injunction. Because the government’s arguments could all have

been raised during the last round of briefing, none of them supplies a basis for reconsideration. USDS has also failed to show that it will experience an irreparable injury if it simply begins to process the USDS Request in accordance with the Court’s order, without having to yet disclose any records, while merits briefing proceeds. The Court will, however, grant USDS a modest extension of the deadlines set forth in its prior order to ensure that USDS can provide meaningful responses to CREW’s inquiries.

I. Background

The Court incorporates the factual and procedural background from its memorandum opinion partially granting CREW’s motion for a preliminary injunction. See Citizens for Resp. & Ethics in Washington v. U.S. Doge Serv. (“CREW I”), No. 25-cv-511 (CRC), 2025 WL 752367, at *1–6 (D.D.C. Mar. 10, 2025). To briefly summarize: Since the start of President Trump’s second term, USDS, a newly formed unit within the Executive Office of the President, has reportedly helmed efforts to drastically reduce the size and budget of the federal government. Seeking to learn more about this novel organization, CREW lodged two FOIA requests with OMB and one with USDS from December 2024 to January 2025. Then, in February 2025, CREW filed a motion for preliminary relief requiring OMB and USDS to fully process and produce, by March 10, 2025, all non-exempt records as to all three of its requests. Id. at *5. The Court granted CREW’s motion in part and denied it in part. First, the Court held that CREW was not entitled to processing of any of the three requests by March 10, reasoning that the requested information “will not go ‘stale’ for CREW’s own asserted purpose after March 10—to the contrary, it will likely remain valuable and relevant to all congressional funding decisions in the near future.” Id. at *10.

The Court did, however, enter a preliminary injunction ordering expedited processing of the USDS Request. At oral argument, the government indicated that it did not plan to process that request at all based on its view that “USDS is not subject to FOIA.” Id. at *5. Contrary to the government’s position, the Court concluded that USDS is likely subject to FOIA because it is endowed with and is apparently exercising “substantial authority independent of the President.” Id. at *11. Moreover, the relevant statutory factors likely entitled CREW to expedited processing of its request—consistent with the treatment OMB provided to its two requests. Id. at *13–14.

Next, as required to award preliminary relief, the Court considered whether a delay in processing while the case was litigated on a standard timeline would cause CREW irreparable harm. The Court concluded that CREW had made the necessary showing, reasoning that “Congress needs the requested information in a timely fashion to use it effectively,” as does the electorate, who “may seek to influence congressional representatives to take action responsive to USDS at any point along the road.” Id. at *15. And “the potential for irreparable harm under these circumstances exist[ed] because ongoing public and congressional debates about issues of vital national importance cannot be restarted or wound back.” Id. at *14 (citation omitted). Again, these findings were consistent with OMB’s implicit determination when it agreed to expedite CREW’s request to it. The Court also exercised its inherent authority to enter a preservation order as to all documents responsive to CREW’s three FOIA requests. Id. at *17. In accordance with its supervisory role, the Court directed the government to file a status report by March 20, 2025 setting forth “the estimated number of documents responsive to CREW’s three requests.” Id. at *17. The Court further ordered the parties to meet and confer and file a

joint status report by March 27 “proposing a schedule for expedited processing and rolling production of responsive records,” in the near future. Id.

The government has chosen not to appeal to the Court’s preliminary injunction order, which it had a right to do. See 28 U.S.C. § 1292(a)(1). Instead, USDS has now filed a motion for partial reconsideration. It asks the Court to reconsider the portions of its opinion directing USDS to (1) process the USDS Request; (2) provide, by March 20, 2025, an estimate of the volume of responsive records; and (3) propose, by March 27, 2025, a schedule for expedited processing and rolling production of responsive records. Mot. for Recons. at 1. USDS also asks the Court to enter an expedited summary-judgment briefing schedule directing USDS to file a motion for summary judgment on or before March 19, 2025 (which it says it intends to do in any case); CREW to file its opposition on or before March 24, 2025; and USDS to file any reply on or before March 26, 2025. Id. Lastly, USDS also seeks a stay or extension of the Court’s March 20 and March 27 deadlines, pending consideration of its motion for reconsideration and forthcoming summary-judgment motion. Id. at 1, 3.¹ CREW opposes the motion for reconsideration.

For the reasons that follow, the Court will deny the government’s motion for reconsideration and for a stay. The Court agrees with the government, however, that it would be preferable for the Court (and the D.C. Circuit on any appeal) to review the question of whether USDS is subject to FOIA on the merits based on a more complete record following expedited summary judgment proceedings. The government is free to file its summary judgment motion imminently, as it has indicated it will do. Once filed, the Court will entertain a motion from

¹ USDS does not seek reconsideration of the Court’s document preservation order. Mot. for Recons. at 1 n.1.

CREW under Rule 56(d) to conduct limited discovery to develop facts relevant to USDS's status as an agency under FOIA. Summary judgment briefing would be completed promptly upon the conclusion of any limited discovery period.

II. Legal Standards

“Although the Federal Rules of Civil Procedure do not specifically provide for motions for reconsideration, courts generally analyze them under the standards for a motion to alter or amend judgment under Rule 59(e) or a motion for relief from a judgment or order under Rule 60(b).” S.E.C. v. Bilzerian, 729 F. Supp. 2d 9, 12 (D.D.C. 2010). Under Federal Rule of Civil Procedure 59(e), a party may move to “alter or amend a judgment no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). “A Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (quotation marks omitted).

However, “once the parties have ‘battled for the court’s decision, they should neither be required, nor without good reason permitted, to battle for it again.’” Banks v. Booth, 518 F. Supp. 3d 57, 63 (D.D.C. 2021) (quoting Hispanic Affairs Project v. Perez, 319 F.R.D. 3, 6 (D.D.C. 2016). Importantly, a “motion under either Rule 54(b) or Rule 59(e) is not ‘simply an opportunity to reargue facts and theories upon which a court has already ruled.’” Id. (citation omitted). “Nor is a motion for reconsideration an avenue to “present[] theories or arguments that could have been advanced earlier.” Id. (alteration in original) (citation omitted).

The government also seeks a stay of the Court’s preliminary injunction ruling while the Court considers the motion for reconsideration and forthcoming summary judgment motion. A

party seeking a stay carries the “burden of showing that exercise of the court’s extraordinary injunctive powers is warranted.” Comm. on the Judiciary v. McGahn, 407 F. Supp. 3d 35, 38 (D.D.C. 2019) (citation omitted). “There are four ‘traditional’ factors that govern a request for a stay: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” Id. (citing Nken v. Holder, 556 U.S. 418, 426 (2009)).

III. Analysis

USDS seeks reconsideration of the Court’s holding that it is likely subject to FOIA based on a host of arguments that were available to USDS in the last round of briefing, all of which it deliberately chose to forego. USDS’s litigation choice does not entitle it to a do-over, and the Court will accordingly deny its motion for reconsideration. The Court will, however, order an expedited briefing schedule once USDS files its motion for summary judgment. USDS has also failed to make a showing of irreparable injury required to justify a stay of the Court’s preliminary injunction while summary-judgment briefing proceeds. But to ensure meaningful responses, the Court will grant USDS a seven-day extension until March 27, 2025, to provide an estimate of the number of documents responsive to the USDS Request, and an extension until April 3, 2025, for the parties to file a joint status report governing production.

A. Motion for Reconsideration

USDS mounts several lines of attack in support of its motion for reconsideration. All are unavailing. And each argument could have been raised in USDS’s initial opposition to CREW’s motion for a preliminary injunction, so a motion for reconsideration is not the appropriate avenue through which to present them. See Banks, 518 F. Supp. 3d at 63.

1. Irreparable Harm

USDS first argues that the Court clearly erred in its analysis of irreparable harm because “the question of USDS’s FOIA status would not take years to resolve and could be litigated on an expedited basis, as USDS now proposes.” Mot. for Recons. at 11. This is a new argument. In its opposition and at oral argument, USDS did not propose an expedited summary judgment schedule, as it now has. See Mar. 7, 2025 Hrg. Tr. Nor did it premise its opposition to CREW’s irreparable-harm argument on the difference between an expedited briefing schedule and immediate processing of the USDS Request. Instead, counsel for the government represented only that it would not process the USDS Request at all on the ground that USDS is not subject to FOIA. Id. at 3:23–4:1 (“Last night the Court -- the DOGE made a determination on that request. DOGE sent an email to plaintiff saying that the request was denied on the grounds that USDS is not an agency subject to FOIA.”). Counsel advanced the position as to all three requests that “the Court should just treat it like it would sort of an ordinary FOIA case, perhaps a case where we would have arguments about how quickly to -- with plaintiffs about how to expedite[.]” Id. at 55:1–4. In response, the Court noted that proceeding along a regular schedule, motions for summary judgment would likely fall approximately six months after the government’s 36-month processing estimate for the OMB requests. Id. at 55:5–12. Such a timeline, the Court observed, would seemingly tee up litigation over whether USDS is subject to FOIA “four years down the road.” Id. at 55:12.

Counsel for the government did not disagree with the Court’s general timeline. Instead, counsel remarked that the parties “could submit status reports, perhaps competing status reports,” and the Court could “order processing on a schedule” “based on discovery from the parties.” Id. at 55:17–20. To be sure, counsel added that it was within *the Court’s* prerogative to order

expedited briefing on the question whether USDS is subject to FOIA. *Id.* at 56:13–16. But the government did not propose such an expedited schedule as way of reducing the potential harm imposed by a processing delay. Accordingly, USDS’s reliance on its newly proposed expedited schedule to mitigate the delay in releasing documents in the ordinary course is an “argument[] that could have been advanced earlier” and thus not an appropriate basis on which to seek reconsideration. *Banks*, 518 F. Supp. 3d at 63.

Moreover, if USDS does not even begin processing the request until after the question of whether it is subject to FOIA is litigated on the merits, a decision in *CREW*’s favor will likely be followed by additional processing delays. Meanwhile, USDS appears to be taking new actions every day—for instance, earlier this week, USDS representatives reportedly “took over the U.S. Institute of Peace on Monday after threatening its officials with criminal prosecution.” Karen DeYoung & Derek Hawkins, *DOGE plays hardball in U.S. Institute of Peace takeover*, Wash. Post (Mar. 19, 2025), <https://www.washingtonpost.com/national-security/2025/03/18/doge-institute-of-peace-takeover-musk-trump/>. USDS must at least begin its processing efforts now, even if any actual production is deferred until after the Court’s ruling on its motion of summary judgment, for Congress and the public to have a hope of receiving the requested information while it remains timely. This is especially so given USDS’s suggestion that it has little infrastructure in place to handle FOIA requests. *See infra* at 15–17.

The government also faults *CREW* for not “immediately mov[ing] for summary judgment” and thereby avoiding any “modest delay.” Mot. for Recons. at 12. This argument is beside the point. *CREW* believed it was entitled to preliminary relief and filed a motion seeking just that. It is the government who now requests expedited summary-judgment briefing as an alternative to the preliminary relief that *CREW* already won from this Court. *CREW* was well

within its rights to seek preliminary relief, and its decision to do so rather than file an expedited summary-judgment motion reflected its view of the severity of the potential harms. See Opp’n at 8 (“Moving for a preliminary injunction—and specifically *not* filing a pre-answer motion for summary judgment—is the proper procedure in this District for preventing irreparable harm caused by delayed release of FOIA records.”). For all these reasons, the Court concludes that it did not clearly err in holding that the delay in releasing documents responsive to the USDS request if this case were treated as a run-of-the-mine FOIA case—the government’s only alternative proposal to the Court at the time—would impose irreparable harm on CREW and the public.

2. *New Evidence*

The government next asks the Court to grant its motion for reconsideration to consider new evidence: a declaration from USDS Administrator Amy Gleason. Mot. for Recons. at 13–17. For the purposes of a motion for reconsideration, however, “newly raised” evidence is not considered “new” evidence if it was “previously available.” Olson v. Clinton, 630 F. Supp. 2d 61, 63 (D.D.C. 2009) (quoting Schoenbohm v. FCC, 204 F.3d 243, 250 (D.C. Cir. 2000)). The government offers no reason why Administrator Gleason’s declaration was not available to it when it briefed its opposition to CREW’s preliminary-injunction motion. Gleason has occupied her role as USDS Administrator since at least February 25, 2025. CREW I, 2025 WL 752367, at *2. No doubt USDS could have obtained a declaration from her to submit along with its opposition to CREW’s preliminary-injunction motion, which it filed on February 27.

USDS admits as much. It nowhere suggests it had any trouble obtaining the declaration on which it now bases its argument or that Gleason was unavailable to provide it. Instead, USDS argues only that declining to brief the question of whether USDS is subject to FOIA “was a

considered decision that doing so was unnecessary because CREW’s preliminary injunction motion was meritless for other reasons.” Mot. for Recons. at 20. As noted in its prior opinion, the Court disagreed with this assessment, finding at least part of CREW’s preliminary-injunction motion to have merit. CREW I, 2025 WL 752367, at *12 (“[A]s the Court’s granting of partial preliminary relief indicates, USDS did not have a slam-dunk argument after all.”). And the government’s overestimation of its argument on the merits does not supply a basis on which to introduce new evidence through a motion for reconsideration.

In any event, Gleason’s declaration does not establish without question that USDS is not exercising substantial independent authority. Instead, the declaration appears to be subject to factual disputes that may provide a basis for CREW to seek discovery under Rule 56(d). Although “[d]iscovery in FOIA is rare and should be denied where an agency’s declarations are reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains,” Baker & Hostetler LLP v. U.S. Dep’t of Com., 473 F.3d 312, 318 (D.C. Cir. 2006) (citation omitted), parts of Gleason’s declaration appear to be “called into question by contradictory evidence in the record,” Jud. Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 215 (D.C. Cir. 2013).

For instance, Gleason states that Elon Musk does not work at USDS. Mot. for Recons., Decl. of Amy Gleason (“Gleason Decl.”) ¶ 6. But this statement is contradicted by President Trump’s and Musk’s own statements: Musk “noted publicly that he plans to use USDS to reduce the federal budget by \$2 trillion.” CREW I, 2025 WL 752367, at *11. And President Trump identified Musk as the leader of USDS and recently praised his efforts to cut spending through the department. Colleen Long & Jill Colvin, *Trump says Musk, Ramaswamy will form outside group to advise White House on government efficiency*, AP News (Nov. 12, 2024),

<https://apnews.com/article/donald-trump-president-elon-musk-vivek-ramaswamy-2f0f76bb6440231f2504b77cb117d988>; Taylor Penly, *Trump praises 'real patriot' Elon Musk for 'opening a lot of eyes' with DOGE*, Fox Business, <https://www.foxbusiness.com/media/trump-praises-real-patriot-elon-musk-opening-lot-eyes-doge> (Mar. 9, 2025).

Gleason also states that each DOGE Team Lead is an “an agency employee” and “reports to agency personnel,” Gleason Decl. ¶ 15, apparently indicating that USDS employees do not direct agency decisions. But this statement is at odds with other cases finding that USDS “has taken numerous actions without any apparent advanced approval by agency leadership.” Does 1-26 v. Musk, No. 25-cv-462, 2025 WL 840574, at *3 (D. Md. Mar. 18, 2025). For instance, USDS reportedly surprised agency officials by “execut[ing] cuts to billions of dollars of funding from the National Institutes of Health to universities and research organizations” and “terminat[ing] personnel at the Department of Agriculture (“USDA”) and the Department of Energy, National Nuclear Security Administration (“NNSA”)”). Id. USDS also reportedly “played a leading role” in shutting down USAID and DOGE Team members “reportedly demanded that all USAID senior managers be barred from authorizing payments and that the DOGE Team Members be the exclusive authorizers.” Id. at *1, 4.

Gleason’s description of USDS’s authority further conflicts with reports suggesting that the President has “ordered cabinet secretaries to cooperate with DOGE on staffing,” CREW I, 2025 WL 752367, at *11 (citation omitted), and that USDS employees have gained access to classified information over the objection of officials within those agencies. 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. Given the apparent factual disputes evident from the face of Gleason’s declaration, even were the Court to consider it, it would not displace the Court’s prior holding on likelihood of success on the merits without further development.

3. *Manifest Injustice*

USDS next argues that reconsideration of the court’s order is warranted to prevent manifest injustice. Mot. for Recons. at 17–20. “A ‘manifest injustice requires at least (1) a clear and certain prejudice to the moving party that (2) is fundamentally unfair in light of governing law.’” New LifeCare Hosps. of N. Carolina LLC v. Azar, 466 F. Supp. 3d 124, 129 (D.D.C. 2020) (citation omitted).

USDS bases this argument on its view that the Court rejected the specific preliminary injunction sought by CREW and awarded preliminary relief beyond what CREW sought. Mot. for Recons. at 18. Thus, USDS says it was unprepared to oppose the entry of the injunction that the Court ultimately issued. But when considering preliminary relief, a court “need not grant the total relief sought by the applicant but may mold its decree to meet the exigencies of the particular case.” Trump v. Int’l Refugee Assistance Project, 582 U.S. 571, 580 (2017) (citation omitted). The “Court’s discretion in granting preliminary injunctive relief is therefore not constrained by the relief Plaintiffs explicitly seek.” Aracely, R. v. Nielsen, 319 F. Supp. 3d 110, 133 (D.D.C. 2018). Given the Court’s broad discretion to fashion equitable relief, the government cannot show that the Court’s injunction was “fundamentally unfair in light of governing law” merely because it did not award CREW all the relief it explicitly sought. New LifeCare Hosps., 466 F. Supp. 3d at 129.

And it was well within the Court’s equitable discretion to issue a preliminary injunction tailored to the changing circumstances of this case—most of which are attributable to the

government. Recall that OMB initially granted expedited processing of the USDS Request. CREW I, 2025 WL 752367, at *5. Relying on that representation, CREW had no reason to ask for expedited processing of the USDS Request in its preliminary injunction motion. Although the government suggested in its opposition that OMB had inadvertently accepted the USDS request, see Opp’n to PI Mot. at 8–9 n.2, it did not inform CREW of its decision not to process the USDS Request until the evening of March 6, when briefing in this case was already complete. Tr. 3:23–4:1 (“Last night the Court -- the DOGE made a determination on that request. DOGE sent an email to plaintiff saying that the request was denied on the grounds that USDS is not an agency subject to FOIA.”).

Responding to this late-breaking development, the Court *the next day* explicitly requested and received confirmation from CREW that its “requested relief encompasses a preliminary order directing USDS (or OMB) to process the USDS request on an expedited basis as OMB originally agreed—but perhaps not by a date certain tied to Congress’s ongoing appropriations debate.” CREW I, 2025 WL 752367, at *6 (citing Rough Tr. at 12:5–14). The Court therefore fails to understand how USDS could be surprised by the injunction the Court entered. The Court explicitly explored the possibility of this relief during argument in response to USDS’s change in position on whether it would process the USDS Request. Not once during oral argument did the government contend that such an injunction would fall outside the Court’s authority. With good reason. Courts in this district have entered preliminary relief directing the expedited processing of FOIA requests while stopping short of ordering production by the requested dates certain. See, e.g., Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 303 (D.D.C. 2017) (Cooper, J.) (granting preliminary injunction for expedited processing of FOIA request but declining to order production by date certain).

Moreover, whether USDS is subject to FOIA was central to both CREW's request for processing of the USDS Request by March 10 and its argument that Federal Records Act preservation obligations apply to USDS. After all, likelihood of success on the merits is a key consideration in whether to award a preliminary injunction. Nat'l Head Start Ass'n v. U.S. Dep't of Health & Hum. Servs., 297 F. Supp. 2d 242, 247 (D.D.C. 2004) (“[I]t is especially important for the movant to demonstrate a likelihood of success on the merits.”). The government therefore cannot claim that this issue came out of left field. It was in the case from the beginning, and the government must live with the consequences of failing to brief the issue.

USDS also argues that the Court relied on an entirely different theory of irreparable harm than the one put forward by CREW to justify preliminary relief. Not so. USDS's argument slices CREW's theory of harm too thin. CREW did seek production by March 10, but it did so in order “that Congress, with public input, may consider information about USDS's structure and influence over OMB when making funding decisions.” CREW I, 2025 WL 752367, at *10. Neither side ever argued that the requested information would become stale after March 10. And as the Court explained, CREW's own asserted purposes indicated that the requested information would “remain valuable and relevant to all congressional funding decisions in the near future.” Id. The Court did not reject CREW's theory of harm entirely, it merely had a different view of how quickly that harm would come to pass. As the Court said, “although irreparable harm will not result if the requested records are not *immediately* released, there is a point in the not-too-distant future when continued delay will indeed impose such harm.” Id. at *15.

B. Expedited Summary Judgment

Although the Court declines to grant USDS's motion for reconsideration, USDS is free to file a motion for summary judgment in short order and seek an expedited briefing schedule. The

Court agrees that expedited resolution of this question based on a more fulsome summary-judgment record is appropriate. After USDS files its motion for summary judgment, the Court will entertain a prompt motion by CREW under Rule 56(d) showing by affidavit or declaration that “for specified reasons, it cannot present facts essential to justify its opposition” and requesting limited discovery. Any such declaration should “outline the particular facts [the non-movant] intends to discover and describe why those facts are necessary to the litigation,” “explain ‘why [the non-movant] could not produce the facts in opposition to the motion for summary judgment,’ and “show the information is in fact discoverable.” U.S. ex rel. Folliard v. Gov’t Acquisitions, Inc., 764 F.3d 19, 26 (D.C. Cir. 2014) (alterations in original) (citation omitted).

The Court will then set an expedited schedule to complete summary judgment briefing after any appropriate discovery has been completed. The Court will not require actual production of records until it reaches a decision on the government’s forthcoming summary judgment motion. Thus, the Court sees little downside to granting USDS a seven-day extension of the March 20 and March 27 deadlines. The Court will grant these extensions not because there would be any prejudice or injury to USDS from meeting the Court’s original deadlines, as discussed next, but to ensure that USDS is able to meaningfully respond to the Court’s inquiries.

C. Request for Stay

The government also seeks a stay of the March 20 and 27 deadlines as applied to USDS only. Mot. for Recons. at 20–21. It satisfies none of the factors entitling it to a stay of the Court’s preliminary injunction while summary judgment briefing proceeds, however. As just discussed, USDS has not shown a likelihood of success on the merits on its motion for

reconsideration. And it does not even argue that it is likely to succeed on the merits of its summary judgment motion.

The government's only assertion of irreparable injury is that if USDS is required to comply with the Court's order, "it will have to . . . create a FOIA operation from scratch." *Id.* at 21. The Court disagrees that (1) providing an estimate of responsive documents and (2) working with CREW to propose a production schedule while merits briefing is ongoing will so strain USDS's resources as to cause it irreparable harm.

Several factors inform this conclusion. First, the documents requested by CREW are limited in scope. *See* Reply (ECF No. 13), Attachment A. Estimating their volume would not seem to require the creation of an entire "FOIA operation." Mot. for Recons. at 21. Rather, it would seem to involve no more than keyword digital searches and searches for physical records. Reply (ECF No. 13), Attachment A at 2 (narrowing requests by specific topic, e.g., "treatment of probationary employees"). The Court has faith that the employees of a government organization charged with "modernizing Federal technology and software," who have reportedly gained access to databases and payment systems across federal agencies, are technologically sophisticated enough to perform these basic tasks. Executive Order 14158, Establishing and Implementing the President's "Department of Government Efficiency," Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 29, 2025). Indeed, reports suggest that many USDS employees are former software engineers. *The People Carrying Out Musk's Plans at DOGE*, NY Times (Mar. 14, 2025), <https://www.nytimes.com/interactive/2025/02/27/us/politics/doge-staff-list.html>.

Moreover, USDS has already been ordered to respond to discovery requests in other cases. *See New Mexico v. Musk*, No. 25-cv-429 (TSC), 2025 WL 783192, at *7 (D.D.C. Mar. 12, 2025). Presumably, then, USDS may capitalize on its existing efforts and will not need to

start from scratch in responding to CREW’s request. USDS also provides no reason why the existing FOIA office at OMB, or those elsewhere within the Executive Office of the President, could not assist with processing the narrow USDS Request. Indeed, OMB appears to have been willing at one time to handle FOIA requests on USDS’s behalf. See Compl. ¶ 94 (OMB granting expedited processing of the USDS Request). For all these reasons, USDS has not demonstrated that it “will be irreparably injured absent a stay.” McGahn, 407 F. Supp. 3d at 38.

IV. Conclusion

For these reasons, the Court will deny USDS’s motion for reconsideration. The Court also directs the government to file a status report by March 27, 2025 setting forth the estimated number of documents responsive to the USDS Request. The parties are further ordered to meet and confer and file a joint status report by April 3, 2025, proposing a schedule for expedited processing and rolling production of responsive records should the Court deny USDS’s forthcoming summary judgment motion. It is hereby

ORDERED that [Dkt. No. 20] Defendant’s Motion for Reconsideration and Motion for Stay is DENIED.

SO ORDERED.



CHRISTOPHER R. COOPER
United States District Judge

Date: March 19, 2025

Exhibit D



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 24, 2025

U.S. DOGE Service
% Office of Management and Budget
725 17th Street NW, Suite 9272
Washington, DC 20503

Re: Expedited Freedom of Information Act Request - US DOGE Service

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and United States Office of Management and Budget (“OMB”) regulations¹ to the United States DOGE Service. Specifically, CREW requests the following records:

- From November 6, 2024 to the date that this request is processed:

- **All memoranda, directives, or policies regarding changes to the operations of the former U.S. Digital Service, now renamed the U.S. DOGE Service per Executive Order dated January 20, 2025²**
- **Organizational charts for the USDS**
- **All memoranda, directives, or policies regarding performance evaluations of employees of USDS**
- **All ethics pledges or waivers executed by USDS personnel**
- **All financial disclosures of USDS personnel**
- **All communications between OMB personnel and the Trump-Vance transition team regarding USDS, including any such communications with USDS personnel**
- **All communications with the office of the Administrator of the USDS regarding actual or potential changes to USDS operations after President Trump assumed office on January 20, 2025**
- **All communications between OMB personnel and USDS personnel**
- **All communications between the USDS Administrator and USDS staff**
- **All communications between USDS personnel and personnel of any federal agency outside of the Executive Office of the President**

¹ On January 24, 2025, CREW contacted the OMB FOIA Requester Service Center to ask how to submit a FOIA request to United States DOGE Service. CREW was directed to submit the request through OMB at ombfoia@omb.eop.gov.

² The United States DOGE Service was established by executive order on January 20, 2025, through the ordered reorganization and renaming of the United States Digital Service. Except as otherwise noted in this request, “USDS” refers to both the United States DOGE Service and the United States Digital Service.

- From August 11, 2014 to the date that this request is processed, all letters and inquiries, as well as their responses, between USDS and the office of any representative, senator, committee, subcommittee, working group, or caucus of the United States Congress.
- From January 1, 2014 to January 19, 2025:
 - Organizational charts for the USDS
 - Memoranda, directives, and policies regarding the scope of USDS's legal authority
 - Memoranda, directives, and policies regarding the scope of USDS's work with other federal agencies, including how USDS tracked its work with other federal agencies
 - All documents regarding USDS's total budget and expenditures in fiscal years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, or 2025
 - All documents regarding funding requests or justifications that related to or included USDS operations
 - All ethics pledges or waivers executed by USDS personnel
 - All financial disclosures of USDS personnel

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, and anyone who was cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agency wide preservation hold on all documents potentially responsive to this request.

Request for Expedited Processing

CREW requests expedited processing of this request pursuant to FOIA, 5 U.S.C. § 552 and 5 C.F.R. 1303.40(e). CREW is entitled to expedited processing because (1) "[t]here is an urgency to inform the public about an actual or alleged Federal Government activity," *id.* § 1303.40(e)(1)(ii) and CREW "is primarily engaged in disseminating information," 28 C.F.R. § 16.5(e)(1)(ii);, and (2) "[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).

- (1) CREW is “primarily engaged in disseminating information” to the public. This “standard ‘requires that information dissemination be the main [and not merely an incidental] activity of the requestor,’” but “publishing information ‘need not be [the organization’s] sole occupation.’” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). CREW routinely disseminates information obtained through FOIA to the public in several ways. For example, CREW’s website receives hundreds of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website. CREW is a credible requestor and disseminator of information often relied on by major media outlets.³

On January 20, 2025, President Trump issued three executive orders establishing and directing the activities of the United States DOGE Service (“DOGE Service”). The first executive order was entitled *Establishing and Implementing the President’s “Department of Government Efficiency”* (the “DOGE Order”).⁴ It ordered the reorganization and renaming of the United States Department of Digital Service (“Digital Service”) that had been within OMB’s Office of E-Government and Information Technology to establish the (“DOGE Service”) within the Executive Office of the President, so that the DOGE could “implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity” and directs the DOGE Service administrator to “commence a Software Modernization Initiative to improve the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems” and to “work with Agency Heads to promote inter-operability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization.”⁵

The second executive order was entitled *Reforming the Federal Hiring Process and Restoring Merit to Government Service* and directed the administrator of the DOGE Service, along with the Director of OMB and the Director of the Office of Personnel Management (“OPM”), to consult with the Assistant to the

³ See, e.g., *Citizens for Responsibility and Ethics in Washington*, N.Y. Times, <https://www.nytimes.com/topic/citizens-for-responsibility-and-ethics-in-washington> (last visited Nov. 20, 2024) (list of numerous New York Times articles referencing CREW spanning over a decade); Ed Pilkington and Dharna Noor, *Top US ethics watchdog investigating Trump over dinner with oil bosses*, The Guardian (May 15, 2024), <https://www.theguardian.com/us-news/article/2024/may/15/ethics-watchdog-investigating-trump-big-oil> (referring to CREW as “Top US ethics watchdog”).

⁴ Exec. Order, *Establishing and Implementing the President’s “Department of Government Efficiency,”* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department-of-government-efficiency/>.

⁵ *Id.*

President for Domestic Policy 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.”⁶ The third executive order was entitled *Hiring Freeze* (this executive order and *Reforming the Federal Hiring Process and Restoring Merit to Government Service* are referred collectively below as the “Federal Hiring Orders”) that directed the Director of OMB to consult with the administrator of DOGE and Director of OPM to “submit a plan to reduce the size of the Federal Government’s workforce through efficiency improvements and attrition.”⁷

The DOGE Order and Federal Hiring Orders come after then President-elect Trump’s announcement on November 13, 2024 the formation of the “Department of Government Efficiency” (“DOGE”).⁸ The announcement stated that Elon Musk and Vivek Ramaswamy would lead DOGE and that its mission would be to “pave the way for [Trump’s] administration to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies.”⁹ Musk and Ramaswamy explained their vision for DOGE in a piece that they published in the Wall Street Journal in which they said that DOGE will “work in the new administration closely with the White House Office of Management and Budget.”¹⁰ Their public statements, as well as social media accounts purporting to belong to DOGE, indicated that they began to undertake work on its behalf before President Trump took office.¹¹

The Trump administration’s actions since he was inaugurated on January 20 indicate that the implementation of his “DOGE agenda” referenced in the DOGE Order is well underway, as it has already taken steps to freeze federal hiring,¹² eliminate civil service protections from large numbers of public employees,¹³ eliminate protections from discrimination in the federal

⁶ Exec. Order, *Reforming the Federal Hiring Process and Restoring Merit to Government Service* (Jan. 20, 2025),

<https://www.whitehouse.gov/presidential-actions/2025/01/reforming-the-federal-hiring-process-and-restoring-merit-to-government-service/>.

⁷ Exec. Order, *Hiring Freeze* (Jan. 20, 2025),

<https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>.

⁸ @realDonaldTrump, X (Nov. 13, 2024), <https://x.com/realDonaldTrump/status/1856658569124262092>.

⁹ *Id.*

¹⁰ 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.

¹¹ See generally Elizabeth Dwoskin, Jeff Stein, Jacob Bogage and Faiz Siddiqui, *Musk and Ramaswamy race to build a ‘DOGE’ team for war with Washington*, Wash. Post (Dec. 4, 2024),

<https://www.washingtonpost.com/business/2024/11/24/musk-ramaswamy-doge-trump/>.

¹² *Hiring Freeze*, supra note 7.

¹³ Exec. Order, *Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce* (Jan. 20, 2025),

<https://www.whitehouse.gov/presidential-actions/2025/01/restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce/>.

workforce,¹⁴ create a plan to permanently reduce the federal workforce,¹⁵ and ordered federal diversity, equity, and inclusion on leave.¹⁶ At the same time, Mr. Musk, who President Trump announced would head DOGE before his inauguration, is reportedly working in the West Wing of the White House, with a White House email address address, without anyone having been named the administrator of the DOGE Service, while legacy Digital Service employees are being forced to interview for their current positions.¹⁷

At the same time, public reporting indicates that the DOGE Service may be acting beyond its legal authority. As described above, the DOGE Order created the DOGE Service to “moderniz[e] Federal technology and software to maximize governmental efficiency and productivity” and directs the DOGE Service administrator to “commence a Software Modernization Initiative to improve the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems” and to “work with Agency Heads to promote inter-operability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization.”¹⁸ The DOGE Order further created the DOGE Service as a “temporary organization” pursuant to 5 U.S.C. § 3161, which limits the purpose of any such temporary organization to “the purpose of performing a specific study or other project.” 5 U.S.C. § 3161(a)(1). Public reporting indicates that the DOGE Service is nevertheless operating well outside this defined legal authority by, for example, exerting pressure on federal judges, through the United States Marshals Service, to speed up the release of pardoned criminals and criminal defendants who were convicted or arrested for their roles in the January 6, 2021 attack on the Capitol.¹⁹

¹⁴ Exec. Order, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

¹⁵ *Reforming Federal Hiring*, supra note 6.

<https://www.whitehouse.gov/presidential-actions/2025/01/reforming-the-federal-hiring-process-and-restoring-merit-to-government-service/>.

¹⁶ Memorandum, Initial Guidance Regarding DEIA Executive Orders, United States Office of Personnel Management (Jan. 21, 2025), <https://chcoc.gov/sites/default/files/OPM%20Memo%20Initial%20Guidance%20Regarding%20DEIA%20Executive%20Orders.pdf>.

¹⁷ Ken Thomas and John McCormick, *Inside the Elon Musk, Vivek Ramaswamy DOGE Divorce*, WSJ (Jan. 23, 2025), https://www.wsj.com/politics/elections/inside-the-elon-musk-vivek-ramaswamy-doge-divorce-975a3d26?mod=article_inline; Amie Parnes, *Elon Musk already has a White House email address*, The Hill (Jan. 20, 2025), <https://thehill.com/homenews/administration/5096177-musk-white-house-email-address/>; Natalie Alms, *U.S. Digital Service employees are being re-interviewed under DOGE transition*, (Jan. 22, 2025), <https://www.nextgov.com/people/2025/01/us-digital-service-employees-are-being-re-interviewed-under-doge-transition/402423/>.

¹⁸ *Establishing DOGE*, supra note 4.

¹⁹ Ken Thomas and John McCormick, *Inside the Elon Musk, Vivek Ramaswamy DOGE Divorce*, WSJ (Jan. 23, 2025), https://www.wsj.com/politics/elections/inside-the-elon-musk-vivek-ramaswamy-doge-divorce-975a3d26?mod=article_inline; Amie Parnes, *Elon Musk already has a White House email address*, The Hill

Under these circumstances, “[t]here is an urgency to inform the public about an actual or alleged Federal Government activity” about which this request seeks information, namely the planned and current operations of the DOGE Service, its authority, its place in the Executive Office of the President, and the facts surrounding the reorganization of the Digital Service to establish the DOGE Service, all of which could urgently effect not only 3 million federal employees, but the untold number of American citizens who are impacted by their work. See 5 C.F.R. 1303.40(e)(1)(ii).

- (2) The same facts raise “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). As described above, President Trump has vowed “to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies”²⁰ through DOGE and has taken affirmative steps to do so,²¹ but his administration has offered no meaningful information to the public about how the DOGE Service will operate, its budget and resources, its staffing, whether those staffing it will be federal employees, how those federal employees might be classified, what the criteria for employment will be, or whether those associated with it will be required to make financial disclosures or abide by federal ethics rules for employees. The administration also has not explained what steps, if any, it is taking to account for the fact that companies owned by Mr. Musk, who President Trump has said would head DOGE and is reportedly working in the White House, have more than \$3 billion in federal contracts.²² Nor has there been any explanation regarding why reorganizing the Digital Service into the DOGE Service, which is by its terms is tasked with “modernizing Federal technology and software to maximize governmental efficiency and productivity,” is an efficient or appropriate vehicle for decision making that could have a permanent effect on the structure of the executive branch. And, as noted above, public reporting indicates that the DOGE Service is exceeding its legal authority under both the DOGE Order and as a temporary organization under 5 U.S.C. § 3161(a)(1).²³ The lack of public information regarding the DOGE Service’s formation and operations and its apparent reach beyond its legal authority each, and in conjunction, raise significant

(Jan. 20, 2025), <https://thehill.com/homenews/administration/5096177-musk-white-house-email-address/>; Natalie Alms, *U.S. Digital Service employees are being re-interviewed under DOGE transition*, (Jan. 22, 2025), <https://www.nextgov.com/people/2025/01/us-digital-service-employees-are-being-re-interviewed-under-doge-transition/402423/>; 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/>.

²⁰ *Id.*

²¹ See *infra* at 4.

²² Eric Lipton, David A. Fahrenthold, Aaron Krolik, and Kirsten Grind, *U.S. Agencies Fund, and Fight With, Elon Musk. A Trump Presidency Could Give Him Power Over Them.*, NY Times (Oct. 20, 2024), <https://www.nytimes.com/2024/10/20/us/politics/elon-musk-federal-agencies-contracts.html>.

²³ See *infra* at 5.

possible questions of widespread and exceptional public interest regarding the integrity of the work of the DOGE Service.

The undersigned certifies that the representations in the foregoing Request for Expedited Processing are true and correct to the best of his knowledge and belief.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See id.* § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On November 13, 2024, President-elect Donald Trump announced the formation of DOGE.²⁴ The announcement stated that Elon Musk and Vivek Ramaswamy would lead DOGE and that its mission would be to “pave the way for [Trump’s] administration to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies.”²⁵ Musk and Ramaswamy explained their vision for DOGE in a piece that they published in the Wall Street Journal and that they anticipated it working closely with OMB and public reporting indicated that DOGE began its work, including contacting federal agencies, during the presidential transition.²⁶

On January 20, 2025, President Trump issued executive orders establishing the DOGE Service to “implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity,” but also ordering the Assistant to the President for Domestic Policy and Director of OPM to consult with the administrator of the DOGE Service to develop a federal hiring plan and plan to reduce the size of the government, respectively.²⁷

Public reporting indicates that Mr. Musk has begun working in the West Wing of the White House and unnamed members of the DOGE Service are re-interviewing DOGE

²⁴ @realDonaldTrump, X (Nov. 13, 2024), <https://x.com/realDonaldTrump/status/1856658569124262092>.

²⁵ *Id.*

²⁶ 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; *See generally* Elizabeth Dwoskin, Jeff Stein, Jacob Bogage and Faiz Siddiqui, *Musk and Ramaswamy race to build a ‘DOGE’ team for war with Washington*, Wash. Post (Dec. 4, 2024), <https://www.washingtonpost.com/business/2025/01/10/musk-ramaswamy-doge-federal-agencies/>.

²⁷ *Establishing DOGE*, supra note 4; *Reforming Federal Hiring*, supra note 6; *Hiring Freeze*, supra note 7.

Service staff for their current positions.²⁸ As described above, the DOGE Order created the DOGE Service to “moderniz[e] Federal technology and software to maximize governmental efficiency and productivity” and directs the DOGE Service administrator to “commence a Software Modernization Initiative to improve the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems” and to “work with Agency Heads to promote inter-operability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization.”²⁹ The DOGE Order further created the DOGE Service as a “temporary organization” pursuant to 5 U.S.C. § 3161, which limits the purpose of any such temporary organization to “the purpose of performing a specific study or other project. 5 U.S.C. § 3161(a)(1). Despite this limited purpose and these statutory constraints, the DOGE Service has reportedly acted beyond its legal authority by, for example, exerting pressure on federal judges, through the United States Marshals Service, to speed up the release of pardoned criminals and criminal defendants who were convicted or arrested for their roles in the January 6, 2021 attack on the Capitol.³⁰

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

²⁸ Ken Thomas and John McCormick, *Inside the Elon Musk, Vivek Ramaswamy DOGE Divorce*, WSJ (Jan. 23, 2025), https://www.wsj.com/politics/elections/inside-the-elon-musk-vivek-ramaswamy-doge-divorce-975a3d26?mod=article_inline Amie Parnes, *Elon Musk already has a White House email address*, The Hill (Jan. 20, 2025),

<https://thehill.com/homenews/administration/5096177-musk-white-house-email-address/>; Natalie Alms, *U.S. Digital Service employees are being re-interviewed under DOGE transition*, (Jan. 22, 2025), <https://www.nextgov.com/people/2025/01/us-digital-service-employees-are-being-re-interviewed-under-doge-transition/402423/>

²⁹ Exec. Order, *Establishing and Implementing the President’s “Department of Government Efficiency,”* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department-of-government-efficiency/>.

³⁰ Ken Thomas and John McCormick, *Inside the Elon Musk, Vivek Ramaswamy DOGE Divorce*, WSJ (Jan. 23, 2025), https://www.wsj.com/politics/elections/inside-the-elon-musk-vivek-ramaswamy-doge-divorce-975a3d26?mod=article_inline Amie Parnes, *Elon Musk already has a White House email address*, The Hill (Jan. 20, 2025),

<https://thehill.com/homenews/administration/5096177-musk-white-house-email-address/>; Natalie Alms, *U.S. Digital Service employees are being re-interviewed under DOGE transition*, (Jan. 22, 2025), <https://www.nextgov.com/people/2025/01/us-digital-service-employees-are-being-re-interviewed-under-doge-transition/402423/>; 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/>.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely disseminates information obtained through FOIA to the public in several ways. For example, CREW's website receives hundreds of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website.

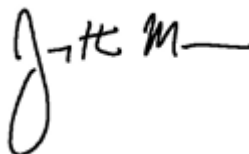
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please email foia@citizensforethics.org or call (202) 408-5565. Also, if CREW's request for a fee waiver is denied, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to foia@citizensforethics.org or by mail to CREW Staff, Citizens for Responsibility and Ethics in Washington, P.O. Box 14596, Washington, D.C. 20004.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Maier". The signature is stylized, with a large, looped initial "J" and a horizontal line extending to the right.

Jonathan Maier
Senior Litigation Counsel
Citizens for Responsibility and Ethics in
Washington (CREW)

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

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DOGE SERVICE, et al.,

Defendants.

No. 25-cv-511 (CRC)

DECLARATION OF AMY GLEASON

1. My name is Amy Gleason. The following is based on my personal knowledge or information provided to me in the course of performing my duties at the United States DOGE Service (USDS).
2. I currently serve as the Acting Administrator of USDS. I joined USDS on December 30, 2024.
3. I am a full-time, government employee at USDS.
4. In my role at USDS, I oversee all of USDS's employees and detailees to USDS from other agencies.
5. I report to the White House Chief of Staff, Susie Wiles.
6. Elon Musk does not work at USDS. I do not report to him, and he does not report to me. To my knowledge, he is a Senior Advisor to the White House.

USDS's Structure and Operation

7. On January 20, 2025, President Trump issued Executive Order 14,158, reforming and renaming the United States Digital Service as the United States DOGE Service (USDS). *See Establishing and Implementing the President's "Department of Government Efficiency,"* Executive Order 14,158 (Jan. 20, 2025) (hereinafter, "USDS Order").

8. USDS derives its structure and authority from the USDS Order. USDS has no independent statutory basis. Pursuant to the USDS Order, USDS was transferred out of the Office of Management and Budget (“OMB”) as of January 20, 2025, and established as a standalone component in the Executive Office of the President.
9. In addition to creating USDS, the USDS Order created the U.S. DOGE Service Temporary Organization, which sits within USDS and thus within the Executive Office of the President.
10. USDS is a permanent entity, whereas the U.S. DOGE Service Temporary Organization is, as its name suggests, a temporary entity with an expiration date of July 4, 2026.
11. As described in the USDS Order, the USDS Administrator heads both USDS and the U.S. DOGE Service Temporary Organization.

Agency DOGE Teams

12. In addition to establishing USDS and the U.S. DOGE Service Temporary Organization, the USDS Order directs the heads of federal agencies to form teams within their respective agencies (called, “DOGE Teams”) in consultation with the USDS Administrator. The agency heads have ultimate decisionmaking authority with respect to the members of their agency DOGE Team.
13. Every member of an agency’s DOGE Team is an employee of the agency or a detailee to the agency. The DOGE Team members – whether employees of the agency or detailed to the agency – thus report to the agency heads or their designees, not to me or anyone else at USDS.
14. In some instances, members of agency DOGE Teams are detailees from USDS to the agency. Where USDS detailees are assigned to an agency DOGE Team and acting in their capacity as a detailee to the DOGE Team, they are supervised by personnel of the agency to which they are detailed.
15. As explained in the USDS Order, agency DOGE Teams are headed by a DOGE Team Lead. That individual is also an agency employee and – whether an appointed employee of the agency or a detailee – reports to agency personnel.
16. The agency DOGE Teams and agency DOGE Team Leads coordinate their work with USDS, as contemplated by the USDS Order and subsequent Executive Orders (*see* ¶¶ 7, 22), but they are distinct from both USDS and the U.S. DOGE Service Temporary Organization, and, again, do not report to me for work conducted within and for the agency.

USDS Functions and Agency DOGE Team Functions

17. As described in the USDS Order, USDS is charged with furthering President's Trump DOGE agenda, by "modernizing Federal technology and software to maximize governmental efficiency and productivity."
18. In furtherance of these efforts, the USDS Order directs the USDS Administrator to work with agency heads to "promote inter-operability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization."
19. In addition, the USDS Order charges the DOGE Service Temporary Organization with advancing President Trump's 18 month "DOGE agenda," as set forth in various Executive Orders. *See* ¶¶ 7, 22.
20. Per the USDS Order, as the USDS Administrator, I oversee the work of USDS and the U.S. DOGE Service Temporary Organization and am responsible for initiating the President's "Software Modernization Initiative."
21. As described in the USDS Order, USDS also consults with agency heads and their designees on technology improvements and other matters related to the President's DOGE agenda.
22. The "DOGE agenda" includes the technology modernization efforts described in the USDS Order, as well as initiatives that are described in four separate Executive Orders and a presidential memorandum. These materials describe distinct—and limited—roles for USDS and agency heads and agency DOGE Teams. They include:
 - a. Executive Order 14,170, *Reforming the Federal Hiring Process and Restoring Merit to Government Service* (Jan. 20, 2025), which directs the USDS Administrator to consult with the Assistant to the President for Domestic Policy and the OMB Director on a federal hiring plan that focuses on hiring highly skilled Americans. The order charges the Assistant to the President for Domestic Policy with actually developing the plan and disseminating it to agency heads.
 - b. Presidential Memorandum, *Hiring Freeze* (Jan. 20, 2025), which instructs the USDS Administrator to consult with the OMB Director, who is responsible for submitting a "plan to reduce the size of the Federal Government's workforce through efficiency improvements and attrition." The USDS Administrator is also responsible for consulting with the OMB Director and the Treasury Secretary, who is responsible for determining when to lift the hiring freeze at the Internal Revenue Service.

- c. Executive Order 14,210, *Implementing the President's "Department of Government Efficiency" Workforce Optimization* (Feb. 11, 2025), which directs agency heads to reduce agency headcount and agency DOGE Team Leads to provide monthly reports to the USDS Administrator on agency hiring. The USDS Administrator is also directed to report to the President on agencies' compliance with the order.
 - d. Executive Order 14,218, *Ending Taxpayer Subsidization of Open Borders* (Feb. 19, 2025), which requires the USDS Administrator to consult with the Assistant to the President for Domestic Policy and the OMB Director to identify sources of federal funding for illegal immigrants and collectively recommend agency actions to align spending with the purposes of the order and, where relevant, enhance eligibility verification systems.
 - e. Executive Order 14,219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative* (Feb. 19, 2025), which requires agency heads, in consultation with their DOGE Teams Leads, to undertake deregulatory efforts.
 - f. Executive Order, 14,222, *Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative*, (Feb. 26, 2025), which requires each agency head to make federal expenditures transparent and for DOGE Team Leads to report to the USDS Administrator on contracting and non-essential travel expenses.
23. Cumulatively, these orders and memorandum set forth the responsibilities assigned to USDS, the U.S. DOGE Service Temporary Organization, agency DOGE Teams, and agency DOGE Team Leads. As an entity created by Executive Order, USDS has no other independent sources of legal authority.

USDS's Data and Records Management

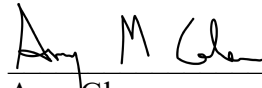
24. Per the USDS Order, USDS is required to adhere to rigorous data protection standards.
25. USDS and the U.S. DOGE Service Temporary Organization have obligations to maintain records and do so pursuant to the Presidential Records Act ("PRA"). In accordance with the PRA's requirements, USDS materials will be transmitted to the National Archives and Records Administration at the appropriate time.
26. USDS has informed its employees (including those in the U.S. DOGE Service Temporary Organization) that they must adhere to records-preservation requirements.
27. USDS has also provided employees with a document hold for this litigation in accordance with the Court's instructions.

Harm to USDS and the President if USDS is Required to Comply with the Court's Order

28. If USDS is required to comply with the court's order, it will have to set up a new FOIA operation from scratch within USDS. Because USDS is an Executive Office of the President component that reports to the White House Chief of Staff and advises the President, it has adopted no FOIA regulations, hired no document processors or reviewers, and has no dedicated budget for these activities. To complete all of these tasks will divert significant time and resources from an organization that is charged with advising the President and others on high-priority projects of this Administration.
29. Because USDS is an Executive Office of the President component that reports to the White House Chief of Staff and advises the President, it works closely with other senior White House advisors on a regular basis. A requirement that USDS produce records not only threatens to divert time and resources, but also risks chilling and inhibiting the exchange of information and advice among the President's advisors on Administration priorities.

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

Executed in Washington, DC this 14th day of March.



Amy Gleason

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

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DOGE SERVICE, et al.,

Defendants.

No. 25-cv-511 (CRC)

DECLARATION OF AMY GLEASON

1. My name is Amy Gleason. The following is based on my personal knowledge or information provided to me in the course of performing my duties at the United States DOGE Service (USDS).
2. I currently serve as the Acting Administrator of USDS. I joined the U.S. Digital Service as an employee on December 30, 2024. My employment carried over to USDS as of January 20, 2025.
3. I am a full-time, government employee.
4. In my role at USDS, I oversee all of USDS's employees and detailees to USDS from other agencies.
5. I report to the White House Chief of Staff, Susie Wiles.
6. Elon Musk does not work at USDS. I do not report to him, and he does not report to me. To my knowledge, he is a Senior Advisor to the White House.

USDS's Structure and Operation

7. On January 20, 2025, President Trump issued Executive Order 14,158, reforming and renaming the United States Digital Service as the United States DOGE Service (USDS). *See Establishing and Implementing the President's "Department of Government Efficiency,"* Executive Order 14,158 (Jan. 20, 2025) (hereinafter, "USDS Order").

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10. USDS is a permanent entity, whereas the U.S. DOGE Service Temporary Organization is, as its name suggests, a temporary entity with an expiration date of July 4, 2026.
11. As described in the USDS Order, the USDS Administrator heads both USDS and the U.S. DOGE Service Temporary Organization.
12. As of today, USDS has approximately 79 directly appointed employees and 10 employees detailed from other agencies.
13. USDS has no formal front office or organizational chart reflecting its current composition.

Agency DOGE Teams

14. In addition to establishing USDS and the U.S. DOGE Service Temporary Organization, the USDS Order directs the heads of federal agencies to form teams within their respective agencies (called, “DOGE Teams”) in consultation with the USDS Administrator. The agency heads have ultimate decisionmaking authority with respect to the members of their agency DOGE Team.
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18. The agency DOGE Teams and agency DOGE Team Leads coordinate their work with USDS, as contemplated by the USDS Order and subsequent Executive Orders (*see* ¶¶ 7,

24), but they are distinct from both USDS and the U.S. DOGE Service Temporary Organization, and, again, do not report to me for work conducted within and for the agency.

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22. Per the USDS Order, the USDS Administrator oversees the work of USDS and the U.S. DOGE Service Temporary Organization and is responsible for initiating the President’s “Software Modernization Initiative.”
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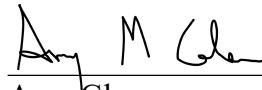
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28. USDS has informed its employees (including those in the U.S. DOGE Service Temporary Organization) that they must adhere to records-preservation requirements.
29. USDS has also provided employees with a document hold for this litigation in accordance with the Court's instructions.

Harm to USDS and the President if USDS is Required to Comply with the Court's Order

30. If USDS is required to comply with the court's order, it will have to set up a new FOIA operation from scratch within USDS. Because USDS is an Executive Office of the President component that reports to the White House Chief of Staff and advises the President, it has adopted no FOIA regulations, hired no document processors or reviewers, and has no dedicated budget for these activities. To complete all of these tasks will divert significant time and resources from an organization that is charged with advising the President and others on high-priority projects of this Administration.
31. Because USDS is an Executive Office of the President component that reports to the White House Chief of Staff and advises the President, it works closely with other senior White House advisors on a regular basis. A requirement that USDS produce records not only threatens to divert time and resources, but also risks chilling and inhibiting the exchange of information and advice among the President's advisors on Administration priorities.

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

Executed in Washington, DC this 19th day of March.



Amy Gleason

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. DOGE SERVICE, *et al.*,

Defendants.

Case No. 1:25-cv-00511-CRC

PLAINTIFF’S MOTION FOR EXPEDITED DISCOVERY

Pursuant to Federal Rules of Civil Procedure 56(d) and 26, and the Court’s March 19 Order, ECF No. 23, Plaintiff Citizens for Responsibility of Ethics (“CREW”) respectfully moves for limited, expedited discovery from Defendants U.S. DOGE Service (“DOGE”) and the DOGE Administrator. The requested discovery seeks information on DOGE’s authority and operations for purposes of determining whether it is subject to the Freedom of Information Act (“FOIA”) and Federal Records Act (“FRA”). CREW’s proposed discovery requests are submitted as Exhibit 1, and its entitlement to Rule 56(d) discovery is supported by the attached Declaration of Jonathan Maier, attached as Exhibit 2.

Counsel for CREW conferred with Defendants’ counsel. Defendants oppose the relief requested in this motion.

INTRODUCTION

The Court and the parties agree: “it would be preferable for the Court (and the D.C. Circuit on any appeal) to review the question of whether” DOGE is subject to FOIA and the FRA “based on a more complete record following expedited summary judgment proceedings.” 3/19/25 Op. & Order at 4, ECF No. 23. To develop that “more complete record,” CREW needs

an opportunity to conduct limited discovery on the fact-dependent question of whether DOGE wields “substantial independent authority.” Courts have permitted such discovery to aid the analysis of whether components of the Executive Office of the President (“EOP”)—including DOGE—are subject to FOIA and other federal laws.¹ This Court should do the same.

Defendants acknowledge that DOGE’s agency status is a “threshold” question that is both “novel and significant.” Defs.’ Recons. Mem. at 2, 3, ECF No. 20-1. Yet they seek to deprive CREW of any opportunity to develop the factual record on the issue. Without having answered CREW’s complaint or allowed any opportunity for discovery, Defendants immediately moved for summary judgment on the applicability of FOIA and the FRA to DOGE and on all claims against Defendant Elon Musk, DOGE’s de facto leader. Defendants’ motion rests on counter-textual readings of the executive orders chartering DOGE and disregards a voluminous public record—detailed in this Court’s preliminary injunction opinion—showing that DOGE is, in fact, wielding “unprecedented” authority “over vast swaths of the federal government.” 3/10/25 Mem. Op. at 23-28, 34, ECF No. 18.

By way of evidence, Defendants offer only a cursory declaration of DOGE’s purported Acting Administrator, Amy Gleason. But the Court has already found that Ms. Gleason’s representations about DOGE’s operations are “called into question by contradictory evidence in the record.” 3/19/25 Op. & Order at 10 (quoting *Jud. Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 215 (D.C. Cir. 2013)). Because Ms. Gleason’s dubious declaration raises more questions than it answers, it only *confirms* the need to develop “a more fulsome summary-judgment record.” *Id.* at 15.

¹ See, e.g., *CREW v. Off. of Admin.*, 566 F.3d 219, 224 (D.C. Cir. 2009) [hereinafter *OA*]; *EPIC v. Off. of Homeland Sec.*, No. 02-cv-00620-CKK, ECF No. 11 (D.D.C. Dec. 26, 2002); *AFL-CIO v. Dep’t of Labor*, No. 25-cv-339, ECF No. 48 (D.D.C. Feb. 27, 2025); *AFL-CIO v. Dep’t of Labor*, No. 25-cv-339, ECF No. 71 (D.D.C. Mar. 19, 2025).

Accordingly, CREW seeks to serve a narrow set of discovery requests (consisting of 13 interrogatories, 11 requests for admission, and 14 requests for production) and to conduct three depositions regarding the fact-bound question of whether DOGE wields substantial independent authority. *See* Ex. 1. CREW requires such discovery to meaningfully oppose Defendants’ early summary judgment motion, test Defendants’ flimsy factual assertions, and develop an adequate factual record for Defendants’ proposed “highly expedited summary judgment process.” Defs.’ Recons. Mem. at 18; *see also* Defs.’ Recons. Reply at 3, ECF No. 22 (stating desire to “complete briefing expeditiously” and “tee up the issue for the D.C. Circuit with all dispatch”).

The proposed discovery is narrowly tailored to seek directly relevant, non-privileged information on an expedited basis. Prompt compliance should cause Defendants minimal burden, and expedition is indeed necessitated by Defendants’ own proposed accelerated schedule.

BACKGROUND

CREW filed this action on February 20, 2025, asserting FOIA and FRA claims against DOGE (among other claims). On the same day, CREW moved for a preliminary injunction to compel immediate processing of CREW’s FOIA request to DOGE and for a document preservation order. *See generally* CREW PI Mem., ECF No. 2-1. Central to CREW’s complaint and motion was the assertion, established by a voluminous public record that included public statements from Defendants, demonstrating that DOGE exercises substantial authority independent of the President, bringing it within the definition of an “agency” subject to both FOIA and the FRA. *Id.* at 8-12, 18-25. DOGE chose not to dispute the “important threshold legal issue” of its substantial independent authority, which had been briefed “at length” by CREW. Defs.’ Recons. Mem. at 3, 12; 3/19/25 Op. & Order at 6, 14.

On March 10, 2025, the Court partially granted CREW’s motion and ordered Defendants to provide an estimate of the total volume of documents responsive to a previously-narrowed set of CREW’s FOIA requests by March 20, the parties to meet and confer on a processing and rolling production schedule, and the parties to submit a joint status report on the same by March 27. 3/10/25 Mem. Op. at 37, ECF No. 18. The Court determined that DOGE “is likely exercising substantial independent authority much greater than other EOP components held to be covered by FOIA” based on three sources of information: (1) the text of applicable executive orders, (2) Defendant Elon Musk’s and the President’s public statements, and (3) reports of DOGE’s actions “demonstrat[ing] its substantial authority over vast swathes of the federal government.” *Id.* at 23-28. In determining that FOIA required expedited processing, the Court also noted “the rapid pace of [DOGE’s] actions,” its “unusual secrecy,” and the “unprecedented” nature of the “authority exercised by [DOGE] across the federal government and the dramatic cuts it has apparently made with no congressional input.” *Id.* at 34, 36.

On March 14, DOGE filed a scattershot motion for reconsideration of the Court’s preliminary injunction ruling and a stay based on arguments and evidence it chose to withhold in opposing CREW’s motion. *See* 3/19/25 Op. & Order at 8-14. In that motion, DOGE promised to soon file a pre-answer motion for partial summary judgment on its agency status and sought an expedited briefing schedule. *Defs.’ Recons. Mem.* at 1.

DOGE also asserted that the Court would commit a manifest injustice if it did not consider “new evidence,” which was actually a declaration by DOGE’s purported Acting Administrator Amy Gleason that DOGE could have offered before the Court granted CREW’s motion. 3/19/25 Op. & Order at 9-12. Ms. Gleason’s March 14 declaration attested that she “currently serve[s] as the Acting Administrator” of DOGE, that she joined DOGE “on December

30, 2024, and that she is a “full-time, government employee at [DOGE].” 1st Gleason Decl. at 1, ECF No. 20-2. The declaration did not specify *when* Ms. Gleason became DOGE’s Acting Administrator, however. The declaration otherwise offered conclusory characterizations about DOGE’s purported legal authorities and operations, and exaggerated claims about the burden to DOGE if it were required to comply with the Court’s narrow order on March 10. *See id.*

On March 18, after CREW filed its opposition to DOGE’s motion for reconsideration, the government was forced to publicly file (after losing a motion to seal) a document in another case that revealed Ms. Gleason’s March 14 declaration in this case omitted material facts. *See infra* Part I.B. Specifically, the unsealed document was a Form 61 Office of Personnel Management Appointment Affidavit for Ms. Gleason, attached as Exhibit 3, that showed she was appointed as an “Expert/Consultant” in the Office of the Secretary of the Department of Health and Human Services on March 4, 2025, when she also swore in this case that was a “full-time” DOGE employee.

On March 19, the Court denied DOGE’s motion for reconsideration. *See* 3/19/25 Op. & Order. The Court held that Ms. Gleason’s declaration was not only untimely, but “contradicted” by the vast public record of DOGE’s conduct and public statements by both Defendant Musk and the President. *Id.* at 10-12, 15-17. The Court further indicated it would entertain expedited summary judgment briefing on the issue of DOGE’s agency status, as well as a motion for limited discovery by CREW, to ensure that “expedited resolution of this question [is] based on a more fulsome summary judgment record.” *Id.* at 14-15.

Also on March 19, Defendants filed their promised motion for partial summary judgment. Defs.’ SJ Mem., EFC No. 24. Defendants rely almost entirely on counter-textual readings of various executive orders and presidential memoranda chartering DOGE. *Id.* Their motion does

not address any of the widely-reported instances of DOGE wielding substantial authority. Instead, Defendants offer a second cursory declaration by Ms. Gleason, which again omits *when* she became DOGE’s Acting Administrator and fails to acknowledge her simultaneous employment at HHS. *See* Gleason 2d Decl., ECF No. 24-2. Yet this time, Ms. Gleason states only that she is a “full-time, government employee”—and not a “full-time, government employee *at [DOGE]*,” as sworn in her March 14 declaration. *Compare* Gleason 2d Decl. 3, *with* 1st Gleason Decl. 3 (emphasis added). Defendants also offer a February 17, 2025 declaration (filed in another case) by the Director of the White House Office Administration, stating that Defendant Musk is not the DOGE Administrator. *See* Fischer Decl. 6, ECF No. 24-3.

LEGAL STANDARDS

“When the party opposing a summary judgment motion shows that it ‘cannot present facts essential to justify its opposition,’ a court may (a) defer consideration of or deny the motion, (b) allow time for discovery, or (c) grant any other appropriate relief.” *United States v. Bolton*, 514 F. Supp. 3d 158, 165 (D.D.C. 2021) (Cooper, J.) (citing Fed. R. Civ. P. 56(d)). “A Rule 56(d) motion requires (1) a specific affidavit about why additional discovery is necessary, (2) an explanation of why the evidence could not be obtained before the motion for summary judgment, and (3) a showing that the information sought can be obtained through additional discovery.” *Id.* at 165 (citing *Convertino v. Dept. of Justice*, 684 F.3d 93, 99-100 (D.C. Cir. 2012)). Because “summary judgment is premature unless all parties have ‘had a full opportunity to conduct discovery,’” the D.C. Circuit “directs trial courts to grant 56(d) motions ‘as a matter of course.’” *Id.* at 164-65 (quoting *Convertino*, 684 F.3d at 99 (D.C. Cir. 2012)).

Beyond the Rule 56(d) context, district courts have “broad discretion over the structure, timing, and scope of discovery.” *Strike 3 Holdings, LLC v. Doe*, 964 F.3d 1203, 1208 (D.C. Cir. 2020). The Federal Rules of Civil Procedure typically provide for discovery pursuant to a discovery plan, developed after the parties confer prior to a scheduling conference. *See* Fed. R. Civ. P. 26(f). However, courts may in their discretion grant expedited discovery without a Rule 26(f) conference, where the court concludes such discovery is reasonable. *Guttenberg v. Emery*, 26 F. Supp. 3d 88, 97-98 (D.D.C. 2014). Reasonableness is a discretionary inquiry, to be considered “in light of all of the surrounding circumstances,” including “(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.” *Id.*

ARGUMENT

The parties and Court agree that whether DOGE wields substantial independent authority and is thus an “agency” under FOIA and the FRA is an “important threshold legal issue” that must be resolved expeditiously. *See* Defs.’ Recons. Mem. at 3; 3/19/25 Op. & Order at 4. Any determination of that fact-intensive issue requires a functional analysis of the activities DOGE actually “performs or is authorized to perform.” *OA*, 566 F.3d at 224. But while Defendants moved for summary judgment on that issue based on purported facts available to them alone (prior to filing an answer),² CREW indisputably has had no opportunity to conduct discovery on

² Pre-answer motions for summary judgment are disfavored in this District. *See* Minute Order, *United States v. Navarro*, No. 22-cv-2292-CKK (D.D.C. Sept. 27, 2022) (summarily denying a pre-answer summary judgment motion and explaining that “the longstanding practice of this jurisdiction” is to “defer consideration of any motion for summary judgment until after the filing of Defendant’s answer”) (citing *First Am. Bank, N.A. v. United Equity, Corp.*, 89 F.R.D. 81, 87 (D.D.C. 1981); Wright & Miller, 10A Fed. Prac. & Proc. Civ. § 2717 (West 2022)). And Defendants previously acknowledged that the subject matter of its motion for summary judgment is “a question for the merits . . . once Defendants have had an opportunity to answer the complaint in the ordinary course.” Defs.’ PI Opp’n at 20 n.4, EFC No. 10 (emphasis added).

that (or any) issue in this case, which was filed merely one month ago. Expedited discovery is thus necessary not only for CREW to meaningfully oppose Defendants’ motion for summary judgment, *see* Rule 56(d); *Bolton*, 514 F. Supp. 3d at 164-65, but also for the Court to expeditiously determine, as requested by Defendants, whether DOGE wields substantial independent authority based on an appropriately robust factual record, *see Strike 3 Holdings*, 964 F.3d at 1208; *Guttenberg*, 26 F. Supp. 3d at 97-98.

I. CREW is entitled to discovery on the fact-bound question of whether DOGE wields substantial independent authority, especially given Defendants’ unreliable and contradicted evidence.

A. Expedited discovery is necessary given the issue in dispute and the posture of the case.

The D.C. Circuit has made clear that whether an EOP component wields substantial independent authority raises questions of fact that require a functional analysis of the activities the component actually “performs *or* is authorized to perform.” *OA*, 566 F.3d at 224 (emphasis added). An understanding of both the EOP component’s “authority *and* operations” are “critical for determining whether [it] is subject to FOIA.” *Id.* at 225 (emphasis added); *see also Armstrong v. EOP*, 90 F.3d 553, 560 (D.C. Cir. 1996) (court must evaluate whether the EOP component “*could* exercise substantial independent authority” and whether it “*does in fact* exercise such authority”) (emphasis added).

Judges in this District have thus granted discovery into EOP components’ authority and operations to determine whether they wield substantial independent authority in multiple contexts similar to this one. *See, e.g., OA*, 566 F.3d at 221, 225-26 (describing court-ordered discovery, including 1,300 pages of documents and a deposition of OA’s Director declarant, “to explore ‘the authority delegated to [OA] in its charter documents and any functions that OA in fact carries out’ to determine “whether ‘OA acts with the type of substantial independent

authority that has been found sufficient to make' other EOP units 'subject to FOIA"); *EPIC*, No. 02-cv-00620-CKK, ECF No. 11 at 12 (ordering discovery to determine the Office of Homeland Security's FOIA agency status partly because "the language" of the executive order "establishing the entity's power [was] broad and lacking in firm parameters"); *AFL-CIO*, No. 25-cv-339, ECF No. 48 (D.D.C. Feb. 27, 2025) (ordering discovery on DOGE's structure, authority, and operations for purposes of determining whether "it is an agency within the meaning of the Economy Act of 1933"); *see also Armstrong*, 90 F.3d 553 (considering National Security Council staff testimony and declarations regarding its interactions with agencies and structure to determine its FOIA agency status); *Meyer v. Bush*, No. 88-cv-3112-JHG 1991 WL 212215 (D.D.C. Sept. 30, 1991), *rev'd on other grounds*, 981 F.2d 1288 (D.C. Cir. 1993) (relying on letters, memoranda, and Vice President's public statements in considering FOIA's applicability to Presidential Task Force on Regulatory Relief).

Discovery into DOGE's authority and operations is equally necessary here. As in other cases where discovery was granted, Defendants' motion for summary judgment relies entirely on its slanted reading of broad delegations of authority across multiple executive orders and memoranda, tethered to a declaration consisting of equally broad and conclusory factual assertions by DOGE's purported Acting Administrator, Ms. Gleason. *See OA*, 566 F.3d at 221, 225-26; *EPIC*, No. 02-cv-00620-CKK, ECF No. 11 at 9-12. That would entitle CREW to discovery under the best circumstances, but it makes discovery all-the-more important here, where Defendants' answer does not meaningfully respond to the issue, CREW does not have the benefit of even initial disclosures, and, as discussed below, Defendants' declaration is utterly unreliable.

Expedited discovery is also eminently reasonable, even outside the context of Rule 56(d), “in light of all of the surrounding circumstances” in which DOGE’s substantial independent authority has come before the Court. *See Guttenberg*, 26 F. Supp. 3d at 97-98 (noting that whether a preliminary injunction is pending, the purpose of requesting discovery, and the timing of discovery are factors for the reasonableness of expedited discovery); *see also infra* Part I.C (discussing scope of the requested discovery and burden to DOGE). First, CREW seeks expedited discovery not in aid of a forthcoming motion for preliminary injunction, but after winning one that is effectively being held in abeyance pending Defendants’ proposed expedited summary judgment briefing. *See* 3/19/25 Op. & Order at 14-15; *Guttenberg*, 26 F. Supp. 3d at 97. Second, the purpose of requesting expedited discovery is not only to fairly resolve Defendants’ summary judgment motion, but to reach the ultimate conclusion of FOIA and the FRA’s applicability to DOGE as soon as possible, at Defendants’ own request. *See* Defs.’ Recons. Mem. at 1, 11-12; *Guttenberg*, 26 F. Supp. 3d at 97-98.

B. Substantial factual uncertainty about DOGE’s authority and operations heightens the need for the requested discovery.

Factual uncertainty about DOGE’s authority and operations—which is directly attributable to the government’s incomplete disclosures, shifting positions, and unprecedented secrecy—further underscores the need for the requested discovery. Ms. Gleason’s declaration, which puts the full breadth of DOGE’s operations squarely at issue, is both facially incomplete and contradicts known facts about DOGE’s operations. As a starting point, the Court has already noted that a substantially similar (though, as discussed below, notably different) declaration by Ms. Gleason in support of DOGE’s motion for reconsideration did “not establish without question that [DOGE] is not exercising substantial independent authority” because, among other things, her assertions about DOGE leadership are “contradicted by President Trump’s and

Musk’s own statements,” her assertions that DOGE does not exercise decision-making authority over agencies are “at odds with other cases finding that [DOGE] ‘has taken numerous actions without any apparent advanced approval by agency leadership,’” and her declaration was inconsistent with still-undisputed news reports about DOGE’s conduct about which Ms. Gleason remains silent. 3/19/25 Op. & Order at 10-12.

Ms. Gleason’s new declaration makes the same contradictory assertions, each of which goes directly to the operational issues on which courts have granted discovery to determine FOIA’s applicability. *See OA*, 566 F.3d at 225-26; *EPIC*, 02-cv-00620-CKK, ECF No. 11 at 12. It claims to address who functionally leads DOGE, the nature of their leadership, and the nature of Mr. Musk’s association with DOGE. Gleason 2d Decl. ¶¶ 4, 6, 11, but repeats the assertions that the Court has observed are contradicted by Mr. Musk and the President, 3/19/25 Op. & Order at 10. It purports to address the balance of authority between DOGE and federal agencies, including whether agency heads have “ultimate decisionmaking authority with respect to the members of” the DOGE Teams embedded in their agency, the functional reporting lines and supervision of members of the agency DOGE Teams, and the nature of their “coordination” with DOGE, Gleason 2d Decl. ¶¶ 12-16, but repeats the assertions that the Court has observed are contradicted by the public record and findings about DOGE’s authority in other cases. 3/19/25 Op. & Order at 11. And it takes pains to portray DOGE as merely a consultant to agencies on technological improvements, Gleason 2d Decl. ¶¶ 19-24, which, as the Court has noted, is contradicted by extensive (and undisputed) public reports. 3/19/25 Op. & Order at 11-12.

In granting expedited discovery against DOGE in another case, Judge Bates identified numerous unresolved questions and evidentiary inconsistencies regarding DOGE’s reporting structure and operations, all of which gave reason “to be cautious of concluding what defendants

put forward [in opposing discovery] is the whole story.” Mem. Op. and Order, *AFL-CIO v. Dept. of Labor*, No. 25-cv-339 at 13 (D.D.C. Mar. 19, 2025), ECF No. 71. For example, he noted incomplete information about DOGE’s structure, including the reporting lines and chain of command for Ms. Gleason and other DOGE employees who work at other agencies for the purpose of “*carrying out the DOGE agenda* at those agencies,” as well as, as DOGE has urged that court to consider, the “subject matter and purpose of [their] work, *their supervision*, and their physical worksite.” *Id.* at 12 (emphasis in original). He further noted inconsistencies about the number of DOGE employees at agencies in a declaration submitted by the defendants and testimony by that declarant in another case, *id.* at 13-14, shifting and contradictory representations about whether DOGE employees were detailed to agencies, *id.* at 14, and the insufficiency of the averments by DOGE given its evolving nature, *id.* at 14-15. In the end, Judge Bates determined that “the consistent alterations and trickle of information caution[ed] the Court against accepting as certain” DOGE and the other defendants’ assertions in opposing discovery. *Id.* at 15.

As Judge Bates indicated, facts concerning DOGE’s functional control of agency DOGE Teams bear directly on whether DOGE wields substantial independent authority. If, as it appears, officials at DOGE’s EOP headquarters wield control over agency DOGE Teams, then any authority of those agency teams actually belongs to DOGE. *See, e.g.*, 3/19/25 Op. & Order at 11 (citing court findings and reports indicating that DOGE has directed agency actions); Exec. Order No. 14158 (Jan. 20, 2025), 90 Fed. Reg. 8441 (Jan. 29, 2025) (establishing DOGE “to implement the President’s DOGE Agenda” and requiring “DOGE Team Leads” at each agency to “coordinate their work with” DOGE); Exec. Order No. 14210 (Feb. 11, 2025), 90 Fed. Reg. 9669

(Feb. 14, 2025) (requiring each “DOGE Team Lead” to provide the DOGE Administrator “a monthly hiring report for the agency”).

Ms. Gleason’s revised declaration also breaks new ground that must be tested through discovery. For example, it offers crumbs of information about DOGE’s composition and structure by describing a purported sophisticated technological operation that “consults” with agencies throughout the executive branch, but meekly asserts it has no “front office” or “organizational chart[s].” Gleason 2d Decl. ¶¶ 12-13. Those assertions necessarily raise the question of what structure DOGE *does* have, which can only be ascertained through discovery.

Similarly, Ms. Gleason insists that DOGE lacks sufficient “budget” and “resources” to respond to CREW’s FOIA request. *Id.* 30. Yet she does not dispute the evidence cited by CREW that the Office of Management and Budget has apportioned more than \$39 million in taxpayer funds to DOGE. *See* CREW PI Mem. at 2 & n.1 (citing government apportionment records). Given her sworn representations to the Court, Ms. Gleason should be required to answer clarifying questions about DOGE’s budget, including why it cannot utilize some portion of that \$39 million to respond to a single FOIA request.

Ms. Gleason’s declaration’s facial insufficiency reinforces the need for discovery in several other respects. First, the declaration asserts in passing that DOGE “advises the President” and “works closely with other Senior White House advisors on a regular basis” without any detail at all, contradicting the description of DOGE’s operations Ms. Gleason provides elsewhere in her declaration. *Compare* Gleason 2d Decl. ¶¶ 30-31, *with* Gleason 2d Decl. ¶¶ 7-25. Equally important, Ms. Gleason’s declaration does not even establish that she is qualified to make it. Although it purports to rely solely on Ms. Gleason’s personal knowledge to describe the full scope of what DOGE does, has done, does not do, and has not done, it conspicuously omits the

date on which Ms. Gleason was appointed DOGE Acting Administrator (despite the fact that the White House confirmed that she was the Administrator on February 25, 2025), what role she had before that undisclosed date, the manner in which she oversees DOGE, and, as described further below, the fact that she is an employee of HHS. *See generally* Gleason 2d Decl.

The need for thorough discovery both to test Ms. Gleason's vague declaration and to obtain accurate information about DOGE's operations is heightened by the government's broader pattern of obfuscation about DOGE. CREW made its FOIA request and filed suit specifically because DOGE has assiduously thwarted public disclosure of the most basic details of its internal operations, the facts of which are entirely in DOGE's possession and control. *See* CREW PI Reply at 4-10, ECF No. 13. This "unusual secrecy," has included, in addition to withholding information from the public and Congress, *see id.*, DOGE employees "reportedly declin[ing] to identify themselves to career officials on request," Defendant Musk's statement "that posters who released the names of [DOGE] employees online 'committed a crime,'" "using auto-deleting messaging apps like Signal," and "not even releas[ing]" the name of the DOGE Administrator "until February 25, more than a month into the new administration." 3/10/25 Mem. Op. at 8-9, 34-35.

And when pressed to identify the DOGE Administrator (and Defendants' sole declarant) the Administration first reveled in treating the inquiry like a game of cat-and-mouse rather than a serious question of public administration, only to then make repeated statements that Mr. Musk, and not Ms. Gleason, actually runs DOGE. CREW PI Reply at 10-11; CREW PI Mem. at 22-25. Most recently, Defendant Musk argued in a lawsuit against one of his companies that he should not be compelled to sit for a deposition because "[t]he White House has designated Musk a 'special government employee' *in charge of Establishing and Implementing the President's*

Department of Government Efficiency ('DOGE')” and he is too busy performing that “official task.” Letter to Hon. Todd M. Hughes at 3, *Arnold v. X Corp.*, No. 23-cv-528 (D. Del. Mar. 19, 2025), ECF No. 144 (emphasis added) (attached as Exhibit 4). Ms. Gleason, meanwhile, has been kept conspicuously out of public view by the Defendants as DOGE has incessantly touted its work and Mr. Musk and the President have touted Mr. Musk’s leadership of DOGE. Defendants’ representations to this Court that Mr. Musk is *not* running DOGE are tantamount to legal gaslighting. At a minimum, they provide further grounds for discovery.

Defendants have also shown a stark lack of candor in this and other cases. In her March 14, 2025 declaration in support of DOGE’s motion for reconsideration, Ms. Gleason swore, among other things, that she was a “full-time, government employee at USDS.” 1st Gleason Decl. 3. She omitted that, unbeknownst to the Court and CREW, Ms. Gleason had, on March 4, accepted an appointment at HHS.

The timeline of Defendants’ and Ms. Gleason’s half-truths and material omissions is troubling in the extreme. On February 27, 2025, the court in *AFL-CIO*, No. 25-cv-339 (D.D.C. 2025), EFC No. 48, ordered expedited discovery because DOGE employees had apparently gained access to sensitive systems at various agencies, including HHS, in violation of federal law limiting such access to agency employees. On March 4, Ms. Gleason was officially appointed to HHS, and other DOGE members were appointed to other agencies at issue in that litigation. Ex. 3. On March 11, DOGE used those hirings to try to convince the court, in a sealed filing, to rescind its discovery order. Order at 6, *AFL-CIO*, No. 25-cv-339 (D.D.C. Mar. 19, 2025), ECF No. 71. DOGE requested that if the court did permit the filing under seal, that it permit DOGE to redact the names of the DOGE employees who were appointed to the agencies and those who administered their oaths. *Id.* at 8 n.7.

On March 14, while DOGE was using Ms. Gleason’s appointment at HHS—temporarily under seal—to avoid its discovery obligations in *AFL-CIO*, DOGE was simultaneously using her sworn statement that she is a “full-time, government employee at USDS” to avoid its disclosure obligations pursuant to the Court’s March 10 order, going so far as to accuse the Court of manifest injustice if it did not credit her inaccurate declaration. Defs.’ Recons. Mem. at 13-19. Neither CREW nor the Court would have been aware of Defendants’ and Ms. Gleason’s double-dealing had the court in *AFL-CIO* not denied the government’s motion to seal on March 18. Order, *AFL-CIO*, No. 25-cv-339, ECF No. 59. In so doing, that court also unsealed plaintiff’s Notice of New Evidence, which made clear that Defendants and Ms. Gleason had withheld her sworn statement that she was a full-time employee of DOGE. Sealed Notice of New Evidence, *AFL-CIO*, No. 25-cv-00339, ECF No. 69. Their game exposed, Ms. Gleason’s new declaration, while still omitting the material fact of her role at HHS, notably has changed her sworn description of her role from “full-time, government employee at USDS” to simply “full-time, government employee.” Gleason 2d Decl. 3.

In sum, discovery is necessary to permit the Court to properly examine DOGE’s operations, fairly probe the full scope of issues put forth by Defendants and Ms. Gleason, test the veracity and basis of Ms. Gleason’s incomplete declaration, and protect against Defendants’ further concealment of the facts.

C. The proposed discovery is narrowly tailored to seek non-privileged information directly relevant to DOGE’s agency status.

As described in the attached declaration of Jonathan Maier, the requested expedited discovery is necessary to oppose Defendants’ motion for summary judgment and to obtain sufficient information to resolve the larger issue of DOGE’s substantial independent authority and, thus, the applicability of FOIA and the FRA. *See* Fed. R. Civ. P. 56(d); *see generally* Maier

Disc. Decl. CREW's narrowly tailored discovery requests target information necessary for those purposes, *Bolton*, 514 F. Supp. 3d at 165 (noting that Rule 56(d) requires a showing that discovery will provide the necessary information), while avoiding information that is privileged, unnecessary to determine DOGE's substantial independent authority, and likely to unreasonably burden DOGE, *see* Fed. R. Civ. P. 56(d); *Guttenberg*, 26 F. Supp. 3d at 97-98 (identifying breadth and burden of production as factors in assessing reasonableness of expedited discovery requests).

CREW seeks discovery on four aspects of DOGE's operations that relate directly to whether it wields substantial independent authority and the assertions in Ms. Gleason's second declaration. The first area is DOGE's structure and leadership, which will simultaneously provide clarity into the scope of DOGE's work, Ms. Gleason's role within DOGE, and the veracity of her declaration. The second area is how DOGE interacts with and directs actions by federal agencies, through agency DOGE Teams or otherwise. The third area is the scope of DOGE's work, including the contradictions between DOGE's widely reported actions and Ms. Gleason's characterizations of its work and whether DOGE actually advises the President. And the fourth area is, to the extent not made clear otherwise, whether Ms. Gleason was qualified to have made the sworn statements she did in her declaration. CREW's proposed discovery requests are well-tailored to those issue areas.

The attached declaration describes in detail why each interrogatory, Maier Disc. Decl. ¶¶ 13-18, request for production, *id.* ¶¶ 19-26, request for admission, *id.* ¶ 15, and depositions of DOGE's designee, Ms. Gleason, and Steven Davis, *id.* ¶¶ 27-29, are necessary to allow CREW to respond to DOGE's motion and for the Court to expeditiously determine whether DOGE wields substantial independent authority. CREW's declaration further confirms the obvious fact

that CREW is unable to, without the requested discovery, obtain or produce any of those facts on its own, *id.* ¶¶ 30-31, and that the information that CREW is seeking is discoverable, *id.* ¶¶ 32-34. Rather than repeating the contents of the declaration in full here, CREW highlights several factors that, in addition to the necessity of the facts to resolve FOIA's and the FRA's applicability to DOGE, make discovery particularly important here.

First, as noted, CREW is being forced to seek expedited discovery without the benefit of initial disclosures to guide it or an answer by Defendants that meaningfully narrows or frames the factual disputes at issue. *See supra* note 2. Up until Defendants' motion for partial summary judgment, CREW's detailed allegations regarding DOGE's exercise of substantial independent authority were met first by a blanket and legally insufficient claim that DOGE's placement in the EOP exempts it from FOIA's plain text, Defs.' PI Opp'n at 8 n.2, and now CREW faces a summary judgment motion that relies on, but barely discusses, a facially incomplete and dubious declaration.³ *See supra* Part I.B.

Defendants' answer, filed one week later, provides no clarity on whether DOGE wields substantial independent authority. While Defendants' answer generally denies that numerous actions taken at federal agencies were "activities of" or actions taken "by USDS," *see, e.g.*, Answer ¶¶ 60, 63-70, 74, 76, 82, EFC No. 26, that narrow denial does not, even if true, speak to the likelihood that DOGE was directing or otherwise controlling the activities of federal agencies. Similarly, Defendants' answer does not deny the accuracy of the many press reports underlying CREW's allegations about DOGE's control over government operations, instead merely referring the Court back to them. *See, e.g., id.* ¶¶ 2-3, 41-45, 60-65, 71, 79-82, 84-88, 90,

³ Defendants' motion only cites Ms. Gleason's declaration a handful of times, namely to offer legal characterizations of executive orders, Defs.' SJ Mem. at 3, ECF No. 24-1, insist that Mr. Musk is not a part of DOGE, *id.* at 24, 28, and claim that DOGE has a small staff and no "front office," *id.* at 27.

97. DOGE also claims to lack sufficient information about its own operations, including if DOGE caused the U.S. Marshals to pressure federal judges to speed up the release of persons pardoned for crimes related to the attack on the U.S. Capitol, *id.* 73, if DOGE representatives appeared at the offices of USAID and threatened to call the U.S. Marshals in the course of obtaining access to a sensitive compartmented information facility over the objections of federal agency personnel, *id.* 74, or if DOGE personnel have refused to identify themselves to federal agency employees from whom they have demanded information, *id.* 76. CREW's proposed discovery seeks to facilitate expedited summary judgment briefing on these unanswered questions. Rule 56(d) and principles of equity require that CREW be given a meaningful opportunity to conduct expedited discovery now and to seek additional discovery at a later date, if needed.

Second, and relatedly, any burden on DOGE in responding to CREW's expedited discovery requests is a problem of its own making. DOGE *insisted on* taking the disfavored route of seeking summary judgment before filing an answer or allowing discovery to begin, specifically to accelerate a final determination on whether it is subject to FOIA and the FRA. *See supra* Part Note 2. And it presumably did so with full knowledge that the likely outcome of its filing would be expedited discovery that would potentially be more burdensome than discovery that would proceed in the normal course of litigation. Not only did counsel for CREW inform counsel for DOGE in a conferral email that it would seek discovery under Rule 56(d) if DOGE sought summary judgment at this point, but the Court also indicated that it would likely permit such discovery if DOGE did so. 3/19/25 Op. & Order at 14-15. DOGE cannot now claim undue burden in responding to discovery that it brought upon itself. And the Court should be skeptical of any claim of burden by DOGE, given its prior dubious claims that making a narrow, one-time

production ordered by the Court on March 10 would require it to create an entire permanent FOIA function. *Id.* at 16. The Court should continue to have “faith that the employees of a government organization charged with ‘modernizing Federal technology and software’ . . . are technologically sophisticated enough” to promptly and efficiently respond to CREW’s targeted discovery requests. *Id.*

Third, CREW has narrowly tailored its discovery requests despite DOGE’s total failure to narrow the scope of the facts at issue. As described above, determining whether DOGE wields substantial independent authority is a fact-intensive exercise that requires an examination of both what DOGE is authorized to do and what it actually does. *See supra* Part 1.A. Defendants, through Ms. Gleason’s solitary declaration, have disputed virtually every aspect of DOGE’s operations, including its administrative capabilities, its relationship to DOGE Teams, its leadership and oversight structure, and even the basic nature of its work. *See generally* Gleason 2d Decl. Despite this, CREW is seeking limited discovery that excludes, for example, all but a small number of email communications, depositions of numerous DOGE personnel identified in public reports as dictating the conduct of federal agencies, and communications or testimony of Defendant Musk, DOGE’s self-identified leader. CREW’s proposed discovery also specifically excludes communications with the President.

Finally, CREW’s proposed expedited discovery requests seek to protect against, and CREW urges the Court to account for, DOGE and the wider government’s track record of dilatory tactics and perfidy when faced with the possibility of public disclosure of information about DOGE. As described above, DOGE and Ms. Gleason have already submitted misleading sworn statements to the Court and Judge Bates has noted that there was reason to believe that the government was not providing his court with the “whole story” as it argued that he should

modify a modest order for expedited discovery in a separate case. *See supra* Part I.B. These are just the latest examples of the government's pattern of obfuscation whenever challenged about DOGE's operations. *See* CREW PI Reply at 9-10.

CONCLUSION

For the reasons stated above, CREW respectfully requests that the Court grant its Motion for Expedited Discovery and issue an order: (1) requiring DOGE and the DOGE Administrator to serve written responses and any objections to CREW's written discovery requests within 7 days of the Court's order, produce documents responsive to CREW's request for production of documents within 14 days of the Court's order, and thereafter complete the depositions of Ms. Gleason, Mr. Davis, and DOGE's Rule 30(b)(6) designee within 10 days from the deadline for producing documents; (2) permitting additional discovery as needed, with leave of the Court; and (3) staying all briefing on Defendants' motion for partial summary judgment, ECF No. 24, pending completion of expedited discovery.

Dated: March 27, 2025

Respectfully submitted,

/s/ Nikhel S. Sus

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CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON

A large black rectangular redaction box covers the signature and name of the attorney, Nikhel S. Sus.

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
Plaintiff,

v.

U.S. DOGE SERVICE, *et al.*,
Defendants.

Case No. 1:25-cv-00511

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR EXPEDITED DISCOVERY**

On March 27, 2025, Plaintiff Citizens for Responsibility and Ethics in Washington (CREW) moved for expedited discovery in response to the United States DOGE Service's (USDS) motion for summary judgment.¹ USDS respectfully opposes the motion. First, there is no need for discovery to resolve USDS's summary judgment motion. USDS's charter documents make clear that it does not possess anything like the substantial independent authority that this Court and the D.C. Circuit have held make Executive Office of the President (EOP) components such as the Office of Science and Technology Policy (OSTP), Council on Environmental Quality (CEQ), and Office of Management and Budget (OMB) agencies for purposes of the Freedom of Information Act (FOIA) and the Federal Records Act (FRA).

But even if this Court were to conclude that some discovery is warranted, CREW's proposed discovery sweeps far more broadly than is plausibly necessary to determine USDS's

¹ The motion also seeks summary judgment as to the USDS Administrator and Elon Musk. Although Mr. Musk is not a USDS employee and is not otherwise affiliated with USDS, for ease of reference we refer to the Defendants who have sought summary judgment collectively as USDS in this opposition.

agency status, would be extremely burdensome, and could not possibly be completed on an expedited basis (let alone on the timetables CREW proposes). Although CREW characterizes its motion as seeking “limited, expedited discovery,” ECF No. 27 (Motion) at 1, its requests are anything but limited. CREW seeks three depositions (including a deposition of the component head), when a single Rule 30(b)(6) deposition would be sufficient. It requests numerous categories of information concerning the work of Agency DOGE Teams that is not otherwise tied to USDS; such information is not readily available to USDS and is in any event irrelevant to whether USDS’s activities render it an agency for FOIA/FRA purposes. CREW further requests information concerning the sufficiency of USDS’s record-keeping and preservation practices—information that, even if relevant to whether USDS’s practices would comply with the FRA, are wholly irrelevant to whether USDS is an agency that must comply with the FRA in the first place, which is the only question at issue in USDS’s summary judgment motion. And, in addition to other irrelevant and unduly burdensome requests, CREW includes numerous requests concerning USDS’s “recommendations” to other Executive Branch components, material that is almost definitionally advisory (and thus cannot help CREW establish that USDS is wielding decisionmaking authority independent of the President) and privileged (as pre-decisional and deliberative). The Court should deny CREW’s motion but, if it does not, the Court should significantly narrow the proposed discovery.

ARGUMENT

I. Discovery Is Not Necessary to Resolve USDS’s FOIA and PRA Status

As an initial matter, the Court should not order any discovery at all. CREW suggests that resolution of an EOP component’s FOIA status necessarily requires analysis of both the activities an entity performs and the activities an entity is authorized to perform. Motion at 8. But this Court’s

cases do not establish that discovery is invariably necessary to determine this issue. Indeed, in the most recent case from this Court addressing this issue (holding that the Office of American Innovation was not a FOIA agency), this Court resolved the case without permitting any discovery. *Democracy Forward Foundation v. White House Office of American Innovation*, 356 F. Supp. 3d 61, 73 (D.D.C. 2019).

And although this Court has authorized discovery in other cases addressing an EOP component's FOIA status, CREW misunderstands those cases. The cases focused on whether a component *could* wield independent authority and authorized discovery only to the extent necessary to determine whether the component was wielding authority it could exercise, or where it was unclear whether the component's charter documents in fact authorized such authority. For example, in *Electronic Privacy Information Center v. Office of Homeland Security*, No. 02-cv-00620 (CKK), ECF No. 11 (D.D.C. Dec. 26, 2002), the Court considered whether the Office of Homeland Security (OHS) was an agency subject to FOIA, and determined that limited discovery on that question was appropriate because "the language establishing [OHS's] power [was] broad and lacking in firm parameters." *Id.* at 9-12.

In *CREW v. Office of Administration (OA)*, No. 1:07-cv-00964-CKK, ECF No 33 (D.D.C. Feb. 11, 2008), the Court expressed doubt that the discovery CREW sought was necessary. *See id.* at 3 n.1 (noting that prior cases had authorized discovery but stating that "CREW has not proffered any legal support for the proposition that discovery of such evidence is *required* whenever an entity's agency status is at issue" (emphasis in original)). But the Court nonetheless concluded—in a motion-to-dismiss posture—"out of an abundance of caution, that *very limited* discovery as to OA's agency status is appropriate," *id.* at 3-4 (emphasis in original). At the same time, the Court "significantly restrict[ed] the scope of discovery that CREW may pursue as to OA's agency

status.” *Id.* at 4.

Discovery is unwarranted here because USDS’s charter documents demonstrate that it does not have anything like the authority that makes OSTP, CEQ, and OMB FOIA agencies. These EOP components are agencies subject to FOIA because they have independent authority to issue guidelines to federal agencies, to issue regulations legally binding on agencies, to oversee certain activities of other federal agencies, or to perform other significant statutory duties such as providing budget information to the Congress. ECF No. 24-1 at 21. As noted in the motion for summary judgment, USDS’s discrete responsibilities are limited, and do not involve authority over other components at all, let alone authority comparable to those of OSTP, CEQ, or OMB:

- Agency DOGE Teams—employees of the respective agency—are tasked generally with “coordinat[ing] their work with USDS” while “advis[ing] their respective Agency Heads on implementing the President’s DOGE Agenda.” Exec. Order 14,158, § 3(c).
- The USDS Administrator must commence a software modernization initiative and “work with Agency Heads to promote inter-operability between agency networks and systems, ensure data integrity, and facilitate responsible data collection and synchronization.” *Id.* § 4(a).
- For purposes of that software modernization initiative, the USDS Administrator should “to the maximum extent consistent with law,” “have full and prompt access to all unclassified agency records, software systems, and IT systems.” *Id.* § 4(b).
- The Assistant to the President for Domestic Policy is directed to consult with USDS (among other entities) in developing a federal hiring plan. Exec. Order 14,170, § 2(a).
- In implementing that plan, USDS may provide “advice and recommendations as appropriate” concerning implementation. *Id.* § 2(d).
- USDS receives monthly hiring reports from each DOGE Team Lead. Exec. Order 14,210, § 3(b)(iii)
- The Administrator of USDS, with the OMB Director and in coordination with the Assistant to the President for Domestic Policy, is directed to identify sources of federal funding for illegal aliens and make various recommendations. Exec. Order 14,218, 2(b)(i)-(ii).
- USDS receives from each Agency DOGE Team Lead “a monthly informational report

on contracting activities,” Exec. Order 14,222, § 3(d)(ii), as well as “to the extent consistent with law—. . . a monthly informational report listing each agency’s justifications for non-essential travel,” *id.* § 3(e).

- The OMB Director is directed to consult with the USDS Administrator (as well as the Director of the Office of Personnel Management), to submit a plan to reduce the size of the federal workforce. Presidential Memorandum, Hiring Freeze, *available at* <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>.
- The Secretary of the Treasury is directed to consult with the OMB Director and USDS Administrator in determining whether it is in the national interest to lift the current IRS hiring freeze. *Id.*

Although CREW assails USDS’s supposed “slanted reading” of the relevant Executive Orders, Motion at 9, and supposed “counter-textual readings of the executive orders chartering DOGE,” *id.* at 2, it does not meaningfully engage with those sources at all, let alone explain why—under any reasonable reading of those sources—they endow USDS with substantial *independent authority*. CREW cites the directive to “implement” the President’s DOGE Agenda in Executive Order 14,158, but we have already explained why reliance on this language is misplaced: it is referring to the entire DOGE structure (including DOGE Teams at federal agencies); the word “implement” is purely prefatory language that explains why the President signed the Executive Order; and even if the term “implement” standing alone was suggestive of something more, the term must be construed in light of the full text of the Executive Orders and presidential memorandum, which assign to USDS specific and purely advisory responsibilities. ECF No. 24-1 at 22-23. CREW also cites Executive Order language directing Agency DOGE Team leads to coordinate their work with USDS, and directing each Agency DOGE Team lead to provide a monthly hiring report for the agency to USDS. Motion at 12-13. This limited information-sharing and coordination mandate, too, does not plausibly identify authority USDS *exerts over* federal agencies, let alone authority independent of the President.

CREW also repeatedly criticizes Ms. Gleason's declaration as missing supposedly necessary information. But this misses the point. A significant portion of Ms. Gleason's declaration simply describes the structure and function of USDS and Agency DOGE Teams by citing to, quoting from, or otherwise discussing the Executive Orders and presidential memorandum that discuss these same issues. Gleason Decl. ¶¶ 7-25. Ms. Gleason's discussion of these issues was not "conclusory," Motion at 5, 9; it was based on the very sources that delineate USDS's limited responsibilities, and the contrasting work of Agency DOGE Teams. And those charter documents make clear that USDS is nothing like the components this Court and the D.C. Circuit have held to be agencies subject to FOIA and the FRA.

Because CREW barely engages with these materials, its motion is premised entirely on speculation that USDS operates in a manner completely disconnected from the Executive Orders and presidential memorandum that govern and authorize its work. But no court has permitted discovery in a case addressing an EOP component's status based on such bare speculation and this Court should not do so either.

Finally, CREW repeatedly accuses Ms. Gleason as well as USDS of making misrepresentations, and otherwise incomplete statements. Most prominently, CREW faults Ms. Gleason for not noting in her declaration that she is also employed by HHS. Motion at 6. CREW goes on to state that failing to include her HHS employment represented a "stark lack of candor," *id.* at 15, "double-dealing" and a "game," *id.* at 16. But CREW's suggestion that this represents some kind of intentional misrepresentation is difficult to fathom. The government did seek to redact Ms. Gleason's name and others in the litigation before Judge Bates, because of fear of harassment she and others face due to their affiliations with USDS. *See* No.1:25-cv-00339-JDB, ECF No. 59 at 3. And they did not highlight Ms. Gleason's HHS employment because it is not

relevant to any issue in this case, let alone to the discrete issue presented by USDS’s summary judgment motion—whether it is an agency subject to FOIA.

CREW also faults Ms. Gleason for insisting that “that DOGE lacks sufficient ‘budget’ and ‘resources’ to respond to CREW’s FOIA request,” Motion at 13. But Ms. Gleason’s point was that USDS “has adopted no FOIA regulations, hired no document processors or reviewers, and has no dedicated budget *for these activities*.” Gleason Decl. ¶ 30 (emphasis added).

Most of CREW’s other supposed misrepresentations and inconsistencies involve its repeated citation of outside sources—including news articles, and statements by President Trump, Elon Musk, and others—that reported on or made statements about “DOGE” generally. *See* Motion at 10-14. CREW’s motion compounds the confusion by choosing to refer to USDS as “DOGE.” *See* Motion at 1.

But as Executive Order 14,158 makes clear, USDS and “DOGE” more generally are simply not the same thing. The Executive Order “establishes the Department of Government Efficiency to implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity.” Exec. Order 14,158, § 1. It then separately defines USDS and the USDS temporary organization. *Id.* § 3(a). The Department of Government Efficiency is thus the umbrella term for the government-wide initiative to implement the President’s DOGE Agenda, while USDS is a specific nonstatutory component with limited and purely advisory responsibilities. The Executive Order makes clear that the “DOGE Structure” it is creating to implement the President’s DOGE agenda consists of USDS, the USDS temporary organization established within USDS, and Agency DOGE Teams. *Id.* § 3(a)-(c). CREW and other Plaintiffs are free to seek information about the work of Agency DOGE Teams by submitting FOIA requests to those agencies—who unquestionably are subject to FOIA. But this lawsuit is

against USDS, and USDS is not a FOIA agency. And public statements about “DOGE” generally—even if considered—do not create any genuine issue of material fact that must be explored through discovery about *USDS*’s limited and purely advisory responsibilities.²

II. If the Court Authorizes Discovery, it Should Significantly Narrow CREW’s Proposed Discovery

Although USDS maintains that no discovery is necessary or appropriate to resolve its summary judgment motion, USDS recognizes that, in the last case to reach the D.C. Circuit concerning whether an EOP component was an agency subject to FOIA, limited discovery was permitted. *CREW v. Office of Administration*, 559 F. Supp. 2d at 13. But even if this Court were to order some discovery, CREW’s proposed discovery—13 interrogatories, 11 requests for admission, 14 requests for production of documents, and three depositions, encompassing activities outside USDS, and including other topics that are highly burdensome and of little to no relevance to the pending summary judgment motion—is substantially overbroad and should be narrowed as discussed further below.

A. The Court Should Either Not Allow Depositions, or the Court Should Limit CREW to a Single Rule 30(b)(6) Deposition

USDS respectfully submits that the least burdensome and most efficient approach is to limit discovery to written discovery only. The Supreme Court has recognized that “[t]he high respect that is owed to the office of the Chief Executive . . . is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.” *Cheney v. United States District Court*, 542 U.S. 367, 385 (2004) (quotation marks omitted). Thus, discovery on the Executive Office of the President should be fashioned to be as unobtrusive as possible. *See also*

² CREW also notes that Defendants’ answer stated that Defendants lack sufficient information to admit or deny certain of CREW’s allegations as reported by the media. These responses have no bearing on the issue of USDS’s agency status and lend no support to CREW’s discovery motion.

id. at 387-88.

Here, USDS has moved for summary judgment based on a single issue: whether it is an agency subject to FOIA. As noted above, CREW's proposed written discovery includes 13 interrogatories, 11 requests for admission, and 14 requests for production of documents. As discussed further below, some of CREW's written discovery is either of limited to no relevance to this question, would be overly burdensome, or both. But regardless of the scope of any discovery this Court authorizes, the least intrusive manner to conduct discovery on that topic is through written discovery. It is also the most efficient approach because, even assuming the question of USDS's agency status requires looking beyond the documents that define its limited responsibilities, any inquiry into USDS's activities can be most fully addressed in writing.

But even if this Court were to permit depositions, USDS strongly objects to two of the three depositions proposed by CREW. CREW seeks a deposition under Fed. R. Civ. P. 30(b)(6). ECF No. 27-1 at 14. "Rule 30(b)(6) requires an organization to identify a person knowledgeable on a noticed topic and to prepare that person to testify as to that topic, thus binding the entity." *Prasad v. George Washington University*, 325 F.R.D. 1, 6 (D.D.C. 2018). For USDS to offer and prepare a witness to give binding testimony on its behalf concerning specified topics is a considerable undertaking. Indeed, Rule 30(b)(6) depositions "provide[] the organization's adversary with a very effective device for procuring information and also can impose considerable burdens on the opposing party." 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.). Given this burden, courts often require a litigant seeking a 30(b)(6) deposition to attempt other means to obtain information (such as contention interrogatories or a deposition upon written questions) before authorizing a 30(6)(6) deposition. *Id.*

Nonetheless, *if* the Court concludes that depositions are needed, Defendants do not object to the Court’s approval of a single 30(b)(6) deposition. Indeed, while CREW repeatedly notes the litigation currently pending before Judge Bates, in that case the Court allowed only 30(b)(6) depositions, and only for a period of eight hours total for 30(b)(6) depositions of USDS and three defendant agencies. *AFL-CIO v. Department of Labor*, No. 25-cv-339 (D.D.C. Mar. 19, 2025), ECF No. 48 at 1. By contrast, USDS does strongly object to CREW’s *additional* demand for depositions of USDS Administrator Amy Gleason and Steven Davis. ECF No. 27-1 at 14. If CREW obtains a Rule 30(b)(6) deposition *of USDS* on topics it deems relevant to the question whether USDS is an agency, *see id.* (stating that “Plaintiff also seeks a deposition of DOGE under Fed. R. Civ. P. 30(b)(6) on the following topics”), it does not *also* need depositions of Ms. Gleason and Mr. Davis.

That Ms. Gleason submitted a declaration in support of USDS’s summary judgment motion does not change the analysis, for at least two reasons. For one, FOIA cases are ordinarily resolved on summary judgment without discovery. This is true even when—as is often if not usually the case—a component’s summary judgment motion relies on a declaration. Similarly here, if discovery is authorized, that does not mean that CREW is entitled to a deposition of Ms. Gleason. *See* 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.) (“Because Rule 30(b)(6) imposes on the organization the obligation to select the individual witness, the party seeking discovery under that provision of the rule is not permitted to insist that it choose a specific person to testify unless in response to a Rule 30(b)(6) notice.”).

Second and no less importantly, to the extent CREW wants (and is permitted) to inquire into particular statements in Ms. Gleason’s declaration and the basis of those statements, it can do that through a Rule 30(b)(6) deposition. The declaration accompanying CREW’s motion, *see* ECF

No. 27-2 (Maier Decl.), proves the point. That declaration states that the 30(b)(6) deposition “is necessary to obtain DOGE’s binding testimony regarding its substantial independent authority, which is both fact-intensive and has been placed squarely at issue by Defendants in their motion for partial summary judgment *and Ms. Gleason’s second declaration.*” Maier Decl. ¶ 28 (emphasis added). It goes on to state that the 30(b)(6) “deposition is also necessary to test the veracity of Ms. Gleason’s second declaration.” *Id.* Yet when it comes time to justifying the need to depose Ms. Gleason individually, CREW offers essentially identical justifications. *Id.* ¶ 29 (stating that “[t]he deposition of Ms. Gleason is necessary to allow CREW to test the veracity of her second declaration” and “her deposition will establish the factual basis, or lack thereof, for her declaration’s assertions about DOGE’s operations and Mr. Musk’s DOGE role” as well as “additional information regarding all manner of DOGE’s operations”).

CREW’s demand for a separate deposition of Ms. Gleason might be driven by an assumption that she would have the most personal knowledge about USDS’s operations. But even this is unclear because CREW also repeatedly suggests that a deposition of Ms. Gleason will be of limited assistance. *See id.* (stating “if she is in fact knowledgeable”); *id.* ¶ 30 (hypothesizing about “the factual gaps that will very likely emerge from Ms. Gleason’s testimony”). In any event, this too is not a basis for seeking a separate, duplicative, and burdensome deposition of Ms. Gleason. If the Court authorizes a Rule 30(b)(6) deposition, USDS will of course be obligated to prepare its designated witness to address the 30(b)(6) topics (including any matter addressed in Ms. Gleason’s declaration to the extent such matter is within the scope of any approved topics). CREW does not also need—and should not get—a deposition of Ms. Gleason.

Finally on this topic, CREW’s requested deposition of Mr. Davis is also unnecessary, duplicative of a 30(b)(6) deposition, and overly burdensome. CREW cites media reports

concerning Mr. Davis’s alleged activities at USDS and suggests that he will “have unique insight into DOGE’s operations, particularly those relevant to whether it wields substantial independent authority, and Defendants Musk’s role.” Maier Decl. ¶ 30. But CREW’s proposed 30(b)(6) notice similarly indicates that it wishes to explore, among other things, “DOGE’s establishment, mission, responsibilities, personnel, leadership structure, authorities, and decision-making and reporting structure.” ECF No. 27-1 at 14. CREW is free in a Rule 30(b)(6) deposition to explore any approved topic.

Notably, in the last case to reach the D.C. Circuit concerning whether an EOP component was an agency subject to FOIA, CREW was permitted a single deposition. *Citizens for Responsibility & Ethics in Washington v. Office of Administration*, 559 F. Supp. 2d 9, 13 (D.D.C. 2008), *aff’d*, 566 F.3d 219 (D.C. Cir. 2009). And again, in the most recent case on the question of whether an entity was subject to FOIA, this Court resolved the case without permitting any discovery. *Democracy Forward Foundation*, 356 F. Supp. 3d at 73. Consistent with those decisions (and the general principle that discovery into an EOP component should be as unobtrusive as possible), the Court should not authorize any depositions but, if it does, should at most permit a single 30(b)(6) deposition of USDS and reject CREW’s request for additional depositions of Ms. Gleason and Mr. Davis.

III. The Court Should Reject Plaintiff’s Proposed Discovery Concerning Irrelevant and/or Overly Burdensome Topics

In addition, CREW seeks discovery into several topics that either are irrelevant to resolving USDS’s summary judgment motion or, to the extent they are marginally relevant, would be unduly burdensome. Although we attempt to identify the discovery requests raising each topic, USDS also objects to any other request to the extent it purports to request information on these irrelevant and overly burdensome topics. Additionally, to the extent USDS is ultimately required to respond to

Plaintiff's discovery requests, USDS would of course provide its formal objections to the requests—including but not limited to objections that particular requests are vague, impermissibly seek privileged information, or are otherwise improper. In highlighting those topics and areas that should not be included in any expedited discovery this Court orders, Defendants do not waive these and other objections they might state in their formal discovery responses.

With those caveats, we address each topic in turn.

USDS's preservation policies and practices: CREW proposes deposing a 30(b)(6) deponent on “DOGE’s recordkeeping and retention policies and practices.” ECF No. 27-1 at 14. Document Request 14 requests “[a]ll documents describing DOGE’s record retention and preservation policies, including those relating to the @DOGE X account.” Interrogatory 11 would ask USDS to “[i]dentify whether any DOGE employee or DOGE Team member has used or presently uses non-official messaging systems or applications with auto-delete functionality, including but not limited to Signal, to conduct government business.” *Id.* at 9.

These inquiries are not germane to the pending summary judgment motion. To be clear, the question at issue here is not whether, if the Court concludes that USDS is an agency under FOIA and the FRA, this proposed discovery would be relevant to the merits of CREW’s FRA claim (we take no position on that question at this time). USDS moved for summary judgment based solely on the argument that it is not an agency that can be sued under the FRA (or FOIA). USDS’s preservation and retention policies are simply not relevant to *whether* USDS is a FOIA/FRA agency in the first place, the only question raised by the summary judgment motion.

CREW wholly fails to establish otherwise. CREW states, for example, concerning Document Request 14,³ that “[t]hese documents are necessary to test the veracity of assertions

³ CREW identifies this request as request 15, but it is request 14.

regarding DOGE’s record retention in Ms. Gleason’s second declaration and to ascertain whether records potentially responsive to CREW’s discovery requests have been lost, and are particularly important given the DOGE’s unusual secrecy.” Maier Decl. ¶ 27 (quotation marks omitted). Ms. Gleason’s declaration included three paragraphs briefly explaining that USDS must comply with the Presidential Records Act, Gleason Decl. ¶ 27, that USDS has explained to its employees that they must comply with recordkeeping requirements, *id.* ¶ 28, and that “USDS has also provided employees with a document hold for this litigation in accordance with the Court’s instructions,” *id.* ¶ 29. The declaration also states (in a paragraph that does not address preservation or records retention specifically) that “[p]er the USDS Order, USDS is required to adhere to rigorous data protection standards.” *Id.* ¶ 26. It is entirely understandable that, in this fast-moving litigation, USDS would want to assure the Court that it has legal obligations under the PRA with which it complies, and that USDS has taken steps to ensure compliance with this Court’s preservation order. But such statements do not make USDS’s recordkeeping and preservation policies/practices relevant to the pending motion, and this topic is not relevant at all.

In addition, to the extent CREW argues that it seeks evidence of whether USDS has consistently treated itself as a PRA entity, any such argument is also unavailing. USDS has indeed consistently taken the position since Executive Order 14,158 (which reconstituted the former United States Digital Service as USDS, as a freestanding component of EOP) that it is a PRA component. In any event, the D.C. Circuit has made clear “that past views have no bearing on the legal issue whether a unit is, in fact, an agency subject to FOIA.” *Citizens for Responsibility & Ethics in Washington v. Office of Administration*, 566 F.3d 219, 225 (D.C. Cir. 2009). Indeed, the D.C. Circuit deemed this issue irrelevant in *CREW v. Office of Administration* notwithstanding

evidence that the Office of Administration had considered itself subject to FOIA for nearly 30 years. *Id.*

Materials from Agency DOGE Teams: Plaintiff’s proposed discovery defines “DOGE Team” as “synonymous in meaning and equal in scope to the term ‘DOGE Team’ in Executive Order 14,158.” ECF No. 27-1 at 5. As Executive Order 14,158 makes clear, Agency DOGE Teams are employees of their respective agencies (not USDS). Executive Order 14,158, § 3(c). And the “DOGE Team Lead” reports to the agency head or an agency head’s agency designee—not to USDS. *Id.* § 2(c).

The proposed discovery nonetheless requests broad categories of information about DOGE Teams, including the identity of all Agency DOGE Team members/who they work for/the dates of their employment (Interrogatory 1), persons who exercise authority over DOGE Team members/reports that DOGE Team members are required to submit (Interrogatory 4), directives from DOGE Team members (Interrogatories 5 and 7), recommendations from DOGE Team members (Interrogatories 6 and 8), any alleged uses of non-official messaging systems by DOGE Team members (Interrogatory 11), timekeeping records for DOGE Team members (Document Request 4), final directives from any DOGE Team (Document Request 5), certain documents delineating the scope of any DOGE Team’s authorities (Document Request 9), certain announcements made to DOGE Teams (Document Request 10), as well as the scope of DOGE Teams’ authority with regard to agencies and the steps DOGE Teams have actually taken with regard to agencies (Deposition Topic 12).⁴ To be clear, we do not object here to those requests that

⁴ As to certain other proposed discovery requests (such as Interrogatories 9 and 10), USDS understands those requests to seek information only about “DOGE” or DOGE employees, meaning the United States DOGE Service, and the United States DOGE Service Temporary Organization, since that is how CREW’s discovery requests define those terms. *See* ECF No. 27-1 at 4. To the extent these and any other requests also purport to seek information about Agency DOGE Teams,

seek information *from* USDS, such as, for example, any detailees from USDS/dual employees of USDS and a federal agency (Interrogatory 2), or any directives from any USDS employee (including the Administrator) *to* federal agencies (Document Requests 5 and 7, Interrogatories 5 and 7).

USDS does, however, object to all the requests enumerated above—and any others to the extent they require USDS to collect and provide information *about* Agency DOGE Teams (as opposed to, again, material such as communications between USDS and Agency DOGE Teams). For one, that information is simply irrelevant to whether USDS wields substantial independent authority. Agency DOGE Teams are employees of the agencies to which they are assigned. Exec. Order 14,158, § 3(c). There is no dispute that Agency DOGE Team members—like all other employees of their respective agencies—are subject to FOIA and must comply with the FRA. Any requests seeking information about how Agency DOGE Teams are staffed, what they do, and how they are supervised within their respective agencies can be obtained via FOIA requests to those agencies and are simply outside the scope of the question the Court must resolve to decide USDS’s summary judgment motion.

In addition, USDS is generally not likely to have information responsive to requests that concern Agency DOGE Teams. Most basically, USDS does not have a master list of all members of Agency DOGE Teams (as opposed to any members of Agency DOGE Teams who are detailed from USDS or dual employed by USDS). The fact that agency heads must establish DOGE Teams “[i]n consultation with USDS,” Exec. Order 14,158, § 3(c), does not mean that USDS knows the final composition of Agency DOGE Teams at any given time. And even more obviously, USDS

Agency DOGE Team employees, or Agency DOGE Team activities, USDS objects to any such other requests as well.

does not have visibility into everything DOGE Team members do at their respective agencies, how they are supervised, what reports they submit within their agencies, how they record their time, and any directives they give within their agencies, in addition to the other information CREW requests about Agency DOGE Teams.

To be sure, USDS would not in any event have any obligation to provide documents it does not have, or provide information that it does not know. *See* ECF No. 27-1 at 2 (noting that document “requests extend to all documents in your possession, custody, or control, or of anyone acting on your behalf”). Thus, even if these requests were authorized, USDS anticipates that it will have little to no information or documents responsive to most of them. But this Court should not require USDS—particularly in an expedited posture—to attempt to provide information about what is going on at federal agencies, particularly when that information would have no relevance to whether *USDS* is an agency subject to FOIA and the FRA.

USDS recommendations: Interrogatory 6 would ask USDS to “[i]dentify each federal agency contract, grant, lease, or similar instrument that any DOGE employee or DOGE Team member *recommended* that federal agencies cancel or rescind since January 20, 2025, and whether that recommendation was followed.” ECF No. 27-1 at 8 (emphasis added). Interrogatory 8 similarly would ask USDS to “[i]dentify each federal agency employee or position that any DOGE employee or DOGE Team member *recommended* federal agencies terminate or place on administrative leave since January 20, 2025 and whether that recommendation was followed.” *Id.* (emphasis added).

To be clear, interrogatories 5 and 7 ask USDS to identify instances where USDS employees or DOGE Team members “directed” the same categories of cancellations and terminations. *Id.* As to *those* interrogatories—if the Court authorizes discovery, and subject to any objections that

USDS would interpose in formal discovery responses—USDS can and would answer them as to USDS employees (as opposed to Agency DOGE Team members, *see supra* p. 15-17). But for three reasons, USDS objects to interrogatories 6 and 8.

For one, these interrogatories definitionally could not result in information that would aid CREW in its efforts to show that USDS wields substantial *authority* independent of the President. *See CREW v. Office of Administration*, 566 F.3d 219, 222 (D.C. Cir. 2009) (noting that “common to every case in which we have held that an EOP unit is subject to FOIA has been a finding that the entity in question wielded substantial authority independently of the President” (quotation marks omitted)). As explained in our motion for summary judgment, the case law is clear that a component that merely provides advice and assistance, regardless of whether that advice is ultimately followed, does not wield substantial independent authority for purposes of the agency inquiry. *See* ECF No. 24-1 at 16-19. A “recommendation,” by definition, is a piece of advice that the recipient is not obligated to follow. *See* RECOMMENDATION, Black’s Law Dictionary (12th ed. 2024) (“A specific piece of advice about what to do, esp. when given officially.”). And it is even clearer that interrogatories 6 and 8 seek such advisory materials when one contrasts them with interrogatories 5 and 7 (which, as noted, seek directives on the same topics).

Second, these interrogatories seek information that is likely privileged. The deliberative process privilege protects “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). To qualify for the privilege, a document must be pre-decisional and deliberative. *See Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Recommendations are often predecisional. *See, e.g., Abtew v. U.S. Department of Homeland Security*, 808 F.3d 895, 899 (D.C.

Cir. 2015) (Kavanaugh, J.) (“The Assessment was pre-decisional; it was merely a recommendation to a supervisor.”). And recommendations about, for example, possible contract cancellations (interrogatory 6) or personnel actions (interrogatory 8) would also likely be part of the process by which the relevant agency reached a decision on the relevant matter.

Finally, a requirement that USDS identify every recommendation it provided on these broad topics would be highly burdensome. As discussed in USDS’s motion for summary judgment, providing advice and recommendations to other components of the Executive Branch is quite literally at the core of what USDS does. *See, e.g.*, Exec. Order 14,170, § 2(d) (USDS charged with providing “advice and recommendations as appropriate” concerning implementation of federal hiring plan); Exec. Order 14,218, § 2(b)(i)-(ii) (directing the Director of OMB and the Administrator of USDS, in coordination with the Assistant to the President for Domestic Policy, to “identify all other sources of Federal funding for illegal aliens,” and to “recommend additional agency actions to align Federal spending with the purposes of this order, and, where relevant, enhance eligibility verification systems”). This Court should not permit a fishing expedition into USDS’s advisory activities, particularly since the broad categories of materials CREW seeks are by definition likely irrelevant and privileged. And indeed, analyzing such material for privilege would itself add to the burden, particularly in this expedited posture.

Other irrelevant topics: Finally, CREW’s proposed discovery includes multiple other topics that have no relevance to the pending summary judgment motion. As to Interrogatory 3, whether USDS’s Administrators since January 20 interviewed for the position—let alone who they interviewed with and who told them they had been appointed, *see* ECF No. 27-1 at 7—has no bearing on whether USDS is a FOIA/FRA agency. As to Interrogatory 9, USDS does not understand its scope. To the extent this Interrogatory is simply asking which USDS employees

have been detailed from USDS to an agency or are dually employed by USDS and an agency, USDS can generally provide this information in response to Interrogatory 2, and USDS assumes that such detailees/dual employees have access to some agency systems in those capacities. But USDS does not collect information at a more granular level about the specific agency systems to which particular detailees/dual employees have access, and such information is not relevant to the pending summary judgment motion.

Document Request 2 seeks “visitor access requests” concerning “any DOGE employee detailed to, otherwise working at, or accessing the offices of, federal agencies.” ECF No. 27-1 at 12. USDS does not believe it has custody and control of any such requests, which it believes are held by the United States Secret Service (for visitor requests to EEOB) or presumably agencies themselves (for visitor requests to agencies). In any event, this Request is also irrelevant to the summary judgment motion. CREW contends that such requests would show the extent to which DOGE employees are “accessing the facilities of federal agencies,” Maier Decl. ¶ 21, but whether detailees to agencies or USDS employees who are working at federal agencies (such as dual employees) actually have access to the offices of those federal agencies is not a disputed issue in this case and is irrelevant to whether USDS is an agency under FOIA and the FRA.

Finally, Interrogatory 12 and Document Request 13 address communications through the @DOGE X account. This account is not owned by USDS . Nonetheless, if discovery is authorized, USDS will make a reasonable effort to provide information responsive to this Interrogatory and Request to the extent that such information is within its possession, custody, and control. Similarly, although Plaintiff’s Requests for Admission also touch on some of the irrelevant matters discussed above, USDS acknowledges that this aspect of the proposed discovery is less burdensome. If the

Court authorizes discovery—which USDS respectfully submits that it should not—USDS thus does not separately object to these requests at this time.

CONCLUSION

The Court should deny USDS’s motion or, alternatively, limit the proposed discovery as discussed above.

Dated: April 8, 2025

Respectfully submitted,

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