IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., Defendants.	No. 25-cv-00128

DEFENDANTS' MOTION FOR A STAY PENDING APPEAL

INTRODUCTION

The Court's preliminary injunction order enjoins the Agency Defendants from "implementing Section 2 of the Executive Order 14238, 'Continuing the Reduction of the Federal Bureaucracy'" ("Executive Order") and directs Defendants "to reverse any policies, memoranda, directives, or actions" taken to implement the Executive Order at IMLS, MBDA, and FMCS. ECF No. 60 ¶¶ 1–2. The Executive Order and Defendants' subsequent implementation actions affirm that, absent further congressional action, the Agency Defendants will continue to perform mandatory statutory duties. But the injunction imposes restrictions on Executive Branch agencies akin to judicial receivership, as compliance requires the Agency Defendants to reinstate personnel against their judgment, expend non-statutorily required resources, and restart non-statutorily required programs that are directly contrary to the Agency Defendants' preferred policies. Moreover, Defendants respectfully disagree with the Court's analysis of the Supreme Court's holding in *California*, and submit that a stay pending the First Circuit's review of that analysis and the Court's jurisdiction is warranted. Accordingly, Defendants request a stay pending their appeal of this Court's preliminary injunction order.[1]

ARGUMENT

In considering a stay pending appeal, the Court must examine "(1) whether the stay applicant has made a strong showing that [it] 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." *Nken v. Holder*, 556 U.S. 418, 426 (2009). Each of the factors strongly counsels in favor of a prompt stay.

[1] Defendants recognize that, in conjunction with its preliminary injunction ruling, this Court denied the request for a stay to allow the Solicitor General to determine whether to appeal and for a stay pending any appeal in the event that the Court granted injunctive relief. *See* ECF No. 57 at 49. Defendants now move for a stay pending appeal, in part, due to Federal Rule of Appellate Procedure 8(a)(1)'s requirement.

I. Defendants are Likely to Succeed on Appeal Because the Preliminary Injunction Sweeps Beyond What is Necessary.

A preliminary injunction is "an 'extraordinary and drastic remedy.'" *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (citation omitted). Constitutional and equitable principles require that such extraordinary relief be no broader than necessary. *Cf. Gill v. Whitford*, 585 U.S. 48, 73 (2018); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). Defendants submit that the relief awarded in this case is overbroad and that this Court lacks jurisdiction to control IMLS, MBDA, and FMCS's personnel actions and to require continued payment on IMLS and MBDA's grants.

The injunction in this case appears to reflect a problematic premise: that the Agency Defendants, as they existed on March 14, 2025, should be the benchmark for minimum statutory compliance, and that a departure from that model carries a taint of illegality. Indeed, the Court predicated its award of preliminary relief on the belief that the Agency Defendants were on the brink of irreversible closure and that preliminary relief was necessary to ensure Defendants' performance of statutory duties. But instead of entering an injunction tailored to only the mandatory statutory functions articulated in the Agency Defendants' organic statutes, the Court imposed a sweeping order that is not grounded in statutory requirements. The injunction—which requires the Agency Defendants "to reverse any policies, memoranda, directives, or actions" intended to implement the Executive Order, ECF No. 60 ¶ 2—blocks standard workforce decision-making discretion, resource allocation decision-making discretion, and discretion to issue administrative directives that the Agency Defendants, like all agencies, ought to retain.

Although the injunction permits personnel decisions unrelated to the Executive Order and, more broadly, authorizes the Agency Defendants to take "actions that would improve Agency efficiency," the order nonetheless requires the Agency Defendants to reinstate *all* personnel that were involuntarily placed on administrative leave or terminated as a result of the Executive Order. *See* ECF No. 60 ¶¶ 3–4. The requirement to reinstate all employees places a tremendous administrative burden on agencies, requiring the Agency Defendants to restore positions they have determined are not necessary to fulfill statutory minimums. This burden is

particularly acute in light of an uncertain appellate outcome that could uphold the agencies' staffing decisions. *See* Sonderling Decl. ¶ 14, 16 ("Adding 57 staff on an ongoing basis is a burden for the agency and will require additional funding under the current CR. The extra, unrecoverable costs are approximately $900,000 per month." And "IMLS was in the process of moving to a more compact footprint of leased space, which would have saved approximately $1.3 million per year."); Mitchell Decl. ¶ 19 ("The terms of the preliminary injunction require the Agency to bring back the approximately 27 remaining MBDA employees, whose positions are not mandated by statute. As such, the Agency will sustain substantial salary costs, as well as ancillary costs, including benefits, for these positions, which would not been incurred but for the preliminary injunction and will not be recoverable."); Goldstein Decl. ¶ 9 ("If the preliminary injunction is not stayed, the cost associated with the 120 salaries for returning employees, including ancillary benefits is $8.4 million. In addition to those costs, employees returning to FMCS Headquarters will need to be reestablished into the SmartBenefits Commuter Transit Benefits program, which will take up to 60 days and cost approximately $40,000. These costs would not be recoverable.").

Rather than permit the Agency Defendants to manage their own workforce—a role soundly committed to agency discretion—the injunction requires the Agency Defendants to "take all necessary steps to restore all IMLS, MBDA, and FMCS employees and personal service contractors." ECF No. 60 ¶ 4. In other words, the injunction substitutes the Agencies' judgment for the Court's in terms of personnel decisions. But the Court has no power to make such a substitution and declare that the Agency Defendants must reinstate and employ these particular employees and contractors—especially when the Agency Defendants have already made contrary personnel decisions with respect to these particular employees and contractors. *See* Sonderling Decl. ¶ 13 ("Returning [employees] to the office promises to present, at best, an awkward situation and, at worst, a toxic work environment."); Mitchell Decl. ¶ 23 ("Considering the recent terminations and the likely future direction of the Agency, requiring the Agency to re-establish the workforce could significantly compromise the overall environment, well-being, and

personal safety of Department employees.").

Moreover, the injunction severely impedes IMLS and MBDA's discretion in negotiating, entering into, and terminating contracts. *See* ECF No. 60 ¶ 5. As Defendants have argued, these claims arise under the Tucker Act, over which the Court of Federal Claims maintains exclusive jurisdiction. *See* Defs.' Opp'n Prelim. Inj., ECF No. 41, at 14–18. The injunction requires IMLS and MBDA to exist as they were prior to March 14, 2025 and to restore Plaintiffs' grants. The injunction, therefore, prohibits IMLS and MBDA from engaging in contract negotiations, oversteps IMLS and MBDA's broad discretion in setting terms of the grant agreements, and prevents IMLS and MBDA from finalizing any subsequent contract termination even if IMLS and MBDA determine that the contracts are unnecessary to fulfill statutory functions. Indeed, agencies routinely enter and terminate contracts based on their needs and priorities.

Although the Court concluded that *California* was not dispositive, ECF No. 57 at 14–17, Defendants respectfully disagree with that conclusion. As Defendants explained, Plaintiffs challenged the termination of their grant agreements and sought relief requiring disbursement of the funds. Such relief arises out of the grantee agreements (rather than statutory or Constitutional provisions, as the Court reasoned) because any obligation for the Government to disburse funds is governed by the express contract entered into between the grantee and the United States. *See* Defs.' Opp'n Prelim. Inj., ECF No. 41, at 14. Congress has made clear that any funds disbursed to grantees like Plaintiffs are paid solely pursuant to grant agreements, *i.e.* contracts, between the agencies and the grantees. *See* 20 U.S.C. § 9108(c) ("The Director [of the IMLS] is authorized to enter into grants, contracts, cooperative agreements, and other arrangements with Federal agencies, public and private organizations, and other entities with expertise the Director determines appropriate . . . ."); 15 U.S.C. § 9524(c)(1) ("The amount of financial assistance provided by the Under Secretary under an MBDA Business Center agreement shall be not less than $250,000 for the term of the agreement."). In analogous circumstances, the Supreme Court held that "the Government [was] likely to succeed in showing that the District Court lacked jurisdiction to order the payment of money under the

[Administrative Procedure Act]" because the Tucker Act vested exclusive jurisdiction over such actions in the Court of Federal Claims. *Department of Education v. California*, 145 S. Ct. 968 (2025). This guidance is dispositive of Plaintiffs' grant-based claims, which at their core involve a challenge to the Government's termination of federal grants. A stay is, therefore, warranted in this case. *See, e.g.*, *Am. Ass'n of Colleges for Teacher Ed., et al. v. McMahon*, No. 25-cv-1281 (4th Cir. Apr. 10, 2025) (granting the Government's motion to stay a preliminary injunction in light of *California*).

II. The Remaining Factors Favor A Stay.

The equitable factors likewise weigh in Defendants' favor, and the public interest and balance of equities factors merge where, as here, an injunction is sought against the government. *Nken*, 556 U.S. at 435. As Defendants have explained, the injunction prevents the Agency Defendants from ensuring taxpayer money is appropriately stewarded, as intended by the statutory scheme that Congress provided. Without such a protective measure, and particularly in the absence of a bond, there may be no way to recover the funds lost to United States taxpayers if the Court were later to find that Defendants were wrongfully enjoined. Defendants, therefore, request that the Court stay the Government's obligations to disburse funds pending review on appeal. *California*, 145 S. Ct. at 968–69. Indeed, a stay is particularly prudent because a bond was not imposed in this case. *See id.* at 969.

Although the Court concluded that Plaintiffs were likely to suffer irreparable harm absent entry of a preliminary injunction, the harms that Plaintiffs purport to suffer are neither certain nor irreparable. By contrast, in addition to unrecoverable administrative expenses, "[c]ompliance with the injunction during the appeal will cost IMLS approximately $78.5 million in additional grant funds that are counter to the administration's priorities and that cannot be recovered even if the Government prevails." Sonderling Decl. ¶ 18. Similarly, MBDA is expected to expend "at least $27 million in additional grant funds" that would not be recoverable if Defendants prevail on appeal. Mitchell Decl. ¶ 10, 13. And FMCS will incur a number of unrecoverable, administrative expenses, including $8.4 million in ancillary benefits, $5,000 for equipment,

$3,400 for credentials, $40,000 in commuter benefits, $3,000 per month in internet reimbursement, and $7,000 per month for cellphones. Goldstein Decl. ¶¶ 8–9, 12, 15.

The Court has awarded preliminary relief for the purpose of preserving the Agency Defendants' existence and restoring the Agency Defendants' pre-Executive Order status. However, Executive Order directs the agencies to operate at their statutory minimum, and the Agency Defendants will continue to fulfill those statutory obligations. *See* Sonderling Decl. ¶ 6; Mitchell Decl. ¶ 4; Goldstein Decl. ¶ 3. In the interim, the employees placed on administrative leave will retain their full pay and benefits, and the agencies remain able reinstate employees as needed.

CONCLUSION

For the foregoing reasons, this Court should enter a stay pending appeal.

Dated: May 19, 2025

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., Defendants.	No. 25-cv-00128

DECLARATION OF KEITH E. SONDERLING

I, Keith E. Sonderling, declare as follows:

1. The information provided below is based upon my personal knowledge and experience, and information furnished to me in my official capacity.
2. I currently serve as the Deputy Secretary of Labor. I was confirmed on March 12, 2025.
3. On March 18, 2025, President Donald J. Trump appointed me as the Acting Director of the Institute of Museum and Library Services (IMLS).
4. IMLS is an independent federal agency that supports libraries, archives, and museums in every State and territory.
5. On March 14, 2025, President Trump issued Executive Order (EO) 14238, Continuing the Reduction of the Federal Bureaucracy, which directed that the "non-statutory components and functions" of IMLS be eliminated "to the maximum extent consistent with applicable law," and that IMLS "reduce the performance of [its] statutory functions and associated personnel to the minimum presence and function required by law."
6. Following the President's directive, IMLS reduced the performance of its statutory

functions and associated personnel to the minimum needed to carry out its statutory duties.

7. To accomplish its work, IMLS issues grants through its Office of Library Services and its Office of Museum Services.

8. The largest program, Grants to States, provides funds through the Library Services and Technology Act to all 50 states and U.S. territories, and accounts for approximately $180 million of the agency's budget.

9. As part of the initial compliance with EO 14238, three Grants to States FY24 awards were terminated on April 1, 2025. However, upon further review, I first authorized back payments to these grants on May 1, 2025, and then fully reinstated them on May 5, 2025. In the meantime, I had authorized partial FY25 grant payments to all state grantees, which were received on April 23, 2025, and May 6, 2025. The payments are partial only because IMLS has not yet received its FY25 apportionment from the Office of Management and Budget. Once that apportionment is received, IMLS will pay out the remainder of the FY25 awards. Thus, the Grants to States program was fully intact, independent of and ahead of the entry of the Court's May 5, 2025, Preliminary Injunction Order.

10. The remaining grants distributed by IMLS are competitive. While approximately 1,200 grants were terminated pursuant to EO 14238, approximately 100 grants remained. As a result, before the issuance of the Preliminary Injunction Order, at least one competitive grant remained per statutory program, with plans to award more later this summer.

11. IMLS has been working diligently to comply with the Preliminary Injunction Order; however, compliance comes with challenges and associated costs.

12. In compliance with the Preliminary Injunction Order, IMLS notified employees that it would implement an orderly, staggered return to work, with all non-remote employees expected to be back in the office by May 27th. The American Federation of Government Employees, the representative of IMLS bargaining unit employees, has indicated that it objects to the return-to-work notice and will likely engage in bargaining over the Agency's implementation of the Court's Order. IMLS will engage in good faith with any negotiations with the intent of reaching a resolution complying with the Preliminary Injunction; however, more time is needed to address the union's concerns and finalize the negotiations. Such negotiations will naturally add time and expense to the efforts to return employees to work.
13. Upon information and belief, many employees who will be returning to the office were actively involved in assisting the plaintiffs in related litigation in the District of Columbia, providing information to the press, and publicly disparaging those employees who remained. Returning them to the office promises to present, at best, an awkward situation and, at worst, a toxic work environment. Furthermore, given their active support of the plaintiffs, it is unclear whether those employees will be fully prepared to support the administration's priorities for IMLS's grant programs.
14. IMLS's apportionment request under the FY25 Continuing Resolution (CR) was based on compliance with EO 14238 and a minimal staffing posture that ensured the full measure of Grants to States and all statutorily required programs were serviced at a level compliant with the President's direction. Adding 57 staff on an ongoing basis is a burden for the agency and will require additional funding under the current CR. The extra, unrecoverable costs are approximately $900,000 per month.

15. While there will be sufficient staff to handle the initial additional duties of the reinstatements, once the initial work is completed, it will leave more employees than are needed to handle the ongoing oversight and eventual closeout of those grants. Although every effort will be made to find work to occupy those employees, bringing back all of the staff while almost half of the grants will remain terminated will result in the agency being overstaffed, leading to staffing inefficiencies and additional costs.
16. Additionally, IMLS was in the process of moving to a more compact footprint of leased space, which would have saved approximately $1.3 million per year. Indeed, the General Services Administration had already terminated IMLS's occupancy agreement and had moved ahead with other plans for the space. Complying with the Preliminary Injunction Order will force GSA to rescind that termination, make alternative arrangements for the intended use of the space, prevent two agencies from efficiently managing their space needs, and result in taxpayers incurring costs that would otherwise have been avoided.
17. The Order requires IMLS to reinstate contracts that were in the process of being terminated for convenience. The agency will incur additional costs of $4 to $ 5 million to do so, excluding the separate termination preparation costs incurred by the contractors and the costs associated with continuing contracts deemed unnecessary for the efficient operation of the agency.
18. Finally, the Order requires the time, ongoing effort, and cost to reinstate at least 755 competitive grants in the Plaintiff States. Compliance with the injunction during the appeal will cost IMLS approximately $78.5 million in additional grant funds that are counter to the administration's priorities and that cannot be recovered even if the Government prevails.

19. All costs associated with grants, contracts, salaries, and other expenses exceeding those necessary to maintain IMLS's statutorily required functions will be unrecoverable. As such, IMLS will suffer irreparable harm if the injunction is not stayed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of May 2025.

KEITH E. SONDERLING

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as the President of the United States, *et al.*, Defendants.	No. 1:25-cv-00128

DECLARATION OF KELLY MITCHELL

Pursuant to 28 U.S.C. § 1746, I, Kelly Mitchell, declare as follows:

1. I am the Deputy Chief of Staff for the Minority Business Development Agency (MBDA or "the Agency") within the U.S. Department of Commerce (Commerce) headquartered in Washington, D.C. I make this Declaration based on my own personal knowledge, on information contained in the records of the Department of Commerce, or on information I have gained in the course of performing my official duties.

2. I have served in this position since March 24, 2025. In my role at MBDA, I am responsible for providing direct support to the Under Secretary of MBDA in the administration of the overall operations of MBDA, assuring that MBDA organizations comply with the policy directives and objectives of the Administration and resolving policy and program operation issues, and otherwise providing strategic advice and guidance on a wide range of substantive and operational policy and organizational issues.

3. Following the issuance of Executive Order 14,238, which directed that the "non-statutory components and functions" of several agencies, including MBDA, be eliminated, the Department conducted a reasoned analysis of how to maintain operations consistent with the statutory requirements.

4. As discussed further below, even prior to the preliminary injunction, MBDA retained sufficient staff to fulfill its statutorily-mandated duties, including the operation of the Business Center Program and the maintenance of the Information Clearinghouse required under 15 U.S.C. § 9513(b).

5. If the injunction is not stayed pending appeal, the Agency and the Department will suffer irreparable harm in the form of unrecoverable costs for grants, contracts, employee salaries, and other administrative expenses, well above and beyond what would be required for the statutorily-required functions MBDA is already fulfilling. As set out in greater detail below, a stay is also squarely in the public interest because, absent a stay, substantial taxpayer dollars will be wasted on projects that no longer align with the administration's priorities, are not statutorily required, and may not ultimately be completed.

Federal Financial Assistance Awards (Grants)

6. If the preliminary injunction is not stayed pending appeal, MBDA will expend substantial funds on the payment of federal financial assistance awards that will not be recoverable if the Agency ultimately prevails on appeal.

7. The Minority Business Development Act of 2021 (the Act) requires MBDA to provide Business Center Program services with nationwide coverage. *See* 15 U.S.C. § 9523. While MBDA has in recent years provided its services through multiple business centers across the country, the Act does not require a specific minimum number of business centers that must

operate. *See id.* The statutory requirements of the Act can be satisfied through the operation of a single business center with a nationwide virtual presence.

8. On May 13, 2025, when the preliminary injunction was entered, MBDA had not terminated, and had no plans to terminate, the award to the MBDA Business Center of the Commonwealth of Virginia (recipient Capital Region Minority Supplier Development Council Inc.).[1] In fact, the Agency was working, and continues to work, on an amendment to the terms of the award to the Virginia Business Center to enable that center to provide nationwide coverage virtually. Continued disbursement of grant funds to other business centers that are not required by the Act would hinder MBDA's efforts to improve Agency efficiency by redirecting its focus to a single virtual business center that can better and more consistently serve the needs of the public.

9. In addition to the Business Center Program, in the past MBDA has, in its discretion, awarded funds through other grant programs that are not mandated by statute, such as the Capital Readiness Program and certain specialty center programs. Continued disbursement of funds through these programs, which are not mandated by statute, would similarly hinder MBDA's efforts to improve Agency efficiency to better serve the public interest.

10. In total, if MBDA must comply with the terms of the Court's order during the pendency of the appeal, the Agency will expend at least $27 million in additional grant funds that will not be recouped if the Agency and Department prevail in litigation.

11. If grant recipients are given renewed access to funds under programs that would have otherwise been terminated, it is foreseeable that these recipients may attempt to draw down grant funds to the limit of their abilities and accelerate work. This would mean that the money

[1] The Virginia Business Center originally received a copy of the April 17, 2025 termination letter sent to business centers; however, that letter was sent in error. A letter rescinding the termination was sent on May 7, 2025.

expended on allowable costs cannot be recovered, even if the Agency and Department ultimately prevail in litigation and terminate the grant going forward. *See* 2 C.F.R. § 200.305.

12. Under 2 C.F.R. § 200.346, federal funds paid to a grant recipient in excess of the amount that the recipient is determined to be entitled to under the award constitute a debt to the federal government. However, even if the federal government determines that any payouts are in excess of the recipient's entitlement, debt collection procedures have significant associated administrative and legal costs, and often do not result in collection of the full amount of the debt. The additional costs associated with recovery efforts would likely negate any recovery amounts.

13. In addition to the unrecoverable disbursements, MBDA will incur unrecoverable administrative costs associated with grants management.

14. At the time that the preliminary injunction was issued, the National Oceanic and Atmosphere Administration (NOAA) Grants Management Division (GMD) continued to provide grants management services, including support and oversight, for MBDA awards. This arrangement is pursuant to an Interagency Agreement between MBDA and NOAA that long pre-dated Executive Order 14,238. Such an arrangement is common within the Department for the management of grants issued by its smaller bureaus. If the preliminary injunction is not stayed pending appeal, MBDA will incur at least $750,000 in additional expenses for services provided by NOAA GMD to manage awards that are not statutorily-required and would otherwise be terminated.

15. At the time that the preliminary injunction was issued, MBDA's contractor, Corner Alliance, also continued to provide support services, including grants administrative support. If the preliminary injunction is not stayed pending appeal, the Agency will incur at least $500,000 in

additional expenses for grants administrative support services for awards that are not statutorily-required and would otherwise be terminated.

16. If MBDA prevails in its appeal of the preliminary injunction, the substantial additional expenses incurred for grants management services and grants management support services will constitute wasted public funds.

Personnel

17. If the preliminary injunction is not stayed pending appeal, MBDA will expend substantial personnel related efforts and funds that will not be recoverable if the Agency prevails, and as such, constitute wasted public funds.

18. Only two positions within MBDA are statutorily mandated. These statutorily mandated positions are currently filled and being performed by MBDA employees. MBDA also retained a Deputy Chief of Staff position, which I am currently performing as an MBDA employee.

19. The terms of the preliminary injunction require the Agency to bring back the approximately 27 remaining MBDA employees, whose positions are not mandated by statute. As such, the Agency will sustain substantial salary costs, as well as ancillary costs, including benefits, for these positions, which would not been incurred but for the preliminary injunction and will not be recoverable.

20. Similarly, the Agency is now required to expend resources supporting these 27 non-statutorily mandated positions, by allocating to them Department support services, such as information technology, human resources, administrative, maintenance, and financial services. The costs associated with these resources would not be incurred but for the preliminary injunction and will also not be recoverable.

21. Furthermore, all MBDA employees who were placed on administrative leave, and subsequently received Reduction-in-Force notices, returned their equipment—*i.e.*, government issued laptops, phones, and credentials—to the Agency. If the preliminary injunction is not stayed pending appeal, the Agency will be required to re-issue the equipment until a decision is rendered on the appeal. Initially, this requires the Agency to assign a Department employee to escort the returning MBDA employees throughout the office, until their badges are re-issued and re-credentialed, and to re-issue equipment.

22. Likewise, the office space which once housed MBDA has since been reallocated and is no longer available. As such, if the preliminary injunction is not stayed, the Agency will have to allocate new space to MBDA.

23. The Federal Government has a fundamental duty to provide a safe and secure workplace for its employees. Considering the recent terminations and the likely future direction of the Agency, requiring the Agency to re-establish the workforce could significantly compromise the overall environment, well-being, and personal safety of Department employees.

24. Reinstating MBDA employees while the litigation is ongoing will also create inefficiencies and disrupt the current workflow of the Agency.

25. The employees serving in MBDA's two statutorily mandated positions, the Under Secretary and Director of Business Centers, along with myself as Deputy Chief of Staff, are fulfilling MBDA's statutorily mandated functions, with the assistance of MBDA's contractor, Corner Alliance.

26. Without a stay of the preliminary injunction, the Agency would be required to restart non-statutorily mandated work, which does not align with the Administration's current priorities or serve the best interests of the American people. MBDA would be required to divert

attention from current Administration priorities to non-statutorily mandated functions, creating inefficiencies by working on matters that may not ultimately be completed.

27. In addition, if the preliminary injunction is not stayed, the Agency will be faced with significant labor obligations.

28. The Agency and the National Federation of Federal Employees (NFFE or Union), the exclusive representative of MBDA bargaining unit employees, entered into a collective bargaining agreement (CBA), which imposed certain requirements and obligations upon the Agency. Article 16, Section 16.02, of the CBA requires the Agency to hold a minimum of one progress review at the mid-point of the performance period. The mid-point of the performance period occurred while the MBDA employees were on administrative leave. Accordingly, if a stay is not granted, the Agency will be required to hold progress reviews in order to comply with the CBA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 19, 2025

KELLY MITCHELL

Digitally signed by KELLY MITCHELL
Date: 2025.05.19 22:55:32 -04'00'

Kelly Mitchell
Deputy Chief of Staff
Minority Business Development Agency

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as the President of the United States, *et al.*, Defendants.	No. 1:25-cv-00128

DECLARATION OF GREGORY GOLDSTEIN

Pursuant to 28 U.S.C. § 1746, I, Gregory Goldstein, declare as follows:

1. I am the Acting Director for the Federal Mediation and Conciliation Service "the Agency") headquartered in Washington, D.C. I make this Declaration based on my own personal knowledge, on information contained in the Agency records, or on information provided to me by Agency employees.

2. I have served in my current appointment as Acting Director since January 20, 2025. In my role at FMCS, I am responsible for overseeing FMCS's operations, compliance, and mission programs.

3. Following the issuance of Executive Order 14,238, which directed that the "non-statutory components and functions" of several agencies, including FMCS, be eliminated, the Agency conducted a reasoned analysis of how to maintain operations consistent with the statutory requirements.

4. If the injunction is not stayed pending appeal, the Department and the Agency will suffer irreparable harm in the form of unrecoverable costs for contracts, employee salaries, and other administrative expenses, well above and beyond what would be required for the statutorily required functions FMCS is already fulfilling. As set out in greater detail below, a stay is also squarely in the public interest because, absent a stay, substantial taxpayer dollars will be wasted on projects that no longer align with the administration's priorities, are not statutorily required, and may not ultimately be completed.

Personnel

5. If the preliminary injunction is not stayed pending appeal, FMCS will expend substantial personnel related efforts and funds that will not be recoverable if the Agency prevails, and as such, constitute wasted public funds.

6. The terms of the preliminary injunction require the Agency to bring back the approximately 120 remaining FMCS employees. As such, the Agency will sustain substantial salary costs, as well as ancillary costs, such as benefit-related costs, for these individuals, which would not been incurred but-for the preliminary injunction and will not be recoverable.

7. Similarly, the Agency is now required to expend resources supporting these 120 non-statutorily mandated individuals, by returning and allocating Agency staff in support services positions to provide ancillary services, such as information technology and human resources, and administrative. The cost and expenditure of these resources would not have been necessary but-for the preliminary injunction and will also not be recoverable.

8. All FMCS employees who were placed on administrative leave, and subsequently received Reduction-in-Force notices, returned their equipment, *i.e.*, government issued laptops, phones, and credentials (PIV cards), to the Agency. If the preliminary injunction is not stayed

pending appeal, the Agency will be required to temporarily re-issue the equipment until a decision is rendered on the appeal. Redistributing Agency equipment would cost approximately $5,000. Re-issuing credentials to these employees will cost approximately $3,400 and take approximately 45 days for re-enrollment and re-issuance. An additional fifteen (15) days would be needed to add the new PIV digital certificates to the Agency's active directory.

9. If the preliminary injunction is not stayed, the cost associated with the 120 salaries for returning employees, including ancillary benefits is $8.4 million. In addition to those costs, employees returning to FMCS Headquarters will need to be reestablished into the SmartBenefits Commuter Transit Benefits program, which will take up to 60 days and cost approximately $40,000. These costs would not be recoverable.

10. Pursuant to the March 14, 2025 Executive Order, FMCS closed all remaining office locations aside form the statutorily-mandated primary office in Washington, D.C. Closures pursuant to the EO included regional offices located in: Glendale, CA, Minneapolis, MN, and Portsmouth, VA. Independence, OH, Buffalo, NY, Collierville, TN, Iselin, NJ, and St. Louis, MO. FMCS also canceled the opening of the Oak Brook, IL. As such, if the preliminary injunction is not stayed, new space will need to be allocated to FMCS.

11. Without a stay of the preliminary injunction, FMCS would be required to restart non-statutorily mandated work, which does not align with the Administration's current priorities. FMCS would be required to divert attention from current Administration priorities to non-statutorily mandated functions, creating inefficiencies by working on matters that may not ultimately be completed.

12. To comply with the May 13, 2025 Executive Order, FMCs would need to reimburse returning employees for internet usage at a cost of $3,000 per month due to the number of regional offices that were closed discussed above. This cost would not be recoverable.

13. In addition, if the preliminary injunction is not stayed, the Agency will be faced with significant labor obligations.

14. The Agency and the National Association of Government Employees (NAGE or Union), the exclusive representative of FMCS bargaining unit employees, entered into a collective bargaining agreement (CBA), which imposed certain requirements and obligations upon the Agency. This will extend the time needed to restore employees to duty because of the Agency's bargaining obligations notice requirements.

Contracts

15. Pursuant to the March 14, 2025 Executive Order, FMCS employees returned their government equipment including cell phones. These cell phones were deactivated and the primary contract associated with their service was terminated. FMCS will need to go through the procurement process to obtain new cell phone service for most of these phones. In addition to costing $7000 per month, this process could take up to 60 days to complete.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 19, 2025

GREGORY GOLDSTEIN Digitally signed by GREGORY GOLDSTEIN Date: 2025.05.19 15:58:30 -04'00'

Gregory Goldstein
Acting Director
Federal Mediation and Conciliation Service