

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

)	
STATE OF NEW MEXICO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:25-CV-00429
)	
ELON MUSK, in his official capacity, et al.,)	
)	
)	
Defendants.)	
)	

During today’s hearing, the Court asked counsel for Defendants for further information regarding (i) whether any federal employee terminations took place at the end of last week; and (ii) any future plans by the non-Defendants identified in the States’ revised TRO (the Office of Personnel Management, the Department of Education, the Department of Labor, the Department of Health and Human Services, the Department of Energy, the Department of Transportation, and the Department of Commerce) to engage in any widespread layoffs or personnel actions within the next fourteen days. Defendants are aware that that a select set of agencies in fact terminated a number of employees at the end of last week. Defendants cannot make a programmatic representation at this juncture about how each of the seven non-Defendants noted above may go about personnel actions over the next two weeks.

But as the attached declaration of Joshua Fisher explains, Elon Musk “has no actual or formal authority to make government decisions himself”—including personnel decisions at individual agencies. Decl. ¶ 5. He is an employee of the White House Office (not USDS or the U.S. DOGE Service Temporary Organization); and he only has the ability to advise the President, or communicate the President’s directives, like other senior White House officials. *Id.* ¶¶ 3, 5. Moreover, Defendants

are not aware of any source of legal authority granting USDS or the U.S. DOGE Service Temporary Organization the power to order personnel actions at any of the agencies listed above. Neither of the President's Executive Orders regarding "DOGE" contemplate—much less furnish—such authority. *See* "Establishing and Implementing the President's Department of Government Efficiency," Exec. Order No. 14,158 (Jan. 20, 2025); "Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative," Exec. Order 14,210 (Feb. 11, 2025).

Dated: February 17, 2025

Respectfully submitted,

BRETT A. SHUMATE

Acting Assistant Attorney General, Civil Division

/s/ Joshua E. Gardner

JOSHUA E. GARDNER (FL Bar No. 302820)

Special Counsel

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, DC 20005

(202) 305-7583

Joshua.e.gardner@usdoj.gov

HARRY GRAVER (DC Bar No. 1779585)*

United States Department of Justice

Counsel to the Assistant Attorney General,

Civil Division

950 Pennsylvania Ave, NW

Washington, DC 20530

Tel: (202) 514-2000

harry.graver@usdoj.gov

* Mr. Graver has been unable to obtain e-filing privileges with the Court, due to the outage on Friday, and the current holiday weekend. He has provided his Notice of Appearance to Chambers, and will file it on the docket as soon as filing-privileges are granted.