

U.S. Department of Justice

Civil Division

P.O. Box 883
Washington, D.C. 20044



Emily Hall
Counsel, Civil Division

Emily.Hall@usdoj.gov
(202) 890-7914

Judge Deborah L. Boardman
6500 Cherrywood Lane
Suite 445
Greenbelt, MD 20770

Re: *Am. Fed'n of Teachers, et al., v. Bessent, et al.*, Civil Action No. 25-00430

Dear Judge Boardman:

We write to address the question posed to the government at the end of today's hearing as to whether the Court should convert the application for a temporary restraining order ("TRO") into a preliminary injunction and under what conditions.

In the event the Court were to rule against the government, the government is prepared to stand on the existing factual record with respect to any appeal. Because the government could not agree in the abstract to forgo any particular argument, undersigned counsel reached out to plaintiffs' counsel to determine whether there are particular facts on which the parties can agree or which the government could agree not to contest for purposes of the preliminary injunction. Plaintiffs' response indicated that they would require a waiver of all factual arguments on appeal. The government cannot accept that proposition.

If the Court determines to rule against the government, and not to convert the ruling to a preliminary injunction, the government opposes discovery. Because the Plaintiffs have alleged a violation of the Administrative Procedure Act, review would be limited to the administrative record that the Defendants would create based on the Court's identification of what final agency action is appropriately being challenged. If the Court determines to rule against the government and agrees to convert the TRO to a preliminary injunction, the government asks that the Court stay its ruling in order to permit the government to appeal to the Fourth Circuit.

Finally, we have attached to this letter an updated version of the Hogan declaration that was filed tonight in a similar action in the Southern District of New York. It provides some additional details about the systems engineers working at OPM to implement the President's Executive Order.

Thank you for your consideration.

Respectfully submitted,

/s/ Emily Hall _____

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cc: April Hu
John Schwab

