

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION**

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO,
1625 L Street NW
Washington, D.C. 20036

ALLIANCE FOR RETIRED
AMERICANS
815 16th Street NW
Washington, D.C. 20006

AMERICAN FEDERATION OF
TEACHERS
555 New Jersey Avenue NW
Washington, D.C. 20001

Plaintiffs,

vs.

SOCIAL SECURITY
ADMINISTRATION
6401 Security Blvd
Baltimore, MD 21235

LELAND DUDEK, in his official capacity
as Acting Commissioner, Social Security
Administration,
6401 Security Blvd
Baltimore, MD 21235

U.S. DIGITAL SERVICE (U.S. DOGE
SERVICE)
736 Jackson PI NW
Washington, DC 20503

U.S. DOGE SERVICE TEMPORARY
ORGANIZATION
736 Jackson PI NW
Washington, DC 20503

Defendants.

Case No. 25-cv-
Jury Trial Requested

PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Since President Trump's inauguration on January 20, 2025, the "U.S. DOGE Service," and Elon Musk, have launched a sweeping campaign to access highly sensitive information systems across multiple federal agencies—unilaterally and unlawfully.

2. DOGE has seized, or at least tried to seize, control of some of the most carefully protected information systems housed at the Treasury Department (including the Internal Revenue Service), the Department of Education, the Department of Labor, the Department of Health and Human Services, the Consumer Financial Protection Bureau, the General Services Administration, and the United States Agency for International Development ("USAID"), and taken hold of all sensitive personnel information at the Office of Personnel Management.

3. As one employee in senior leadership at USAID has put it: DOGE has achieved "God mode," meaning full, unrestricted access to the agency's digital infrastructure.¹

4. DOGE's rapid spread now reaches the Social Security Administration ("SSA"), where it has access to some of the nation's most sensitive data, including the financial data, employment information, medical data, and personal addresses of millions of Americans.

5. This is not just an unprecedented data grab. It is an unprecedented power grab.

6. Only once before has a White House sought to gain access to such personally sensitive information. It was met with a swift and decisive response from Congress: the Tax Reform Act of 1976 and the Privacy Act, putting broad and decisive protections into place to prevent presidential misuse of sensitive, personal information.

¹ Charlie Warzel et al., *DOGE has 'God Mode' Access to Government Data*, The Atlantic (Feb. 19, 2025), <https://www.theatlantic.com/technology/archive/2025/02/doge-god-mode-access/681719/>.

7. Yet, we are once again faced with Executive Branch overreach, threatening to review and expose the personal data of millions of Americans, without any express authority, and in violation of the many protections Congress and the Executive Branch have erected to protect against such data mining and misuse.

8. The facts about this assault on federal systems of records are emergent, with new disclosures in litigation and public reporting coming almost daily. With each, the entire picture grows more concerning.

9. Now, DOGE has not only mined the data from one agency, it has done so at many—allowing for cross-agency data comparison.

10. And while the government continues to insist that this is just business as usual, it is anything but.

11. Never before has a group of unelected, unappointed, and unvetted individuals—misleadingly and conflictingly described as White House employees, employees of agencies (multiple and many), and undefined “advisors”—sought or gained access to such sensitive information from agencies across the Executive Branch.

12. Never before has an industry mogul been allowed to shield from public inspection any record of conflicts of interest while at the same time seeking access to, and reviewing, not only the confidential data of business competitors but, perhaps even more concerningly, privileged information about government investigations into his own businesses.

13. Never before, or, at least, aside from Watergate, has a White House demonstrated such a fundamental disregard for the privacy protections that Congress and the Executive Branch have put into place to protect the data of and about Americans.

14. This lawsuit seeks to halt DOGE from unlawfully seizing the personal, confidential, private, and sensitive data from the Social Security Administration—seizures prohibited by the Internal Revenue Code, the Privacy Act, the Federal Information Systems Modernization Act, the E-Government Act, and the Administrative Procedure Act, and seizures executed by an unconfirmed SSA employee unlawfully serving as the Acting Commissioner.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under federal law, specifically the Tax Reform Act, 26 U.S.C. §§ 6103, 7213A, the Privacy Act, 5 U.S.C. § 552a, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because Defendant SSA is an agency of the United States headquartered in Baltimore, Maryland, where a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred.

PARTIES

17. Plaintiff the American Federation of State, County & Municipal Employees, AFL-CIO (“AFSCME”) is a national labor organization and unincorporated membership association headquartered at 1625 L Street NW, Washington, D.C. 20036. AFSCME is the largest trade union of public employees in the United States, with around 1.4 million members organized into approximately 3,400 local unions, 58 councils, and other affiliates in 46 states, the District of Columbia, and Puerto Rico. Of AFSCME’s membership, approximately 200,000 are retired public service workers who continue to remain members of AFSCME, participate in its governance, and advocate for fairness, equality, and income security for retired Americans. AFSCME’s retiree membership is organized into local and state chapters that are chartered by AFSCME. They elect local and state leadership and, together, organize under a national Retiree

Council. AFSCME's Retiree Council elects chairpersons who, by virtue of their position, are a representative to, and attend, AFSCME's International Executive Board. Retiree Chapters also elect delegates who participate in AFSCME's biennial constitutional convention, at which the union's policy, agenda, and goals are established by the Convention Delegates through the adoption of resolutions.

18. Plaintiff Alliance for Retired Americans ("ARA" or the "Alliance") is a grassroots advocacy organization with 4.4 million members. Founded by the AFL-CIO Executive Council in 2001, the Alliance has 40 state alliances and members in every state. The Alliance's retiree activities are from all walks of life. They are former teachers, industrial workers, state and federal government workers, construction workers, and community leaders united in the belief that every American deserves a secure and dignified retirement after a lifetime of hard work.

19. Plaintiff American Federation of Teachers ("AFT") is a national labor organization headquartered in Washington, D.C., representing over 1.8 million members who are employed as pre-K through 12th-grade teachers, early childhood educators, paraprofessionals, and other school-related personnel; higher education faculty and professional staff; federal, state, and local government employees; and nurses and other healthcare professionals. Approximately 490,000 of AFT's members are retired, and most benefit from programs administered by SSA. AFT's purpose is to promote fairness, democracy, economic opportunity, and high-quality public education, healthcare, and public services for students, their families, and communities their members serve. AFT does so by ensuring its members receive fair pay and benefits for their critical work, and by fighting for safe working conditions that also benefit students, patients and

all those who use public services. Economic and retirement security is at the core of AFT’s mission.

20. The Social Security Administration (“SSA”) is an independent federal agency established to administer the old-age, survivors, and disability insurance program and the supplemental security income program.

21. Leland Dudek is the Acting Commissioner of SSA. He is sued in his official capacity.

22. Defendant U.S. DOGE Service (previously the U.S. Digital Service) was established by Executive Order 14158, reorganizing and renaming the United States Digital Service as the United States DOGE Service, established in the Executive Office of the President. Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 20, 2025).

23. Defendant U.S. DOGE Service Temporary Organization is a temporary organization also created by Executive Order 14158 and headed by the U.S. DOGE Service Administrator. *Id.* Together Defendant U.S. DOGE Service and U.S. DOGE Service Temporary Organization will be referred to as “DOGE” or the “DOGE Defendants.” Upon information and belief, Elon Musk, a special government employee, is the acting Administrator for USDS or is otherwise directing the work of the U.S. DOGE Service and the leader of the DOGE Defendants.

LEGAL FRAMEWORK

I. Privacy and Information Security Protections

24. Government information systems are subject to comprehensive privacy and information security protections.

25. Information systems at SSA are subject to even more stringent privacy protections given the breadth and sensitivity of the confidential information they contain.

26. Following the Watergate scandal and the public disclosure of widespread misuse of citizens' tax information for improper purposes, Congress enacted a comprehensive scheme for the control of tax return information in the Tax Reform Act of 1976. This statutory scheme, codified at 26 U.S.C. § 6103, replaced the prior regime in which return information could be inspected "upon order of the President" and under regulations promulgated by the Secretary of the Treasury and approved by the President.²

27. Section 6103 requires that tax information, including returns and return information, and any related information, which is routinely held by SSA, be treated as confidential and subject to inspection or disclosure only when expressly authorized by statute.

28.

[This] general ban on disclosure provides essential protection for the taxpayer; it guarantees that the sometimes sensitive or otherwise personal information in a return will be guarded from persons not directly engaged in processing or inspecting the return for tax administration purposes. The assurance of privacy secured by § 6103 is fundamental to a tax system that relies upon self-reporting.

Gardner v. United States, 213 F.3d 735, 738 (D.C. Cir. 2000) (internal citation omitted).

29. In the Taxpayer Browsing Protection Act, enacted in 1997, Congress made it unlawful even to inspect return information without proper authorization. 26 U.S.C. § 7213A.

30. Taxpayers are also protected explicitly against political interference. Top officials within the Executive Branch, including the President, are prohibited by law from requesting an audit or investigation of a particular taxpayer, or from interfering with an ongoing audit or investigation. 26 U.S.C. § 7217. Violation of this statutory provision is a crime, punishable by fine or imprisonment.

² Mark Berggren, *I.R.C. 6103: Let's Get to the Source of the Problem*, 74 Chi-Kent L. Rev. 825, 825 (1999).

31. For the White House or its advisors or employees to obtain access to return or return-related information, the President must personally sign such a request, identifying the specific taxpayer whose return information is sought and stating “the specific reason why the inspection or disclosure is requested.” 26 U.S.C. § 6103(g).

32. Taxpayers have a private right of action to seek damages under 26 U.S.C. § 7431 for the knowing or negligent unauthorized inspection or disclosure of returns or return information in violation of 26 U.S.C. § 6103.

33. The term “disclosure” means “the making known to any person in any manner whatever a return or return information.” 26 U.S.C. § 6103(b)(8).

34. The terms “inspected” and “inspection” mean any examination of a return or return information. 26 U.S.C. § 6103(b)(7).

35. The term “return” is broadly defined to include:

any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

26 U.S.C. § 6103(b)(1).

36. The term “return information” encompasses nearly all the information that the IRS may possess on individual taxpayers, including:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

26 U.S.C. § 6103(b)(2)(A).

37. Tax return information includes “the nature, source, or amount” of a taxpayer’s income and any other data gathered by, collected by, created by, or otherwise in the hands of the [Treasury] Secretary or in connection with determining a taxpayer’s liability or potential liability under the Code. 26 U.S.C. § 6103.

38. Other federal laws also protect information held by SSA. The Privacy Act of 1974, 5 U.S.C. § 552a, prohibits disclosure of information from systems of records except in enumerated circumstances.

39. The Privacy Act further requires that, when an agency establishes or revises a system of records, it must issue a System of Records Notice (“SORN”), which discloses information about the records in the system, the manners in which those records may be used, and storage and access policies. 5 U.S.C. § 552a(e)(4).

40. SSA has also published regulations to implement the requirements of the Privacy Act. *See* 20 C.F.R. § 401.5 *et seq.*

41. Those regulations also establish privacy as a key principle that guides SSA activities. As SSA explains:

We are passionate about supporting our customers ... and ensuring the privacy and security of your information. The first regulation we published included a commitment to the public to safeguard the personal information you entrust to us. Our commitment is as solid now as it was when Social Security began in 1935, and we include the highest level of privacy protections possible.³

42. SSA regulations further specify: “When no law specifically requiring or prohibiting disclosure applies to a question of whether to disclose information” SSA considers

³ SSA, Privacy Program, *SSA’s Commitment to Protecting Privacy through Compliance*, <https://www.ssa.gov/privacy/index.html> (last visited Feb. 21, 2025).

“whether the disclosure would result in a clearly unwarranted invasion of personal privacy.” 20 C.F.R. 401.140. In making that determination, SSA considers, (a) “sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure),” (b) “[t]he public interest in the disclosure,” (c) “[t]he rights and expectations of individuals to have their personal information kept confidential,” (d) “[t]he public’s interest in maintaining general standards of confidentiality of personal information,” and (e) “[t]he existence of safeguards against unauthorized redisclosure or use.” *Id.*

43. Agencies, including SSA, are also required by the Federal Information Security Modernization Act of 2014 (“FISMA”), 44 U.S.C. §§ 3551-59, to provide information security protection “commensurate with the risk and magnitude of the harm resulting from unauthorized access [or] use” of information or information systems maintained by the agency, *id.* § 3554(a)(1)(A).

44. And the E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899 (2002), requires that agencies, including SSA, conduct a privacy impact assessment for new or substantially changed information technology which contains records. These assessments are intended to “demonstrate that system owners and developers have incorporated privacy protections throughout the entire life cycle of a system.”⁴

45. Federal agencies, including SSA, are also subject to standards and guidance developed by the National Institute of Standards and Technology (“NIST”). NIST develops and implements “standards to be used by all agencies to categorize all information and information systems,” 15 U.S.C. § 278g-3(b)(1)(A), in order to provide appropriate levels of information security according to a range of risk levels and “minimum information security requirements for

⁴ U.S. Dep’t of Just., Off. of Privacy & C.L., *E-Government Act of 2002*, <https://www.justice.gov/opcl/e-government-act-2002> (last visited Feb. 21, 2025).

information and information systems,” *id.* § 278g-3(b)(C). The Secretary of Commerce is further empowered to make those standards “compulsory and binding to the extent determined necessary by the Secretary to improve the efficiency of operation or security of Federal information systems.” 40 U.S.C. § 11331.

46. Those mandatory standards for Federal information systems can be found in NIST Special Publication 800-53.⁵ The standards require that when federal agencies, including SSA, process personally identifiable information (“PII”), they must design and adopt information security and privacy programs to manage the security risks for the PII in the system.⁶

II. The Rules Governing the Appointment of Constitutional Officers

47. Because DOGE was granted access to SSA systems by an unlawful acting official—Mr. Dudek—the rules governing the appointment of constitutional officers are relevant to this case. Specifically, the Appointments Clause and the Social Security Act operate to constrain the Executive in appointing constitutional officers to fill important Executive Branch posts. Defendants ignored those constraints in installing Mr. Dudek at SSA.

48. The Constitution mandates a role for the United States Congress in the appointment of officers of the United States. This important role is enshrined in the Appointments Clause, which states that officers of the United States may be appointed by the President only “by and with the Advice and Consent of the Senate.” U.S. Const. art. II § 2, cl. 2. It further provided that only Congress, “by Law,” may vest the appointment of inferior officers in the President, the courts, or in the heads of departments, “as they [that is, the Congress] think proper.” *Id.*

⁵ See U.S. Dep’t of Com., Nat’l Inst. of Standards & Tech, *Security and Privacy Controls for Information Systems and Organization, NIST SP-800-53 rev. 5*, (Sept. 2020), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.

⁶ *Id.* at 13.

49. The Appointments Clause “is more than a matter of ‘etiquette or protocol’; it is among the significant structural safeguards of the constitutional scheme.” *Edmond v. United States*, 520 U.S. 651, 659 (1997) (quoting *Buckley v. Valeo*, 424 U.S. 1, 125 (1976) (per curiam)). These “significant structural safeguards” apply to the appointment of all officers—that is, any person afforded “significant authority pursuant to the laws of the United States,” *Buckley*, 424 U.S. at 126, or who has “significant discretion” in their exercise of Executive Branch authority, *Lucia v. Sec. & Exch. Comm’n*, 585 U.S. 237, 245 (2018).

50. Recognizing that “[t]he constitutional process of Presidential appointment and Senate confirmation ... can take time,” “Congress has given the President limited authority to appoint acting officials ... without first obtaining Senate approval.” *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 293–94 (2017)

51. The Social Security Act provides such limited authority. Section 902 specifies that the Deputy Commissioner of Social Security “shall be Acting Commissioner” during a vacancy. 42 U.S.C. s.902(b)(4). The exception to that is if “the President designates another officer of the Government as Acting Commissioner.” *Id.*

FACTUAL ALLEGATIONS

I. The Social Security Administration

52. The Social Security Administration is the largest benefit-paying agency. It manages and administers three of the largest federal benefit programs, the Old-Age Survivor’s Insurance, Disability Insurance, and the Supplemental Security Income (“SSI”) program.

53. Collectively, SSA pays over \$1.3 trillion in monthly benefits to over 70 million—more than 1 in 5—Americans each month. Those benefits lift 22.5 million Americans, including

over 1 million children, out of poverty and reduces the depth of poverty for millions more—more than any other program in the United States.⁷

54. SSA also provides support to administer other federal programs and laws, including Medicare, Medicaid, SNAP, eVerify, Children’s Health Insurance Program (“CHIP”), and the Help America Vote Act.

55. It also assigns Social Security numbers (“SSNs”) and verifies such numbers to federal and state agencies and their employees.

56. The Social Security Administration is headed by the Commissioner of Social Security and the Deputy Commissioner of Social Security, both of whom are appointed by the President with the advice and consent of the Senate. 42 U.S.C. 902.

57. The Deputy Commissioner serves as the Acting Commissioner in cases where the Commissioner position is vacant, unless the President designates another “officer of the Government.” *Id.* § 902(b)(4).

58. SSA systems house some of the most sensitive personally identifiable information and personal health information for millions of American seniors, adults, and children, including SSNs, bank and credit card information, birth and marriage certificates, pension information, home and work addresses, school records, citizenship status, immigration or naturalization records, health care providers’ contact information, family court records, employment and employer records, psychological or psychiatric health records, hospitalization records, addiction treatment records, and tests for, or records about, HIV/AIDS.

⁷ Kathleen Romig, *Social Security Lifts More People Above the Poverty Line Than Any Other Program*, Ctr. on Budget & Pol’y Priorities (Jan. 21, 2025), <https://www.cbpp.org/research/social-security/social-security-lifts-more-people-above-the-poverty-line-than-any-other>.

II. The Department of Government Efficiency

59. On November 12, 2024, then President-Elect Trump announced his intent to create the “Department of Government Efficiency” to “provide advice and guidance from outside of Government” to “the White House and Office of Management & Budget,” to help “pave the way” for the Trump-Vance Administration to “dismantle,” “slash,” and “restructure” federal programs and services.⁸

60. On the day of his inauguration, January 20, 2025, President Trump signed Executive Order 14158, Establishing and Implementing the President's “Department of Government Efficiency,” (“the E.O.”), reorganizing and renaming the United States Digital Service as the United States DOGE Service, established in the Executive Office of the President.⁹

61. The E.O. established the role of U.S. DOGE Service Administrator in the Executive Office of the President, reporting to the White House Chief of Staff.¹⁰

62. The E.O. further established within U.S. DOGE Service a temporary organization known as “the U.S. DOGE Service Temporary Organization.” The U.S. DOGE Service Temporary Organization is headed by the U.S. DOGE Service Administrator and is tasked with advancing “the President’s 18-month DOGE agenda.”¹¹

63. The E.O. also requires each Agency Head to establish a “DOGE Team” comprised of at least four employees within their respective agencies. DOGE Teams are required

⁸ See Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 12, 2024, 7:46 PM ET), <https://truthsocial.com/@realDonaldTrump/posts/113472884874740859>.

⁹ Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 29, 2025).

¹⁰ *Id.* § 3(b).

¹¹ *Id.*

to “coordinate their work with [U.S. DOGE Service] and advise their respective Agency Heads on implementing the President’s DOGE Agenda.”¹²

64. The E.O. directs Agency Heads to take all necessary steps “to ensure USDS has full and prompt access to all unclassified agency records, software systems, and IT systems,”¹³ but makes no mention of this directive being subject to applicable law. The E.O. nominally directs the U.S. DOGE Service to adhere to “rigorous data protection standards.”¹⁴

65. The E.O. does not and could not vest any statutory authority in DOGE.

66. Multiple DOGE officials have asserted that DOGE was reorganized to “fall[] under the Executive Office of the President [EOP]” and is now “subject to [the] Presidential Records [Act],”¹⁵ which applies to, in relevant part, individuals and components in EOP who are close to the President:

a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.

44 U.S.C. § 2201.

67. Congress has neither established, nor appropriated money for, DOGE. It appears to be operating at the direction of the President and his White House advisor, Elon Musk.¹⁶

¹² *Id.* § 3(c).

¹³ *Id.* § 4(b).

¹⁴ *Id.*

¹⁵ Minh Kim, *Trump’s Declaration Allows Musk’s Efficiency Team to Skirt Open Records Laws*, N.Y. Times (Feb. 10, 2025), <https://www.nytimes.com/2025/02/10/us/politics/trump-musk-doge-foia-public-records.html?smid=url-share>; see also Katie Miller (@katierosemiller), X (Feb. 5, 2025, 8:26 PM), <https://x.com/katierosemiller/status/1887311943062499425> (contending that the E.O. made DOGE “subject to Presidential Records [Act]”).

¹⁶ Joe Hernandez, *Trump hired Musk as a ‘special government employee.’ Here’s what that means*, NPR (Feb. 13, 2025), <https://www.npr.org/2025/02/13/nx-s1-5293124/special-government-employee-trump-musk-doge>.

68. As of February 20, 2025, DOGE reportedly has nearly fifty employees, a number of whom are understood as working for the Executive Office of the President.¹⁷

69. DOGE's behavior repeats itself across virtually every agency it enters: swooping in with DOGE staff, demanding access to sensitive systems, and taking employment action against employees who resist their unlawful commands—and frequently attempting to re-work the entire agencies to DOGE's will.

70. Since Inauguration Day, DOGE personnel have sought and, in most instances, obtained unprecedented access to information systems across numerous federal agencies, including the United States Agency for International Development,¹⁸ the Department of Treasury¹⁹ (including the Internal Revenue Service²⁰), the Department of Labor,²¹ the Department of Health and Human Services,²² the Consumer Financial Protection Bureau,²³ the

¹⁷ Avi Asher-Shapiro et al., *Elon Musk's Demolition Crew*, ProPublica (updated Feb. 20, 2025), <https://projects.propublica.org/elon-musk-doge-tracker/>.

¹⁸ Charlie Warzel et al., *DOGE has 'God Mode' Access to Government Data*, *supra* (“DOGE has acquired God-mode access across the entire digital system [at USAID].”).

¹⁹ Katelyn Polantz et al., *How an arcane Treasury Department office became ground zero in the war over federal spending*, CNN (Feb. 1, 2025), <https://www.cnn.com/2025/01/31/politics/dogetreasury-department-federal-spending/index.html>; Andrew Duehren et al., *Elon Musk's Team Now Has Access to Treasury's Payment System*, N.Y. Times (Feb. 1, 2025), <https://www.nytimes.com/2025/02/01/us/politics/elon-musk-dogefederal-payments-system.html>; Vittoria Elliott et al., *A 25-Year-Old With Elon Musk Ties Has Direct Access to the Federal Payment System*, Wired (Feb. 4, 2025), <https://www.wired.com/story/elon-musk-associate-bfsfederal-payment-system/>.

²⁰ Jeff Stein et al., *Musk's DOGE seeks access to personal taxpayer data, raising alarm at IRS*, Wash. Post (Feb. 9, 2025), <https://www.washingtonpost.com/business/2025/02/16/doge-irs-access-taxpayer-data/>.

²¹ Ex. F, Decl. of Rushab Sanghvi ¶ 9, *Am. Fed'n of Lab. & Cong. of Indus. Orgs. et al. v. Dep't of Lab. et al.*, No. CV 25-0339 (JDB) (D.D.C. Feb. 12, 2025), ECF No. 29-8.

²² Dan Diamond et al., *DOGE broadens sweep of federal agencies, gains access to health payment systems*, Wash. Post (Feb. 5, 2025), <https://www.washingtonpost.com/health/2025/02/05/doge-health-agencies-labor/>.

²³ Makena Kelly, *DOGE Is Now Inside the Consumer Financial Protection Bureau*, Wired (Feb. 7, 2025), <https://www.wired.com/story/doge-access-consumer-financial-protection-bureau-data/>; Jason Leopold, *DOGE-Backed Halt at CFPB Comes Amid Musk's Plans for 'X' Digital Wallet*, Bloomberg Law (Feb. 10, 2025), <https://news.bloomberglaw.com/ip-law/doge-backed-halt-at-cfpb-comes-amid-musks-plans-for-x-digital-wallet>.

National Oceanic and Atmospheric Administration,²⁴ the Office of Personnel Management,²⁵ the General Services Administration,²⁶ and the Department of Education.²⁷

71. Some DOGE staffers appear to be working across multiple agencies concurrently,²⁸ potentially collecting sensitive information from multiple agency databases and providing opportunities to combine and cross-reference data in ways that were never contemplated by the security plans for those systems.

72. DOGE is also reportedly planning to monitor electronic employee communications, including emails, at the agencies it engaged with including monitoring chats

²⁴ Michael Sainato, *Doge staffers enter NOAA headquarters and incite reports of cuts and threats*, The Guardian (Feb. 4, 2025), <https://www.theguardian.com/us-news/2025/feb/04/doge-noaa-headquarters>; Eric Katz, *DOGE enters NOAA, accesses IT systems and removes the top HR official*, Gov't Exec. (Feb. 5, 2025), <https://www.govexec.com/management/2025/02/doge-enters-noaa-accesses-it-systems-and-removes-top-hr-official/402776/>.

²⁵ Tim Reid, *Exclusive: Musk Aides Lock Workers out of OPM Computer Systems*, Reuters (Feb. 1, 2025), <https://www.reuters.com/world/us/musk-aides-lock-government-workers-out-computer-systems-us-agency-sources-say-2025-01-31/>; 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/>.

²⁶ Emily Davies & Faiz Siddiqui, *GSA engineering lead resigns over DOGE ally's request for access*, Wash. Post (Feb. 18, 2025), <https://www.washingtonpost.com/business/2025/02/18/gsa-staffer-resigns-doge/>.

²⁷ See Laura Meckler et al., *Trump Preps Order to Dismantle Education Dept. as DOGE Probes Data*, Wash. Post (Feb. 3, 2025), <https://www.washingtonpost.com/education/2025/02/03/trump-education-department-dismantling-executive-order-draft/> (“At least some DOGE staffers have gained access to multiple sensitive internal systems, the people said, including a financial aid dataset that contains the personal information for millions of students enrolled in the federal student aid program.”).

²⁸ See, e.g., Tim Marchman & Matt Giles, *This DOGE Engineer Has Access to the National Oceanic and Atmospheric Administration*, Wired (Feb. 5, 2025), <https://www.wired.com/story/doge-engineer-noaa-data-google-musk-climate-project-2025/>; Vittoria Elliott et al., *The US Treasury Claimed DOGE Technologist Didn't Have 'Write Access' When He Actually Did*, Wired (Feb. 6, 2025), <https://www.wired.com/story/treasury-department-doge-marko-elez-access/>; Asher-Schapiro et al., *Elon Musk's Demolition Crew*, *supra* (DOGE staffer Nikhil Rajpal working at NOAA, CFPB, and OPM); Ella Nilsen & Sean Lyngaas, *Trump Energy Secretary Allowed 23-Year-Old Doge Rep To Access It Systems Over Objections From General Counsel*, CNN (Feb. 7, 2025), <https://www.cnn.com/2025/02/06/climate/doge-energy-department-trump/index.html> (DOGE staffer Luke Farritor working at HHS and Department of Energy); Evan Weinberger, *Musk's DOGE Descends on CFPB With Eyes on Shutting It Down*, Bloomberg Law (Feb. 7, 2025), <https://news.bloomberglaw.com/banking-law/musks-doge-descends-on-consumer-financial-protection-bureau>; Asher-Schapiro et al., *supra* (DOGE staffer Gavin Kliger working at CFPB, OPM, and USAID); Makena Kelly & Zoe Schiffer, *Elon Musk's Friends Have Infiltrated Another Government Agency*, Wired (Jan. 31, 2025), <https://www.wired.com/story/elon-musk-lackeys-general-services-administration/>; Laura Barrón-López (@lbarronlopez), X (Feb. 3, 2025, 2:05 PM), <https://x.com/lbarronlopez/status/1886491276729544809> (DOGE staffer Edward Cristine working at OPM, Small Business Administration, and General Services Administration).

and each keystroke typed by employees.²⁹ And DOGE has, at another agency, reportedly installed software—PuTTY—used for large-scale transfers of data.³⁰

73. DOGE’s careless and unlawful behavior has not ended in merely accessing sensitive and protected information. On February 12, 2025, for example, DOGE posted classified information, including classified personnel information, from the National Reconnaissance Office on its website.³¹

III. President Trump, Elon Musk, and DOGE Take Aim at Social Security and Medicare

74. On March 11, 2024, then-candidate Trump implied that he would be amenable to cutting Social Security and Medicare if he won the presidency, stating during an interview on CNBC: “There is a lot you can do in terms of entitlements, in terms of cutting and in terms of also the theft and the bad management of entitlements.”³²

75. Elon Musk stated during the presidential campaign that if Trump were re-elected, his administration would likely cause “temporary hardship” for American citizens because of the ensuing budget cuts.³³

²⁹ Jenna McLaughlin & Shannon Bond, *GSA Staff Facing Massive Cuts and Fears Of ‘nonstop’ Surveillance*, NPR (Feb. 12, 2025), <https://www.npr.org/2025/02/11/nx-s1-5293258/trump-gsa-budget-cuts-doge> (“Some employees were told that this would include monitoring of when employees logged in and out of their devices, when employees swipe in and out of their workspaces and monitoring of all their work chats. They were also told that ‘keylogger’ software that would keep track of everything the employees typed on their work machines would be installed on their work computers, the GSA officials said.”)

³⁰ David Ingram, *DOGE Software Approval Alarms Labor Department Employees*, NBC News (Feb. 13, 2025), <https://www.nbcnews.com/tech/security/doge-software-approval-alarms-labor-department-employees-data-security-rcna191583>.

³¹ Jennifer Bendery, *Elon Musk’s DOGE Posts Classified Data On Its New Website*, HuffPost (Feb 14, 2025), https://www.huffpost.com/entry/elon-musk-doge-posts-classified-data_n_67ae646de4b0513a8d767112; Will Steakin et al., *DOGE Data Release Criticized By Intel Community; Trump Admin Says It’s Public Data*, ABC News (Feb. 16, 2025), <https://abcnews.go.com/US/agency-data-shared-doge-online-sparks-concern-intelligence/story?id=118858837>.

³² Kate Sullivan & Tami Luhby, *Trump suggests he’s open to cuts to Medicare and Social Security after attacking primary rivals over the issue*, CNN (Mar. 11, 2024), <https://www.cnn.com/2024/03/11/politics/trump-entitlements-social-security-medicare/index.html>.

³³ Rob Wile & Lora Kolodny, *Elon Musk asks voters to brace for economic ‘hardship,’ deep spending cuts in potential Trump Cabinet role*, CNN (Nov. 1, 2024), <https://www.nbcnews.com/business/economy/economy-if-trump-wins-second-term-could-mean-hardship-for-americans-rcna177807>.

76. Elon Musk also expressed a desire to slash the federal budget by at least \$2 trillion, a figure that amounts to more than what the federal government spent in the last fiscal year on “defense, education, veterans’ health and other discretionary items” combined.³⁴

77. On December 2, 2024, Musk implied that he was amenable to overhauling Social Security, quote tweeting an “X” thread by Senator Mike Lee that called Social Security an “outdated, mismanaged system.”³⁵

78. Since Donald Trump has taken office, Elon Musk has repeatedly suggested that there is widespread fraud within Social Security, as well as other entitlements.

79. On February 11, 2025, Musk wrote on “X”: “At this point, I am 100% certain that the magnitude of the fraud in federal entitlements (Social Security, Medicare, Medicaid, Welfare, Disability, etc.) exceeds the combined sum of every private scam you’ve ever heard by FAR. It’s not even close.”³⁶

80. On February 17, 2025, Musk wrote on “X”: “Yes, there are FAR more ‘eligible’ social security numbers than there are citizens in the USA. This might be the biggest fraud in history.”³⁷

81. On February 17, 2025, White House Press Secretary Karoline Leavitt stated on Fox News that President Trump “has directed Elon Musk and the DOGE team to identify fraud at the Social Security Administration.”³⁸ Leavitt also stated on Fox News: “They haven’t dug

³⁴ Tami Luhby et al., *Trump wants Elon Musk to overhaul the government. Here’s what could be on the chopping block*, CNN (Nov. 14, 2024), <https://www.cnn.com/2024/11/14/politics/elon-musk-doge-trump/index.html>.

³⁵ Elon Musk (@elonmusk), X (Dec. 2, 2024, 9:47 PM ET), <https://x.com/elonmusk/status/1863777030766022779>.

³⁶ Elon Musk (@elonmusk), X (Feb. 11, 2025, 1:23 AM ET), <https://x.com/elonmusk/status/1889198569518719122>.

³⁷ Elon Musk (@elonmusk), X (Feb. 17, 2025, 12:17 AM ET), <https://x.com/elonmusk/status/1891357918605332965>.

³⁸ Yamiche Alcindor & Raquel Coronell, *Top Social Security official steps down after disagreement with DOGE over sensitive data*, CNN (Feb. 17, 2025), <https://www.nbcnews.com/politics/doge/top-social-security-official-steps-disagreement-doge-sensitive-data-rcna192530>.

into the books yet, but they suspect that there are tens of millions of deceased people who are receiving fraudulent Social Security payments.”³⁹

82. On February 19, 2025, Commerce Secretary Howard Lutnick stated on Fox News:

Back in October ... I flew down to Texas, got Elon Musk to [set up DOGE], and here was our agreement: that Elon was gonna cut a trillion dollars of waste fraud and abuse.... We have almost \$4 trillion of entitlements, and no one’s ever looked at it before. You know Social Security is wrong, you know Medicaid and Medicare are wrong....⁴⁰

83. On February 19, 2025, Donald Trump himself backed a Republican budget plan that could cut billions of dollars from Medicaid.⁴¹

84. DOGE has allegedly begun to examine SSA’s contracting and other systems, posting various cuts to agency contracts on its “wall of receipts.”⁴²

IV. DOGE Seeks Access to Protected Information at SSA

85. DOGE and its game of governmental whack-a-mole have wreaked havoc on the American system of government and caused incredible concern for the privacy of the American public. It has not helped that the executive branch has been unable to articulate exactly what DOGE is, its activities, or the authorities under which it is operating; nor who leads it; nor how DOGE employees are simultaneously members of multiple agencies at the same time.

86. Indeed, a federal district court judge recently granted a temporary restraining order to safeguard information systems at the Department of Treasury. *New York v. Trump*, No.

³⁹ Zachary B. Wolf, *Trump and Musk set their sights on Social Security by spreading rumors*, CNN (Feb. 19, 2025), <https://www.cnn.com/2025/02/18/politics/trump-musk-social-security-payments-what-matters/index.html>.

⁴⁰ Acyn (@Acyn), X (Feb. 19, 2025, 8:16 PM ET), <https://x.com/Acyn/status/1892382760649839014>.

⁴¹ Brent D. Griffiths & Noah Sheidlower, *Trump said in an interview with Elon Musk that he wouldn't touch Medicaid. Hours later he endorsed a GOP plan that could slash the program*, Bus. Insider (Feb. 19, 2025), <https://www.businessinsider.com/trump-medicaid-cuts-republicans-congress-budget-reconciliation-elon-musk-interview-2025-2>.

⁴² Aliss Higham, *DOGE Reveals Social Security Administration Cuts*, Newsweek (Feb. 19, 2025), <https://www.newsweek.com/doge-reveals-social-security-administration-cuts-2033081>.

25 CIV. 1144, -- F.Supp.3d --, 2025 WL 435411 (S.D.N.Y. Feb. 8, 2025), *modified on clarification*, No. 25-CV-01144 (JAV), 2025 WL 455406 (S.D.N.Y. Feb. 11, 2025). Another expressly acknowledged that “DOGE’s unpredictable actions have resulted in considerable uncertainty and confusion,” highlighting the concerning nature of “the unchecked authority” being wielded by “an unelected individual and an entity that was not created by Congress.” *New Mexico v. Musk*, Case No. 25-cv-429, -- F.Supp.3d --, 2025 WL 520583, at *4 (D.D.C. Feb. 18, 2025). And another expressed “serious concerns” about the privacy of Americans’ data and rejecting the government’s argument that DOGE is a “goldilocks” entity that can wield massive authority with minimal oversight.” *Am. Fed’n of Lab. & Cong. of Indus. Orgs. et al. v. Dep’t of Lab. et al.*, -- F.Supp.3d --, No. CV 25-0339, 2025 WL 542825, at *3 (D.D.C. Feb. 14, 2025).

87. The nation has, once before, experienced an executive branch that sought to obtain information regarding individual Americans. In response, Congress put an unambiguous barriers in its way. Those protections, enshrined in federal law for decades, mandate that DOGE be restrained here.

88. Over President’s Day Weekend 2025, Michelle King, the then-Acting SSA Commissioner resigned, “after a clash” with DOGE, which had attempted “to access sensitive government records.”⁴³

89. President Trump selected Leland Dudek to serve as the Acting Commissioner until his nominee, Frank Bisignano, is confirmed.⁴⁴ Dudek had previously been a manager in the Office of Program Integrity working on anti-fraud measures.⁴⁵ Dudek was reportedly a GS-15

⁴³ Lisa Rein et al., *Top Social Security official exits after clash with Musk’s DOGE over data*, Wash. Post (Feb. 17, 2025), <https://www.washingtonpost.com/politics/2025/02/17/doge-social-security-musk/>.

⁴⁴ *Id.*

⁴⁵ *See id.*; Marisa Kabas, *The Curious case of Leland Dudek*, The Handbasket (Feb. 20, 2025), <https://www.thehandbasket.co/p/leland-dudek-ssa-doge>.

employee, not a member of the Senior Executive Service.⁴⁶

90. Before his promotion, the agency had placed Dudek on administrative leave for cooperating with DOGE, after SSA leadership received reports that Dudek had shared information with nonagency personnel as early as December 2024 and had reportedly pressured career staff to “help DOGE representatives.”⁴⁷ As Dudek reportedly wrote in a now-deleted LinkedIn post, “I confess. I moved contractor money around to add data science resources to my anti-fraud team to examine Direct Deposit Fraud I confess. I bullied agency executives, shared executive contact information, and circumvented the chain of command to connect DOGE with the people who get stuff done.”⁴⁸

91. After Dudek’s promotion, Elon Musk posted on X, “There ARE good people in the government who want to eliminate fraud & waste. Amazingly, Leland was fired by Social Security Administration upper management for helping @DOGE find taxpayer savings. Can you believe that?? Thanks to President Trump, Leland was brought back right away and now HE is upper management [].”⁴⁹

92. Reports indicate that since Dudek’s elevation, DOGE officials have been able to access the SSA Enterprise Data Warehouse, “a centralized database that includes records on individuals who have been issued a Social Security number or have applied for or received Social Security benefits, including wage, tax and bank account information.”⁵⁰ This database “serves as the main hub for personal, sensitive information related to social security benefits

⁴⁶ Kabas, *The Curious case of Leland Dudek*, *supra*.

⁴⁷ Ken Thomas, *The Newly Elevated Acting Head of Social Security Covertly Helped DOGE*, Wall Street J. (Feb. 20, 2025), <https://www.wsj.com/politics/policy/social-security-commissioner-leland-dudek-doge-343d3f5e>.

⁴⁸ Tami Luhby, *Acting Social Security head rose to the position after giving information to DOGE*, CNN (Feb. 21, 2025), <https://www.cnn.com/politics/live-news/trump-administration-news-02-21-25/index.html>; *see also* Thomas, *The Newly Elevated Acting Head of Social Security Covertly Helped DOGE*, *supra*.

⁴⁹ Elon Musk (@elonmusk), X (Feb. 19, 2025, 10:18 PM ET), <https://x.com/elonmusk/status/1892413385804792307>.

⁵⁰ Thomas, *The Newly Elevated Acting Head of Social Security Covertly Helped DOGE*, *supra*.

such as beneficiary records and earnings data.”⁵¹

93. On February 19, 2025, Dudek issued a press release confirming that DOGE personnel are working at SSA and have “read” access to SSA systems. It also confusingly stated that DOGE personnel “do not have access to data related to a court ordered temporary restraining order, current or future.”⁵² Plaintiffs are not aware of any restraining order to SSA data at this time.

94. On February 21, 2025, it was reported that Marko Elez—a former Space-X and X employee who had resigned from the DOGE team at the Department of Treasury earlier in February following accounts of racist social media posts⁵³—has been “reinstated” at SSA.⁵⁴ Elez was earlier in the week “listed . . . on a roster of DOGE employees with a government email address associated with the Executive Office of the President.”⁵⁵

HARMS TO PLAINTIFFS

95. Plaintiffs have been engaged in advocating for, and ensuring the availability of, Social Security benefits for decades, as a central policy and advocacy goal.

96. Plaintiffs’ active membership of working Americans participate in and contribute to the federal Old-Age (“OAI”), Survivors, and Disability Insurance (“DI”) programs (“OSDI”) managed by SSA.

⁵¹ *Social Security Administration acting commissioner steps down*, CBS (Feb. 18, 2025), <https://www.cbsnews.com/news/social-security-acting-commissioner-steps-down/#:~:text=Nancy%20Altman%2C%20the%20president%20of,access%20Internal%20Revenue%20Service%20databases>.

⁵² Statement from Lee Dudek, Acting Commissioner, about Commitment to Agency Transparency and Protecting Benefits and Information, SSA (Feb. 19, 2025), <https://www.ssa.gov/news/press/releases/2025/#2025-02-19>.

⁵³ Bobby Allyn & Shannon Bond, *Member of Elon Musk's DOGE team resigns after racist posts resurface*, NPR (Feb. 7, 2025), <https://www.npr.org/2025/02/06/nx-s1-5289337/elon-musk-doge-treasury>.

⁵⁴ Emily Birnbaum et al., *DOGE Staffer Behind Racist Posts Reinstated at Social Security*, Bloomberg AI (Feb. 20, 2025), <https://www.bloomberg.com/news/articles/2025-02-21/doge-staffer-behind-racist-posts-reappears-at-social-security/>.

⁵⁵ *Id.*

97. Many of Plaintiffs' retiree members are OAI eligible and most, if not all, are DI eligible. Many AFSCME members have children who receive disability benefits administered by SSA or who receive survivor benefits.

98. SSA has collected and stored extensive personal and financial information about Plaintiffs' members participating in SSA programs, including about their tax payments and refunds.

99. Defendants are required by law to protect the sensitive personal and financial information that they collect and maintain about individuals from unnecessary and unlawful disclosure.

100. The decision to grant DOGE personnel access to the extensive records that SSA maintains, without obtaining or even requesting the consent of affected individuals, violates those requirements.

101. Plaintiffs' members rely on the very programs that President Trump, Elon Musk, the White House, and DOGE are targeting for purposes of "rooting out fraud."

102. Defendants' actions have thus harmed Plaintiffs' members by depriving them of privacy protections guaranteed by federal law and by making their information available for, and subject to, investigation by DOGE for civil and criminal liability.

CLAIMS FOR RELIEF

Count I

Violation of the APA: Unlawful, Arbitrary and Capricious Agency Action (26 U.S.C. §§ 6103, 7213A)

103. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

104. SSA Defendants unlawfully permitted DOGE Defendants to access and inspect return information protected by 26 U.S.C. § 6103 and 26 U.S.C. § 7213A.

105. SSA Defendants' actions have been arbitrary and capricious, not in accordance with the law, and in excess of statutory authority. 5 U.S.C. §§ 706(2)(A), (C).

106. *First*, SSA Defendants have permitted, contrary to 26 U.S.C. §§ 6103(g), (h), DOGE staff to obtain broad access to return information for a broad purpose in a manner that does not comply with specific statutory requirements.

107. *Second*, SSA Defendants have permitted DOGE staff broad access to sensitive return information in an arbitrary and capricious manner that does not comport with historical or existing SSA regulations, practice, or policy.

108. Defendants' conduct constitutes final agency action under 5 U.S.C. § 704.

109. Defendants have thereby engaged in conduct that is contrary to law, in excess of statutory authority, and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

Count II

Violation of the APA: Unlawful, Arbitrary and Capricious Agency Action (FISMA)

110. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

111. SSA Defendants have administered systems containing vast quantities of sensitive personal information without complying with statutorily required security protections under FISMA. 44 U.S.C. §§ 3554(a)(1)–(2).

112. Defendants' conduct constitutes final agency action under 5 U.S.C. § 704.

113. Defendants have thereby engaged in conduct that is contrary to law, in excess of statutory authority, and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

Count III

Violation of the APA: Unlawful, Arbitrary and Capricious Agency Action (Privacy Act)

114. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

115. IRS Defendants have disclosed personal data contained in systems of records controlled by Defendants in violation of the Privacy Act, 5 U.S.C. § 552a(b) and wrongfully used such data for computer matching without an adequate written agreement in violation of the Privacy Act, 5 U.S.C. § 552a(o).

116. Defendants' conduct constitutes final agency action under 5 U.S.C. § 704.

117. Defendants have thereby engaged in conduct that is contrary to law, in excess of statutory authority, and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

Count IV

Violation of the Privacy Act

118. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

119. SSA Defendants have disclosed Plaintiffs' personal data contained in systems of records controlled by Defendants without Plaintiffs' consent and without satisfying any of the conditions identified in the Privacy Act, 5 U.S.C. § 552a(b), and wrongfully used such data for computer matching without an adequate written agreement in violation of the Privacy Act, 5 U.S.C. § 552a(o).

120. Accordingly, and alternatively, to Count III, Plaintiffs are entitled to civil remedies under 5 U.S.C. § 552a(g).

Count VI

Violation of the APA: Unlawful, Arbitrary and Capricious Agency Action (42 U.S.C. § 902)

121. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

122. Mr. Dudek’s service as Acting Commissioner is unlawful under the Social Security Act.

123. The Social Security Act provides that the Deputy Commissioner “shall” serve as the Acting Commissioner when a vacancy occurs, “unless the President designates another officer of the Government as Acting Commissioner.” 42 U.S.C. § 902(b)(4).

124. Prior to his appointment as Acting Commissioner, Mr. Dudek was not serving as an “officer” of the United States, as that term has been interpreted. *See Lucia*, 585 U.S. at 245 (quoting *Buckley*, 424 U.S. at 6 (1976)).

125. Mr. Dudek was therefore not lawfully serving as the Acting Commissioner when he provided DOGE access to SSA systems.

126. Defendants’ conduct constitutes final agency action under 5 U.S.C. § 704.

127. Defendants have thereby engaged in conduct that is contrary to law, in excess of statutory authority, and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

Count VII

Violation of the APA: Unlawful, Arbitrary and Capricious Agency Action (5 U.S.C. § 706)

128. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

129. Defendants have given access to an unfathomable amount of data, without identifying the source of its authority to do so, and without providing any analysis whatsoever of why its decision is not arbitrary and capricious.

130. Defendants’ conduct constitutes final agency action under 5 U.S.C. § 704.

131. Defendants have thereby engaged in conduct that is contrary to law, in excess of statutory authority, and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

Count VIII

**Violation of the Appointments Clause of the U.S. Constitution
(U.S. Const. Art. II § 2, cl. 2)**

132. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

133. The Appointments Clause of the U.S. Constitution provides that officers of the United States may be appointed by the President “by and with the advice of the Senate,” unless Congress has “by Law” authorized the appointment of an inferior officer by the President, the courts, or a department head.” U.S. Const. Art. II, § 2, cl.2.

134. As Acting Commissioner, Mr. Dudek is exercising significant authority and discretion, and therefore is serving as an officer for purposes of the Appointments Clause—and likewise was so serving when he unlawfully gave access to SSA systems.

135. Although serving as an officer, Mr. Dudek has not been nominated by the President nor confirmed by the Senate. Nor has Congress enacted a law authorizing Mr. Dudek to perform the functions and duties of the Commissioner without Senate confirmation.

136. Plaintiffs filed suit to challenge the access granted to SSA systems within a reasonable amount of time after it occurred, and Defendants had reasonable notice of the defect in Mr. Dudek’s appointment. The grant of access to SSA systems is thus unlawful and must be invalidated.

Count VIII
Actions Ultra Vires

137. Plaintiffs assert and incorporate by reference the foregoing paragraphs.

138. In directing and controlling the use and administration of Defendant SSA's systems, DOGE Defendants have breached secure government systems and caused the unlawful disclosure of the personal data of tens of millions of people.

139. DOGE Defendants may not take actions which are not authorized by law.

140. No law or other authority authorizes or permits DOGE defendants to access or administer these systems.

141. Through such conduct, Defendants have engaged (and continue to engage) in *ultra vires* actions that injure plaintiffs by exposing their protected private information and increasing the risk of further disclosure of their information.

Requested Relief

WHEREFORE, Plaintiffs request that this Court:

1. Enjoin Defendants' wrongful provision of access, inspection, and disclosure of return information and other personal information in the SSA system to members of DOGE;
2. Declare unlawful and halt DOGE Defendants' access to, inspection, or disclosure of personal or other protected information;
3. Declare unlawful and halt Defendants' use of SSA systems for purposes in excess of System of Records Notices (SORNs), Privacy Impact Assessments (PIAs), and the Federal Information Security Modernization Act (FISMA);

4. Declare unlawful and halt DOGE Defendants' direction or control of use of SSA systems;
5. Order Defendants to disgorge or delete all unlawfully obtained, disclosed, or accessed return information and other personally identifiable information from systems or devices on which they were not present on January 19, 2025;
6. Order SSA Defendants to establish and maintain security protections that prevent the unauthorized access of return information or other personal information;
8. Order SSA Defendants to revoke access to return information or other personal information by DOGE Defendants and any other unauthorized entity or individual;
9. Prohibit DOGE Defendants from collecting, accessing, disclosing, or retaining return information or other personal information in SSA systems;
10. Prohibit DOGE Defendants from installing any software on SSA systems and order any software previously installed be removed;
11. Award costs and reasonable attorneys' fees incurred in this action; and
12. Grant such other relief as the Court may deem just and proper.

The Plaintiffs request a trial by jury on all issues so triable.

Dated: February 21, 2025

Respectfully Submitted,

/s/ Mark B. Samburg

Mark B. Samburg (Bar No. 31090)

Karianne M. Jones*

Emma R. Leibowitz*

Robin F. Thurston*

Democracy Forward Foundation

P.O. Box 34553

Washington, DC 20043

Tel.: (202) 448-9090

msamburg@democracyforward.org

kjones@democracyforward.org

eleibowitz@democracyforward.org

rthurston@democracyforward.org

Counsel for Plaintiffs

*Applications for admission to this
Court and applications for admission
pro hac vice forthcoming