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FIRST AMENDMENT COALITION

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 MSW MEDIA, INC., and FIRST
AMENDMENT COALITION,

16 Plaintiffs,

17 v.

18 UNITED STATES DOGE SERVICE,

19 Defendants.
20

Case No. 3:25-cv-2881

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT**

1 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

2 Plaintiffs MSW Media, Inc. and First Amendment Coalition (collectively “Plaintiffs”)
3 bring this action against Defendant United States DOGE Service pursuant to the Freedom of
4 Information Act, 5 U.S.C. § 552 (“FOIA”), the Federal Declaratory Judgment Act, 28 U.S.C. §
5 2201, and the All Writs Act, 28 U.S.C. § 1651

6 **PARTIES**

7 1. Plaintiff MSW Media, Inc. (“MSW Media”) is a media business incorporated in the
8 state of California and has the ability to disseminate information on a wide scale. MSW Media’s
9 principal place of business is 3245 University Avenue, Suite 163, San Diego, CA 92104.

10 2. Plaintiff First Amendment Coalition (“FAC”) is a California non-profit corporation
11 dedicated to freedom of speech and government transparency. FAC provides legal information and
12 consultations to journalists, academics, bloggers, and ordinary persons regarding access rights
13 under FOIA and California’s various open-government laws. FAC files amicus briefs in important
14 appeals, both in state and federal courts, including the United States Supreme Court. FAC also
15 files litigation to defend and expand the rights of the public and press under access laws, including
16 FOIA. FAC’s principal place of business is 534 Fourth Street, Suite B, San Rafael, CA 94901.

17 3. Defendant United States DOGE Service (“USDS”) is an agency within the meaning
18 of 5 U.S.C. § 552(f)(1), and is in possession and/or control of the records requested by Plaintiffs
19 which are the subject of this action. As a component of the Executive Office of the President
20 (“EOP”), USDS is headquartered at 1600 Pennsylvania Avenue, NW, Washington, DC 20500.

21 **JURISDICTION**

22 4. This Court has both subject matter jurisdiction over this action and personal
23 jurisdiction over Defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

24 **VENUE**

25 5. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.
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INTRADISTRICT ASSIGNMENT

6. Because FAC’s office is located in Marin County, assignment of this case to the San Francisco Division of the Northern District of California is appropriate pursuant to Civil Local Rule 3-2(c)–(d).

STATUTORY FRAMEWORK

7. FOIA, 5 U.S.C. § 552, requires agencies of the federal Government to release requested records to the public unless one or more specific exemptions apply.

8. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

9. “A FOIA requester may also assert a FOIA pattern or practice claim—a ‘claim that an agency *policy or practice* will impair the party’s lawful access to information in the future.’” *Hajro v. U.S. Citizenship & Imm. Servs.*, 811 F.3d 1086, 1103 (9th Cir. 2016).

BACKGROUND

PART I: DOGE BEFORE USDS

10. On 19 August 2024, after a campaign event in Pennsylvania, Candidate Trump was asked if would consider an administration position for Elon Musk (“Musk”) if elected. Candidate Trump replied, “I certainly would, if he would do it, I certainly would. He’s a brilliant guy.” That evening, Musk replied from a personal social media account, “I am willing to serve,” along with an Artificial Intelligence-generated image of himself standing at a lectern labeled “D.O.G.E. Department of Government Efficiency.” This image is the earliest known use of “D.O.G.E.” or reference to the “Department of Government Efficiency.” The DOGE acronym is a tongue-in-cheek reference to Dogecoin, a cryptocurrency in which Musk has personally invested and which he regularly promoted on social media.

11. On 12 November 2024, following his election victory, President-Elect Trump announced in a statement from his transition team, published on social media, that he intended to appoint Musk and former presidential candidate Vivek Ramaswamy to “lead the Department of Government Efficiency (‘DOGE’),” which he described as a new entity that would “provide

1 advice and guidance from outside of Government” and would “partner with the White House and
2 Office of Management & Budget to drive large scale structural reform, and create an
3 entrepreneurial approach to Government never seen before.” He further stated that he “look[ed]
4 forward to Elon and Vivek making changes to the Federal Bureaucracy,” and set a termination
5 date of 4 July 2026 for this new advisory committee.

6 12. On 20 November 2024, Musk and Ramaswamy authored an opinion editorial in the
7 *Wall Street Journal* in which they stated that “President Trump has asked the two of us to lead a
8 newly formed Department of Government Efficiency, or DOGE, to cut the Federal Government
9 down to size.”

10 13. Most relevant for this litigation, Musk and Ramaswamy then stated their intention
11 to, through DOGE, effect “mass head-count reductions across the federal bureaucracy” through
12 executive action:

13 DOGE intends to work with embedded appointees in agencies to identify the
14 minimum number of employees required at an agency for it to perform its
15 constitutionally permissible and statutorily mandated functions. The number of
16 federal employees to cut should be at least proportionate to the number of federal
17 regulations that are nullified: Not only are fewer employees required to enforce
18 fewer regulations, but the agency would produce fewer regulations once its scope
19 of authority is properly limited. Employees whose positions are eliminated deserve
20 to be treated with respect, and DOGE’s goal is to help support their transition into
21 the private sector. The president can use existing laws to give them incentives for
22 early retirement and to make voluntary severance payments to facilitate a graceful
23 exit.

19 Conventional wisdom holds that statutory civil-service protections stop the
20 president or even his political appointees from firing federal workers. The purpose
21 of these protections is to protect employees from political retaliation. But the
22 statute allows for “reductions in force” that don’t target specific employees. The
23 statute further empowers the president to “prescribe rules governing the
24 competitive service.” That power is broad. Previous presidents have used it to
25 amend the civil service rules by executive order, and the Supreme Court has held—
26 in *Franklin v. Massachusetts* (1992) and *Collins v. Yellen* (2021) that they weren’t
27 constrained by the Administrative Procedures [sic] Act when they did so. With this
28 authority, Mr. Trump can implement any number of “rules governing the
competitive service” that would curtail administrative overgrowth, from large-scale
firings to relocation of federal agencies out of the Washington area. Requiring
federal employees to come to the office five days a week would result in a wave of
voluntary terminations that we welcome: If federal employees don’t want to show
up, American taxpayers shouldn’t pay them for the Covid-era privilege of staying
home.

1 14. On 12 January 2025, the *New York Times* reported, citing “people who have insight
2 into DOGE’s operations,” “The goal is for most major agencies to eventually have two DOGE
3 representatives.” This report added that “the minority of people not detailed to agencies would be
4 housed within the Executive Office of the President at the U.S. Digital Service” and that “DOGE
5 is also expected to have an office in the Office of Management and Budget.”

6 15. This report also noted, “People involved in the operation say that secrecy and
7 avoiding leaks is paramount, and much of its communication is conducted on Signal, the
8 encrypted messaging app.”

9 16. This claim is supported by a public blog post by Vinay Hiremath, who worked with
10 DOGE for four weeks in November and December:

11 After 8 calls with people who all talked fast and sounded very . . . smart, I was
12 added to a number of Signal groups and immediately put to work. . . . Within 2
13 minutes of talking to the final interviewer for DOGE, he asked me if I wanted to
14 join. I said “yes”. Then he said “cool” and I was in multiple Signal groups. I was
15 immediately acquainted with the software, HR, and legal teams and went from 0 to
16 100 taking meetings and getting shit done. This was the day before Thanksgiving.

17 The next 4 weeks of my life consisted of 100s of calls recruiting the smartest
18 people I’ve ever talked to, working on various projects I’m definitely not able to
19 talk about, and learning how completely dysfunctional the government was.

20 **PART II: DOGE BECOMES USDS AND BEGINS EXERCISING AUTHORITY**

21 17. On 20 January 2025, President Trump issued Executive Order 14,158, entitled
22 *Establishing and Implementing the President’s “Department of Government Efficiency”* (“the
23 Order” or “E.O. 14,158”).

24 18. The Order stated that the existing U.S. Digital Service, which was housed in the
25 Office of Management and Budget (“OMB”), was renamed the U.S. DOGE Service and moved to
26 the Executive Office of the President (“EOP”). According to the Order, the USDS
27 Administrator—also referred to as the “Administrator of the Department of Government
28 Efficiency” in other presidential documents—would be the head of USDS.

 19. USDS has a self-contained structure.

1 20. USDS does more than merely advise and assist the President. In fact, USDS wields
2 substantial authority independently of the President, whether by the terms of the Order or other
3 applicable rules or regulations or in actual practice.

4 21. Since 20 January, USDS staff have entered numerous government agencies and
5 have: (a) gained access to computer systems previously available only to agency employees; (b)
6 rendered decisions related to agency payments or agency personnel; and (c) ordered agency
7 supervisors or staff to take various actions.

8 22. For example, USDS has taken credit for “saving the Federal Government approx..
9 \$1 billion/day, mostly from stopping the hiring of people into unnecessary positions, deletion of
10 DEI and stopping improper payments to foreign organizations, all consistent with the President’s
11 Executive Orders.” Department of Government Efficiency (@DOGE), X.com (Jan. 28, 2025 7:20
12 PM), at <https://x.com/DOGE/status/1884396041786524032> (last accessed Mar. 25, 2025).

13 23. Stopping the hiring of people into allegedly unnecessary positions is an exercise of
14 independent authority.

15 24. Deletion of “DEI,” meaning information, initiatives, or programs related to
16 diversity, equity, and inclusion, is an exercise of independent authority.

17 25. Stopping allegedly improper payments to foreign organizations is an exercise of
18 independent authority.

19 26. As another example, USDS has taken credit for “feeding USAID into the wood
20 chipper.” Elon Musk (@elonmusk), X.com (Feb. 3, 2025 1:54 AM), at
21 <https://x.com/elonmusk/status/1886307316804263979> (last accessed Mar. 25, 2025).

22 27. Feeding a federal agency into a wood chipper is an exercise of independent
23 authority.

24 **PART III: MUSK IS IN CHARGE OF USDS**

25 28. Even though the White House has filed documents in litigation contending that
26 Amy Gleason (“Gleason”) is the Acting USDS Administrator, all evidence points to Musk
27 actually running USDS in practice if not in formal name.
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1 29. For example, on 19 February, President Trump publicly stated, “I signed an order
2 creating the Department of Government Efficiency and put a man named Elon Musk in charge.”
3 Anna Bower (@annabower.bsky.social), Bluesky (Feb. 19, 2025 6:11 PM), at
4 <https://bsky.app/profile/annabower.bsky.social/post/3likvkcjnr22h> (last accessed Mar. 25, 2025).

5 30. On 22 February, President Trump posted on social media, “ELON IS DOING A
6 GREAT JOB, BUT I WOULD LIKE TO SEE HIM GET MORE AGGRESSIVE.” Donald J.
7 Trump (@realDonaldTrump), Truth Social (Feb. 22, 2025 8:04 AM), at
8 <https://truthsocial.com/@realDonaldTrump/posts/114047677181856301> (last accessed Mar. 25,
9 2025). Within seven hours, Elon Musk posted on social media, “Consistent with President
10 @realDonaldTrump’s instructions, all federal employees will shortly receive an email requesting
11 to understand what they got done last week. Failure to respond will be taken as a resignation.”
12 Elon Musk (@elonmusk), X.com (Feb. 22, 2025 2:46 PM), at
13 <https://x.com/elonmusk/status/1893386883444437415> (last accessed Mar. 25, 2025). The
14 promised email was sent out by the Office of Personnel Management (“OPM”) soon after.

15 31. In a press conference on 24 February, President Trump reiterated that people who
16 did not respond to Musk’s OPM email would be “sort of semi-fired or . . . fired.” Courtney Kube,
17 *et al.*, *DOGE will use AI to assess the responses of federal workers who were told to justify their*
18 *jobs via email*, NBC News (Feb. 24, 2025), at [https://www.nbcnews.com/politics/doge/federal-](https://www.nbcnews.com/politics/doge/federal-workers-agencies-push-back-elon-musks-email-ultimatum-rcna193439)
19 [workers-agencies-push-back-elon-musks-email-ultimatum-rcna193439](https://www.nbcnews.com/politics/doge/federal-workers-agencies-push-back-elon-musks-email-ultimatum-rcna193439) (last accessed Mar. 25,
20 2025).

21 32. Even after OPM reversed its earlier position and stated that responses were entirely
22 voluntary, Musk posted on social media that same day that a second OPM email would be
23 forthcoming and that “[s]ubject to the discretion of the President, [Government employees] will be
24 given another chance[,]” warning that “[f]ailure to respond a second time will result in
25 termination.” Elon Musk (@elonmusk), X.com (Feb. 24, 2025 7:06 PM), at
26 <https://x.com/elonmusk/status/1894177129887404484> (last accessed Mar. 25, 2025). The second
27 OPM email was sent on 28 February 2025.

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1 33. On 26 February 2025, in his first Cabinet meeting of the year, which was attended
2 by Musk, President Trump again acknowledged Musk’s position as the head of USDS: “I’m going
3 to ask if it’s possible to have Elon get up first and talk about DOGE. . . . So Elon, if you could get
4 up and explain where you are, how you’re doing, and how much we’re cutting.” *Trump: People*
5 *who didn’t respond to ‘what did you do’ email are on the bubble*, Scripps News (Feb. 26, 2025),
6 at <https://www.youtube.com/watch?v=Jd-MlbyYles> (last accessed Mar. 25, 2025).

7 34. In this Cabinet meeting, Musk, for his part, consistently referred to “the DOGE
8 team” as “we” over ten times in three minutes in his remarks to the Cabinet, while admitting that
9 “we”—meaning USDS—sent out the OPM email. *Id.*

10 35. On 4 March 2025, President Trump, in his Joint Address to Congress, stated that
11 DOGE was “headed by Elon Musk.”

12 36. It has been widely reported that Musk has been inviting officials to call him on his
13 cell phone to discuss DOGE. Annie Grayer, *et al.*, *Republicans push Musk to let Congress vote on*
14 *DOGE cuts*, CNN (Mar. 5, 2025), at [https://www.cnn.com/2025/03/05/politics/musk-doge-](https://www.cnn.com/2025/03/05/politics/musk-doge-republicans/index.html)
15 [republicans/index.html](https://www.cnn.com/2025/03/05/politics/musk-doge-republicans/index.html) (last accessed Mar. 25, 2025) (“Musk gave out his cell phone number
16 during the closed-door meeting to GOP senators and told them he wants to work more closely
17 with them.”); Nikki McCann Ramirez & Asawin Suebsaeng, *Trump’s cabinet sure seems pissed*
18 *about Elon Musk*, Rolling Stone (Mar. 7, 2025), available at
19 [https://www.rollingstone.com/politics/politics-news/musk-spars-trump-cabinet-officials-](https://www.rollingstone.com/politics/politics-news/musk-spars-trump-cabinet-officials-1235291830/)
20 [1235291830/](https://www.rollingstone.com/politics/politics-news/musk-spars-trump-cabinet-officials-1235291830/) (last accessed Mar. 25, 2025) (reporting that, in a confrontation with Transportation
21 Secretary Sean Duffy, Musk “offer[ed] him his phone number”).

22 37. Lastly, on 19 March 2025, the attorneys for defendants X Corporation, X Holdings
23 Corporation, and Musk himself submitted a letter to the U.S. District Court for the District of
24 Delaware detailing their objections to the plaintiffs’ request to depose Musk. In this letter, Musk’s
25 *own private lawyers* stated: “And the presumed undue burden from a deposition is heightened
26 because Musk is not only X Corp.’s (and other companies’) highest executive, but he is a high-
27 ranking government official. The White House has designated Musk a ‘special government
28 employee’ *in charge of Establishing and Implementing the President’s Department of Government*

1 *Efficiency (“DOGE”).*” Ltr., Dkt. #144, at 3 (filed Mar. 19, 2025), *Arnold v. X Corp.*, No. 23-528
2 (D. Del.) (emphasis added) (citations omitted).

3 38. Despite this public trail clearly identifying Musk as the head of USDS, the Director
4 of the EOP Office of Administration has, under penalty of perjury, stated that Musk is merely a
5 “Senior Advisor to the President” and is “not an employee of the U.S. DOGE Service or U.S.
6 DOGE Service Temporary Organization.” Fisher Decl., Dkt. #24-1, ¶ 6 (filed Feb. 17, 2025), *State*
7 *of N.M. v. Musk*, No. 25-429 (D.D.C.).

8 39. Gleason herself has submitted a declaration in another case on 14 March 2025
9 stating unequivocally: “Elon Musk does not work at USDS. I do not report to him and he does not
10 report to me. To my knowledge, he is a Senior Advisor to the White House.” Gleason Decl., Dkt.
11 #20-2, ¶ 6 (filed Mar. 14, 2025), *Citizens for Resp. & Ethics in Wash. v. U.S. DOGE Serv.*, No. 25-
12 511 (D.D.C.).

13 40. Upon information and belief, the Fisher and Gleason declarations—and other
14 comparable statements—have been made in bad faith to insulate Musk from any accountability or
15 transparency as the head of USDS.

16 **FIRST CAUSE OF ACTION**

17 **(CONSTRUCTIVE DENIAL – MSW MEDIA REQUEST NO. 1)**

18 41. Plaintiffs repeat and reallege the allegations contained in all paragraphs set forth
19 above.

20 42. On 11 February 2025, MSW Media submitted to USDS a FOIA request for “all
21 emails sent or received by employees of the US DOGE Service between February 7th, 2025, and
22 February 10th, 2025, inclusive.”

23 43. MSW Media sent this request by Federal Express to U.S. DOGE Service,
24 Executive Office of the President, 1600 Pennsylvania Avenue, NW, Washington, DC 20500, and
25 it was delivered on 13 February 2025.

26 44. As of this writing, USDS has not acknowledged or responded to this request.

27 45. MSW Media has a legal right under FOIA to obtain the information it seeks, and
28 there is no legal basis for the denial by USDS of said right.

1 **SECOND CAUSE OF ACTION**

2 **(CONSTRUCTIVE DENIAL – FAC REQUEST NO. 1)**

3 46. Plaintiffs repeat and reallege the allegations contained in all paragraphs set forth
4 above.

5 47. On 25 February 2025, FAC submitted to USDS a FOIA request for “all emails or
6 other electronic text communications sent or received by any employees of the U.S. DOGE
7 Service or U.S. DOGE Service Temporary Organization from January 20, 2025, to the date of this
8 request in which Elon Musk was either the sender or a recipient.”

9 48. FAC sent this request by Federal Express to U.S. DOGE Service, Executive Office
10 of the President, 1600 Pennsylvania Avenue, NW, Washington, DC 20500, and it was delivered
11 on 27 February 2025.

12 49. As of this writing, USDS has not acknowledged or responded to this request.

13 50. FAC has a legal right under FOIA to obtain the information it seeks, and there is no
14 legal basis for the denial by USDS of said right.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs MSW Media, Inc. and First Amendment Coalition pray that this
17 Court:

18 (1) Declare and find that the United States DOGE Service is an agency subject to
19 FOIA;

20 (2) Order USDS to release all requested records to them;

21 (3) Order preliminary and permanent injunctive and/or declaratory relief as may be
22 appropriate;

23 (4) Award reasonable costs and attorneys’ fees as provided in 5 U.S.C. § 552(a)(4)(E),
24 28 U.S.C. § 2412(d), or any other applicable law;

25 (5) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and

26 (6) Grant such other relief as the Court may deem just and proper.
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1 Dated: March 28, 2025

Respectfully submitted,

2 FIRST AMENDMENT COALITION

3 By

/s/ David Loy

4 _____
DAVID LOY

ANN CAPPETTA

5 Attorneys for Plaintiffs MSW MEDIA, INC.

6 and FIRST AMENDMENT COALITION

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