UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1410, *et al.*, Plaintiffs, v. UNITED STATES DEPARTMENT OF DEFENSE, *et al.*, Defendants.	CASE NO. 1:26-cv-02653-SAG

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND 5 U.S.C. § 705 STAY

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INTRODUCTION

This case presents a textbook example of arbitrary-and-capricious agency action that violates the Administrative Procedure Act ("APA").

On April 9, 2026, Defense Secretary Pete Hegseth issued a terse memorandum directing Department of Defense ("DoD") agencies to terminate their collective bargaining agreements ("CBAs") within 24 hours. The only explanation given by the Hegseth Memorandum was that immediate termination of CBAs is "required to align agency operations with national security requirements as outlined in" Executive Order 14251 ("EO 14251" or "EO"). But the EO had been issued more than a year earlier, and it did not "require[]" agencies to terminate their existing CBAs. Indeed, after first advising agencies not to terminate any existing CBAs until litigation challenging the EO ran its course, the Office of Personnel Management ("OPM") later provided a template for agencies to follow before terminating CBAs. The template required findings that a specific CBA, or a specific part of a CBA, could not be honored in a manner consistent with national security. The template also required that the terminating agency include a finding that union and worker reliance interests had been considered before issuing the termination notice.

The Hegseth Memorandum did not point to any facts showing that any of Plaintiffs' CBAs, much less all of them, were inconsistent with national security. DoD agencies had voluntarily agreed to these CBAs. Nor did the Hegseth Memorandum consider the obvious alternatives to immediate mass termination of all CBAs, such as refraining from terminating CBAs until litigation about EO 14251 runs its course, allowing CBAs to expire pursuant to their own terms, or identifying only those specific parts of CBAs that the Secretary determined to be inconsistent with national security. Moreover, because the Hegseth Memorandum required DoD agencies to terminate CBAs within 24 hours, agencies wound up terminating CBAs with respect to some employees who are not covered by EO 14251. The Hegseth Memorandum was the opposite of the reasoned decision-making that the APA requires before final agency action.

Plaintiffs are 24 local unions and labor councils that received CBA termination notices. As a result of those notices, DoD agencies are telling Plaintiffs' members that their unions no longer exist; they are not allowing union representatives to use the official time permitted by the CBAs so they can represent workers; and they are blocking union representatives from using the office space guaranteed by the CBAs. DoD agencies are also denying Plaintiffs' members the right to union representation during the disciplinary process; they are unilaterally changing members' terms and conditions of employment; and they are refusing to accept CBA grievances.

Plaintiffs have an overwhelming likelihood of success on their claim that DoD's mass termination of CBAs was arbitrary-and-capricious action that violates the APA. Plaintiffs and their members will suffer serious and irreparable harm without interim relief. The remaining preliminary injunction factors also tip in Plaintiffs' favor. Accordingly, the Court should issue a preliminary injunction and/or an APA stay under 5 U.S.C. § 705 to restore the pre-Hegseth Memorandum status quo until Plaintiffs' claims can be resolved on the merits.

BACKGROUND

I. DoD civilian employees have engaged in collective bargaining for decades.

In 1962, President Kennedy issued Executive Order 10988, "Employee-Management Cooperation in the Federal Service," 27 Fed. Reg. 551 (Jan. 17, 1962). The order recognized the right of federal employees—including DoD civilian employees—to engage in collective bargaining. A presidential task force, which included the Secretary of Defense, had recommended issuance of such an order.[1] Five years later, a review committee appointed by President Johnson, which also included the Secretary of Defense, concluded that collective bargaining had produced "excellent results, beneficial to both agencies and employees."[2] Accordingly, President Nixon expanded the collective bargaining framework in 1969, during the height of the Vietnam War, by issuing Executive Order 11491, "Labor-Management Relations in the Federal Service," 34 Fed. Reg. 17605 (Oct. 31, 1969).

Congress codified and refined federal employee collective bargaining rights by adopting the Civil Service Reform Act of 1978, which enacted the Federal Service Labor-Management Relations Statute ("FSLMRS"), P.L. No. 95-454, 92 Stat. 1111, 1191-1216 (1978). In the FSLMRS, Congress found that securing collective bargaining rights for federal employees "safeguards the public interest," "contributes to the effective conduct of public business," and "facilitates and encourages the amicable settlements of disputes between employees and their employers." 5 U.S.C. § 7101(a)(1). The FSLMRS grants "[e]ach employee" the "right to form, join, or assist any labor organization … freely and without fear of penalty or reprisal," and provides that "[a]ny agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement." 5 U.S.C. §§ 7102, 7114(a)(4). Prior to March 27, 2025, DoD and the DOD subdivisions in this action were agencies covered by the FSLMRS. *See* 5 U.S.C. § 7103(a)(3).

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[1] *See Report of the President's Task Force on Employee-Management Relations in the Federal Service* (Nov. 30, 1961), https://perma.cc/WCB5-FVC9; *see also* Federal Labor Relations Authority, *50th Anniversary: Executive Order 10988*, at https://www.flra.gov/50th_Anniversary_EO10988 (last visited July 11, 2026) ("FLRA Anniversary").

[2] *See* FLRA Anniversary, supra at n.1; *see also* Lyndon B. Johnson, *Memorandum on Employee-Management Cooperation in the Federal Government* (Sept. 8, 1967), https://perma.cc/Q56N-TCHE.

II. Plaintiffs are parties to collective bargaining agreements with DoD agencies.

Plaintiffs are 24 local labor unions and labor councils that represent tens of thousands of employees of various DoD agencies. Amended Compl. ¶¶ 8-31. Some of these DoD bargaining units have had continuous union representation for more than 50 years, during wartime and peacetime. *See, e.g.,* Burns Decl. ¶2; Halloway Decl. ¶3. The employees Plaintiffs represent include professionals at the Aberdeen Proving Ground in Maryland, Toth Decl. ¶2, nursing assistants and other health care workers, Manning Decl. ¶¶1-3, Mooney Decl. ¶¶1, 3, analysts at the Defense Finance and Accounting Service and the Defense Contract Management Agency, Abounader Dec. ¶¶1, 3, D.R. Brown Decl. ¶¶1, 3, meat cutters and other commissary workers on military bases, Taylor Decl. ¶¶1, 3, and myriad other civilian DoD employees.

For years, Plaintiffs have administered collective bargaining agreements with DoD agencies. *See* Abounader Decl. ¶5, Ex. A; D.R. Brown Decl. ¶¶4-8, Ex. A; Z. Brown Decl. ¶¶4-6, Ex. A, Ex. B; Burns Decl. ¶3, Ex. A; Edwards Decl. ¶¶3-5; Foust Decl. ¶¶3, 5, Ex. A; Green Decl. ¶¶4-7; Halloway Decl. ¶¶4, 6-8, Ex. A; Hines Decl. ¶¶4, 6-7; Keating Decl. ¶¶4, 10, Ex. A; Manning Decl. ¶¶4-5, 8; Mooney Decl. ¶¶4, 6-8; Simpson Decl. ¶¶4, 6-8, Ex. A; Taylor Decl. ¶5, Ex. A; Toth Decl. ¶4, Ex. A. DoD agencies voluntarily entered into these CBAs to further the agencies' missions. *See, e.g.,* Burns Decl. Ex. A at 1 ("The purpose and intent of this contract is to unite the EMPLOYER, the UNION, and the EMPLOYEES to establish mutually beneficial relationships in working as a team to accomplish the mission of the Baltimore District in an exemplary manner. The EMPLOYER and the UNION agree to expend every effort to assure that the intent of this contract is adhered to at all times by all personnel."); Abounader Decl. Ex. A at 5 ("We recognize the dedicated, professional, and concerned employees of the Agency are the means for providing effective and ever improving service . . . we will work together to fulfill the promise and accomplish the mission of the Defense Finance and Accounting Service.”).

Plaintiffs’ CBAs provide important rights and protections to their members, such as: notice and union representation in disciplinary matters and formal agency discussions; grievance and arbitration procedures; an employee assistance program to provide services for employees working through life challenges such as stress, financial issues, legal issues, family problems, office conflicts, and alcohol and substance use disorders; leave entitlements, such as sick leave, family leave, parental leave, and other forms of leave; hours of work and overtime protections; telework eligibility and procedures; wellness and fitness programs and lactation accommodations; safety, health, and workers’ compensation provisions; fair treatment in evaluation, career development, and training; and protections during reductions in force and other workforce changes. *See, e.g.,* Abounader Decl. ¶6, Ex. A; D.R. Brown Decl. ¶8, Ex. A; Z. Brown Decl. ¶6, Ex. A, Ex. B; Burns Decl. Ex. A; Edwards Decl. ¶5; Foust Decl. Ex. A; Green Decl. ¶7; Halloway Decl. ¶8, Ex. A; Hines Decl. ¶7; Keating Decl. ¶5, Ex. A; Manning Decl. ¶5; Mooney Decl. ¶8; Simpson Decl. ¶8, Ex. A; Taylor Decl. ¶6, Ex. A; Toth Decl. ¶8, Ex. A.

Plaintiffs’ CBAs also provide necessary protections for Plaintiffs’ ability to perform their core missions as labor organizations, including: the right of employees to organize and engage in union activity without reprisal; the grant of “official time” that union representatives may use to represent their fellow employees when they otherwise would be on duty; and the use of on-site office space to perform union functions and communicate with employees concerning employment-related matters. Abounader Decl. ¶6, Ex. A; D.R. Brown Decl. ¶8, Ex. A; Z. Brown Decl. ¶6, Ex. A, Ex. B; Burns Decl. ¶3, Ex. A; Edwards Decl. ¶5; Foust Decl. ¶5, Ex. A; Halloway Decl. ¶8, Ex. A; Green Decl. ¶7; Hines Decl. ¶7; Keating Decl. ¶5, Ex. A; Manning

Decl. ¶5; Mooney Decl. ¶8; Simpson Decl. ¶8, Ex. A; Taylor Decl. ¶6, Ex. A; Toth Decl. ¶8, Ex. A.

III. The Executive Order excluded certain agencies from the FSLMRS but did not mandate termination of existing CBAs.

The FSLMRS requires two fact-based determinations before a President may issue an order excluding an agency or agency subdivision from its coverage. First, the agency or subdivision must have as a "primary function intelligence, counterintelligence, investigative, or national security work[.]" 5 U.S.C. § 7103(b)(1). Second, there must be a determination that the provisions of the FSLMRS "cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations." *Id.* But even when such determinations are properly made nothing in Section 7103(b) mandates that affected agencies terminate existing CBAs or otherwise compels agency action.

Historically, moreover, Section 7103(b) has been invoked sparingly and in narrow ways. For example, President Trump, in his first term, excluded the Defense Counterintelligence and Security Agency from FSLMRS coverage. *See* Exec. Order 13869, 84 Fed. Reg. 18125 (Apr. 24, 2017).

On March 27, 2025, however, President Trump issued Executive Order 14251, "Exclusions from Federal Labor-Management Relations Programs," 90 Fed. Reg. 14553 (March 27, 2025). EO 14251 invoked Section 7103 to remove approximately "two-thirds of the federal workforce" from the FSLMRS on the theory that, notwithstanding over 45 years of experience to the contrary, the FSLMRS "cannot be applied to these agencies and agency subdivisions in a manner consistent with national security requirements and considerations." *Nat'l Treasury Emps. Union v. Trump*, 780 F. Supp. 3d 237, 246-47 (D.D.C. 2025) ("*NTEU I*") (discussing EO 14251);

EO 14251, § 1 (a). DoD was one of the cabinet-level departments that the EO removed from FSLMRS coverage. *Id.* § 2(b).

EO 14251 delegated authority to the Secretary of Defense to issue an order suspending application of the EO "to any subdivisions of the department[] … thereby bringing such subdivisions under the coverage of the [FSLMRS]." EO 14251, § 4(a). To exercise such delegated authority, the Secretary was required to issue an order within 15 days of the EO certifying that the FSLMRS "can be applied to such subdivision in a manner consistent with national security requirements and considerations." EO 14251, § 4(b). On April 23, 2025, DoD published a notice in the Federal Register in which Secretary Hegseth purported to exercise the authority delegated by EO 14251 to conclude that the FSLMRS "can be applied to the following federal wage system employees in the trades at the following DoD component subdivisions in a manner consistent with national security requirements and considerations." Executive Order 14251 Certification, 90 Fed. Reg. 17052 (Apr. 23, 2025). The four subdivisions identified were (a) Letterkenny Munition Center, US Army Aviation and Missile Command; (b) Air Force Test Center, Air Force Materiel Command; (c) Air Force Sustainment Center, Air Force Materiel Command; and (d) Fleet Readiness Center Southeast. *Id.* Secretary Hegseth did not suspend the EO as to other DoD agencies or subdivisions.

EO 14251 stated that, "[n]otwithstanding the forgoing [sic], nothing in this section [which otherwise excluded listed federal agencies from the FSLMRS] shall exempt from the coverage" of the FSLMRS "the immediate, local employing offices of any agency police officers, security guards, or firefighters…." EO 14251, § 2.

Although EO 14251 purported to exempt DoD from the FSLMRS under § 7103(b), it did not direct DoD (or any other agencies) to terminate their existing CBAs. Rather, the EO instructed "each applicable agency head" to take certain actions "upon termination of the applicable collective bargaining agreement." EO 14251, § 6.

The government has made clear that, for each agency covered by the EO, the decision whether and when to terminate an existing CBA lies with the individual agency. For instance, in a guidance memorandum issued contemporaneously with the EO, the Office of Personnel Management ("OPM") advised agencies to "consult with their General Counsels as to how to implement the President's directive" and to "consider and implement" various changes in personnel practices. March 27, 2025 Memorandum from OPM Acting Director to Head and Acting Heads of Agencies and Departments, https://perma.cc/H5SN-T5FZ.[3] Shortly thereafter, through an "FAQ," OPM advised that "[a]gencies *should not terminate any CBAs* until the conclusion of litigation [about EO 14251] or further guidance from OPM directing such termination" and that "agencies should not file any decertification petitions until litigation regarding [EO 14251] has been resolved. *Only after the litigation is final and the Administration has assessed the implications of its outcome* should agencies consider filing Federal Labor Relations Authority ("FLRA") petitions." OPM, *Frequently Asked Questions*, Executive Order 14251 (first emphasis added), https://perma.cc/38KJZ7TN. Thus, the OPM guidance document confirmed that EO 14251 did not require immediate termination of existing CBAs.

The government also informed the courts that the EO does not require termination of existing CBAs. In *Nat'l Treasury Emps. Union v. Trump*, No. 25-5157, 2025 WL 1441563 (D.C. Cir. May 16, 2025) ("*NTEU II*"), the government obtained a stay pending appeal of a district court's preliminary injunction against EO 14251. In seeking the stay, the government argued that

[3] The Court may take judicial notice of documents from official government websites. *Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004); *Philips v. Pitt County Memorial Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

the union could not "establish any imminent loss of bargaining power because agencies ha[d] been advised not to terminate collective bargaining agreements" and that it was "speculative to think that employees … will leave the union even before their bargaining unit has been decertified." *Nat'l Treasury Emps. Union v. Trump*, No. 25-5157, Dkt. 2113741, at 27 (D.C. Cir. April 30, 2025). The D.C. Circuit accepted that argument and granted the government a stay pending appeal on that basis. *NTEU II,* 2025 WL 1441563, at *1.[4]

On February 12, 2026, OPM issued a guidance document and "Template" for agencies to use if they sought to terminate CBAs. *Template: Termination of Collective Bargaining Agreements for Agencies subject to Executive Orders 14251 and 14343* ("OPM Termination Template"), https://perma.cc/LB5L-22DK. That OPM Termination Template reinforces that CBA terminations are discretionary and must comply with the APA's requirements for reasoned decision-making. The OPM Template indicates that agencies should specify that, after the issuance of the EO, the agency "considered whether to terminate any CBA, in whole or part, as it pertains to those bargaining unit employees who fall within the [EO's] scope." *Id.* at 2. Agencies also should explain that they "reviewed the parties' CBA to determine [whether] continuing to adhere to its provisions would be consistent with the President's national security determination." *Id.* Agencies also should explain that they "considered the interests of bargaining unit employees and the [insert name of certified representative] in continuing to adhere to the

[4] Multiple legal challenges were filed against EO 14251. To Plaintiffs' knowledge, three preliminary injunctions prevent application of EO 14251 to specific unions. *See AFL-CIO, et al. v. Trump, et al.*, 25-cv-02445 PLF, ECF No. 44 (D.D.C. Oct. 1, 2025); *Fed. Educ. Ass'n v. Trump*, 2025 WL 2738626 (D.C. Cir. Sept. 25, 2025) (denying stay of preliminary injunction). Three other district court preliminary injunctions have been stayed or vacated. *See NTEU II,* 2025 WL 1441563, at *1; *Am. Foreign Service Ass'n v. Trump*, 2025 WL 1742853 (D.C. Cir. June 20, 2025); *Am. Fed'n of Gov't Emps. v. Trump*, 178 F.4th 456, 469(9th Cir. 2026). To Plaintiffs' knowledge, none of the cases has reached a final judgment about the validity of EO 14251, nor did any of those decisions address agency-specific CBA terminations.

parties' CBA." *Id.* at 3. The factors set forth by OPM for agencies to consider are precisely the sort of factors that the APA demands that agencies consider as part of reasoned decision-making.

IV. Without warning or a reasoned explanation, Secretary Hegseth directed DoD agencies to terminate existing CBAs within 24 hours

For ***more than a year*** after the issuance of EO 14251, DoD did not terminate any of its existing CBAs. On April 9, 2026, however, DoD executed an unexplained U-turn in its labor relations policy. On that date, Secretary Hegseth issued a two-paragraph Memorandum that tersely "direct[ed] the termination of all collective bargaining agreements to which the Department is a party, not subject to a court order enjoining implementation of [the EO]." April 9, 2026 Memorandum re: Termination of Certain Collective Bargaining Agreements in Accordance With Executive Order 14251 ("Hegseth Memorandum"), https://perma.cc/M6GK-5XFE**;** *see also* Foust Decl. Ex. B at 2 (copy of Hegseth Memorandum). Furthermore, Secretary Hegseth directed that the blanket terminations must occur "within 24 hours of the date of this Memorandum," except as to the employees' listed in the Secretary's April 23, 2025 certification and as to "the local employing offices of any agency police offices, security guards, or firefighters." *Id.* The Memorandum provided no explanation for the timing of its issuance or its 24-hour requirement.

The only explanation provided in the Hegseth Memorandum for the reversal of DoD's position was that "[t]his action is *required* to align agency operations with national security requirements as outlined in [the EO]," and that "[a]gencies and subdivisions identified in sections 2 and 3 of EO 14251 have been determined to perform functions incompatible with the continued application of [the FSLMRS]." Hegseth Memorandum at 1 (emphasis supplied). But not only did the EO not require termination of the CBAs, the EO had been issued a year earlier and the legality of the EO is still being disputed in multiple court cases. *See supra* at 9 n.4. The

Hegseth Memorandum, moreover, did not discuss the obvious alternatives of leaving existing CBAs in place until CBAs expire on their own terms, leaving CBAs in place until the conclusion of litigation challenging the EO, or identifying only those specific parts of CBAs that the Secretary has specifically determined to be inconsistent with national security. The Hegseth Memorandum did not provide any reasons why any of Plaintiffs' CBAs, in whole or in part, are incompatible with national security. Nor did the Hegseth Memorandum discuss Plaintiffs' reliance interests in their CBAs.

V. DoD's mass termination of CBAs is causing irreparable harm

As a result of the Hegseth Memorandum, DoD agencies have been informing Plaintiffs that their CBAs have been terminated and informing Plaintiffs' members that they "no longer have a union," or that "the union does not exist anymore." Simpson Decl. ¶¶10-11, 18, 21, Ex. B, Ex. C; Abounader Decl. ¶¶8, 11-12; D.R. Brown Decl. ¶10, Ex. B; Z. Brown Decl. ¶¶8, 12-13; Burns Decl. ¶¶4-5, Ex. B; Edwards Decl. ¶¶7, 15, 17; Foust Decl. ¶¶6-7, 10, Ex. B, Ex. C; Green Decl. ¶¶9-10, 18, 20, Ex. A, Ex. B; Halloway Decl. ¶¶10, 15, 17, Ex. B; Hines Decl. ¶¶9, 15, 17, Ex. A; Keating Decl. ¶¶11, 14-15, Ex. B; Manning Decl. ¶¶7, 10-12; Mooney Decl. ¶¶10, 18, 20, Ex. B; Taylor Decl. ¶¶8, 11-13; Toth Decl. ¶¶5, 11, Ex. B. DoD agencies are coding workers' personnel files to state that the workers are "not eligible for union representation." Foust Decl. ¶7, Ex. C; Toth Decl. ¶11. Some employees are being forced by DoD management to sign documents attesting that they no longer have union representation. Manning Decl. ¶12.

In addition, DoD agencies are refusing to grant official time provided by the CBAs, so union representatives can no longer perform their duties, such as representing workers in disciplinary interviews and counseling workers. Abounader Decl. ¶¶9-11, 14-15; D.R. Brown Decl. ¶13; Z. Brown Decl. ¶11; Edwards Decl. ¶10; Foust Decl. ¶8; Green Decl. ¶13; Hines

Decl. ¶12; Keating Decl. ¶¶12-13, 16-18; Mooney Decl. ¶14; Simpson Decl. ¶¶11-12, 14; Taylor Decl. ¶¶9-10, 15-16; Toth Decl. ¶8. DoD agencies are barring Plaintiffs from using the on-site office space guaranteed to them by their CBAs. Abounader Decl. ¶10; D.R. Brown Decl. ¶14; Burns Decl. ¶5; Edwards Decl. ¶11-12; Foust Decl. ¶8; Green Decl. ¶14; Keating Decl. ¶13; Mooney Decl. ¶15; Simpson Decl. ¶15; Taylor Decl. ¶¶10; Toth Decl. ¶9.

DoD agencies are also unilaterally changing workers' terms and conditions of employment and refusing to accept CBA grievances. Abounader Decl. ¶¶11, 13-15; D.R. Brown Decl. ¶4; Z. Brown Decl. ¶10; Edwards Decl. ¶9; Foust Decl. ¶9; Green Decl. ¶¶12, 16; Halloway Decl. ¶12; Hines Decl. ¶11; Keating Decl. ¶¶16-18; Manning Decl. ¶9; Mooney Decl. ¶¶12-13; Simpson Decl. ¶¶13, 19; Taylor Decl. ¶¶11, 14-16; Toth Decl. ¶7. For example, supervisors are arbitrarily changing the work schedules of commissary employees, upending employees' lives. Taylor Decl. ¶¶11-12.

DoD agencies are not permitting workers to have union representation during pre-discipline interviews and throughout the disciplinary process. Abounader Decl. ¶¶9, 11, 14-15; D.R. Brown Decl. ¶11; Z. Brown Decl. ¶9; Edwards Decl. ¶14; Foust Decl. ¶¶9, 12; Green Decl. ¶17; Halloway Decl. ¶14; Hines Decl. ¶14; Keating Decl. ¶¶12, 16-18; Mooney Decl. ¶17; Simpson Decl. ¶17; Taylor Decl. ¶¶9, 14-16; Toth Decl. ¶10.

All of these changes have caused substantial, ongoing, irreparable harm to Plaintiffs and the employees they represent.

ARGUMENT

I. Legal Standard

"A plaintiff seeking a preliminary injunction must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The same legal standard applies to a request for interim relief under 5 U.S.C. § 705 pending review of administrative action. *See Casa de Maryland, Inc. v. Wolf,* 486 F. Supp. 3d 928, 949–50 (D. Md. 2020); *AFSCME v. SSA*, 2025 WL 1249608, at *61 (4th Cir. 2025); *Immigr. Defs. Law Ctr. v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025).

II. Plaintiffs are likely to prevail on the merits

A. This Court has jurisdiction

In other litigation that relates to EO 14251, the government has argued that the FSLMRS' creation of an administrative tribunal, the Federal Labor Relations Authority ("FLRA"), to hear certain labor disputes, displaces district court jurisdiction under the reasoning of *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). This "administrative channeling" argument is meritless here. Among other things, the FSLMRS review scheme applies only "with respect to claims *within its scope*." *AFGE, AFL-CIO v. Trump*, 929 F.3d 748, 755 (D.C. Cir. 2019) (emphasis added). The FSLMRS does not provide the FLRA with authority to resolve APA claims, much less APA claims involving agencies that have been excluded by executive order from the FSLMRS, so the claims here at issue cannot be channeled to the FLRA. *See AFGE Local 2305 v. U.S. Dep't of Veterans Affairs*, 2026 WL 709856, at *4 (D.R.I. Mar. 13, 2026) (rejecting government's administrative channeling argument in a case analogous to this one); *United Nurses Association of California/Union of Healthcare Professionals v. U.S. Department of Veterans Affairs*, 2026 WL 851188, at *3 (D.R.I., Mar. 27, 2026) (same); *Nat'l Council of*

Prison Locals v. Fed. Bureau of Prisons, 2026 WL 1146301, at *6 (D. Conn., Apr. 28, 2026) (same).[5]

B. DoD's mass termination of CBAs was final agency action

The APA authorizes courts to review a "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. For an agency action to be final for purposes of APA review, it must (1) "mark the consummation of the agency's decision-making process" and (2) "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–178 (1997) (citation modified).

Secretary Hegseth's action to terminate Plaintiffs' CBAs is a final action because it is "the end result of the Defendants' decisions to implement the EO by terminating the … CBA[s] and this termination stripped Plaintiffs' ability to carry out their missions as well as their members' bargained-for rights." *AFGE Local 2305*, 2026 WL 709856, at *7 n.9 (reviewing CBA termination as final agency action); *see also AFGE v. Noem,* 785 F. Supp. 3d 833, 843, 852 (W.D. Wash. 2025) (reviewing CBA termination as final agency action).

C. DoD's action was arbitrary and capricious

"The Administrative Procedure Act embodies a basic presumption of judicial review and instructs reviewing courts to set aside agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' 5 U.S.C. § 706(2)(A)." *Dep't of Com. v. New York*, 588 U.S. 752, 771 (2019) (citation and internal quotation marks omitted). "An agency

[5] *See also AFGE v. Trump*, 178 F.4th at 465-66 (rejecting administrative channeling argument in case about EO 14251); *NTEU I*, 780 F. Supp. 3d at 251 ("[T]he administrative process of the FSLMRS cannot and does not govern here because the Executive Order at issue removed the agencies and subdivisions in question from coverage of the FSLMRS."); *Am. Foreign Service Ass'n v. Trump*, 783 F.Supp.3d 248, 259 (D.D.C. 2025) (same reasoning); *Fed. Educ. Ass'n v. Trump*, 795 F.Supp.3d 74, 85-87 (D.D.C. 2025) (same reasoning).

action qualifies as 'arbitrary' or 'capricious' if it is not 'reasonable and reasonably explained.'" *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292 (2024) (quoting *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)). The court "must ensure … that the agency has offered a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Ohio*, 603 U.S. at 292 (internal quotation marks and citation omitted); *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 567 (2025) ("*White Lion*"). In reviewing agency action, the court must consider only the agency's explanation at the time the relevant decision was made, as opposed to a post hoc rationale. *SEC v. Chenery Corp.*, 318 U.S. 80, 87–88 (1943); *see also Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv.*, 707 F.3d 462, 467–68 (4th Cir. 2013) ("[A] reviewing court may look only to the[] *contemporaneous* justifications in reviewing the agency action.") (emphasis in original). Moreover, while "agencies are free to change their existing policies," they must "provide a reasoned explanation for the change, display awareness that they are changing position, and consider serious reliance interests." *White Lion,* 604 U.S. at 568 (cleaned up) (quoting from *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–222 (2016) and *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

Secretary Hegseth's Memorandum directing DoD agencies to terminate all their existing CBAs within 24 hours fails arbitrary and capricious review for multiple reasons.

First, the Secretary's sole reason for directing the termination of CBAs within 24 hours was that such action is "*required* to align agency operations with national security requirements as outlined in executive order 14251." Hegseth Memorandum at 1 (emphasis supplied). But EO 14251 did not *require* the termination of CBAs on a set timeline. *See supra* at 6-8. Indeed, DoD left its CBAs in place for more than a year after issuance of the EO. DoD could continue to leave

CBAs in place pending the resolution of legal challenges to the EO or until CBAs expire on their own terms, or DoD could identify only those specific parts of specific CBAs that it believes are inconsistent with national security. An agency action is arbitrary and capricious when it is based on a misinterpretation of the law or an erroneous assumption that the agency lacks discretion. *DHS v. Regents of the Univ. Of Cal.*, 591 U.S. 1, 25–26 (2020) (holding the Acting Secretary's decision arbitrary and capricious for failing to "appreciate the full scope of her discretion").

Second, the Secretary failed to identify any facts to show that any of the CBAs (much less all of them) interfere with national security. Thus, he necessarily failed to "offer[] 'a satisfactory explanation for [DoD's] action, including a rational connection between the facts found and the choice made.'" *Ohio*, 603 U.S. at 292.

Third, the Secretary failed to consider the obvious alternatives to the immediate termination of all CBAs. DoD could leave CBAs in place until after litigation about the validity of the EO concludes. DoD could allow individual CBAs to terminate in accordance with their own terms. DoD could identify those specific parts of specific CBAs that the Secretary determines are inconsistent with "national security considerations." The failure to consider obvious alternatives is a classic example of arbitrary and capricious decision-making. *Regents*, 591 U.S. at 30 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 51 (1983)).

Fourth, the Secretary failed to offer "a reasoned explanation" for the agency's change in position" or to "consider serious reliance interests" that would be affected by the change. *White Lion*, 604 U.S. at 568. DoD agencies had successfully engaged in collective bargaining for decades—even before the FSLMRS. They voluntarily entered into the CBAs at issue and abided by their terms without interfering with national security. DoD also left the CBAs in place for more than a year after issuance of the EO without any interference with national security. That being so, DoD's new position that all the CBAs are inconsistent with national security and must be terminated immediately is a major change in position that required a reasoned explanation. DoD also was required to consider Plaintiffs' reliance interests. The CBAs provide, among many other things, for official time and office space so union representatives can perform their work. Yet nothing in the Hegseth Memorandum considers these issues.

Fifth, although the Hegseth Memorandum stated that it does not apply to the "the local employing offices of any agency police officers, security guards, or firefighters," it did not provide any definition or list of "local employing offices" and nonetheless required that DoD agencies terminate their CBAs "*within 24 hours*." Hegseth Memorandum at 1 (emphasis supplied). As a predicable result of that unexplained and arbitrarily short timeline, DoD agencies have impermissibly terminated CBAs as to employees within the same local employing offices as police officers, security guards, or firefighters (*e.g.,* administrative staff). D.R. Brown Decl. ¶¶15-16; Z. Brown Decl. ¶¶14-16; Edwards Decl. ¶¶18-19; Halloway Decl. ¶¶18-21; Hines Decl. ¶¶18-20; Manning Decl. ¶¶13-16; Mooney Decl. ¶¶21-25; Simpson Decl. ¶¶22-27. An agency acts arbitrarily and capriciously if it "entirely fail[s] to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43. The Hegseth Memorandum provided no rationale for directing DoD agencies to terminate CBAs within 24 hours rather than providing sufficient time for advance notice to the affected unions to ensure that any CBA terminations did not violate the explicit terms of the EO. Plaintiffs are therefore likely to succeed on their arbitrary-and-capricious claims and obtain vacatur of the Hegseth Memorandum.

III. Plaintiffs and their members are suffering irreparable harm as a result of the CBA terminations

As stated above, DoD's mass termination of CBAs is causing immediate and irreparable harm to Plaintiffs and their members. *See supra* at 11-12. Courts have recently recognized that similar harm was irreparable in granting preliminary injunctions to reverse agency actions that terminated CBAs in *AFGE Local 2305*, 2026 WL 709856, at *10-11, *United Nurses Association*, 2026 WL 851188, at *4, and *AFGE v. Noem*, 785 F.Supp.3d at 861.

Plaintiffs face an existential threat because workers are afraid to engage in any union activity or are confused about their right to do so. Abounader Decl. ¶¶10, 12, 14-15; Z. Brown Decl. ¶¶12-13; Burns ¶6; Edwards Decl. ¶16-17; Foust Decl. ¶¶10-12; Green Decl. ¶¶19-20; Halloway Decl. ¶¶16-17; Hines Decl. ¶¶16-17; Keating Decl. ¶¶13, 15, 17-18; Manning Decl. ¶¶10-12; Mooney Decl. ¶¶19-20; Simpson Decl. ¶¶20-21; Taylor Decl. ¶¶10, 12-13, 15-16; Toth Decl. ¶12. DoD is telling Plaintiffs' members and prospective members that they are ineligible to join unions and that their unions "do[] not exist." Abounader Decl. ¶¶11-12, 15; Z. Brown Decl. ¶11; Edwards Decl. ¶¶15, 17; Foust Decl. ¶¶7, 10, Ex. C; Green Decl. ¶¶18, 20; Halloway Decl. ¶¶15, 17; Hines Decl. ¶¶15, 17; Keating Decl. ¶¶14-15; Manning Decl. ¶¶10-12; Mooney Decl. ¶¶18, 20; Simpson Decl. ¶¶18, 20; Taylor Decl. ¶¶11-13. Plaintiffs cannot successfully retain or recruit members under such circumstances, and union membership is declining. Abounader Decl. ¶12; Z. Brown Decl. ¶13; Edwards Decl. ¶16; Green Decl. ¶19; Halloway Decl. ¶16; Hines Decl. ¶16; Keating Decl. ¶15; Manning Decl. ¶11; Mooney Decl. ¶19; Simpson Decl. ¶20; Taylor Decl. ¶¶13, 15. These harms are irreparable. *See, e.g., Elev8 Baltimore, Inc. v. Corporation for National and Community Service*, 804 F.Supp.3d 524, 568 (D. Md. 2025) (actions that threaten a union's existence are irreparable); *New York v. McMahon*, 784 F. Supp. 3d 311, 362 (D. Mass. 2025) ("Actions by a defendant that make it more difficult for an organization to accomplish its primary mission ... provide injury for purposes ... irreparable harm." (citation and internal quotation marks omitted)).

Plaintiffs cannot perform their core functions (*e.g.,* representing workers in disciplinary matters and official discussions with the employer) without official time and office space. Abounader Decl. ¶¶9-11, 14-15; D.R. Brown Decl. ¶¶13-14; Z. Brown Decl. ¶11; Burns Decl. ¶5; Edwards Decl. ¶¶10-12; Foust Decl. ¶8; Green Decl. ¶¶13-14; Hines Decl. ¶¶12; Keating Decl. ¶¶12-13, 16-18; Mooney Decl. ¶¶14-15; Simpson Decl. ¶¶11, 14-15; Taylor Decl. ¶¶9-10, 15-16; Toth Decl. ¶¶8-9, 12. Plaintiffs' members have also lost the right to union representation in disciplinary matters and to file grievances under their CBAs. Abounader Decl. ¶¶9, 11, 13-15; D.R. Brown Decl. ¶¶11-12; Z. Brown Decl. ¶10; Edwards Decl. ¶14; Foust Decl. ¶¶9, 12; Green Decl. ¶17; Halloway Decl. ¶14; Hines Decl ¶14; Keating Decl. ¶¶12, 16-18; Manning Decl. ¶9; Mooney Decl. ¶17; Simpson Decl. ¶17; Taylor Decl. ¶¶9, 14-16; Toth Decl. ¶¶7, 12. These types of organizational, procedural and due-process deprivations are quintessential irreparable harms warranting injunctive relief, as they cannot be retroactively cured. *See Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1192 (9th Cir. 2011) ("The value of the right to enjoy the benefits of union representation is immeasurable in dollar terms once it is delayed or lost.") (citation omitted). DoD is also changing members' terms and conditions and employment covered by the CBA. Foust Decl. ¶9 (unilateral changes to pay schedule, job descriptions, and health and safety procedures); Taylor Decl. ¶¶11-12 (arbitrary and unilateral changes to work schedules and denial of sick leave); Green Decl. ¶16 (denial of nighttime differential pay and reassignment of employees to new job functions); Abounader Decl. ¶11 (increase in disciplinary actions brought against employees without cause or union representation). Changes to some of those terms and conditions, like changes to leave rights and work schedules, or the right to be represented at formal meetings or agency investigations, cannot be fully remedied after the fact. *See AFGE Local 2305,* 2026 WL 709856, at *10.

IV. The balance of equities and public interest favor Plaintiffs

Where the Government opposes a preliminary injunction, the balancing of the equities and weighing of the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts "must balance the competing claims of injury and must consider the effect on each party [and the public] of the granting or withholding" of relief. *Winter*, 555 U.S. at 24.

The harm to Plaintiffs and their members has been immediate and severe. Those harms will only worsen as time passes. By contrast, requiring defendants to return to the pre-Hegseth Memorandum status quo would not inflict any similar injury. DoD agencies entered into the CBAs at issue and kept them in place for a year after the EO. The civilian employees covered by the CBAs have had collective bargaining rights for decades. The Hegseth Memorandum does not identify any conflict between the terms of any CBAs and national security.

V. A nominal or waived bond is appropriate.

When issuing a preliminary injunction under FRCP 65(c), district courts have discretion to impose a nominal or waived bond in public-interest litigation against the government. *D.N.N. v. Liggins*, 822 F.Supp.3d 543, 598 (D. Md. 2026); *Elev8 Baltimore*, 804 F. Supp. 3d at 569–70. District courts have required nominal bonds in cases like this one that seek to protect federal employees' collective bargaining rights.[6] A nominal or waived bond would therefore be appropriate here. No bond is required when a court stays agency action pursuant to the APA

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[6] *See, e.g., AFSCME v. Trump*, 25-cv-03306 PLF, Dkt. 38 (D.D.C. Nov. 18, 2025) ($100 bond); *AFGE v Noem*, 785 F.Supp.3d at 862 ($100 bond); *United Nurses Association*, 2026 WL 851188, at *5 ($1,000 bond); *NTEU I*, 780 F. Supp. 3d at 268 ($0 bond); *Am. Foreign Serv. Ass'n*, 783 F. Supp.3d at 273 ($100 bond); *Fed. Educ. Ass'n*, 795 F. Supp. 3d at 103 ($100 bond); *AFL-CIO,* No. 1:25-cv-02445 PLF, Dkt. 44 (D.D.C. Oct. 1, 2025) ($100 bond).

under 5 U.S.C. § 705. *Asylum Seeker Advocacy Project v. United States Citizenship and Immigration Services*, 808 F.Supp.3d 708, 722 (D. Md. 2025).

CONCLUSION

The Court should grant a preliminary injunction and/or a stay under 5 U.S.C. § 705 that bars defendants from implementing the April 9, 2026 Hegseth Memorandum and requires them to rescind their terminations of CBAs that occurred pursuant to the Hegseth Memorandum.

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Respectfully submitted,

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