
In the Supreme Court of the United States

U.S. DOGE SERVICE, ET AL.,

Applicants,

v.

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,

Respondent.

On Application for Stay of the Orders of the
United States District Court for the District of Columbia

**BRIEF OF AMERICAN OVERSIGHT AS *AMICUS CURIAE* IN SUPPORT OF
RESPONDENT**

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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

American Oversight is a nonpartisan, nonprofit section 501(c)(3) watchdog organization that advances truth, accountability, and democracy by enforcing the public's right to government records, primarily through the Freedom of Information Act (FOIA) and other public records laws. Through FOIA requests, American Oversight has sought information about the Department of Government Efficiency (DOGE).

American Oversight has obtained information (not previously made public) about agency “DOGE teams,” which calls into question the government's assertions about DOGE's structure and operations. American Oversight has also sought records from DOGE itself and is currently litigating two federal lawsuits against DOGE under FOIA and the Federal Records Act.² These cases, and the public interest they seek to vindicate, turn in part on DOGE's “agency” status, which it denies.

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

² See *American Oversight v. U.S. Dep't of Gov't Efficiency*, No. 25-cv-409 (D.D.C. filed Feb. 11, 2025) (FOIA); *American Oversight v. U.S. Dep't of Gov't Efficiency*, No. 25-cv-1251 (D.D.C. filed Apr. 23, 2025) (FOIA and Federal Records Act claims regarding use of nongovernmental, ephemeral messaging and document systems).

INTRODUCTION AND SUMMARY OF ARGUMENT

Notwithstanding the government's current protestations that the Department of Government Efficiency is a mere "advisory body" defined by the four corners of an anodyne executive order, DOGE has operated at breakneck speed to slash the executive branch of the federal government—sometimes apparently indiscriminately—while operating largely in secret. But while DOGE's operations are opaque and complex, the law is not.

The central question in this case, but *not* in the application for stay, is whether DOGE is an "agency" under the Freedom of Information Act. That is a mixed question of law and fact, turning on fact-intensive inquiries into what DOGE actually (not just purportedly) is and does. Here, the government's own actions—in the world, and in litigation—indicate that limited discovery is necessary to supply the facts necessary to determine whether DOGE is an "agency." These questions include: (1) whether DOGE issues binding directives to executive departments, rather than merely advising and assisting the President; (2) DOGE's actual (rather than ostensible) structure and leadership, about which the President himself contradicts the government's litigation position; and (3) the roles and actual powers of the staff who act on behalf of DOGE (*e.g.*, to terminate employees or halt payments authorized or obligated by law) within agencies, which (according to public reports, and new information that American Oversight obtained from government agencies via FOIA) appear to depart substantially from the government's litigation assertions.

Answering these open questions is necessary to determine whether DOGE qualifies as an “agency.” The Court should deny the government’s last-ditch attempt to block limited discovery needed to answer these questions.

ARGUMENT

I. Whether an Entity Qualifies as an “Agency” Depends on the Facts.

While DOGE’s structure and operations may be unprecedented, the legal standard is not. Under FOIA, an “agency” “includes any executive department * * * or other establishment in the executive branch of the Government (including the Executive Office of the President) * * *.” 5 U.S.C. 552(f)(1). Legislative history explains that “the President’s immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President” are not within FOIA’s scope. *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 156 (1980) (quoting H.R. Conf. Rep. No. 93-1380, at 15 (1974)). The D.C. Circuit evaluates this by examining three factors: “how close operationally the group is to the President, what the nature of its delegation from the President is, and whether it has a self-contained structure.” *Meyer v. Bush*, 981 F.2d 1288, 1293 (D.C. Cir. 1993); see also *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971) (inquiring, under FOIA’s precursor, whether entity held “substantial independent authority in the exercise of specific functions”).

This inquiry involves “specific evidence.” *Armstrong v. Exec. Off. of the President*, 90 F.3d 553, 558–59 (D.C. Cir. 1996) (noting that in deciding “whether a unit within the Executive Office of the President is an agency covered by the FOIA * * the specific evidence bearing upon that question varies with the entity in

question.”). A concrete understanding of an entity’s actual “authority and operations * * * is critical for determining whether [the entity] is subject to FOIA.” *Citizens for Resp. & Ethics in Washington (“CREW”) v. Off. of Admin.*, 566 F.3d 219, 225–26 (D.C. Cir. 2009); see also *Meyer*, 981 F.2d at 1298 (concluding that a seemingly-powerful task force “seems to have been merely a committee which convened periodically”).

This fact-sensitive inquiry supports FOIA’s broad purpose: “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The “broadly conceived” statute created “a judicially enforceable public right to secure such information from possibly unwilling official hands,” subject to “a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.” *Env’tl Prot. Agency v. Mink*, 410 U.S. 73, 80 (1973) (quoting S. Rep. No. 813, at 3 (1965)).

Under this careful balance, the purely internal operations of the White House—“the President’s immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President,” *Kissinger*, 445 U.S. at 156—are not subject to disclosure. But that is the question: does a particular unit within the Executive Office of the President have the “sole function * * * to advise and assist the President,” or does it exercise actual power?

Often, this factual analysis simply requires examining statutes or executive orders creating the entity in question. But here, public statements by the President, and DOGE’s observable actions, stand in tension with the executive orders and with the government’s evolving and sometimes difficult-to-credit litigation assertions. Thus, judicial analysis of the *actual facts* concerning critical threshold questions about DOGE’s structure, authority, and operations is necessary to determine whether it is an “agency” under FOIA.

II. Limited Discovery Is Appropriate Because DOGE’s Attempt to Evade Transparency Rests on Questionable Factual Assertions.

Discovery is appropriate to ascertain whether an executive branch establishment is subject to FOIA in the first place. See *CREW*, 566 F.3d at 225–26 (noting that “district court allowed CREW to obtain more than 1300 pages of documents that shed light on OA’s authority and operations, an understanding of which is critical for determining whether OA is subject to FOIA”). This differs from more typical FOIA litigation where questions involve adequacy of an agency’s searches or applicability of an agency’s claimed exemptions, and where discovery is indeed rare. See, e.g., *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1200–01 (D.C. Cir. 1991) (affirming denial of discovery where affidavits concerning search efforts were sufficient).

The government asks the Court to ignore publicly reported facts that would answer this question and instead rely exclusively on the text of executive orders and the litigation assertions of DOGE officials. But the public record—including statements by the President—conflicts with those executive orders on several

fundamental questions necessary to decide whether DOGE is an “agency.” Limited discovery is essential to answer questions including: (1) whether DOGE has issued authoritative directives to other federal agencies, (2) its structure and leadership, and (3) the nature, identity, and authority of agency DOGE teams.

A. Has DOGE Issued Authoritative Commands to Executive Agencies and Overruled Cabinet Secretaries?

Whether DOGE issues binding directives to other executive agencies or merely advises and assists the President is central to determining its agency status. See, e.g., *Kissinger*, 445 U.S. at 156. Although the government claims otherwise, public reporting indicates that DOGE has directed agency actions and overruled at least one Senate-confirmed Cabinet secretary:

- DOGE staff halted U.S. Agency for International Development (“USAID”) payments for “life-saving humanitarian assistance programs” specifically authorized by the Secretary of State.³
- The Acting Commissioner of the Social Security Administration admitted that he is “receiving decisions that are made without my input” from DOGE that he “ha[s] to effectuate.”⁴

³ See Secretary Marco Rubio, Dep’t of State, *Emergency Humanitarian Waiver to Foreign Assistance Pause* (Jan. 28, 2025), <https://www.state.gov/wp-content/uploads/2025/01/Final-Signed-Emergency-Humanitarian-Waiver.pdf>; Matt Bai, *The Blinding Contempt of the DOGE Bros*, Wash. Post (Feb. 24, 2025), <http://wapo.st/3XrTgyn>.

⁴ Lisa Rein et al., *DOGE is Driving Social Security Cuts and Will Make Mistakes, Acting Head Says Privately*, Wash. Post (Mar. 6, 2025), <https://www.washingtonpost.com/politics/2025/03/06/doge-is-driving-social-security-cuts-will-make-mistakes-acting-head-says-privately/>.

- DOGE staff have gained access to sensitive data systems at multiple agencies—often over the objections of career staff.⁵

B. What is DOGE’s Structure and Who Leads It?

DOGE’s internal structure, relationships between its various entities, and the identity and actual authority of its ultimate decision-makers are similarly critical to a determination of its agency status. See *Kissinger*, 445 U.S. at 156. The executive orders regarding DOGE do not clarify these matters.

The first DOGE executive order established the Department of Government Efficiency by redesignating the U.S. Digital Service—formerly a component of the Office of Management and Budget, which is undisputedly subject to FOIA—as the U.S. DOGE Service (USDS) and creating the U.S. DOGE Service Temporary Organization (USDSTO), and agency DOGE Teams. *Establishing and Implementing the President’s “Department of Government Efficiency,”* 90 Fed. Reg. 8,441 (Jan. 20, 2025). The order does not clarify whether these three entities collectively compose

⁵ See, e.g., Andrew Duehren et al., *Elon Musk’s Team Now Has Access to Treasury’s Payments System*, N.Y. Times (Feb. 1, 2025), <https://www.nytimes.com/2025/02/01/us/politics/elon-musk-doge-federal-payments-system.html>; Tim Marchman & Matt Giles, *This DOGE Engineer Has Access to the National Oceanic and Atmospheric Administration*, WIRED (Feb. 5, 2025, 2:58 PM), <https://www.wired.com/story/doge-engineer-noaa-data-google-musk-climate-project-2025/>; Bobby Allyn et al., *Musk’s Team Takes Control of Key Systems at Consumer Financial Protection Bureau*, NPR (Feb 7, 2025, 11:48 PM), <https://www.npr.org/2025/02/07/g-s1-47322/musks-team-takes-control-of-key-systems-at-consumer-financial-protection-bureau>.

all of DOGE, or whether additional organizations are involved in that Department.⁶ Nor does it (or subsequent orders) define the relationship between USDS and USDSTO, the relationship between agency DOGE Teams and USDS/USDSTO, or the lines of reporting within and between these various entities.

Discovery is also necessary to clarify DOGE's leadership. On paper, the USDS Administrator runs USDS and USDSTO and reports to the White House Chief of Staff. But facts presented by the government in other proceedings, public statements by President Trump and Elon Musk, and public reporting cast doubt on who is in charge. Below, Amy Gleason filed a sworn declaration stating that she serves as the full-time Acting Administrator of USDS. D. Ct. Doc. 24-2 (Mar. 19, 2025). But an earlier sworn declaration from the government in a different matter revealed that Gleason was detailed from USDS to the Department of Health and Human Services (HHS) in February 2025 and then converted to a direct HHS hire

⁶ The government's litigation position (Gov't Br. 17) is that the Department of Government Efficiency is an "umbrella term for the executive-wide initiative," not a standalone entity. That belies the plain meaning of the word "Department," and is not what the executive orders say.

on March 4, 2025.⁷ No explanation has been offered for the discrepancy.

Meanwhile, Trump, Musk, and senior White House officials repeatedly confirm that Musk actually leads DOGE. Trump told a joint session of Congress that “I have created the brand new Department of Government Efficiency * * * [w]hich is headed by Elon Musk, who is in the gallery tonight.”⁸ Other reporting indicates that Musk lieutenant Steve Davis, not Gleason, actually leads day-to-day operations.⁹

⁷ See Decl. of Garey Rice ¶¶ 6-8, *AFL-CIO v. Dep’t of Labor*, No. 25-cv-0339 (D.D.C. Mar. 11, 2025), Doc. No. 51-3, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.dcd.277150/gov.uscourts.dcd.277150.51.3.2.pdf>; Appointment Affidavit (OPM Form SF-61) of Amy Gleason, *AFL-CIO v. Dep’t of Labor*, No. 25-cv-0339 (D.D.C. Mar. 18, 2025), Doc. No. 65-1, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.dcd.277150/gov.uscourts.dcd.277150.65.1.1.pdf>; Order, *AFL-CIO v. Dep’t of Labor*, No. 25-cv-0339 (D.D.C. Mar. 17, 2025), Doc. No. 59, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.dcd.277150/gov.uscourts.dcd.277150.59.0.pdf> (denying government’s motion to seal SF-61s or redact affiants’ names).

⁸ *Full Speech: President Trump’s Joint Address to Congress*, YouTube (Mar. 4, 2025), <https://www.youtube.com/watch?v=WVOvmHUu8Vw> (highlighting DOGE and Musk’s role from 22:26-22:49); *see also Full Transcript of President Trump’s Speech to Congress*, N.Y. Times (Mar. 5, 2025, 4:08 AM), <https://www.nytimes.com/2025/03/04/us/politics/transcript-trump-speech-congress.html>; Andrea Shalal & Nandita Bose, *Trump Appears to Contradict White House, Says Elon Musk in Charge of DOGE*, Reuters (Feb. 20, 2025 12:27 PM), <https://www.reuters.com/world/us/trump-appears-contradict-white-house-says-elon-musk-charge-doge-2025-02-20/>.

⁹ Ryan Mac et al., *Meet Elon Musk’s Top Lieutenant Who Oversees DOGE*, N.Y. Times (updated Mar. 21, 2025), <https://www.nytimes.com/2025/03/20/technology/elon-musk-steve-davis-doge.html>; Christopher Bing et al., *Who’s Running the Doge Wrecking Machine: The World’s Richest Man or a Little-Know Bureaucrat?*, ProPublica (Mar. 14, 2025, 1:30 PM), <https://www.propublica.org/article/doge-leadership-elon-musk-amy-gleason-trump-ethics-conflict-of-interest>.

C. Who Within Agencies Implements DOGE Cuts and Policies?

On paper, the DOGE teams responsible for implementing the DOGE Agenda within each agency—who work and reportedly sleep in agency offices,¹⁰ displaying little if any operational proximity to the President—report to “Agency Heads” rather than USDS. The government therefore claims (Gov’t Br. 5, 18, 28) that their activities should not be considered in determining DOGE’s agency status. But the undeveloped record does not confirm that agency-employee DOGE teams are the actual DOGE staff implementing DOGE’s drastic cuts within agencies, nor that those implementing the cuts are actually separate from USDS or DOGE.

The government has informed American Oversight, through responses to FOIA requests, that the Department of Interior, the Centers for Disease Control and Prevention, and the Food and Drug Administration do not have “DOGE

¹⁰ Cuneyt Dil, *Elon Musk’s DOGE staffers Sleep in IKEA beds in Federal Offices*, Axios D.C. (Mar.10, 2025), <https://www.axios.com/local/washington-dc/2025/03/10/elon-musk-doge-sleep-ikea-beds-federal-buildings>.

team[s].”¹¹ But each such agency has had its staff and/or budget cut by DOGE.¹² If DOGE teams are not imposing these cuts, who is? Likewise, just a few weeks after Musk-linked individuals (including Davis and several staffers identified as part of DOGE teams at other agencies) arrived at the General Services Administration (GSA) and attempted “to use [information technology] credentials from the Executive Office of the President to access GSA laptops and internal GSA infrastructure,”¹³ the acting administrator of the GSA nonetheless told an all-hands

¹¹ See Final FOIA Response Letter from U.S. Dep’t of the Interior to American Oversight (Apr. 3, 2025), *available at* <https://www.documentcloud.org/documents/25952464-response-to-american-oversight-foia-request-to-department-of-the-interior-multi-doi-25-0654-nrr/>; Final FOIA Response Letter from Ctrs. for Disease Control & Prevention to American Oversight (Mar. 25, 2025), *available at* <https://www.documentcloud.org/documents/25952465-response-to-american-oversight-foia-request-to-the-cdc-multi-hhs-cdc-25-0663-nrr/>; Final FOIA Response Email from Food & Drug Admin. to American Oversight (Mar. 19, 2025), *available at* <https://www.documentcloud.org/documents/25952467-response-to-american-oversight-foia-request-to-the-fda-multi-hhs-fda-25-0667-nrr/>.

¹² Jenna McLaughlin et al., *How Cuts and \$1 Payment Limits Are Making Federal Jobs Harder*, NPR (Mar. 20, 2025, 5:00 AM), <https://www.npr.org/2025/03/20/nx-s1-5333655/interior-department-budget-cuts-doge>; Yuki Noguchi, *DOGE Cut a CDC Team As It Was About to Start a Project to Help N.C. Flood Victims*, NPR (Apr. 15, 2025, 9:00 AM), <https://www.npr.org/sections/shots-health-news/2025/04/15/nx-s1-5364897/cdc-disaster-doge-trump-layoffs-hurricane-helene>; Kit Eaton, *DOGE Cuts Force the FDA to Recruit Volunteers to Finish Drug Reviews*, Inc. (Apr. 29, 2025), <https://www.inc.com/kit-eaton/doge-fired-drug-testing-experts-the-fda-needs-volunteers-to-finish-their-work/91182110>.

¹³ Makena Kelly & Zoë Schiffer, *Elon Musk’s Friends Have Infiltrated Another Government Agency*, WIRED (Jan. 31, 2025, 6:27 PM), <https://www.wired.com/story/elon-musk-lackeys-general-services-administration/>.

staff meeting, “There is no DOGE team inside of GSA.”¹⁴ Agency DOGE teams cannot implement cuts within agencies if no such team exists.

Moreover, it appears that DOGE has detailed core DOGE staff to multiple agencies, undercutting the notion that DOGE teams are simply agency employees. For example, the Department of Agriculture informed American Oversight that its DOGE team includes detailees Jordan Wick and Gavin Kliger.¹⁵ The government has elsewhere identified Wick as a USDS employee who is “detailed to at least six agencies besides [the Consumer Financial Protection Bureau] and USDS.”¹⁶ Reporting identifies Kliger as “one of Mr. Musk’s most prolific foot soldiers” involved in DOGE activities at the USAID, Internal Revenue Service, and Consumer Financial Protection Bureau.¹⁷

Other DOGE employees are also apparently spread across multiple agencies:

¹⁴ Zoë Schiffer & Kate Knibbs, ‘*Who Is DOGE?*’ *Has Become a Metaphysical Question*, WIRED (Apr. 24, 2025 1:27 PM), <https://www.wired.com/story/elon-musk-doge-mystery-general-services-administration/>.

¹⁵ Final FOIA Response Letter from U.S. Dep’t of Agric. to American Oversight, April 10, 2025, *available at* <https://www.documentcloud.org/documents/25952466-response-to-american-oversight-foia-request-to-the-department-of-agriculture-multi-usda-25-0652-a/>.

¹⁶ Defs.’ Objs. and Resps. to Pls.’ Reqs. for Expedited Disc. at 13, 18, *AFL-CIO v. Dep’t of Labor*, 25-cv-0339 (D.D.C. Mar. 29, 2025), Doc. No. 73-2, *available at* <https://www.documentcloud.org/documents/25873564-aflcio-v-labor-doge-employee-access-exhibit/>.

¹⁷ See *The People Carrying Out Musk’s Plans at DOGE*, N.Y. Times (updated May 14, 2025), <https://www.nytimes.com/interactive/2025/02/27/us/politics/doge-staff-list.html>.

- Marko Elez, a Department of Labor employee, is detailed to “four other agencies at which Mr. Elez is concurrently detailed to or otherwise employed, other than USDS.”¹⁸
- Luke Farritor, a GSA employee, is detailed to HHS and USDS; he was previously detailed to the Consumer Financial Protection Bureau.¹⁹ Farritor has received access to sensitive data systems at HHS²⁰ and the Department of Energy’s information technology system.²¹
- Kyle Schutt, a GSA employee, has been detailed to HHS and USDS.²²
- Edward Coristine, a GSA employee, has been detailed to HHS and USDS.²³ Coristine reportedly has gained physical access to the Cybersecurity and Infrastructure Security Agency and has a Department of Homeland Security email address.²⁴

The only certainty is that questions about DOGE team members—including on whose authority they act—cannot be answered solely by a formalistic

¹⁸ Defs.’ Objs. and Resps. to Pls.’ Reqs. for Expedited Disc. at 13, *AFL-CIO v. Dep’t of Labor*, 25-cv-0339 (D.D.C. Mar. 29, 2025), Doc. No. 73-2, available at <https://www.documentcloud.org/documents/25873564-aflcio-v-labor-doge-employee-access-exhibit/>.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 8.

²¹ Ella Nilsen & Sean Lyngaas, *Trump Energy Secretary Allowed 23-Year-Old DOGE Rep to Access IT Systems Over Objections from General Counsel*, CNN (updated Feb. 7, 2025, 2:54 PM), <https://www.cnn.com/2025/02/06/climate/doge-energy-department-trump/index.html>.

²² Defs.’ Objs. and Resps. to Pls.’ Reqs. for Expedited Disc. at 11, *AFL-CIO v. Dep’t of Labor*, 25-cv-0339 (D.D.C. Mar. 29, 2025), Doc. No. 73-2, available at <https://www.documentcloud.org/documents/25873564-aflcio-v-labor-doge-employee-access-exhibit/>.

²³ *Id.* at 9.

²⁴ David DiMolfetta, *DOGE Employee Edward Coristine Lands at CISA with DHS Email*, NextGov (Feb. 19, 2025), <https://www.nextgov.com/cybersecurity/2025/02/doge-employee-edward-coristine-lands-cisa-dhs-email/403126/>. Coristine sometimes uses the online alias “Big Balls.” See, e.g., Raphael Satter, *Exclusive: DOGE Staffer, ‘Big Balls’, Provided Tech Support to Cybercrime Ring, Records Show*, USA Today (Mar. 26, 2025 7:11 AM), <https://www.usatoday.com/story/news/politics/2025/03/26/doge-staffer-big-balls-edward-coristine/82667607007/>.

examination of the DOGE executive orders. But the answers are essential to the ultimate question of whether DOGE is subject to FOIA's transparency requirements.

Even as DOGE takes dramatic action throughout the executive branch, the government insists that it is a mere "advisory body," not an agency. This can only be resolved through facts, which requires discovery.

CONCLUSION

For the foregoing reasons, this Court should deny the application.

Respectfully submitted,

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