

No.

In the Supreme Court of the United States

U.S. DOGE SERVICE, ET AL., PETITIONERS

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The district court in this case entered a wide-ranging and intrusive discovery order against the U.S. DOGE Service (USDS)—a body within the Executive Office of the President tasked with advising the President—to determine whether that body’s influence renders it an “agency” subject to the Freedom of Information Act (FOIA), 5 U.S.C. 552. This Court previously granted certiorari, vacated the court of appeals’ denial of a writ of mandamus, and remanded for the court of appeals to “narrow” discovery in light of “separation of powers concerns.” On remand, respondent withdrew several of its discovery requests, and the court of appeals again denied the government’s mandamus petition without any new analysis regarding the remaining discovery, which includes numerous requests for internal communications and a deposition of USDS’s head. The questions presented are:

1. Whether the court of appeals’ order departed from this Court’s instructions and the separation-of-powers principles that this Court articulated in *Cheney v. United States District Court*, 542 U.S. 367 (2004).

2. Whether a court may order broad discovery against an Executive Office advisory body—potentially providing much information sought on the merits of a plaintiff’s FOIA claims—to determine whether FOIA’s disclosure requirements apply in the first place.

PARTIES TO THE PROCEEDING

Petitioners (defendants-petitioners below) are the U.S. DOGE Service; Amy Gleason in her official capacity as Acting Administrator of the U.S. DOGE Service; Elon R. Musk, in his official capacity; the Office of Management and Budget; Russel Vought in his official capacity as Director, Office of Management and Budget; the National Archives and Records Administration; and the Archivist of the United States.*

Respondent in this Court is the United States District Court for the District of Columbia. Respondents also include Citizens for Responsibility and Ethics in Washington (plaintiff in the district court in No. 25-cv-511, and real party in interest in the court of appeals in No. 25-5130).

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Citizens for Responsibility & Ethics in Washington
v. *U.S. DOGE Serv.*, No. 25-cv-511 (Apr. 15, 2025)
(granting discovery)

Citizens for Responsibility & Ethics in Washington
v. *U.S. DOGE Serv.*, No. 25-cv-511 (May 20, 2025)
(scheduling discovery)

United States Court of Appeals (D.C. Cir.):

In re U.S. DOGE Serv., No. 25-5130 (May 14, 2025)
(denying mandamus and dismissing stay motion
as moot)

* Elon R. Musk is no longer in government service. A successor as Archivist of the United States will be automatically substituted under this Court's Rule 35.3.

III

In re U.S. DOGE Serv., No. 25-5130 (July 14, 2025)
(denying mandamus and dismissing stay motion
as moot on remand)

In re U.S. DOGE Serv., No. 25-5130 (Dec. 18, 2025)
(denying rehearing)

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General—on behalf of the U.S. DOGE Service; Amy Gleason, Acting Administrator of the U.S. DOGE Service; and others—respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the District of Columbia Circuit denying a writ of mandamus in this case.

OPINIONS BELOW

The order of the court of appeals (App., *infra*, 3a-5a) is not reported. The order of the district court (App., *infra*, 14a-28a) is reported at 349 F.R.D. 1.

JURISDICTION

The judgment of the court of appeals was entered on July 14, 2025. A petition for rehearing was denied on December 18, 2025 (App., *infra*, 29a-30a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

The pertinent statutory provision is reproduced in the appendix. App., *infra*, 53a.

INTRODUCTION

This case presents important questions about whether, and to what extent, discovery targeting a body within the Executive Office of the President can proceed for the paradoxical purpose of determining whether the Freedom of Information Act (FOIA), 5 U.S.C. 522, applies to that body at all. Last spring, the district court and D.C. Circuit saw no separation-of-powers problem with ordering sprawling discovery about the operations of the U.S. DOGE Service (USDS)—a body within the Executive Office of the President that indisputably advises the President. Those courts likewise saw no statutory problem with defining an “agency” subject to FOIA by asking whether USDS’s influence, as a practical matter, functioned like independent authority.

This Court considered those questions cert-worthy nine months ago when it granted certiorari and vacated the court of appeals’ denial of mandamus. This Court held that requests for USDS’s recommendations were not “appropriately tailored”; that whether a body is an “agency” subject to FOIA “cannot turn on [its] ability to persuade”; and, “[f]urthermore,” that “separation of powers concerns” required “judicial deference and restraint” under *Cheney v. United States District Court*, 542 U.S. 367 (2004). App., *infra*, 1a. This Court then remanded for the court of appeals to “narrow” discovery and stayed discovery pending any petition for certiorari. *Id.* at 2a.

While this case has narrowed slightly since then—because respondent dropped requests to obtain all USDS “recommendations” to federal agencies—those

questions remain cert-worthy now. On remand, the D.C. Circuit interpreted the Court's order to require modifying discovery only as to the now-abandoned requests for USDS's recommendations. On that premise, the D.C. Circuit summarily denied the government's mandamus petition and allowed the rest of the discovery to proceed. That discovery includes all "directives" by the USDS Administrator to USDS's employees; any alleged "directives" to federal agencies; all USDS "attempt[s]" or "plans" to access classified information; all manner of details regarding employees (including names, duties, hiring information, and timekeeping records); and a deposition of USDS's head—Administrator Amy Gleason—on subjects like USDS's "decision-making and reporting structure," App., *infra*, 22a, 42a-51a.

Together, that discovery would perversely give respondent much of the information that it sought in its actual FOIA requests (and in some respects even more)—before any court has held that FOIA applies. Yet the D.C. Circuit declined to address whether any aspects of that discovery presented separation-of-powers concerns. And the court declined to otherwise narrow that discovery to address this Court's conclusion that the "ability to persuade" is irrelevant to whether a body is an "agency" under FOIA. That order, like its predecessor, remains constitutionally and statutorily indefensible and calls for this Court's review.

Review is warranted first and foremost for separation-of-powers reasons. Discovery against a body that advises the President clearly "implicates the separation of powers." *Cheney*, 542 U.S. at 390. "[S]pecial considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are impli-

cated.” *Id.* at 385. Thus, courts must scrutinize the need for discovery, ensure that any discovery is “precisely identified” and narrowly tailored, and “explore other avenues” before setting “coequal branches of the Government * * * on a collision course” through privilege disputes. *Id.* at 387, 390.

The D.C. Circuit wrongly short-circuited that inquiry as to the bulk of the discovery by resting on an untenably narrow view of this Court’s order. The court thus never undertook the *Cheney* analysis as to the remaining discovery, even though it targets “internal Executive Branch communications” that this Court viewed as triggering *Cheney*’s concerns, App., *infra*, 1a—including requests for internal “directives” to employees and alleged “directives” to agencies, USDS’s “plans” regarding certain data access, vast amounts of employee information, and even a deposition of USDS’s head on topics like USDS’s “decision-making.” The court rubber-stamped those requests without determining that they are necessary, “precisely identified” and narrowly tailored, and not excessively burdensome as to raising privileges or undermining Executive Branch duties. *Cheney*, 542 U.S. at 382, 387-390. That clear departure from *Cheney* alone warrants review, if not summary reversal.

Second, the court of appeals’ approval of intrusive discovery to assess whether FOIA even applies cannot be reconciled with FOIA. This Court’s prior order rejected the premise underlying the discovery order by holding that USDS’s influence is irrelevant to FOIA’s applicability. App., *infra*, 1a. That conclusion flows from FOIA’s text and longstanding precedent: FOIA’s definition of covered “agencies” does not reach “units in the Executive Office whose sole function is to advise and

assist the President,” *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980), and courts have long identified such bodies by asking whether the body is vested with “‘substantial independent authority’” that goes “beyond advising,” *e.g.*, *Meyer v. Bush*, 981 F.2d 1288, 1292 (D.C. Cir. 1993) (citation and emphasis omitted). And that conclusion independently dooms respondent’s discovery requests, all of which seek to test USDS’s practical influence. The whole point of distinguishing between presidential advisors and entities with independent authority is to protect advisors from intrusive FOIA requests. This Court should not allow litigants to perversely use discovery regarding FOIA “agency” status to effect the same intrusions.

The court of appeals’ errors plainly warrant this Court’s review. The decision below intrudes into the autonomy and confidentiality of presidential advisors and augurs time-consuming and burdensome discovery litigation, including through a deposition of USDS Administrator Amy Gleason. Beyond this case, the court of appeals’ FOIA ruling threatens to burden future presidential administrations with FOIA suits designed to leverage discovery against advisors in the Executive Office. The Court previously granted certiorari in this case and recognized a reasonable probability that it would do so again when it issued a stay. This Court’s intervention is once again necessary.

STATEMENT

A. Legal Background

Under FOIA, a federal “agency” must generally make agency records available to “any person” who has submitted “any request for [such] records.” 5 U.S.C. 552(a)(3)(A). In 1974, Congress amended FOIA’s definition of “agency” to include any “establishment in the

executive branch of the Government (including the Executive Office of the President).” 5 U.S.C. 552(f).

In *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980), this Court held that FOIA’s definition of “agency” does “not include” “units in the Executive Office whose sole function is to advise and assist the President.” *Id.* at 156 (citation omitted). That restriction is necessary “to avoid * * * serious separation-of-powers questions.” *Judicial Watch, Inc. v. United States. Secret Serv.*, 726 F.3d 208, 216, 227 (D.C. Cir. 2013). Following *Kissinger*, courts determine whether an Executive Office entity is an “agency” under FOIA by asking whether it bears “substantial independent authority” “beyond advising.” *E.g., Meyer v. Bush*, 981 F.2d 1288, 1292 (D.C. Cir. 1993) (citation and emphasis omitted).

B. Facts

1. On January 20, 2025, the President created USDS by executive order as an entity in the Executive Office of the President. 90 Fed. Reg. 8441, 8441 (Jan. 29, 2025). USDS is led by the USDS Administrator, who reports to the White House Chief of Staff. *Ibid.* Its purpose is to further the President’s goal of “modernizing Federal technology and software to maximize governmental efficiency and productivity.” *Ibid.* To that end, various executive orders give USDS or its administrator the responsibility of advising the President and consulting with federal agencies. See D. Ct. Doc. 24-1, at 25-26 (Mar. 19, 2025) (listing USDS responsibilities under such orders).

For example, Executive Order No. 14,210 directs the USDS Administrator to submit a report and recommendations to the President regarding “waste, bloat, and insularity” in federal hiring. 90 Fed. Reg. 9669, 9669-

9670 (Feb. 14, 2025). Executive Order No. 14,218 directs the USDS Administrator (among others) to evaluate “sources of Federal funding for illegal aliens” and “recommend additional agency actions.” 90 Fed. Reg. 10,581, 10,581 (Feb. 25, 2025). And Executive Order No. 14,170 requires the USDS Administrator to “consult[]” with the Assistant to the President for Domestic Policy to develop a federal hiring plan and provide “advice and recommendations.” 90 Fed. Reg. 8621, 8621-8622 (Jan. 30, 2025). USDS has no organic statute or regulation, so the President’s orders alone delineate USDS’s responsibilities.

In the same order that created USDS, the President also directed agency heads to create agency “DOGE Teams” composed of agency employees who report to agency leadership. 90 Fed. Reg. at 8441. Those agency DOGE teams form part of the broader initiative titled the “Department of Government Efficiency.” *Ibid.* The President has directed USDS to coordinate with agency DOGE teams on the President’s efficiency goals, but those teams operate under each agency’s authority, not USDS. See *id.* at 8441-8442.

2. Four days after the President created USDS, respondent Citizens for Responsibility and Ethics in Washington submitted a FOIA request seeking broad categories of information—including “[a]ll communications between the USDS Administrator and USDS staff” and “[a]ll communications” with “any federal agency.” D. Ct. Doc. 2-6, at 1 (Feb. 20, 2025). A few weeks later, respondent filed this FOIA lawsuit and sought a preliminary injunction requiring production of responsive documents. D. Ct. Doc. 2-1, at 1-4 (Feb. 20, 2025).

The district court denied respondent’s preliminary injunction motion and rejected its theory of irreparable harm. D. Ct. Doc. 18, at 15-16 (Mar. 10, 2025). The court nonetheless held that USDS was likely an agency subject to FOIA, recast respondent’s motion as one for expedited processing, and ordered “USDS to process the request on an expedited basis.” *Id.* at 22-28.

USDS filed a motion for reconsideration, which the district court denied. See D. Ct. Doc. 20 (Mar. 14, 2025); D. Ct. Doc. 23 (Mar. 19, 2025). USDS then moved for summary judgment to fully brief the threshold legal issue whether it is an “agency” subject to FOIA. See D. Ct. Doc. 24 (Mar. 19, 2025). Both filings explained that USDS’s governing executive orders conferred only advisory functions, and USDS’s Administrator, Amy Gleason, filed a declaration attesting that USDS lacked other legal authority. See D. Ct. Docs. 20-2, 24-2.

Respondent then moved for the expedited discovery at issue. See D. Ct. Doc. 27 (Mar. 27, 2025). Respondent’s discovery requests covered large categories of information—including much information sought in respondent’s FOIA requests. Among other things, the requested discovery sought USDS’s “recommendation[s]” and “directives” to agencies, USDS’s “plans” to access classified data, various internal documents, numerous details about USDS and agency DOGE team employees, and a deposition of Administrator Amy Gleason. D. Ct. Doc. 27-1, at 8-14.

3. The district court granted most of respondent’s requests. App., *infra*, 14a-28a. The court recognized that the dispositive inquiry on summary judgment is whether USDS is an “agency” under FOIA’s applicable definition, which turns on whether USDS has “substantial independent authority” or whether its “sole func-

tion is to advise and assist the President.’” *Id.* at 17a (citations omitted). But the court stated that the inquiry could not be resolved just by examining the executive orders that defined USDS’s authority. See *id.* at 19a. Instead, the court held, respondent was entitled to wide-ranging information to assess USDS’s “influence over * * * federal agencies,” *id.* at 24a; see *id.* at 17a, 27a, to resolve FOIA’s applicability.

The district court justified that approach by citing press accounts that the court interpreted to indicate that USDS was “leading the charge” on various government initiatives, without addressing the government’s explanation that those accounts referred to non-USDS entities. App., *infra*, 20a (citation omitted); see D. Ct. Doc. 24, at 24. And the court speculated that two provisions in executive orders rendered USDS’s authority potentially “unclear.” App., *infra*, 18a-20a. One of those provisions describes the purpose of the “Department of Government Efficiency” as a whole—including agency DOGE teams that are not a part of USDS—as “implement[ing]” the President’s agenda, 90 Fed. Reg. at 8441. The other provision states that “DOGE Team Lead[s]” at agencies—not USDS—could keep certain agency positions unfilled subject to the views of their agency heads, 90 Fed. Reg. at 9670. The court acknowledged that the government was “[p]erhaps” correct that those provisions do not give USDS any authority beyond advising. App., *infra*, 19a. But the court held that discovery was appropriate because “the record” did not confirm that reading. *Ibid.*

The district court then struck several of respondent’s requests as irrelevant or unnecessary—specifically, a deposition of USDS official Steven Davis and requests regarding record-keeping policies, information as to

prior USDS Administrators, and certain visitor access requests. App., *infra*, 23a-24a, 26a-27a. But the court approved the vast majority of respondent's requests. See *id.* at 21a-28a. The court also permitted respondent to depose the USDS Administrator, Amy Gleason, a senior official who reports directly to the Chief of Staff. *Id.* at 21a-23a. The court deemed a deposition of USDS's Administrator appropriate because of the two materially similar declarations that she had submitted. *Ibid.*; see D. Ct. Docs. 20-2, 24-2. Those declarations were five pages long, four of which summarized the executive orders giving USDS an advisory role and explained that "USDS has no other independent sources of legal authority." D. Ct. Doc. 24-2, at 4; see D. Ct. Doc. 20-2, at 1-5. The court did not explain why Administrator Gleason's testimony was necessary or why another witness could not testify as to those subjects under Federal Rule of Civil Procedure 30(b)(6).

4. The government filed a petition for a writ of mandamus and stay motion in the D.C. Circuit. The court of appeals issued an administrative stay, App., *infra*, 12a-13a, but a different panel denied relief in an unpublished order, *id.* at 6a-11a. Characterizing the ordered discovery as "narrow" and "modest," the court of appeals found that mandamus was unwarranted. *Id.* at 9a-10a. The court determined that the threshold inquiry whether a presidential advisory body is subject to FOIA is a "functional analysis" that "depends on the practical realities of the entity's role, not merely on its formal placement or authority." *Id.* at 8a.

As to the government's arguments that the discovery order violated the separation of powers under *Cheney v. United States District Court*, 542 U.S. 367 (2004), the court of appeals reasoned that the government had "for-

feited” that objection. App., *infra*, 9a. The court also reasoned that “*Cheney* is distinguishable.” *Ibid.* And the court concluded that the government had not satisfied the mandamus standard by showing that it had “no other adequate means of relief” or “a clear and indisputable right” to relief. *Id.* at 9a-10a.

5. This Court granted a writ of certiorari and vacated the denial of mandamus. App., *infra*, 1a. The Court concluded that requests for the “Government to disclose the content of intra-Executive Branch USDS recommendations and whether those recommendations were followed are not appropriately tailored.” *Ibid.* The Court explained that “whether an entity is an agency for the purposes of the Freedom of Information Act cannot turn on the entity’s ability to persuade.” *Ibid.* “Furthermore,” the Court emphasized, “separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications.” *Ibid.* In doing so, the Court invoked *Cheney*’s holding that “[s]pecial considerations control when” discovery implicates “the Executive Branch’s * * * autonomy” and “the confidentiality of its communications.” *Id.* at 1a-2a (quoting *Cheney*, 542 U.S. at 385).

The Court remanded the case and instructed the court of appeals to “narrow the April 15 discovery order consistent with this order.” App., *infra*, 2a. The Court stayed all discovery “pending remanded consideration at the Court of Appeals, and disposition of the petition for a writ of certiorari, if such writ is timely sought.” *Ibid.*

6. On remand, respondent withdrew two interrogatories and five requests for admission that targeted the content of USDS recommendations to agencies. See

Resp. C.A. Mot. for Summary Disposition 4-5. But respondent continued to press the rest of its discovery requests, including:

- a deposition of Administrator Gleason on topics like USDS’s “decision-making,” “reporting structure,” and “actions” regarding agencies, App., *infra*, 22a, 51a;
- “attempt[s]” or “plans to gain access” to a classified “agency database,” *id.* at 43a-44a;
- all “directives” made by USDS’s Administrator to USDS’s employees, *id.* at 48a-49a;
- actions “directed” by USDS at federal agencies, *id.* at 43a, 46a-4a;
- detailed information on “all current and former employees of DOGE and members of DOGE Teams,” including names, employment dates, chain of command information, hiring information, duties, supervisory authority, timekeeping records, and any recurring reports they submit, *id.* at 42a-43a, 48a; and
- various internal agreements with federal agencies and invoices, *id.* at 48a.

Respondent moved for summary affirmance, arguing that this Court’s decision called into question only the requests for USDS recommendations and “left the remainder of discovery intact.” Resp. C.A. Mot. for Summary Affirmance 1.

The government opposed, arguing that this Court’s order required the lower courts to reconsider each discovery request by applying *Cheney*’s principles and this Court’s decision regarding FOIA. See Gov’t Response

to Mot. for Summary Disposition 1, 6. Among other objections, the government explained that requests for alleged “directives” or information regarding agency DOGE teams would be needlessly burdensome and implicate internal communications, *id.* at 9-11; that production of employee names and “detailed information about the minutiae of day-to-day employee management” was irrelevant and burdensome, *id.* at 11-12; that this Court’s order foreclosed any inquiry into “practical influence arising from an advisory body’s size and budget,” *ibid.*; that discovery into USDS access of classified data would be irrelevant and “exceedingly burdensome,” *id.* at 13, 18-19; and that a deposition of Administrator Gleason was unnecessary and inconsistent with the “judicial deference and restraint” that this Court required, *id.* at 15-16 (quoting App., *infra*, 1a). The government thus asked the court to “remand” for the district court to reassess discovery “line-by-line.” *Id.* at 6, 21.

7. The court of appeals panel again denied mandamus in an unpublished order. See App., *infra*, 4a. The court summarily stated that “[e]xcluding [the] interrogatories and requests” that respondent had withdrawn “will narrow the district court’s April 15 discovery order consistent with the Supreme Court’s order.” *Ibid.* The court rejected the government’s arguments regarding the separation of powers and FOIA by summarily stating that USDS’s “arguments in opposition to the summary disposition motion do not otherwise alter this court’s conclusions in previously denying mandamus relief.” *Ibid.*

8. The government petitioned for en banc and panel rehearing on the ground that the panel’s order violated this Court’s instructions and the separation of powers.

See Gov't C.A. Pet. for Reh'g 1-3. The court of appeals denied rehearing. App., *infra*, 29a-30a.

REASONS FOR GRANTING THE PETITION

This Court previously deemed the issues arising from the discovery at issue here cert-worthy, and they remain cert-worthy despite limited narrowing of the discovery. The court of appeals has continued to approve intrusive discovery against a presidential advisory body without adequate consideration for the separation of powers, the FOIA statute, and this Court's previous order. This Court should again grant review. The Court could either grant plenary review of both the separation-of-powers issues concerning discovery into part of the Executive Office of the President and the statutory question of how to tell whether a body counts as an "agency" for FOIA purposes. Or the Court could summarily reverse on the separation-of-powers issue alone because the order below so seriously departs from *Cheney's* principles.

A. The Decision Below Departs From This Court's Order And *Cheney's* Principles

The court of appeals adopted an unduly cramped interpretation of this Court's instructions on remand to greenlight extensive discovery with significant separation-of-powers implications. This Court required the courts below to reassess all remaining discovery—not just requests for USDS recommendations—with the "deference and restraint" applicable to presidential advisors under *Cheney v. United States District Court*, 542 U.S. 380 (2004). App., *infra*, 1a. Yet the court of appeals reflexively allowed discovery into USDS's processes and activities without explaining how any of that discovery was necessary or narrowly tailored to avoid

burdening the Executive Branch. The court thus authorized discovery into all requests for “directives” by the USDS Administrator to USDS employees; alleged “directives” to federal agencies; USDS “attempts” or “plans” to access classified data systems; a host of irrelevant details regarding USDS employees and day-to-day management; and even an intrusive deposition of USDS’s head on vague topics like USDS’s internal “decision-making.” *Id.* at 22a, 42a-49a, 51a. Such “overly broad” discovery against presidential advisors constitutes a “clear abuse of discretion” warranting a writ of mandamus under *Cheney*. 542 U.S. at 389-390 (citation omitted).

That error warrants either plenary review or summary reversal—all the more because the court of appeals’ cavalier approach to the deposition of a high-ranking presidential advisor starkly contrasts with the courts of appeals’ uniform recognition that such depositions would require “extraordinary circumstances.” *In re Musk*, No. 26-1160, 2026 WL 626965, at *2 n.3 (4th Cir. Mar. 5, 2026) (collecting cases). Indeed, just a few weeks ago the Fourth Circuit rejected depositions against similarly high-ranking officials and advisors concerning USDS activities. *Id.* at *3.¹

1. a. Discovery against a presidential advisory body necessarily “implicates the separation of powers.” *Cheney*, 542 U.S. at 390. “The high respect that is owed to the office of the Chief Executive” must “inform * * * the timing and scope of discovery.” *Id.* at 385 (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)) (brackets

¹ The Fourth Circuit did not address a deposition of Administrator Gleason, which was also sought there, because the district court had not denied a protective order as to her, see *Musk*, 2026 WL 626965, at *1 n.1, but its reasoning applies here, see *id.* at *2-*3.

omitted). Given the President’s “unique position in the constitutional scheme,” discovery requests against presidential advisors require “deference and restraint.” *Id.* at 382 (citations omitted). That restraint protects “the public interest” in “afford[ing] Presidential confidentiality the greatest protection consistent with the fair administration of justice.” *Ibid.* (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)). It reflects the “paramount necessity” of “protecting the Executive Branch from vexatious litigation that might distract it from the energetic performance of its constitutional duties.” *Ibid.* And it guards against the prospect of a “constitutional confrontation” between “coequal branches of the Government,” which “should be avoided whenever possible.” *Id.* at 389-390 (quoting *Nixon*, 418 U.S. at 692).

Thus, in *Cheney*, this Court ordered the court of appeals to reconsider the government’s mandamus petition regarding a discovery order against an advisory body located within the Executive Office of the President and headed by the Vice President. 542 U.S. at 373-374. That body was charged with advising the President on energy policy, and the plaintiffs sought extensive disclosures based on allegations that the body was subject to disclosure requirements under the Federal Advisory Committee Act (FACA), 5 U.S.C. 1001, *et seq.* *Cheney*, 542 U.S. at 373-374. Despite the government’s threshold legal arguments that the disclosure requirements did not apply, the district court had ordered broad discovery into the body’s activities to assess the plaintiffs’ theory that private persons were *de facto* members of the body whose presence triggered FACA. *Id.* at 375-376.

This Court vacated the court of appeals' denial of mandamus. *Cheney*, 542 U.S. at 378. The Court held that the district court's order ignored the "special considerations" that "control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated." *Id.* at 385. The Court faulted the district court for not narrowing its "overly broad" order, neglecting to "explore" alternatives, and providing the plaintiffs with disclosures of the very information sought "on the merits" of their FACA claims—purportedly "to ascertain whether" FACA "even appl[ied]." *Id.* at 384, 386, 388, 390. And this Court explained that forcing the Executive Branch to "winnow the discovery orders by asserting specific claims of privilege and making more particular objections" was itself a constitutionally problematic burden. *Id.* at 388-389.

b. In its prior order in this case, this Court recognized that *Cheney's* "separation of powers concerns" apply here. App., *infra*, 1a-2a. USDS is a presidential advisory body located in the Executive Office of the President, just like the body in *Cheney*. 90 Fed. Reg. at 8441. USDS's head reports directly to the President's Chief of Staff. *Ibid.* And the President has expressly required USDS to provide advice and recommendations to him and to federal agencies. See pp. 6-7, *supra*.

This Court thus invoked *Cheney's* "special considerations" when it held that "separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications." App., *infra*, 1a-2a (quoting *Cheney*, 542 U.S. at 385). And the Court ordered the court of appeals to "take appropriate action to narrow" discovery "consistent with [its] order." *Id.* at 2a.

2. On remand, the court of appeals declined to undertake that analysis, instead granting respondent a summary disposition. That was plainly incorrect.

a. The panel’s interpretation of this Court’s order is untenably narrow. On remand, respondent withdrew several requests for USDS recommendations, then argued that the principles in this Court’s order applied *only* to the requests for recommendations that this Court described as inappropriately tailored. Resp. C.A. Mot. for Summary Disposition 1. Thus, respondent argued that this Court left “the remainder of discovery intact” and asked for “summary disposition” on that basis. *Ibid.* The panel agreed, granting summary disposition on the ground that “[e]xcluding” the withdrawn requests for USDS recommendations would “narrow the district court’s April 15 discovery order consistent with the Supreme Court’s order.” App., *infra*, 4a.

That is not a fair reading, and in all events it overlooks significant separation-of-powers issues with the remaining discovery. While this Court held that respondent’s requests for USDS recommendations were “not appropriately tailored,” it identified the discovery order’s failure to grapple with *Cheney*’s principles as a “further[]” problem and remanded for the courts below to engage in further “consideration.” App., *infra*, 1a. This Court explained that *Cheney*’s “judicial deference and restraint” should apply whenever discovery targets “internal Executive Branch communications”—not just to the USDS recommendations. *Ibid.*

It is implausible that, in describing serious “separation of powers concerns” with discovery against “internal Executive Branch communications,” App., *infra*, 1a., the Court implicitly approved of the rest of the sprawling discovery ordered here—including a deposi-

tion of USDS’s head on subjects like “decision-making,” internal “directives” to employees, internal “plans” about data access, alleged “directives” to agencies, and much more. See *id.* at 22a, 43a, 46a-49a, 51a. Were the requests for USDS recommendations the only problem, this Court could have just excised those requests itself and avoided any remand. Reinforcing that conclusion, the Court stayed *all* discovery “pending remanded consideration”—a course that would be inexplicable if the only problem were the non-tailored requests for recommendations. *Id.* at 2a. Yet the panel never explained why separation-of-powers concerns exist as to USDS recommendations, but not, for example, as to the body’s internal directives to its own employees, its plans regarding data access, or even to deposing USDS’s head on topics like the body’s “decision-making.” *Id.* at 22a, 51a.

The panel’s statement that the government’s arguments did “not otherwise alter” the panel’s “conclusions in previously denying mandamus relief” underscores the problems with the decision below. This Court necessarily rejected the panel’s conclusions in granting relief. App., *infra*, 4a. The panel previously declined to apply *Cheney*’s principles, *id.* at 9a-10a—but this Court then applied *Cheney*’s separation-of-powers framework, *id.* at 1a-2a (quoting *Cheney*, 542 U.S. at 385). And the panel previously minimized the discovery order’s burdens on USDS and held that the government lacked a clear and indisputable right to relief, *id.* at 9a-10a—but this Court made clear that USDS has a clear and indisputable right to “narrow[ing]” of discovery under *Cheney*, *id.* at 2a.

b. The court of appeals’ failure to analyze separation-of-powers problems with the remaining discovery is

particularly remarkable because allowing the intrusive requests at issue clearly defies *Cheney*'s requirement to "explore other avenues, short of forcing the Executive to invoke privilege" and to "precisely identif[y]" and "narrow" any discovery to avoid unnecessary "burdens * * * on the Executive Branch." *Cheney*, 542 U.S. at 387-388, 390-391 (citation omitted).

Internal Communications. Most glaringly, numerous remaining requests target the same "internal Executive Branch communications" that this Court's order said raise grave "separation of powers concerns." App., *infra*, 1a. For example, one request for document production seeks all "directives" made by the USDS Administrator to any "DOGE employee," including USDS's own employees. *Id.* at 48a-49a. That invasive demand for all internal directives to employees—without any explanation as to its relevance to whether FOIA applies—cannot meet *Cheney*'s precision and narrow-tailoring requirements.

Other requests similarly target information about instances in which USDS or "DOGE" employees "directed" funding or employment decisions at agencies. See App., *infra*, 43a, 46a-49a. USDS has repeatedly explained that it has made no such directives because it lacks such authority, and that it lacks such information for agency DOGE teams that are explicitly *not* part of USDS. See p. 7, *supra*. Yet these discovery requests raise the specter of discovery disputes over internal communications made to agencies or DOGE teams at those agencies—and potentially even recommendations that are off-limits under this Courts order—not least because the district court previously asserted that "[t]he line between a recommendation and [a] directive is a blurry one." App., *infra*, 25a-26a. *Cheney* precludes

those “overly broad” requests risking such privilege disputes, 542 U.S. at 386, 388, particularly because respondent does not need *the content* of any such internal communications merely to determine whether non-advisory authority *exists* such that the USDS might be subject to FOIA. See pp. 26-31, *infra*.

Data Access. Respondent’s request for USDS’s past or future “attempt[s]” or “plans to gain access” to classified information systems presents similar problems. App., *infra*, 43a-44a. Information about such “plans” is clearly “predecisional” and “deliberative” information protected by the deliberative-process privilege. *United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 264, 267-268 (2021). Yet, contrary to *Cheney*, the courts below have required USDS to “bear the onus” of invoking privilege—and risked the kind of “constitutional confrontation” that “should be avoided whenever possible”—without “explor[ing]” alternatives or seriously scrutinizing the need for such a request. *Cheney*, 542 U.S. at 388-390 (quoting *Nixon*, 418 U.S. at 692).

Even apart from privilege issues, information about any classified systems that presidential advisors access—or do not access—to render advice to the President or communicate his views to agencies is clearly sensitive and implicates the “confidentiality” of advice within the Executive Branch. Cf. *Nixon*, 418 U.S. at 706, 708. Respondent has no need for that information—much less one outweighing those separation-of-powers problems. Whether USDS can *access* information does not show whether it is an “agency” under FOIA. The National Security Council, for example, “is not an agency subject to the FOIA,” despite far-reaching access to in-

formation. *Main St. Legal Servs., Inc. v. National Sec. Council*, 811 F.3d 542, 544 (2d Cir. 2016).

Deposition. Also incompatible with *Cheney* is the court of appeals’ summarily greenlighting a deposition of USDS’s head, Administrator Gleason, without any analysis under *Cheney* and this Court’s prior order. This Court’s call for “judicial deference and restraint” applies *a fortiori* to the deposition of the head of an entity that indisputably advises the President. App., *infra*, 1a. Subjecting Administrator Gleason to a deposition will not only “distract” her from her important duties advising the President, *Cheney*, 542 U.S. at 382 (quoting *Nixon*, 418 U.S. at 715), but appears likely to require assertions of privilege given the vaguely worded topics on which respondent seeks information—such as USDS’s “decision-making and reporting structure” and “actions * * * taken with regard to federal agencies,” App., *infra*, 51a (listing topics for a deposition under Federal Rule of Civil Procedure 30(b)(6)); see *id.* at 22a.

Such an intrusive, burdensome discovery request does not comply with *Cheney*’s principles—especially when the sole question that respondent seeks to answer is the legal question whether FOIA applies to USDS. The head of a presidential advisory body, who reports to the White House Chief of Staff, see, *e.g.*, 90 Fed. Reg. at 9670, is the kind of official that cannot be deposed absent extraordinary circumstances. See, *e.g.*, *United States v. Morgan*, 313 U.S. 409, 421-422 (1941); *In re U.S. Dep’t of Educ.*, 25 F.4th 692, 701 (9th Cir. 2022) (collecting cases). She is analogous to “a Deputy Assistant to the President, two levels removed from the chief executive.” *In re Murthy*, 22-30697 Order at 2 (5th Cir. Nov. 21, 2022); see *In re Cheney*, 544 F.3d 311, 314 (D.C.

Cir. 2008) (per curiam) (“The duties of high-ranking executive officers should not be interrupted by judicial demands for information that could be obtained elsewhere.”).

Courts have frequently concluded that separation-of-powers principles prevent depositions of similar high-ranking officials. See, e.g., *Musk*, 2026 WL 626965, at *2 n.3 (collecting cases). Earlier this month, the Fourth Circuit granted mandamus of a district court order allowing the deposition of similar presidential advisors and officials in a case involving Appointments Clause challenges—explaining that even if those officials had “first-hand knowledge” relevant to the plaintiffs’ claims, no “extraordinary circumstances” justified such depositions. *Id.* at *1-*4 (citation omitted). And last year, the D.C. Circuit stayed intrusive discovery against USDS and a presidential advisor before the district court resolved legal questions that could avoid discovery. See *In re Musk*, No. 25-5072, 2025 WL 926608, at *1 (D.C. Cir. Mar. 26, 2025) (per curiam).

Respondent has defended Administrator Gleason’s deposition based on her submission of two declarations that summarized the Executive Orders governing USDS’s authority and explained that USDS has no other authority. See p. 8, *supra*. Yet respondent itself has called those declarations “ cursory”—noting that the government “only cite[d]” them “a handful of times,” mainly to refer to the “executive orders.” D. Ct. Doc. 27, at 2, 18 n.3. The government did not submit the declarations to prove any disputed facts; indeed, respondent suggested that the government could furnish a USDS representative (not Administrator Gleason specifically) to address those topics under Rule 30(b)(6), App., *infra*, 51a, and the government noted that, if the

district court rejected its arguments against discovery, it could offer a lower-level employee, see Gov't Opp. to Plaintiffs' Mot. for Expedited Discovery 9-10. The court of appeals' unexplained approval of Gleason's deposition despite clear reasons why respondent has no need for it is the antithesis of the "judicial deference and restraint" that the Constitution demands as to presidential advisors. App., *infra*, 1a.

Documents and Employee Information. The discovery order also reaches myriad internal documents and information without any attempt at "narrow[ing]" or "precisely identif[ying]" those which are strictly necessary, as *Cheney* requires. *Cheney*, 542 U.S. at 387-389 (citation omitted). For example, the court of appeals allowed requests for agreements between USDS and agencies, as well as invoices for all "DOGE-related work"—without explaining their relevance. App., *infra*, 48a. Other requests seek detailed information about all USDS, "DOGE," and "DOGE Teams" employees and detailees—including names, employment dates, hiring information, duties, supervisory authority, and even timekeeping records. *Id.* at 42a-43a, 48a.

Those requests resemble the requests in *Cheney* for "[a]ll documents identifying * * * any staff" and all "activities," which the Court described as "overly broad." 542 U.S. at 386-387. Here, respondent's ability to litigate whether USDS is subject to FOIA does not depend on the names of every USDS employee, much less details about each employee's duties and timekeeping. And (once again) USDS has explained that it lacks any central repository of such information for agency "DOGE Teams" because those teams comprise persons acting under agency authority, not USDS's authority. These requests, in addition to being highly burdensome,

risk discovery disputes about USDS’s internal communications with agency DOGE teams.

Overlap with FOIA claims. Further reinforcing the court of appeals’ sharp departure from *Cheney* is that these discovery requests together give respondent a significant portion of the internal communications that respondent seeks on the merits of its FOIA claims. In *Cheney*, this Court held that the discovery order at issue was “anything but appropriate” because it gave the plaintiffs all the information they sought on the merits of their FACA claim, purportedly to determine whether FACA applied. *Cheney*, 542 U.S. at 388.

So too here, respondent’s FOIA requests seek “[a]ll communications between USDS” and “any federal agency,” “[a]ll communications between the USDS Administrator and USDS staff,” and “[m]emoranda, directives, and policies regarding the scope of USDS’s work with other federal agencies.” D. Ct. Doc. 2-6, at 2-3. Yet before any conclusion that FOIA applies, the court of appeals approved discovery into numerous categories of internal USDS communications (such as “directives” from the USDS Administrator and alleged “direct[ives]” to agencies), and internal memoranda, guidance, announcements, and other documents. App., *infra*, 43a, 46a-49a. And the discovery order in some ways gives respondent even *greater* disclosure, including requests for information on various kinds of agreements with agencies and USDS access of classified data, not to mention a deposition of USDS’s head. *Id.* at 43a-44a, 48a, 51a.

* * *

In sum, the remaining discovery here presents obvious separation-of-powers concerns—concerns that, pursuant to this Court’s order, should have prompted the

court of appeals to at least scrutinize their necessity, “explore other avenues,” and remain “mindful of the burdens imposed on the Executive Branch.” *Cheney*, 542 U.S. at 390-391. That alone warrants granting either plenary review or summary reversal to rectify the court of appeals’ plainly erroneous approach and avoiding unnecessary interbranch conflict.

B. The Court of Appeals’ Decision Incorrectly Requires Intrusive Discovery To Assess Whether FOIA Applies

This case also presents an important question about the scope of FOIA that independently warrants review. This Court’s order rejected the district court’s inquiry into USDS’s “ability to persuade” as a basis for discovery and remanded for the lower courts to “narrow” discovery consistent with that order. App., *infra*, 1a-2a. Nonetheless, without explanation, the court of appeals permitted most of that problematic discovery to go forward without considering how much of that discovery rests solely on the misimpression that advisory bodies become FOIA agencies if their advice has practical influence. The remand order is thus inconsistent with FOIA and this Court’s order and threatens to mire future presidential administrations in FOIA litigation against presidential advisors.

1. a. FOIA defines an “agency” subject to FOIA to include any “establishment in the executive branch of the Government (including the Executive Office of the President).” 5 U.S.C. 552(f)(1). In *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980), this Court settled that FOIA’s definition of “agency” excludes “‘units in the Executive Office whose sole function is to advise and assist the President,’” *id.* at 156 (citation omitted). Congress incorporated that limitation partly “to avoid * * * serious separation-of-

powers questions.” *Judicial Watch, Inc. v. United States Secret Serv.*, 726 F.3d 208, 227 (D.C. Cir. 2013).

Since *Kissinger*, courts have identified an “establishment” for FOIA purposes by asking whether the entity wields “substantial independent authority” that goes “beyond advising.” *E.g., Meyer v. Bush*, 981 F.2d 1288, 1292 (D.C. Cir. 1993) (citation and emphasis omitted); *Main St. Legal Servs.*, 811 F.3d at 547. Under that inquiry, the “important consideration” is “whether the relevant entity had ‘any authority in law to make decisions.’” *Cotton v. Heyman*, 63 F.3d 1115, 1122 (D.C. Cir. 1995) (citation omitted).

That legal inquiry turns on interpretation of a body’s legal authorities and requires no discovery. See, *e.g., Meyer*, 981 F.2d at 1293-1294 (relying on “[a] careful reading of the Executive Order[s]” and rejecting the relevance of “*ad hoc* directions”); *Main St. Legal Servs.*, 811 F.3d at 543-544 (“[W]e construe * * * the ‘function’ provisions of the [National Security Council’s] statute, and the current presidential directive organizing the National Security Council System.”); *Sweetland v. Walters*, 60 F.3d 852, 855 (D.C. Cir. 1995) (per curiam) (statutory “provisions [did] not empower the Executive Residence staff” with independent authority); *Rushforth v. Council of Econ. Advisers*, 762 F.2d 1038, 1041-1043 (D.C. Cir. 1985) (Council of Economic Advisers’ “enumerated statutory duties are directed at providing * * * advice”). Thus, “[a] plaintiff who has failed adequately to state a claim” of FOIA agency status based on “publicly available materials” “is not entitled to discovery.” *Main St. Legal Servs.*, 811 F.3d at 567.

b. Consistent with those principles, this Court previously rejected the district court’s basis for ordering discovery: that USDS’s “influence over * * * federal

agencies” could render it an agency under FOIA. App., *infra*, 24a; see *id.* at 17a, 27a. This Court made clear that FOIA agency status “cannot turn on the entity’s ability to persuade.” *Id.* at 1a. And the Court remanded for the court of appeals to “narrow” discovery “consistent” with the Court’s refutation of the district court’s theory. *Id.* at 2a.

That inquiry should have been straightforward. The discovery order’s sweeping requests for internal information regarding USDS’s size and operations were premised on the view that its power to persuade was relevant. App., *infra*, 17a, 24a, 27a. After setting aside the district court’s erroneous focus on USDS’s influence, none of the discovery orders are necessary to assess whether USDS bears “substantial independent authority” that goes “beyond advising.” *Meyer*, 981 F.2d at 1292 (citation and emphasis omitted). Instead, “publicly available materials” make clear that USDS lacks such authority, and therefore respondent “is not entitled to discovery.” *Main St. Legal Servs.*, 811 F.3d at 567.

USDS is a body in the Executive Office of the President that reports to the President’s Chief of Staff and that is expressly tasked with advising the President. See pp. 6-7, *supra*. USDS has no authority aside from that set forth in the President’s orders. *Ibid.* And every executive order delineating USDS’s authority describes it in purely advisory terms. See, *e.g.*, 90 Fed. Reg. at 8621-8622 (requiring USDS to “consult” with the Assistant to the President for Domestic Policy on a federal hiring plan and provide “advice and recommendations”); 90 Fed. Reg. at 10,581 (requiring USDS to identify “sources of Federal funding for illegal aliens” and make recommendations alongside the OMB Director and the

Assistant to the President for Domestic Policy); 90 Fed. Reg. at 8441 (requiring USDS to “promote” and “facilitate” various technological objectives).

USDS is thus exempt from FOIA because it is a “unit[] in the Executive Office whose sole function is to advise and assist the President.” *Kissinger*, 445 U.S. 156 (citation omitted).

2. The court of appeals’ decision below distorts FOIA by permitting broad discovery just to answer the threshold question whether FOIA applies. Without even addressing the sources delineating USDS’s legal authority, the court of appeals permitted sprawling discovery, including (as described above) internal “directives” to USDS employees, “plans” for classified data access, internal agreements and invoices, detailed information about every employee, and a deposition of USDS’s head to boot. See pp. 20-25, *supra*. Still other requests appear designed principally to satisfy respondent’s curiosity, such as a request to “[d]escribe all instances in which any DOGE employee told an employee of a federal agency that the DOGE employee would or could call law enforcement in response to the other employee’s conduct.” App., *infra*, 44a.

The court of appeals’ approach has no plausible grounding in FOIA’s text. Whether USDS is an “establishment” with non-advisory authority turns on the authority with which it is established under law. It does not turn on *the content* of communications within USDS or to federal agencies, USDS’s attempts or plans for accessing classified data, internal agreements, or any disagreements with employees from federal agencies. To litigate whether USDS is an “agency” under FOIA, respondent does not need names and detailed information

about every USDS employee, much less to depose USDS's head.

The lower courts' approach also defeats FOIA's objective of protecting the separation of powers. Subjecting advisory bodies to intrusive discovery triggers the very concerns that Congress sought to avoid by excluding presidential advisory bodies from FOIA's reach. Cf. *Judicial Watch*, 726 F.3d at 225-226 (noting concerns about "end runs" around FOIA's exclusion of entities when "separation-of-powers concerns" are implicated). As Justice Thomas explained in *Cheney*, "broad discovery into the inner workings" of an Executive Office advisory body has "the same potential to offend the Constitution's separation of powers as the actual application of" a disclosure statute like FOIA. *Cheney*, 542 U.S. at 395 (Thomas, J., concurring in part and dissenting in part).

The court of appeals' decision also would illogically mean that a FOIA litigant could use discovery on the "agency" question to obtain information that it seeks on the merits of its FOIA claims, as respondent seeks to do here, see p. 25, *supra*. But it cannot be that answering whether USDS is subject to FOIA involves supplying the plaintiff with the very information that the plaintiff seeks under FOIA (and more). That approach would eviscerate FOIA's limitations and allow plaintiffs to obtain sensitive disclosures from presidential advisors without first establishing FOIA's applicability. Even when a court ultimately concludes that FOIA does not apply, a court cannot remedy the distraction and burdens on "candor" and "confidentiality." Cf. *Nixon*, 418 U.S. at 706, 708.

This Court repudiated a similarly paradoxical approach to discovery in *Cheney*. There, this Court held

that the discovery order at issue was “anything but appropriate” because it purportedly sought information to assess whether FACA applied at all, but in the process gave the plaintiffs “all the disclosure to which they would be entitled * * * on the merits.” *Cheney*, 542 U.S. at 388. Such abuse of discovery is even less appropriate under FOIA’s “agency” inquiry, which is designed to protect presidential advisors from invasive disclosures, see *Judicial Watch*, 726 F.3d at 216.

3. On remand, the court of appeals did not explain its interpretation of FOIA other than by saying that it declined to “alter [its] conclusions in previously denying mandamus relief.” App., *infra*, 4a. But the court of appeals’ prior view that FOIA’s applicability turns on “practical realities” (*id.* at 8a) did not survive this Court’s repudiation of any inquiry into USDS’s “ability to persuade,” *id.* at 1a. The court of appeals did not explain what other “practical realities” the discovery requests target that might determine whether USDS has substantial independent authority. A government body “may not confer power upon itself.” Cf. *Louisiana Pub. Serv. Comm’n v. Federal Commc’ns Comm’n*, 476 U.S. 355, 374 (1986). And a body’s status as an “establishment” subject to FOIA cannot toggle on or off—being an “establishment” one year but not the next—depending on an amorphous inquiry into unspecified “practical realities.”²

² The court of appeals also previously stated that two prior circuit cases “endorsed” such discovery, App., *infra*, 10a-11a, but neither case did so. See *Armstrong v. Executive Office of the President*, 90 F.3d 553 (D.C. Cir. 1996), cert. denied, 520 U.S. 1239 (1997); *Citizens for Responsibility & Ethics in Washington v. Office of Admin.*, 566 F.3d 219 (D.C. Cir. 2009). In *Armstrong*, discovery happened be-

Below, respondent argued that this Court approved discovery to assess FOIA “agency” status because this Court “requir[ed] narrowing rather than vacatur of the discovery order.” Resp. C.A. Reply in Support of Mot. for Summary Disposition 3 (emphasis omitted). But this Court’s remand for further “consideration” and “narrow[ing],” App., *infra*, 2a, cannot plausibly be read as implicitly adopting the momentous proposition that assessing FOIA’s applicability may require discovery against presidential advisors—much less as blessing the intrusive discovery requests here. After rejecting the primary theory underlying the district court’s discovery order, the Court appropriately remanded for the courts below to determine which, if any, requests could survive—an approach that makes sense given the limited briefing and expedited timing involved at the stay stage, coupled with numerous categories of requests and sub-requests. Yet the panel improperly approved sweeping discovery against presidential advisors without ever engaging in that inquiry.

C. The Decision Below Warrants Further Review

This case warrants this Court’s intervention now, just as it did when the Court granted certiorari months ago. The court of appeals’ virtually unexplained ruling on remand contravenes this Court’s instructions in a case implicating serious “separation of powers concerns.” App., *infra*, 1a. And when the Court previously granted certiorari and vacated the court of appeals’ denial of the government’s mandamus petition, the Court

for the government raised FOIA’s applicability. See *Armstrong v. Executive Office of the President*, 877 F. Supp. 690, 696-697 & n.8 (D.D.C. 1995). The other decision *rejected* a request for additional discovery, and the question whether prior discovery was proper was not before the court. *Office of Admin.*, 566 F.3d at 224-225.

necessarily found that the government had a clear and indisputable right to “narrow[ing]” of discovery through issuance of a writ of mandamus. *Id.* at 2a; see *Cheney*, 542 U.S. at 381. Further, in staying discovery pending “disposition of [a] petition for a writ of certiorari,” App., *infra*, 2a, the Court necessarily found a “reasonable probability” that it would again grant certiorari if the court of appeals did not adequately address the separation-of-powers problems. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). That is what occurred on remand. The panel’s reflexive approval of invasive discovery against a presidential advisory body “decided an important federal question in a way that conflicts with relevant decisions of this Court,” Sup. Ct. R. 10(c): specifically, *Cheney* and this Court’s prior order in this very case.

The court of appeals’ unexplained approval of discovery that invades the workings of a presidential advisory body also “so far depart[s] from the accepted and usual course of judicial proceedings * * * as to call for an exercise of this Court’s supervisory power.” Sup. Ct. R. 10(a). Without any indication that the court of appeals applied the “deference and restraint” that this Court said was necessary, App., *infra*, 1a, respondent would be permitted to seek wide-ranging internal information, not to mention to take a deposition of USDS’s head—likely embroiling USDS in discovery litigation and distracting it from its presidentially assigned duties. See *Cheney*, 542 U.S. at 382. Any ensuing privilege disputes could needlessly “push to the fore difficult questions of separation of powers and checks and balances.” *Id.* at 389.

Finally, although unpublished, allowing the decision below to stand and far-reaching discovery to proceed

would sow mischief in countless future cases seeking discovery against high-ranking officials. Courts have already been grappling with a surge of such improper attempts. See, *e.g.*, *Musk*, 2026 WL 626965, at *1; *Musk*, 2025 WL 926608, at *1. And the potential consequences for FOIA litigation against Executive Office entities are equally stark, as the decision below creates a blueprint for litigants to weaponize FOIA discovery against presidential advisory bodies in future administrations—even if FOIA will not, after all, apply.

This Court has previously granted certiorari in similar circumstances involving intrusive discovery orders that threaten the Executive Branch’s functioning. See *In re United States*, 583 U.S. 29, 30-31 (2017) (per curiam) (granting certiorari and vacating a denial of mandamus relief to halt discovery); *In re Department of Commerce*, 586 U.S. 1018 (2018) (granting certiorari to review an order requiring deposition of high-ranking executive-branch official). And a denial of a writ of mandamus is the typical posture in which this Court has occasion to review discovery orders that violate the separation of powers, as those constitutional harms cannot be remedied after the burden of discovery occurs. Indeed, in *Cheney* itself, this Court granted certiorari from a denial of a writ of mandamus when the D.C. Circuit permitted aggressive discovery against a presidential advisory body. *Cheney*, 542 U.S. at 378. The same course is warranted here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 2026

APPENDIX

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APPENDIX A

(ORDER LIST: 605 U.S.)

FRIDAY, JUNE 6, 2025

CERTIORARI—SUMMARY DISPOSITION

24-1246 U.S DOGE SERVICE, ET AL. V. CREW
(24A1122)

The application for a stay presented to The Chief Justice and by him referred to the Court is granted. Additionally, applicants suggested this Court treat the application as a petition for a writ of certiorari; doing so, the petition is granted. The United States Court of Appeals for the District of Columbia Circuit’s order denying a writ of mandamus is vacated, and the case is remanded to the Court of Appeals for further consideration in light of this order. Cf. *In re United States*, 583 U. S. 29 (2017) (*per curiam*).

The portions of the District Court’s April 15 discovery order that require the Government to disclose the content of intra-Executive Branch USDS recommendations and whether those recommendations were followed are not appropriately tailored. Any inquiry into whether an entity is an agency for the purposes of the Freedom of Information Act cannot turn on the entity’s ability to persuade. Furthermore, separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications. Cf. *Cheney v. United States Dist. Court for D. C.*, 542 U. S. 367, 385 (2004) (“[S]pecial considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and

safeguarding the confidentiality of its communications are implicated.”). On remand of the case, the Court of Appeals should take appropriate action to narrow the April 15 discovery order consistent with this order.

The April 15, 2025, and May 20, 2025, orders of the United States District Court for the District of Columbia, case No. 25-cv-511, are stayed pending remanded consideration at the Court of Appeals, and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Justice Sotomayor, Justice Kagan, and Justice Jackson would deny the application.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5130

September Term, 2024

1:25-cv-00511-CRC

IN RE: U.S. DOGE SERVICE, ET AL., PETITIONERS

Filed: July 14, 2025

ORDER

BEFORE: HENDERSON, WILKINS, and CHILDS,
Circuit Judges

Upon consideration of the Supreme Court's order and judgment granting the petition for certiorari, vacating this court's May 14, 2025, order, and remanding for further consideration; the petition for writ of mandamus, the opposition thereto, and the reply; the motion for stay, the opposition thereto, and the reply; and the motion for summary disposition, the opposition thereto, and the reply, it is

ORDERED that the mandamus petition be granted in part and denied in part. The petition is granted to the extent that the district court's April 15, 2025, order requires petitioners to serve responses and objections to Interrogatories Nos. 6 and 8 and Requests for Admission Nos. 2, 4, 6, 8, and 10. The district court is di-

rected to modify its April 15 order to exclude those interrogatories and requests. In all other respects, the petition is denied.

The Supreme Court determined that “[t]he portions of the District Court’s April 15 discovery order that require the Government to disclose the content of intra-Executive Branch USDS recommendations and whether those recommendations were followed are not appropriately tailored.” U.S. DOGE Serv. v. CREW, 145 S. Ct. 1981, 1982 (2025). The Court explained that “[a]ny inquiry into whether an entity is an agency for the purposes of the Freedom of Information Act cannot turn on the entity’s ability to persuade,” and that “separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications.” Id. The Court’s order directed this court to “take appropriate action to narrow the April 15 discovery order consistent with [the Court’s] order.” Id.

In moving for summary disposition, respondent has withdrawn the discovery requests that pertain to “recommendations” made by U.S. DOGE Service employees and others—specifically, Interrogatories Nos. 6 and 8 and Requests for Admission Nos. 2, 4, 6, 8, and 10. Excluding those interrogatories and requests will narrow the district court’s April 15 discovery order consistent with the Supreme Court’s order. Petitioners’ arguments in opposition to the summary disposition motion do not otherwise alter this court’s conclusions in previously denying mandamus relief. It is

FURTHER ORDERED that the administrative stay entered on April 18, 2025, be dissolved, and the motion for stay be dismissed as moot.

5a

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

6a

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5130

September Term, 2024

1:25-cv-00511-CRC

IN RE: U.S. DOGE SERVICE, ET AL., PETITIONERS

Filed: May 14, 2025

ORDER

Before: HENDERSON, WILKINS, and CHILDS, Circuit Judges

Upon consideration of the petition for a writ of mandamus, the opposition thereto, and the reply; and the motion for stay, the opposition thereto, and the reply, it is

ORDERED, on the court's own motion, that the administrative stay entered on April 18, 2025, be dissolved. For the reasons stated in the memorandum accompanying this order, it is

FURTHER ORDERED that the petition be denied. It is

FURTHER ORDERED that the stay motion be dismissed as moot.

7a

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

MEMORANDUM

The government petitions for a writ of mandamus to halt the district court's order for limited discovery into whether the United States DOGE Service (USDS) constitutes an "agency" within the meaning of the Freedom of Information Act (FOIA). The Citizens for Responsibility and Ethics in Washington (CREW) initiated the underlying litigation seeking disclosure of records reflecting USDS's organizational role, authorities, and operational reach. The government contends that the district court's order permitting narrow discovery impermissibly intrudes upon the President's constitutional prerogatives.

Mandamus is an extraordinary remedy, appropriate only when the petitioner can show that (1) it has no other adequate means to attain the relief it desires, (2) its right to the writ is clear and indisputable, and (3) issuance of the writ is appropriate under the circumstances. *See Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004) (citations omitted). In the FOIA context, whether an entity is an "agency" turns on a functional analysis: whether it "exercises substantial independent authority" or instead exists solely "to advise and assist the President." *CREW v. Office of Admin.*, 566 F.3d 219, 224 (D.C. Cir. 2009) (quoting *Armstrong v. Exec. Off. of the President*, 90 F.3d 553, 558 (D.C. Cir. 1996)); *Soucie v. David*, 448 F.2d 1067, 1073-75 (D.C. Cir. 1971). That inquiry, by its nature, depends on the practical realities of the entity's role, not merely on its formal placement or authority within the Executive Office of the President.

As an initial matter, the government forfeited its primary objection to the district court's order under *Cheney* by failing to raise that argument below. At no point during the summary judgment briefing, or in opposing CREW's discovery motion, did the government argue that the requested discovery posed a separation-of-powers issue or risked intruding into the core functions of the presidency. The government never discussed *Cheney* in its motion for summary judgment and, in its opposition to the discovery order, it merely cited *Cheney* for the proposition that courts should accord respect to the "office of the Chief Executive" and that any discovery "should be fashioned to be as unobtrusive as possible." Gov't Opp'n to Mot. for Discovery at 8 (D.D.C. Apr. 8, 2025), ECF No. 34. It did not request protective narrowing of discovery on constitutional grounds. Its opposition to discovery rested instead on assertions of burden and relevance.

On the merits, the government has also not shown that it has no other adequate means of relief. The government rests most of its argument on *Cheney*'s holding that line-by-line assertions of executive privilege were not an adequate alternative means of relief in that case. But *Cheney* is distinguishable in numerous respects. Even in the circumstances of *Cheney*, the Supreme Court declined to issue a writ because it was "not a case where, after having considered the issues, [this court] abused its discretion by failing to" do so. 542 U.S. at 391. More importantly, unlike in *Cheney*, where the Vice President himself was subject to a wide-ranging third-party subpoena and the asserted intrusion implicated the mental processes of the President's advisers, *see id.* at 381-82, the discovery here is modest in scope and does not target the President or any close adviser

personally. The government retains every conventional tool to raise privilege objections on the limited question-by-question basis foreseen here on a narrow and discrete ground. Although the government protests that any such assertion of privilege would be burdensome, the only identified burdens are limited both by time and reach, covering as they do records within USDS's control generated since January 20. It does not provide any specific details as to why accessing its own records or submitting to two depositions would pose an unbearable burden. That is a far cry from the sweeping discovery at issue in *Cheney*. See *id.* at 387 (describing the discovery requests as asking “for everything under the sky”). Moreover, unlike *Cheney*, the information sought here does not provide CREW “all the disclosure to which [it] would be entitled” if it prevails on the merits. *Id.* at 388.

Nor has the government asserted a clear and indisputable right. Petitioner can carry that burden if the challenged order constitutes a “clear abuse of discretion.” *Id.* at 380 (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953)). Petitioner must “point to ‘cases in which a federal court has held that’ relief is warranted ‘in a matter involving like issues and comparable circumstances.’” *In re Al Baluchi*, 952 F.3d 363, 369 (D.C. Cir. 2020) (quoting *Doe v. Exxon Mobil Corp.*, 473 F.3d 345, 355 (D.C. Cir. 2007)). “Accordingly, we will deny mandamus even if a petitioner’s argument, though ‘pack[ing] substantial force,’ is not clearly mandated by statutory authority or case law.” *Id.* (quoting *In re Khadr*, 823 F.3d 92, 99-100 (D.C. Cir. 2016)). Open legal questions do not present a clear and indisputable right to mandamus relief. See *In re Al-Nashiri*, 791 F.3d 71, 85-86 (D.C. Cir. 2015). We have

previously endorsed limited discovery to determine agency status under FOIA. *See Armstrong*, 90 F.3d at 560-61; *CREW*, 566 F.3d at 224-26. And that limited discovery can be used to follow up on factual questions put at issue by the government's declarations. *See In re Cheney*, 544 F.3d 311, 312 (D.C. Cir. 2008) (under the Presidential Records Act). Even the government concedes, as it must, that such discovery is sometimes appropriate. Pet. 22-23.

In light of the government's failure to make a persuasive showing on either of the first two elements of the analysis, there is also no reason, in considering the totality of the circumstances, to issue the writ. *See Cheney*, 542 U.S. at 381.

Accordingly, the petition for a writ of mandamus is denied.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5130

September Term, 2024

1:25-cv-00511-CRC

IN RE: U.S. DOGE SERVICE, ET AL., PETITIONERS

Filed: Apr. 18, 2025

ORDER

Before: PILLARD, KATSAS, and RAO, Circuit Judges

Upon consideration of the petition for writ of mandamus and the emergency motion for a stay, which includes a request for an immediate administrative stay, it is

ORDERED that the district court's April 15, 2025, order granting in part the motion for expedited discovery be administratively stayed pending further order of the court. The purpose of this administrative stay is to allow the court time to receive full briefing on the mandamus petition and to render a decision on the petition and stay motion. The administrative stay should not be construed in any way as a ruling on the merits of that petition or motion. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2024). It is

FURTHER ORDERED that any response to the emergency motion be filed by April 25, 2025. Any reply is due April 30, 2025. It is

FURTHER ORDERED, on the court's own motion, that Citizens for Responsibility and Ethics in Washington enter an appearance and file a response to the mandamus petition, not to exceed 7,800 words, by April 25, 2025. See Fed. R. App. P. 21(d); D.C. Cir. R. 21(a). Petitioners may file a reply, not to exceed 3,900 words, by April 30, 2025.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 25-cv-511 (CRC)

CITIZENS FOR RESPONSIBILITY AND ETHICS IN
WASHINGTON, PLAINTIFF

v.

U.S. DOGE SERVICE, ET AL., DEFENDANTS

Filed: Apr. 15, 2025

OPINION AND ORDER

This case concerns three Freedom of Information Act (“FOIA”) requests lodged by Citizens for Responsibility and Ethics in Washington (“CREW”) seeking information about the recently formed United States DOGE Service (“USDS”). CREW filed two requests with the Office of Management and Budget (“OMB”) and the third with USDS itself. While OMB has agreed to take up CREW’s requests on an expedited basis, USDS initially declined to process CREW’s request at all on the ground that it is not an agency subject to FOIA. The Court disagreed, holding that USDS is likely an agency subject to FOIA and entering a preliminary injunction requiring expedited processing of CREW’s request.

USDS then moved for summary judgment, reiterating its position that USDS is not an agency subject to FOIA. In response, CREW filed a motion for expedited discovery under Federal Rule of Civil Procedure 56(d), seeking information relevant to whether USDS wields substantial authority independent of the President and is therefore subject to FOIA. USDS opposed CREW's motion, contending that CREW is not entitled to discovery at all and that, even if some limited discovery is appropriate, CREW's requests stretch too broadly.

For the reasons that follow, the Court holds that CREW is entitled to limited discovery. The Court will, however, limit CREW's requests to some extent.

I. Background

The Court incorporates the factual and procedural background from its memorandum opinion partially granting CREW's motion for a preliminary injunction and its opinion and order denying USDS's motion for reconsideration of the preliminary injunction ruling. See Citizens for Resp. & Ethics in Washington v. U.S. DOGE Serv. ("CREW I"), No. 25-cv-511 (CRC), 2025 WL 752367, at *1-6 (D.D.C. Mar. 10, 2025); Citizens for Resp. & Ethics in Washington v. U.S. DOGE Serv. ("CREW II"), No. 25-CV-511 (CRC), 2025 WL 863947, at *1-2 (D.D.C. Mar. 19, 2025).

To briefly summarize: USDS, a unit within the Executive Office of the President, has reportedly spearheaded efforts to terminate federal workers, programs, and contracts across the federal government since President Trump took office in January 2025. Seeking to learn more about USDS, CREW filed two FOIA re-

quests with OMB and one with USDS itself. After CREW sought emergency relief, the Court entered a preliminary injunction ordering expedited processing of the USDS Request, though it declined to order processing of any of the requests by a date certain. CREW I, 2025 WL 752367, at *10-16.

The government then filed a motion for partial reconsideration asking the Court to reconsider the portions of its opinion directing USDS to process the USDS request, provide an estimate of responsive documents, and propose a schedule for expedited processing. CREW II, 2025 WL 863947, at *2. As the basis for its motion, the government argued that the Court had erred by concluding that USDS is likely an agency subject to FOIA. Id. at *3. The Court denied the government's motion, but noted that it was "free to file its summary judgment motion imminently, as it has indicated it will do." Id. at *2. Once that motion was filed, the Court indicated that it would "entertain a motion from CREW under Rule 56(d) to conduct limited discovery to develop facts relevant to USDS's status as an agency under FOIA." Id.

USDS filed its summary judgment motion, and CREW subsequently moved for limited expedited discovery under Rule 56(d). For the reasons that follow, the Court will grant CREW's motion in part.

II. Legal Standards

To determine whether expedited discovery is appropriate, the Court considers the "reasonableness of the request in light of all of the surrounding circumstances." Guttenberg v. Emery, 26 F. Supp. 3d 88, 98 (D.D.C. 2014) (citation omitted). These include: "(1) whether

a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.” Id.

III. Analysis

A. CREW is Entitled to Limited Discovery

USDS seeks summary judgment on the ground that USDS is not an agency subject to FOIA. As the Court explained in its prior opinions, to conclude that “an EOP unit is subject to FOIA,” there must be “a finding that the entity in question ‘wielded substantial authority independently of the President.’” Citizens for Resp. & Ethics in Wash. v. Off. of Admin. (“OA”), 566 F.3d 219, 222 (D.C. Cir. 2009) (citation omitted). That analysis turns on whether an entity within EOP “could exercise substantial independent authority” and whether it “does in fact exercise such authority.” Armstrong v. Exec. Off. of the President, 90 F.3d 553, 560 (D.C. Cir. 1996). If instead the unit’s “sole function is to advise and assist the President,” it is not an agency. Alexander v. FBI, 456 F. App’x 1, 1-2 (D.C. Cir. 2011) (quoting Kissinger v. Reps. Comm., 445 U.S. 136, 156 (1980)). CREW, in response, seeks expedited discovery on USDS’s influence and operations for purposes of determining whether it is exercising the requisite authority subjecting it to FOIA. Mot. for Expedited Discovery at 1.

As the government acknowledges, courts in this district have permitted limited discovery in just these circumstances—to ascertain whether an entity is wielding independent authority sufficient to bring it within

FOIA's ambit. For instance, when considering whether FOIA applies to the Office of Administration within EOP, the district court "allowed CREW to conduct limited jurisdictional discovery to explore 'the authority delegated to [OA] in its charter documents and any functions that OA in fact carries out.'" OA, 566 F.3d at 221 (citation omitted). Similarly, when the government argued that the Office of Homeland Security ("OHS") was not an agency subject to FOIA, the court ordered limited discovery, reasoning that the plaintiff's request was "necessary and relevant" in the absence of "evidence that is definitive on the issue of OHS's agency status." EPIC v. Off. of Homeland Sec., No. 02-cv-00620-CKK, ECF No. 11, at 10, 12 (D.D.C. Dec. 26, 2002); see also Armstrong, 90 F.3d at 560 (considering National Security Council staff declaration to determine its agency status); Meyer v. Bush, No. 88-cv-3112-JHG, 1991 WL 212215, at *6 (D.D.C. Sept. 30, 1991), rev'd on other grounds, 981 F.2d 1288 (D.C. Cir. 1993) (relying on letters, memoranda, and the Vice President's public statements in considering FOIA's applicability to Presidential Task Force on Regulatory Relief).

Just recently, Judge Bates partially granted the plaintiffs' motion for expedited discovery seeking "facts that bear on [the] irreparable harm" imposed by USDS employees' access to individual information protected by the Privacy Act of 1974. AFL-CIO, No. 25-cv-339-JDB, ECF No. 48, at 8 (D.D.C. Feb. 27, 2025). The court reasoned that "the structure of USDS and the scope of its authority" were "unclear on the current record" and "critical to deciding the question of whether USDS is an agency within the meaning of the Economy Act of 1933—and thus whether its employees are permitted by the Privacy Act to view individual infor-

mation.” Id. Accordingly, limited discovery was appropriate. Id.

So too here. The structure of USDS and the scope of its authority are critical to determining whether the agency is “wield[ing] substantial authority independently of the President.” QA, 566 F.3d at 222. And the answers to those questions are unclear from the record. Resisting this conclusion, the government principally argues that the language of the President’s executive orders indicate that USDS’s function is merely advisory. Opp’n at 4-5. But these executive orders cannot bear the weight the government assigns to them for two reasons.

First, the language of the President’s USDS-related executive orders, far from resolving the question against CREW, in fact suggests that USDS is exercising substantial independent authority. As the Court already noted, the executive order establishing USDS “to implement the President’s DOGE Agenda” appears to give USDS the authority to carry out that agenda, “not just to advise the President in doing so.” CREW I, 2025 WL 752367, at *11. President Trump’s subsequent executive order also “grants the USDS Team Lead the power to keep vacant career positions open unless an agency overrides their decision.” Id. USDS responds that the language highlighted by the Court refers “to the entire DOGE structure (including DOGE Teams at federal agencies).” Id. Perhaps. But contrary to the government’s position, nothing in the record conclusively establishes that USDS representatives embedded within agencies act independently of USDS. In fact, the relevant executive orders suggest the opposite. For instance, agencies are required to “coordinate [the

DOGE Teams’] work with USDS.” See Exec. Order No. 14158, Establishing and Implementing the President’s “Department of Government Efficiency,” 90 Fed. Reg. 8441 (Jan. 29, 2025). And as another court in this district recently observed, “DOGE Team members are also selected in part by USDS, and USDS helps form the contours of their duties.” AFL-CIO, No. 25-cv-339, ECF No. 75, at 3 n.4.

Accordingly, even if other parts of the executive orders could be read to suggest a more advisory role, the implication left by USDS’s charter documents is unclear at best. And that weighs in favor of permitting limited discovery, not against it. See EPIC, No. 02-cv-620-CKK, ECF No. 11, at 12 (ordering discovery because “the language” of the executive order “establishing the [OHS’s] power [was] broad and lacking in firm parameters”).

Second, USDS’s focus on its charter documents ignores evidence in the public record that USDS is exercising substantial authority across vast areas of the federal government. In its prior opinion, the Court referenced news articles reporting that USDS “likely drove the charge to shutter USAID,” “eliminated 104 DEI-related contracts with the federal government,” and otherwise exercised authority to “identify and terminate federal employees, federal programs, and federal contracts.” CREW I, 2025 WL 752367, at *11. The Court emphasized, as well, that these articles characterized USDS as “reportedly [] leading the charge on these actions, not merely advising others to carry them.” Id. And the Court cited other cases finding that USDS “has taken numerous actions without any apparent advanced approval by agency leadership.” Op. Denying Mot. for

Recons., ECF No. 23, at 11 (citing Does 1-26 v. Musk, No. 25-cv-462, 2025 WL 840574, at *3 (D. Md. Mar. 18, 2025)). Because the public record contradicts USDS's already disputable interpretation of the relevant executive orders, discovery is particularly appropriate here.

The other factors that the Court considers when assessing whether to order expedited discovery point in the same direction. CREW is not currently seeking a preliminary injunction, but it has already obtained emergency relief. That relief will not be fully effectuated until the Court rules on USDS's expedited summary judgment motion, however, since the Court has indicated that it will not order USDS to produce documents until after that ruling. See Guttenberg, 26 F. Supp. 3d at 98. And, especially given modifications to CREW's requests which the Court will next discuss, the burden on the defendants to comply with the requests will not be onerous. Id.¹

B. Specific Requests at Issue

Next, the Court considers whether CREW's discovery request are properly scoped. USDS raises several objections to CREW's requests. The Court will take each in turn.

1. *Depositions*

CREW seeks to depose three witnesses: a USDS representative designated under Federal Rule of Civil Procedure 30(b)(6), USDS Administrator Amy Gleason,

¹ As noted in the Court's prior opinion, "USDS also provides no reason why the existing FOIA office at OMB, or those elsewhere within the Executive Office of the President, could not assist with processing the narrow USDS Request." CREW II, 2025 WL 863947, at *8.

and Steven Davis, who has been reported as leading USDS's daily operations. Mot. for Expedited Discovery at 17, *id.*, Maier Decl. ¶ 30. USDS responds by asking the Court to limit any discovery to written discovery only, or, at most, permit a single Rule 30(b)(6) deposition. Opp'n at 8, 10 (“[I]f the Court concludes that depositions are needed, Defendants do not object to the Court’s approval of a single 30(b)(6) deposition.”).

“Rule 30(b)(6) requires an organization to identify a person knowledgeable on a noticed topic and to prepare that person to testify as to that topic, thus binding the entity.” Prasad v. George Washington Univ., 325 F.R.D. 1, 6 (D.D.C. 2018). If USDS desires, of course, it may select USDS Administrator Amy Gleason as its Rule 30(b)(6) representative. If USDS does not select Administrator Gleason as its Rule 30(b)(6) representative, however, a deposition of Ms. Gleason is additionally appropriate. USDS first submitted a declaration from Ms. Gleason in support of its motion for reconsideration, which detailed her knowledge of USDS’s structure and operations. Mot. for Recons., Gleason Decl. Moreover, USDS’s motion for summary judgment largely relies on a second declaration from Ms. Gleason on the same topic. Mot. for Summ. J., Attachment 2 (Gleason Decl.). Given that Ms. Gleason’s declaration is the only factual evidence offered in support of USDS’s summary judgment motion, CREW is naturally entitled to question her. That determination is consistent with the Court’s prior observation that parts of Gleason’s declaration appear to be “called into question by contradictory evidence in the record.” Op. Denying Mot. for Recons. at 10 (citing Jud. Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 215 (D.C. Cir. 2013)). See AFL-CIO, No. 25-cv-339, ECF No. 48, at 9 (“It would be strange to permit defend-

ants to submit evidence that addresses critical factual issues . . . without permitting plaintiffs to explore those factual issues through very limited discovery”).

On the other hand, the Court will not at this juncture order the deposition of Steven Davis. CREW describes Mr. Davis as “a DOGE employee who has been widely reported to be the day-to-day manager of DOGE’s operations and a close associate of Mr. Musk.” Maier Decl. ¶ 30. But Mr. Davis has not submitted a declaration in support of the government’s motion for summary judgment, and CREW provides no reason why Mr. Davis is uniquely positioned to answer questions that USDS’s Rule 30(b)(6) representative or Ms. Gleason could not.

2. *Record-Keeping Policies*

The government next identifies several topics which “either are irrelevant to resolving USDS’s summary judgment motion or, to the extent they are marginally relevant, would be unduly burdensome.” Opp’n at 12. As to some of these, the Court agrees with USDS.

USDS first objects to CREW’s request for information about the agency’s record-keeping practices. Specifically, USDS objects to CREW’s proposal to depose a 30(b)(6) deponent on “DOGE’s recordkeeping and retention policies and practices,” Document Request 14 seeking “[a]ll documents describing DOGE’s record retention and preservation policies, including those relating to the @DOGE X account,” and Interrogatory 11, which asks USDS to “[i]dentify whether any DOGE employee or DOGE Team member has used or presently uses non-official messaging systems or applications with auto-delete functionality, including but not limited to Signal, to conduct government business.” *Id.* at 13.

These requests may be grounded in legitimate concerns about USDS's compliance with federal record-keeping requirements. But they are largely irrelevant to the issue at hand. That is, they do not bear on the question presented by USDS's motion for summary judgment, which is whether the agency is wielding substantial independent authority subjecting it to FOIA.

CREW responds that “[q]uestioning on these topics is also necessary to ascertain whether documents that would otherwise have been produced in the course of discovery have been lost or are unretrievable because of DOGE's lack of document preservation measures.” Reply at 12. The Court disagrees. While the Court certainly expects USDS to comply with its preservation order—which USDS has indicated it will do—discovery on that issue is tangential to the pending summary judgment motion.

3. Materials from Agency USDS Teams

Next, the government objects to all requests that “require USDS to collect and provide information about Agency DOGE Teams.” Opp'n at 16. The government argues that such information is irrelevant because “[a]gency DOGE Teams are employees of the agencies to which they are assigned” and are subject to FOIA. Id. at 16. Here, the government misses the mark. Whether or not agency USDS detailees are otherwise subject to FOIA, their actions, and particularly the extent to which USDS is directing them, is relevant to assessing USDS's authority. If Agency DOGE teams are complying with orders from USDS leadership, that speaks to USDS's influence over other federal agencies.

The government asserts that it “does not have visibility into everything DOGE Team members do at their respective agencies, how they are supervised, what reports they submit within their agencies, how they record their time, and any directives they give within their agencies.” Opp’n at 17. CREW, however, has clarified that its document requests only seek documents “within [USDS]’s custody, control, or possession.” Reply at 14. The same limitation would apply to a Rule 30(b)(6) deposition: the deponent need testify only to matters within USDS’s collective knowledge.

4. USDS Recommendations

Next, USDS objects to CREW’s Interrogatories 6 and 8. Interrogatory 6 would ask USDS to “[i]dentify each federal agency contract, grant, lease, or similar instrument that any DOGE employee or DOGE Team member recommended that federal agencies cancel or rescind since January 20, 2025, and whether that recommendation was followed.” Interrogatories, ECF No. 27-1, at 8. Similarly, Interrogatory 8 asks USDS to “[i]dentify each federal agency employee or position that any DOGE employee or DOGE Team member recommended federal agencies terminate or place on administrative leave since January 20, 2025 and whether that recommendation was followed.” *Id.*

USDS objects first that these requests “definitionally could not result in information that would aid CREW in its efforts to show that USDS wields substantial authority independent of the President” because recommendations need not always be followed. Opp’n at 18. True, if the recipient of those recommendations viewed them as purely advisory. But that is just the question. The line between a recommendation and di-

rective is a blurry one, and CREW is attempting to determine whether USDS’s “purported ‘recommendations’ are always followed (or almost always followed).” Reply at 15. That question is relevant to the authority USDS exercises over federal agencies. USDS also objects that requests related to its recommendations “seek information that is likely privileged.” Opp’n at 18. But even if true, USDS may assert privilege in its discovery responses “as CREW’s proposed discovery requests explicitly instruct.” *Id.* at 15.

5. *Other Objections*

The government also objects to Interrogatory 3, which asks USDS to “[i]dentify each Administrator since January 20, 2025, the dates during which each person held that position, whether they interviewed for that position, with whom they interviewed, and who first informed them that they had been appointed to that position.” Interrogatories at 7. USDS complains that this interrogatory “has no bearing on whether USDS is a FOIA/FRA agency.” Opp’n at 19. The Court agrees. CREW has not shown how the specifics of who served as USDS Administrator or interviewed for the position bears on USDS’s authority.

The government also objects to Interrogatory 9, which asks USDS to “[i]dentify each federal agency database or data management system to which, since January 20, 2025, any DOGE employee has attempted to gain, has planned to gain, or plans to gain access, and whether access was obtained.” Interrogatories at 8. In response, CREW proposes narrowing the scope of this interrogatory to systems that store classified or sensitive information. Reply at 17. As narrowed, the Court concludes that CREW’s discovery request is ap-

appropriate. USDS’s employee access to sensitive systems is an indicator of its authority, especially if such access was obtained over the objection of agency officials, as has been reported. CREW I, 2025 WL 752367, at *12. Nor should this request present a burden for USDS, since it has been ordered to disclose similar information in the aforementioned case before Judge Bates.

USDS also complains that it does not “collect information at a more granular level about the specific agency systems to which particular detailees/dual employees have access.” Opp’n at 20. But as already noted, to the extent USDS does not have this information in its custody, control, or possession—or within its collective knowledge for purposes of the Rule 30(b)(6) deposition—it need not conduct further investigation within other agencies. See Reply at 14.

USDS next objects to Document Request 2, which seeks “visitor access requests” concerning “any DOGE employee detailed to, otherwise working at, or accessing the offices of, federal agencies.” Interrogatories at 8, 12. The Court agrees that this is request seeks irrelevant information. It is not disputed that USDS employees have access to the offices of federal agencies. The question is whether USDS employees are using that access to influence those agencies, which is targeted by CREW’s other requests.

Lastly, USDS notes that Interrogatory 12 and Document Request 13 “address communications through the @DOGE X account” which is “not owned by USDS.” Opp’n at 20. Although the Court is somewhat baffled by this, USDS has nonetheless agreed to “make a reasonable effort to provide information responsive to this

Interrogatory and Request to the extent that such information is within its possession, custody, and control.” Id. The Court therefore need not linger over this request.

IV. Conclusion

For the reasons explained above, it is hereby

ORDERED that [27] plaintiffs’ motion for expedited discovery is **GRANTED** in part, subject to the alterations the Court has explained in this Order; and it is further

ORDERED that Defendants:

Serve responses and objections to Plaintiff’s Discovery Requests within 7 days of the date of this order;

Produce all responsive documents within 14 days of the date of this order; and it is further

ORDERED that all depositions be completed within 10 days from the deadline for producing documents.

CHRISTOPHER R. COOPER
United States District Judge

Date: April 15, 2025

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5130

September Term, 2024

1:25-cv-00511-CRC

IN RE: U.S. DOGE SERVICE, ET AL., PETITIONERS

Filed: Dec. 18, 2025

ORDER

BEFORE: SRINIVASAN, Chief Judge, and HENDERSON, MILLETT, PILLARD, WILKINS, KATSAS, RAO, WALKER, CHILDS, PAN, and GARCIA, Circuit Judges

Upon consideration of the petition for rehearing en banc and the response thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

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APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5130

September Term, 2024

1:25-cv-00511-CRC

IN RE: U.S. DOGE SERVICE, ET AL., PETITIONERS

Filed: Dec. 18, 2025

ORDER

BEFORE: HENDERSON, WILKINS, and CHILDS,
Circuit Judges

Upon consideration of the petition for rehearing and
the response thereto, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil Action No. 1:25-cv-511

CITIZENS FOR RESPONSIBILITY AND ETHICS IN
WASHINGTON, PLAINTIFF

v.

U.S. DOGE SERVICE, ET AL., DEFENDANTS

Filed: June 30, 2025

**PLAINTIFF'S [PROPOSED] FIRST DISCOVERY
REQUESTS**

Pursuant to Federal Rule of Civil Procedure 26, 33, 34, and 36, and Local Civil Rule 26.2, Defendants U.S. DOGE Service and the Administrator of the U.S. DOGE Service are requested to answer and respond to the following interrogatories, requests for admission, and requests for production (collectively, the “Discovery Requests”) propounded by undersigned counsel for Plaintiff Citizens of Responsibility and Ethics in Washington (“CREW”) separately and fully, in writing, under oath, to the best of your ability from knowledge you are able to obtain from any and all sources available to you, your agents, or your attorneys, and respond to these discovery requests as follows:

- Serve written responses and any objections to these Discovery Requests within 7 days of the Court's order granting discovery;
- Produce all responsive documents to Plaintiffs' request for production within 14 days of the Court's order granting discovery; and
- Complete all depositions within 10 days from the deadline for producing documents.

INSTRUCTIONS

1. These instructions and definitions apply to each of the Discovery Requests and should be construed to require answers based upon the knowledge of, and information available to, the responding party as well as its agents, representatives, and, unless privileged, attorneys.
2. It is intended that the following Discovery Requests will not solicit any information protected either by the attorney/client privilege or work product doctrine which was created or developed by counsel for the responding party after the date on which this litigation was commenced.
3. These Discovery Requests are continuing in character, so as to require that supplemental answers be filed if further or different information is obtained with respect to any request, and documents and tangible things sought by these requests that you obtain or discover after you serve your answers must be produced to counsel for Plaintiff by supplementary answers or productions.
4. No part of a Discovery Request should be left unanswered merely because an objection is interposed to

another part of the request. If a partial or incomplete answer is provided, the responding party shall state that the answer is partial or incomplete.

5. With respect to document requests, requests extend to all documents in your possession, custody or control, or of anyone acting on your behalf. A document is in your possession, custody or control if it is in your physical custody or if it is in the physical custody of any other person and you:
 - a. own such document in whole or in part;
 - b. have a right, by contract, statute or otherwise, to use, inspect, examine, or copy such document on any terms;
 - c. have an understanding, express or implied, that you may use, inspect, examine or copy such document on any terms; or
 - d. have, as a practical matter, been able to use, inspect, examine, or copy such document when you sought to do so.
6. The documents produced in response to these requests shall be (i) organized and designated to correspond to the categories in these requests, or (ii) produced as they are maintained in the normal course of business.
7. If a document called for by these requests has been destroyed, lost, discarded, or otherwise disposed of, identify such document as completely as possible including, without limitation, the following information: author(s), recipient(s), sender(s), subject matter, date prepared or received, date of disposal, manner of disposal, reason for disposal, person(s)

authorizing the disposal, person(s) having knowledge of the disposal and person(s) disposing of the document.

8. In the event that more than one copy of a document exists, produce every copy on which there appears any notation or marking of any sort not appearing on any other copy, or any copy containing attachments different from any other copy.
9. Produce all documents in their entirety, without abbreviation or redaction, including both front and back thereof and all attachments or other matters affixed thereto.
10. Pursuant to Rule 33(b)(2)(B), Rule 34(b)(2)(B), and Rule 36(a)(5), if you object to a request, the grounds for each objection must be stated with specificity. Also pursuant to Rule 33 and Rule 34, if you intended to produce copies of documents or of ESI instead of permitting inspection, you must so state.
11. Pursuant to Rule 33(b)(2)(B), Rule 34(b)(2)(C), and Rule 36(a)(5) an objection must state whether any responsive information or materials are being withheld on the basis of that objection.
12. Whenever in these requests you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying:
 - a. If you are withholding the document under claim of privilege (including, but not limited to, the work product doctrine), please provide the information set forth in Fed. R. Civ. P. 26(b)(5). For electronically stored information, a privilege log (in searchable and sortable form, such

as a spreadsheet, matrix, or table) generated by litigation review software, containing meta-data fields that generally correspond to the above paragraph is permissible, provided that it also discloses whether transmitting, attached or subsidiary (“parent-child”) documents exist and whether those documents have been produced or withheld.

- b. If you are withholding the document for any reason other than an objection that it is beyond the scope of discovery, identify as to each document and, in addition to the information requested in paragraph 4.A, above, please state the reason for withholding the document. If you are withholding production on the basis that ESI is not reasonably accessible because of undue burden or cost.
13. When a document contains both privileged and non-privileged material, the nonprivileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.
 14. In accordance with Fed. R. Civ. P. 26(b)(5), where a claim of privilege is asserted in objecting to any in-

interrogatory or request for admission or part thereof, and information is not provided on the basis of such assertion:

- a. In asserting the privilege, the responding party shall, in the objection to the interrogatory or request for admission, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed.
- b. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:
 - i. For oral communications:
 1. the name of the person making the communication and the names of persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication;
 2. the date and place of the communication; and
 3. the general subject matter of the communication.
 - ii. For documents:
 1. the type of document,
 2. the general subject matter of the document,

3. the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document and, where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.
15. If, in answering these Discovery Requests, the responding party encounters any ambiguities when construing a question, instruction, or definition, the responding party's answer shall set forth the matter deemed ambiguous and the construction used in answering.
 16. Nothing in these Discovery Requests should be construed to apply to the President of the United States or direct communications with the President.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Discovery Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

1. *DOGE*: The term "DOGE" refers collectively to (1) Defendant United States DOGE Service, established by Executive Order 14158, "Establishing and Implementing the President's 'Department of Government Efficiency,'" on January 20, 2025; (3) the U.S. DOGE Service Temporary Organization ("DOGE Temporary Organization") described in

Executive Order 14158; and (3) any agent, unit, or component of the foregoing.

2. *Administrator*: The term “Administrator” means any person appointed to be the Administrator of the United States DOGE Service as established in Executive Order 14158, including any person appointed to that position on a temporary, interim, or acting basis.
3. *Federal agency*: The term “federal agency” refers to any entity of the United States government, whether executive, legislative, or judicial.
4. *Communication*: The term “communication” means the transmittal of information by any means.
5. *Document*: The terms “document” and “documents” are synonymous in meaning and equal in scope to the term “items” in Fed. R. Civ. P. 34(a)(1) and include, but are not limited to, electronically stored information. The terms “writings,” “recordings,” and “photographs” are defined to be synonymous in meaning and equal in scope to the usage of those terms in Fed. R. Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term “document.” *However*, for purposes of these requests only, while the term “document” includes electronically stored information, it does not, unless the specific request indicates otherwise, include emails, text messages, or any similar electronically exchanged communication, except that documents should not be excluded from your response merely because they may be otherwise attached to such communications.

6. *DOGE Team*: The term “DOGE Team” is synonymous in meaning and equal in scope to the term “DOGE Team” in Executive Order 14158.
7. *Employee*: The term “employee” means any person who is authorized to perform or actually performs work on behalf of any entity or agency-including, for the avoidance of doubt, DOGE-regardless of their formal employment classification, whether they are a detailee from another agency, or are providing services on a volunteer basis. The term includes any employee who is detailed or employed elsewhere, so long as that employee continues in any role in the agency in which they are an employee. The term also includes the actual or de facto leader of an entity or agency (e.g., the DOGE Administrator is an “employee” of DOGE).
8. *Federal record*: The term “federal record” is synonymous in meaning and equal in scope to the term “record” in 44 U.S.C. § 3301.
9. *Identify (with respect to persons)*: When referring to a person, to “identify” means to state the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment. If telephone numbers are known to the answering party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

10. *Identify (with respect to documents)*: When referring to documents, to “identify” means to state the: (i) type of document; (ii) general subject matter; (iii) date of the document; and, (iv) author(s), addressee(s), and recipient(s) or, alternatively, to produce the document.
11. *Location*: The term “location” means, for electronic documents and communications, the device, server, or medium on which those documents and communications are stored or maintained, as well as where any such device, server, or medium can be found. For documents in non-electronic form, the term “location” means where and in whose possession the documents can be found.
12. *Person*: The term “person” means any natural person or any business, legal or governmental entity or association, or their agents. Requests seeking the identification of a “person” seek the person’s name.
13. *Relating to*: The term “relating to” means concerning, referring to, describing, evidencing, or constituting.
14. *You/Your*: The terms “You” or “Your” include the person(s) to whom these requests are addressed, and all of that person’s agents, representatives, and attorneys.
15. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all;” “any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompass both “and” and “or.” Words in the mas-

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culine, feminine, or neuter form include each of the other genders.

16. If the requested documents are maintained in a file, the file folder is included in the request for production of those documents.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANTS U.S. DOGE SERVICE AND
ADMINISTRATOR OF THE U.S. DOGE SERVICE**

INTERROGATORY NO. 1: Identify all current and former employees of DOGE and members of DOGE Teams and, for each such person, the dates of their employment, their positions, whether they are paid, to whom they directly report, whether they are employed by DOGE, the DOGE Temporary Organization, or a federal agency, under whose authority they were hired or their volunteer services accepted, and whether they have independent access to DOGE office space in the Eisenhower Executive Office Building.

RESPONSE:

INTERROGATORY NO. 2: Identify any current or former employees of DOGE who have been detailed to other federal agencies or have simultaneously been employees of DOGE and a federal agency, and, for each such employee, the agencies to which they have been detailed or by which they have simultaneously been employed, their positions and duties at those agencies, and any duties they have retained at DOGE during their detail or simultaneous employment.

RESPONSE:

INTERROGATORY NO. 3:

[STRUCK BY DISTRICT COURT]

INTERROGATORY NO. 4: Identify all persons who oversee, supervise, or exercise authority over the conduct of DOGE employees, DOGE Teams, or any affiliates thereof, and how they do so, including any dedicated staff or systems to facilitate such oversight, any

recurring reports that DOGE employees and DOGE Team members are required to submit, and any DOGE employees who are exempt from those systems or reports. As part of this response, identify all persons who have the authority to hire, terminate, or detail DOGE employees, or who have actually taken such actions, since January 20, 2025.

RESPONSE:

INTERROGATORY NO. 5: Identify each federal agency contract, grant, lease, or similar instrument that any DOGE employee or DOGE Team member directed federal agencies to cancel or rescind since January 20, 2025.

RESPONSE:

INTERROGATORY NO. 6:

[WITHDRAWN]

INTERROGATORY NO. 7: Identify each federal agency employee or position that any DOGE employee or DOGE Team member directed federal agencies to terminate or place on administrative leave since January 20, 2025.

RESPONSE:

INTERROGATORY NO. 8:

[WITHDRAWN]

INTERROGATORY NO. 9: Identify any of the following systems which, since January 20, 2025, any DOGE employee has attempted to gain, has planned to gain, or plans to gain access, and whether access was obtained: any system that stores classified information, requires a security clearance prior to access, or is housed in a sensitive compartmented information facility, 2) any sys-

tem used to store non-public and non-anonymized information regarding individuals, including but not limited to any person's social security number, contact information, financial information, health information, employment or employment applications, criminal histories, immigration or citizenship status, tax information, or security clearances, 3) any system utilized to store information regarding criminal investigations, and 4) any system utilized to control or facilitate spending, including payment systems or human resources/capital management at any federal agency.

RESPONSE:

INTERROGATORY NO. 10: Describe all instances in which any DOGE employee told an employee of a federal agency that the DOGE employee would or could call law enforcement in response to the other employee's conduct, including who made such statement, the federal agency and conduct of the federal agency employee at issue, the law enforcement entity referenced, and, if the law enforcement was called, who made the call and law enforcement's response.

RESPONSE:

INTERROGATORY NO. 11:

[STRUCK BY DISTRICT COURT]

INTERROGATORY NO. 12: Identify all persons who are or who have posted or authored posts to the @DOGE X account since January 20, 2025.

RESPONSE:

INTERROGATORY NO. 13: For each Request for Admission served concurrently with these interrogatories, explain the basis for Defendants' response, including

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the basis of any partial or full denial, for any request not fully admitted.

RESPONSE:

**PLAINTIFF'S FIRST REQUESTS FOR ADMISSION
TO DEFENDANTS U.S. DOGE SERVICE AND
ADMINISTRATOR OF THE U.S. DOGE SERVICE**

REQUEST FOR ADMISSION NO. 1: Admit that since January 20, 2025, DOGE employees have directed federal agencies to cancel contracts, grants, or leases.

Admit: _____ Deny: _____

REQUEST FOR ADMISSION NO. 2:

[WITHDRAWN]

REQUEST FOR ADMISSION NO. 3: Admit that since January 20, 2025, DOGE Team members have directed federal agencies to cancel contracts, grants, or leases.

Admit: _____ Deny: _____

REQUEST FOR ADMISSION NO. 4:

[WITHDRAWN]

REQUEST FOR ADMISSION NO. 5: Admit that since January 20, 2025, DOGE employees have directed changes in the employment status of employees of federal agencies.

Admit: _____ Deny: _____

REQUEST FOR ADMISSION NO. 6:

[WITHDRAWN]

REQUEST FOR ADMISSION NO. 7: Admit that since January 20, 2025, DOGE Team members have directed changes in the employment status of employees of federal agencies.

Admit: _____ Deny: _____

REQUEST FOR ADMISSION NO. 8:

[WITHDRAWN]

REQUEST FOR ADMISSION NO. 9: Admit that since January 20, 2025, DOGE Team members have directed federal agencies to keep open vacancies in career positions.

Admit: _____ Deny: _____

REQUEST FOR ADMISSION NO. 10:

[WITHDRAWN]

REQUEST FOR ADMISSION NO. 11: Admit that since January 20, 2025, the Office of Management and Budget has apportioned over \$41 million to the “United States DOGE Service” account.

Admit: _____ Deny: _____

**PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION TO DEFENDANTS U.S. DOGE
SERVICE AND ADMINISTRATOR OF THE U.S. DOGE
SERVICE**

REQUEST NO. 1: All Interagency Agreements or Memoranda of Understanding, from January 20, 2025 to the present, between DOGE and federal agencies.

REQUEST NO. 2:

[STRUCK BY DISTRICT COURT]

REQUEST NO. 3: All general terms and conditions invoices, commonly referred to as Ginvoices, concerning DOGE-related work performed from January 20, 2025 to the present.

REQUEST NO. 4: All timekeeping records for any DOGE employee or DOGE Team member reflecting DOGE-related work.

REQUEST NO. 5: All final directives, or announcements of final directives, from any DOGE employee to any DOGE Team or federal agency, including such directives or announcements made by electronic messages such as email, signal message, X direct message, or text message.

REQUEST NO. 6: All final directives, or announcements of final directives, from any DOGE Team to any federal agency, including such directives or announcements made by electronic messages such as email, signal message, X direct message, or text message.

REQUEST NO. 7: All entity-wide final directives, or announcements of final directives, sent by any current or former Administrator to any DOGE employee or DOGE Team member since January 20, 2025, including

such directives or announcements made by electronic messages such as email, signal message, X direct message, or text message.

REQUEST NO. 8: Any documents formalizing DOGE's organization, structure, reporting lines, operational units or divisions, or authority with respect to federal agencies.

REQUEST NO. 9: Any mission statement, memorandum, guidance, or other final records delineating the scope of DOGE's or any DOGE Team's authorities, functions, or operations.

REQUEST NO. 10: All announcements to any DOGE employee or DOGE Team regarding the appointment or departure of any Administrator from January 20, 2025 to the present, including such announcements made by electronic messages such as email, signal message, X direct message, or text message.

REQUEST NO. 11: All documents, including responses, produced in response to Plaintiff States' First Set of Written Discovery in *New Mexico v. Musk*, No. 1:25-cv-429 (D.D.C. filed February 13, 2025), and the consolidated case *Japanese American Citizens League v. Musk*, 1:25-cv-643 (D.D.C. filed Mar. 5, 2025), including copies of Defendants' answers to all requests for production, interrogatories, and requests for admission, including objections, as well as any exhibits, attachments, logs, files, or other things produced in response to Plaintiff States' requests in that case, as well as any deposition transcripts produced.

REQUEST NO. 12: All documents, including responses, produced in response to Plaintiff States' First Set of Written Discovery in *AFL-CIO v. Department of Labor*,

No. 1:15-cv-339 (D.D.C. filed Feb. 5, 2025), including copies of Defendants' answers to all requests for production, interrogatories, and requests for admission, including objections, as well as any exhibits, attachments, logs, files, or other things produced in response to Plaintiffs' requests in that case, as well as any deposition transcripts produced.

REQUEST NO. 13: All "direct messages" sent by the @DOGE X account relaying any final directives to a federal agency from January 20, 2025 to the present.

REQUEST NO. 14:

[STRUCK BY DISTRICT COURT]

DEPOSITIONS

Plaintiff seeks the depositions of the following DOGE employees:

- Amy Gleason
- [STRUCK BY DISTRICT COURT]

Plaintiff also seeks a deposition of DOGE under Fed. R. Civ. P. 30(b)(6) on the following topics:

1. DOGE's establishment, mission, responsibilities, personnel, leadership structure, authorities, and decision-making and reporting structure (including the relationship of DOGE to DOGE Teams and DOGE employees detailed to or otherwise working at or with federal agencies and the relationship of DOGE Teams to federal agencies) between January 20, 2025 and the date of deposition.
2. The scope of DOGE's and DOGE Teams' authority with regard to federal agencies, and actions DOGE or DOGE Teams have actually undertaken with regard to federal agencies, between January 20, 2025 and the date of deposition.
3. The role and responsibilities of all DOGE employees detailed to or otherwise working at or with federal agencies, or having supervisory authority over DOGE employees detailed to or otherwise working at or with federal agencies, between January 20, 2025 and the date of deposition, including their titles at DOGE and any federal government entity; their responsibilities at federal agencies, DOGE, and any other federal government entities to which they have been de-

tailed and/or otherwise assigned; their authority with regard to other federal agency staff; the supervision of said DOGE employees; and the policies, procedures, and protocols pertaining to their detailing to and activities at other federal agencies.

4. DOGE's budget, resources, funding, and expenditure of federal funds.
5. [STRUCK BY DISTRICT COURT]

APPENDIX I

5 U.S.C. 552(f) provides:

Public information; agency rules, opinions, orders, records, and proceedings

(f) For purposes of this section, the term—

(1) “agency” as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) “record” and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.