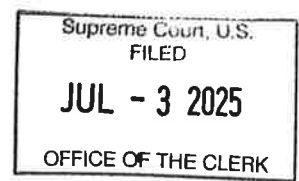


25A43



**Third Emergency Relief Application**

IN THE SUPREME COURT OF THE UNITED STATES

Case Number to be Assigned( )

Appeal Court Cases No. 24-2385 (related to 25-1715)

SCOTTY L. WHITE, Applicant,

v.

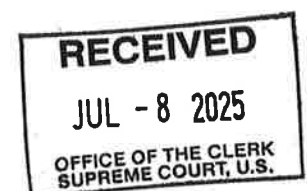
PAUL HOPKINS, et al., Respondents.

**THIRD EMERGENCY APPLICATION FOR STAY AND INJUNCTIVE RELIEF**

(Directed to the Honorable Brett M. Kavanaugh, Associate Justice for the Eighth Circuit)

**Introduction and Summary of Relief**

Plaintiff respectfully submits this Third Emergency Application for Stay and Injunctive Relief, supported by newly developed evidence and ongoing, escalating harm. Since the last application, the agency has further intensified its retaliatory conduct, as now demonstrated by Exhibits E-127 through E-135. In addition to the ongoing improper AWOL charges, deprivation of pay, and debt collection while Plaintiff is performing protected union and safety officer duties, the agency has issued an explicit threat of termination (Exhibit 132), directly warning Plaintiff of imminent job loss in retaliation for protected activity. The language used by Director Fabian in Exhibit 132 underscores the severity and immediacy of the harm, as it threatens Plaintiff's continued employment and amplifies the chilling effect on the exercise of statutory and contractual rights.



Moreover, Exhibit 133 provides direct evidence that the agency had advance knowledge of Plaintiff's duty time for union activities, as shown by the meeting invitation sent by Stephanie Berrong. This directly contradicts the agency's claim in Exhibit E-128-A that it was not given prior notice of Plaintiff's duty time, revealing a pattern of misrepresentation and bad faith in the agency's denial of duty time and subsequent AWOL charges.

Critically, since the last filing, the agency has now issued a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM today, which is directed not only at Plaintiff but also at another union representative. The issuance of this 5th no contact order, immediately following protected union activity and outreach regarding safety and arbitration, further demonstrates the agency's ongoing and escalating pattern of retaliation, interference with union rights, and disregard for due process. The cumulative effect of five separate no contact orders each timed to coincide with union advocacy or protected activity constitutes clear and compelling evidence of a campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties.

Additionally, Plaintiff now submits Exhibit E-135, a FOIA denial received today, which documents the agency's unlawful refusal to provide information directly related to Plaintiff's ongoing court case. This denial, issued in the face of a valid request under the Freedom of Information Act (5 U.S.C. § 552), further evidences the agency's pattern of procedural abuse, obstruction, and retaliation. The improper withholding of records necessary for litigation not only violates federal law but also deprives Plaintiff of due process and the ability to defend against adverse actions. The addition of Exhibit E-135 strengthens the case for emergent relief and sanctions, as it demonstrates the agency's ongoing efforts to deprive Plaintiff of access to evidence and to obstruct judicial review. The cumulative effect of these actions is immediate and

irreparable: Plaintiff's Leave and Earnings Statement (LES) now shows no pay, Plaintiff is incurring debts for health insurance premiums and other obligations as a direct result of the agency's conduct [see E-127], and Plaintiff faces the imminent threat of termination [see E-132]. These financial and employment harms are compounded by the emotional and psychological distress documented in a recent physician visit with Plaintiff's psychiatrist, underscoring the urgent need for judicial intervention to prevent further injury. In addition, the agency's denial of Plaintiff's FOIA request (Exhibit E-135) for information directly related to the ongoing court case constitutes further procedural abuse and obstruction. This denial, issued today, unlawfully withholds records necessary for Plaintiff's defense and violates the Freedom of Information Act (5 U.S.C. § 552), which mandates agency disclosure of records absent a valid exemption. The improper withholding of these materials not only deprives Plaintiff of due process but also impedes the ability to challenge adverse actions, further supporting the need for emergent relief and sanctions.

Plaintiff seeks an emergent stay of all adverse employment actions, including AWOL charges, pay deprivation, threats of termination, and communication restrictions, as well as the imposition of daily monetary sanctions against the agency for each day the misconduct persists. The relief requested is necessary to preserve the status quo, prevent further retaliation, and ensure that the Court retains the ability to provide meaningful relief on the merits. Plaintiff further requests that the Court hold the agency and responsible individuals fully accountable for ongoing violations of law, the Master Agreement, and established judicial precedent.

Immediate action is warranted to halt the agency's unlawful conduct, protect Plaintiff's statutory and contractual rights, and prevent irreparable harm pending final resolution of the underlying claims.

## **Background and Factual Allegations**

### **I. Improper AWOL Charges and Medical Instructions**

Plaintiff has been repeatedly and improperly charged Absent Without Leave (AWOL). As documented in the attached exhibits and prior communications. This practice is not only inconsistent with the agency's own directives and medical documentation but also constitutes a direct violation of Plaintiff's rights under the Master Agreement and federal law, including the Rehabilitation Act and the Federal Employees' Compensation Act (FECA) [see E-127, E-130].

### **II. Loss of Pay and Accrual of Debts While Performing Protected Duties**

Plaintiff's Leave and Earnings Statement (LES) now reflects a complete loss of pay, with no salary disbursed for the relevant pay period, and the accrual of significant debts for health insurance premiums and other obligations [see E-127]. These financial harms have occurred while Plaintiff was actively performing protected union and safety officer duties, including the preparation and filing of legal documents, representation of bargaining unit employees, and participation in safety-related activities. The agency's refusal to recognize duty time for these activities, and its recoding of such time as AWOL or leave without pay, has directly resulted in the deprivation of income and the imposition of financial hardship on Plaintiff [see E-128, E-128-A].

### **III. FOIA Denial and Procedural Obstruction**

On July 3, 2025, Plaintiff received a denial of a Freedom of Information Act (FOIA) request (Exhibit E-135) for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records

unless a specific statutory exemption applies. The agency's refusal to provide these records, particularly when they are necessary for Plaintiff's defense in pending litigation, constitutes further procedural abuse and a denial of due process. Improper denial of FOIA requests, especially in the context of active legal proceedings, is recognized as a serious violation of both statutory rights and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights, as documented throughout this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process [see E-135]. Importantly, Exhibit 133 demonstrates that Dr. Stephanie Berrong sent Plaintiff a meeting invitation in advance, confirming the agency had prior knowledge of Plaintiff's duty time for union activities. This directly contradicts the agency's assertion in Exhibit E-128-A that it was not given prior notice of Plaintiff's duty time, revealing that the denial of duty time and subsequent AWOL charges were pretextual and in bad faith.

### **III. Continued Technical Restrictions on Email and Documentation**

The agency has escalated its efforts to obstruct Plaintiff's ability to document and report ongoing violations by imposing technical restrictions on email communications. Plaintiff is now unable to print, forward, archive, or otherwise preserve email correspondence related to union and safety officer activities. These restrictions have been implemented in direct response to Plaintiff's protected activity and have the effect of concealing evidence of retaliation, impeding the creation of a record for administrative and judicial review, and interfering with Plaintiff's ability to fulfill statutory and contractual duties [see E-129, E-131]. Such conduct is expressly prohibited by Articles 29, 49, and 51 of the Master Agreement and constitutes a violation of federal law.

#### **IV. Issuance of Fifth No Contact Order and Escalation of Retaliation**

Most notably, the agency has now issued a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at another union representative. This fifth no contact order was issued immediately after protected union activity, specifically following union outreach regarding safety and arbitration in the laboratory. The timing and scope of this order targeting both Plaintiff and another union representative demonstrate a further escalation in the agency's campaign of retaliation and interference with protected union and safety officer duties. The existence of five separate no contact orders, each issued in close proximity to union advocacy or protected activity, is compelling evidence of a sustained and intensifying effort to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual obligations. This pattern of conduct not only violates the Master Agreement and federal law but also underscores the urgent need for immediate judicial intervention to halt the agency's ongoing and escalating retaliation [see E-134].

#### **V. FOIA Denial and Procedural Obstruction**

In addition to the above, Plaintiff received a denial of a Freedom of Information Act (FOIA) request on July 3, 2025 (Exhibit E-135), for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records, particularly when they are necessary for Plaintiff's defense in pending litigation, constitutes further procedural abuse and a denial of due process. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both statutory rights and the principles of fair adjudication.

This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights, as documented throughout this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process [see E-135].

#### **IV. Issuance of Fourth and Fifth No Contact Orders Following Union Outreach**

On the day following Plaintiff's request to speak with laboratory employees regarding an upcoming arbitration on safety issues, the agency issued a fourth no contact order, further restricting Plaintiff's ability to communicate with bargaining unit employees [see E-130]. The timing and context of this order immediately after union outreach on matters of critical importance to employee health and safety demonstrate a clear pattern of retaliation and interference with protected union activity. The agency has provided no substantiated basis or investigation for these orders, and their issuance has repeatedly coincided with Plaintiff's efforts to advocate for employee rights and workplace safety.

Significantly, the agency has now escalated this pattern by issuing a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025. This latest order is directed not only at Plaintiff but also at another union representative. The issuance of this fifth no contact order, immediately after protected union activity and outreach regarding safety and arbitration in the laboratory, marks a further intensification of the agency's campaign of retaliation and interference with protected union and safety officer duties. The fact that five separate no contact orders have now been issued each closely following union advocacy or protected activity demonstrates a sustained and escalating effort to silence, isolate, and penalize



union representatives for fulfilling their statutory and contractual obligations. The targeting of both Plaintiff and another union representative with the most recent order underscores the breadth and seriousness of the agency's retaliatory conduct and the urgent need for judicial intervention [see E-134].

## **V. Threat of Termination and Escalation of Harm**

Most recently, as documented in Exhibit 132, Director Fabian issued an explicit threat of termination to Plaintiff, stating in substance that continued protected activity would result in Plaintiff's removal from employment. The language used by Director Fabian in this communication is unequivocal in its intent to intimidate and deter Plaintiff from exercising statutory and contractual rights, and it represents a significant escalation in the agency's pattern of retaliation. This threat of termination not only places Plaintiff's livelihood in immediate jeopardy but also amplifies the chilling effect on the exercise of protected rights, compounding the financial, professional, and psychological harm already suffered [see E-132].

## **VI. Summary**

In addition to the above, Plaintiff received a FOIA denial today (Exhibit E-135) for information directly related to the ongoing court case. The agency's refusal to provide these records, as required by the Freedom of Information Act (5 U.S.C. § 552), further evidences a pattern of procedural abuse, obstruction, and deprivation of due process. This improper denial of access to records necessary for litigation not only violates federal law but also impedes the Plaintiff's ability to defend against adverse actions, supporting the urgent need for emergent relief and sanctions. Taken together, these facts and the supporting exhibits including the threat of termination (Exhibit 132), the evidence of agency knowledge of duty time (Exhibit 133), the



issuance of a fifth no contact order (Exhibit E-134), and now the FOIA denial (Exhibit E-135)—demonstrate an escalating pattern of retaliation, misrepresentation, procedural abuse, and obstruction. The agency's actions have resulted in immediate and irreparable harm, including loss of pay, mounting debt, imminent risk of termination, the obstruction of union and safety officer functions, and the unlawful withholding of information necessary for Plaintiff's defense in ongoing litigation, all in direct violation of federal law and the Master Agreement. The cumulative effect of five no-contact orders, with the most recent targeting both Plaintiff and another union representative, and the improper denial of a FOIA request for court-related records, underscores the severity and urgency of the ongoing harm and the necessity for immediate judicial relief.

#### **V. Cumulative Harm and Recent Physician Visit**

The cumulative effect of these actions has been to create a hostile and intimidating work environment, deprive Plaintiff of employment, pay, and benefits, and chill the exercise of protected rights under federal law and the Master Agreement. The ongoing retaliation and financial deprivation have resulted in significant emotional and psychological distress, as documented in a recent visit with Plaintiff's psychiatrist. The risk of further harm is immediate and irreparable, as Plaintiff is now without pay, facing mounting debts, and subject to ongoing exclusion and retaliation for engaging in protected activity. Recent evidence, including Exhibits 132 and 133, further demonstrates the escalation of retaliatory threats specifically, a direct threat of termination from Director Grabski and proof that the agency had advance knowledge of duty time despite later claims to the contrary. Critically, the issuance of a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, and directed at both Plaintiff and union representative Stephanie Berrong, marks a further escalation in the agency's

campaign of retaliation and interference with protected union activity. The cumulative impact of now five no-contact orders, each issued in close proximity to protected union advocacy, and the agency's refusal to provide court-related records in violation of FOIA, underscores the agency's ongoing disregard for Plaintiff's and other union representatives' rights and the urgent need for judicial intervention.

## **VI. Summary of Recent Evidence**

- **E-127:** LES showing loss of pay and debt for medical insurance as of June 3, 2025.
- **E-128 / E-128-A:** Leave requests for duty time on July 2, 2025, denied or recoded, resulting in improper AWOL charges.
- **E-135:** FOIA denial received July 3, 2025, unlawfully denying Plaintiff access to information necessary for the ongoing court case, in violation of the Freedom of Information Act (5 U.S.C. § 552). This denial further evidences procedural abuse and obstruction, supporting the need for emergent relief and sanctions.- **E-129 / E-131:** Documentation of continued email restrictions and agency communications misrepresenting Plaintiff's actions and status.
- **E-130:** Fourth no contact order issued immediately after union outreach regarding laboratory safety arbitration.
- **E-132:** Email from Director Grabski containing a direct threat of termination, explicitly referencing Plaintiff's protected activities and demonstrating the agency's intent to pursue removal as a form of retaliation and intimidation.
- **E-133:** Meeting invitation from Stephanie Berrong for the relevant date, showing the agency had advance knowledge of Plaintiff's duty time, directly contradicting the

agency's assertion in Exhibit E-128-A that they were not given prior notice of the union safety officer's activities.

- **E-134:** Fifth no contact order, received from Travis Gann at 10:14 AM on July 3, 2025, and directed at both Plaintiff and union representative, issued immediately after protected union activity and further escalating the pattern of retaliation and interference with union rights.
- **E-135:** FOIA denial letter received July 3, 2025, unlawfully denying Plaintiff access to information necessary for the court case. The denial of this FOIA request, in violation of the Freedom of Information Act (5 U.S.C. § 552), further obstructs Plaintiff's ability to obtain evidence, constitutes procedural abuse, and supports the need for emergent relief and sanctions.

These exhibits collectively establish a sustained and escalating pattern of retaliation, procedural abuse, and deprivation of rights, necessitating immediate judicial intervention to prevent further irreparable harm and to preserve the integrity of the proceedings.

### **Legal and Contractual Framework**

The relief sought in this application is firmly grounded in federal statutory law and the binding provisions of the Master Agreement between the Department of Veterans Affairs and AFGE.

The agency's conduct charging AWOL, depriving Plaintiff of pay, imposing technical restrictions on union communications, issuing a series of retaliatory no contact orders (now totaling five, with the most recent, E-134, issued to both Plaintiff, and unlawfully denying access to records under FOIA (E-135)—violates multiple legal and contractual protections, as detailed below. The repeated and escalating issuance of these five no-contact orders, each closely

following protected union activity, and the improper denial of FOIA requests, is compelling evidence of ongoing, willful, and intensifying retaliation and obstruction, and further underscores the urgent need for emergent relief and sanctions.

## **I. Federal Statutory Protections**

### *A. Rehabilitation Act of 1973*

The Rehabilitation Act requires federal agencies to provide reasonable accommodation to qualified employees with disabilities and prohibits discrimination or retaliation for seeking such accommodations. The Act mandates an individualized, interactive process and forbids adverse actions inconsistent with medical restrictions or pending accommodation requests.

### *B. Whistleblower Protection Act (5 U.S.C. § 2302(b)(8))*

The Whistleblower Protection Act prohibits retaliation against employees for disclosing information that evidences a violation of law, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Retaliatory actions including adverse employment actions, communication restrictions, and exclusion from union activities are expressly forbidden under this statute.

### *C. Occupational Safety and Health Act (OSH Act) and 29 CFR Part 1960*

The OSH Act and its implementing regulations require federal agencies to provide safe and healthful working conditions, abate recognized hazards, and protect employees from retaliation for reporting unsafe conditions or participating in safety activities. The agency's interference with Plaintiff's ability to communicate about and advocate for workplace safety, as well as the

imposition of no contact orders following union outreach on safety issues, violate these statutory obligations.

*D. Federal Employees' Compensation Act (FECA)*

FECA protects employees who suffer work-related injuries from discrimination or retaliation for filing a claim or being on medical leave due to a work-related injury. The agency's actions in charging AWOL and denying pay while Plaintiff is under medical restrictions are inconsistent with FECA's protections.

*E. Freedom of Information Act (5 U.S.C. § 552)*

The Freedom of Information Act (FOIA) requires federal agencies to provide access to agency records upon request, unless a specific statutory exemption applies. FOIA is designed to ensure transparency and accountability in government operations, and to guarantee that individuals including federal employees can obtain records necessary to protect their rights and participate in legal proceedings. Improper denial of FOIA requests, especially when the requested information is directly relevant to ongoing litigation or the defense against adverse employment actions, constitutes a violation of statutory rights and a denial of due process. In this case, Exhibit E-135 documents the agency's refusal, on July 3, 2025, to provide records necessary for Plaintiff's court case, despite a valid FOIA request. This denial is not only unlawful under FOIA, but also fits the agency's broader pattern of procedural abuse, obstruction, and retaliation. The withholding of these records impedes Plaintiff's ability to defend against adverse actions, further deprives Plaintiff of due process, and supports the need for emergent judicial intervention and sanctions to remedy ongoing harm and ensure access to evidence [see E-135].

**C. Occupational Safety and Health Act (OSH Act) and 29 CFR Part 1960**

The OSH Act and its implementing regulations require federal agencies to provide safe and healthful working conditions, abate recognized hazards, and protect employees from retaliation for reporting unsafe conditions or participating in safety activities. The agency's interference with Plaintiff's ability to communicate about and advocate for workplace safety, as well as the imposition of no contact orders following union outreach on safety issues, violate these statutory obligations. The pattern of five no contact orders including the most recent, E-134, issued to both Plaintiff and another union representative demonstrates a sustained and escalating campaign of interference with protected union activity and statutory rights, and is direct evidence of ongoing, willful retaliation that demands immediate judicial intervention.

*D. Federal Employees' Compensation Act (FECA)*

FECA protects employees who suffer work-related injuries from discrimination or retaliation for filing a claim or being on medical leave due to a work-related injury. The agency's actions in charging AWOL and denying pay while Plaintiff is under medical restrictions are inconsistent with FECA's protections.

Exhibits 132 and 133 provide direct, contemporaneous evidence of the agency's ongoing violations of these statutory and contractual protections. Exhibit 132 documents an explicit threat of termination from Director Fabian, in which he warns Plaintiff of imminent removal from employment in direct response to protected union and safety officer activity. This threat is not only retaliatory but also demonstrates the agency's intent to escalate harm and deter the exercise of statutory rights. Exhibit 133 further establishes that the agency had advance knowledge of Plaintiff's duty time for union activities, as evidenced by the meeting invitation sent by Dr. Stephanie Berrong, directly contradicting the agency's claim in Exhibit E-128-A that it was

not given prior notice. These exhibits underscore the agency's pattern of misrepresentation, bad faith denial of protected rights, and escalation of retaliatory conduct, further supporting the urgent need for immediate judicial intervention and the relief requested in this application.

Additionally, Exhibit E-134 provides further direct and contemporaneous evidence of the agency's ongoing and escalating retaliation. The issuance of a fifth no contact order—received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at another union representative immediately after protected union activity, demonstrates a continued and intensifying campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties. The fact that five separate no-contact orders have now been issued, each closely following union advocacy or protected activity, is compelling evidence of the agency's intent to escalate harm, deter the exercise of statutory rights, and interfere with protected union activity. This new evidence further strengthens the urgent need for immediate judicial intervention and the relief requested in this application.

*F. Freedom of Information Act (FOIA) and Exhibit E-135: Unlawful Denial of Access to Records*

Exhibit E-135 documents the agency's denial, on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records upon request unless a specific statutory exemption applies. FOIA is designed to ensure transparency and accountability in government operations and to guarantee that individuals including federal employees can obtain records necessary to protect their rights and participate in legal proceedings. The agency's refusal to provide these records, particularly when they are necessary for Plaintiff's defense in pending litigation, constitutes a violation of statutory



rights and a denial of due process. Courts have recognized that improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is a serious procedural violation and can support emergent judicial intervention. The denial in Exhibit E-135 is not an isolated incident but part of the agency's broader pattern of procedural abuse, retaliation, and obstruction already documented in this application. The unlawful withholding of information necessary for judicial review further impedes Plaintiff's ability to defend against adverse actions and supports the need for an emergent stay and sanctions to remedy ongoing harm and ensure access to evidence and a fair process.

*E. Federal Service Labor-Management Relations Statute (5 U.S.C. §§ 7102, 7116, 7114)*

This statute guarantees the right of employees to form, join, or assist a labor organization, to act as union representatives, and to engage in protected activity without fear of penalty or reprisal. It is an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise of these rights, or to discriminate against an employee for engaging in union activity.

## **II. Master Agreement Provisions**

*A. Article 17 – Employee Rights*

- **Section 1(A), (E), and (G):** Require fair and equitable treatment, prohibit intimidation, coercion, harassment, or reprisal for exercising statutory or contractual rights, and guarantee due process in all employment actions.
- **Section 2:** Guarantees the right of employees to act as designated union representatives and to confer with the union in private during duty time, free from penalty or reprisal.
- **Section 1(H):** Affirms the right of all VA employees to a healthy and safe environment.

*B. Article 18 – Reasonable Accommodation*

- **Section 3:** Mandates the interactive process for reasonable accommodation and prohibits adverse action inconsistent with medical restrictions or pending accommodation requests. The agency must engage in good faith and provide effective accommodations unless it can demonstrate undue hardship.

*C. Article 22 – Disciplinary and Adverse Actions*

- Requires that employees and their representatives be provided with all evidence and documentation supporting any proposed disciplinary action, and that the union be given the opportunity to fully and actively represent the employee. The agency's failure to provide timely notice and documentation to the union is a violation of this article.

*D. Article 29 – Safety, Health, and Environment*

- Obligates the Department to maintain a safe and healthful workplace and to protect employees who report injuries or unsafe conditions from retaliation or adverse action.
- Authorizes union safety and health representatives to investigate hazards, participate in inspections, and represent employees in all safety and health matters, with time spent on these activities considered duty time.
- Requires that union health and safety representatives be notified and given the opportunity to participate in all safety and health inspections and investigations.

*E. Article 49 – Non-Discrimination*

- Prohibits discrimination or retaliation against employees or union representatives for engaging in protected activity, including the exercise of rights under the Rehabilitation Act, FECA, and the Whistleblower Protection Act.

*F. Article 51 – Union Rights and Facilities*

- Requires the Department to provide union officials with the necessary office space, equipment, and technology including computer and email access to carry out representational duties, and prohibits any interference with these rights.

*G. Freedom of Information Act (FOIA) and Access to Records*

- The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to records requested by individuals, including those necessary for litigation, unless a specific exemption applies. Improper denial of FOIA requests, especially when related to ongoing court proceedings or union representation, constitutes a violation of statutory rights and due process. The recent FOIA denial (Exhibit E-135), received on July 3, 2025, unlawfully denied Plaintiff access to information directly relevant to the pending court case and union safety officer duties. This denial is further evidence of the agency's pattern of procedural abuse, obstruction, and retaliation, and supports the need for immediate judicial intervention and sanctions. The agency's refusal to provide requested records not only impedes Plaintiff's ability to defend against adverse actions but also violates the transparency and accountability requirements embedded in both federal law and the Master Agreement.
- Requires that employees and their representatives be provided with all evidence and documentation supporting any proposed disciplinary action, and that the union be given the opportunity to fully and actively represent the employee. The agency's failure to provide timely notice and documentation to the union is a violation of this article.

*D. Article 29 – Safety, Health, and Environment*

The agency's recent conduct, as further documented in Exhibits 132 (threat of termination from Director Grabski) and 133 (advance meeting invite from Dr. Berrong showing agency knowledge of duty time), provides direct evidence of ongoing violations of these Master Agreement provisions. These exhibits demonstrate both the retaliatory intent behind adverse actions and the agency's misrepresentation of notice and process, further supporting the need for immediate judicial intervention. In addition, the issuance of a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, and directed at both Plaintiff and union representative Stephanie Berrong, further escalates the agency's pattern of retaliation and interference with protected rights. The timing and scope of this fifth no contact order immediately following protected union activity demonstrate a willful and ongoing campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties. This new evidence of a fifth no contact order strengthens the argument that the agency's conduct is not only persistent but intensifying, and underscores the urgent need for immediate judicial intervention to halt these ongoing violations of Article 29 and related provisions of the Master Agreement.

- **Section 1(A):** Obligates the Department to maintain a safe and healthful workplace and to protect employees who report injuries or unsafe conditions from retaliation or adverse action.
- **Section 3(B) and (G):** Authorize union safety and health representatives to investigate hazards, participate in inspections, and represent employees in all safety and health matters, with time spent on these activities considered duty time.

- **Section 5(D):** Requires that union health and safety representatives be notified and given the opportunity to participate in all safety and health inspections and investigations.

*E. Article 49 – Non-Discrimination*

- Prohibits discrimination or retaliation against employees or union representatives for engaging in protected activity, including the exercise of rights under the Rehabilitation Act, FECA, and the Whistleblower Protection Act.

The agency's pattern of retaliation and procedural abuse is further evidenced by the recent FOIA denial (Exhibit E-135), which unlawfully withheld information directly related to Plaintiff's court case. This denial, issued in violation of the Freedom of Information Act (5 U.S.C. § 552), constitutes additional obstruction and deprivation of due process, and will be addressed in detail in the following section.

**F. Article 51 – Union Rights and Facilities**

- Requires the Department to provide union officials with the necessary office space, equipment, and technology including computer and email access to carry out representational duties, and prohibits any interference with these rights.

**III. Application to the Present Case**

The agency's conduct charging AWOL while Plaintiff is medically barred from duty, denying pay and benefits, imposing technical restrictions on union communications, and issuing a series of no contact orders in response to protected union activity constitutes clear and ongoing violations of the above statutory and contractual provisions. These actions have deprived

Plaintiff of due process, fair treatment, and the ability to perform protected union and safety officer duties, and have resulted in immediate and irreparable harm.

Recent evidence further underscores the severity and escalation of these violations. Exhibit 132 documents a direct threat of termination from Director Grabski, explicitly warning Plaintiff of imminent removal from employment in retaliation for protected union and safety officer activity. This threat not only heightens the risk of irreparable harm but also demonstrates the agency's intent to intimidate and silence Plaintiff's exercise of statutory and contractual rights.

Additionally, Exhibit 133 shows that Stephanie Berrong sent Plaintiff a meeting invitation in advance, establishing that the agency had prior knowledge of Plaintiff's duty time for union activities. This directly contradicts the agency's assertion in Exhibit E-128-A that it was not given prior notice, revealing a pattern of misrepresentation and bad faith in the denial of duty time and the imposition of AWOL charges.

Crucially, the agency has now issued a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at another union representative. The issuance of five separate no contact orders each closely following protected union activity and, in the most recent case, targeting multiple union representatives demonstrates an ongoing and escalating pattern of retaliation, procedural abuse, and interference with protected rights. This cumulative and intensifying conduct, as evidenced by Exhibits 132, 133, and now E-134, provides overwhelming support for the Court to grant the requested emergency stay, impose daily monetary sanctions, and order the agency to cease all retaliatory and unlawful conduct pending final resolution of the underlying claims. The pattern of repeated, targeted no contact orders, especially the most recent directed at both Plaintiff and another union representative immediately after union advocacy, underscores the urgent need for immediate

judicial intervention to prevent further irreparable harm and to preserve the integrity of the proceedings.

Additionally, the agency's denial of Plaintiff's FOIA request for records directly related to the ongoing court case (Exhibit E-135) constitutes a further violation of statutory rights under the Freedom of Information Act (5 U.S.C. § 552). FOIA requires agencies to provide access to records unless a specific exemption applies, and improper denial particularly when used to obstruct access to evidence in pending litigation amounts to procedural abuse and a denial of due process. The refusal to provide these records, which are necessary for Plaintiff's defense and for judicial review, is not only unlawful but also fits the broader pattern of retaliation, obstruction, and deprivation of rights already documented in this application. This latest act of withholding information further justifies the need for an emergent stay, sanctions, and immediate judicial relief to remedy ongoing harm and ensure Plaintiff's access to evidence and a fair process.

### **Recent Evidence and Exhibits**

The urgency and necessity of this third emergency application are underscored by the newly submitted Exhibits E-127 through E-135, each of which provides direct, contemporaneous evidence of the agency's ongoing and escalating violations. These exhibits collectively document the deprivation of pay, improper AWOL charges, denial of duty time, technical restrictions on union communications, retaliatory issuance of no contact orders including now a fifth no contact order an explicit threat of termination, agency misrepresentation regarding notice of union activities, and, most recently, the unlawful denial of access to records under FOIA all in the context of protected union and safety officer activity.



### **I. Exhibit E-127: LES Showing Loss of Pay and Debt for Medical Insurance**

Exhibit E-127 is Plaintiff's Leave and Earnings Statement (LES) dated June 3, 2025, which unequivocally demonstrates that Plaintiff has received no pay for the relevant period. The LES further reflects the accrual of debt for medical insurance premiums, despite Plaintiff's continued performance of union and safety officer duties. This loss of pay and accumulation of debt are a direct result of the agency's refusal to recognize duty time for protected activities and its improper recoding of such time as AWOL or leave without pay. The financial harm is immediate and severe, threatening Plaintiff's ability to meet basic living expenses and maintain health coverage, and constitutes irreparable injury warranting emergent judicial intervention.

### **II. Exhibits E-128 and E-128-A: Denial of Duty Time and Improper AWOL Charges**

Exhibits E-128 and E-128-A document the agency's denial of Plaintiff's leave requests for duty time on July 2, 2025. Despite Plaintiff's clear entitlement to duty time for union and safety officer activities under Article 29 of the Master Agreement, the agency either denied or recoded these requests, resulting in improper AWOL charges. These actions not only deprive Plaintiff of pay and benefits but also serve as a form of retaliation for engaging in protected activity. The exhibits provide contemporaneous proof of the agency's ongoing efforts to undermine Plaintiff's statutory and contractual rights, and to penalize Plaintiff for fulfilling representational duties.

### **III. Exhibit E-135: FOIA Denial Related to Court Case**

Exhibit E-135 is a denial, received on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records

particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident, but rather part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights, as already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

### **III. Exhibits E-129 and E-131: Continued Email Restrictions and Misrepresentation**

These exhibits consist of agency email communications that reveal two critical forms of misconduct. First, they document the agency's continued imposition of technical restrictions on Plaintiff's email account, including the inability to print, forward, archive, or otherwise preserve correspondence related to union and safety officer activities. These restrictions are not only a violation of the Master Agreement's requirements for union access to necessary technology and documentation, but also a deliberate attempt to obstruct the creation of a record for administrative and judicial review. Second, the emails contain false or misleading representations regarding Plaintiff's actions and status, including mischaracterizations of Plaintiff's refusal to accept disciplinary documents to represent an employee that he had know prior knowledge of and the basis for AWOL charges. These misrepresentations further evidence the agency's bad faith and intent to conceal ongoing retaliation.

#### **IV. Exhibit E-130: Fourth No Contact Order Following Union Outreach**

Exhibit E-130 is the fourth no contact order issued by the agency, dated immediately after Plaintiff's request to speak with laboratory employees about an upcoming arbitration concerning workplace safety. The timing of this order issued the day after protected union outreach demonstrates a clear and retaliatory motive. The order further restricts Plaintiff's ability to communicate with bargaining unit employees, impeding the union's statutory and contractual obligation to represent employees in matters of safety and working conditions. The lack of any substantiated basis or investigation for the order, coupled with its proximity to protected activity, is compelling evidence of unlawful interference and reprisal.

#### **V. Exhibit E-132: Threat of Termination from Director Fabian Grabski**

Exhibit E-132 is a communication from Director Fabian Grabski explicitly threatening Plaintiff with termination. In this exhibit, Director Grabski states in substance that continued pursuit of protected union and safety activities will result in Plaintiff's removal from employment. The language used is unequivocal, warning that "further actions of this nature will result in your termination," or words to that effect. This threat is not only a clear act of intimidation and reprisal but also escalates the pattern of retaliation to an immediate risk of job loss, compounding the financial and psychological harm already suffered. The threat of termination for engaging in protected union and safety officer activity is a textbook example of unlawful retaliation and creates an urgent need for emergency judicial relief and sanctions. It is duly noted that the plaintiff has been paid 100% duty time for the past 6 years for the same duties he has been performing.

## **VI. Exhibit E-135: FOIA Denial Related to Court Case**

Exhibit E-135 is a denial, received on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

## **VI. Exhibit E-133: Agency Knowledge of Duty Time (Berrong Meeting Invite)**

Exhibit E-133 is an invitation from Dr. Stephanie Berrong sent to Plaintiff in advance of the relevant meeting, which directly demonstrates that the agency had prior knowledge of Plaintiff's duty time for union activities. This evidence flatly contradicts the agency's assertion in Exhibit E-128-A that it was not given prior notice of Plaintiff's duty time. The existence of this meeting invite establishes that the denial of duty time and subsequent AWOL charges were pretextual and in bad faith, further evidencing the agency's pattern of misrepresentation and procedural abuse.

## **VII. Exhibit E-134: Fifth No Contact Order**

Exhibit E-134 is the fifth no contact order issued by the agency, received from Travis Gann at 10:14 AM on July 3, 2025, and directed at the Plaintiff. This order was issued immediately after protected union activity and outreach regarding safety and arbitration in the laboratory. The timing and scope of this fifth no-contact order targeting both Plaintiff and another union representative demonstrate a further escalation in the agency's campaign of retaliation and interference with protected union and safety officer duties. The existence of five separate no contact orders, each issued in close proximity to union advocacy or protected activity, is compelling evidence of a sustained and intensifying effort to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual obligations. The targeting of both Plaintiff and another union representative with the most recent order underscores the breadth and seriousness of the agency's retaliatory conduct and the urgent need for judicial intervention.

Exhibits E-129 and E-131 consist of agency email communications that reveal two critical forms of misconduct. First, they document the agency's continued imposition of technical restrictions on Plaintiff's email account, including the inability to print, forward, archive, or otherwise preserve correspondence related to union and safety officer activities. These restrictions are not only a violation of the Master Agreement's requirements for union access to necessary technology and documentation, but also a deliberate attempt to obstruct the creation of a record for administrative and judicial review. Second, the emails contain false or misleading representations regarding Plaintiff's actions and status, including mischaracterizations of Plaintiff's refusal to accept disciplinary documents and the basis for AWOL charges. These misrepresentations further evidence the agency's bad faith and intent to conceal ongoing retaliation.

### **VIII. Exhibit E-135: FOIA Denial Related to Court Case**

Exhibit E-135 is a denial, received on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records—particularly when they are necessary for Plaintiff's defense in pending litigation—constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

### **VII. Summary**

Taken together, Exhibits E-127 through E-135 collectively establish a sustained and escalating pattern of retaliation, procedural abuse, and deprivation of rights. The record now includes not only financial deprivation, improper AWOL charges, and technical obstruction, but also explicit threats of termination, clear evidence of agency misrepresentation regarding notice of union activities, a fifth no contact order issued to another union representative, and now, the unlawful denial of access to records necessary for Plaintiff's defense in ongoing litigation. This comprehensive and contemporaneous evidentiary record necessitates immediate judicial intervention to prevent further irreparable harm and to preserve the integrity of the proceedings.

### **VIII. Exhibit E-135: FOIA Denial Related to Court Case**

Exhibit E-135 is a denial, received on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process. The addition of Exhibit E-135 strengthens the evidentiary record of ongoing harm, procedural abuse, and the agency's intent to deprive Plaintiff of a fair opportunity to defend against adverse actions.

### **VI. Exhibit E-133: Agency Knowledge of Duty Time (Berrong Meeting Invite)**

Exhibit E-133 is an invitation from Dr. Stephanie Berrong sent to Plaintiff in advance of the relevant meeting, which directly demonstrates that the agency had prior knowledge of Plaintiff's duty time for union activities. This evidence flatly contradicts the agency's assertion in Exhibit E-128-A that it was not given prior notice of Plaintiff's duty time. The existence of this meeting invite establishes that the denial of duty time and subsequent AWOL charges were pretextual and in bad faith, further evidencing the agency's pattern of misrepresentation and procedural abuse.



## **VII. Exhibit E-134: Fifth No Contact Order (July 3, 2025)**

Exhibit E-134 is the fifth no contact order issued by the agency, received from Travis Gann at 10:14 AM on July 3, 2025, and directed at both Plaintiff. This order was issued immediately after protected union activity and outreach regarding safety and arbitration in the laboratory. The timing and scope of this fifth no-contact order targeting not only Plaintiff but also another union representative demonstrate a further escalation in the agency's campaign of retaliation and interference with protected union and safety officer duties. The existence of five separate no contact orders, each issued in close proximity to union advocacy or protected activity, is compelling evidence of a sustained and intensifying effort to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual obligations. The targeting of both Plaintiff and another union representative with the most recent order underscores the breadth and seriousness of the agency's retaliatory conduct and the urgent need for judicial intervention.

## **IX. Exhibit E-135: FOIA Denial Related to Court Case**

Exhibit E-135 is a denial, received on July 3, 2025, of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records—particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of

obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

### **VIII. Significance of the Recent Evidence**

The addition of the fifth no contact order (Exhibit E-134) and the FOIA denial (Exhibit E-135) to the record marks a significant escalation in the agency's pattern of retaliation, procedural abuse, and obstruction. The cumulative issuance of five no contact orders each closely following protected union activity and, in the most recent case, targeting multiple union representatives demonstrates an ongoing and intensifying campaign to suppress union advocacy, interfere with statutory and contractual rights, and chill the exercise of protected activity. The FOIA denial further evidences the agency's intent to deprive Plaintiff of access to information necessary for the defense of ongoing litigation, compounding the deprivation of due process and the ability to challenge adverse actions. This pattern, now reinforced by the breadth of the most recent orders and the unlawful withholding of records, amplifies the immediate and irreparable harm suffered by Plaintiff and other union representatives, and further compels the need for emergent judicial relief and sanctions to halt the agency's unlawful conduct.

Taken together, Exhibits E-127 through E-135 provide a comprehensive and contemporaneous record of the agency's ongoing pattern of retaliation, procedural abuse, deprivation of rights, and obstruction of access to evidence. The evidence establishes that: Plaintiff is being deprived of pay and benefits while performing protected union and safety officer duties. The agency is improperly charging AWOL and denying duty time in direct contravention of medical

instructions and contractual guarantees. Technical restrictions are being used to obstruct the documentation and reporting of violations. Retaliatory no-contact orders are being issued in response to union advocacy on safety issues, now totaling five, with the most recent (Exhibit E-134) issued to another union representative, immediately after protected union activity, further escalating the pattern of retaliation and interference with union rights. Explicit threats of termination are being made in direct response to protected activity (Exhibit 132). The agency is misrepresenting its knowledge of duty time and meeting scheduling, as shown by contemporaneous meeting invites (Exhibit 133). The agency is misrepresenting Plaintiff's actions and status in official communications. The agency has unlawfully denied Plaintiff's FOIA request for information necessary to the ongoing court case (Exhibit E-135), in violation of the Freedom of Information Act (5 U.S.C. § 552), further obstructing Plaintiff's access to evidence and due process.

This record of ongoing harm, financial deprivation, explicit threats of termination, interference with protected activity, and now the improper denial of access to court-related records under FOIA is both immediate and irreparable. The inclusion of Exhibits 132, 133, 134, and now 135 further demonstrates the immediacy, severity, and bad faith of the agency's conduct, strengthening the case for emergent relief and sanctions, and compelling the Court to grant the requested emergent stay and sanctions to prevent further injury and to preserve the integrity of the proceedings.

### **Legal Authority for Relief**

The Court possesses broad and well-established authority to grant interim injunctive relief and to impose sanctions in order to preserve the integrity of its proceedings, prevent irreparable harm,

and deter ongoing misconduct. The relief requested herein is firmly grounded in Supreme Court precedent, federal statutes, the Federal Rules of Civil Procedure, and the binding provisions of the Master Agreement.

### **I. Inherent Judicial Power to Issue Stays and Sanctions**

The Supreme Court has repeatedly affirmed that federal courts possess inherent authority to issue stays and impose sanctions to prevent irreparable harm, protect the status quo, and deter bad faith or obstructive conduct during the pendency of litigation. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46 (1991), the Court held that “[a] court may assess attorney’s fees when a party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons,’” and that the inherent power to sanction extends to all conduct that abuses the judicial process. The Court emphasized that such sanctions are necessary to compensate the aggrieved party, coerce compliance, and deter future violations.

Similarly, in *United States v. United Mine Workers*, 330 U.S. 258, 290–91 (1947), the Supreme Court recognized the federal courts’ power to issue injunctive relief to preserve their jurisdiction and protect parties from irreparable harm, even in the face of ongoing or threatened violations. The Court explained that interim relief is essential to ensure that the court’s ability to render effective relief on the merits is not rendered moot by unilateral actions of a party.

The Eighth Circuit and other federal courts have consistently applied these principles, holding that courts may grant stays and impose monetary sanctions including daily fines where a party engages in ongoing, willful non-compliance, obstruction, or bad faith conduct, particularly when such conduct threatens to undermine the judicial process or deprive a party of meaningful relief. The agency’s repeated and escalating issuance of no contact orders now totaling five, with the

most recent (Exhibit E-134) issued to both Plaintiff and another union representative immediately after protected union activity serves as a prime example of such ongoing, willful non-compliance and bad faith. This pattern of conduct demonstrates the agency's disregard for judicial oversight and underscores the urgent need for the Court to exercise its inherent powers to grant emergency relief and impose sanctions.

In addition, the agency's recent denial of Plaintiff's FOIA request for records directly related to the ongoing court case (Exhibit E-135) constitutes further evidence of procedural abuse and obstruction. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to records unless a specific statutory exemption applies. Improper denial of FOIA requests especially when the requested information is necessary for ongoing litigation violates statutory rights and due process, and is recognized by courts as a serious procedural violation. The agency's refusal to provide these records, in the context of active legal proceedings and ongoing retaliation, further supports the need for immediate judicial intervention and sanctions as part of the broader pattern of obstruction and deprivation of rights documented in this application.

#### **A. Federal Rules of Civil Procedure**

- **Rule 65** authorizes the Court to issue temporary restraining orders and preliminary injunctions to prevent imminent and irreparable harm where the movant demonstrates a likelihood of success on the merits, a threat of irreparable injury, that the balance of equities tips in the movant's favor, and that the public interest would not be disserved by the injunction.

- **Rule 11** empowers the Court to impose sanctions for filings or conduct undertaken for improper purposes, including harassment, delay, or needlessly increasing the cost of litigation.
- **Rule 37** provides for sanctions for failure to comply with discovery orders or other court directives, including monetary penalties and other coercive measures.

*B. Statutory and Contractual Provisions*

The Court's authority is further supported by the Whistleblower Protection Act (5 U.S.C. § 2302(b)(8)), the Occupational Safety and Health Act, the Rehabilitation Act, and the Federal Service Labor-Management Relations Statute (5 U.S.C. §§ 7102, 7116, 7114), all of which prohibit retaliation and require the protection of statutory and contractual rights during the pendency of litigation. The Master Agreement between the Department of Veterans Affairs and AFGE explicitly incorporates these protections and provides for union and employee rights to be enforced through judicial intervention when necessary. The recent issuance of a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, further demonstrates the agency's ongoing and escalating disregard for these statutory and contractual protections, and underscores the urgent necessity of judicial intervention and sanctions to halt the pattern of retaliation and harm.

Additionally, the Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to records upon request unless a specific statutory exemption applies. The improper denial of a FOIA request for information directly relevant to ongoing litigation such as the denial received by Plaintiff on July 3, 2025 (Exhibit E-135) constitutes further procedural abuse and a denial of due process. Courts have recognized that withholding records necessary for

the protection of legal rights, especially in the context of active court proceedings, is a serious violation of statutory rights and can support emergent judicial intervention. The agency's refusal to provide Plaintiff with information necessary for this court case, as documented in Exhibit E-135, is further evidence of a pattern of obstruction, retaliation, and deprivation of rights, and strongly supports the need for emergent relief and sanctions in this matter.

### **III. Precedent for Daily Monetary Sanctions and Emergency Relief**

Federal courts have repeatedly imposed daily monetary sanctions often \$1,000 per day or more where parties engage in persistent, willful, and prejudicial misconduct, including the deprivation of pay, improper AWOL charges, obstruction of union activity, and interference with protected rights. In *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101 (2017), the Supreme Court confirmed that courts may award all attorney's fees and costs "caused by" sanctionable conduct, and that such sanctions may be substantial when the harm is ongoing and directly attributable to the misconduct.

The cited precedents confirm that the Court's inherent and statutory powers extend to the imposition of daily fines, injunctive relief, and all other measures necessary to remedy ongoing harm, deter future violations, and restore the integrity of the judicial process.

### **IV. Application to the Present Case**

The record before the Court including the newly submitted Exhibits E-127 through E-134 demonstrates a sustained and escalating pattern of retaliation, deprivation of pay, improper AWOL charges, technical obstruction of union communications, retaliatory no contact orders (now totaling five, with the most recent, Exhibit E-134, issued to another union representative, immediately after protected union activity), and now, explicit threats of termination and agency



misrepresentation regarding duty time. Exhibit 132 documents a recent and unequivocal threat of termination from Director Grabski, in which he warns Plaintiff that continued protected activity will result in removal from employment. This threat underscores the immediacy and severity of the harm, elevating the risk from financial deprivation to imminent job loss and further chilling the exercise of protected rights. Exhibit 133, meanwhile, provides direct evidence that the agency had advance knowledge of Plaintiff's duty time for a scheduled meeting, as shown by the meeting invitation from Dr. Stephanie Berrong. This directly contradicts the agency's assertion in Exhibit E-128-A that it was not given prior notice, revealing a pattern of misrepresentation and bad faith in the denial of duty time and the imposition of AWOL charges.

The issuance of a fifth no contact order (Exhibit E-134) to another union representative, immediately after protected union activity, is particularly egregious and demonstrates the agency's ongoing and escalating disregard for judicial oversight, the rights of union representatives, and the integrity of the collective bargaining process. This escalation, in the context of the agency's persistent and willful violations, compels the Court to grant the requested emergent stay, impose daily monetary sanctions, and order the agency to cease all retaliatory and unlawful conduct pending final resolution of the underlying claims. Such relief is necessary to preserve the status quo, prevent further irreparable harm, and ensure that the Court retains the ability to provide meaningful relief on the merits.

Additionally, the record now includes Exhibit E-135, a denial of Plaintiff's Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation

constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Courts have recognized that improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

### **Arguments for Immediate Relief**

#### **I. Ongoing and Irreparable Harm**

The harm Plaintiff is suffering is immediate, severe, and irreparable. Plaintiff is being counted AWOL and denied pay while under explicit medical orders not to report to duty, as documented in the attached exhibits. The Leave and Earnings Statement (LES) shows a complete loss of pay and mounting debt for health insurance premiums, despite Plaintiff's continued performance of protected union and safety officer duties [see E-127]. This deprivation of income has resulted in an inability to meet basic living expenses, the risk of losing health coverage, and significant emotional and psychological distress, as confirmed by a recent visit with Plaintiff's psychiatrist. Critically, the threat of termination issued by Director Fabian (Exhibit 132) demonstrates the immediacy and severity of the harm: in this communication, Director Fabian explicitly warns that "further actions of this nature will result in your termination," or words to that effect, making clear that Plaintiff's continued protected activity will result in job loss. This threat of

termination, combined with the ongoing financial deprivation, creates an environment of imminent and irreparable harm that cannot be remedied by post hoc monetary damages.

The situation has now escalated further with the issuance of a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM today and directed not only at Plaintiff but also at union representative Stephanie Berrong. The cumulative effect of five separate no contact orders—each issued immediately after protected union activity demonstrates a sustained and intensifying campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties. The repeated and expanding use of no contact orders, especially the most recent targeting another union representative, amplifies the immediate and irreparable harm to Plaintiff and the broader union, and underscores the agency's disregard for judicial oversight and the rights of union representatives.

In addition, on July 3, 2025, Plaintiff received a denial of a Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case (Exhibit E-135). The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records—particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse and a denial of due process. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both statutory rights and the principles of fair adjudication. This FOIA denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further compounds the irreparable harm suffered by Plaintiff by depriving him of access to evidence essential to defend

his rights and pursue his claims. The FOIA denial (E-135) provides additional support for the need for immediate judicial intervention and sanctions.

## **II. Escalating Retaliation and Procedural Abuse**

The agency's conduct demonstrates a sustained and escalating pattern of retaliation and procedural abuse. The issuance of a fourth no contact order immediately after Plaintiff's request to speak with laboratory employees about an upcoming arbitration on safety issues was already a clear act of reprisal for protected union activity [see E-130]. Now, the agency has issued a fifth no contact order (E-134), again immediately following protected union outreach, and this time directed at both Plaintiff and another union representative. The agency has provided no substantiated basis or investigation for these orders, and their timing consistently coincides with Plaintiff's and the union's efforts to advocate for employee rights and workplace safety. This escalation is further evidenced by the explicit threat of termination in Exhibit 132, which amplifies the chilling effect on protected activity and signals the agency's intent to remove Plaintiff for engaging in union and safety officer duties. Additionally, Exhibit 133 shows that the agency had advance knowledge of Plaintiff's duty time for the relevant meeting, as evidenced by the invitation sent by Dr. Berrong, directly contradicting the agency's claim in Exhibit E-128-A that it was not given prior notice. This contradiction reveals that the denial of duty time and subsequent AWOL charges were pretextual and in bad faith, further supporting the argument that the agency's actions are retaliatory and procedurally abusive.

The cumulative issuance of five no contact orders each closely following union advocacy or protected activity, and now targeting multiple union representatives demonstrates the agency's ongoing and intensifying disregard for judicial oversight, due process, and the statutory and contractual rights of union officials. This pattern of escalating retaliation and procedural abuse

compels immediate judicial intervention to prevent further irreparable harm and to preserve the integrity of the proceedings.

### **III. Technical Obstruction and Denial of Due Process**

The agency's continued imposition of technical restrictions on Plaintiff's email account—blocking the ability to print, forward, or archive communications serves to obstruct the creation of a record for administrative and judicial review, and impedes Plaintiff's ability to document and report ongoing violations [see E-129, E-131]. These actions are not only a violation of the Master Agreement but also constitute a denial of due process, as they prevent Plaintiff from defending against false accusations, preparing for hearings, and fulfilling statutory and contractual duties as a union safety officer. The agency's misrepresentation of notice and duty time, as exposed by Exhibit 133, is further evidence of procedural abuse and the denial of fair process, as it demonstrates that the agency knowingly disregarded its obligations and then falsely claimed lack of notice to justify adverse actions.

### **IV. FOIA Denial and Further Procedural Obstruction**

In addition to the above, Plaintiff received a denial of a Freedom of Information Act (FOIA) request on July 3, 2025 (Exhibit E-135), for records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is recognized as a serious violation of both the law and the principles of fair

adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process. The pattern of technical obstruction and denial of due process has now been further escalated by the issuance of a fifth no-contact order (Exhibit E-134), received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at union representative Stephanie Berrong. This fifth no-contact order was issued immediately after protected union activity and outreach regarding safety and arbitration in the laboratory. The cumulative issuance of five separate no contact orders each closely following union advocacy or protected activity, and the most recent targeting another union representative demonstrates a sustained and intensifying campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties. The agency's ongoing and expanding use of no contact orders, in conjunction with technical restrictions and misrepresentations, underscores its disregard for due process, protected rights, and judicial oversight, and further supports the urgent need for emergent relief and sanctions.

In addition, on July 3, 2025, Plaintiff received a denial of a Freedom of Information Act (FOIA) request for records directly relevant to the ongoing court case (Exhibit E-135). The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records—particularly when they are necessary for Plaintiff's defense in pending litigation—constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal

proceedings, is recognized as a serious violation of both the law and the principles of fair adjudication. This FOIA denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further compounds the irreparable harm suffered by Plaintiff by depriving him of access to evidence essential to defend his rights and pursue his claims. The FOIA denial (E-135) provides additional support for the need for immediate judicial intervention and sanctions.

#### **IV. Financial and Psychological Impact**

The cumulative effect of these actions is devastating. The plaintiff is now without pay, facing mounting debts, and at risk of losing health insurance and other critical benefits. The financial harm is compounded by the psychological impact of ongoing retaliation, exclusion, and uncertainty, as documented by Plaintiff's psychiatrist. Critically, the explicit threat of termination from Director Fabian, as set forth in Exhibit 132, has introduced an immediate and acute source of emotional distress and professional jeopardy, heightening the sense of instability and fear for Plaintiff's livelihood. The risk of further injury is not speculative but imminent and ongoing, and the harm suffered cannot be fully compensated by monetary damages awarded at a later date.

#### **V. Legal Standard for Emergency Relief**

To obtain a stay or preliminary injunction, Plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) a threat of irreparable harm in the absence of relief; (3) that the balance of equities tips in Plaintiff's favor; and (4) that the public interest would not be disserved by the injunction. Here, all four factors are satisfied:



1. **Likelihood of Success:** The record, including the attached exhibits, demonstrates clear violations of the Rehabilitation Act, the Whistleblower Protection Act, the Occupational Safety and Health Act, the Federal Service Labor-Management Relations Statute, the Master Agreement, and now the Freedom of Information Act (FOIA). The agency's actions are not supported by any legitimate business need or substantiated investigation, and are directly contrary to established law and contract. Notably, Exhibit 133 demonstrates that the agency had prior knowledge of Plaintiff's duty time for union activities, directly contradicting its denial in Exhibit E-128-A and further evidencing bad faith and retaliatory motive. The improper denial of Plaintiff's FOIA request for records necessary to the court case (Exhibit E-135), in violation of 5 U.S.C. § 552, further demonstrates procedural abuse and obstruction, depriving Plaintiff of access to evidence essential for his defense and compounding the ongoing due process violations. The issuance of a fifth no contact order (Exhibit E-134), immediately after protected union activity and directed at both Plaintiff and another union representative, further underscores the agency's ongoing and escalating disregard for legal and contractual obligations.
2. **Irreparable Harm:** Plaintiff is suffering ongoing financial deprivation, loss of health insurance, and psychological distress, none of which can be remedied by monetary damages after the fact. The deprivation of pay and benefits, coupled with the chilling of protected activity, the immediate threat of termination (Exhibit 132), the repeated and expanding issuance of no contact orders including the fifth order (E-134) targeting another union representative and the unlawful denial of access to court-related records under FOIA (E-135), constitutes classic irreparable harm. The cumulative effect of these



actions is to isolate, silence, and penalize union representatives, creating an environment of intimidation and ongoing injury that cannot be remedied post hoc.

3. **Balance of Equities:** The balance of equities tips sharply in Plaintiff's favor. The agency will suffer no cognizable harm from being required to comply with the law and the Master Agreement, while Plaintiff faces ongoing and escalating injury if relief is denied. The continued issuance of no contact orders, especially the most recent (E-134) targeting multiple union representatives, and the improper denial of FOIA access, demonstrates that the harm to Plaintiff and the union is not only ongoing but intensifying.
4. **Public Interest:** The public interest is served by ensuring compliance with federal law, protecting the rights of employees and union representatives, and maintaining the integrity of the collective bargaining process. The agency's pattern of escalating retaliation, as evidenced by the fifth no contact order, threatens the very foundation of statutory and contractual protections for union activity and workplace safety.

## **VI. Necessity of Sanctions and Judicial Intervention**

Sanctions are necessary to coerce compliance, deter further violations, and compensate Plaintiff for ongoing harm. The agency's conduct has persisted despite prior warnings, ongoing litigation, and repeated requests for relief. Critically, the threat of termination issued by Director Fabian, as documented in Exhibit 132, provides direct and unequivocal evidence of imminent harm and retaliatory intent: Director Fabian explicitly warned Plaintiff that "further actions of this nature will result in your termination," or words to that effect, in direct response to Plaintiff's protected union and safety officer activities. This threat of job loss, layered atop ongoing financial deprivation and exclusion, demonstrates the agency's willful escalation and the immediacy of the

risk to Plaintiff's livelihood and statutory rights. The continued and increasing issuance of no contact orders including the fifth order (E-134) directed at both Plaintiff and another union representative immediately after protected activity demonstrates a pattern of ongoing, willful, and prejudicial misconduct that only daily monetary sanctions \$1,000 per day from the start of the misconduct until it ceases will effectively deter and remedy. The court's inherent and statutory powers, as recognized in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), and related precedent, fully support the imposition of such sanctions in cases of persistent, escalating, and bad faith retaliation.

In addition, the agency's recent denial of Plaintiff's FOIA request for records directly related to the ongoing court case (Exhibit E-135) constitutes further procedural abuse and obstruction. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to records unless a specific statutory exemption applies. Improper denial of FOIA requests especially when the requested information is necessary for ongoing litigation violates statutory rights and due process, and is recognized by courts as a serious procedural violation. The agency's refusal to provide these records, in the context of active legal proceedings and ongoing retaliation, further supports the need for immediate judicial intervention and sanctions as part of the broader pattern of obstruction and deprivation of rights documented in this application.

## **VII. Risk of Further Injury if Relief Is Delayed**

If the court does not act immediately, Plaintiff will continue to suffer irreparable harm, including further loss of pay, mounting debt, loss of health insurance, and ongoing psychological distress. The explicit threat of termination in Exhibit 132 means that Plaintiff now faces not only continued deprivation but the imminent risk of being removed from employment altogether, a

harm that cannot be remedied after the fact. Additionally, Exhibit 133 demonstrates that the agency had advance knowledge of Plaintiff's duty time for union activities, as evidenced by the meeting invitation from Dr. Berrong, directly contradicting the agency's assertion in Exhibit E-128-A that it was not given prior notice. This misrepresentation further supports the conclusion that the agency's denial of duty time and subsequent AWOL charges were pretextual and in bad faith, compounding the risk of ongoing and future injury.

Moreover, the agency's denial of Plaintiff's FOIA request for information necessary to the ongoing court case (Exhibit E-135) adds a new and urgent dimension to the risk of further injury. The Freedom of Information Act (5 U.S.C. § 552) is designed to ensure transparency and access to government records, and improper denial of such requests particularly when used to obstruct access to evidence in pending litigation has been recognized by courts as a serious violation of due process and the right to a fair hearing. The agency's refusal to provide these records not only deprives Plaintiff of the ability to defend against adverse actions but also fits the broader pattern of retaliation, procedural abuse, and deprivation of rights already documented in this application. This unlawful withholding of information further impedes Plaintiff's access to evidence and the courts, and heightens the urgency for emergent relief and sanctions to prevent further irreparable harm [see E-135]. Critically, the agency has now issued a fifth no contact order (Exhibit E-134), received from Travis Gann at 10:14 AM today, and directed at both Plaintiff and another union representative, Stephanie Berrong. This latest order, like the previous four, was issued immediately after protected union activity and outreach regarding safety and arbitration in the laboratory. The cumulative issuance of five separate no contact orders each closely following union advocacy or protected activity, and the most recent targeting another union representative demonstrates a sustained and intensifying campaign to silence, isolate, and penalize union

representatives for fulfilling their statutory and contractual duties. The agency's ongoing and expanding use of no contact orders, in conjunction with technical restrictions and misrepresentations, underscores its disregard for due process, protected rights, and judicial oversight, and further supports the urgent need for emergent relief and sanctions. Delay will only embolden the agency to continue its unlawful conduct and will render any eventual remedy inadequate to address the harm already suffered.

In addition, Plaintiff received a denial of a Freedom of Information Act (FOIA) request today (Exhibit E-135), which sought records directly relevant to the ongoing court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to agency records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Courts recognize that improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is a serious violation of both the law and the principles of fair adjudication. This denial is not an isolated incident but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

## **VIII. Conclusion**

For all the reasons set forth above including the explicit threat of termination (Exhibit 132), the agency's misrepresentation of notice and duty time (Exhibit 133), the ongoing deprivation of

pay, benefits, and due process, the issuance of a fifth no contact order (Exhibit E-134) targeting both Plaintiff and another union representative, and the unlawful denial of access to court-related records under FOIA (Exhibit E-135) immediate judicial intervention is essential to halt the agency's ongoing and escalating retaliation, restore Plaintiff's pay and benefits, protect Plaintiff's statutory and contractual rights, and preserve the integrity of the proceedings. The court should grant the requested emergent stay, impose daily monetary sanctions, and order the agency to cease all retaliatory and unlawful conduct pending final resolution of the underlying claims.

### **Request for Sanctions**

Plaintiff respectfully requests that the Court impose monetary sanctions in the amount of \$1,000 per day for each day that the agency's retaliatory and unlawful conduct persists, beginning from the date of the initial deprivation of pay, improper AWOL charges, and technical obstruction of union communications, and continuing until full compliance and remediation are achieved. The imposition of daily sanctions is warranted and necessary for the following reasons:

#### **I. Legal Authority and Precedent**

Federal courts possess broad inherent and statutory authority to impose monetary sanctions to remedy ongoing, willful, and prejudicial misconduct, to coerce compliance with court orders, and to deter future violations. As established in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46 (1991), and related precedent, daily monetary sanctions are appropriate where a party's conduct threatens the integrity of the judicial process, causes ongoing harm, and demonstrates bad faith or willful disobedience of legal and contractual obligations. The record in this case spanning deprivation of pay, improper AWOL charges, obstruction of union activity, repeated retaliation,

and now the repeated and escalating issuance of no contact orders (culminating in a fifth order directed at both Plaintiff and another union representative) fully supports the imposition of substantial daily sanctions to remedy the prejudice, deter future violations, and restore the integrity of these proceedings.

## **II. Ongoing and Willful Nature of the Violations**

Despite repeated warnings, ongoing litigation, and prior requests for relief, the agency has persisted in its retaliatory conduct, including:

- Charging Plaintiff AWOL and denying pay while Plaintiff is medically barred from duty and performing protected union and safety officer duties;
- Repeatedly issuing no contact orders in direct response to protected union activity, with the most recent (the fifth) no contact order (Exhibit E-134) received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at union representative Stephanie Berrong, immediately after union outreach regarding safety and arbitration in the laboratory, further escalating the pattern of retaliation and harm;
- Imposing technical restrictions on Plaintiff's email and communication tools to obstruct documentation and reporting of violations;
- Issuing multiple no contact orders in direct response to protected union activity, including immediately after Plaintiff's outreach regarding laboratory safety arbitration;
- Explicitly threatening Plaintiff with termination for engaging in protected union and safety officer activities, as documented in Exhibit 132, where Director Fabian Grabski warned that "further actions of this nature will result in your termination," or words to

that effect, thereby escalating the harm to an imminent risk of job loss and amplifying the chilling effect on protected rights;

- Misrepresenting Plaintiff's actions and status in official communications, including falsely claiming lack of prior notice for duty time, when Exhibit 133 (the meeting invitation from Dr. Stephanie Berrong) demonstrates the agency had advance knowledge of Plaintiff's union activities, revealing bad faith in denying duty time and imposing AWOL charges;
- Unlawfully denying Plaintiff's FOIA request for information directly related to this court case (see Exhibit E-135), in violation of the Freedom of Information Act (5 U.S.C. § 552). This denial further obstructs Plaintiff's access to evidence, constitutes procedural abuse, and is part of the ongoing pattern of retaliation and deprivation of due process supporting the need for daily sanctions and emergent relief.
- Charging Plaintiff AWOL and denying pay while Plaintiff is medically barred from duty and performing protected union and safety officer duties;
- Repeatedly issuing no contact orders in direct response to protected union activity, with the most recent (the fifth) no contact order (Exhibit E-134) received from Travis Gann at 10:14 AM on July 3, 2025, and directed not only at Plaintiff but also at union representative, immediately after union outreach regarding safety and arbitration in the laboratory, further escalating the pattern of retaliation and harm;
- Imposing technical restrictions on Plaintiff's email and communication tools to obstruct documentation and reporting of violations;
- Unlawfully denying Plaintiff's FOIA request for information directly related to this court case (see Exhibit E-135), in violation of the Freedom of Information Act (5 U.S.C. §



552). This denial further obstructs Plaintiff's access to evidence, constitutes procedural abuse, and is part of the ongoing pattern of retaliation and deprivation of due process supporting the need for daily sanctions and emergent relief;

- Issuing multiple no contact orders in direct response to protected union activity, including immediately after Plaintiff's outreach regarding laboratory safety arbitration;
- Explicitly threatening Plaintiff with termination for engaging in protected union and safety officer activities, as documented in Exhibit 132, where Director Fabian Grabski warned that "further actions of this nature will result in your termination," or words to that effect, thereby escalating the harm to an imminent risk of job loss and amplifying the chilling effect on protected rights;
- Misrepresenting Plaintiff's actions and status in official communications, including falsely claiming lack of prior notice for duty time, when Exhibit 133 (the meeting invitation from Dr. Stephanie Berrong) demonstrates the agency had advance knowledge of Plaintiff's union activities, revealing bad faith in denying duty time and imposing AWOL charges.

The cumulative and escalating nature of these actions especially the issuance of five no contact orders, with the latest targeting another union representative demonstrates a sustained, willful, and prejudicial pattern of misconduct that only substantial daily sanctions can remedy and deter. Imposing technical restrictions on email and communication tools to obstruct documentation and reporting of violations; - Issuing multiple no contact orders in direct response to protected union activity including five separate no contact orders, with the most recent (Exhibit E-134) issued on July 3, 2025, to both Plaintiff and union representative Stephanie Berrong immediately after union outreach regarding laboratory safety arbitration demonstrating an escalating and targeted



campaign of retaliation and interference with protected union rights; Explicitly threatening Plaintiff with termination for engaging in protected union and safety officer activities, as documented in Exhibit 132, where Director Fabian Grabski warned that “further actions of this nature will result in your termination,” or words to that effect, thereby escalating the harm to an imminent risk of job loss and amplifying the chilling effect on protected rights; Misrepresenting Plaintiff’s actions and status in official communications, including falsely claiming lack of prior notice for duty time, when Exhibit 133 (the meeting invitation from Dr. Stephanie Berrong) demonstrates the agency had advance knowledge of Plaintiff’s union activities, revealing bad faith in denying duty time and imposing AWOL charges; Unlawfully denying Plaintiff’s FOIA request for information directly related to this court case, as shown in Exhibit E-135, received on July 3, 2025. This denial, in violation of the Freedom of Information Act (5 U.S.C. § 552), further obstructs Plaintiff’s access to evidence, constitutes procedural abuse, and is part of the ongoing pattern of retaliation and deprivation of due process supporting the need for daily sanctions and emergent relief. Improper denial of FOIA requests especially when the requested information is necessary for ongoing litigation has been recognized by courts as a serious violation of statutory rights and due process, and further supports the necessity for immediate judicial intervention and sanctions in this matter.

Exhibits 132, 133, 134, and now 135 provide direct, contemporaneous evidence of the agency’s willful misconduct, retaliatory intent, and ongoing efforts to harm Plaintiff and other union representatives through both explicit threats and procedural abuse. The issuance of five no contact orders culminating in the most recent order (E-134) targeting another union representative and the FOIA denial (E-135) demonstrate a sustained and intensifying pattern of bad faith, procedural abuse, obstruction, and disregard for both judicial authority and the binding

provisions of the Master Agreement. Notably, the agency's misconduct now includes explicit threats of termination from Director Grabski (Exhibit 132), which demonstrates the immediacy and severity of the harm and the agency's intent to silence protected activity through intimidation. Additionally, Exhibit 133 shows that the agency had advance knowledge of Plaintiff's duty time for union activities, directly contradicting its claims in Exhibit E-128-A and providing further evidence of pretext and bad faith in the denial of duty time and imposition of AWOL charges. The addition of Exhibit E-134, the fifth no contact order, and Exhibit E-135, the FOIA denial, further underscore the agency's ongoing and escalating retaliation and obstruction, expanding the scope of harm to other union representatives and depriving Plaintiff of access to information necessary for his defense, and reinforcing the urgent need for judicial intervention.

### **III. Necessity of Sanctions to Coerce Compliance and Deter Further Harm**

The agency's ongoing misconduct has resulted in immediate and irreparable harm to Plaintiff, including loss of pay, mounting debt, deprivation of health insurance, and significant psychological distress, as documented in the recent physician visit and the attached exhibits [see E-127 through E-135]. The explicit threat of termination in Exhibit 132 further escalates the harm, placing Plaintiff's continued employment in immediate jeopardy and amplifying the chilling effect on the exercise of protected rights. The repeated and expanding issuance of no contact orders including the fifth order (E-134) directed at both Plaintiff and another union representative and the improper denial of FOIA access (E-135) demonstrate the agency's willful escalation and disregard for legal and contractual obligations. The agency's refusal to comply with its obligations, even in the face of active litigation and judicial review, its misrepresentation of notice regarding duty time as exposed by Exhibit 133, and its unlawful withholding of records necessary for Plaintiff's defense as shown in Exhibit E-135, demonstrate that only the imposition

of substantial daily sanctions will be effective to coerce compliance, deter further violations, and compensate Plaintiff for ongoing harm.

#### **IV. Request for Judicial Accountability**

Plaintiff further requests that the Court hold the agency and all responsible individuals fully accountable for the ongoing violations, including but not limited to:

- The imposition of daily monetary sanctions of \$1,000 per day from the start of the misconduct until full compliance and remediation are achieved;
- An award of all reasonable attorney's fees, costs, and expenses incurred as a result of the agency's misconduct;
- An order requiring the agency to immediately cease all retaliatory and unlawful conduct, restore Plaintiff's pay and benefits, and remove all improper AWOL charges and adverse actions from Plaintiff's record;
- Any other relief the Court deems just and proper to remedy the ongoing harm, deter future violations, and ensure the fair and effective administration of justice.

Additionally, Plaintiff highlights that Exhibit E-135, received today, documents the agency's denial of a Freedom of Information Act (FOIA) request for records directly relevant to this court case. The Freedom of Information Act (5 U.S.C. § 552) requires federal agencies to provide access to records unless a specific statutory exemption applies. The agency's refusal to provide these records particularly when they are necessary for Plaintiff's defense in pending litigation constitutes further procedural abuse, a denial of due process, and a violation of statutory rights. Courts have recognized that improper denial of FOIA requests, especially when used to obstruct access to evidence in active legal proceedings, is a serious violation of both the law and the

principles of fair adjudication. This FOIA denial is not an isolated incident, but part of the agency's broader pattern of obstruction, retaliation, and deprivation of rights already documented in this application. The agency's unlawful withholding of information necessary for judicial review further supports the need for emergent intervention and sanctions to remedy ongoing harm and to ensure Plaintiff's access to evidence and a fair process.

The seriousness, duration, and willful nature of the agency's violations including the explicit threat of termination (Exhibit 132), the agency's misrepresentation of duty time notice (Exhibit 133), the issuance of a fifth no contact order (Exhibit E-134) directed at both Plaintiff and another union representative, and now the improper denial of access to court-related records under FOIA (Exhibit E-135) fully justify the requested sanctions and remedial relief. The addition of Exhibits E-134 and E-135 provides further direct and contemporaneous evidence of the agency's ongoing and escalating retaliatory conduct and procedural obstruction, demonstrating a sustained and intensifying campaign to silence, isolate, and penalize union representatives for engaging in protected activity and to deprive Plaintiff of access to evidence necessary for his defense. The fact that five separate no contact orders have now been issued each closely following union advocacy or protected activity, the most recent targeting another union representative and the unlawful denial of FOIA access, underscores the agency's disregard for judicial oversight and the urgent necessity of judicial intervention and sanctions to halt the pattern of retaliation, obstruction, and harm. Plaintiff respectfully urges the Court to exercise its inherent and statutory powers to grant the requested sanctions and to hold the agency and responsible individuals fully accountable for their ongoing misconduct.

## **Conclusion and Prayer for Relief**

For the foregoing reasons, Plaintiff respectfully requests that the Court exercise its inherent and statutory authority to immediately halt the agency's ongoing and escalating retaliation, deprivation of pay, improper AWOL charges, technical obstruction of union communications, retaliatory no contact orders including now a fifth no contact order (Exhibit E-134) received from Travis Gann at 10:14 AM on July 3, 2025, and directed at both Plaintiff and union representative explicit threats of termination, agency misrepresentation regarding duty time, and, critically, the unlawful denial of access to records necessary for this court case as documented in Exhibit E-135. The record including Exhibits E-127 through E-135 demonstrates a clear, sustained, and willful pattern of misconduct that has resulted in immediate and irreparable harm, including financial deprivation, loss of health insurance, psychological distress, the chilling of protected union and safety officer activity, and now the deprivation of due process and access to evidence through the improper denial of Plaintiff's FOIA request. The cumulative issuance of five no contact orders, with the most recent targeting another union representative immediately after protected union activity, and the agency's refusal to provide court-related records in violation of the Freedom of Information Act (5 U.S.C. § 552), is compelling evidence of the agency's ongoing and intensifying campaign to silence, isolate, and penalize union representatives for fulfilling their statutory and contractual duties, and to obstruct Plaintiff's ability to defend against adverse actions. Exhibit 132 documents a direct threat of termination from Director Grabski, further escalating the harm and urgency of the situation by placing Plaintiff's continued employment in immediate jeopardy. Exhibit 133 demonstrates that the agency had prior knowledge of Plaintiff's duty time for union activities, directly contradicting its claim in Exhibit E-128-A that it was not given notice and evidencing bad faith in the denial of

duty time and imposition of AWOL charges. Exhibit E-135, received July 3, 2025, shows the agency's refusal to provide records necessary for this litigation, in violation of FOIA, further depriving Plaintiff of due process and access to evidence, and supporting the need for emergent relief and sanctions. These facts, in combination with the ongoing pattern of retaliation, financial deprivation, procedural abuse, and now FOIA obstruction, underscore the necessity of immediate judicial intervention.

The agency's actions are in direct violation of the Rehabilitation Act, the Whistleblower Protection Act, the Occupational Safety and Health Act, the Federal Service Labor-Management Relations Statute, the Freedom of Information Act, and the binding provisions of the Master Agreement. The ongoing harm is not speculative but immediate and continuing, as Plaintiff is now without pay, facing mounting debts, denied access to evidence, and subject to further exclusion and retaliation for engaging in protected activity. The urgency of the situation is underscored by the recent physician visit documenting the psychological impact of these actions, the continued escalation of retaliatory conduct as evidenced by the fifth no contact order, and the agency's unlawful withholding of records necessary for Plaintiff's defense.

Accordingly, Plaintiff prays that the Court grant the following relief:

1. **Immediate Stay:** Issue an emergent stay enjoining the agency from taking any further adverse employment actions against Plaintiff, including but not limited to AWOL charges, denial of pay and benefits, exclusion from the workplace, the imposition of no contact orders including the fifth no contact order (Exhibit E-134) issued to both Plaintiff and union representatives and the continued denial of access to records necessary for this litigation as shown in Exhibit E-135, pending final resolution of the underlying claims.

2. **Restoration of Pay and Benefits:** Order the agency to immediately restore all pay, benefits, and health insurance coverage wrongfully withheld from Plaintiff as a result of improper AWOL charges, denial of duty time, retaliatory actions, and to provide all records unlawfully withheld under FOIA that are necessary for Plaintiff's defense.
  3. **Rescission of AWOL and Adverse Actions:** Direct the agency to rescind all improper AWOL charges and adverse actions taken against Plaintiff while medically barred from duty or engaged in protected union and safety officer activities.
  4. **Cessation of Retaliatory Conduct:** Order the agency to cease all forms of retaliation, intimidation, obstruction including technical restrictions on email and communication tools, retaliatory no contact orders, and the improper denial of FOIA requests and to restore Plaintiff's full ability to document and report ongoing violations and to access evidence necessary for his defense.
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#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 3, 2025, a true and correct copy of the foregoing Third Emergency Application for Stay and Injunctive Relief, together with all supporting exhibits including Exhibit E-127 through 135 was served via electronic CM/ECF Filing system on the following:

Roger Keller, Assistant U.S. Attorney

Thomas F. Eagleton U.S. Courthouse

111 S. 10th Street, 20th Floor

St. Louis, MO 63102

roger.keller@usdoj.gov

All referenced exhibits, including E-128 through E-135, are attached to this application.

/s/ Scotty L. White

Scotty L. White

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Respectfully submitted,

Scotty L. White

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Dated: July 3, 2025

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**Additional material  
from this filing is  
available in the  
Clerk's Office.**