

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEMOCRACY FORWARD  
FOUNDATION,

*Plaintiff,*

v.

Civil Action No. 25-cv-858

OFFICE OF MANAGEMENT AND  
BUDGET et al.,

*Defendants.*

**ORAL ARGUMENT REQUESTED**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S  
MOTION FOR A LIMITED PRELIMINARY INJUNCTION**

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## INTRODUCTION

Democracy Forward seeks limited, yet crucial, relief to enable it to inform the public about a matter of momentous national importance. Over the last two months, the Trump Administration has taken radical actions to eviscerate the functioning of government agencies by laying off their workers *en masse*. The President has ordered *all* agencies to prepare for “large-scale” reductions in force (“RIFs”) to conduct a “critical transformation” of the federal government. By March 13, agencies were required to submit their plans for these RIF terminations for the approval of Defendants Office of Management and Budget (“OMB”) and Office of Personnel Management (“OPM”).

Actions of this scale by the government require transparency, but, to date, the Administration’s mass firings have been conducted without complete or timely public information. The recent wholesale RIFs at the Department of Education were accompanied by a bare public statement that left the public to find out the details of the actions’ impact from cobbled-together media reports. OPM has advised that information about RIFs going forward should be disclosed—even to federal workers’ representatives—in a circumscribed and limited fashion only for “particularized need[s]” demonstrated with “specificity” by employee unions.<sup>1</sup> Given this opacity, Democracy Forward submitted Freedom of Information Act (“FOIA”) requests to OMB and OPM for the RIF plans submitted by agencies, and related communications, on an expedited basis.

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<sup>1</sup> Memorandum, Charles Ezell, Acting Dir., OPM, to Heads and Acting Heads of Departments and Agencies (Mar. 12, 2025), <https://federalnewsnetwork.com/wp-content/uploads/2025/03/Guidance-on-collective-bargaining-on-ARRPs-FINAL.pdf> [<https://perma.cc/7XWT-ZK2L>] (“Memorandum re: Guidance on Collective Bargaining in Connection with RIFs”).

The urgent need for the requested information has only grown since the requests were submitted. The Administration's statements and actions have made clear that mass firings are imminent, and they will impact crucial government functions on which millions of Americans rely. But the public remains in the dark about what services will be cut, which communities will be most harmed, and which agency functions will be degraded or made impossible. The RIF plans reveal key aspects of these nationally important decisions. Democracy Forward—and the public it serves—needs this information while it can still be used in the public debate, and before it is made stale by the Administration's *fait accompli* destruction of agency capacities. Once RIFs the Administration has decided to conduct are carried out, the public will lose access almost immediately to critical services and agencies will quickly harm their functioning for the long-term in a manner that cannot be remedied months later. Democracy Forward's mission of informing and serving the public will be irreparably harmed if this information is released too late for it to affect the public discourse before drastic actions have been taken.

Consequently, Democracy Forward asks this Court to order expedited production of a limited set of easily identifiable records of tremendous importance, none of which are likely to be exempt from production: agency RIF plans already approved by Defendants OMB and OPM. The minimal burden this order would place on Defendants pales in comparison to the public interest served by timely release of this information.

### **BACKGROUND**

Within days of assuming office, the Trump Administration began eliminating or dramatically curtailing the functioning of federal agencies established by statute and funded by Congress, preventing those agencies from serving their critical and statutorily-required public functions. From the U.S. Agency for International Development, to the Consumer Financial

Protection Bureau, to the Department of Education, to multiple other smaller agencies, the Trump Administration has over-and-over again substantially eliminated agency functions, largely through mass personnel actions that deprived the agencies of the staff needed to function. Complaint, ECF No. 1 (“Compl.”) ¶ 14; McGrath Declaration (“McGrath Decl.”) ¶ 11. Mass firings and other personnel actions have been critical to this approach, and there has been almost no warning before such dramatic personnel actions have been taken that affect the core functioning of these agencies.<sup>2</sup>

The Trump Administration is now set to apply this strategy in sweeping fashion across the entirety of the federal government. This stands to impact the services on which hundreds of millions of Americans rely—from Social Security payments, to workplace safety and environmental protection enforcement, to scientific research of every stripe. On February 11, 2025, President Trump issued an executive order requiring agency heads to “promptly” prepare to “initiate large-scale reductions in force (RIFs).” Exec. Order 14210, *Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*, 90 Fed. Reg 9669 (Feb. 14, 2025)<sup>3</sup>; Compl. ¶ 13; McGrath Decl. ¶ 12. This order directs agencies to

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<sup>2</sup> See, e.g., Dana Goldstein and Sarah Mervosh, “Are Schools Succeeding? Trump Education Department Cuts Could Make It Hard to Know,” N.Y. Times (Mar. 12, 2025), <https://www.nytimes.com/2025/03/12/us/education-department-cuts.html> [https://perma.cc/S54X-Y7YJ]; Karoun Demirjian and Aishvarya Kavi, *Trump Administration to Lay Off Nearly All of U.S. Aid Agency’s Staff*, N.Y. Times (Feb. 6, 2025), <https://www.nytimes.com/2025/02/06/us/politics/usaid-job-cuts.html> [https://perma.cc/WM75-QMS3]; Laurel Wamsley, *Up to 100 more workers are fired at CFPB as staff fear mass layoffs are looming*, NPR, Feb. 13, 2025, <https://www.npr.org/2025/02/13/nx-s1-5296929/cfpb-layoffs-staff-trump-doge> [https://perma.cc/9DV3-5QWG].

<sup>3</sup> Also available at *Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*, The White House (Feb. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-government-efficiency-workforce-optimization-initiative/> [https://perma.cc/F82G-AKX9].



prepare for drastic reductions in their ability to function, directing them to prioritize for “separat[ion] from Federal service . . . all components and employees . . . who are not typically designated as essential” during a government shutdown. *Id.* The order envisions a skeletal federal government that can provide the nation’s citizens with only a remnant of the extent and quality of the services they currently receive.

Defendants OMB and OPM issued a memorandum February 26, 2025, to implement this radical vision. OMB Director, Russell Vought, and Acting Director of Personnel Management, Charles Ezell, directed the heads of all executive departments and agencies to submit “large-scale” RIF plans for “approval” by March 13, 2025.<sup>4</sup> Defendants’ memorandum baldly asserted, without any particular support, that “tax dollars are being siphoned off to fund unproductive and unnecessary programs that benefit radical interest groups,” and that the federal “bureaucracy” was “bloated” and “corrupt.” *Id.* The memorandum also included an Appendix with a timeline suggesting RIF notices ought to be issued 30 days after agencies March 13, 2025, RIF plan submissions, on or around April 12, 2025, with the option of using a “shortened” notice period based on OPM granting of waivers. *Id.*

Defendants’ memorandum directed agencies, in submitting their mass RIF termination plans, to “focus on the maximum elimination of functions” not judged to meet the statutory minimum. *Id.* OMB and OPM further made clear that these plans were to be submitted not only for Defendants’ “review,” but also for their “approval.” *Id.* Further evidencing the speed with

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<sup>4</sup> Russell T. Vought and Charles Ezell, “*Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*,” Office of Management and Budget and Office of Personnel Management (Feb. 26, 2025), <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf> [https://perma.cc/HDG5-43LW].

which the Administration has taken dramatic action reduce agencies' functional capacities, department and agency heads across the Executive Branch were afforded scarcely more than two weeks to submit these plans to eviscerate much of their functional capacities through mass firings. *Id.*

On March 12, 2025, just before the deadline for agency submissions of Agency RIF and Reorganization Plans (“ARRPs”)—the “large-scale” termination plans ordered by President Trump and Defendants—the Democracy Forward Foundation (“Democracy Forward”) submitted FOIA requests to Defendants seeking these large-scale RIF plans (or ARRPs), as well as relevant OPM communications records. Compl. ¶¶ 25, 28, 31; McGrath Decl. Exhibits (“Exs.”) 1-3.<sup>5</sup> Each of Democracy Forward’s requests sought expedited processing, explaining the “compelling need” for information concerning the Administration’s mass RIF plans given the dramatic effects on public functions as well as the particular impacts on millions of federal workers. Compl. ¶¶ 20-22; McGrath Decl. Exs. 1-3. As Democracy Forward stated in those requests for expedited processing, “[b]y the Administration’s *own* description these actions carry enormous public importance as they stand to ‘commence[] a critical transformation of the Federal bureaucracy.’” Compl. ¶ 22; McGrath Decl. Exs. 1-3. Democracy Forward sought expedited processing as an organization primarily involved in disseminating information to the public, as the organization has regularly worked to analyze public records it has received and disseminates information about government activities both through numerous media reports and its own publications about

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<sup>5</sup> Democracy Forward submitted the request at this time given the typical agency practice of cutting off search date ranges shortly after the request is received, to ensure that substantially all plans submitted to Defendants were responsive to the request.

investigations the organization has conducted. Compl. ¶3; McGrath Decl. Exs. 1-3.<sup>6</sup> Democracy Forward's expedition requests cited numerous examples of media reports that utilized public records obtained by the organization. *Id.* Neither OMB nor OPM has acknowledged Democracy Forward's requests nor granted expedited processing. Compl. ¶¶ 27, 30, 33; McGrath Decl. ¶ 10. Perhaps explaining this lack of any action, reports suggest Defendant OPM's FOIA staff has been impacted by the Administration's significant firings to date.<sup>7</sup>

Since Democracy Forward submitted its requests, the Trump Administration has continued to take radical action to lay off federal workers and reduce the capacity of agencies to function. Consequently, on March 21, 2025, Democracy Forward supplemented its requests to Defendants for expedited processing with additional information. McGrath Decl. Exs. 4, 5. Defendants still have not granted expedited processing of the requests. Compl. ¶¶ 27, 30, 33; McGrath Decl. ¶ 10.

Indeed, The Administration's actions over the past several weeks suggest that it may *already* be placing the ARRP mass termination plans into action as the public remains is kept unaware of the extent, consequences, and rationale for the Administration's actions. Most prominently, in the last two weeks the Administration has conducted an extraordinarily broad

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<sup>6</sup> See Democracy Forward, *Investigation*, <https://democracyforward.org/work-category/investigation/> [https://perma.cc/2WSW-JSJG]; Democracy Forward, *Policy & Education*, <https://democracyforward.org/work-category/research/> [https://perma.cc/W8NY-F2HX].

<sup>7</sup> GovExec Staff, *RIF Watch: See Which Agencies Are Laying Off Federal Workers*, GovExec (Mar. 24, 2025), <https://www.govexec.com/workforce/2025/02/rif-watch-see-which-agencies-are-laying-federal-workers/403342/> [https://perma.cc/WZX7-HV77] (In late February, OPM virtually eliminated its Human Capital Data Management and Modernization office. Several dozen employees received RIF notices and only 10 were spared. OPM has also laid off employees from its privacy and Freedom of Information Act office. OPM has also eliminated its Chief Technology Office).

RIF at the Department of Education, cutting the Department's staff by approximately 50 percent, with certain statutorily-created component agencies reportedly seeing staff reductions of close to 90 percent. Compl. ¶ 15; McGrath Decl. ¶ 13.<sup>8</sup> In conducting these dramatic actions with the potential to impact our nation's students, educators, researchers, parents, and our collective future, the Department released only a barebones statement that asserted that the Department would "continue to deliver on all statutory programs," but which failed to detail the extent of the cuts within the Department or to explain the reasoning behind such dramatic action to reduce the capacity of a Department relied on by millions. Compl. ¶ 16; McGrath Decl. ¶ 13.<sup>9</sup> Without warning, the Administration also began to close regional offices of the Department of Health and Human Services ("HHS"), laying off their workers, as even employees of the agency lack knowledge about the Department's imminent additional RIFs. *See* McGrath Decl. Exs. 4, 5.<sup>10</sup>

There is every indication that continued mass firings are imminent following the submission of large-scale RIF plans to Defendants and Defendants' approval of those plans. Indeed, that is the stated purpose of those plans. On March 21, 2025, public reports indicated that

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<sup>8</sup> Arthur Jones II and Rachel Scott, *Department of Education lays off nearly 50% of its workforce*, ABC News (Mar. 11, 2025), <https://abcnews.go.com/US/department-education-faces-50-layoffs-after-closure-notice/story?id=119690524> [https://perma.cc/9CMF-58MS]; Jill Barshay, *Chaos and confusion as the statistics arm of the Education Department is reduced to a skeletal staff of 3*, Hechinger Rep. (Mar. 14, 2025), <https://hechingerreport.org/proof-points-chaos-confusion-statistics-education/> [https://perma.cc/XHD2-EHKR].

<sup>9</sup> Press Release, *U.S. Department of Education Initiates Reduction in Force*, U.S. Dep't of Educ. (Mar. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force> [https://perma.cc/64P6-VTB6].

<sup>10</sup> Paul Blumenthal & Jonathan Cohn, *Trump Administration Shutting Down HHS Legal Offices That Help Fight Fraud*, The Huffington Post (Mar. 11, 2025), [https://www.huffpost.com/entry/trump-hhs-close-regional-legal-offices\\_n\\_67d0c2afe4b08ae973d9446e](https://www.huffpost.com/entry/trump-hhs-close-regional-legal-offices_n_67d0c2afe4b08ae973d9446e) [https://perma.cc/CCX8-RGAC].

the Administration was actively reviewing the submitted plans with mass firing likely to follow within the “coming weeks.” McGrath Decl. Exs. 4, 5.<sup>11</sup>

The Administration has been intentionally opaque about the extent, scope, and rationale of its RIF plans. In a March 12, 2025, memorandum, Defendant OPM stated that agencies should only share “information concerning a RIF” even with federal employees’ representatives if there was a “particularized need for the requested information” demonstrated with “specificity” using a standard generally interpreted to apply to documents implicating sensitive deliberative or investigatory interests and suggesting the Administration will continue to keep both federal employees and the public in the dark about its consequential actions.<sup>12</sup> Further illustrating the opacity of the Administration’s approach to its mass terminations, one reporter covering the large-scale RIFs complained that “reporters are being forced to rely on (traumatized) laid-off workers . . . for basic information” about the recent firings at the Department of Education.<sup>13</sup>

### LEGAL STANDARDS

The FOIA statute requires agencies to “make available to the public information” by making agency records “promptly” available upon request. 5 U.S.C. § 552(a). Agencies are

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<sup>11</sup> Nandita Bose, *White House Begins Review of Federal Agency Plans for Second Round of Mass Layoffs, Sources Say*, Reuters (Mar. 21, 2025), <https://www.reuters.com/world/us/white-house-begins-review-federal-agency-plans-second-round-mass-layoffs-sources-2025-03-21/> [https://perma.cc/WPB5-QD7X].

<sup>12</sup> Memorandum re: Guidance on Collective Bargaining in Connection with RIFs, *supra* note 1. This memorandum employs a demanding standard for disclosing *any* information “concerning a RIF” that has been applied in previous cases to information concerning sensitive privacy and deliberative interests—as is demonstrated by the opinions cited in the memorandum.

<sup>13</sup> Zachary Schermele, LinkedIn (Mar. 19, 2025), [https://www.linkedin.com/posts/zachary-schermele-674a091a5\\_the-fact-that-reporters-are-being-forced-activity-7308145377621200899-dAyY?utm\\_source=share&utm\\_medium=member\\_desktop&rcm=ACoAADGcxqgBsBq8gUQjfWAHrSm5ssnYQaF\\_XQs](https://www.linkedin.com/posts/zachary-schermele-674a091a5_the-fact-that-reporters-are-being-forced-activity-7308145377621200899-dAyY?utm_source=share&utm_medium=member_desktop&rcm=ACoAADGcxqgBsBq8gUQjfWAHrSm5ssnYQaF_XQs) [https://perma.cc/F4PV-9ATE] (Reporter for USA Today).

required to process FOIA requests for which there is a “compelling need” for the information on an “expedited” basis, providing a determination and non-exempt portions of the requested records “as soon as [is] practicable.” *Id.* § 552(a)(6)(E). The D.C. Circuit has held that there is a compelling need warranting expedited processing when the FOIA request concerns “a matter of current exigency to the American public” and involves “federal government activity.” *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001) (citing 5 U.S.C. § 552(a)(6)(E)).

An agency must respond to a request for expedited processing “within 10 days after the request” and failure to do so is subject to judicial review. 5 U.S.C. § 552(a)(6)(E)(ii). When an agency fails to comply with the applicable time-limit provisions in the FOIA statute, a requester “shall be deemed to have exhausted his administrative remedies with respect to such request.” *Id.* § 552(a)(6)(C)(i); *see also Oglesby v. Dep’t of the Army*, 920 F.2d 57, 62 (D.C. Cir. 1990) (holding that a requester may bring suit if an agency fails to comply with statutory time limits).

The Supreme Court has recognized the vital importance of these statutory entitlements to information about the government’s actions, recognizing that it is “a structural necessity in a real democracy.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004).

The same factors for determining whether a preliminary injunction is warranted apply in FOIA cases as in all others. A plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep’t of Commerce*, 498 F. Supp. 3d 87, 96 (D.D.C. 2020) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)).

In a FOIA matter, when “time is necessarily of the essence,” the harm in agency delay is more likely to be irreparable.” *Am. Oversight v. U.S. Dep’t of State*, 414 F. Supp. 3d 182, 186

(D.D.C. 2019) (finding irreparable harm where records would inform the public concerning ongoing impeachment proceedings) (quoting *Elec. Priv. Info. Ctr. v. U.S. Dep't of Just.*, 416 F. Supp. 2d 30, 40–41 (D.D.C. 2006) (where records related to ongoing congressional hearings). In FOIA cases, the balance of equities and the public interest factors “merge” because “the Government is the opposing party.” *Brennan Ctr. for Just.*, 498 F. Supp. 3d at 103 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

## ARGUMENT

### A. Democracy Forward is Likely to Succeed on the Merits.

#### 1. The records sought are incontrovertibly subject to FOIA, and this Court has jurisdiction.

As a clear matter of established law, Democracy Forward is entitled to expedited processing of its FOIA requests, and timely processing and production of non-exempt responsive records. The FOIA statute requires a determination on requests for expedited processing within 10 calendar days and expedited processing, with a determination and prompt production “as soon as practicable” after the granting expedition. 5 U.S.C. § 552(a)(6)(E); *id.* § 552(a)(3)(A). Defendants OMB and OPM have failed to meet this clear statutory obligation as they have failed to grant, or even acknowledge, Democracy Forward’s requests for expedited processing of its March 12, 2025, FOIA requests.

The records sought here—plans for “large-scale” reductions in force, which are in OMB and OPM’s possession given their roles in approving these plans—are undoubtedly agency records subject to production under the FOIA statute. *See U.S. Dep’t of Just. v. Tax Analysts*, 492 U.S. 136, 146 (1989) (defining “agency records” as materials “create[d] or obtain[ed]” by the agency and within the agency’s control at the time the request is made). And Democracy Forward’s requests are proper, reasonably described requests that seek a limited, clearly

identified set of records that can be located with “a reasonable amount of effort.” *Truitt v. U.S. Dep’t of State*, 897 F.2d 540, 544-46 (D.C. Cir. 1990). Democracy Forward is thus likely to succeed in establishing its entitlement to the production of the non-exempt portions of the requested records.<sup>14</sup>

**2. Expedited processing and prompt production is warranted due to the urgent need to inform the public about the Administration’s decisions to fire vast swaths of the federal workforce.**

Here, Democracy Forward has requested records directly relevant to a matter of tremendous national importance. *See* Compl. ¶¶ 20-24, McGrath Decl. Exs. 1-5. Democracy Forward is entitled to expedited processing of its requests, as there is a compelling need for the information requested concerning the decisions the Administration has made to conduct large scale terminations of federal workers. 5 U.S.C. § 552(a)(6)(E)(v)(II). The “urgency to inform the public” about the requested RIF plans, *id.*, is clear based on the Administration’s own characterization of the plans’ transformative impacts, the depth of the impacts already felt as a result of the large-scale terminations the Administration has already engaged in, and the stark opacity with which the Administration has undertaken its recent mass terminations. *See* Compl. ¶¶ 22, 24, McGrath Decl. Exs. 1-5. These imminently impending actions to fire federal workers *en masse* in rapid fire fashion, are certainly a “matter of current exigency to the American

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<sup>14</sup> For the avoidance of any doubt, Plaintiff notes that although OPM’s 32 year-old FOIA regulations suggest that FOIA requests should be sent by U.S. Mail, 5 C.F.R. § 294.108 (1989), OPM’s website currently states “to the extent feasible, FOIA requests for agency records should be submitted by email to FOIA@opm.gov.” *Freedom of Information Act, Contacts*, Off. of Pers. Mgmt., <https://www.opm.gov/information-management/freedom-of-information-act/#url=Contacts> [https://perma.cc/K8YW-54NQ] (last accessed Mar. 20, 2025). Democracy Forward consequently submitted the requests via email.



public,” that courts have regularly found would warrant expedited processing. *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (quoting *Al-Fayed*, 254 F.3d at 310).

Defendants have conceded that these plans are of great public importance. “[B]y the Administration’s *own* description these actions carry enormous public importance as they stand to ‘commence[] a critical transformation of the Federal bureaucracy’ . . . [with] ‘large-scale’ reductions” in the number of federal workers employed to serve Americans. Compl. ¶ 22, McGrath Decl. Exs. 1-3 (quoting Vought & Ezell Memorandum, *supra*). Indeed, these large-scale RIF plans are apparently already being implemented in large Departments like Education and HHS—with entire regional offices closed and component agencies reduced to mere stumps—promptly substantial media attention and public interest. McGrath Decl. Exs. 4, 5. But the public, and even federal employees impacted and reporters, lack basic information about the RIF plans. *Supra* note 3, McGrath Decl. Exs. 4, 5.

The mass firings could affect the quality of governance and provision of government services in a manner that impacts nearly every American. These firings could, for example, dramatically reduce environmental protection enforcement against polluters, deprive national parks of the ability to fully operate, hinder citizens seeking their hard-earned Social Security benefits, jeopardize food safety as inspectors are fired, and put American workers’ lives at risk as labor enforcement is truncated. *See, e.g.*, Compl. ¶ 22.<sup>15</sup>

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<sup>15</sup> *See also* Chris Megerian, *The Trump Administration Sets the Stage for Large-Scale Federal Worker Layoffs in a New Memo*, Reuters (Feb. 27, 2025), <https://apnews.com/article/trump-elon-musk-federal-workers-layoffs-d295d4bb2cdd5023c27d9cb03754e81b> [https://perma.cc/GLW2-MK2G] (“The ripple effects will be felt around the country. Roughly 80% of federal workers live outside the Washington area, and government services — patent approvals, food inspections, park maintenance and more — could be hindered depending on how cuts are handled.”).

Courts have found that expedited processing and preliminary injunctions are warranted even in cases where the records requested were needed far less urgently needed and less directly connected to the matter of public exigency than here. For example, in *Washington Post v. Department of Homeland Security*, the court found expedited processing and a preliminary injunction warranted where the Vice President’s visitor logs were at issue because congressional elections were impending. 459 F. Supp. 2d 61, 65 (D.D.C. 2006). And in *Leadership Conference on Civil Rights v. Gonzales*, the court found expedited processing warranted where the records related to legislation set to expire more than a *year* from the time of the court’s decision. 404 F. Supp. 2d 246, 260 (D.D.C. 2005).

**3. Production of a limited set of easily-identifiable records—approved RIF plans—by the statutory deadline is eminently “practicable.”**

As expedited processing is warranted, Plaintiff Democracy Forward is entitled to production “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E). Here that requires production by a date in which the information sought will still be useful to the public debate. A court in this district has held that production “as soon as practicable” under expedited processing must require, as a matter of statutory construction, a determination and prompt production by the time of the twenty-working day statutory deadline for non-expedited requests. *Elec. Priv. Info. Ctr.*, 416 F. Supp. 2d at 39. In this case that timeline would require production by April 9, 2025. Compl. ¶¶ 25, 28.

To facilitate a practicable completion of the search and production in this time frame, Democracy Forward is seeking limited relief in the instant motion: production by a date certain of only *approved* RIF plans. Democracy Forward is not now asking that the other records it has requested, namely the related communications records, Compl. ¶ 31, McGrath Decl. Ex. 3, and

RIF plans not approved by the time of the Court’s order, be produced by that date certain.<sup>16</sup> If the Court grants the requested relief, Defendants would only be required to process and produce a limited universe of easily identifiable, finalized, and formal documents by that date: already approved RIF plans. Production of such documents—which are associated with specific email inboxes and reflect final decisions—is *easier* and more “practicable” than was the case in other instances where courts have ordered similarly prompt productions in response to much broader FOIA requests that have involved (1) harder to identify documents, and (2) that were also likely to be deliberative or classified, requiring complex FOIA exemption determinations. *See Elec. Priv. Info. Ctr.*, 416 F. Supp. 2d at 34, 39 (10 days for four agencies to produce records “concerning” domestic surveillance activities); *Am. Oversight*, 414 F. Supp. at 188 (20 working days to produce State Department communications records related to Ukraine and impeachment inquiry).

**B. Democracy Forward—and the Public it Seeks to Serve—Will be Irreparably Harmed Absent Prompt Release of a Limited Set of Records of Tremendous National Importance.**

Democracy Forward will be harmed irreparably if Defendants do not grant expedited processing and promptly process its FOIA requests to produce non-exempt records showing the approved plans for “large-scale” RIF terminations at agencies across the federal government.<sup>17</sup>

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<sup>16</sup> As is typical in FOIA cases, Democracy Forward also seeks—and incorporates into its proposed order—rolling productions following an initial production shortly after this Court’s order. Even there, Democracy Forward requests prompt rolling productions only of RIF plans approved after the Court’s order.

<sup>17</sup> *Approved* RIF plans are particularly unlikely to be exempt under the FOIA, as they will no longer be deliberative after having been approved by OMB—the Executive Office of the President component charged with implementation of the President’s vision and specifically empowered by executive order in this instance—and OPM, the agency that has promulgated regulations concerning RIFs and which is specifically empowered to grant exemptions from RIF

Defendants' actions and statements have made clear that these mass RIF terminations are imminent and likely to begin on a government-wide scale on or around April 12, 2025.<sup>18</sup> As this Circuit has long held, "stale information is of little value." *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988). And district courts in this Circuit have long "recognized that, where an obligation to disclose exists, plaintiffs may suffer irreparable harm if they are denied access to information that is highly relevant to an ongoing public debate." *Dunlap v. Presidential Advisory Comm'n on Election Integrity*, 286 F. Supp. 3d 96, 110 (D.D.C. 2017) (citing *Wash. Post*, 459 F. Supp. 2d at 75; *Elec. Priv. Info. Ctr.*, 416 F. Supp. 2d at 41). "FOIA was created to foster public awareness, and failure to process FOIA requests in a timely fashion is 'tantamount to denial.'" *Wash. Post*, 459 F. Supp. 2d at 74 (quoting H.R. Rep. No. 93–876, at 6 (1974)). The public Democracy Forward serves must have access to the approved RIF plans before they are put into effect and agencies take irreparable steps toward gutting their functional capacities, not months or years later.

The Trump Administration has begun implementing these large-scale RIFs, impacting agencies' abilities to carry out their missions and provide services to the public. *See* McGrath Decl. Exs. 4, 5. The public that Democracy Forward serves badly needs information about the

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requirements in this instance. *See Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative*, 90 Fed. Reg. 9669. Additionally, given the Administration is *already* implementing mass RIFs, there is no foreseeable harm to an interest protected by FOIA exemptions in disclosing the plans for mass firings the Administration has already determined to conduct and will imminently carry out.

<sup>18</sup> *See Appendix* Russell T. Vought and Charles Ezell, "Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative," Office of Management and Budget and Office of Personnel Management (Feb. 26, 2025), <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf> [<https://perma.cc/HDG5-43LW>].

extent of the RIFs, and the consequent future impacts on government services, to meaningfully engage elected representatives to seek remedies or a change in course. Without receiving that information by the time the RIFs are implemented—or at a minimum within the short period after their implementation before to-be-fired civil servants are placed *en masse* on administrative leave—Democracy Forward and the public will be irreparably harmed. Once the plans the Administration has decided to carry out are implemented, the public will immediately face potential losses in critical services. And the mass of federal workers subject to the RIFs could be completely separated from their agencies within 30 days, finalizing a crucial loss of the massive loss of resources essential to agency functioning that cannot be practically remedied after the fact. *See* McGrath Decl. Exs. 4, 5.<sup>19</sup> (Democracy Forward has tailored its requested relief narrowly to *approved* RIF plans so that only those records that would provide information about such imminent action—and where irreparable harm would result without prompt disclosure—must be produced rapidly if the Court grants this motion.)

The administration’s speed in scaling back the functioning of federal agencies has already limited the opportunity for contemporaneous public debate. From the U.S. Agency for International Development to the U.S. Institute of Peace, the Administration has gutted agencies over-and-over again without warning or the opportunity for public consideration and discourse. McGrath Decl. Exs. 4, 5. The “basic purpose of FOIA,” “to ensure an informed citizenry, vital to

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<sup>19</sup> *See also* Russell T. Vought and Charles Ezell, “Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative,” Office of Management and Budget and Office of Personnel Management (Feb. 26, 2025), <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf> [https://perma.cc/HDG5-43LW] (noting the possibility of 30-day RIF timelines with OPM approval).

the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed,” is an essential antidote to the haste and opacity of the administration’s actions. *Nat’l Lab. Rels. Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

The Administration plans to eviscerate agency functions through mass firings across the entirety of the federal government. This is no exaggeration. The President’s executive order directed agencies to create these RIF termination plans with an eye toward maintaining the “employees and components” generally used during a government shutdown.<sup>20</sup> *See also* Compl. ¶ 13; McGrath Decl. ¶ 12. This is the type of exigent matter of “national importance” that courts in this district have found warrants a preliminary injunction to ensure the release of vital information to the public to prevent irreparable harm. *Brennan Ctr. for Just.*, 498 F. Supp. at 101 (quoting *Ctr. for Pub. Integrity v. U.S. Dep’t of Def.*, 411 F. Supp. 3d 5, 12 (D.D.C. 2019)); *see also* *Wash. Post.*, 459 F. Supp. 2d at 75; *Am. Oversight*, 414 F. Supp. 3d at 186; *Elec. Priv. Info. Ctr.*, 416 F. Supp. 2d at 40-41.

Members of the public cannot meaningfully participate in petitioning their elected representatives without adequate information, and organizations like Democracy Forward cannot fulfill their mission by informing and participating in the public discourse about these critical matters without access to the requested information. For example, at the Departments of Education and HHS, entire regional offices have been shuttered. *Supra* Background. The citizens and states served by those regions had no opportunity engage in the public debate surrounding the Administration’s plans, or to contact their representatives or advocate for a different course

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<sup>20</sup> *Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*, 90 Fed. Reg. 9669.

of action *before* critical services were stripped away. This is to say nothing of the millions of federal workers who are unable to plan for dramatic firings that will deeply impact their lives, their families, and their communities.

And “[t]ime is clearly of the essence here.” *Am. Oversight*, 414 F. Supp. 3d at 186. The actions of the Administration to date and public reports show that those “large-scale” RIFs that are not already underway will be conducted in the “coming weeks.” *See* Exs. 4, 5.<sup>21</sup> Workers could be placed on leave within days or weeks after the RIF notices, harming agency functioning almost immediately. And the RIF mass firings could be complete in as little 30 days after their first notice. McGrath Decl. Exs. 4, 5. The structure of Defendants’ instruction to agencies confirms that this process will happen quickly, with mass terminations *first* and reorganization efforts later. Defendants’ memorandum to agencies required their large-scale RIF plans be submitted for approval quickly by March 13, 2025. And Defendants’ memorandum to agencies suggests that mass RIFs may begin to be implemented on a wide scale 30 days after the submission of plans to Defendants—on or around April 12, 2025.<sup>22</sup> Subsequent reorganization plans are also due on April 12, 2025, for a process that will be completed by September 30, 2025.<sup>23</sup> That Defendants afforded agencies barely more than two weeks to submit mass firing

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<sup>21</sup> Bose, *White House Begins Review of Federal Agency Plans for Second Round of Mass Layoffs*, *Sources Say*, *supra* note 11.

<sup>22</sup> Russell T. Vought and Charles Ezell, “Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative,” Office of Management and Budget and Office of Personnel Management (Feb. 26, 2025), <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf> [https://perma.cc/HDG5-43LW].

<sup>23</sup> *Id.*

plans and demanded those plans well *before* agencies' reorganization plans further demonstrates the Administration's determination to move forward with mass terminations very quickly. *Id.* Without very prompt production of plans reflecting the mass termination decisions the Administration has decided to undertake, irreparable harm will undoubtedly result.

**C. The Requested Relief Will Not Burden Others' Interests and the Public Interest Strongly Favors the Requested Relief.**

Granting Democracy Forward's limited request for production of records of great national concern is plainly in the public interest and will not meaningfully burden others' interests. The public badly needs access to the plans that show the decisions the Administration has made that could deprive them of critical public services. Here, as in other cases where courts have considered this factor in FOIA cases, the public interest and equities weigh in favor of disclosure given the "public benefit in the release of information that adds to citizens' knowledge' of the activities of their government." *Ctr. for Pub. Integrity*, 411 F. Supp. 3d at 15 (quoting *Ctr. to Prevent Handgun Violence v. U.S. Dep't of Treasury*, 49 F. Supp. 2d 3, 5 (D.D.C. 1999)). Similarly, the hardships placed on other FOIA requesters and the Defendants are minimal and are no bar to relief. *See id.* The relief sought is for the expedited and prompt processing of a limited set of records of immense public concern could, at most, incrementally delay processing of other less urgent requests. And Defendants and the Administration are currently—as is the very subject of this request—engaged in "large-scale" efforts to reduce the number of federal workers available to carry out government functions despite largely constant congressional appropriations. Indeed, reports indicate that Defendant OPM has recently laid off



staff in its FOIA and privacy office.<sup>24</sup> Defendants cannot turn around and credulously argue that they lack the staff to expeditiously process Democracy Forward's requests without hardship.

### CONCLUSION

Democracy Forward asks that this Court order the limited relief it has sought here to inform the public about the government's decision to undertake actions of tremendous national consequence. Democracy Forward asks that Defendants be ordered to produce the records Democracy Forward has requested on an expedited basis and as soon as practicable, including finding that production of approved RIF plans by April 9, 2025, or seven days after this Court's order, with rolling productions of subsequently approved plans on an expedited basis, is required and is practicable.

Respectfully submitted,

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<sup>24</sup>GovExec Staff, *RIF Watch: See Which Agencies Are Laying Off Federal Workers*, *supra* note 7 (“In late February, OPM virtually eliminated its Human Capital Data Management and Modernization office. Several dozen employees received RIF notices and only 10 were spared. OPM has also laid off employees from its privacy and Freedom of Information Act office. OPM has also eliminated its Chief Technology Officer.”).