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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO;
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO; NATIONAL NURSES
ORGANIZING COMMITTEE/NATIONAL
NURSES UNITED; SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO;
NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, INC.;
NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, IAM, AFL-CIO,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; U.S.
OFFICE OF PERSONNEL MANAGEMENT;
CHARLES EZELL, in his official capacity as
Acting Director of the U.S. Office of
Personnel Management; U.S. DEPARTMENT
OF STATE; U.S. AGENCY FOR
INTERNATIONAL DEVELOPMENT;
MARCO RUBIO, in his official capacities as
U.S. Secretary of State and Acting
Administrator for the U.S. Agency for
International Development; U.S.
DEPARTMENT OF DEFENSE; PETER
HEGSETH, in his official capacity as U.S.
Secretary of Defense; U.S. DEPARTMENT
OF THE TREASURY; SCOTT BESSENT, in
his official capacity as U.S. Secretary of the
Treasury; U.S. DEPARTMENT OF
VETERANS AFFAIRS; DOUG COLLINS, in

Case No. 3:25-cv-03070-JD

**BRIEF AMICI CURIAE OF FORMER
SENIOR NATIONAL SECURITY
OFFICIALS AND ADVISORS, AND OTHER
INTERESTED PARTIES, IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Hon. James Donato

1 his official capacity as U.S. Secretary of
2 Veterans Affairs; U.S. DEPARTMENT OF
3 JUSTICE; PAMELA BONDI, in her official
4 capacity as U.S. Attorney General; U.S.
5 DEPARTMENT OF HEALTH AND
6 HUMAN SERVICES; ROBERT F.
7 KENNEDY JR., in his official capacity as
8 Secretary of Health and Human Services; U.S.
9 DEPARTMENT OF HOMELAND
10 SECURITY; KRISTI NOEM, in her official
11 capacity as Secretary of Homeland Security;
12 U.S. DEPARTMENT OF THE INTERIOR;
13 DOUG BURGUM, in his official capacity as
14 Secretary of the Interior; U.S. DEPARTMENT
15 OF ENERGY; CHRIS WRIGHT, in his
16 official capacity as Secretary of Energy; U.S.
17 DEPARTMENT OF AGRICULTURE;
18 BROOKE ROLLINS, in her official capacity
19 as Secretary of Agriculture; U.S.
20 ENVIRONMENTAL PROTECTION
21 AGENCY; LEE ZELDIN, in his official
22 capacity as Administrator of the U.S.
23 Environmental Protection Agency; U.S.
24 NATIONAL SCIENCE FOUNDATION; DR.
25 SETHURAMAN PANCHANATHAN, in his
26 official capacity as Director of the U.S.
27 National Science Foundation; U.S.
28 INTERNATIONAL TRADE COMMISSION;
AMY A. KARPEL, in her official capacity as
Chair of the U.S. International Trade
Commission; U.S. GENERAL SERVICES
ADMINISTRATION; STEPHEN EHIKIAN,
in his official capacity as Acting Administrator
of the General Services Administration; U.S.
SOCIAL SECURITY ADMINISTRATION;
LELAND DUDEK, in his official capacity as
Acting Commissioner of the Social Security
Administration; U.S. DEPARTMENT OF
LABOR; LORI CHAVEZ-DEREMER, in her
official capacity as Secretary of Labor; U.S.
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; SCOTT
TURNER, in his official capacity as Secretary
of the U.S. Department of Housing and Urban
Development; U.S. DEPARTMENT OF
TRANSPORTATION; SEAN DUFFY, in his
official capacity as Secretary of
Transportation; U.S. DEPARTMENT OF
EDUCATION; LINDA MCMAHON, in her
official capacity as Secretary of Education,

Defendants.

Introduction

The rule of law is critical to this country’s national security. For generations, America’s commitment to the rule of law has served as an example to the world that the credible resolution of disputes and a strong defense of free speech help ensure stability and economic prosperity. America’s defense of the rule of law is a primary currency underlying its ability to project security and stability around the world. The current administration, however, seeks to abandon these principles—and thereby endangers the peace, prosperity, and stability critical to America’s national and economic security.

The First Amendment’s protections—including freedom of speech and the right to petition the government for redress—are foundational to the rule of law in America. The executive order challenged in this case is one of a series of orders that seek to punish actors for protected First Amendment expression. Not only are these executive orders *intended* to stifle dissent and to diminish the right to petition for redress—they have done so, with targeted organizations choosing to change their behavior rather than risk punitive sanctions. The Administration’s tactics are anathema to the First Amendment and to the rule of law—and to the continued prosperity and security of this country.

Argument

The challenged executive order violates the plaintiffs’ First Amendment rights. The fact sheet issued by the Administration along with the executive order claims that President Trump is acting “to ensure that agencies vital to national security can execute their missions without delay and protect the American people.” Kelley Decl. (Dkt. No. 15-22), Exh. 3 (Fact Sheet) at 3. But the fact sheet then explains that, in the President’s view, “[c]ertain Federal unions have declared war on President Trump’s agenda,” and that unions for employees of the Department of Veteran Affairs have “filed 70 national and local grievances over President Trump’s policies since the inauguration—an average of over one a day.” *Id.*

Grievances represent core speech and petitioning protected by the First Amendment. *See* U.S. CONST., amend. I. “The First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others, and to petition his government for redress of grievances.”

1 *Smith v. Ark. State Highway Emps., Local 1315*, 441 U.S. 463, 464 (1979). The fact sheet does not
 2 attempt to argue that the *substance* of the unions’ grievances threatens national security. Instead, it
 3 calls out the supposed “mass obstruction” of the grievances themselves. Kelley Decl., Exh. 3 at 3.
 4 That demonstrates that the Administration is retaliating for the *First Amendment conduct itself*. That
 5 is unconstitutional. *See Smith*, 441 U.S. at 464 (“The government is prohibited from infringing upon
 6 the[] guarantees [of the First Amendment] . . . by imposing sanctions for the expression of particular
 7 views it opposes.”).

8 **1. The challenged executive order is part of a pattern of government conduct in**
 9 **violation of the First Amendment.**

10 The challenged—and unconstitutional—executive order is not a mere shot across by the bow
 11 by the Administration. It is part of what has become a relentless volley of attacks on First
 12 Amendment rights exercised by actors that the Administration views as thorns in its side.

13 For example, President Trump’s executive order targeting the law firm Perkins Coie
 14 expressly states that its purpose is to counter activity such as the firm’s representation of Hillary
 15 Clinton, and its legal work challenging election laws requiring voter identification. Exec. Order No.
 16 14230, 90 Fed. Reg. 11781, *Addressing Risks from Perkins Coie LLP*, § 1 (March 6, 2025). The
 17 Perkins Coie executive order does not stand alone. The (now revoked) executive order directed at
 18 Paul Weiss noted that the firm “brought a pro bono suit against individuals alleged to have
 19 participated in the events that occurred at or near the United States Capitol on January 6, 2021,” and
 20 hired a lawyer “who had previously left Paul Weiss to join the Manhattan District Attorney’s office
 21 solely to manufacture a prosecution against [President Trump].” Exec. Order No. 14237, 90 Fed.
 22 Reg. 13039, *Addressing Risks from Paul Weiss*, § 1 (March 14, 2025). The executive order that
 23 targets Jenner & Block calls out the firm’s rehiring of an attorney who was part of a special
 24 prosecutor’s investigation of the first Trump administration. Exec. Order No. 14246, 90 Fed. Reg.
 25 13997, *Addressing Risks from Jenner & Block*, § 1 (March 25, 2025). The WilmerHale executive
 26 order also condemns the firm for its hiring of attorneys that investigated the first Trump
 27 Administration. Exec. Order No. 14250, 90 Fed. Reg. 14549, *Addressing Risks from WilmerHale*, §
 28 1 (March 28, 2025). And the Susman Godfrey executive order targets that firm for representations

1 that supposedly “weaponize the American legal system and degrade the quality of American
 2 elections.” Exec. Order No. 14263, 90 Fed. Reg. 15615, *Addressing Risks from Susman Godfrey*, § 1
 3 (April 9, 2025). The *merits* of the representations these law firms have undertaken is, for purposes of
 4 the First Amendment, irrelevant. The mere fact of “[o]fficial reprisal for protected speech offends
 5 the Constitution because it threatens to inhibit exercise of the protected right.” *Hartman v. Moore*,
 6 547 U.S. 250, 256 (2006) (cleaned up).

7 These executive orders have, in fact, done more than *threaten* to inhibit the exercise of First
 8 Amendment rights—they have done so. For example, President Trump revoked the Paul Weiss
 9 executive order after the firm agreed to “dedicate the equivalent of \$40 million in pro bono legal
 10 services over the course of President Trump’s term to support the Administration’s initiatives”
 11 Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Mar. 20, 2025)¹; *see also* Exec. Order No.
 12 14244, 90 Fed. Reg. 13685, *Addressing Remedial Action by Paul Weiss*, § 1 (March 21, 2025)
 13 (stating that “Paul Weiss indicated that it will engage in a remarkable change of course”). Again, the
 14 merits of the Administration’s preferred pro bono services are irrelevant. The deeply problematic
 15 point is that the government has, through an executive order in retaliation for past speech and
 16 petitioning, coerced a private law firm into agreeing to take on representations in support of the
 17 Administration’s policies. And, again, the Paul Weiss example does not stand alone; the
 18 Administration has reached similar deals with Skadden, Willkie Farr, Milbank, Kirkland & Ellis,
 19 Latham & Watkins, A&O Shearman, Cadwalader, and Simpson Thacher. *See* Donald J. Trump
 20 (@realDonaldTrump), TRUTH SOCIAL (Mar. 28, 2025)² (Skadden to provide \$100 million in pro
 21 bono services to “causes that the President” supports); Donald J. Trump (@realDonaldTrump),
 22 TRUTH SOCIAL (Apr. 1, 2025)³ (Willkie Farr to provide \$100 million in pro bono services to “causes
 23 that President Trump” supports); Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Apr. 2,
 24 2025)⁴ (Milbank to provide \$100 million in pro bono services on initiatives supported by the
 25

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 27 ¹ <https://truthsocial.com/@realDonaldTrump/posts/114197044617921519>.

² <https://truthsocial.com/@realDonaldTrump/posts/114241348699704594>.

³ <https://truthsocial.com/@realDonaldTrump/posts/114264667777137553>.

⁴ <https://truthsocial.com/@realDonaldTrump/posts/114269692330126501>.

President); Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Apr. 11, 2025)⁵ (Kirkland & Ellis, A&O Shearman, Simpson Thacher, and Latham & Watkins each to provide \$125 million in pro bono services to causes that President Trump supports); Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Apr. 11, 2025)⁶ (Cadwalader to provide \$100 million in pro bono services to causes that President Trump supports).

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). President Trump’s actions run roughshod over this principle—and with it, the First Amendment.

2. The challenged executive order undermines national security.

In issuing the executive order challenged in this case, President Trump invoked national security. But by ignoring the First Amendment and, more broadly, the rule of law, the executive order undermines national security.

America’s “commitment to democratic values and the rule of law” has contributed to its long-held status as a leader on the world stage and its “exceptional position within the international legal system.” *See* Winston P. Nagan & Craig Hammer, *The New Bush National Security Doctrine and the Rule of Law*, 22 BERKELEY J. INT’L L. 375, 401–02 (2004). Thus, “a claim promoting expansion or unlimited powers based on a national security crisis poses a serious threat to the principle that official power must be subject to law,” harming both our country’s standing in the global community and national security. *See id.* at 385. If foreign states and businesses lose trust in America’s willingness to accept that it is bound by the rule of law, that will harm national security, not promote it; official acts that flout the rule of law “erode both security and law.” *See The Rule of Law in the Age of Terrorism*, WILSON CENTER at 7.⁷

“National security is public security, not government security from informed criticism.” *United States v. Morison*, 844 F.2d 1057, 1081 (4th Cir. 1988) (Wilkinson, J., concurring). “The

⁵ <https://truthsocial.com/@realDonaldTrump/posts/114320245355397433>.

⁶ <https://truthsocial.com/@realDonaldTrump/posts/114320237164839938>.

⁷ https://www.wilsoncenter.org/sites/default/files/media/documents/event/kennan_cable_-_anti-terror_and_law.pdf.

1 First Amendment interest in informed popular debate does not simply vanish at the invocation of the
 2 words ‘national security.’” *Id.* “In the entire history of the United States”—until now—“the national
 3 government has never attempted to punish criticism of government officials or policies, except in
 4 times of war.” Geoffrey R. Stone, *Free Speech and National Security*, 84 IND. L.J. 939, 939 (2009).
 5 The Administration’s current contrary actions threaten to erode trust in America’s commitment to
 6 free speech.

7 “National security has as a goal the defense of liberty as well as of our physical security.”
 8 JAMES E. BAKER, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES 2
 9 (Cambridge University Press, 2007). By retaliating against the plaintiff unions based on their speech
 10 and petitioning, the challenged executive order harms rather than protects national security.

11 Conclusion

12 For the foregoing reasons, the Court should grant the motion for a preliminary injunction.

13
 14 Dated: April 18, 2025

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 24 *Blanchard, Mary DeRosa, Gordon Gray, J.*
 25 *Michael Luttig, Mara Rudman, Suzanne Spaulding,*
 26 *and the Bar Association of the District of*
 27 *Columbia*