



January 22, 2026

Via Electronic Mail

United States Department of Justice
Civil Division, Federal Programs Branch

Elizabeth J. Shapiro
Deputy Branch Director

Marianne F. Kies
Samuel Holt
Trial Attorneys

Re: AFSCME v. SSA, No. 1:25-cv-00596 (D. Md.)

Dear Ms. Shapiro, Ms. Kies, and Mr. Holt,

Democracy Forward Foundation represents the American Federation of State, County, and Municipal Employees, AFL-CIO; the Alliance for Retired Americans; and the American Federation of Teachers in the above-captioned matter. In February 2025, our clients filed litigation against the Social Security Administration (“SSA”), the Department of Government Efficiency (“DOGE”), and affiliated defendants (collectively “Defendants”) challenging Defendants’ unlawful actions in permitting unauthorized individuals to access Americans’ most sensitive personal data. Throughout the pendency of this litigation, Defendants, through counsel, filed declarations which represented to our clients and to the Court that, among other things: (1) SSA revoked DOGE Team members’ access to SSA systems by March 24, 2025; (2) DOGE, other than DOGE Team members, never had access to SSA systems of record; (3) SSA had provided a complete list of SSA systems of record to which DOGE Team members had access; (4) the SSA DOGE Team’s work was directed at detecting waste, fraud, and abuse; and (5) safeguards ensure that no private or commercial servers integrate with SSA systems.

Those representations were neither true nor accurate. On Friday, January 16, 2026, you and other Department of Justice (“DOJ”) attorneys filed a document with the federal district court in the above-captioned matter titled “Notice of Corrections to the Record.” ECF No. 197 (“Notice”). The Notice contains a laundry list of misrepresentations and omissions made in sworn declarations

signed by federal government officials and submitted by DOJ attorneys to the Court in the above-captioned matter. The Notice makes plain that the representations referenced above, among others, were not truthful when provided to the Court. The Notice also describes two previously unidentified instances of Defendant SSA violating the District of Maryland's active temporary restraining order ("TRO") entered to protect our clients' privacy interests.

We are troubled—to put it mildly—by the information described in the Notice. We are even more troubled that DOJ attorneys first learned of these violations and misrepresentations last year and yet waited well over a month to inform our clients and the Court of the misstatements and omissions, despite the pendency of the Fourth Circuit appeal in this matter, *AFSCME v. SSA*, No. 25-1411, which included a record that contains the same misrepresentations. The revelations in the Notice also come as there is increased concern among our clients and the broader American public regarding the way in which the federal government, including SSA and the other Defendants, maintain and are using their data.

We ask that you confirm by no later than the close of business tomorrow, Friday, January 23, that since February 21, 2025, when this litigation was filed, Defendants and the DOJ have preserved:

- All evidence—including records, documents, e-mails, messages sent through message applications, and other information—related to DOGE Team members' and DOGE employees' access to and handling of personal data held at SSA. This includes records concerning any dissemination of that data to third parties, contractors, authorized or unauthorized persons.

This includes, among other things, any such materials in DOJ's and/or Defendants' possession stored on personal devices and in personal email or messaging applications. If Defendants and DOJ are not able to confirm that such evidence has been preserved, please provide, by the close of business on Friday, January 30, a list of custodians of such records which may not have been preserved.

The Notice DOJ filed with the Court also raises a number of concerns regarding our clients' privacy interests and compliance with the Court's directives protecting those interests that we will be pursuing. This includes the Notice's revelation that Defendants authorized the transfer of official records, potentially including PII, in SSA's possession to individuals not employed by SSA and to a non-governmental server. By close of business on Friday, January 30, please provide:

- A summary detailing what steps, if any, have been taken by Defendants and/or DOJ to “claw back” information provided to third parties and/or transferred to a non-governmental server. This includes, among other things, providing information regarding what instructions, if any, were provided to third parties who received the data as well as information concerning the disposition of the data.

We ask that you confirm by the close of business tomorrow, January 23, that DOJ and Defendants have preserved and are preserving on a going forward basis:

- All evidence, information, records, or documents relied on in preparation of the Notice or referred to by the Notice.
- All evidence, information, records, or documents relevant to the “PII searches” run by a member of the SSA DOGE Team on NUMIDENT during the morning of Monday, March 24, 2025 (as referenced on page 2 of the Notice). This includes, but is not limited to, any activity logs or other automatically generated system records.
- All evidence, information, records, or documents relevant to the March 3, 2025 email from an SSA DOGE Team member to the Department of Homeland Security, on which Steve Davis and an unnamed DOGE-affiliated employee at the Department of Labor were copied (as referenced on pages 2 and 3 of the Notice). This includes, but is not limited to a copy of the email, a copy of all responsive correspondence, and a copy of the attached file.
- All evidence, information, records, or documents relevant to SSA’s March 26, 2025 grant of access to a DOGE Team member to ten EDW scheme containing PII (as referenced on page 3 of the Notice). This includes, but is not limited to, any requests or justifications for access provided, any correspondence regarding the decision to grant access, and any activity logs or other automatically generated system records concerning the DOGE Team member’s use of those systems.
- All evidence, information, records, or documents relevant to SSA’s April 9, 2025 grant of access to a DOGE Team member to a call center profile that allowed access to PII (as referenced on page 3 of the Notice). This includes, but is not limited to, any requests or justifications for access provided, any correspondence regarding the decision to grant access, and any activity logs or other automatically generated system records concerning the DOGE Team member’s use of that profile.

- All evidence, information, records, or documents relevant to SSA’s grants of access to DOGE Team members to SSA systems of record which SSA had not identified prior to the Notice (as referenced on pages 3 and 4 of the Notice). This includes, but is not limited to, any requests or justifications for access provided, any correspondence regarding the decision to grant access, and any activity logs or other automatically generated system records.
- All evidence, information, records, or documents relevant to an SSA DOGE Team member’s entering into a “Voter Data Agreement” with an unidentified private organization (as referenced on pages 4 and 5 of the Notice). This includes, but is not limited to, any correspondence between the organization or its representatives and any SSA employees or DOGE Team members, any internal correspondence concerning requests from the organization or concerning the “Voter Data Agreement,” the signed “Voter Data Agreement,” any records of analysis or work conducted in furtherance of the agreement, and the Hatch Act referrals referenced on Page 5 of the Notice.
- All evidence, information, records, or documents relevant to the SSA DOGE Team’s use of Cloudflare in connection with SSA systems. This includes, but is not limited to, any requests or justifications for authorization to use or interface with Cloudflare, any correspondence from or to any SSA employee or SSA DOGE Team member regarding such authorization or regarding use of Cloudflare, any internal reports of use of Cloudflare, any correspondence with Cloudflare, and any activity logs or other automatically generated system records capturing activity related to the use or interface of Cloudflare.
- All evidence, information, records, reports, memoranda, or documents relevant to, generated, or produced in the course of any audits, investigations, or other reviews, whether internal or external, which included review of DOGE activity or data access at SSA. This includes, but is not limited to, any and all reviews by which Defendants first became aware of the events which were the subject of the omissions and misrepresentations identified in the Notice and any subsequent reviews for the purposes of confirming or investigating those events.

For the avoidance of doubt, “all evidence” includes information that is or was in Defendants’ possession, including, among others, those stored on personal devices and in personal email or messaging applications. If Defendants and DOJ cannot confirm that such evidence has been preserved, please provide, by the close of business on Friday, January 30, a list of evidence that

has not been preserved and the custodian of such records and the date they were destroyed or altered.¹

In addition to Defendants and DOJ's ongoing obligations, we note, for the avoidance of doubt, that should the Department of Justice or Defendants learn of any further misrepresentations or omissions which have not yet been revealed to our clients and the Court, all Defendants in this matter are obligated to preserve, maintain, and not destroy any evidence, records, or documents relevant to those misrepresentations and the omissions and events they concern. Such obligations commence, of course, when Defendants or the Department of Justice first learn of the omissions and events, not when the Department of Justice first informs our clients or the Court of them.

We expect your immediate attention to the requests in this letter. We reserve all rights of our clients to pursue answers to these questions, as well as the enforcement of their rights through the judicial process. We trust that you appreciate the gravity of these issues for our clients and for the American public.

Sincerely,



Alethea Anne Swift
Counsel for Plaintiffs

CC: Robin F. Thurston
Mark B. Samburg
Simon C. Brewer
Carrie Y. Flaxman

¹ Separate from our clients' specific demands for retention, we take this opportunity to remind you and your clients of your and your clients' legal obligations to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and its related regulations. As you are aware, this obligation extends to all electronic messages involving official business, whether sent by official or personal devices or accounts. In addition to penalties under federal law for failure to maintain records in accordance with the FRA and other regulations, in litigation a failure to preserve or maintain any such evidence, or material alteration or destruction of such evidence constitutes spoliation, and would be sufficient grounds for the Court to impose sanctions to redress Defendants' conduct. *See Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001).