

25-1860

United States Court of Appeals for the Second Circuit

STATE OF NEW YORK, STATE OF ARIZONA, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NORTH CAROLINA, STATE OF OREGON, STATE OF RHODE ISLAND, STATE OF VERMONT, STATE OF WISCONSIN,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, UNITED STATES DEPARTMENT OF THE TREASURY, SCOTT BESSENT, in his official capacity as Secretary of the Treasury,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR STATE APPELLEES

BARBARA D. UNDERWOOD
Solicitor General
ESTER MURDUKHAYEVA
Deputy Solicitor General
ANAGHA SUNDARARAJAN
*Assistant Solicitor General
of Counsel*

LETITIA JAMES
*Attorney General
State of New York*
Attorney for State Appellees
28 Liberty Street
New York, New York 10005
(212) 416-8073

Dated: March 23, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
PRELIMINARY STATEMENT.....	1
ISSUES PRESENTED.....	4
STATEMENT OF THE CASE.....	5
A. Factual Background.....	5
1. The Treasury Department’s Bureau of the Fiscal Service.....	5
2. The Treasury Department’s retention of the States’ confidential information.....	8
3. The challenged engagement plan.....	9
B. Procedural History.....	13
1. The complaint, temporary restraining order, and initial preliminary injunction.....	13
2. The district court’s subsequent modifications of the preliminary injunction.....	16
C. DOGE’s Subsequent Disbanding.....	18
STANDARD OF REVIEW.....	19
SUMMARY OF ARGUMENT.....	20
ARGUMENT.....	23
POINT I	
THE APPEAL SHOULD BE DISMISSED AS MOOT.....	23

Page

POINT II

THE STATES HAVE ARTICLE III STANDING..... 25

A. The States Have Suffered Concrete Injury From Defendants’ Decision to Grant Access to Payment Systems to DOGE Employees..... 26

B. The States’ Injuries Are Imminent..... 33

POINT III

THE ENGAGEMENT PLAN IS A REVIEWABLE FINAL AGENCY ACTION..... 35

A. Defendants’ Finality Challenge Is Not Properly Presented in this Appeal..... 35

B. The District Court Properly Concluded That the Engagement Plan is a Final Agency Action..... 36

CONCLUSION..... 43

RETRIEVED FROM DEPOSITARY DOCKET.COM

TABLE OF AUTHORITIES

Cases	Page(s)
<i>6801 Realty Co. v. United States Citizenship & Immigr. Servs.</i> , 719 F. App'x 58 (2d Cir. 2018)	36
<i>Almontaser v. New York City Dep't of Educ.</i> , 519 F.3d 505 (2d Cir. 2008)	19
<i>American Federation of Teachers v. Bessent</i> , 152 F.4th 162 (4th Cir. 2025)	30-31, 39
<i>Appalachian Power Co. v. EPA</i> , 208 F.3d 1015 (D.C. Cir. 2000)	38
<i>Baton v. Ledger SAS</i> , 740 F. Supp. 3d 847 (N.D. Cal. 2024)	33
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	37-40
<i>Bohnak v. Marsh & McLennan Cos.</i> , 79 F.4th 276 (2d Cir. 2023).....	26-28, 31
<i>Carter v. HealthPort Techs., LLC</i> , 822 F.3d 47 (2d Cir. 2016)	25
<i>Center for Taxpayer Rights v. IRS</i> , No. 25-cv-00457, 2025 WL 3251044 (D.D.C. Nov. 21, 2025)..	30, 38, 41
<i>Centro de Trabajadores Unidos v. Bessent</i> , 167 F.4th 1218 (D.C. Cir. 2026).....	38
<i>Community Econ. Dev. Ctr. of Se. Mass. v. Bessent</i> , No. 1:25-cv-12822, 2026 WL 309281 (D. Mass Feb. 5, 2026).....	40
<i>DGR Funding Corp. v. Secretary of Hous. & Urban Dev.</i> , 76 F.3d 1212 (D.C. Cir. 1996)	39
<i>Farricielli v. Holbrook</i> , 215 F.3d 241 (2d Cir. 2000)	24

Cases	Page(s)
<i>Fox v. Board of Trs. of State Univ. of N.Y.</i> , 42 F.3d 135 (2d Cir. 1994)	23
<i>In re Facebook, Inc. Initial Pub. Offering Derivative Litig.</i> , 797 F.3d 148 (2d Cir. 2015)	36
<i>In re USAA Data Sec. Litig.</i> , 621 F. Supp. 3d 454 (S.D.N.Y. 2022).....	33
<i>Ipsen Biopharmaceuticals, Inc. v. Azar</i> , 943 F.3d 953 (D.C. Cir. 2019)	40-41
<i>Lichtenberg v. Besicorp Group, Inc.</i> , 204 F.3d 397 (2d Cir. 2000)	20, 35
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	25
<i>McMorris v. Carlos Lopez & Assocs., LLC</i> , 995 F.3d 295 (2d Cir. 2021)	33
<i>New York v. Trump</i> , 133 F.4th 51 (1st Cir. 2025).....	10
<i>North American Soccer League v. United States Soccer Fed'n</i> , 883 F.3d 32 (2d Cir. 2018)	39
<i>Pennell v. City of San Jose</i> , 485 U.S. 1 (1988).....	33
<i>Salazar v. King</i> , 822 F.3d 61 (2d Cir. 2016)	38-39
<i>Salazar v. National Basketball Ass'n</i> , 118 F.4th 533 (2d Cir. 2024).....	26-30
<i>Sierra Club v. United States Army Corps of Eng'rs</i> , 732 F.2d 253 (2d Cir. 1984)	19

Cases	Page(s)
<i>SM Kids, LLC v. Google LLC</i> , 963 F.3d 206 (2d Cir. 2020)	30
<i>SSA v. American Fed’n of State, Cnty., and Mun. Emps.</i> , 145 S. Ct. 1626 (2025)	31
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)	32-33
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	25-26, 32
<i>Venetian Casino Resort, LLC v. EEOC</i> , 530 F.3d 925 (D.C. Cir. 2008)	40
<i>Video Tutorial Servs., Inc. v. MCI Telecomms. Corp.</i> , 79 F.3d 3 (2d Cir. 1996)	24
<i>Weight Watchers Int’l, Inc. v. Luigino’s, Inc.</i> , 423 F.3d 137 (2d Cir. 2005)	20
 Laws	
E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899	7
5 U.S.C.	
§ 552a	7
§ 704	36
26 U.S.C. § 6103	7
31 C.F.R. § 1.32	7

Miscellaneous Authorities*	Page(s)
Courtney Rozen, <i>Exclusive: DOGE ‘Doesn’t Exist’ With Eight Months Left on Its Charter</i> , Reuters (Nov. 24, 2025), https://www.reuters.com/world/us/doge-doesnt-exist-with-eight-months-left-its-charter-2025-11-23/	18
Geoff Bennett & Ali Schmitz, <i>DOGE Disassembled ‘But the Principles Remain Alive’ Trump Administration Says</i> , PBS (Nov. 25, 2025), https://www.pbs.org/newshour/show/doge-disassembled-but-the-principles-remain-alive-trump-administration-says	18
Jory Heckman, <i>DOGE and Its Long-Term Counterpart Remain, With a Full Slate of Modernization Projects Underway</i> , Federal News Network (Nov. 25, 2025), https://federalnewsnetwork.com/it-modernization/2025/11/doge-and-its-long-term-counterpart-remain-with-a-full-slate-of-modernization-projects-underway/	18
Makena Kelly & Vittoria Elliott, <i>DOGE Isn’t Dead. Here’s What Its Operatives Are Doing Now</i> , Wired (Dec. 2, 2025), https://www.wired.com/story/what-is-doge-doing-now/	12, 18
Meryl Kornfield, Elizabeth Dwoskin & Lisa Rein, <i>Whistleblower Claims Ex-DOGE Member Says He Took Social Security Data to New Job</i> , Washington Post (Mar. 10, 2026), https://www.washingtonpost.com/politics/2026/03/10/social-security-data-breach-doge-2/	32
Stephen Fowler, <i>Elon Musk Is Leaving The Federal Government. What’s Next For DOGE?</i> , NPR (updated May 30, 2025), https://www.npr.org/2025/05/30/nx-s1-5415641/musk-leaves-doge-what-comes-next	18

* All websites last visited March 23, 2026.

PRELIMINARY STATEMENT

In January 2025, the newly created United States Department of Government Efficiency (DOGE) embedded members of its team at various federal agencies to carry out the President's directive to slash federal programs and spending that did not align with the new administration's policy preferences. Defendant United States Department of Treasury adopted an engagement plan that gave members of the DOGE team unprecedented access to the Bureau of the Fiscal Service's (BFS) payment systems, which hold the sensitive personal and financial information of almost everyone who receives money from the federal government. The stated purpose of this engagement plan was to allow DOGE to build an automated review process that could identify and block the transmission of federal funds to programs and beneficiaries based on ideologically motivated criteria.

Nineteen States brought this action to, among other things, enjoin the implementation of defendants' engagement plan. The district court found that the defendants' onboarding process for DOGE team members was rushed and haphazard, and it granted a preliminary injunction preventing defendants from providing access to BFS systems to DOGE

team members without first ensuring that each individual received the same security clearances, training, and oversight that are required for all other employees accessing BFS systems. The district court subsequently modified the preliminary injunction to permit access to BFS systems by four specific DOGE team members who received the clearances, training, and oversight required by the preliminary injunction and denied defendants' motion to dissolve the preliminary injunction entirely. If this Court reaches the merits, the Court should affirm.

At the outset, the interlocutory appeal should be dismissed as moot. By its terms, the order on appeal is limited to unauthorized access by any employee or affiliate of DOGE. According to statements from the United States Office of Personnel Management and widespread public reporting, DOGE has been disbanded since November 2025. Defendants do not address this factual development in their opening brief or identify what, if any, individuals they wish to onboard but cannot because of that order.

On the merits, defendants make no effort to defend the legality of the engagement plan. Instead, they argue that the plaintiff States lack standing and that the engagement plan is not a final agency action subject

to review under the Administrative Procedure Act (APA). Neither argument has merit.

The States have Article III standing because they suffer a cognizable injury from defendants' unprecedented expansion of access to BFS systems and the heightened risk that increased access poses to the security and confidentiality of the States' financial information. This injury is also imminent: at the time the district court ruled, at least one member of the original DOGE team has already shared outside of Treasury sensitive information stored in BFS systems and there have been numerous subsequent publicized instances of security breaches by DOGE team members across the federal government. Moreover, defendants themselves acknowledge that the expansion of access to BFS systems poses a significant cybersecurity risk.

Defendants' contention that the engagement plan is not a reviewable final agency action similarly fails. For one, defendants did not make this argument on their motion to dissolve the preliminary injunction, and it is therefore outside the scope of this appeal. In any event, the engagement plan is reviewable final agency action because it reflects defendants' final

determination of defendants' policy regarding access to BFS information and creates legal consequences for the States.

ISSUES PRESENTED

1. Whether defendants' appeal is moot because DOGE has been disbanded since November 2025.

2. Whether the district court properly held that the plaintiff States have standing to challenge defendants' plan to authorize disclosure of the States' financial information to individuals who lack requisite security clearances and training.

3. Whether the district court properly found that the challenged engagement plan is a final agency action subject to review under the APA.

STATEMENT OF THE CASE

A. Factual Background

1. The Treasury Department's Bureau of the Fiscal Service

The Treasury Department is the federal agency entrusted with, among other duties, maintaining our nation's central bank account and disbursing funds appropriated by Congress and approved by the executive agencies that manage various federal programs. (*See* Joint Appendix (J.A.) 37-38.)

BFS operates as the “plumbing” that allows Treasury's system of disbursements to function. (*See* Br. of Amici Curiae Former Treasury Dep't Offs. in Support of Pls.' Mot. for Prelim. Inj. at 5 (Feb. 13, 2025) (“Amicus Br.”), ECF No. 50-1 (quotation marks omitted).) BFS is responsible for maintaining Treasury's payment systems and processing disbursements promptly, accurately, and securely. (*See* J.A. 56.) Approximately 87.8% of all federal disbursements are processed by BFS annually, through approximately 1.2 billion individual transactions totaling approximately \$5.46 trillion. (*See* J.A. 57, 118.)

For BFS to process a payment, the agency responsible for overseeing the relevant federal program must send BFS a payment file explaining

how much money needs to be paid, to whom, how, and for what purpose. (J.A. 57-58.) This payment file must include the information necessary to process the transaction, including the recipient's name, address, bank account information, and other personally identifying information (PII). The payment file may also include documentation explaining the reason for the disbursement, including, for example, an itemized breakdown of each expense billed to the federal government. (*See* J.A. 37-38, 57-59.)

Once BFS receives a payment file, it confirms that the recipient is neither delinquent on state or federal debt nor barred from receiving federal money because of the recipient's inclusion on a "bad actor" list (for example, because that individual has been sanctioned). (*See* J.A. 57 (quotation marks omitted).) If the recipient falls into either of these categories, the originating agency must confirm that the payment is nevertheless proper. (*See* Amicus Br. at 7.) If the recipient does not fall into either category or if the originating agency confirms the payment's propriety, BFS must process the payment using the details contained in the payment file. (*See* J.A. 57-58.)

Like all federal government systems, BFS's payment systems are subject to several statutes aimed at safeguarding PII and sensitive finan-

cial information from unauthorized disclosure, even to other agencies within the federal government. These include the Privacy Act of 1974, which prohibits the disclosure of private information without written consent from the individual to whom the information belongs, except in certain narrow circumstances, *see* 5 U.S.C. § 552a(b); the E-Government Act of 2002, which requires agencies to conduct and publish a privacy impact assessment before procuring or developing information technology involving the collection, maintenance, or dissemination of PII, *see* Pub. L. No. 107-347, 116 Stat. 2899, 2921-23; and various provisions in the Tax Code and the Social Security Administration Regulations protecting tax and social security information, *see, e.g.*, 26 U.S.C. § 6103; 31 C.F.R. § 1.32(d).

Accordingly, access to payment files and to the BFS systems on which they are stored is strictly limited. Payment files are generally sent directly to BFS and access to the systems on which they are stored is generally limited to a small number of nonpartisan, career BFS officers who have received extensive training and are subject to strict oversight and supervision. (*See* J.A. 77; Amicus Br. at 10, 15-16.) The BFS systems that store payment files are subject to heightened data security protections to prevent unauthorized access (*see* J.A. 99), and Treasury's own internal policies

strictly restrict access to PII and sensitive financial information (*see, e.g.*, J.A. 282). Contractors and other Treasury employees who receive access to BFS systems are subject to a contractual agreement or memorandum of understanding that strictly defines the scope of their work. (J.A. 99-100.)

2. The Treasury Department's retention of the States' confidential information

Each year, Treasury disburses billions of dollars directly to the States to fund a variety of critical programs, ranging from disaster relief to education to law enforcement. (*See* J.A. 37-38; *see also* J.A. 58-76 (detailing disbursements received by each plaintiff State).) States also receive money from Treasury to reimburse them for the costs they incur while administering federal programs like Medicaid, Social Security, and the Supplemental Nutritional Assistance Program. (J.A. 38, 59-60, 74.) Finally, States receive money from Treasury through a centralized offset process that helps States collect on debts owed to them by their citizens, such as, for example, unpaid state taxes. (*See* J.A. 74-76.)

States that receive money from Treasury must provide the information necessary for disbursement, including account numbers for the state treasury's bank accounts. (*See* J.A. 57-59.) States seeking reimbursement

for costs associated with the federal programs they administer also must provide documentation of the expenses that they incurred—for example, by providing information on each participant’s eligibility for Medicaid and the medical care that person received that was billed to Medicaid. (*See* J.A. 57-59.) States must also provide similar details about their citizens to recoup outstanding debts through Treasury’s centralized offset program. (*See* J.A. 74-76.) This information and other confidential information provided by the States is contained within BFS systems. (*See, e.g.,* J.A. 59, 75.)

3. The challenged engagement plan

On the first day of his second administration, President Donald Trump issued an executive order establishing DOGE as a “temporary organization” (J.A. 78) purportedly to improve the “efficiency and productivity” of federal government (J.A. 125-126), by, among other things, eliminating federal programs and restructuring the federal government (*see* J.A. 38-39, 77-79). DOGE was housed within the Executive Office of the President and was largely staffed by temporary employees who did not receive vetting or security clearances. (*See* J.A. 78.)

Two DOGE team members—Marko Elez and Thomas Krause—were embedded at Treasury shortly thereafter. (J.A. 125-126.) Elez, a software engineer who had previously worked with several companies owned by Elon Musk, was brought on as a Special Government Employee (SGE) on January 21, 2025. (See J.A. 125-126.) Krause, a software executive, was originally brought on as an SGE and was eventually converted to a temporary transitional employee to serve as the Fiscal Assistant Secretary, the Treasury officer responsible for overseeing BFS. Krause also serves as the chief executive officer of a private software conglomerate. (See J.A. 97, 149-151.)

The new administration's Treasury leadership directed BFS to implement a payment process engagement plan to help Elez, Krause, and other DOGE team members develop an automated process to review payment files and reject payments relating to programs and recipients that did not align with the President's policy priorities.¹ (See, e.g., J.A. 120-

¹ Treasury's engagement plan was implemented simultaneously with the Office of Management and Budget's attempt to institute a blanket freeze on billions of dollars of federal payments, which was ultimately halted by court order. See *New York v. Trump*, 133 F.4th 51, 55-59, 73 (1st Cir. 2025) (denying stay pending appeal of court order enjoining this funding freeze).

121, 130-133, 202-206.) Specifically, defendants granted Krause and Elez broad access to view BFS systems and data, including the PII and sensitive financial information contained in payment files. (*See* J.A. 120-121, 129-130.) Elez was also given copies of the source code for several BFS payment platforms and permission to review and edit that code in a testing environment. (J.A. 140-141.) He was also temporarily given “write” permissions, which would have allowed him to alter data stored on at least one BFS system. (J.A. 143, 204-205.)

Defendants acknowledged that the implementation of the engagement plan carried significant cybersecurity risks. (*See* J.A. 139.) Despite this, defendants took few steps to mitigate that risk before giving Krause and Elez access to BFS systems. For example, neither Krause nor Elez received in-depth training on laws and policies governing access to and use of sensitive information. (*See* J.A. 129, 140-141; *see also* J.A. 221, 224-227, 235-239 (training and security process normally provided to BFS staff).) Nor did either individual undergo the vetting, security clearances, and training processes typically required for BFS employees. (*See* J.A. 140-141.) Though defendants provided Elez with an encrypted laptop and purportedly used certain unspecified cybersecurity tools to monitor Elez’s

activity on that laptop (J.A. 140), Elez was able to disseminate information from BFS systems without it being immediately detected. For example, Elez emailed an unencrypted spreadsheet containing PII from BFS systems to individuals at the General Services Administration. (J.A. 253-254.) And Elez took screenshots of payment data and sent that information to Krause and others at DOGE. (J.A. 138; *see also* J.A. 166-167.)

Elez resigned from DOGE on February 6, 2025, the day before this case was filed, though he was apparently reappointed to a different DOGE team.² Elez was replaced by Ryan Wunderly on February 19, 2025. (J.A. 220, 224.) At least three other individuals—Gavin Kliger, Linda Whitridge, and Sam Corcos—were added to the DOGE Treasury team after the temporary restraining order restricting DOGE team members' access to BFS systems was entered in this case. (J.A. 234-235; *see also* J.A. 11 (entry of TRO).)

² See Makena Kelly & Vittoria Elliott, *DOGE Isn't Dead. Here's What Its Operatives Are Doing Now*, Wired (Dec. 2, 2025). For authorities available online, full URLs appear in the table of authorities.

B. Procedural History

1. The complaint, temporary restraining order, and initial preliminary injunction

On February 7, 2025, plaintiff States filed this action in the U.S. District Court for the Southern District of New York, seeking to enjoin defendants from providing any SGE or temporary government employee from outside Treasury, including members of the DOGE team, with access to BFS systems and to set aside the engagement plan as unlawful, arbitrary, and capricious under the APA.³ (J.A. 37-95.) The district court (Engelmayer, J.) granted the States' request for a temporary restraining order that prevented defendants from, among other things, granting DOGE team members access to any payment system or payment record that contained PII or confidential financial information. (J.A. 11.) That order was modified and continued for good cause while the district court consid-

³ Plaintiffs are the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, Vermont, and Wisconsin. (J.A. 43-48.) Defendants are the U.S. Department of Treasury, Scott Bessent, in his official capacity as Secretary of the Treasury, and Donald Trump, in his official capacity as President of the United States. (J.A. 48.)

ered the States' motion for a preliminary injunction. (J.A. 14, 33-36, 104-111.)

On February 21, 2025, the district court (Vargas, J.) entered a preliminary injunction prohibiting defendants from granting access to BFS systems to "any employee, officer or contractor employed or affiliated with the United States DOGE Service, DOGE, or the DOGE Team established at the Treasury Department" without first ensuring that each individual team member receive the same security clearances, training, and oversight that is required for all BFS employees. (Special Appendix (S.P.A.) 63-64.) The court further required defendants to seek court approval before providing DOGE team members with access to BFS systems and ordered defendants to provide the court with information about the mitigation procedures that defendants had developed to protect sensitive data stored at BFS. (S.P.A. 63-64.)

In issuing the preliminary injunction, the district court held that the States have standing to bring this action. Specifically, the court concluded that the States had suffered a cognizable injury as a result of the disclosure of their sensitive financial information to members of the DOGE team and the resulting increase in cybersecurity risk. (*See* S.P.A. 26-

27.) In particular, the court explained that it was concerned that Elez was able to disseminate information outside of Treasury without immediate detection and about the danger that defendants’ “rushed and ad hoc process” of implementing the engagement plan posed to the security of BFS systems. (S.P.A. 27.)

The court also held that the States are likely to succeed on the merits of their APA claim challenging the engagement plan as arbitrary and capricious. The district court explained that the States are likely to succeed in showing that the engagement plan is a final agency action because there was no evidence that the plan was tentative or a routine matter of employee management with no substantive effect. To the contrary, the plan resulted in the unprecedented expansion of access to BFS systems and resulting disclosure of the States’ financial information to members of the DOGE team. (*See* S.P.A. 44-48.) And the district court expressly found that BFS staff were forced to operate under “inexplicable urgency and time constraints” that “all but ensured that the launch of the Treasury DOGE Team was chaotic and haphazard.” (S.P.A. 50.)

The district court also found that the balance of the equities weighed heavily in the States' favor because "the potential consequences of a cybersecurity breach could be catastrophic." (S.P.A. 61.)

2. The district court's subsequent modifications of the preliminary injunction

On April 11, 2025, the district court granted defendants' motion to dissolve the preliminary injunction with respect to Ryan Wunderly. (S.P.A. 83-91.) In doing so, the court concluded that Wunderly had been adequately vetted and that he had received the same training and oversight as other BFS employees. (S.P.A. 83-91.) The court also concluded that various steps taken by defendants to mitigate the risk to the States' information were sufficient to satisfy the court's concerns, provided those steps were "properly implemented" and "coupled with the training and vetting procedures." (*See* S.P.A. 91-92.)

On May 27, 2025, the district court granted defendants' motion to dissolve the preliminary injunction with respect to Gavin Kliger, Linda Whitridge, and Sam Corcos, again based on evidence that each of these three individuals had been vetted and received the appropriate training and oversight. (S.P.A. 96-100.) The court modified the preliminary injunc-

tion order to eliminate the requirement that defendants seek court approval for each additional DOGE team member. (S.P.A. 100-101.) However, the court declined to dissolve the preliminary injunction in its entirety, holding that the States (and the court) are not required to assume that defendants would continue to vet, supervise, and train new DOGE team members in the absence of a court order where they had previously failed to do so. (See S.P.A. 101.)

RETRIEVED FROM DEMOCRACYDOCKET.COM

C. DOGE's Subsequent Disbanding

In November 2025, news outlets reported that DOGE had been disbanded and that several of its employees had either left the federal government for new employment or been absorbed into the federal agencies at which they had been embedded.⁴ Elon Musk, DOGE's de facto head, had left the federal government several months earlier.⁵ Though a DOGE spokesperson denied that DOGE's operations had ended,⁶ other administration officials, including the director of the Office of Personnel Management, told the press that DOGE no longer existed as an independent entity.⁷ The States are not aware of any evidence that DOGE has continued to hire new employees or to embed new team members at federal agencies, including at Treasury, since November 2025.

⁴ See, e.g., Courtney Rozen, *Exclusive: DOGE 'Doesn't Exist' With Eight Months Left on Its Charter*, Reuters (Nov. 24, 2025); Kelly & Elliot, *supra*.

⁵ See Stephen Fowler, *Elon Musk Is Leaving The Federal Government. What's Next For DOGE?*, NPR (updated May 30, 2025).

⁶ See Jory Heckman, *DOGE and Its Long-Term Counterpart Remain, With a Full Slate of Modernization Projects Underway*, Federal News Network (Nov. 25, 2025); see also Geoff Bennett & Ali Schmitz, *DOGE Disassembled 'But the Principles Remain Alive' Trump Administration Says*, PBS (Nov. 25, 2025).

⁷ See Rozen, *supra*.

Defendants have not acknowledged Musk's departure or DOGE's disbanding before either the district court or this Court. Nor have they provided any evidence to contradict reports that DOGE's mission has ended and that it is no longer recruiting new employees or embedding additional team members at various federal agencies.

STANDARD OF REVIEW

The decision to grant a preliminary injunction is vested in the sound discretion of the district court. *Almontaser v. New York City Dep't of Educ.*, 519 F.3d 505, 508 (2d Cir. 2008). A preliminary injunction is appropriate where the party seeking the injunction is likely to face irreparable harm absent injunctive relief and can show "either a likelihood of success on the merits, or a serious question going to the merits . . . with a balance of hardships tipping decidedly in plaintiff's favor." *Id.* (quotation marks omitted).

In deciding whether to modify, dissolve, or vacate a preliminary injunction, the district court is "charged with the exercise of the same discretion it exercised in granting or denying injunctive relief in the first place." *Sierra Club v. United States Army Corps of Eng'rs*, 732 F.2d 253, 256 (2d Cir. 1984). The grant or denial of a motion to dissolve, like the

grant or denial of the underlying preliminary injunction, is therefore reviewed for an abuse of that discretion, and will be reversed only if the district court “applie[d] an incorrect legal standard” or “base[d] its ruling on clearly erroneous findings of fact.” *Weight Watchers Int’l, Inc. v. Luingino’s, Inc.*, 423 F.3d 137, 141 (2d Cir. 2005) (quotation marks omitted). In an appeal from an order declining to modify or dissolve a preliminary injunction, this Court will not review the propriety of the underlying preliminary injunction order unless that order was also timely appealed. *See Lichtenberg v. Besicorp Group, Inc.*, 204 F.3d 397, 401 (2d Cir. 2000).

SUMMARY OF ARGUMENT

1. This Court should dismiss this appeal as moot. DOGE has been disbanded and defendants do not identify any additional DOGE team members that they wish to onboard but cannot because of the preliminary injunction. Defendants therefore cannot show any cognizable interest in the outcome of this appeal, and this Court should remand to allow the district court to consider the consequences of DOGE’s disbanding on the underlying litigation in the first instance.

2. Alternatively, if this Court reaches the merits, it should affirm. The district court correctly concluded that the States have Article III standing to challenge the implementation of the engagement plan's expansion of access to BFS systems, and the resulting disclosure of, and risk to, the States' sensitive financial data.

The States have suffered a concrete injury resulting from defendants' decision to give members of the DOGE team access to the States' sensitive financial information. As this Court has consistently explained, the injury caused by the unauthorized exposure of a plaintiff's sensitive information to a third party is a concrete injury for purposes of standing. Relatedly, the States have also suffered a concrete injury based on the increased risk that defendants' disclosure of the States' sensitive financial information poses to the security of that information.

The States' injuries are imminent in the absence of the preliminary injunction because defendants' haphazard implementation of the engagement plan exposes the States' financial information to unauthorized employees and the risk of further disclosure outside Treasury. Indeed, the preliminary injunction record already showed at least two instances of unauthorized disclosure by a DOGE team member embedded at Treasury.

3. The district court also correctly concluded that the engagement plan is a final agency action subject to review under the APA.

At the outset, defendants are barred from raising this issue on an appeal from the denial of their motion to dissolve the preliminary injunction, because defendants did not timely appeal the district court's initial preliminary injunction order or argue in their motion to dissolve that the district court erred in finding that the engagement plan was subject to APA review.

In any event, the engagement plan is a reviewable final agency action. At the time this action was filed, defendants had decided the parameters of the engagement plan and began to implement the plan by giving members of the DOGE team access to BFS systems and copies of the source code for BFS platforms. In doing so, defendants determined that DOGE team members had a right to access BFS systems and created legal consequences for the States by disclosing the States' sensitive financial information to members of the DOGE team.

ARGUMENT

POINT I

THE APPEAL SHOULD BE DISMISSED AS MOOT

As a preliminary matter, this appeal should be dismissed because DOGE was disbanded in November 2025, and defendants do not explain why they nevertheless retain a “legally cognizable interest in the outcome” of this appeal.⁸ See *Fox v. Board of Trs. of State Univ. of N.Y.*, 42 F.3d 135, 139 (2d Cir. 1994) (quotation marks omitted).

As explained above (at 14, 16-17), the order denying defendants’ motion to dissolve the preliminary injunction was limited by its terms to individuals “employed or affiliated with the United States DOGE Service, DOGE, or the DOGE Team established at the Treasury Department.” (S.P.A. 101.) However, DOGE and the United States DOGE Service were disbanded in November 2025: Neither entity continues to exist as an

⁸ The only order before this Court in this appeal is the district court’s May 2025 denial of defendants’ motion to dissolve the preliminary injunction, not the underlying preliminary injunction. See *infra* at 35-36. Additionally, the States’ complaint was not limited to members of the DOGE team, and instead sought to limit any temporary government employee outside of Treasury from accessing BFS systems, so it continues to present a justiciable controversy. (See J.A. 91.)

independent organization within the federal government or to employ and embed individuals within federal agencies to further its stated mission. See *supra* at 18-19. Indeed, defendants offer no evidence here that either Treasury or DOGE is continuing to recruit team members and is prevented from onboarding those individuals because of the preliminary injunction. Nor do defendants suggest that DOGE is likely to be reconstituted in the near future or that they otherwise maintain a cognizable interest in this Court's resolution of this interlocutory appeal. See *Video Tutorial Servs., Inc. v. MCI Telecomms. Corp.*, 79 F.3d 3, 5-6 (2d Cir. 1996).

This Court should therefore dismiss this interlocutory appeal as moot and should remand to allow the district court to determine how the underlying litigation should proceed. As explained above (at 19), defendants have not addressed, or even acknowledged, DOGE's disbanding in *any* filing before the district court, so the district court has not had the opportunity to consider the consequence of that factual development on the States' complaint or its underlying preliminary injunction order. The district court should be allowed to do so in the first instance. See *Farrielli v. Holbrook*, 215 F.3d 241, 246 (2d Cir. 2000) ("It is [this Court's]

settled practice to allow the district court to address arguments in the first instance.”).

POINT II

THE STATES HAVE ARTICLE III STANDING

If this Court reaches the merits, it should affirm because the district court correctly concluded that the States have standing. Article III standing limits the jurisdiction of the federal courts to only those cases in which the plaintiffs have a personal stake in the outcome of the litigation at the time the suit is filed. *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 56 (2d Cir. 2016). Standing is “not dispensed in gross.” *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). For each claim they advance, plaintiffs must show that: (1) they have suffered an injury in fact that is “concrete and particularized, actual or imminent”; (2) the injury is fairly traceable to the challenged action; and (3) the injury can be redressed by the form of relief that plaintiffs are seeking. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also TransUnion*, 594 U.S. at 423.

On appeal, defendants do not dispute that the States have shown that their injuries are particularized, traceable to the challenged engagement plan, and can be remedied, at least in part, through injunctive relief.

See Br. for Appellants (Br.) at 18-28. Rather, defendants assert that neither the ongoing disclosure of the States' financial information to the DOGE team nor the imminent risk to the security of that information gives rise to a "concrete" injury that is "actual or imminent." See *TransUnion*, 594 U.S. at 423. This argument runs contrary to both the record and this Court's precedents.

A. The States Have Suffered Concrete Injury From Defendants' Decision to Grant Access to Payment Systems to DOGE Employees.

The Supreme Court's decision in *TransUnion* serves as the "touchstone" to determine whether a particular injury stemming from defendants' conduct is sufficiently concrete to establish Article III standing. See *Bohnak v. Marsh & McLennan Cos.*, 79 F.4th 276, 283 (2d Cir. 2023). In *TransUnion*, the Supreme Court held that, to be "concrete," an alleged injury must bear a sufficiently close relationship to the kinds of harms "traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 694 U.S. at 417. This inquiry does not require an "exact duplicate" of a common law tort, see *id.* at 426, or require the plaintiff to satisfy all the elements of that tort. See *Salazar v. National Basketball Ass'n*, 118 F.4th 533, 542 n.6 (2d Cir. 2024). Rather, plaintiffs

must only identify a historical or common law analogue for the kind of harm alleged. *Id.* (discussing *TransUnion*).

Here, the States have shown that they suffered at least two different concrete injuries as the result of the engagement plan.

First, in implementing the engagement plan, defendants gave members of the DOGE team unauthorized access to the States' sensitive financial information, including bank account numbers and other payment details. (See J.A. 37-38, 57-59.)

This Court has consistently held that plaintiffs whose sensitive or private information is disclosed to third parties without authorization have suffered a concrete injury sufficient for Article III standing. For example, in *Bohnak v. Marsh & McLennan Cos.*, this Court concluded that the exposure of plaintiff's PII to unauthorized third parties—hackers who accessed plaintiff's information following a data breach—“bears some relationship to a well-established common-law analog: public disclosure of private facts.” See 79 F.4th at 285-86. Specifically, this Court held that the plaintiff had standing because “*harm* arising from disclosure of one's PII bears a relationship to an injury with a ‘close historical or common-law analogue,’” even though the plaintiff could not necessarily

bring a separate common law tort action. *Id.* at 286 (emphasis added) (quoting *TransUnion*, 594 U.S. at 443).

This Court reached a similar conclusion in *Salazar v. National Basketball Association* based on the disclosure of plaintiff's browsing activity to a third party pursuant to a contractual agreement between the defendant and that third party. 118 F.4th at 537-38, 541-42. As in *Bohnak*, the Court in *Salazar* had "no trouble" concluding that the defendant's disclosure of plaintiff's information without plaintiff's consent bears a close enough relationship to a "well-established common-law analogue" to constitute a concrete injury. *Id.* at 541-42 (quotation marks omitted). And it reached this conclusion without evidence that the plaintiff's data was stolen or even that the disclosure went beyond the terms of the defendant's contractual agreement with the third party. *See id.* at 537-39.

The harm resulting from defendant's unauthorized disclosure of the States' sensitive financial information is substantively identical to the kind of harm that this Court in both *Bohnak* and *Salazar* found to be concrete. *See Bohnak*, 79 F.4th at 285-86; *Salazar*, 118 F.4th at 541-42. Contrary to defendants' assertion, the fact that members of the DOGE team were employed by the federal government does not undermine the conclusion

that the States have suffered concrete injuries. *Contra* Br. for Defendants-Appellants (Br.) at 23-26. As this Court explained in *Salazar*, where, as here, the plaintiffs' information was deliberately shared with a third party, the relevant inquiry is whether the disclosure was made as part of the defendant's ordinary course of business to a "ministerial intermediary" acting solely on the defendant's behalf. *Salazar*, 118 F.4th at 542-53 (quotation marks omitted).

The disclosure here was not so limited. As explained above (at 9-10), DOGE was created as part of the Executive Office of the President, not Treasury. (J.A. 77-79.) Though at least one member of the DOGE team—Thomas Krause—was eventually formally appointed to a position in Treasury (*see* J.A. 149-151), Krause and other members of the DOGE team remained in contact with, and responsive to, DOGE (*see, e.g.,* J.A. 127).

Moreover, the purpose of the engagement plan is to create a new automated process to reject otherwise approved payments that did not align with the President's policy priorities (*see, e.g.,* J.A. 120-121, 129-130), a goal that represents a significant departure from BFS's traditional role within Treasury and that Treasury itself acknowledged required an

unprecedented expansion of access to BFS systems (*see* J.A. 77, 139). Defendants provided this access to DOGE team members without the kind of contract or memorandum of understanding (MOU) that BFS ordinarily uses to limit the scope of a third party's access to payment systems (*see* J.A. 99-100, 220) or the kind of training and oversight that BFS normally requires (*see* J.A. 140-141, 225-227). The access that the DOGE team was given therefore goes far beyond a limited disclosure to a ministerial intermediary, *see Salazar*, 118 F.4th at 542-43, and this Court has had “no trouble” concluding that plaintiffs have suffered a cognizable injury in similar circumstances, *see id.* at 541-42 (quoting *Bohnak*, 79 F.4th at 285).⁹

Treasury's reliance on the Fourth Circuit's decision in *American Federation of Teachers v. Bessent*, 152 F.4th 162 (4th Cir. 2025), is

⁹ Defendants miss the mark (Br. at 22-23) in relying on federal regulations that purportedly authorize Treasury to provide DOGE team members access to Treasury systems, because that argument improperly collapses the standing and merits inquiry. *See SM Kids, LLC v. Google LLC*, 963 F.3d 206, 212-13 (2d Cir. 2020). The relevant question for purposes of the standing inquiry is whether, assuming the expansion of access to members of the DOGE team is unlawful, it also inflicts a concrete injury on plaintiffs. *See id.*; *see also Center for Taxpayer Rights v. IRS*, No. 25-cv-00457, 2025 WL 3251044, at *13 (D.D.C. Nov. 21, 2025).

misplaced. *Contra* Br. at 27-28. In that case, the Fourth Circuit concluded, based on its own prior case law, that plaintiffs had to allege either that their information had been publicly disclosed or that viewing it constituted an “intrusion upon seclusion” akin to trespass in order to establish Article III injury. *See American Federation of Teachers*, 152 F.4th at 172-74. There is no similar case law in this Circuit; to the contrary, this Court has recognized that disclosure to a single third party is sufficient to give rise to a concrete injury, as explained above (at 27-30). The Supreme Court’s grant of a stay pending appeal in *SSA v. American Federation of State, County, and Municipal Employees* also does not support defendants’ argument, because the Court in that case did not grant a stay based on the absence of standing. *See* 145 S. Ct. 1626 (2025).

Second, the States have also suffered a separate and independent concrete injury based on the increased risk that the engagement plan’s implementation poses to the security of their sensitive financial information. *See Bohnak*, 79 F.4th at 287 (recognizing that risk of future disclosure can give rise to a concrete injury). As the Supreme Court has held, an imminent risk of future harm may give rise to a concrete injury where, as here, the plaintiffs are seeking only “forward-looking, injunctive relief to

prevent the harm from occurring.” *TransUnion*, 594 U.S. at 435-36; see *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014).

As explained above (at 11-12), defendants’ haphazard onboarding procedures for DOGE team members without adequate training or oversight has already resulted in PII being improperly disseminated outside of BFS via unencrypted email networks.¹⁰ (See J.A. 166, 253-254.)

¹⁰ In at least two other cases, the federal government has acknowledged that PII, tax information, and other sensitive data was improperly disseminated by DOGE team members, apparently without regard for the need to protect the security and confidentiality of that data. See, e.g., Decision & Order at 4-7, *Center for Taxpayer Rights v. IRS*, No. 1:25-cv-00457, NYSCEF No. 74 (D.D.C. Feb. 26, 2026) (addressing declaration disclosing that IRS improperly shared taxpayer information with DHS); Notice of Corrections to the Record, *American Fed’n of State, Cnty. and Mun. Emps., AFL-CIO v. SSA*, No. 1:25-cv-00596 (D. Md. Jan. 16, 2026), ECF No. 197 (Social Security data accessed improperly and possibly shared outside the government). A recent whistleblower complaint has also alleged that a DOGE team member kept copies of Social Security data after leaving the federal government in order to share that data with their private-sector employer. See Meryl Kornfield, Elizabeth Dwoskin & Lisa Rein, [*Whistleblower Claims Ex-DOGE Member Says He Took Social Security Data to New Job*](#), Washington Post (Mar. 10, 2026). A separate whistleblower complaint made by the IRS’s former chief data officer alleged that members of DOGE improperly uploaded copies of Social Security data to a digital cloud, putting individuals’ private information at risk. *Id.* That same officer expressed fears that data leaving the federal government is “absolutely the worst-case scenario” because the government would have no way of knowing who had access to that data: “There could be one or a million copies of it, and we will never know now.” *Id.*

That disclosure is itself evidence that the States face a significant risk of their information being disseminated outside of Treasury. Indeed, defendants themselves acknowledged below that expanding access to BFS systems carries significant cybersecurity risks. (See J.A. 139-140.)

B. The States' Injuries Are Imminent.

The States have also shown that they face “realistic danger of sustaining a direct injury” in the absence of a preliminary injunction. See *Pennell v. City of San Jose*, 485 U.S. 1, 8 (1988) (quotation marks omitted); see also *Susan B. Anthony List*, 573 U.S. at 158-59. Courts have generally found that plaintiffs seeking an injunction requiring the defendant to implement more rigorous data security measures to protect the privacy of their information can show a sufficiently imminent injury when other information held by the defendant has already been compromised. See, e.g., *Baton v. Ledger SAS*, 740 F. Supp. 3d 847, 881-82 (N.D. Cal. 2024); *In re USAA Data Sec. Litig.*, 621 F. Supp. 3d 454, 473 (S.D.N.Y. 2022); see also *McMorris v. Carlos Lopez & Assocs., LLC*, 995 F.3d 295, 301-02 (2d Cir. 2021) (circuits have consistently considered whether other data has been compromised or misused).

As explained above (at 11-12), and as defendants acknowledge, PII and other sensitive information stored in BFS's systems has already been shared with other agencies by members of the DOGE team. (*See* J.A. 138, 166-167 (Elez sent screenshots of information), 253-254 (Elez emailed PII outside of Treasury).) Indeed, DOGE team members were able to share this information without being detected and without Treasury being able to immediately identify what information was transmitted to whom. (*See* J.A. 166 (emails were sent out of Treasury, but Treasury did not immediately know what was shared), 253-254 (Elez's email was discovered during a forensic analysis).)

Additionally, as the district court explained (S.P.A. 27-28), defendants have acknowledged that the access DOGE team members required to implement the engagement plan posed significant cybersecurity risks. (*See* J.A. 139-140.) Any mitigation measures defendants tried to adopt (*see, e.g.*, J.A. 142-143), were not properly implemented and were not coupled with the necessary training and oversight to adequately mitigate the risk. (*Compare* J.A. 140-143, 253-254 (training and setup that Elez received), *with* J.A. 225-227, 242-247 (training that is normally provided).) And there is no evidence that, in the absence of a preliminary injunction,

defendants would have provided members of the DOGE team with more robust supervision and training. Indeed, defendants offered no evidence below that they would continue to provide robust training, supervision, and oversight to other DOGE team members if the preliminary injunction was dissolved.

POINT III

THE ENGAGEMENT PLAN IS A REVIEWABLE FINAL AGENCY ACTION

A. Defendants' Finality Challenge Is Not Properly Presented in this Appeal.

This Court's review of a decision on a motion to dissolve or modify a preliminary injunction does not "extend to the propriety of the original order," unless the original preliminary injunction order was also timely appealed. *See Lichtenberg v. Besicorp Grp., Inc.*, 204 F.3d 397, 401 (2d Cir. 2000) (quotation marks omitted) (collecting cases).

Defendants here failed to timely appeal the original preliminary injunction order. (*See* J.A. 20-28 (no notice of appeal filed within sixty days of February 21, 2025, preliminary injunction order), 323 (notice of appeal filed July 28, 2025).) While defendants made two subsequent motions to dissolve the preliminary injunction, defendants did not argue in either of

those motions that the district court’s original finality determination was erroneous. (See Defs.’ Mem. of Law in Support of Mot. to Partially Dissolve Prelim. Inj. (Mar. 10, 2025), ECF No. 112; Defs.’ Mem. of Law in Support of Mot. to Dissolve Prelim. Inj. (May 1, 2025), ECF No. 142.) Accordingly, defendants cannot argue in this appeal that the district court erroneously determined in its original order that the engagement plan was a final agency action subject to APA review.¹¹

B. The District Court Properly Concluded That the Engagement Plan is a Final Agency Action.

Alternatively, this Court should affirm the district court’s conclusion that the engagement plan is a final agency action. The APA generally limits judicial review to agency actions that are “final,” rather than “preliminary, procedural, or intermediate.” See 5 U.S.C. § 704. An agency action is “final” for purposes of APA review if it “mark[s] the consumma-

¹¹ While standing is a question of Article III jurisdiction that can be addressed at any time, this Court has generally treated the APA’s “final agency action” requirement as a question of statutory, rather than constitutional, standing. See *In re Facebook, Inc. Initial Pub. Offering Derivative Litig.*, 797 F.3d 148, 155-56 (2d Cir. 2015); cf. *6801 Realty Co. v. United States Citizenship & Immigr. Servs.*, 719 F. App’x 58, 59 n.1 (2d Cir. 2018) (whether final agency action requirement is jurisdictional is an open question).

tion of the agency’s decisionmaking process,” meaning it is not “tentative or interlocutory,” and is “one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations and quotation marks omitted). Here, the district court properly concluded that the challenged engagement plan satisfies both conditions. (S.P.A. 43-46.)

First, the engagement plan reflects the culmination of defendants’ decision-making process and is neither tentative nor interlocutory. *See Bennett*, 520 U.S. at 177. As explained above (at 9-10), the purpose of the engagement plan was to develop an automated process for BFS to review and reject otherwise approved payments based on the President’s ideological views about the underlying federal programs at issue or the merits of the beneficiaries. (*See, e.g.*, J.A. 120-121, 130-133, 202-206.) By the time this action was filed, the scope of the engagement plan had been finalized and the plan was being implemented. Specifically, Krause and Elez were embedded in Treasury and had been given access to BFS systems, and BFS had given Elez copies of the source code for several BFS platforms to allow him to develop the automated review process for BFS payments. (*See* J.A. 120-121, 129-130, 140-141.)

Defendants offer no evidence that could support the inference that their internal deliberative process was still ongoing or even that Treasury itself considered the engagement plan tentative.¹² See *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020-22 (D.C. Cir. 2000) (informal action that the agency treats as reflecting its settled position is final); see also *Bennett*, 520 U.S. at 177-78. Nor is it relevant that defendants claim the engagement plan was intended to be temporary and was in its early stages when this suit was filed. *Contra* Br. at 30-31. The APA “does not require that the challenged agency action be the agency’s final word on the matter,” *Salazar v. King*, 822 F.3d 61, 83-84 (2d Cir. 2016); nor does it require an agency to have finished implementing a particular decision before that decision can be challenged, as long as “judicial review at the

¹² For this reason, the D.C. Circuit’s recent decision concluding that a preliminary MOU between the IRS and DHS is not a final agency action is inapposite. See *Centro de Trabajadores Unidos v. Bessent*, 167 F.4th 1218, 1235-37 (D.C. Cir. 2026). In that case, the Court concluded that MOU was a “nonbinding, nonfinal policy statement,” *id.* at 1236, that expressly contemplated a further agreement between the IRS and DHS before it would go into effect, *id.* at 1227, and the plaintiffs had not challenged any specific actions taken by the IRS to implement the MOU, see *id.* at 1236; cf. *Center for Taxpayer Rights*, 2025 WL 3251044, at *18-20 (challenge to IRS’s decision to disclose specific information to DHS is a final agency action).

time would not disrupt the administrative process.” *Id.* (alteration and quotation marks omitted).

Second, the States are likely to succeed in showing that the engagement plan determines the rights and obligations of members of the DOGE Treasury team and is one “from which legal consequences will flow.”¹³ *See Bennett*, 520 U.S. at 178 (quotation marks omitted). As explained above (at 36-37), to be reviewable under the APA, an agency action must change the status quo in a way that affects the plaintiffs, and not just in a way that alters how the agency conducts its day-to-day functions. *See, e.g., DGR Funding Corp. v. Secretary of Hous. & Urban Dev.*, 76 F.3d 1212, 1214 (D.C. Cir. 1996). This inquiry is a “pragmatic” one that requires courts to consider what “concrete consequences an agency action has or does not have as a result of the specific statutes and regulations

¹³ The Fourth Circuit’s decision in *American Federation of Teachers v. Bessent* does not compel a contrary conclusion. *Contra* Br. at 37. In that case, the Fourth Circuit explained that plaintiffs were not entitled to a preliminary injunction because they could not “definitively find” that the engagement plan was a final agency action subject to APA review. *See* 152 F.4th at 175. But this Court has been clear that the standard of review on a preliminary injunction is “likelihood of success on the merits,” not definitive success. *See North American Soccer League v. United States Soccer Fed’n*, 883 F.3d 32, 37 (2d Cir. 2018).

that govern it.” *See Ipsen Biopharmaceuticals, Inc. v. Azar*, 943 F.3d 953, 956 (D.C. Cir. 2019) (quotation marks omitted).

The engagement plan satisfies this standard because it necessarily determined the rights of the DOGE team members to access sensitive BFS systems and data. *Contra* Br. at 32-36. As explained above (at 5-6, 9-11), the engagement plan required an unprecedented expansion of access to BFS systems to create a process that, once completed, would fundamentally change how BFS processes payment orders. (See J.A. 120-121, 129-130, 140-143.) To implement the plan, defendants granted members of the DOGE team access to BFS’s payment systems and, in doing so, necessarily determined that those individuals had a right to access those systems and the information stored in them. *See Bennett*, 520 U.S. at 178 (action must determine rights or obligations). Indeed, other courts have similarly held that an agency’s disclosure of confidential information constitutes a final agency action. *See, e.g., Venetian Casino Resort, LLC v. EEOC*, 530 F.3d 925, 931 (D.C. Cir. 2008) (policy permitting disclosure of confidential information determines the rights of the owners of that information); *Community Econ. Dev. Ctr. of Se. Mass. v. Bessent*, No. 1:25-cv-12822, 2026 WL 309281, at *12-13 (D. Mass

Feb. 5, 2026) (data-sharing between IRS and ICE is a final agency action); *Center for Taxpayer Rights*, 2025 WL 3251044, at *18-20 (same).

The engagement plan also created legal consequences for Treasury and the States. *See Ipsen Biopharmaceuticals, Inc.*, 943 F.3d at 956. In implementing the plan, Treasury failed to ensure that the disclosure of sensitive information was consistent with federal law and Treasury's own internal policies (see *supra* at 7-9), and to ensure that members of the DOGE team received the training necessary to uphold their obligation to protect the confidentiality and security of BFS systems (see *supra* at 11-12). These failures significantly increased the risk of harm to the States. And Treasury implemented the engagement plan with the express intention of changing how BFS stored, protected, and ultimately used the States' confidential information—information that the States and their citizens are required to provide in order to receive money appropriated by Congress and to which the States and their citizens are entitled. (See J.A. 37-38, 57-60, 74-76.) Accordingly, the engagement plan is a far cry from the type of mundane operational decision that affects only how Treasury manages its own resources. *Contra Br.* at 32-34.

Finally, judicial review of the engagement plan does not risk entangling the district court in overseeing BFS's day-to-day operations. *Contra Br.* at 36. The ultimate remedy the States seek—an injunction against implementation of an automated, ideologically-based payment review process for payments processed by BFS undertaken through expanded access to BFS systems without adequate safeguards to protect sensitive information—does not require the district court to oversee BFS's day-to-day operations, a fact the district court recognized when modifying the preliminary injunction. (*See S.P.A.* 100-101.)

RETRIEVED FROM DEMOCRACYDOCKET.COM

CONCLUSION

For the foregoing reasons, this Court should dismiss this interlocutory appeal as moot, or alternatively affirm the district court's denial of the motion to dissolve the preliminary injunction.

Dated: New York, New York
March 23, 2026

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for State Appellees

By: /s/ Anagha Sundararajan
ANAGHA SUNDARARAJAN
Assistant Solicitor General

BARBARA D. UNDERWOOD
Solicitor General
ESTER MURDUKHAYEVA
Deputy Solicitor General
ANAGHA SUNDARARAJAN
Assistant Solicitor General
of Counsel

28 Liberty Street
New York, New York 10005
(212) 416-8073

(Counsel listing continues on next page.)

KRISTIN K. MAYES
Attorney General
State of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

KWAME RAOUL
Attorney General
State of Illinois
115 S. LaSalle St.
Chicago, IL 60603

ROB BONTA
Attorney General
State of California
1300 I St.
Sacramento, CA 95814

AARON M. FREY
Attorney General
State of Maine
6 State House Sta.
Augusta, ME 04333

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway, 10th Fl.
Denver, CO 80203

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Pl.
Baltimore, MD 21202

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Ave.
Hartford, CT 06106

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Pl., 18th Fl.
Boston, MA 02108

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French St.
Wilmington, DE 19801

KEITH ELLISON
Attorney General
State of Minnesota
445 Minnesota St., Ste. 1800
St. Paul, MN 55101

ANNE E. LOPEZ
Attorney General
State of Hawai'i
425 Queen St.
Honolulu, HI 96813

AARON D. FORD
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701

(Counsel listing continues on next page.)

JENNIFER DAVENPORT
Attorney General
State of New Jersey
Hughes Justice Complex
25 Market St.
Trenton, NJ 08625

PETER F. NERONHA
Attorney General
State of Rhode Island
150 S. Main St.
Providence, RI 02903

JEFF JACKSON
Attorney General
State of North Carolina
114 W. Edenton St.
Raleigh, NC 27603

CHARITY R. CLARK
Attorney General
State of Vermont
109 State St.
Montpelier, VT 05609

DAN RAYFIELD
Attorney General
State of Oregon
1162 Court St. N.E.
Salem, OR 97301

JOSH KAUL
Attorney General
State of Wisconsin
17 W. Main St.
Madison, WI 53703

RETRIEVED FROM DEMOCRACY DOCKET.COM

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Mary Quinn Moss, an employee in the Office of the New York State Attorney General, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 8,146 words and complies with the typeface requirements and length limits of Rule 32(a)(5)-(7) and Local Rule 32.1.

/s/ Mary Quinn Moss

RETRIEVED FROM DEMOCRACYDOCKET.COM