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Trump Admin Defends Gov't Restructuring As Lawful

By **Beverly Banks**

Law360 (May 8, 2025, 7:47 PM EDT) -- The Trump administration defended what it says is a lawful executive order looking to reorganize agencies and terminate workers, telling a California federal judge that unions, nonprofits and local governments "waited far too long" to seek a temporary restraining order.



The Trump administration argued Wednesday that the court "should reject out of hand the notion that plaintiffs' sprawling current challenge to an executive order issued nearly three months ago constitutes an emergency that requires the nearly government-wide TRO that plaintiffs now request." (AP Photo/Alex Brandon)

U.S. District Judge Susan Illston must deny a temporary restraining order, or TRO, request aiming to block some federal agencies and Elon Musk's Department of Government Efficiency from carrying out the president's directive focused on reorganization and reductions in force, the Trump administration **argued in an opposition memorandum** Wednesday. A hearing on the TRO is set for Friday.

A coalition of unions, nonprofits and local governments "waited far too long" to file the TRO bid, the government contended, saying "any 'emergency' is thus entirely of their own making." In late April, the **coalition sued** President Donald Trump and more than 20 federal agencies, pursuing ultra vires claims and allegations under the Administrative Procedure Act over a **Feb. 11 executive order**.

In that executive order, the president told agencies to make preparations to begin reductions in force, draft reorganization plans and work with DOGE on hiring. The Office of Management and Budget and the Office of Personnel Management issued a Feb. 26 memorandum to agency heads about the executive order and sending in reorganization and reduction-in-force plans.

Representatives of the White House, the U.S. Department of Justice and some of the federal agency defendants did not immediately respond to requests for comment.

Tony LoPresti, who represents Santa Clara County, California, in this case, said in a statement to Law360 on Thursday that the "government's opposition is full of misdirection."

"In court, the government claims the president's executive order is nothing more than nonbinding guidance," LoPresti said. "But as our overwhelming evidence shows, agencies are making these foundational changes because the president directed them to do so. And there's no constitutional basis for the president providing that direction."

In their request for a TRO on May 1, the **coalition argued** that the president can't restructure federal agencies without Congress' blessing, adding that the plaintiffs faced harms from reorganization and staffing cuts.

The timing of the coalition's TRO motion is part of the reason why the district court should not greenlight the request, the government said Wednesday.

"This court should reject out of hand the notion that plaintiffs' sprawling current challenge to an executive order issued nearly three months ago constitutes an emergency that requires the nearly government-wide TRO that plaintiffs now request," the government argued.

The government also argued that the coalition did not meet the four factors for winning injunctive relief under the U.S. Supreme Court's 2008 opinion in Winter v. Natural Resources Defense Council Inc.

The four prongs include whether the party asking for injunctive relief shows they are likely to "succeed on the merits," likely to face "irreparable harm" without an injunction, whether the "balance of equities" leans in that party's favor and whether the injunction is in the public interest.

The district court doesn't have jurisdiction to weigh in on the coalition's allegations, the government argued, and the union plaintiffs lack standing for their claims.

Additionally, the coalition can't seek to block enforcement of the Feb. 26 memorandum about the executive order because that guidance is not "final agency action" that could be challenged under the APA, the government contended.

The memorandum and executive order are legal, the government argued, saying "President Trump acted well within his authority in providing broad direction to agencies on how they should exercise the authority Congress has concededly given them."

The Constitutional Accountability Center, which describes itself as a think tank and law firm advocating for progressive views of the Constitution, **submitted an amicus brief** on Wednesday supporting the TRO motion.

Miriam Becker-Cohen, who is senior appellate counsel at the CAC, said in a statement to Law360 on Thursday that "the power to reorganize the federal government belongs to Congress — through the passage of statutes — not the executive branch."

"As we explained in the amicus brief we filed in this case, the Trump administration's effort to unilaterally reshape the government is at odds with the Constitution's structural separation of powers," Becker-Cohen said. "It also defies decades of practice by former presidents, who always obtained legislative authorization before attempting to create, abolish, or otherwise restructure the federal government's agencies. "

Unions within the coalition include the American Federation of Government Employees; some AFGE locals; the American Federation of State, County and Municipal Employees; the Service Employees International Union; and an SEIU local.

The nonprofit members of the coalition include the Alliance For Retired Americans, the American Geophysical Union, the American Public Health Association, the Center For Taxpayer Rights, the Coalition To Protect America's National Parks, Common Defense Civic Engagement, the Main Street Alliance, Natural Resources Defense Council Inc., Northeast Organic Farming Association Inc., VoteVets Action Fund Inc.

and the Western Watersheds Project.

The local governments in the coalition include Santa Clara County, California; King County, Washington; Harris County, Texas; the city of Chicago; the city of Baltimore; and the city and county of San Francisco.

The following federal agencies and their top leaders are defendants: the U.S. Office of Management and Budget, the U.S. Office of Personnel Management, the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of Defense, the U.S. Department of Energy, the U.S. Department of Health and Human Services, the U.S. Department of Homeland Security, the U.S. Department of Housing and Urban Development, the U.S. Department of Justice, the U.S. Department of the Interior, the U.S. Department of Labor, the U.S. Department of State, the U.S. Department of the Treasury, the U.S. Department of Transportation, the U.S. Department of Veterans Affairs, AmeriCorps, the U.S. Environmental Protection Agency, the U.S. General Services Administration, the National Labor Relations Board, the National Science Foundation, the U.S. Small Business Administration and the U.S. Social Security Administration. Musk, DOGE and DOGE's acting administrator, Amy Gleason, are also defendants.

Representatives of the Environmental Protection Agency, the National Science Foundation, the National Labor Relations Board, the Department of Agriculture, the Department of Health and Human Services, the Department of State and the Department of the Interior declined to comment.

A representative of Democracy Forward, which represents some members of the coalition, declined to comment. A representative of King County also declined to comment.

All of the unions and nonprofits are represented by Stacey Leyton, Barbara J. Chisholm, Danielle E. Leonard, Corinne Johnson, Alice Wang, Robin Tholin and Aaron Schaffer-Neitz of Altshuler Berzon LLP.

The unions, some of the nonprofits and some of the local governments are represented by Elena Goldstein and Skye Perryman of the Democracy Forward Foundation.

The unions and some of the nonprofits are also represented by Jules Torti, Erica Newland and Jacek Pruski of Protect Democracy Project and by Norman Eisen and Spencer Klein of State Democracy Defenders Fund.

The AFGE and its locals are also represented in-house by Rushab Sanghvi.

The AFSCME is also represented in-house by Teague Paterson and Matthew Blumin.

The SEIU is also represented in-house by Steven Ury.

The city and county of San Francisco are represented in-house by David Chiu, Yvonne R. Meré, Mollie Lee, Sara Eisenberg, Molly Alarcon and Alexander Holtzman.

The county of Santa Clara, California, is represented in-house by Tony LoPresti, Kavita Narayan, Meredith Johnson, Raphael N. Rajendra and Hannah Godbey.

King County, Washington, is also represented in-house by David Hackett, Alison Holcomb and Erin King-Clancy.

Harris County, Texas, is also represented in-house by Christian D. Menefee, Jonathan Fombonne, Tiffany Bingham, Sarah Utley, Bethany Dwyer, R. Chan Tysor and Alexandra Keiser.

The city of Chicago is also represented in-house by Mary B. Richardson-Lowry, Stephen Kane, Rebecca A. Hirsch and Lucy Prather.

The city of Baltimore is also represented in-house by Ebony M. Thompson and Sara Gross.

Harris County, King County, Baltimore and Chicago are also represented by Sharanya Mohan of the Public Rights Project.

The government is represented by Eric Hamilton, Diane Kelleher, Christopher Hall and Andrew Bernie of the U.S. Department of Justice and by Patrick Robbins of the U.S. Attorney's Office for the Northern District of California.

The Constitutional Accountability Center, as an amicus, is represented in-house by Elizabeth B. Wydra, Brianne J. Gorod, Miriam Becker-Cohen and Anna Jessurun.

The case is American Federation Of Government Employees, AFL-CIO et al. v. Trump et al., case number 3:25-cv-03698, in the U.S. District Court for the Northern District of California.

--Editing by Nick Petruncio.

Update: This article has been updated with a response from the U.S. Department of Agriculture.

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