

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
et al.,

Defendants.

Case No. 1:25-cv-01237-DLC

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF
PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

This Court twice held that Plaintiffs showed standing, held that Plaintiffs showed irreparable harm, and held that Defendants failed to show mootness. *AFGE v. OPM*, 777 F. Supp. 3d 253, 266 (S.D.N.Y. Apr. 3, 2025); *AFGE v. OPM*, 786 F. Supp. 3d 647, 677–83, 693–95 (S.D.N.Y. June 9, 2025); *AFGE v. OPM*, 820 F. Supp. 3d 260, 271–75 (S.D.N.Y. Dec. 19, 2025).

The Court’s holdings were correct then, and that remains true today. Plaintiffs still suffer from ongoing and imminent injury due to Defendants’ systematic violations of the Privacy Act’s non-disclosure and cybersecurity rules. 5 U.S.C. §§ 552a(b) & (e)(10). The U.S. DOGE Service (“DOGE” or “USDS”) still operates. The DOGE Executive Order still demands “full and prompt access” to agency records. Two DOGE agents still work at OPM, and others remain in the federal government. Defendants still assert that OPM may provide DOGE agents with access to agency records based on speculative future need (so long as they don’t receive administrative access). DOGE agents still fail to attest that they do not retain copies of OPM records, and Defendants have not sought that assurance from them. And Defendants still have not implemented the kinds of cybersecurity audits and repairs required by NIST standards.

Defendants now seek to evade a judicial reckoning for their lawlessness, by means of minor, last-minute adjustments to an OPM policy (adopted only after the first round of briefing), and an incomplete and impermanent repudiation of a discredited legal position. Defendants’ arguments fail, whether framed under the doctrine of mootness, standing, or irreparable harm.

Precise crafting of prospective judicial relief can come after this Court’s ruling on the pending motions. Still, it bears emphasis that despite Defendants’ recent actions, remediation of Plaintiffs’ injuries will require an Order that:

(1) Prohibits OPM from disclosing records (not just granting “administrative access”) to any employee under §552a(b)(1) based on a “need to be prepared” for future events;

(2) Prohibits OPM from disclosing records to the DOGE agency or DOGE agents, under the same exception, which is statutorily limited to “officers and employees of the agency;”

(3) Requires OPM to conduct a real investigation and remediation under NIST standards; and

(4) Requires OPM to ensure the DOGE agency and DOGE agents do not retain copies of OPM records. *See* ECF No. 210 at 34–35.

ARGUMENT

Plaintiffs continue to suffer injury from Defendants’ systematic lawbreaking. Defendants’ belated half-steps do not moot Plaintiffs’ claims, strip Plaintiffs of injunctive standing, or indicate Plaintiffs lack the irreparable harm required for a permanent injunction.¹

I. FACT CHANGES DO NOT ELIMINATE PLAINTIFFS’ ONGOING AND IMMINENT HARM

The most pertinent facts in this case remain the same: DOGE is active in seeking agency records; DOGE agents remain at OPM; OPM reserves the right to disclose records to them in ways the Court has already found unlawful; and OPM has not adequately investigated or remediated DOGE’s past breach of records. *See* ECF No. 210 at 8–18.

The DOGE Executive Order is still in effect. *See* Exec. Order No. 14,158 (Jan. 20, 2025)

¹ Defendants’ most recent brief offers no response (other than citation to earlier briefs) to the arguments in Plaintiffs’ opening brief, ECF No. 210, that Plaintiffs suffer injuries that are concrete, particularized, caused by Defendants, and redressable by this court; that Defendants violated the Privacy Act’s non-disclosure and cybersecurity rules; and that these violations are remediable under the Administrative Procedures Act.

(E.O.). This means USDS and DOGE Teams within agencies are still active and encouraged. §§ 3(c) & 4(b). This includes the E.O. provision that requires OPM “to ensure USDS has full and prompt access to all unclassified agency records.” § 4(b). While the “U.S. DOGE Service Temporary Organization”—which is distinct from USDS or DOGE Teams—terminated on July 4, 2026, it was mentioned in only a single paragraph of the E.O. And its termination “shall not be interpreted to imply the termination, attenuation, or amendment of any other authority or provision of this order.” § 3(b). Therefore, the “President’s DOGE Agenda” remains live. §§ 1 & 3(c). *Cf.* ECF No. 227 (“Def. Reply”) 15.²

OPM has not adequately updated its Cybersecurity and Privacy Policy, nor even included a copy of it in the summary judgment record.³ As described by the Adam Starr Declaration, *see* ECF No. 228 ¶¶ 10–11, OPM’s May 11, 2026, updates still allow OPM to continue doing two unlawful things central to this case. First, the updated policy does not prohibit OPM from disclosing records to individuals based on a “need to be prepared” for future undefined events. Second, it does not prohibit DOGE agents and those detailed to other agencies from gaining access to OPM records systems under the 552a(b)(1) exception—an exception only proper for employees “of the” OPM, which DOGE agents are not. *Cf.* Def. Reply 5, 7, 11–12, 14. Notably, this deficient Policy update came well after Defendants filed their Summary Judgment Motion on March 20, 2026, ECF No. 201, and Plaintiffs filed their cross-motion on April 15, 2026, ECF No. 210.⁴

² In this brief, page citations to docketed items (including Defendants’ reply brief) refer to blue ECF numbers atop pages.

³ Besides, it is “ultimately no more difficult for OPM to ignore these new protocols than to ignore its old procedures.” 820 F. Supp. 3d at 273.

⁴ Defendants also cite their November 2025 update to this Policy, Def. Reply 4–5, 10–11, but this Court previously held that update did not moot the case. 820 F. Supp. 3d at 273–74.

OPM has not adequately repudiated its unlawful justification for disclosing OPM records to DOGE agents—namely, the need “to be prepared to implement changes.” *See* Def. Reply 5, 12, 14–15. To start, the carefully worded Starr Declaration only disclaimed this improper justification when disclosing records through “administrative access.” ECF No. 228 ¶ 3. However, the Privacy Act concerns all “disclosure” of records, § 552a(b), including through standard access credentials—not just disclosure through “administrative access” credentials. Notably, this repudiation is dated July 6, 2026—the eve of Defendants’ Summary Judgment Reply deadline of July 7. Moreover, after a year and a half of litigation, this pivot comes only in a declaration filed by an OPM employee—the third Chief Information Officer since this case began.⁵ No change has been implemented as part of any written policy or been properly communicated to staff. Indeed, Defendants’ latest brief continues to assert that DOGE agents “had a sufficient need” and “needed access to OPM’s records systems.” Def. Reply 3, 7. *See also Id.* at 14 (incorporating past “need” arguments). Moreover, Defendants’ opening brief also claims OPM’s authorizing statute entitles DOGE agents to millions of personal records, ECF No. 201 at 9—an argument similarly untethered to the law.

Two DOGE agents remain at OPM, and others remain in the federal government. *See* ECF No. 210 at 12–18. It is undisputed that Riccardo Biasini and Noah Peters remain at OPM.⁶ It is also undisputed that Biasini is not paid by OPM, works at the agency on an intermittent

⁵ In the past, the government’s declarations have proved misleading or inaccurate. *See, e.g.*, 786 F. Supp. 3d at 687 (describing Greg Hogan’s declaration as “misleading”); ECF No. 148 ¶ 4 (filing declaration to “correct the previous report”); *Id.* ¶ 9.c (incorrectly declaring that Riccardo Biasini “has not been detailed to” DOGE).

⁶ While naming these two DOGE agents in a footnote, Defendants continue to use anonymized monikers for them, despite the Court’s previous unsealing order. 827 F. Supp. 3d 513, 522 (S.D.N.Y. Apr. 1, 2026) (“DOGE Agents in this case are not entitled to confidentiality”). In addition, Defendants have failed to comply with the Court’s unsealing order that “defendants shall re-file” certain unredacted documents. *Id.*

basis, is known as a “DOGE engineer,” and has been detailed to DOGE since January 27, 2025. *Id.* at 12. While not material to Plaintiffs’ success, according to a DOGE agency roster, Peters has also been detailed to DOGE since January 24, 2025. *See* ECF No. 211 ¶ 3; ECF No. 211-3.⁷ There can be no question about the roster’s authenticity. DOGE’s counsel from the U.S. Attorney’s Office for the Southern District of New York filed it on a public court docket in this judicial district, *Authors Guild v. NEH*, 1:25-cv-03923-CM, ECF Nos. 122 & 122-2 (Feb. 17, 2026); and DOGE’s counsel and a federal judge describe it as a “roster[] of U.S. DOGE Service employees, contractors, and detailees.” *Authors Guild v. National Endowment for the Humanities*, 2026 WL 412620, at *1 (S.D.N.Y. Feb. 13, 2026).⁸ While Defendants now submit three declarations claiming Peters is not detailed to DOGE, ECF Nos. 229–31, none explains why this DOGE roster states the opposite. *See also* ECF No. 211-4 at 24 (ProPublica reporting, based on an internal government directory, that “Peters has an Executive Office of the President DOGE email address”). And Defendants do not contest other names on the roster.

OPM has not disclaimed the prerogative to disclose OPM records to Biasini, Peters, or future DOGE agents.⁹ Starr has merely declared that OPM will no longer grant Biasini or Peters “administrative access” to certain databases. ECF No. 228 ¶¶ 5–6. This means OPM continues to insist (incorrectly) that it may lawfully disclose OPM records to DOGE agents based on a need

⁷ Throughout this case, the Court has considered declarations from both parties outside the Administrative Record. It is again warranted here, given that Defendants omitted the full employment records of many DOGE agents from the Administrative Record. *See Safe Haven Home Care, Inc. v. HHS*, 130 F.4th 305, 324 (2d Cir. 2025).

⁸ While the previous Trujillo Declaration suffices, Plaintiffs again attach the same DOGE roster, which is authenticated by an attorney who received the records in discovery in the *Authors Guild* case. *See* Declaration of Yinka Onayemi, Exhibits A & B.

⁹ There is no evidence in the record that Peters ever completed cybersecurity training, *See* ECF No. 210 at 18, despite his ongoing work and Defendants’ uncited assertion that he has “been properly trained.” Def. Br. at 14.

to be prepared—as it has done before—so long as the disclosure does not happen through “administrative access.” *Cf.* Def. Reply 6, 10, 12, 14.

Finally, OPM has not adequately investigated or remediated past disclosures to DOGE agents and extractions of records from OPM systems. *Cf.* Def. Reply 6–8, 12–13, 15–16. The Starr declaration claims that OPM investigated previous grants of records access; that it found no evidence that records were extracted by DOGE agents or disseminated “in violation of applicable law and policy”; and therefore, that it found “no remediation is necessary.” ECF No. 228 ¶¶ 13–16.

There are numerous problems with OPM’s brief description of its breach investigation. First, the date of the investigation is unknown. The description may merely be a summary of past, flawed reviews—some of which contained unexplained errors and others that required corrections. *See, e.g.*, 786 F. Supp. 3d at 681 (describing OPM’s March 2025 audit as “not entirely reliable”); ECF Nos. 141, 148 ¶ 4 (requiring correction to report). Notably, Defendants continue to insist incorrectly that the “relevant timeframe” of this case ended on February 11, 2025. *Compare* Def. Reply 8; *with* ECF No. 210 at 23–24. Second, the investigation overlooked one of the most straightforward paths to evidence—simply asking past and present DOGE agents at OPM how they used, extracted, or deleted records. The sole DOGE agent who submitted a declaration in this briefing is silent on this point. ECF No. 230. Third, OPM’s investigation concluded, at most, that any DOGE agents’ extraction or dissemination of records was done in compliance with “applicable law or policy.” ECF No. 228 ¶ 16. However, Defendants’ have consistently misapplied applicable law (the Privacy Act) throughout this litigation. Regardless, whether OPM violated “applicable law” cannot be resolved by OPM’s Chief Information Officer merely declaring it so. Fourth and most importantly, OPM’s brief description omits critical

breach response steps required by NIST, including reporting, harm assessment, mitigation, and notification. *See* NIST SP 800-53 Revision 5.1, IR-8(1) (incorporating Office of Personnel Management, Memo 17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information,” Jan. 3, 2017).

II. PLAINTIFFS’ CLAIMS ARE NOT MOOT

“[T]he government, not petitioners, bears the burden to establish that a once-live case has become moot.” *West Virginia v. EPA*, 597 U.S. 697, 719 (2022). A case only becomes moot when it is “impossible for a court to grant any effectual relief whatever to the prevailing party.” *Doe v. McDonald*, 128 F.4th 379, 385 (2d Cir. 2025). Here, Plaintiffs continue to suffer injury, so it is not “impossible” for this Court to provide Plaintiffs with “any effectual relief.” *Cf.* Def. Reply 14.

Even if Defendants could show such impossibility—which they cannot—they still could not prevail. Because the alleged basis for mootness is their own “voluntary cessation” of the challenged conduct, they bear the heavy burden to establish both “(1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Neurological Surgery Prac. v. U.S. Dep’t of Health & Hum. Servs.*, 145 F.4th 212, 223 (2d Cir. 2025). Defendants can show neither. Given the course of this litigation, there is substantial risk that absent a judicial order, OPM will return to its old ways and once again provide DOGE agents with access to OPM records based on speculative future need as opposed to actual current need. Also, Plaintiffs suffer continuing injury from Defendants’ past violations: Defendants have neither ensured that DOGE agents have not retained the records they wrongfully accessed, nor repaired the dangerous cybersecurity vulnerabilities created by their reckless disclosures.

As described above, Section I, *supra*, Defendants have not updated their policies to prohibit disclosing records to DOGE agents—including two who remain at the agency—based on the Privacy Act’s (b)(1) exception and the “need to be prepared.” ECF No. 228 ¶ 10–11. OPM’s investigation of ongoing cybersecurity risks has been cursory, and its remediation has been nonexistent, *Id.* ¶ 13–16, in contradiction of mandated NIST standards. And OPM’s purported repudiation of its “need” justification is limited, has not been communicated to staff, and applies only to grants of “administrative access.” *Id.* ¶ 3.

Defendants’ partial, eleventh-hour repudiation stands in stark contrast to Defendants’ insistence that the “need to be prepared” justified its records disclosures. *See, e.g.*, OPM-000028–000029 (January 2025 email from OPM Director Charles Ezell: “Right now we don’t have immediate plans to change anything but if we need to we might need to move quickly.”); ECF No. 95 (May 2025 brief opposing preliminary injunction) at 36 (“The initial justification for granting access permissions was thus appropriate.”); ECF No. 125 (May 2025 preliminary injunction hearing transcript, examination of OPM CIO Greg Hogan) at 123: 8–10 (“[T]he intention was that they may have a need to use those permissions.”); ECF No. 140 (July 2025 report) at 1–2 (pre-litigation protocols supposedly were “adequate to ensure compliance with the Privacy Act” and new protocols supposedly were “not required”); ECF No. 148 (September 2025 report) at 6–7 (“access was granted in order to be prepared to implement changes to this system”); ECF No. 163 (December 2025 brief supporting dismissal) at 21 n.7 (“OPM does not concede that its prior grants of access were in violation of the Privacy Act or the APA.”); ECF No. 201 (March 2026 brief supporting summary judgment) at 8 n.3 (“all” DOGE agents who received access “had a need for that access”). *See also* Def. Reply 3, 7, 14 (defending “need” for records and incorporating past arguments).

For this reason and more, Defendants cannot show there is “no reasonable expectation that the alleged violation will recur.” *Neurological Surgery Prac.*, 145 F.4th at 223; *see also AFGE*, 786 F. Supp. 3d at 694 (“Without a full-throated recognition that the law and established cybersecurity procedures must be followed, the risk of irreparable harm will continue to exist.”).¹⁰

III. PLAINTIFFS HAVE INJUNCTIVE STANDING

An injury is “imminent” for purposes of Article III injunctive standing if it “is certainly impending, or there is a substantial risk that harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (cleaned up). Here, it is both, as discussed in Section I *supra*. First, there is continuing risk that OPM again will unlawfully provide DOGE agents with access to OPM record systems. Second, Plaintiffs face ongoing, unmitigated harms from Defendants’ past unlawful acts. *Cf.* Def. Reply 8, 15.¹¹

IV. PLAINTIFFS SATISFY THE REQUIREMENTS FOR INJUNCTIVE RELIEF

To obtain a permanent injunction, a plaintiff must demonstrate: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Spin Master Ltd. v. Alan Yuan’s Store*, 325 F. Supp. 3d 413, 427 (S.D.N.Y. 2018) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 391 (2006)). Plaintiffs satisfy all of these requirements. *Cf.* Def. Reply 15–16.

¹⁰ Plaintiffs incorporate by reference their additional arguments that their claims are not moot and are ripe. *See* ECF No. 171 at 8–13, 16–17, 19–32; ECF No. 210 at 22–23.

¹¹ Plaintiffs incorporate by reference their additional arguments that they have Article III standing. *See* ECF No. 67 at 15–25; ECF No. 84 at 17–20; ECF No. 109 at 9–15; ECF No. 210 at 19–22.

Absent a permanent injunction, Plaintiffs will continue to suffer irreparable injury. For all the reasons above, Section I-III, *supra*, Defendants’ last-minute half-steps do not mitigate this injury. Defendants’ repudiation of past actions, its policies, its investigation, and its remediation steps remain inadequate. Section I-III, *supra*.

As this Court explained in holding that Plaintiffs demonstrated irreparable harm for purposes of preliminary relief:

An improper disclosure within the Government is a serious and cognizable harm. Congress enacted the Privacy Act in light of government abuse, including improper searches by government authorities during the Colonial Era, government investigations of federal employees in the McCarthy Era, and government wiretapping during the Watergate Era. The plaintiffs have an interest in avoiding the “Big Brother” government monitoring that the Privacy Act is designed to prevent.

786 F. Supp. 3d at 694.

No remedy at law can adequately compensate Plaintiffs for their loss of data privacy. *See Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 499 (S.D.N.Y. 2019) (“The disclosure of private, confidential information is the quintessential type of irreparable harm that cannot be compensated or undone by money damages.”) (citation and internal quotation omitted). And the Court has already held Plaintiffs have no alternative remedy. 786 F. Supp. 3d at 691–92.

The balance of hardships and the public interest favor a permanent injunction. Indeed, “there is a substantial public interest in having governmental agencies abide by federal laws.” *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Also, as this Court previously ruled in granting a preliminary injunction: “defendants have not shown that a modernization effort will be hampered by compliance with the mandates of the Privacy Act.” 786 F. Supp. 3d at 695.

Along with injunctive and declaratory relief, Plaintiffs ask this Court to “hold unlawful and set aside” the challenged agency actions. 5 U.S.C. § 706(2). *See also* 5 U.S.C. § 703 (APA

relief also includes “declaratory judgments or writs of prohibitory or mandatory injunction”).

Plaintiffs renew their request for prospective judicial relief against Defendants’ violations of the Privacy Act, as specified in Plaintiffs’ opening summary judgment brief. *See* ECF No. 210 at 34–35. Plaintiffs recommend that this Court now determine whether Plaintiffs are entitled to relief, and if so, seek input from the parties regarding the precise terms of relief. *See* ECF Nos. 121–22, 127–34 (taking this approach to the preliminary injunction).¹²

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for summary judgment, deny Defendants’ motion for summary judgment, and enter an appropriate order and permanent injunction redressing Defendants’ violations of the law.

Dated: July 21, 2026

Respectfully submitted,

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¹² Plaintiffs incorporate by reference their additional arguments that they have satisfied all requirements for an injunction. *See* ECF No. 84 at 31–35; ECF No. 109 at 24–25; ECF No. 210 at 34–35.

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CERTIFICATE OF COMPLIANCE

I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing contains 3,419 words, calculated using Microsoft Word for Mac, which complies with Rule 7.1(c) if the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York.

Dated: July 21, 2026

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