

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION ("NATCA"), <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. _____
)	
v.)	
)	
UNITED STATES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs National Air Traffic Controllers Association ("NATCA") on behalf of its members, and Individual Plaintiffs, Amanda Fuchs, Kevin Bianchi, Jonathan Barnett, and John Garner, by and through the undersigned counsel, hereby request pursuant to Fed. R. Civ. P. 65 and Local Rule 65.1 that this Court issue a temporary restraining order and preliminary injunction requiring defendants Donald J. Trump, United States, Daniel K. Elwell, Margaret Weichert, and Mick Mulvaney, and David Bernhardt (collectively, "Defendants") to cease violating the plaintiffs' Fifth Amendment right to Due Process and to restore plaintiffs the compensation for work performed during the government shutdown to which they are entitled pursuant to the Fifth Amendment, and of which they were unlawfully deprived as of today, the date that they should have been paid for the first pay period of 2019.

To obtain a temporary restraining order and/or preliminary injunction, a plaintiff must establish "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4]

that an injunction is in the public interest.” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

As demonstrated in the accompanying Memorandum of Points and Authorities and supporting declarations, plaintiffs have easily met their burden. Plaintiffs, Air Traffic Controllers employed by the U.S. Federal Aviation Authority, who have been required to work for free performing the critical and stressful function of coordinating the safe, orderly, and expeditious movement of airplanes and aviation passengers across the nation’s skies, are likely to succeed in establishing that the defendants have violated, and continue to violate, the Due Process Clause of the Fifth Amendment to the United States Constitution.

NATCA’s members and the individual plaintiffs are federal employees who have a property interest protected by the Fifth Amendment in the wages earned for work already performed. *See United States v. Larionoff*, 431 U.S. 864, 879 (1977); *Foley v. Carter*, 526 F. Supp. 977, 985 (D.D.C. 1981). The defendants have deprived the plaintiffs of this property without providing *any process whatsoever*. The deprivation has undoubtedly caused the plaintiffs irreparable harm, as the plaintiffs have been deprived of constitutionally protected rights. *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Further, the individual plaintiffs and NATCA’s members have suffered immeasurable losses. For example, as a result of the deprivation of rights, one plaintiff has been unable to honor the life of her grandmother, who died on January 8, 2019; she cannot mourn side by side with family members because she cannot afford to travel. Others have been unable to afford crucial medical care for immediate family members, while yet another plaintiff will be unable to provide payments owed to a former spouse that could result in a violation of a court order and the

subsequent loss of his required security clearance. Several of the individual plaintiffs will not be able to make loan repayments to Thrift Savings Plans, which may result in penalties. Measuring the weight of these individual losses as they are multiplied across the thousands of Air Traffic Controllers represented by NATCA becomes unbearable; a continued deprivation of rights is not sustainable for NATCA's members, who already serve the nation in one of the most stressful jobs in the country. These are losses for which future monetary compensation is insufficient.

Finally, the balance of the equities as well as the public interest weigh in favor of injunctive relief, given the public interest in ensuring that the Government does not violate the U.S. Constitution, and the Government's and the public's interest in maintaining the safety of our nation's skies and airport runways.

Pursuant to LCvR 65.1(d) and based on the facts outlined in the memorandum accompanying this motion, plaintiffs request that this motion be heard on an expedited basis. Given that the funding for the United States Courts will lapse on or about January 18, 2019, plaintiffs respectfully request to be heard before that date.

Accordingly, this Court should issue a temporary restraining order and a preliminary injunction to preserve the plaintiffs' rights pending a resolution of this matter. Plaintiffs therefore request that the Court:

- (1) Issue a temporary restraining order, restraining the defendants from continuing to violate the rights of NATCA's members, and those of the individual plaintiffs, under the Fifth Amendment to the U.S. Constitution;
- (2) Issue a preliminary injunction, enjoining the defendants from continuing to violate the rights of NATCA's members, and those of the individual plaintiffs, under the Fifth Amendment to the U.S. Constitution; and

(3) Restore to NATCA's members and the individual plaintiffs the pay to which they are entitled for the time period since December 23, 2018, and of which they were unlawfully deprived in violation of the Fifth Amendment's Due Process Clause.

Dated: January 11, 2019

Respectfully submitted,

/s/ Molly A. Elkin

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