

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION)
1750 H Street, N.W.)
Washington, D.C. 20006,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

JOHN MICHAEL MULVANEY, in his)
official capacity as Director of the Office of)
Management and Budget,)
725 17th Street, N.W.)
Washington, D.C. 20503,)

Case No. 1:19-cv-50

and)

STEVEN TERNER MNUCHIN, in his)
official capacity as Secretary of the Treasury,)
1500 Pennsylvania Ave., N.W.)
Washington, D.C. 20220)

Defendants.)

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff National Treasury Employees Union (NTEU) is a labor organization that represents approximately 150,000 federal government employees. A partial government shutdown affecting numerous federal agencies has been in effect since December 22, 2018. Despite this lapse in appropriations, these executive branch agencies have required tens of thousands of NTEU-represented federal employees to report to work as “excepted employees.” The decision to require them to work was

based upon an Office of Management and Budget (OMB) directive issued on January 19, 2018, purporting to implement the Antideficiency Act, 31 U.S.C. § 1342. These employees are being required to work without pay indefinitely. One regularly scheduled pay day has already passed without pay being issued to these workers.

The Constitution commands that “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const., Art. I, § 9, cl. 7. This provision prohibits the executive branch from authorizing payment, or incurring obligations to pay, absent appropriations that have been made pursuant to laws enacted by Congress. The Appropriations Clause vests the power of the purse in Congress, and the Antideficiency Act, 31 U.S.C. § 1342, is unconstitutional insofar as it purports to authorize the executive branch to obligate funds that have not been appropriated.

Further, the Antideficiency Act only authorizes the executive branch to require employees to work, without pay, in limited circumstances involving an imminent threat to human life or property. OMB has purported to authorize agencies to require employees to work in a far broader range of circumstances than the Antideficiency Act allows.

Magnifying this problem, the Department of the Treasury, Internal Revenue Service (IRS) announced on January 15, 2019 that it will recall tens of thousands of additional employees who are currently on furlough so that IRS might fulfill the President’s promise that federal tax refunds will not be delayed by the lapse in

appropriations. These federal employees designated to be recalled—a recall IRS purports is authorized by an entirely different legal avenue than it (and other agencies) have used to “except” employees under the Antideficiency Act—include over 20,000 bargaining unit employees represented by NTEU.

Plaintiff NTEU thus seeks a declaration that Section 1342 of the Antideficiency Act is unconstitutional. NTEU also seeks to enjoin the United States from relying on Section 1342 to require NTEU members to work without pay during a lapse in appropriations. Alternatively, NTEU requests a declaration that the OMB directive being used by agencies to determine which employees may be required to report to work is inconsistent with the Antideficiency Act, and an injunction against the federal agency reliance on the directive to require employees to report to work without pay. Finally, in addition to the application of the above-described relief to all NTEU members, including those at IRS, NTEU requests two remedies specific to its IRS members. NTEU requests that the Secretary of the Treasury be enjoined from (1) designating any additional NTEU members as excepted employees or otherwise calling furloughed NTEU members back into service to work without pay during this lapse in appropriations; and (2) requiring NTEU members who were designated as excepted employees or otherwise called back into service on or since January 15, 2019 to work without pay during this lapse in appropriations.

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

VENUE

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff NTEU is an unincorporated association with its principal place of business at 1750 H Street, N.W., Washington, D.C. 20006. NTEU is, pursuant to Title VII of the Civil Service Reform Act, Public Law No. 95-454, 92 Stat. 1111, the exclusive bargaining representative of approximately 150,000 federal employees in 32 federal departments and agencies, several of which are implicated by the instant partial government shutdown. NTEU represents the interests of these employees by negotiating collective bargaining agreements; filing and arbitrating grievances under such agreements; filing unfair labor practices; petitioning Congress for favorable working conditions, pay, and benefits; and enforcing employees' collective and individual rights in federal courts.

4. NTEU brings this action on behalf of itself and its members, whose rights are being violated through the actions of the defendants.

5. Defendant United States of America, through its executive branch agencies, has obligated funds that are not appropriated and is requiring employees to report to work without pay on penalty of discipline.

6. Defendant John Michael Mulvaney is the Director of OMB. OMB is responsible for setting executive branch policy and issuing directives regarding expenditures. OMB has issued directives, such as the directive at issue in this lawsuit (discussed below), to federal agencies instructing them concerning which employees may be required to work during a lapse in appropriations. OMB also approves agency “contingency plans” setting forth which employees will be required to report to work during a lapse in appropriations.

7. Defendant Steven Terner Mnuchin is the Secretary of the Treasury. In this capacity, he oversees the Department of the Treasury’s components, including the Internal Revenue Service (IRS). That includes oversight of IRS’s lapsed appropriations contingency plan, which was updated and released to NTEU January 15, 2019. Pursuant to that contingency plan, thousands of NTEU members are excepted from the lapse in appropriations or otherwise designated to work during the partial government shutdown without pay.

STATEMENT OF CLAIMS

8. On December 22, 2018, appropriations lapsed for several executive branch agencies at which NTEU represents bargaining unit employees, including: the IRS (and other Department of Treasury offices and bureaus), United States Custom and Border Protection, the Federal Law Enforcement Training Center, the Commodity Futures Trading Commission, the Environmental Protection Agency, the Federal Communications Commission, the Food and Drug Administration, the Federal Elections Commission, the National Parks Service, the Patent and

Trademark Office, the Securities and Exchange Commission, and the United States Department of Agriculture.

9. Notwithstanding the ongoing lapse in appropriations, tens of thousands of federal employees represented by NTEU have been required to report to work since December 22, 2018.

10. In directing employees excepted from the partial government shutdown to report to work, the defendants have purported to rely on the Antideficiency Act, 31 U.S.C. §§ 1341, 1342.

11. That Act generally prohibits agencies from involving the government “in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.” 31 U.S.C. § 1341. It provides, however, that the United States may “employ personal services exceeding that authorized by law” in “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

12. Congress amended Section 1342 of the Antideficiency Act in 1990 to provide explicitly that “[a]s used in this section, the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”

13. Congress added this clarifying and limiting language in 1990 because of “what the conferees believe[d] might be an overly broad interpretation” by the Attorney General in 1981 “regarding the authority for the continuance of

Government functions during the temporary lapse in appropriations, and [to] affirm that the constitutional power of the purse resides with Congress.” H.R. Conf. Rep. No. 101-964, at 1170 (1990).

14. On January 19, 2018, Defendant Mulvaney, Director of OMB, sent a memorandum to the heads of all executive departments and agencies, requiring that they review and, if needed, update their contingency plans for agency operations during a lapse in appropriations. A copy of this directive is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/m-18-05-Final.pdf>.

15. The OMB directive directs agencies to OMB Circular A-11. The directive further states that agencies “should refer to relevant legal opinions issued by the Attorney General and the Office of Legal Counsel of the Department of Justice, which set forth the legal requirements imposed by the Antideficiency Act (Act) during a lapse in appropriations and the guiding standards agencies should use in making decisions under the Act during a lapse in appropriations.” Directive at 1.

16. OMB Circular No. A-11, at Section 124, points agencies to Office of Legal Counsel (OLC) opinions from 1995, 1981, and 1980 for guidance on the Antideficiency Act, as applied during a lapse in appropriations.

17. The 1995 OLC opinion to which OMB directs executive branch agencies states that, “even after the 1990 amendment” to the Antideficiency Act (discussed above), the Attorney General’s 1981 broad construction of the Antideficiency Act’s emergency exception was still “fair.” See Memorandum for

Alice Rivlin, Director, Office of Management and Budget, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Operations in the Event of a Lapse in Appropriations at 8 (Aug. 16, 1995) (1994 OLC opinion).

18. The 1995 OLC opinion thus goes on to reiterate the very interpretation of Section 1342’s emergency exception that Congress viewed as overbroad and from which it consciously departed through the 1990 amendment: that, for the exception to apply, there need only be “some reasonable and articulable connection between the function to be performed and the safety of human life or the protection or property” and “there is “some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by the delay in the performance of the function in question.” *Id.* at 8 (adding that “to forestall possible misinterpretations, the second criteria’s use of the phrase ‘in some degree’ should be replaced with the phrase, ‘in some significant degree’”) (emphases added).

19. The 1995 OLC opinion’s overbroad test—requiring only a “reasonable” connection to protecting life or property and only a “reasonable likelihood” that life or property would be compromised if the employee did not continue to perform his or her official functions—is inconsistent with the plain text of Section 1342. The Antideficiency Act requires the existence of an “imminent[] threat[]” to human safety or property to justify continued work during a lapse in appropriations.

20. Acting pursuant to the OMB directive and the 1995 OLC opinion endorsed by OMB, federal agencies implicated by the current lapse in appropriations drew up contingency plans designating tens of thousands of NTEU-

represented employees as excepted employees, whose services could be required in a government shutdown, notwithstanding the Antideficiency Act.

21. Many of the employees designated as excepted, in accordance with the OMB directive, including many members of Plaintiff NTEU, are persons whose services involve only “the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” 31 U.S.C. § 1342. Their excepted status is thus inconsistent with the plain text of the Antideficiency Act.

22. Pursuant to federal law and regulation, federal employees are entitled to be paid wages for their work. Yet NTEU-represented excepted employees are being required to work despite the lapse in appropriations will not be paid during the period of lapsed appropriations for that work. One regularly scheduled pay day has already passed without paychecks being issued to these workers for their labors. Their employing agencies have no legal authority to obligate the United States to pay their salaries.

23. In purporting to obligate the United States to spend money that has not been appropriated, the executive branch has usurped the legislation function by transferring to the President the power over spending that the Constitution vests in Congress. In doing so, it has caused injury to NTEU members who are working during the lapse in appropriations without pay.

24. IRS is calling thousands more NTEU-represented employees—employees who are currently on furlough—back into service during the current

shutdown. These employees will not be paid during the lapse of appropriations for their work. These “recalled employees,” in significant part, are not being excepted the lapse in appropriations under the Antideficiency Act. IRS is calling them back into service under an entirely different legal theory that is discussed in detail below.

25. The impetus for this call-back is the President’s declaration, in early January, that the partial government shutdown will not delay the issuance of federal tax refunds. When that declaration was made, there were not enough employees at IRS working during the lapse in appropriations to fulfill this promise. See Darla Mercado, “White House Promises Tax Refunds Will Go Out, But There’s Hardly Anyone At The IRS To Do The Work,” CNBC.com (Jan. 7, 2019) (noting that 12% of IRS employees are working during the lapse in appropriations).

26. The timely issuance of federal tax refunds is politically important to the President. “The massive tax law enacted by Republicans in Congress in late 2017, which is President Donald Trump’s signature legislative achievement, gave generous tax cuts to corporations and the wealthiest Americans and more modest reductions to middle- and low-income households. The law is expected to bring lower taxes for 2018 for the great majority of Americans, and the refunds are a big tangible part of that.” Jill Colvin, “The IRS Is Recalling 46,000 Workers To Handle Tax Returns,” NYTimes.com (Jan. 15, 2019).

27. To fulfill the President’s promise, IRS announced on January 15 “that it expects to have 46,052 employees on the job — more than half its workforce — if the shutdown stretches into tax-filing season in late January. That would be a huge

jump from its initial shutdown plan, which kept only 9,946 workers on the job.”

Sam Mintz *et al.*, “Shutdown Shrinks As Thousands More Employees Called In To Work Without Pay,” Politico.com (Jan. 15, 2019).

28. Indeed, on January 15, IRS informed NTEU that 21,900 bargaining unit employees represented by NTEU who are currently on furlough would be called back into service. IRS told NTEU that it would begin contacting those employees as soon as January 16. IRS provided NTEU with this information and an updated contingency plan for lapsed appropriations on January 15. A copy of the plan is available at https://home.treasury.gov/system/files/266/IRS-Lapse-in-Appropriations-Contingency-Plan_Filing-Season_2019-01-15.pdf.

29. IRS’s January 15, 2019 contingency plan provides for 12,262 employees to be excepted from the lapse in appropriations pursuant to Section 1342’s emergency exception because they are engaged in the protection of life and property. IRS’s previous iteration of its contingency plan, sent to NTEU on December 21, 2018, provided that 8,017 employees would be excepted pursuant to Section 1342’s emergency exception. The figure in IRS’s January 15 plan thus represents a 52% increase from its December 21 plan.

30. IRS’s stated mission is to “[p]rovide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all” (<https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>). That mission does not involve protecting human life or property from imminent threat. Both (1) the jump in the number of

employees excepted by IRS under Section 1342 between December 21, 2018 and January 15, 2019; and (2) the overall number of employees that IRS excepted under Section 1342 in its January 15, 2019, contingency plan illustrate an untenably overbroad reading of Section 1342. That overboard reading is attributable to agency reliance on the illegal OMB directive, which, as discussed, is inconsistent with Section 1342's plain text.

31. IRS's January 15, 2019 contingency plan suffers from an additional legal deficiency unrelated to Section 1342. The plan improperly relies on a different and inapposite theory—the “necessarily implied by law” exception (discussed in more detail below)—to justify requiring an additional 32,967 employees to work during the lapse in appropriations. This figure is drastically greater than the 250 employees that IRS's December 21, 2018 contingency plan put in the “necessarily implied by law” category. Indeed, an April 2011 IRS contingency plan excepted zero employees under this theory, further illustrating the significant change in IRS's approach in its most recent plan.

32. The 32,967 employees that IRS now says fall within the scope of the “necessarily implied by law” theory include 17,520 employees at “accounts management centers” and another 12,961 employees at “submission processing centers.” Each of these types of centers process federal tax returns. IRS's January 15, 2019 contingency plan, at page 6, confirms that it is relying on the “necessarily implied by law” theory to fund the salaries of those engaged in “activities necessary to issue [tax] refunds.”

33. As the 1995 OLC opinion, at page 4, explains, “the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well.” (emphasis added.)

34. The OMB directive recounts, as pertinent here, that this theory applies only where (1) “Congress has providing funding that remains available during the lapse (including funds already obligated from the current fiscal year); and (2) “the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation.” OMB Directive, Attachment, Frequently Asked Questions During a Lapse in Appropriations, Section I.B (emphasis added). “The touchstone of the analysis is determining whether the execution of the terms of the [pertinent] statutory provision . . . would be significantly damaged in the absence of immediate performance of the unfunded, related activity.” *Id.* (emphases added).

35. Examples of the “limited” activities that fit into this category include (1) “the check writing and distribution functions necessary to disburse the social security payments that operate under indefinite appropriations”; and (2) the contracting for materials “essential to the performance of the emergency services that continue under [this] separate exception.” 1995 OLC opinion at 4 (emphases added). *See* OMB Directive, Attachment, Frequently Asked Questions During a Lapse in Appropriations, Section I.B (noting that, with respect to entitlement

programs, “there is a congressional authorization to make regular payments to beneficiaries”).

36. IRS’s January 15, 2019 contingency plan, at page 6, states the agency’s view that “tax refunds are paid from the permanent, indefinite refund appropriation (31 U.S.C. § 1324) and activities necessary to issue the refunds may continue during a shutdown.” IRS thus appears to be relying solely on the type of appropriation involved—i.e., an indefinite appropriation—to justify its use of the necessarily implied by law theory. That is an incomplete and erroneous analysis. It ignores what OMB agrees is the “touchstone of the analysis”: “whether the execution of the terms of the [pertinent] statutory provision . . . would be significantly damaged in the absence of immediate performance of the unfunded, related activity.” *Id.* (emphases added). OMB Directive, Attachment, Frequently Asked Questions During a Lapse in Appropriations, Section I.B (emphases added).

37. Section 1324 of Title 31, relied on by IRS, is limited to appropriating funds for, and authorizing the disbursement of, federal tax refunds. It provides, in full, that:

(a) Necessary amounts are appropriated to the Secretary of the Treasury for refunding internal revenue collections as provided by law, including payment of—

- (1) claims for prior fiscal years; and
- (2) accounts arising under—
 - (A) “Allowance or drawback (Internal Revenue)”;
 - (B) “Redemption of stamps (Internal Revenue)”;
 - (C) “Refunding legacy taxes, Act of March 30, 1928”;
 - (D) “Repayment of taxes on distilled spirits destroyed by casualty”; and
 - (E) “Refunds and payments of processing and related taxes”.

(b) Disbursements may be made from the appropriation made by this section only for—

- (1) refunds to the limit of liability of an individual tax account; and
- (2) refunds due from credit provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) enacted before January 1, 1978, or enacted by the Taxpayer Relief Act of 1997, or from section 25A, 35, 36, 36A,[1] 36B, 168(k)(4)(F), 53(e),[1] 54B(h),[1] or 6431 [1] of such Code, or due under section 3081(b)(2) of the Housing Assistance Tax Act of 2008.

38. Section 1324 does not require the payment of federal tax refunds by any particular date (let alone immediately)—or even that refunds be paid at all. Neither does Section 1324 provide appropriated funds for the payment of salaries of tax processing employees. It simply makes appropriated funds available to issue refund payments. Thus, activities related to those disbursements do not fit the necessarily implied by law exception, as it has been construed by OMB and OLC.

39. As former IRS Commissioner John Koskinen has indicated, “it would be hard to make the case that taxpayers face real hardship if their refunds are delayed, as they are with Social Security payments.” Katie Rogers and Alan Rappeport, “White House Redefines Who Is Essential to Get Parts of Government Moving Again,” NYTimes.com (Jan. 16, 2019).

40. Neither do IRS employees involved in the disbursement of tax refunds fit any exception to the Antideficiency Act’s general rule that obligations may not be incurred during a lapse in appropriations. IRS’s recall of thousands of NTEU members to perform tax processing functions during the lapse in appropriations therefore violates Section 1341 of the Antideficiency Act.

CAUSES OF ACTION

Count 1: Section 1342 of the Antideficiency Act violates the Constitution's Appropriations Clause.

41. Plaintiff reasserts the allegations contained in paragraphs 1 through 40 of this complaint as though contained herein.

42. The Appropriations Clause of the Constitution commands that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const., Art. I, § 9, cl. 7.

43. To the extent that the Antideficiency Act purports to authorize executive agencies to obligate funds for the payment of employees, absent appropriations made by law, that Act is unconstitutional.

44. The obligation of funds by Defendant United States, in absence of a congressional appropriation, in the instant lapse in appropriations thus violates the plain and unequivocal language of the Appropriations Clause.

45. This illegal obligation has injured thousands of NTEU-represented employees, who are being required to work without pay during the current lapse in appropriations.

Count 2: The OMB Directive is inconsistent with the Section 1342 of the Antideficiency Act.

46. Plaintiff reasserts the allegations contained in paragraphs 1 through 45 of this complaint as though contained herein.

47. The Antideficiency Act forbids an agency from obligating the United States to pay for employee services unless those services are needed in connection with an imminent threat to human life or property. 31 U.S.C. § 1342.

48. The OMB directive issued on January 19, 2018 purports to authorize agencies to designate employees as excepted and to require them to work during a lapse in appropriations, even where their services are not rendered in connection with covered emergencies, but instead involve “the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” 31 U.S.C. § 1342.

49. The OMB directive is inconsistent with the plain text of the Antideficiency Act and thus constitutes unlawful agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

50. Thousands of Plaintiff NTEU’s members are injured by the OMB directive because it has resulted in their designation as excepted employees, thereby invoking the requirement that they work without pay during this period of lapsed appropriations.

Count 3: The Department of Treasury, Internal Revenue Service has designated thousands of employees as excepted or otherwise designated them to return to work in violation of the Antideficiency Act, 31 U.S.C. § 1341.

51. Plaintiff reasserts the allegations contained in paragraphs 1 through 50 of this complaint as though contained herein.

52. IRS employees who process federal tax returns and refunds do not protect human life or property from imminent threat. IRS’s designation of over

12,000 employees as excepted employees under Section 1342 of the Antideficiency Act is thus incorrect, and the incurrence of obligations for their salaries during this lapse of appropriations violates Section 1341 of the Antideficiency Act.

53. Assuming, arguendo, that the “necessarily implied by law” exception to the Antideficiency Act, 31 U.S.C. § 1341, is constitutional, IRS has erred in invoking it to designate over 32,000 tax processing employees as being required to work during this lapse in appropriations. The necessarily implied by law exception does not encompass the disbursements of federal tax refunds under 31 U.S.C. § 1324. There is nothing in Section 1324 suggesting that the execution of its terms would be significantly damaged in the absence of immediate performance, as OMB has stated is necessary for the necessarily implied by law exception to attach. Because the exception does not apply, the incurrence of salary obligations for tens of thousands of employees engaged in processing federal tax returns and disbursing federal tax refunds during the lapse of appropriations violates Section 1341 of the Antideficiency Act.

54. IRS’s contingency plan for a lapse in appropriations, updated and provided to NTEU on January 15, 2019, thus constitutes an unlawful agency action the Administrative Procedure Act, 5 U.S.C. § 701, et seq.

REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff NTEU requests judgment against Defendants United States and Mulvaney:

A. Declaring that the obligation of monies by the United States to pay for employee services, in the absence of any appropriation, violates Article I, section 9, clause 7 of the United States Constitution;

B. Declaring Section 1342 of the Antideficiency Act unconstitutional;

C. Enjoining defendants from giving effect to Section 1342 of the Antideficiency Act, including by requiring Plaintiff NTEU's members to work during a period of lapsed appropriations;

D. Declaring that the OMB directive is inconsistent with the Antideficiency Act, to the extent that it purports to authorize agencies to designate employees as excepted when the suspension of their services would not imminently threaten the safety of human life or the protection of property;

E. Ordering Defendant Mulvaney to withdraw the illegal OMB directive;

F. Enjoining defendants from implementing OMB's illegal directive;

G. Enjoining Defendant Mnuchin from designating any additional NTEU members as excepted employees or otherwise calling any furloughed NTEU members back into service to work without pay during this lapse in appropriations;

H. Enjoining Defendant Mnuchin from requiring any NTEU member designated as excepted or otherwise called back into service on or since January 15, 2019, to work without pay during this lapse in appropriations;

I. Ordering defendants to pay reasonable attorneys' fees and costs, as determined by the Court; and

J. Ordering such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Gregory O'Duden

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January 17, 2019

Attorneys for Plaintiff NTEU

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

National Treasury Employees Union
1750 H Street, NW
Washington, DC 20006

Plaintiff(s)

v.

United States of America
et. al

Defendant(s)

Civil Action No. 19-cv-50

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) STEVEN TERNER MNUCHIN
Secretary of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Gregory O'Duden
National Treasury Employees Union
1750 H St., NW
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 01/17/2019

Signature of Clerk or Deputy Clerk

Civil Action No. 19-cv-50

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: