UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ. Plaintiff, v. EXECUTIVE OFFICE OF THE PRESIDENT, *et al*. Defendants.	Civil Action No.: 1:25-cv-1365-AHA **HEARING REQUESTED**

PLAINTIFF MARK ZAID'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Civil Rule 65.1(c), Plaintiff Mark S. Zaid, Esq., by and through his attorneys, hereby moves for a preliminary injunction against the Defendants. Pursuant to Local Civil Rule 65.1(d), Mr. Zaid also requests a hearing on his application for a preliminary injunction no later than 21 days after this filing.

Plaintiff notes that service was effected on the United States Attorney's Office for the District of Columbia on May 6, 2025.[1] *See* ECF No. 8. Undersigned counsel made two attempts to contact leadership from the United States Attorney's Office for the District of Columbia and from the Department of Justice's Federal Programs Branch to alert them to this filing and discuss its attendant briefing schedule and have not yet received a response.

A memorandum of law, Mr. Zaid's supporting declaration, an accompanying client declaration, an expert report, and a proposed Order are attached hereto.

[1] E-mailed delivery of the summons referenced at ECF No. 8 was coupled with service via certified mail in accordance with Fed. R. Civ. P. 4(i). Undersigned counsel is awaiting the return receipts.

Dated: May 21, 2025

Respectfully Submitted,

/s/ Abbe David Lowell
Abbe David Lowell (D.C. Bar #358651)
David A. Kolansky (NY Bar #5887765)
LOWELL & ASSOCIATES, PLLC
1250 H Street, N.W., 2nd Fl.
Washington, DC 20005
Tel: (202) 964-6110
Fax: (202) 964-6116
alowellpublicoutreach@lowellandassociates.com
dkolansky@lowellandassociates.com

/s/ Norman L. Eisen
Norman L. Eisen (D.C. Bar #435051)
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Avenue, SE, #15180
Washington, D.C. 20003
Tel: (202) 594-9958
norman@statedemocracydefenders.org

/s/ Margaret M. Donovan
Margaret M. Donovan (D.C. Bar #CT0026)
Christopher M. Mattei (*pro hac vice forthcoming*)
KOSKOFF, KOSKOFF & BIEDER, PC
350 Fairfield Ave., Suite 501
Bridgeport, CT 06604
Tel: (203) 336-4421
Fax: (203) 368-3244
mdonovan@koskoff.com
cmattei@koskoff.com

/s/ Kevin T. Carroll
Kevin T. Carroll (D.C. Bar #1021479)
1751 Pinnacle Drive
Tysons, VA 22102
Tel: (718) 791-5761
kevintcarroll@hotmail.com

/s/ George W. Croner
George W. Croner (*pro hac vice forthcoming*)
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: (215) 238-1700
gcroner@kohnswift.com

/s/ D.E. Wilson, Jr.
D.E. Wilson, Jr. (D.C. Bar #932178)
LANKFORD & REED, PLLC
120 North St. Asaph Street
Alexandria, VA. 22314
Tel: (703) 299-5000
ewilson@LRfirm.net

/s/ Eugene R. Fidell
Eugene R. Fidell (D.C. Bar #112003)
FELDESMAN LEIFER LLP
1129 20th Street NW, Ste. 400
Washington, D.C., 20036
Tel: (202) 466-8960
efidell@feldesman.com

Counsel for Plaintiff Mark S. Zaid.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ.

Plaintiff,

v.

EXECUTIVE OFFICE OF THE PRESIDENT, *et al*.

Defendants.

Civil Action No.: 1:25-cv-1365-AHA

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF
MARK ZAID'S MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitution and Statutes

Rules

INTRODUCTION

For over three decades, Plaintiff Mark Zaid has painstakingly built a career as a national security litigator, whistleblower advisor, and bulwark against government overreach. His work requires him to traverse some of the most inaccessible areas of government on behalf of his clients: scouring through classified discovery, parsing the details of covert operations, and digesting the particulars of sensitive national security material. Given the nature of his work—providing legal advice to individuals related to sensitive government operations—Mr. Zaid has consistently been granted and maintained security clearances tailored to his representations. As "cleared counsel," he is often the only person with whom his clients can speak about their problems and, by extension, the sole advocate they can trust to represent them.

His remarkable track record has made him a sought-after advisor for individuals involved in both adversarial and non-adversarial legal proceedings. His clientele spans the spectrum of political ideology and his practice commits to neither party nor persuasion. From the ground up—the American way—he has established himself over the years as an objective, fact-based expert in a niche area of law. He has done so through steadfast adherence to the principles of the national security communities he serves, zealously and ethically representing his clients.

But today, the caprice of a vengeful Executive has upended Mr. Zaid's life's work and professional practice. A progression of events inimical to the rule of law and precipitated by the unbridled vindictiveness of a person in power has intruded upon attorney-client relationships, obstructed zealous advocacy on active cases, and summarily overwritten Mr. Zaid's hard-fought reputation through a nationally circulated Presidential decree. On March 22, 2025, in a publicly posted Presidential Memorandum, President Donald J. Trump identified Mr. Zaid by name, grouped him in with other perceived political enemies, and directed federal agencies to immediately revoke Mr. Zaid's security clearance and access to classified information. The edict

was not premised upon any alleged breach of his security obligations, but in the name of an undefined "national interest." Defendants fell in line, flouting their agencies' own long-recognized due process requirements for the adjudication of security clearances. No notice was ever provided to Mr. Zaid. This off-with-their-heads approach created predictable and irreparable collateral damage: Defendants encroached on the sacred constitutional relationship between an attorney and his clients, disrupting numerous active cases being handled by Mr. Zaid including at least one before this Court.

Targeted, conclusory, and punitive, this is precisely the type of monarchal retribution the Framers of our Constitution were committed to eradicating in their new republic. Defendants have offended the core tenets of the Constitution's First and Fifth Amendments, and Mr. Zaid and his clients have suffered and continue to suffer irreparable harm as a result. Defendants, for their part, remain unconcerned with the legality and consequences of their actions. These flagrant violations of citizens' rights cannot be tolerated in a functioning democracy.

In accordance with Fed. R. Civ. P. 65 and Local Civ. R. 65.1, Mr. Zaid respectfully asks this Court to preliminarily enjoin Defendants from their patently unlawful actions and course of conduct while this case proceeds on the merits. Mr. Zaid respectfully requests a hearing on his application for a preliminary injunction pursuant to Local Civil Rule 65.1(d).

FACTUAL BACKGROUND

Mr. Zaid's Livelihood as a National Security Attorney

As outlined in the Complaint (ECF No. 1, "Compl."), Plaintiff Mark Zaid is a Washington, D.C.-based attorney who has built a career over nearly 35 years in the fields of national security, international law, foreign sovereign and diplomatic immunity, the Freedom of Information Act, and the Privacy Act. Compl. ¶¶ 9, 22. His clientele consists of current and former federal employees, military servicemembers, and government contractors, to name a few. *Id.* ¶ 1. Over

the decades, he has established a respectable reputation as a legal advisor to lawful government whistleblowers, particularly in the national security arena, eventually forming his own non-profit foundation to facilitate pro bono legal representation to whistleblowers. *Id.* ¶ 31. As an attorney, he has never been a state or federal employee and has strived to remain apolitical throughout his career. *Id.* ¶ 1. Since being admitted to the bar in 1993, Mr. Zaid has advised clients facing off against every Presidential Administration that has occupied the White House. *Id.* ¶ 32.

As it happens, a significant share of the cases he has litigated over the past three decades involved individuals challenging impending denials or revocations of their security clearances. *Id.* ¶ 3. He has also defended current and former federal employees who faced criminal allegations or other adverse action initiated by the government. *Id.* ¶ 54; Declaration of Mark S. Zaid ("Zaid Decl.") ¶ 7. Not all of Mr. Zaid's representations are adversarial in nature; he has frequently advised whistleblower witnesses and acted as counsel for neutral participants in government inquiries. *Id.* at. ¶ 39. He also has served as an expert witness and advisor in the field of national security, classification, and prepublication reviews, including providing testimony to a variety of legislative and executive branch governmental bodies. Compl. ¶ 23.

Mr. Zaid's work originates primarily from the Intelligence, Military, and Law Enforcement Communities. Zaid Decl. ¶ 5. For example, as a private lawyer, he is a crucial source of discreet, unconflicted counsel for current and former employees of the Central Intelligence Agency ("CIA"), Department of Defense ("DoD"), Defense of Counterintelligence and Security Agency ("DCSA"), and the Office of the Director of National Intelligence ("ODNI") (hereinafter, the "Agency Defendants"). *Id.* Consequently, in order to properly assess his clients' issues, he frequently must access, review, or discuss classified material. *Id.* ¶¶ 16–22. As a result, the government has approved Mr. Zaid's access to classified information since approximately

1995 through various types of case-specific authorizations. *Id.* ¶ 5. For three decades, he has adhered to non-disclosure agreements with the government, successfully underwent multiple background checks, and been cleared to review some of the most sensitive government information so that his clients could rely on competent, private counsel. *Id.* ¶¶ 16–18. Over that time period, Mr. Zaid has been consistently and favorably adjudicated trustworthy.[1] *Id.* ¶¶ 18, 22.

Having maintained authorized access to classified information for the better part of three decades and having represented a wide variety of clients involved in sensitive government operations, Mr. Zaid has established himself as a leading lawyer in his field. Compl. ¶ 31. As a highly sought-after attorney for complex national security cases, Mr. Zaid's livelihood and reputation are inextricably tied to his ability to analyze and advocate for positions he discovers, develops, and cultivates, in whole or in part, from his access to classified information. *Id.* ¶ 31; Zaid Decl. ¶¶ 15, 48. It goes without saying, then, that being suddenly and arbitrarily denied access to classified information, coupled with being tarred as untrustworthy, will force him to abandon cases and his clients to either proceed without counsel or seek it elsewhere. In sum, Mr. Zaid's life's work and reputation have been irreparably undermined by unfounded accusations of untrustworthiness.

Although this would be unacceptable for any lawyer, this is a particularly disconcerting reality when considering Mr. Zaid's distinguished and hard-earned career. As outlined in the Complaint, he has excelled professionally and has been admitted to practice law in a multitude of state and federal jurisdictions. Compl. ¶ 31(a). He frequently provides instruction to lawyers and law students on his areas of expertise. *Id.* ¶¶ 31(b), (f). He has been recognized by a variety of

[1] *See, e.g.*, *Stillman v. CIA, et al.*, 319 F.3d 546, 548 (D.C. Cir. 2003), in which the government conducted the requisite background investigation and "found that Mr. Zaid was trustworthy."

publications and trade organizations for his accomplishments in his chosen field. *Id.* ¶¶ 31(c)-(e). His work providing legal advice to whistleblowers inspired him to found a successful non-profit foundation as an extension of his passion. *Id.* ¶ 31(g). He serves as legal counsel for that non-profit, while also sitting on the boards of various private organizations related to his specialty fields. *Id.* In addition to his advocacy work, he also draws income from serving as an expert on national security matters. *Id.* ¶ 31(j). Mr. Zaid earns an income principally from his work as a lawyer and expert in this field, and both his income and identity are at stake in this case. Zaid Decl. ¶ 15.

Mr. Zaid's Clients

Mr. Zaid has represented clients from across the political spectrum and under every Presidential administration since 1993. Zaid Decl. ¶ 24. Through his law firm, Mark Zaid, P.C., he currently represents a number of active clients that have been impacted by Defendants' summary revocation of his security clearance. *Id.* ¶¶ 42–46. For example, at the time of the March 22, 2025 Memorandum, Mr. Zaid was retained by individuals employed by multiple federal agencies, including Defendants CIA and ODNI. *Id.* ¶¶ 43–44. As discussed in further detail herein, Defendants have significantly and adversely impacted those relationships. A representative sample of Mr. Zaid's clients follows.

- John Doe-1 is employed within the Intelligence Community. Mr. Zaid's representation of him involves handling classified whistleblower complaints on Anomalous Health Incidents ("AHI"). *Id.* ¶ 43.
- Marc Polymeropolous was previously employed by Defendant CIA. Declaration of Marc Polymeropolous ("M.P. Decl.") ¶ 2. He hired Mr. Zaid because of his well-known reputation as an attorney uniquely experienced in representing individuals impacted by

AHIs. *Id.* ¶ 10.

- Mr. Zaid's past clients involving classified information have included military members charged with war crimes, former CIA case officers charged with criminal offenses, and government officials who have had their own clearances revoked. Zaid Decl. ¶ 40.

Moreover, because of his prominence in this field, Mr. Zaid routinely receives referrals and other requests for assistance on a recurring basis. *Id.* ¶ 46. The events at issue have undoubtedly affected the tempo of referrals he would normally receive and accept. Ever since the February 8, 2025 *New York Post* article about President Trump's targeting of his clearance, Compl. ¶ 39, and continuing through the present day, Mr. Zaid regularly hears from colleagues, adversaries, clients, friends, and family, raising concerns about President Trump's fixation on his past representations. Zaid Decl. ¶ 37. His restricted ability to represent clients has been widely publicized by the White House, along with other federal officials and their allies.

Additionally, over the past decade, Mr. Zaid has served as counsel in the esoteric area of law governing the claims of former and current government officials afflicted by, and suffering from, AHIs, colloquially referred to as Havana Syndrome. *Id.* ¶ 42; M.P. Decl. ¶ 8. These matters often require Mr. Zaid to review and handle classified information, and in some cases, file classified whistleblower complaints. Zaid Decl. ¶ 43. However, President Trump's directive now has a devastating effect on Mr. Zaid's ability to represent those current and future AHI clients, including by utilizing classified information he previously learned through authorized representations and which benefits victims of AHIs whom he has represented, such as lawful whistleblowers. *Id.* ¶ 44; M.P. Decl. ¶¶ 16–17.

The Trump Administration's Targeting of Mr. Zaid

As he has done countless times before in his career, in September 2019, Mr. Zaid began representing a whistleblower from within the Intelligence Community ("IC Whistleblower"). Compl. ¶ 34; Zaid Decl. ¶ 23. This particular whistleblower had five weeks earlier filed a classified complaint with the ODNI's Office of Inspector General related to President Trump's telephone conversation with Ukrainian President Volodymyr Zelensky on July 25, 2019. *Id.* The complaint ultimately led to the first impeachment of President Trump. Mr. Zaid's representation of the IC Whistleblower continued throughout that process. *Id.* Mr. Zaid's legal representation of the IC Whistleblower did not involve advocating for any specific outcome. *Id.* His work had three objectives: (1) ensure the IC Whistleblower's complaint reached the proper oversight authorities; (2) protect the anonymity of the IC Whistleblower; and (3) shield the IC Whistleblower from retaliation. Zaid Decl. ¶ 23. Each objective was successfully achieved. Notably, impeaching President Trump was never part of nor an objective of Mr. Zaid's representation.

Over the past three decades, Mr. Zaid has represented whistleblowers who have provided information that proved embarrassing to the federal government under many different presidential administrations. *Id.* ¶ 24. However, it was not until his representation of the IC Whistleblower that a President of the United States responded directly. *Id.* After learning that Mr. Zaid represented the IC Whistleblower, President Trump publicly called Mr. Zaid a "sleazeball" at a televised political rally in Louisiana in November 2019. *Id.* ¶ 25. That was the first time in Mr. Zaid's entire legal career that an American President had ever publicly commented about him or his representation of a client, let alone vilified him. *Id.* Days after the Louisiana rally, President Trump again referenced Mr. Zaid's representation of the IC Whistleblower while speaking with

reporters at the White House, stating, "The whistleblower, because of that, should be revealed. And his lawyer, who said the worst things possible two years ago, he should be sued and maybe for treason. Maybe for treason, but he should be sued. His lawyer is a disgrace." *Id.* ¶ 26.

Nevertheless, the first Trump Administration never initiated any investigation, suspension, revocation, denial, or any other adverse action related to Mr. Zaid's security clearance, and he continued to represent a wide variety of clients. *Id.* ¶ 27. In fact, in 2020, Mr. Zaid's access was *increased* to Top Secret/Sensitive Compartmented Information ("TS/SCI")—a higher security clearance level than he held in 2019 while representing the IC Whistleblower—for his representation of a client in another high-profile whistleblower case. *Id.* Mr. Zaid continued to utilize his TS/SCI clearance, unquestioned and uninterrupted, for various cases up through November 2024. Compl. ¶ 38. He also consistently accumulated and advised new clients seeking assistance during this time period. Zaid Decl. ¶¶ 21, 41.

After the second Trump inauguration, on January 20, 2025, Mr. Zaid continued his as-yet unbroken representation of federal employees and contractors. On February 4, 2025, he filed a lawsuit against the Department of Justice and United States on behalf of a group of FBI employees alleging unlawful targeting based on their work on the January 6th insurrection cases. Compl. ¶ 40. Four days after Mr. Zaid filed that lawsuit, the *New York Post* reported that he and one of his co-counsel in that case were included among a group of individuals targeted by President Trump for a mass revocation of their security clearances. *Id.* ¶ 39. Approximately one month later, on March 10, 2025, Director of National Intelligence ("DNI") Tulsi Gabbard published the following statement on her X social media account:

> Per @POTUS directive, I have revoked security clearances and barred access to classified information for Antony Blinken, Jake Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, and Andrew Weissman, along with the 51 signers of the Hunter Biden 'disinformation' letter. The President's Daily Brief

is no longer being provided to former President Biden.

Id. ¶ 41; *see also* Plaintiff's Exhibit ("Ex.") 1 (DNI Gabbard X Post from March 10, 2025).

The post does not identify the "@POTUS directive" to which Director Gabbard was referring. As of the date of the filing of this lawsuit, the post has been viewed more than 8.4 million times. *Id.*; Compl. ¶ 42 n.8. Less than two weeks later, on March 22, 2025, President Trump published a four-paragraph Presidential Memorandum on the publicly accessible website "www.whitehouse.gov" addressed to "the heads of executive departments and agencies." *Id.* ¶ 43. The Memorandum is titled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals" (hereinafter the "Rescinding Security Clearances Memorandum" or the "Memorandum"). It states:

> I have determined that it is no longer in the national interest for the following individuals to access classified information: Antony Blinken, Jacob Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.'s family. Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by the aforementioned individuals and to immediately rescind their access to classified information. I also direct all executive department and agency heads to revoke unescorted access to secure United States Government facilities from these individuals.
>
> This action includes, but is not limited to, receipt of classified briefings, such as the President's Daily Brief, and access to classified information held by any member of the Intelligence Community by virtue of the named individuals' previous tenure in the Congress.
>
> In the event that any of the named individuals received a security clearance by virtue of their employment with a private entity, the United States Government entity that granted the security clearance should inform the private entity that these individuals' ability to access classified information has been revoked.

> This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Id. ¶ 44; Ex. 2 (Rescinding Security Clearances Memorandum).

Shortly following publication of the Rescinding Security Clearances Memorandum, on or about April 3, 2025, Mr. Zaid received a one-page, three-paragraph memorandum from Defendant DCSA with the subject line "Revocation of Personnel Security Clearance Eligibility." It states:

> The [Rescinding Security Clearances Memorandum] directs every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by you, and by other individuals identified or described in the [Memorandum].
>
> Pursuant to that direction, DCSA has revoked the security clearance held by you. The revocation action has been annotated in our system of record for personnel clearances.

Id. ¶ 47; Ex. 3 (April 3, 2025 DCSA letter).

A few days later, on or about April 9, 2025, Mr. Zaid received a one-page, one-paragraph letter from the Defendant CIA's Office of General Counsel which stated:

> I am writing regarding the Presidential Memorandum entitled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals," *available at* https://www.whitehouse.gov/presidential-actions/2025/03/rescinding-security-clearances-and-access-to-classified-information-from-specified individuals. As you are aware, you were specifically identified by the White House in this memo. Pursuant to this memo, the Agency is required to "revoke any active security clearances ... and to immediately rescind [] access to classified information" for the named individuals. Accordingly, you are no longer personally permitted access to classified information in any ongoing matters that you are currently involved in with the Agency. You may continue to represent any current or future clients as you deem appropriate, but you cannot gain access to or make use of classified information in connection with such representations. To the extent necessary and appropriate, you are still permitted escorted access to Agency facilities and may review unclassified materials.

Id. ¶ 49; Ex. 4 (April 9, 2025 CIA letter).

On April 23, 2025, Mr. Zaid received an e-mail from ODNI's Office of Inspector General denying him access to John Doe-1's classified complaint that he had previously filed with the agency, which Mr. Zaid has previously accessed and remains a critical part of an ongoing case. Compl. ¶ 51. The e-mail stated that ODNI Security had determined "(U) Pursuant to Presidential direction issued on 22 March 2025 (attached), the individuals listed therein, no longer have a security clearance, are not authorized for access to classified information, and do not have unescorted access to ODNI facilities." Ex. 5 (April 23, 2025 ODNI e-mail); Compl. ¶ 51.

On May 1, 2025, Director Gabbard discussed her revocation of Mr. Zaid's security clearance during a sit-down interview with reporter Megyn Kelly on *The Megyn Kelly Show*, which was broadcast and is available on YouTube/SiriusXM. *Id.* ¶ 52; Ex. 6 (May 1, 2025, video clip from *The Megyn Kelly Show*). At the time of this filing, Ms. Kelly's YouTube channel has 3.59 million subscribers, and this interview has been viewed over 317,000 times.[2] Director Gabbard referenced Mr. Zaid by name as among "a number of other people" whose clearances have been revoked, while laughing about it with Ms. Kelly. Ex. 6. Director Gabbard agreed that revoking clearances was "fun" and that she "smiled" while revoking the clearances of another individual listed in the Memorandum. *Id.* The next day, Director Gabbard published an ODNI press release promoting the summary, group revocation of security clearances, including Mr. Zaid's, which the release described as a group "who abused public trust for political purposes." Compl. ¶ 53; Ex. 7 (ODNI Press Release No. 08-25, May 2, 2025). She also posted substantially the same message on social media the same day. Compl. ¶ 53 n.15; Ex. 8 (Gabbard X Post from May 2, 2025). As of the approximate date of this filing, it has been viewed over 114,000 times. Ex. 8.

[2] *See* https://www.youtube.com/watch?v=6tFyUP0TgrM (last visited May 20, 2025).

Mr. Zaid filed the Complaint in this case on May 5, 2025. ECF No. 1.

ARGUMENT

"A plaintiff seeking a preliminary injunction 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. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). When, as here, the government is a defendant, the third and fourth factors merge. *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016). Plaintiff satisfies all four factors required for seeking a preliminary injunction.[3]

I. PLAINTIFF HAS STANDING TO BRING HIS CLAIMS.

As an initial matter, Mr. Zaid has standing to bring his claims and this Motion for a Preliminary Injunction. To establish Article III standing, a plaintiff must first allege "'an injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual and imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Second, he must show "a causal connection between the injury and the conduct complained of[.]" *Id*. Third, he must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*. at 561 (internal quotations omitted); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).

A. Injury-in-Fact

Mr. Zaid has established a clear injury-in-fact that existed both at the filing of the complaint and continues to exist. *Garcia v. U.S. Citizenship & Immigr. Servs.*, 168 F. Supp. 3d 50, 65 (D.D.C. 2016). He has been publicly accused of being untrustworthy on issues involving classified

[3] Plaintiff bases this Motion on **Count One** through **Count Five** of the Complaint. ECF 1. **Count Six** (Bill of Attainder) will be briefed on the merits in a subsequent filing.

information and cut off from active cases, a concrete and particularized harm. Multiple denials of access have already occurred and paid hours that would have been spent working clients' cases have been lost. *See* Exs. 3 – 5; Zaid Decl. ¶¶ 34, 43. If Mr. Zaid is unable to continue his chosen career as a national security attorney, his entire livelihood is the injury. That is reality, not hypothesis or conjecture. *Lujan*, 504 U.S. at 560. He requires a security clearance to competently and ethically represent any clients on matters where that representation requires, in whole or in part, access to classified information. Without that security clearances, he loses his lifelong, well-cultivated career as competent "cleared counsel." Zaid Decl. ¶¶ 41–42.

In addition to the direct, non-speculative harm to Mr. Zaid's livelihood and reputation, "[i]t has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); s*ee also Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (internal quotations omitted); *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020) ("violation of Fifth Amendment due process rights" is "harm" that "support[s] injunctive relief.").

Mr. Zaid also has standing to bring claims related to the constitutional injuries suffered by his clients based on his special relationship with them as their attorney. *See Ctr. for Democracy & Tech. v. Trump*, 507 F. Supp. 3d 213, 223–24 (D.D.C. 2020); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623 n.3 (1989); *U.S. Dep't of Lab. v. Triplett*, 494 U.S. 715, 720–21 (1990); *Kowalski v. Tesmer*, 543 U.S. 125, 130–31 (2004). A litigant can assert standing on behalf of a third party when "(1) the litigant . . . suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; (2) the litigant [has] a close

relation to the third party; and (3) there . . . exist[s] some hindrance to the third party's ability to protect his or her own interests." *Ctr. for Democracy & Tech.* 507 F. Supp. 3d at 223–24 (D.D.C. 2020). All three of these criteria are met here. Mr. Zaid himself has suffered, and continues to suffer, injuries to his reputation and practice because of Defendants' actions. Zaid Decl. ¶¶ 44–48. He has a special attorney-client relationship with many individuals, including but not limited to John Doe-1 and Marc Polymeropolous, who continue to feel the adverse consequences to their own legal rights resulting from Defendants' harms. *Id.* ¶¶ 43–44; M.P. Decl. ¶¶ 16–17. There are many other clients in the same circumstance but who are not at liberty to publicly raise these claims themselves because either their identity and relationship to the U.S. government is classified, or they remain employed by the Trump Administration and would likely face immediate repercussions. Zaid Decl. ¶ 45. Moreover, for some of the cases, the legal concerns they have brought to Mr. Zaid are confidential and privileged. *Id.* In other words, forcing clients to reveal their relationships and communications with Mr. Zaid in order to appear as plaintiffs in this lawsuit would undermine the very purpose for which they sought legal advice in the first place. This is unnecessary when Mr. Zaid can bring claims on their behalf while preserving their ongoing, confidential communications.

B. Causal Connection

The cause of Mr. Zaid's injuries is plainly President Trump's March 22, 2025 Rescinding Security Clearances Memorandum. It is cited in the Agency Defendants' letters and e-mails informing him of the revocations. Exs. 3 – 5. It is also referenced by ODNI Direct Gabbard in her multiple public statements on the matter. Exs. 6 – 8. The Rescinding Security Clearances Memorandum was directive in nature. *See* Ex. 2 ("Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing

law to revoke any active security clearances held by the aforementioned individuals and to immediately rescind their access to classified information.").

It cannot be seriously contested that the Rescinding Security Clearances Memorandum and the Agency Defendants' blind implementation of it caused Mr. Zaid's injuries. *See Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, No. CV 25-239 (LLA), 2025 WL 597959, at *6–7 (D.D.C. Feb. 25, 2025) (rejecting defendants' arguments that federal agencies had any discretion in implementing a memorandum that contained express directives); *Fla. Audubon Soc. v. Bentsen*, 94 F.3d 658, 667 (D.C. Cir. 1996) (causation where challenged rulemaking "actually threatens the plaintiff's particular interests"). The directives of the Executive Office of the President control the Agency Defendants, and the Agency Defendants control Mr. Zaid's access, directly revoking his continued access and causing the unavoidable attendant consequences. *Cf. Ctr. for L. & Educ. v. Dep't of Educ.*, 396 F.3d 1152, 1161 (D.C. Cir. 2005) (causation established when "alleged injury [is] 'fairly traceable to' the final agency rules 'and not the result of the independent action'" of a third party).

C. Redressability

The relief requested here is specifically tailored to redress the harms that have already befallen Mr. Zaid and his clients. By declaring the Executive Order unconstitutional both facially and as applied to Mr. Zaid, and by ordering the reinstatement of his clearance, the Court can mitigate the future harm caused by Defendants both to Mr. Zaid, his clients, and to future injured parties. *See Friends of the Earth, Inc.*, 528 U.S. at 174 (2000) (recognizing deterrence of future violations as a form of redress).

It bears noting here that redress is available to Mr. Zaid notwithstanding the longstanding deference to Executive Branch security clearance determinations. *See Lee v. Garland*, 120 F.4th 880, 886–87 (D.C. Cir. 2024) (citing *Dep't of Navy v. Egan*, 484 U.S. 518 (1988)). This string of

cases, which preclude judicial review of security clearance determinations, are readily distinguishable from the instant case. First, *Egan* and *Lee* involved claimants who raised such challenges *after* being legally afforded the basic procedural protections that are required as part of due process. *See, e.g.*, *Lee*, 880 at 885–86 (final revocation following multiple polygraphs and an appeal) and *Egan*, 484 U.S. at 521–22 (final revocation following an agency's letter of intent, claimant's response, and failed appeal). Second, neither case involved attorney-client constitutional issues as exist here. Finally, neither *Egan* nor *Lee* involved the openly acknowledged vengeance by a vindictive Executive against his perceived political enemies.

The justiciability of a security clearance adjudication in a similar context was recently discussed at length following the Trump Administration's blanket suspension of clearances for employees of certain law firms disfavored by the President. *See Perkins Coie LLP v. U.S. Dep't of Just.*, No. CV 25-716 (BAH), 2025 WL 1276857, at *20 (D.D.C. May 2, 2025) (citing *Nat'l Fed'n of Fed. Emps. v. Greenberg*, 983 F.2d 286, 289 (D.C. Cir. 1993), to note that "[i]t is simply not the case that all security-clearance decisions are immune from judicial review."). In *Perkins Coie*, Judge Beryl A. Howell explained that in circumstances where security clearance decisions "are made by experts based on information specific to the individual . . . courts have no basis on which to redo the analysis or second-guess the decisions." *Perkins Coie* at *21; *see* Expert Report of J. William Leonard ("Leonard Rpt.") ¶ 39 (Opinion 1: "a blanket revocation of security clearances of a diverse and unrelated group of individuals was—prior to March 2025—unprecedented in its scope and fundamentally inconsistent with existing authority addressing the processing, granting, and revocation of security clearances."). However, in circumstances where, like here, "no such process or apparent expertise was involved, and where the allegation is that a pervasive, class-wide discriminatory policy exists against some group of individuals, the questions

involved do not create any need for courts to second-guess experts or weigh unmanageable standards." *Perkins Coie* at *21. Instead, a court can proceed to analyzing a plaintiff's constitutional challenges to agencies' methods and process or lack thereof—"the heartland of the judicial ken." *Id.* (internal quotations omitted).

Moreover, *Perkins Coie* addressed just the *suspension* of security clearances pending further review.[4] Despite the language of the Rescinding Security Clearances Memorandum explicitly requiring that agencies take action "consistent with existing law," Ex. 2, Defendants in this case bypassed any level of due process, gleefully reporting that the *final revocation* of Mr. Zaid's clearance was "fun" and swiftly accomplished. Exs. 6 – 7. Agency Defendants' summary revocation here failed to meet even the most cursory standards of their own regulations, and Mr. Zaid is entitled to challenge this insolvency. The government conceded decades ago that even in national security cases involving classified information legal challenges under the Administrative Procedure Act ("APA") are permitted to ensure an agency follows its own regulations. *Webster v. Doe*, 486 U.S. 592, 602 n.7 (1988).

The Supreme Court's decisions in *Service v. Dulles*, 354 U.S. 363 (1957) and *Vitarelli v. Seaton*, 359 U.S. 535 (1959), make clear that federal employees may challenge an agency's compliance with its regulations governing revocation of security clearances. *Service*, 354 U.S. at 373–74; *Vitarelli*, 359 U.S. at 539–40. Nothing in *Egan* overrules those cases, and in fact the principles underpinning those cases has been applied to post-*Egan* cases involving federal employee security clearance litigation. *See Palmieri v. United States*, 72 F. Supp. 3d 191, 207 (D.C. Cir. 2014) ("Here, this Court's review is limited to consideration of whether [the

[4] Even then, Judge Howell found that where "clearances have been suspended pending 'a further security clearance determination,'" the matter was ripe for review. *Perkins Coie* at *22.

government] complied with its own regulations during the security clearance administrative hearing."); *Wonders v. Dep't of the Army*, 659 Fed. Appx. 646, 648 (Fed. Cir. 2016)("Inquiry is limited to determining whether a security clearance was denied . . . and whether the applicable procedural guarantees were followed." (internal quotations and modifications omitted); *Duane v. U.S. Dep't of Def.*, 275 F.3d 988, 993 (10th Cir. 2002) ("We are not, however, precluded from reviewing a claim that an agency violated its own procedural regulations when revoking or denying a security clearance, and we may relatedly compel an agency to follow its own regulations."); *Reinbold v. Evers*, 187 F.3d 348, 359 n.10 (4th Cir. 1999) (same); *see also Rattigan v. Holder*, 689 F.3d 764, 768 (D.C. Cir. 2012) ("We adhere to our holding that *Egan's* absolute bar on judicial review covers only security clearance-related decisions made by trained Security Division personnel and does not preclude all review of decisions" outside of this context.)

Perhaps the most informative language on this point comes from *Egan* itself, where the government asserted in its own briefing:

> We agree with the Board that it may examine whether the agency *made* such a determination [to revoke a security clearance], that is, whether the agency had procedures for denying or revoking clearances and whether the procedures were followed. The Board also could, in an appropriate case, find that a determination was not validly made because the employee was not afforded procedural protections guaranteed to him by the agency's regulations (such as notice, a statement of reasons for the proposed denial or revocation, and an opportunity to respond).

Brief for the Petitioner, *Dep't of the Navy v. Egan*, 484 U.S. 518 (1988), 1987 WL 880362, at *24–25 (emphasis in original); *see also Romero v. DoD*, 527 F.3d 1324, 1329 (Fed. Cir. 2008) (quoting from the government's brief in *Egan*).

II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiff Is Likely to Succeed on the Merits of His Administrative Procedure Act Claim (Count One).

Under the APA, a court shall "compel agency action unlawfully withheld or unreasonably delayed" and "hold unlawful and set aside agency action found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . contrary to constitutional right, power, privilege, or immunity . . . [or] . . . without observance of procedure required by law." 5 U.S.C. § 706(1) and (2)(A), (B) and (D). "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). In this sense, "the question is not what [the Court] would have done, nor whether [the Court] agree[s] with the agency action," but "whether the agency action was reasonable and reasonably explained." *Ams. for Clean Energy v. EPA*, 864 F.3d 691, 726 (D.C. Cir. 2017) (internal quotations omitted). Agency action will be arbitrary and capricious "if it has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.

1. Agency Defendants Failed to Follow the Law and Their Own Policies.

Agency Defendants were bound by several decades' worth of required procedures at the time of Mr. Zaid's security clearance revocation, absolutely none of which they followed.

For example, Executive Order ("EO") 10865, published in 1960, states that classified access "may not be finally denied or revoked" without a "comprehensive and detailed" written statement of reasons, an "opportunity to reply," "an opportunity to appear" before the revoking

authority, and a right to cross-examine adverse witnesses. Ex. 9 (EO 10865), Sec. 3. Similarly, EO 12968, enacted in 1995, guarantees similar due process protections and requires formal certification by an agency head when those procedures are not followed. Ex. 10 (EO 12968), Sec. 5.2. In 2008, EO 13467 left these due process protections unchanged, while noting that agencies "may not establish additional investigative or adjudicative requirements" beyond the "aligned system" in place. Ex. 11 (EO 13467), Sec. 2.1. It further appointed the Director of National Intelligence as the Security Executive Agent. *Id*. at Sec. 2.3 The Security Executive Agent, in turn, published its own Directive, "SEAD-4," which establishes the "single, common adjudicate criteria" for clearance eligibility. Ex. 12 (SEAD-4), Part B. SEAD-4 again memorializes the due process protections owed to individuals facing denial or revocation. *Id*. at Part E, ¶ 6 ("When an adjudicative determination is made to deny or revoke eligibility for access to classified information or eligibility to hold a sensitive position, review proceedings, to the extent they are made available in EO 12968, as amended, Part 5, shall be afforded covered individuals at a minimum."). The Intelligence Community Policy Guidance 704-3, applicable to all Agency Defendants here, reflects the prior authorities' guarantees of "written notice," the "right to be represented by counsel," "an opportunity to respond," and "an opportunity to appeal," among others. Ex. 13 (IC Policy Guidance 704-3, Sec. D ("Process")). Finally, Department of Defense Directive 5220.6 governs the Defense Industrial Personnel Security Clearance Review Program and guarantees that "a final unfavorable clearance decision shall not be made without first providing the applicant with" a laundry list of due process protections, including "[n]otice of specific reasons" for the decision, "[a]n opportunity to respond," "a hearing," the right to be "represented by counsel" and "present evidence" on one's own behalf. Ex. 14 (DoDD 5200.6), Sec. 4 ("Policy").

Defendants followed exactly *none* of their own established procedures, nor any authoritative Executive Orders that speak to the issue. Instead, they blundered straight into final agency action that immediately caused significant, adverse legal consequences. *See* 5 U.S.C. § 704; *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (describing final agency action as "the consummation of the agency's decision making process" from which "legal consequences will flow") (internal quotations omitted).

2. Agency Defendants' Actions Were Arbitrary and Capricious.

Defendants' have engaged in textbook "arbitrary and capricious" conduct. *See* 5 U.S.C. § 706(2)(A). Defendants have given no reasoned or legitimate explanation for the sudden revocation of Mr. Zaid's authorized access to classified information. Indeed, the scant record afforded to Mr. Zaid—which might explain Defendants' actions—contains only:

- A reference to an undefined "national interest," Ex. 2.;
- The fact that the Director of National Intelligence found summary security clearance revocation to be "fun," Ex. 6; and
- An ODNI press release that cryptically referenced a group of "numerous individuals who abused public trust for political purposes," Ex. 7.

The formal correspondence Plaintiff received from individual agencies did little more than link directly to the Rescinding Security Clearances Memorandum itself before informing him of their final actions. Exs. 3 – 5.

A summary revocation of a security clearance cannot be done under the justification of the "national interest." Ex. 2; Leonard Rpt. ¶¶ 26, 42. Of the six authoritative documents outlined above (three EOs, the IC Policy Guide, SEAD-4, and DoDD 5200.6), only two reference "national interest" in the context of an individual's eligibility (as opposed to a national interest in

maintaining a cohesive clearance process, generally). The first is EO 10865, issued more than six decades ago, which references a "national interest" evaluation as part and parcel of the due process itself. Ex. 9. The second is DoDD 5200.6, which references that a suspension—not a final revocation—can be made when there is an "imminent threat" to the national interest. Even then, substantial process is due. Ex. 14, Sec. 6.4. Judge Howell aptly noted the incalculable delta between "national security" and "national interest" when it comes to justifying security clearance decisions, noting "the national interest" is "a concept seemingly *far broader and more nebulous* than threats to national security" and simply invoking "'the national interest' . . . represent[s] a breathtaking expansion of executive power[.]" *Perkins Coie* at *21 (emphasis added). The phrase "national interest"—if it can even be categorized as a "justification"—is intentionally opaque and primed for abuse. *See* Leonard Rpt. ¶ 42 (Opinion 2).

"An agency acts arbitrarily and capriciously in violation of the APA when it makes a decision that is not based on a consideration of the relevant factors or fails to follow the necessary procedural requirements." *Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88, 182 (D.D.C. 2020). "[D]issimilar treatment of evidently identical cases is the quintessence of arbitrariness and caprice." *Grayscale Invs., LLC v. SEC*, 82 F.4th 1239, 1245 (D.C. Cir. 2023) (internal quotations omitted). Here, Agency Defendants flouted decades' worth of established procedures, treating Mr. Zaid and the other named individuals boldly dissimilar from virtually every other person in history whose clearance has been questioned. To Mr. Zaid's knowledge, no sitting Director of National Intelligence, since the inception of such a position a quarter century ago, has ever laughed giddily on national television about how she "smiled" during the "fun" summary revocation of someone's longstanding security clearance. Ex. 6. Nor does the ODNI press release reference to "abusing public trust for political purposes"—whatever that could

possibly mean as to Mr. Zaid, a private citizen—identify any recognized basis for evaluating eligibility. Ex. 7; *cf*. Ex. 12, Appendix A (outlining the 13 SEAD-4 Adjudicative Guidelines, none of which contain any reference "abusing public trust for political purposes").

Based on the Agency Defendants' decisive rejection of binding rules, regulations and laws that apply to security clearance revocations, Mr. Zaid is likely to succeed on the merits of his claim in **Count One** that the Agency Defendants have failed to provide him with the necessary process underlying the revocation of his security clearance and that the Agency Defendants' actions were "arbitrary and capricious" in violation of the APA. 5 U.S.C. § 706(1) and (2)(a).

B. Plaintiff Is Likely to Succeed on His Fifth Amendment Procedural Due Process (Count Two) and Vagueness (Count Four) Claims.

1. Defendants' Actions Violate the Fifth Amendment's Guarantee of Procedural Due Process.

The Due Process Clause of the Fifth Amendment states that "[n]o person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "A procedural due process claim consists of two elements: (i) deprivation by [government] action of a protected interest in life, liberty, or property, and (ii) inadequate [] process." *Reed v. Goertz*, 598 U.S. 230, 236 (2023) (citing *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) ("At the outset, then, we are faced with what has become a familiar two-part inquiry: we must determine whether [Plaintiff] was deprived of a protected interest, and, if so, what process was his due."). Such a claim is ripe not when the deprivation of liberty occurred, but rather when the due process has been denied. *Reed*, 598 U.S. at 236. The Rescinding Security Clearances Memorandum and Defendants' subsequent actions provide two independent bases for finding a deprivation of liberty interests.

First, it is well established that when an individual is unlawfully denied access to classified information necessary for his job, he is deprived of the liberty to practice one's chosen profession.

Greene v. McElroy, 360 U.S. 474, 492 (1959); *see also O'Donnell v. Barry*, 148 F.3d 1126, 1141 (D.C. Cir. 1998) ("The Constitution protects an individual's 'right to follow a chosen trade or profession' without governmental interference."). The government intrudes on this right to pursue one's chosen profession when it "formally or automatically exclude[s]" someone from opportunities, or when its actions have "the broad effect of largely precluding" someone from pursuing a "chosen career." *Id*. (quoting *Kartseva v. Dep't of State*, 37 F.3d 1524, 1528 (D.C. Cir. 1994)). *See* D.C. R. Prof'l Conduct l .3(a) (requiring a lawyer to "represent a client zealously and diligently within the bounds of the law") *and* D.C. R. Prof'l Conduct 1.3, cmt. [l] ("The duty of a lawyer, both to the client and to the legal system, is to represent the client zealously within the bounds of the law, including the Rules of Professional Conduct and other enforceable professional regulations, such as agency regulations applicable to lawyers practicing before the agency.").

Defendants' actions here do both. The summary revocation of Mr. Zaid's security clearance and access to classified information has automatically excluded him from representing government clients whose cases involve classified information. Zaid Decl. ¶¶ 44–46. He could not possibly continue to ethically, zealously represent his clients while knowing that he cannot access, discuss, or review basic facts about their cases. *Id.* By severing his ability to contract with clients whose issues involve classified matters, Defendants' actions also have the "broad effect of largely precluding" Mr. Zaid from continuing his decades-long cultivation of a successful career in national security law. *O'Donnell*, 148 F.3d at 1141.

Second, the immensely public nature of the Rescinding Security Clearances Memorandum and subsequent agency action deprives Mr. Zaid of his "good name, reputation, honor, [and] integrity." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). When these values are jeopardized by government action, "notice and an opportunity to be heard are essential." *Id*. Mr.

Zaid's case establishes all the elements of a "reputation-plus" claim under the Fifth Amendment. "A plaintiff makes out a reputation-plus claim when the government takes certain adverse actions *and* defames the plaintiff." *Campbell v. D.C.*, 894 F.3d 281, 284 (D.C. Cir. 2018) (emphasis in original). Here, the government's adverse action of revoking Mr. Zaid's security clearance without process was combined with a conclusory statement that it was against the "national interest" for he, a national security lawyer, to handle classified information. Similarly, Director Gabbard's widely-viewed social media posts on the revocations, and ODNI's press release, describe Mr. Zaid as belonging to a group "who abused public trust for political purposes" without any explanation of what that means. Ex. 7. Defendants have yet to provide even the patina of a legitimate basis for Mr. Zaid's clearance revocation, after-the-fact or otherwise, and the pretextual allegations they have tendered are decisively refuted by Mr. Zaid's declaration. Zaid Decl. ¶¶ 14, 17–19, 22. For obvious reasons, a national security lawyer who has been declared incapable of safeguarding national security information will experience reputational harm. Combined with his loss of property interest, Mr. Zaid has a valid reputation-plus claim under the Fifth Amendment. *O'Donnell*, 148 F.3d at 1140 (observing that "official criticism will carry much more weight if the person criticized" loses his property interest "at the same time").

The revocation of a security clearance may give rise to a due process claim for injury to a liberty interest. *See Doe v. Austin*, 2024 WL 864270, at *12 (D.D.C. Feb. 29, 2024), citing *Doe v. Casey*, 796 F.2d 1508, 1522 (D.C. Cir. 1986); *see also Ranger v. Tenet*, 274 F. Supp. 2d 1, 9 (D.D.C. 2003) (finding plaintiff had liberty interest where alleging CIA did not afford meaningful opportunity to contest revocation). While the mere revocation of a security clearance, in and of itself, does not constitute stigmatizing of reputation, it can be stigmatizing if that action parallels public factual accusations referenced as the basis for the revocation, which are pretextual at best,

and which damages the individual's standing and associations in the community. *Doe v. Cheney*, 885 F. 2d 898, 910 (D.C. Cir. 1989).

2. The March 22, 2025 Rescinding Security Clearances Memorandum is Unconstitutionally Vague.

A federal law is unconstitutionally vague in the context of the Fifth Amendment Due Process Clause if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008) (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)); *see also Johnson v. United States*, 576 U.S. 591, 595 (2015). This doctrine applies in both the civil and criminal context. *See, e.g.*, *Boutilier v. INS*, 387 U.S. 118, 123 (1967).

The March 22, 2025 Rescinding Security Clearances Memorandum is unconstitutionally vague. It provides no explanation for the revocation of security clearances, other than asserting that the revocations were in the "national interest." As explained *infra*, this term is all but meaningless in the context of security clearance revocations. *See* Leonard Rpt. ¶¶ 41–42. The intentionally obscure language does not provide Mr. Zaid—to say nothing of the other named individuals—with any information on either the purpose or process behind the revocation. Further, it does not provide any other security clearance holders across the U.S. Government with any way to ascertain how to avoid such a summary revocation, setting the stage for arbitrary enforcement. "Words which are vague and fluid may be as much of a trap for the innocent as the ancient laws of Caligula." *See Cramp v. Bd. of Pub. Instruction of Orange Cnty., Fla.*, 368 U.S. 278, 287 (1961) (citing *United States v. Cardiff*, 344 U.S. 174, 176 (1952)). On this point, the language of the Rescinding Security Clearances Memorandum is facially incoherent in that is directs process-less revocations while simultaneously requiring that agencies take action "consistent with existing law." Ex. 2. As discussed above, these two concepts are mutually exclusive.

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Where that regulation relates to speech, "rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *Id*. at 253-54. A vague regulation of speech "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. Am. C.L. Union*, 521 U.S. 844, 871–72 (1997). "[S]tandards of permissible statutory vagueness are strict in the area of free expression." *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 432 (1963) (collecting cases). As discussed in further detail *infra*, Defendants' actions have impermissibly restricted the First Amendment Rights of both Plaintiff and his clients. Their utterly insufficient explanations for their actions and unconstitutionally vague language of the Rescinding Security Clearance Memorandum do not come close to meeting the applicable standards for fair notice.

Defendants have openly and unapologetically deprived Mr. Zaid of liberty and property interests in violation of the Due Process Clause of the Fifth Amendment. Moreover, they have done so by relying on a vague and internally conflicting Presidential Memorandum which does not provide even a modicum of "fair notice." For these reasons, Mr. Zaid is likely to succeed on his claims for **Count Two** and **Count Four**.

C. Plaintiff Is Likely to Succeed on His First Amendment Claim (Count Three).

1. Defendants' Actions Violate the Right to Petition Clause.

The Presidential Memorandum and its compulsory consequences infringe on Mr. Zaid's First Amendment right "to petition the Government for a redress of grievances." U.S. Const. amend. I. The Supreme Court has recognized the right to petition the government "extends to all departments of the Government" and, crucially, includes "[t]he right of access to the courts" as well as administrative agencies. *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525 (2002) (quoting

Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972)). As such, the Court has consistently treated the act of filing a lawsuit as a form of "petition" protected by the Petition Clause. *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 390 (2011); *see also id.* at 387 (citing cases affirming that the Petition Clause safeguards the right to seek resolution of legal disputes in courts and other governmental forums). Mr. Zaid has standing both to assert First Amendment rights on his own behalf and on behalf of his clients through an attorney-client relationship. *Kowalski*, 543 U.S., at 130–31.

As Judge Howell found in a similar context as applied to law firms, the violation of the right to petition the government "is straightforward" in this instance: "retaliation based on the exercise of the right to petition the government via access to the courts violates that right, and the associated liberty interest, in the same way that retaliation based on protected speech violates the First Amendment." *Perkins Coie* at *43–44 (citing *Guarnieri*, 564 U.S. at 387–93).

Here, the President's retaliatory directive to rescind a group of clearances, including that of Mr. Zaid in the name of the "national interest" violates this doctrine by sanctioning Mr. Zaid for providing good-faith—and in many cases, nationally significant—representations of clients, particularly of lawful whistleblowers. Most notably, President Trump has expressed disdain for, and outright targeted, Mr. Zaid ever since learning he represented of the IC Whistleblower in 2019—calling Mr. Zaid a "disgrace," a "sleazeball," and for him to "be sued and maybe for treason." Zaid Decl. ¶¶ 25–26. Simply put, the Petition Clause does not allow the President to punish Mr. Zaid for filing lawsuits or representing whistleblowers whom President Trump did or does not like. The Supreme Court has long accepted "the proposition that when a person petitions the government for redress"—e.g., by filing a lawsuit or appearing before an official forum on behalf of a client—"the First Amendment prohibits any sanction on that action … so long as the

petition was in good faith." *Nader v. Democratic Nat'l Comm.*, 567 F.3d 692, 696 (D.C. Cir. 2009). Mr. Zaid's petitions on behalf of whistleblowers and other clients have never been anything other than in complete good faith, and the President's statements about Mr. Zaid reveal a motivation grounded in sheer retribution.

Accordingly, the retaliatory action taken by President Trump with a stroke of the pen, based quite obviously in retaliation for Mr. Zaid's past representation of lawful whistleblowers before Congress and the judiciary, has decisively "deprived plaintiff of [his] liberty interest in petitioning the government," *Perkins Coie* at *44. The negative effects span across branches of government for Mr. Zaid and his clients, all without any prior notice or opportunity to be heard.

2. Defendants' Actions Violate Freedom of Speech and Association.

When a lawyer associates with a client and vice versa, the relationship and ensuing legal advocacy is protected speech under the First Amendment's freedom of speech and association clauses. *Perkins Coie* at *38 (collecting cases); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) ("[T]he Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties."). Mr. Zaid has both direct standing to challenge Defendants' intrusion into his own First Amendments as well as the rights of clients with whom he currently associates with via an attorney-client relationship. *See Kowalski*, 543 U.S. at 130–31. This third-party standing is particularly apt where the existence of that relationship and "association" is protected by privilege in the first place.

Any infringements by the Executive Branch on these foundational protections needs to be promptly checked, as "[g]overnment officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602

U.S. 175, 180 (2024). And yet that is exactly what Defendants do here. By summarily revoking Mr. Zaid's security clearance without due process, and consequently depriving him of the ability to review and prosecute his clients' cases, Defendants have unilaterally extinguished Plaintiff's clients' First Amendment rights to continue to associate with him and benefit from his advocacy. Even more troubling is Defendants' election to broadcast the security clearance revocation through no less public a manner than a Presidential Memorandum posted to the White House's official website. The intended chilling effect for all who observe this case is immediately obvious. Mr. Zaid is widely known as an attorney accomplished in the practice of advising whistleblowers and advocating for their rights. Compl. ¶¶ 31–32; Zaid Decl. ¶ 9; M.P. Decl. ¶ 13. Defendants' message to whistleblowers is clear: blow the whistle and lose your attorney. Their message to lawyers is just as disturbing: represent someone we disfavor and lose your practice.

An analysis of whether Defendants' actions were sufficiently tailored to a compelling interest is nearly farcical at this point: there was no discernable interest alleged, and no tailoring was done. "Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—'because First Amendment freedoms need breathing space to survive.'" *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 609 (2021) (quoting *Nat'l Ass'n for Advancement of Colored People*, 371 U.S. at 433). No tailoring whatsoever was done here, and any "national interest" discussed above is unconstitutionally vague. There is no First Amendment framework where Defendants' transgressing of Mr. Zaid's and his clients' constitutional guarantees of speech and association survives any level of scrutiny.

For the reasons outlined above, there is a substantial likelihood that Plaintiff will succeed on the merits of **Count Three**. As was the case under a Fifth Amendment analysis, a facial challenge to the Rescinding Security Clearances Memorandum is appropriate here because the

nationally-publicized and chilling nature of the Memorandum renders it unconstitutional. Additionally, the Memorandum's lack of tailoring to any government interest is true to each name on the list, as is the absence of any discernable government interest. Additionally, as applied to Mr. Zaid—the only named individual on the list who had no recent formal affiliation with state or federal government—his inclusion is linked inextricably to his exercise of First Amendment rights on behalf of himself and his clients. "[T]he First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468 (2022).

D. Plaintiff Is Likely to Succeed on His Fifth Amendment Right to Counsel Claim.

"While the First Amendment's free speech and association protections safeguard a client's rights to hire and consult with an attorney . . . separate constitutional problems are posed under the Fifth and Sixth Amendments when the government interferes with a client's right to choose counsel." *Perkins Coie* at *43. Mr. Zaid has prudential, third-party standing to challenge restrictions on his clients' access to him as counsel. *See Caplin & Drysdale*, 491 U.S., at 623 n.3; *U.S. Dep't of Lab. v. Triplett*, 494 U.S. 715, 720 (1990). That includes both interference with a client's right to counsel of choice, *Caplin & Drysdale*, 491 U.S. at 623 n.3, as well as government action that "interferes with [counsel's] professional obligation to his client," *Wounded Knee Legal Def./Offense Comm. v. FBI*, 507 F.2d 1281, 1284 (8th Cir. 1974).

In many of Mr. Zaid's current cases, he is advising clients as they navigate their own due process rights within their federal employment. Zaid Decl. ¶¶ 40–42. But as stated above, he cannot fulfill his own professional and ethical obligations to his clients when he is being ordered by the government to disregard classified information he has already learned through lawful access previously afforded by the U.S. Government. *Id.* ¶¶ 43–44. His clients' due process rights will

be "of little avail" if they do not also include " a right to be heard by counsel." *Powell v. State of Ala.*, 287 U.S. 45, 68–69 (1932). And although a civil litigant may not always have a constitutional right to *appointed* counsel, Defendants' effective severance of active attorney-client agreements for *chosen* counsel is still an egregious violation of due process rights. *Powell*, 287 U.S. at 69 ("If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."); *Am. Airways Charters, Inc. v. Regan*, 746 F.2d 865, 873-74 (D.C. Cir. 1984).

Defendants' actions amount to unconstitutional interference of the right to counsel as contemplated under the Fifth Amendment. By revoking Mr. Zaid's security clearance and access to classified information without due process, Defendants have forced litigants to proceed in active cases *pending against the Defendants themselves* without the litigants' chosen counsel. Zaid Decl. ¶ 43 (John Doe-1); M.P. Decl. ¶ 17. The government's abusive leveraging of its power to kneecap its legal adversaries in active court proceedings would have been abhorrent to the Framers of the Constitution. *See Legal Svcs. Corp. v. Velazquez*, 531 U.S. 533, 537–49 (2001) (rejecting government action that "distorts the legal system by altering the traditional role of attorneys" as advocates for their clients and "insulate[s] the Government's interpretation of the Constitution from judicial challenge").

Defendants' actions have constructively severed attorney-client relationships and deprived Mr. Zaid's clients of their zealous advocate of choice. Having offered no remotely legitimate reason for their actions, and without a second thought as to the implications of using government power to pluck opposing lawyers off of active litigation, Defendants have directly offended the Fifth Amendment's guarantees to counsel of choice. *See Muniz v. Meese*, 115 F.R.D. 63, 66 n.11

(D.D.C. 1987) (noting "violation of civil liberties that is implied by a government intrusion into [citizens'] right to select and to be represented by counsel of their choice").

Accordingly, Defendants have unlawfully violated the right to counsel as envisioned under the Fifth Amendment and Plaintiff is likely to succeed on the merits of **Count Five**.

III. PLAINTIFF WILL SUFFER IRREPARABLE HARM ABSENT PRELIMINARY INJUNCTIVE RELIEF.

Mr. Zaid's irreparable injury is "both certain and great" and "actual and not theoretical," and the injury is "beyond remediation." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). Absent preliminary injunctive relief, Mr. Zaid will continue to suffer severe and irreparable harm because of the Defendants' unlawful actions.

"The loss of First Amendment freedoms"—here, the freedoms of association, speech, and the right to petition the courts—"for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam); *see also Chaplaincy of Full Gospel Churches*, 454 F.3d at 301–03. As outlined in the Declarations accompanying this filing, Mr. Zaid and his clients are currently suffering a loss of their First Amendment freedoms. Zaid. Decl. ¶¶ 44–45; M.P. ¶ 17.

"[E]conomic loss that threatens the survival of the movant's business can amount to irreparable harm." *Nat'l Mining Ass'n v. Jackson*, 768 F.Supp.2d 34, 50 (D.D.C. 2011). Significant economic injuries can constitute irreparable harm even where they do not threaten to destroy the entire business, if "no 'adequate compensatory or other corrective relief will be available at a later date.'" *NTE Conn., LLC*, 26 F.4th 980, 990 (D.C. Cir. 2022); *see Air Transp. Ass'n of Am. v. Exp.-Imp. Bank of U.S.*, 840 F.Supp.2d 327, 335 (D.D.C. 2012) ("significant" economic harm constitutes irreparable injury "where it is irretrievable because a defendant has sovereign immunity"). *See* Zaid Decl. ¶¶ 15, 48.

Because reputational harm and the loss of goodwill are "not easily measurable in monetary terms," they, too, generally constitute irreparable harm. *Xiaomi Corp. v. Dep't of Def.*, 2021 WL 950144, at *9 (D.D.C. Mar. 12, 2021); *Beacon Assocs., Inc. v. Apprio, Inc.*, 308 F. Supp. 3d 277, 288 (D.D.C. 2018); *Patriot, Inc. v. U.S. Dep't of Hous. & Urb. Dev.*, 963 F. Supp. 1, 5 (D.D.C. 1997). Using the reach and prestige of the White House and Executive Branch agencies, Defendant have irreparably tarnished Mr. Zaid's reputation as an accomplished national security lawyer by publicly labeling him as insufficiently trustworthy to handle classified information without affording him the requisite due process. Ex. 7; Zaid Decl. ¶¶ 37–38. Indeed, even if the Presidential Memorandum is rescinded, its delirious consequences will likely linger. For the remainder of Mr. Zaid's career, he will be plagued by Defendants' actions, as he likely will have to disclose the existence of this revocation on any future security clearance application(s). Zaid Decl. ¶ 47; Leonard Rpt. ¶ 43.

The unconstitutional Presidential Memorandum will continue to harm Mr. Zaid and his clients until it is preliminarily, then permanently, enjoined, and the illegal and unconstitutional bases of the action declared.

IV. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING PLAINTIFF'S INJUNCTIVE RELIEF.

When preliminary injunctive relief is sought against the government, the balance of the equities and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of harms and the public interest here weigh strongly in favor of granting a preliminary injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008) (explaining the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief").

In contrast to the irreparable injury facing Mr. Zaid, Defendants will be unable to identify any harm resulting from an injunction, or of any "adverse impact on the public interest" resulting from the injunction. *Winter*, 555 U.S. at 24. The government "cannot suffer harm from an injunction that merely ends an unlawful practice," and any contrived hardship would be "not legally relevant." *Ramirez v. U.S. Immigr. & Customs Enf't*, 568 F. Supp. 3d 10, 34 (D.D.C. 2021) (quoting *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015)); *see League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). There is, however, a "substantial public interest" in ensuring that the government abides by the law. *League of Women Voters*, 838 F.3d at 12. In fact, Defendants' overt violations of Mr. Zaid's and others' constitutional rights through arbitrary and capricious security clearance revocations provide further support for an injunction. *See Open Cmtys. All. v. Carson*, 286 F. Supp. 3d 148, 179 (D.D.C. 2017) ("There is generally no public interest in the perpetuation of unlawful agency action."); *Perkins Coie* at *49 ("The balance of the equities and the public interest also favor the issuance of an injunction for a simple reason: enforcement of an unconstitutional law is always contrary to the public interest.") (internal quotations omitted).

Mr. Zaid, his current clients, and his prospective clients within the national security community each have a strong interest in protecting the bedrock constitutional guarantees of the First and Fifth Amendments. The public interest will be served by an injunction that refuses to countenance retributive attacks by the government against an adversarial attorney "simply for doing the job of a lawyer." *Id*.

V. THIS COURT SHOULD EXERCISE ITS DISCRETION TO WAIVE FEDERAL RULE OF CIVIL PROCEDURE 65(C)'S SECURITY REQUIREMENT.

Mr. Zaid respectfully requests that the Court waive Fed. R. Civ. P. 65(c)'s security requirement pursuant to its "wide discretion" to require no bond. *Am. First Legal Found. v.*

Becerra, 2024 WL 3741402, at *16 n.11 (D.D.C. Aug. 9, 2024). In matters such as this one, "where the restraint will do the defendant no material damage" and "where there has been no proof of likelihood of harm," it is wholly appropriate for the district court to "dispense with any security requirement whatsoever." *Id.* (internal quotations and citations omitted).

CONCLUSION

For the foregoing reasons, Plaintiff Mark Zaid requests that the Court grant this Motion for Preliminary Injunctive Relief while the case proceeds on the merits, and respectfully requests an oral hearing on this application within 21 days pursuant to Local Civil Rule 65.1(d).

Dated: May 21, 2025

Respectfully submitted,

/s/ Abbe David Lowell
Abbe David Lowell (D.C. Bar #358651)
David A. Kolansky (NY Bar #5887765)
LOWELL & ASSOCIATES, PLLC
1250 H Street, N.W., 2nd Fl.
Washington, DC 20005
Tel: (202) 964-6110
Fax: (202) 964-6116
alowellpublicoutreach@lowellandassociates.com
dkolansky@lowellandassociates.com

/s/ Norman L. Eisen
Norman L. Eisen (D.C. Bar # 435051)
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Avenue, SE, #15180
Washington, D.C. 20003
Tel: (202) 594-9958
norman@statedemocracydefenders.org

/s/ Margaret M. Donovan
Margaret M. Donovan (D.C. Bar #CT0026)
Christopher M. Mattei (*pro hac vice forthcoming*)
KOSKOFF, KOSKOFF & BIEDER, PC
350 Fairfield Ave., Suite 501
Bridgeport, CT 06604
Tel: (203) 336-4421
Fax: (203) 368-3244
mdonovan@koskoff.com
cmattei@koskoff.com

/s/ Kevin T. Carroll
Kevin T. Carroll (D.C. Bar #1021479)
1751 Pinnacle Drive
Tysons, VA 22102
Tel: (718) 791-5761
kevintcarroll@hotmail.com

/s/ George W. Croner
George W. Croner (*pro hac vice forthcoming*)
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: (215) 238-1700
gcroner@kohnswift.com

/s/ D.E. Wilson, Jr.
D.E. Wilson, Jr. (D.C. Bar #932178)
LANKFORD & REED, PLLC
120 North St. Asaph Street
Alexandria, VA 22314
Tel: (703) 299-5000
ewilson@LRfirm.net

/s/ Eugene R. Fidell
Eugene R. Fidell (D.C. Bar #112003)
FELDESMAN LEIFER LLP
1129 20th Street NW, Ste. 400
Washington, D.C., 20036
Tel: (202) 466-8960
efidell@feldesman.com

Counsel for Plaintiff Mark S. Zaid

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ.	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civil Action No. 25-01365 (AHA)
	*	
EXECUTIVE OFFICE OF THE PRESIDENT, et. al.	*	
	*	
	*	
Defendants.	*	
	*	

* * * * * * * * * * * * *

DECLARATION OF MARK S. ZAID, ESQ.

I, MARK ZAID, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of the Plaintiff's Motion for a Preliminary Injunction.

2. I am the Plaintiff in this action.

Professional Background

3. I am admitted to practice law in the States of New York, Connecticut, Maryland, and the District of Columbia, as well as the D.C. Circuit, Federal Circuit, Second Circuit, and Fourth Circuit Courts of Appeals, and the United States District Courts for the District of Columbia, Maryland, Eastern District of New York, Northern District of New York, Southern District of New York, and the U.S. Court of Federal Claims.

4. I am a 1992 graduate of Albany Law School of Union University in New York, where I served as an Associate Editor of the Law Review. I completed my undergraduate education *cum laude* in 1989 at the University of Rochester, New York, with honors in Political Science and high honors in History.

5. My law practice, which has been based in Washington, D.C., since July 1993, predominantly focuses on cases related to national security that involve members of the Intelligence, Military, and/or Law Enforcement Communities. I have been, or am currently, retained as counsel for current and former employees of Defendants Central Intelligence Agency ("CIA"), Department of Defense ("DoD"), Defense of Counterintelligence and Security Agency ("DCSA"), and the Office of the Director of National Intelligence ("ODNI"), among others. For most of my professional career, I have held a security clearance, including up to Top Secret/Sensitive Compartmented Information (otherwise commonly known as "TS/SCI") and Q (a clearance level utilized by the Department of Energy that is the basic equivalent of TS/SCI) eligibility and have handled cases with authorized access to classified information since approximately 1995.

6. I am widely recognized by the news media as an expert in the national security legal arena and frequently asked to comment on such topics. I have been quoted in many print articles as well as appeared in radio and television interviews. I have also written numerous articles that relate to national security legal matters.

7. I have been specifically designated by courts as an expert in national security legal matters, including by a federal district judge as an expert witness on the issue of prepublication classification review in *Bissonnette v. Podlaski*, 2018 U.S. Dist. LEXIS 94198, *54-*63, (June 5, 2018, N.D. Ind.), and in 2017, on security and facility clearances in *Skipper v. Skipper*, Case No. 13-C-16-107613 (Howard County Circuit Court). Since 2024, I have served, at the request of the Presiding Judge of the Dallas County Probate Court, as an expert consultant for a probate case involving security clearances and facility clearances. Furthermore, I have provided expert advice in multiple matters involving individuals' security clearances, including for criminal matters in

state and county courts in Maryland, Virginia, and California, and in a civil matter in the United States District Court for the District of Columbia, but I was not specifically designated in those matters.

8. For more than 20 years, I have taught Continuing Legal Education classes for the District of Columbia Bar Association and other jurisdictions including on "The Basics of Filing and Litigating Freedom of Information/Privacy Act Requests" (since 2003), "Defending Security Clearances" (since 2006) and "Handling Federal Whistleblower Cases" (since 2016).

9. Since 2009, I have been named a Washington, D.C., Super Lawyer every year (including being profiled) and I am repeatedly named a "Best Lawyer" in Washingtonian Magazine's bi-annual designation for my national security or whistleblower work. The Magazine also named me one of D.C.'s 250 (2021) and 500 Most Influential People (2022 & 2023), respectively, for national security/legal intelligentsia. In 2022, the magazine awarded me the status of "Lawyer Lifetime Achievement Member." Additionally, in 2020, the Washington Metropolitan Employment Lawyer's Association named me "Attorney of the Year" for my representation of an Intelligence Community Whistleblower. Finally, in 2024, Forbes Magazine announced that I was one of the top 200 lawyers in the United States on their inaugural ranking list.

10. I taught as an adjunct professor at Johns Hopkins University in the Global Security Studies program from 2014 – 2023, and since 2024, have been at Texas A&M's George H.W. Bush School of Government & Public Service, where my course of instruction at the Masters level has been on national security issues. I also serve on the Executive Board at the Center for Ethics and the Rule of Law at the University of Pennsylvania's Annenberg Public Policy Center (*https://www.penncerl.org),* and on the Advisory Board of the International Spy Museum (*https://www.spymuseum.org).*

11. In 2017, I co-founded Whistleblower Aid (*https://whistlebloweraid.org*), a non-profit law firm that provides pro bono legal representation to whistleblowers, particularly in the national security arena and sometimes in a classified arena, and where I serve as legal counsel.

12. Since 1998, I have served as the Executive Director and founder of the James Madison Project, a Washington, D.C.-based organization with the primary purpose of educating the public on issues relating to intelligence gathering and operations, secrecy policies, national security and government wrongdoing.

13. Additionally, I am a recognized expert on the Freedom of Information Act, especially when it comes to litigation of national security Exemption One claims. I have been regularly litigating FOIA cases since 1993, as well as utilizing FOIA myself for over thirty-five years. I have delivered countless speeches on FOIA processing and litigation, including on panels at the American Society of Access Professionals. I was appointed by the Archivist of the United States to serve a two-year term (2014-2016) on the first Federal FOIA Advisory Committee. I was a co-editor of LITIGATION UNDER THE FEDERAL OPEN GOVERNMENT LAWS from 2002 – 2012.

14. I have never worked for the federal government. In fact, I have never been employed by any level of government, whether city, state or federal, as an attorney. I should also note that I have been a registered Independent my entire adult life and consider myself non-partisan. My law practice has absolutely reflected that fact as I have represented both Republicans (including those who are identified as “MAGA”) and Democrats.

15. My employment as an attorney constitutes my primary source of income.

My Authorized Access To Classified Information

16. I have had authorized access to classified information since approximately 1995, upon my first completion of an SF-86, which is the U.S. government's National Security Questionnaire. During that initial time frame, my authorized access was based on individual agency decisions granted on a case-by-case basis and did not require the completion of a full-scale background investigation.

17. Defendant CIA, whose clandestine employees I frequently represent, terms these types of clearances "Limited Security Access" approvals. These types of approvals are equivalent to interim Secret clearances but are not subject to reciprocity from other agencies. As part of this process, I have executed countless lawyer-specific non-disclosure agreements ("NDAs"). I regularly accessed classified information in support of my clients and their cases through Defendant CIA's Limited Security Access approvals since approximately 1999, until such time my security clearance was unlawfully revoked.

18. My first fully approved security clearance—meaning, a clearance supported by a background investigation—was in or around 2002 and handled through the Department of Justice's ("DOJ") Federal Bureau of Investigation ("FBI") after Defendants CIA and Department of Defense were ordered by a federal judge in *Stillman v. DoD et al.*, 209 F.Supp.2d 185, 231 (D.D.C. 2002), to process me for access to classified information as part of ongoing First Amendment representation of a client in litigation. The D.C. Circuit noted that, as a result, the Government "found that Mr. Zaid was trustworthy," *Stillman v. CIA et al.*, 319 F.3d 546, 548 (D.C. Cir. 2003), and I was granted a "Secret" clearance.

19. DOJ's Office of Security oversaw my clearance, mostly connected to classified litigation, through on or about 2019. Between 2002 and 2019, DOJ would often reciprocally certify my

clearance to other agencies so I could attend classified briefings or otherwise converse in an interagency environment. This would include, but not be limited to, certifying my clearance eligibility to federal agencies' Offices of Inspector Generals.

20. At various times between 2003 and 2024, I was authorized access to TS/SCI material by both the FBI and the Department of Homeland Security ("DHS") on a case-by-case basis. In fact, in 2020, during President Donald Trump's first administration, my access eligibility was *increased* to TS/SCI as part of my representation of a DHS whistleblower.

21. When an individual no longer requires access to classified information, they are supposed to be debriefed and "read out" of their security access. For DHS, I was last debriefed and read out of SCI in November 2024. I learned, however, that DHS did not finalize my "read out" in the Scattered Castles system, which is the Intelligence Community database and repository used to verify personnel security access and visit certifications, until March 10, 2025.

22. Since I was first granted a security clearance in or around 2002, I have never had my eligibility suspended or revoked. I have successfully passed multiple background investigations during Republican and Democrat administrations and been adjudicated trustworthy each time.

My Representation Of The Intelligence Community Whistleblower During The First Trump Administration

23. In September 2019, I began representing a whistleblower within the Intelligence Community ("IC Whistleblower") who had five weeks earlier filed a classified complaint with Defendant ODNI's Office of Inspector General regarding President Trump's interactions with Ukrainian President Volodymyr Zelensky. This complaint ultimately led to the first impeachment of President Trump, although no aspect of my legal representation of the IC Whistleblower involved advocating for any specific outcome, much less the decision to impeach a president. My work for this client had three objectives: (1) ensure the IC Whistleblower's

complaint reached the proper oversight authorities; (2) protect the anonymity of the IC Whistleblower; and (3) shield the IC Whistleblower from retaliation. Each of these objectives was successfully achieved.

24. As I have done with every administration since President William J. Clinton assumed office in 1993, I handled cases involving various government officials, including President Trump and his Administration shortly after he was inaugurated in January 2017. But it was not until the 2019 IC Whistleblower matter that I apparently came onto President Trump's radar and sparked his ire and that of his loyalists both inside and outside the government.

25. In the aftermath of my role as legal counsel becoming public, President Trump called me a "sleazeball" while he was speaking at a televised political rally in Louisiana in November 2019, and he displayed a photo of someone he said was me.[1] To my knowledge, this was the first time an American President has publicly commented about me or my representation of a client. The multitude of vitriolic attacks that I received because of President Trump and right-wing media mentioning me actually led to one of the President's devotees sending me an e-mail that "traitors must die miserable deaths" and that he and other of President Trump's followers "will hunt you down and bleed you out." That specific threat was fully prosecuted by President Trump's DOJ and the individual served over a year in jail as a result.[2]

---

[1] Washington Examiner, *https://www.washingtonexaminer.com/news/2767712/sleazeball-trump-condemns-whistleblowers-attorney-for-calling-for-a-coup-in-2017-tweets/#google_vignette* (November 6, 2019). President Trump's recorded remarks about me can be viewed at *https://www.facebook.com/watch/live/?ref=watch_permalink&v=2550184791701934* (beginning at 11:48).

[2] Politico, *https://www.politico.com/news/2021/06/10/man-threatened-whistleblower-gets-sentence-493159* (June 10, 2021).

26. Days after the Louisiana rally, President Trump spoke to reporters at the White House about the IC Whistleblower and stated: "The whistleblower, because of that, should be revealed. And his lawyer, who said the worst things possibly two years ago, he should be sued and maybe for treason. Maybe for treason, but he should be sued. His lawyer is a disgrace."[3]

27. Notwithstanding President Trump's public attacks on me, the first Trump Administration never initiated any adverse action against my security clearance. In fact, the following year in 2020, I was processed and approved by DHS for access to TS/SCI — an even higher level of security clearance than I had held in 2019 — for my role representing a client in another high-profile whistleblower case.

The Defendants' Revocation Of My Security Clearance

28. On Saturday, February 8, 2025, I learned that the *New York Post* had reported on an interview with President Donald Trump where he stated an intent to conduct a mass revocation of security clearances for a wide-ranging set of current and former government employees.[4] Although I did not fit within that category, I was specifically identified as part of that group and it was noted that my security clearance was to be revoked because of my 2019 representation of an Intelligence Community whistleblower whose complaint had led to President Trump's first impeachment.

[3] American Journal News, *https://americanjournalnews.com/donald-trump-treason-ukraine-whistleblower-impeachment-mark-zaid-twitter-coup* (November 8, 2019)(video of President Trump embedded within story).

[4] Miranda Devine, *Trump stripping the security clearances of numerous antagonists — including NY AG Letitia James, DA Alvin Bragg*, New York Post (February 8, 2025).

29. Approximately one month later, on March 10, 2025, the Director of National Intelligence Tulsi Gabbard published the following statement on social media platform X[5]:

30. On March 22, 2025, President Trump published a Presidential Memorandum on *www.whitehouse.gov* addressed to "the heads of executive departments and agencies." The subject of the memorandum was titled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals." The four-paragraph Memorandum states as follows:

> I have determined that it is no longer in the national interest for the following individuals to access classified information: Antony Blinken, Jacob Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.'s family. Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by the aforementioned individuals and to immediately rescind their access to classified information. I also direct all executive department and agency heads to revoke unescorted access to secure United States Government facilities from these individuals.
>
> This action includes, but is not limited to, receipt of classified briefings, such as the President's Daily Brief, and access to classified information held by any

[5] Since its initial posting on March 10, 2025, Director Gabbard's post has more than 8.4 million "views" and 184,000 "likes" on X. *See* @DNIGabbard, X (Mar. 10, 2025, 3:11 PM), available at *https://x.com/DNIGabbard/status/1899176257406857274*.

> member of the Intelligence Community by virtue of the named individuals' previous tenure in the Congress.
>
> In the event that any of the named individuals received a security clearance by virtue of their employment with a private entity, the United States Government entity that granted the security clearance should inform the private entity that these individuals' ability to access classified information has been revoked.
>
> This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

31. On April 3, 2025, I received a one-page, three-paragraph memorandum from Defendant Defense Counterintelligence and Security Agent ("DCSA") with the subject line "Revocation of Personnel Security Clearance Eligibility." The DSCA document cited to the March 22, 2025 Presidential Memorandum and stated as follows:

> The [March 22, 2025 Memorandum] directs every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by you, and by other individuals identified or described in the [Memorandum].
>
> Pursuant to that direction, DCSA has revoked the security clearance held by you. The revocation action has been annotated in our system of record for personnel clearances.

32. The third paragraph then directs the reader to the *www.whitehouse.gov* website which displays the Rescinding Security Clearances Memorandum. The letter was signed by the Division Chief, Adjudication and Vetting Services.

33. On April 9, 2025, I received a one-page, one-paragraph letter Defendant CIA's Deputy General Counsel for Litigation and Investigations, Office of General Counsel. There is no subject line for the correspondence and the single substantive paragraph stated as follows:

> I am writing regarding the Presidential Memorandum entitled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals," *available at* https://www.whitehouse.gov/presidential-actions/2025/03/rescinding-security-clearances-and-access-to-classified-information-from-specified individuals. As you are aware, you were

> specifically identified by the White House in this memo. Pursuant to this memo, the Agency is required to "revoke any active security clearances ... and to immediately rescind [] access to classified information" for the named individuals. Accordingly, you are no longer personally permitted access to classified information in any ongoing matters that you are currently involved in with the Agency. You may continue to represent any current or future clients as you deem appropriate, but you cannot gain access to or make use of classified information in connection with such representations. To the extent necessary and appropriate, you are still permitted escorted access to Agency facilities and may review unclassified materials.

34. On April 23, 2025, I received an e-mail from Defendant Office of the Director of National Intelligence's ("ODNI") Office of Inspector General that stated I was being denied access to a whistleblower client's classified complaint (discussed in more detail below), which I had previously accessed and remains a critical part of an ongoing lawsuit, because ODNI Security determined "(U) Pursuant to Presidential direction issued on 22 March 2025 (attached), the individuals listed therein, no longer have a security clearance, are not authorized for access to classified information, and do not have unescorted access to ODNI facilities." This client is referred to in my Complaint and herein as John Doe-1.

35. On May 1, 2025, DNI Gabbard discussed the Defendants' revocation of my security clearance during a sit-down interview with reporter Megyn Kelly on *The Megyn Kelly Show*. DNI Gabbard actually referenced me by name directly as among "a number of other people" whose clearances have been revoked, and laughed about it with Ms. Kelly and agreed it was "fun."[6]

[6] "Tulsi Gabbard on Investigating the Leaks, Fighting the Deep State, and Whether She'll Run in 2028," *The Megyn Kelly Show* (May 1, 2025), *https://www.youtube.com/watch?v=6tFyUP0TgrM*.

36. Defendant ODNI then issued a press release[7] on May 2, 2025, which DNI Gabbard shared on *X* as well, which noted that she revoked security clearances of "numerous individuals who abused public trust for political purposes."[8] A click of the hyperlink on the press release directs back to DNI Gabbard's original tweet of March 10, 2025, which I am identified as one of the targeted individuals.

37. This extraordinary national publication of the revocation of my clearance without process has caused colleagues, friends, family, and even adversaries to reach out to me out of concern. It is apparent to me that news of the revocation was intended to, and did, reach a wide audience, including an invaluable client pool.

38. I have never received any procedural or substantive due process that is "consistent with existing law" as set forth in the Rescinding Security Clearances Memorandum.

My Use And Reliance As An Attorney On A Security Clearance

39. I often represent individuals in administrative, civil or criminal matters where classified information is involved, and for those matters I must be able to maintain an active security clearance as an attorney. I have been handling classified cases since approximately 1995.

40. Some of my cases involving classified information were/are very high profile, in that they involved serious allegations against or by government officials. For example, among many other clients for which I had authorized access to classified information, I represented (a) Jeffrey Sterling, a former case officer for the Central Intelligence Agency ("CIA") who was criminally prosecuted under the Espionage Act, as well as handled his civil proceedings against the Agency

[7] ODNI News Release No. 08-25, *https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2025/4069-pr-08-25* (May 2, 2025).

[8] *https://x.com/DNIGabbard/status/1918333364970365134?s=19*.

and litigated the State Secrets Privilege[9], (b) SSgt Frank Wuterich, U.S. Marine Corps, who was criminally prosecuted for alleged war crimes committed in Haditha, Iraq[10]; (c) the anonymous IC Whistleblower whose classified complaint ultimately led to the first impeachment of President Donald Trump[11]; and (d) Brian Murphy, the highest ranking whistleblower in modern times who in 2020 was the Acting DHS Undersecretary of Intelligence and for whose case the first Trump Administration increased my classified access to TS/SCI.[12]

41. In fact, some of my clients are covert intelligence officers for the U.S. government and their very affiliation with any specific agency is itself classified. There are even occasions where only I, and not my client, have had authorized access to classified information concerning their case. Meaning, the client was not permitted to access the classified information to assist with their own matter, but I, as cleared legal counsel, was permitted the opportunity to do so and zealously advocate on their behalf, whatever the case might involve. The last time this scenario arose was in November 2024 at the TS/SCI level.

42. The revocation of my security clearance has had a cascading adverse effect on my ability to represent current clients, most notably victims of Anomalous Health Incidents ("AHI") of

[9] Courthouse News Service, *https://www.courthousenews.com/feds-subpoenaed-lawyer-for-alleged-cia-turncoat* (January 25, 2011).

[10] Reuters, *https://www.reuters.com/article/world/marine-faces-murder-charges-in-haditha-killings-idUSWBT006331* (August 9, 2007).

[11] NBC, *https://www.nbcnews.com/politics/trump-impeachment-inquiry/whistleblowers-welcome-mark-zaid-represents-trump-accuser-others-secrets-share-n1071811* (October 29, 2019).

[12] Reuters, *https://www.reuters.com/article/us-usa-election-whistleblower-idUSKBN2712U7* (October 16, 2020).

which I represent more than two dozen.[13] I have been representing AHI victims, some of whose very affiliation with the U.S. government remains classified, for over ten years. I have relied on my security clearance for many of my AHI clients, especially in participating in classified meetings with Members of Congress and their staff. For example, on May 8, 2024, I testified before the Subcommittee On Counterterrorism, Law Enforcement, And Intelligence, Committee On Homeland Security, House of Representatives, in its hearing on "Silent Weapons: Examining Foreign Anomalous Health Incidents Targeting Americans In The Homeland And Abroad" and explained my representation of AHI victims and highlighted how much of my work is in the classified arena.[14]

43. One of my AHI related clients is a whistleblower, John Doe-1, who currently serves within the Intelligence Community. I assisted this individual in filing an anonymous classified complaint with Defendant ODNI regarding allegations of a deliberate cover-up by the U.S. government, most significantly Defendant CIA, over evidence of a foreign government's involvement in intentionally targeting U.S. officials and their families with directed energy. I had authorized access to the portions of this whistleblower complaint that were classified Secret on multiple occasions, and could previously access them upon request, prior to the unlawful revocation of my clearance. I am currently handling a FOIA lawsuit to compel disclosure of this whistleblower complaint in *James Madison Project et. al. v. CIA et. al.*, Civil Action No. 23-3457 (D.D.C.)(APM). I was recently denied access to this document by Defendant ODNI because I have had my security clearance unlawfully revoked. My denied access to this

[13] Anomalous Health Incidents, misleadingly referred to in the media as "Havana Syndrome," are unexplained health issues and symptoms believed to be caused by directed energy that have been experienced by government employees and their families both abroad and domestically.

[14] The hearing can be viewed at *https://homeland.house.gov/hearing/silent-weapons-examining-foreign-anomalous-health-incidents-targeting-americans-in-the-homeland.*

document not only affects my representation of John Doe-1, but also hinders my ability to represent other AHI clients, such as Marc Polymeropolous, a former CIA case officer.

44. The loss of my security clearance significantly hampers my ability to zealously advocate for my clients, especially my AHI victims. For some of them, it literally destroys my ability to do much of anything on their behalf and constructively severs aspects of my ongoing attorney-client relationships. For example, Defendant CIA's letter emphasizes that I am "no longer personally permitted access to classified information in any ongoing matters that you are currently involved in with the Agency." I interpret this additional retaliatory action as being specifically directed at my representation of AHI victims, such as Marc Polymeropolous, as Defendant CIA is aware that I was bringing whistleblowers to meet with the appropriate Congressional oversight committees for classified meetings in which I was participating and the Agency desires to prevent this from occurring.[15] Each of these opportunities I had to directly engage with Congress in classified meetings concerning AHIs significantly benefited my AHI clients, including Marc Polymeropolous. In that sense, Defendants' actions are not just affecting me and my clients, but also our ability to access and inform the legislative branch of government on matters that potentially affect hundreds, if not more than a thousand, of known AHI victims.

45. I have many clients in the same circumstances but they are not at liberty to publicly raise these claims themselves because either their identity and relationship to the U.S. government is classified, or they remain employed by the Trump Administration and would likely face immediate repercussions (not to mention issues surrounding confidentiality and privilege).

[15] *See* Tom Rogan, *Trump runs defense for deep state with Mark Zaid clearance revocation,* Washington Examiner (February 11, 2025), available at *https://www.washingtonexaminer.com/opinion/beltway-confidential/3316191/trump-runs-defense-deep-state-mark-zaid-clearance-revocation.*

Defendants' actions have put my clients and I in an impossible position, and I cannot risk causing them further harm simply to help me.

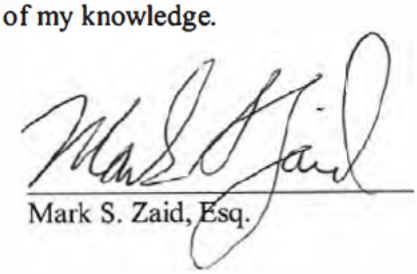
46. Since the unlawful revocation of my security clearance, I am still routinely asked to participate in classified matters within the administrative, civil and criminal arenas. Unfortunately, I have already had to turn down prospective clients, from referrals and otherwise, who have approached me for representation, when it became obvious that access to classified information would be an essential requirement in their matter.

47. The revocation does not just impact my ability to represent clients. It personally harms my eligibility for a security clearance in perpetuity. I will now need to disclose this revocation on any future SF-86 (National Security Questionnaire) in Section 25 ("Investigations and Clearance Record") and it will always stand as a black mark on my record.

48. Therefore, the unlawful revocation of my security clearance will have – and is already having – a profound impact on my law practice and livelihood in general.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: May 20, 2025



Mark S. Zaid, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ. Plaintiff, v. EXECUTIVE OFFICE OF THE PRESIDENT et al. Defendants.	Civil Action No. 1:25-cv-01365

DECLARATION OF MARC POLYMEROPOLOUS[1]

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of the Plaintiff Mark S. Zaid's Motion for a Preliminary Injunction.

I. Personal and Factual Background

2. I retired in June 2019 from the CIA's Senior Intelligence Service rank after a 26-year career in operational headquarters and field management assignments covering the Middle East, Europe, Eurasia, and Counter Terrorism. I served extensively in several conflict zones and received the Distinguished Career Intelligence Medal, the Distinguished Intelligence Medal, the Intelligence Medal of Merit, and the Intelligence Commendation Medal. My last position prior to retirement was overseeing CIA's clandestine operations in Europe and Eurasia.

3. Since 2021, I have served as a nonresident senior fellow at the Atlantic Council and am a regular media commentator on foreign policy and intelligence matters, including as a national

[1] Due to my status as a former Senior Intelligence Officer with the CIA, this Declaration was submitted for pre-publication review on May 15, 2025, and it was cleared for public release on May 19, 2025.

security contributor for MSNBC. In June 2021, I authored a book, *Clarity in Crisis: Leadership Lessons from the CIA*, published by Harper Collins.

4. During my tenure at the CIA, as part of field assignments and operations, I spent significant time in various countries around the world.

5. During one particular trip to Russia in December 2017, while on CIA assignment, I experienced an "Anomalous Health Incident" or "AHI"—colloquially referred to in the media as "Havana Syndrome." AHIs are unexplained health issues and events that have been experienced by a growing number of federal employees and their families, particularly within the Intelligence Community, and generally involve a sudden onset of debilitating symptoms, including severe headaches, loss of balance and reduced cognitive function. After experiencing this mysterious health event during my trip to Russia, I endured eighteen months of constant headaches and other debilitating symptoms that ultimately caused my premature retirement from the CIA in 2019.

6. Since my retirement, I have been an outspoken advocate for AHI victims. I have provided classified information to both the Senate and House Intelligence Committees, as well as given countless media interviews (all of an unclassified nature) on the subject. I went public—and was the first CIA AHI victim to do so—when I was featured in an October 19, 2020, article by GQ entitled "The Mystery of the Immaculate Concussion," which is available at: *https://www.gq.com/story/cia-investigation-and-russian-microwave-attacks*. More than one thousand American government employees (as well as their family members) serving [redacted] around the world, and even here in the United States, have reported being victimized by an AHI. I personally know many AHI victims, especially from within CIA, including a number of whom are Mr. Zaid's clients.

7. The issue has spawned congressional investigations, lawsuits and intense advocacy efforts. Reports of AHIs impacting US officials have been publicly reported in, among other places, Cuba, China, Russia, Austria, India, Vietnam, the United Kingdom, Colombia and even near the White House in Washington, D.C., as well as elsewhere within the United States. Many people hold the view that the Intelligence Community, and notably CIA, is covering up the truth surrounding the perpetrator(s) of AHIs. Much of the evidence concerning AHIs remains classified, and purposefully so that it prevents most people, including private attorneys, from being able to lawfully access the information.

8. Mr. Zaid has represented victims of AHIs, including current and former government employees as well as lawful whistleblowers, for more than a decade. His reputation in this area precedes him, and that is why I, like many other current and former government employees, specifically sought him out for legal assistance on this matter.

II. Retention of Mr. Zaid As My Legal Counsel

9. As a victim of an AHI, I have been highly critical of the U.S. government and particularly CIA's handling and investigation of AHIs.

10. I retained Mr. Zaid in September 2020, to help me on all matters related to my AHI, and especially to navigate through CIA's bureaucracy to ensure I received proper healthcare treatment. We have an agreement as to financial compensation in exchange for these services. I was aware at the time I retained Mr. Zaid that he held a security clearance and that there might be opportunities for him to rely upon that privilege to help pursue and further my interests, as well as those of other AHI victims who he represented. Mr. Zaid's authorized access to classified information was a significant factor in my retaining him as my legal counsel, and I and his other clients have greatly benefited from this fact.

11. In January 2021, amid public scrutiny and pressure, which without a doubt involved Mr. Zaid's efforts, CIA agreed to send me to Walter Reed Medical Center, in Washington, D.C., to receive treatment for my AHI injuries. I continue to receive medical treatment care of the U.S. government to this day.

12. Mr. Zaid has continued to represent me in all matters relating to my AHI through the present day. I credit Mr. Zaid with helping save my life, as my medical condition had deteriorated significantly prior to gaining entry to Walter Reed's Traumatic Brain Injury program.

13. I have personal knowledge that during nearly the entirety of his representation of my interests—until the recent Presidential Memorandum—Mr. Zaid possessed a Top Secret clearance. I am personally aware that Mr. Zaid has actively relied upon and utilized his security clearance on behalf of myself and other AHI victims, particularly for purposes of participating in classified meetings with staff of the Senate Select Committee on Intelligence and House Permanent Committee on Intelligence. Mr. Zaid has especially represented whistleblowers on the matter of AHIs in classified settings.

14. This includes the circumstances of the client identified as John Doe-1, who I know to be the individual whose classified whistleblower complaint, which Mr. Zaid has had authorized access to, is the subject of litigation being handled by Mr. Zaid in *JMP et al. v. ODNI*, Civil Action No. 23-cv-03457-APM (D.D.C.). Because many of the AHI victims and the circumstances that led to the incidents are believed to be related, each of these opportunities for Mr. Zaid to rely upon his security clearance served as a clear benefit to me, specifically, and generally to all of his AHI clients.

15. I have reviewed the Complaint filed in this matter, and I am aware that the Department of Defense and CIA have revoked Mr. Zaid's security clearance, and that the Office of the Director of National Intelligence has prohibited Mr. Zaid from again reviewing the classified

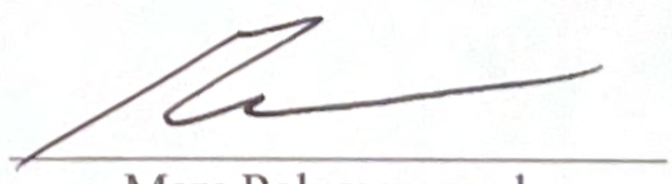
whistleblower complaint referenced in the above paragraph. In reading CIA's revocation letter dated April 9, 2025, it is clear to me that Mr. Zaid is being targeted so as to prevent him from making use of classified information, which he previously already had authorized access to, pertaining to AHI cases that has been relied upon to directly benefit my representation.

16. The blanket revocation of Mr. Zaid's security clearance by Presidential Memorandum functionally and effectively prevents him from zealously representing me, as well as other AHI victims, in federal courts, in matters before Congress, and before federal agencies because our representation requires him to have classified access.

17. Mr. Zaid's loss of his security clearance, without any particularized reason or justification or ability to challenge the revocation, has deprived me of his unique qualifications and expertise, and of my choice of counsel. There is no other attorney I trust who has the type of expertise on AHI matters, let alone holding authorized access to classified information, besides Mr. Zaid.

I do solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge.

Dated: May 16, 2025



Marc Polymeropoulos

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ. Plaintiff, v. EXECUTIVE OFFICE OF THE PRESIDENT, *et al*. Defendants.	Civil Action No.: 1:25-cv-1365-AHA

EXPERT REPORT OF J. WILLIAM LEONARD

I, J. WILLIAM LEONARD, declare as follows:

1. I have agreed to testify *pro bono* as an expert witness in the above matter based upon the expertise I developed during the course of a 34-year career as a Federal public servant in the national security arena and more than 50 continuous years of experience as a cleared individual.

I. BACKGROUND AND CREDENTIALS

2. I was employed by the Department of Defense ("DoD") from 1973 to 2002. My entire tenure involved the area of Personnel Security. For the first 23 years of my career, I served in various roles of increasing responsibility at the Defense Investigative Service, which was the precursor to today's Defense Counterintelligence and Security Agency. *See* https://www.dcsa.mil/. In these roles I had operational responsibilities in the DoD's program providing oversight to private sector entities, to include defense contractors and law firms, and their employees who required access to classified national security information. From 1992 to 1996, I served as the Assistant Deputy Director at the Defense Investigative Service, where I was responsible for a wide range of policy and operational matters pertaining to the DoD's administration of the National Industrial Security Program ("NISP"). *See* https://www.dcsa.mil/Industrial-Security/National-Industrial-

Security-Program-Oversight. The NISP is the federal program that manages the access of private industry to classified information. Among other things, I was responsible in that role for the Field Services Division, the Counterintelligence Office, and all overseas operations of the Defense Investigative Service in Europe, the Middle East, Central and South America, and the Far East. My responsibilities included reviewing submittals to the Office of the Secretary of Defense recommending the suspension of personnel security clearances of private sector individuals when appropriate.

3. From 1996 to 1998, I served as the Director of Security Programs for the DoD, and from 1999 to 2002, I served at times as the Deputy Assistant Secretary of Defense ("DASD") responsible for security and information operations, and at other times as the Principal Director in that office. As the DASD, I was the most senior official in the DoD responsible for all security, counterintelligence, computer security, infrastructure protection, and information operations programs within the DoD. Part of my responsibility at the Pentagon was to develop and oversee policies to ensure the proper protection of classified information within the entirety of the DoD as well as within private sector entities that did business with the DoD. These policies included the granting, revocation, and suspension of personnel security clearances for military and civilian members of the DoD and for employees of DoD-affiliated private sector entities, to include law firms, that required access to classified national security information. As DASD, I was the final authority resolving matters relating to security clearance issues. In 2002, I was a recipient of the Presidential Meritorious Rank, an award that recognizes a select group of career members of the Senior Executive Service ("SES") for exceptional performance over an extended period of time.

4. From 2002 to January 2008, I served as the Director of the Information Security Oversight Office ("ISOO") during the Administration of President George W. Bush. ISOO

receives its policy and program guidance from the National Security Council and is an administrative component of the National Archives and Records Administration. *See* https://www.archives.gov/isoo. The Director of ISOO is known colloquially as the "Classification Czar" because the Director is responsible for oversight of the government-wide classification system and aspects of the security clearance process. I was appointed to this position with the approval of President Bush, and in this role I oversaw the entire Executive Branch's classification and handling of classified national security information.

5. The Director of ISOO has authority to access more classified information than anyone in the government other than the President and Vice President. As the Director of ISOO, I was the primary official charged with the responsibility to ensure that all Executive Branch agencies properly classified and declassified national security information and appropriately granted and restricted access to classified national security information in accordance with established policy. To that end, I had a primary role in the drafting, editing, and issuance by President George W. Bush of Executive Order 13292 (2003), which amended Executive Order 12958 (1995), and established the Federal government's policies with respect to classifying, safeguarding, and declassifying national security information.

6. As the Director of ISOO, I was also the primary official charged with the responsibility to ensure that Executive Branch agencies appropriately implemented the NISP. The NISP policies that I oversaw included policies around the granting, revocation, and suspension of personnel security clearances for employees of private sector firms that required access to classified national security information in support of Executive Branch agencies or in working with other cleared private sector entities.

7. In my various capacities with the Federal government, it was my responsibility on a regular basis to recommend and/or determine whether security clearances should be granted, suspended, or revoked, and whether information which an agency sought to classify or keep classified met the appropriate classification criteria.

8. Between 2008 and 2010, I served as the principal of my own consulting firm advising on security issues related to national defense, homeland security, and counterintelligence. My area of expertise included the investigation and adjudication of personnel security clearances; assessments of the foreign ownership, control, and influence of cleared U.S. defense industry; and the protection of critical infrastructures. I also served as an adjunct professor of political science at St. Mary's College of Maryland.

9. Between 2010 and 2019, I served as the Chief Operating Officer of the National Endowment for Democracy, a nongovernmental, nonprofit foundation dedicated to the growth and strengthening of democratic institutions around the world.

10. While I am retired from full-time employment, I currently serve as a member of the board of directors for a company cleared by the DoD under the terms of a special security agreement. In this capacity, I am required to retain a personnel security clearance, and my responsibilities include ensuring that the cleared firm and its personnel properly safeguard classified information as well as ensuring that the firm's foreign-owned parent is precluded from accessing classified and other sensitive U.S. Government information. As such, I have remained abreast of all official policy and requirements for the protection of classified national security information, as well as the standards for approving, suspending, denying, or revoking security clearances. I have been continuously cleared (i.e., have held an active security clearance) at all times between 1973 and the present.

11. I hold a Master of Arts degree in International Relations from Boston University and a Bachelor of Arts degree in History from Saint John's University.

II. RETENTION IN THIS MATTER AND RELATED DISCLOSURES

12. In May 2025, I was approached by counsel to Mark Zaid to discuss this case, which relates to a Presidential Memorandum dated March 22, 2025, entitled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals," DCPD-202500388 ("Clearance Recission Memorandum"). More specifically, I was asked to address the purported determination by the President set forth in the Clearance Recission Memorandum that "it was no longer in the national interest" for Mark Zaid, among others, to access classified information. The Memorandum directed the revocation of any active security clearances held by Mark Zaid, among others, and to immediately rescind his access to classified information. The Memorandum further directed all executive department and agency heads to revoke unescorted access to secure United States Government facilities from Mark Zaid, among others. After reviewing the Clearance Recission Memorandum, I agreed to offer the opinions in this report in the capacity of an expert witness based on my experience and credentials above. I am doing so without compensation, as my sole motivation for involvement in this present matter is my concern for the integrity of the processes around security clearances, a key tool intended to safeguard the security of our nation and the American people. I have devoted the great majority of my professional career to the protection of our national security through rigorous application of fair criteria determining (1) what information should be classified and (2) which individuals are entitled to access to such information, and on what terms.

13. In the years since my retirement from public service, I have served as a *pro bono* expert in several prior court proceedings, including in the parallel litigation against Executive Order 14230, entitled "Addressing Risks from Perkins Coie LLP," 90 Fed. Reg. 11781, *see Perkins*

Coie LLP v. U.S. Department of Justice, Dkt. 39-8, No. 1:25-cv-716-BAH (D.D.C. Apr. 2, 2025), and against Executive Order 14250 entitled "Addressing Risks from WilmerHale," 90 Fed. Reg. 14549 (March 27, 2025), *see Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Office of the President, et al.*, Dkt. 16-5, No. 1:25-cv-917-RJL (D.D.C. Apr. 8, 2025). In all such instances, as in this case, I have made it clear to the counsel that I would become involved in their case not as an advocate for a party but rather as an advocate for the integrity of the national security classification and clearance systems.

14. A list of publications that I have authored in the last ten years is attached as Exhibit 1. I have not testified in any case as an expert at trial or by deposition in the last four years. The facts or data I have considered in forming my opinions are set forth in Section III below.

III. SUMMARY OF RELEVANT FACTS

A. Presidential Memorandum Dated March 22, 2025 and Related Events

15. On February 8, 2025, the *New York Post* reported on President Trump's alleged intent to conduct a mass revocation of security clearances for a wide-ranging set of current and former government employees, and referenced Mr. Zaid, a lawyer, who was identified in the article in connection with one of his past whistleblower clients. Zaid Compl. ¶ 39. The article is available online. *See* https://nypost.com/2025/02/08/us-news/trump-stripping-the-security-clearances-from-a-new-hit-list-of-antagonists-including-ny-ag-letitia-james-da-alvin-bragg/ (Feb. 8, 2025).

16. On March 10, 2025, Director of National Intelligence Tulsi Gabbard posted on social media platform X a statement that "Per @POTUS directive," she had "revoked security clearances and barred access to classified information for Antony Blinken, Jake Sullivan, Lisa Monaco, **Mark Zaid**, Norman Eisen, Letitia James, Alvin Bragg, and Andrew Weissman, along with the 51 signers of the Hunter Biden 'disinformation' letter." Zaid Compl. ¶¶ 41-42 (emphasis

added). This blanket revocation included revoking Mr. Zaid's clearance, who maintained an active security clearance in the context of fulfilling his obligation as a lawyer to represent his clients.

17. Twelve days later, on March 22, 2025, the Trump White House published a Presidential Memorandum online addressed to "the heads of executive departments and agencies," entitled "Rescinding Security Clearances and Access to Classified Information from Specified Individuals." *See* https://www.whitehouse.gov/presidential-actions/2025/03/rescinding-security-clearances-and-access-to-classified-information-from-specified-individuals/. The following points contained in the Presidential Memorandum are relevant to this report.

18. The Presidential Memorandum is directed to "the heads of executive departments and agencies" and directs the summary revocation of the security clearances of a group of individuals. The Memorandum reads, in relevant part, "I have determined that it is no longer in the national interest for the following individuals to access classified information: Antony Blinken, Jacob Sullivan, Lisa Monaco, **Mark Zaid**, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.'s family. Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing law **to revoke any active security clearances** held by the aforementioned individuals and **to immediately rescind their access to classified information**. I also direct all executive department and agency heads to revoke unescorted access to secure United States Government facilities from these individuals." *Id.* (emphasis added).

19. Shortly after publication of the Presidential Memorandum, on or about April 3, 2025, Mr. Zaid received a one-page, three-paragraph memorandum from the Defense of

Counterintelligence and Security Agency with the subject line, "Revocation of Personnel Security Clearance Eligibility." It stated: "The [March 22, 2025 Rescinding Security Clearances Memorandum] directs every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by you, and by other individuals identified or described in the [Memorandum]. Pursuant to that direction, DCSA has revoked the security clearance held by you. The revocation action has been annotated in our system of record for personnel clearances." Zaid Compl. ¶ 47.

20. Then, on or about April 9, 2025, Mr. Zaid received a one-page, one-paragraph letter from the Central Intelligence Agency's Office of General Counsel, which stated, in relevant part, as follows: ". . . As you are aware, you were specifically identified by the White House in this [March 22, 2025 Presidential Memorandum]. Pursuant to this memo, the Agency is required to 'revoke any active security clearances ... and to immediately rescind [] access to classified information' for the named individuals. Accordingly, you are no longer personally permitted access to classified information in any ongoing matters that you are currently involved in with the Agency." *Id.* ¶ 49. The "you" referenced in the April 9 correspondence refers to Mr. Zaid. The letter is signed by the CIA's Deputy General Counsel for Litigation and Investigations. *Id.* ¶ 50.

21. On April 23, 2025, Mr. Zaid received an email from the Office of the Director of National Intelligence ("ODNI")'s Office of Inspector General that stated he was denied access to a client's classified complaint, which he has previously accessed, because ODNI Security determined "(U) Pursuant to Presidential direction issued on 22 March 2025 (attached), the individuals listed therein, no longer have a security clearance, are not authorized for access to classified information, and do not have unescorted access to ODNI facilities." *Id.* ¶ 51. Mr. Zaid had maintained a TS/SCI clearance, for which information classified at that level carries a greater exposure to details that implicitly or explicitly implicate intelligence sources or methods.

B. Public Commentary by Director Gabbard and Social Media Postings

22. On May 1, 2025, DNI Director Gabbard publicly discussed the government's revocation of Mr. Zaid's security clearance during a sit-down interview with reporter Megyn Kelly. Director Gabbard referenced Mr. Zaid by name directly as among "a number of other people" whose clearances have been revoked. The hour-long interview is available on YouTube. *See* "Tulsi Gabbard on Investigating the Leaks, Fighting the Deep State, and Whether She'll Run in 2028," *The Megyn Kelly Show* (May 1, 2025), https://www.youtube.com/watch?v=6tFyUP0TgrM.

23. The next day, on May 2, 2025, ODNI issued an official press release which noted that Director Gabbard had revoked security clearances of "numerous individuals who abused public trust for political purposes." The press release is available online. *See* ODNI News Release No. 08-25, https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2025/4069-pr-08-25 (May 2, 2025).

24. Director Gabbard also posted a copy of the press release on her official X page, which contains a hyperlink directing back to Director Gabbard's original March 10, 2025 tweet identifying Mr. Zaid as one of the targeted individuals, among others who are named. *See* https://x.com/DNIGabbard/status/1918333364970365134?s=19 (May 2, 2025).

IV. BACKGROUND PRINCIPLES ON SECURITY CLEARANCES

A. The Rules And Principles Governing The Security Clearance Review Process

25. Executive Order 12968, which established the protocols governing access to classified information to include provisions for due process, has remained in effect since it was issued nearly thirty years ago by President Bill Clinton. *Access to Classified Information*, 60 Fed. Reg. 40245 (Aug. 2, 1995). The protocols in Executive Order 12968 have been subject to minor amendments since then, the most substantive ones being the designation of the Director of National Intelligence as the "Security Executive Agent" by virtue of Executive Order 13467, *Reforming*

Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, which was issued by President George W. Bush on June 30, 2008, and the initiation of continuous vetting procedures through Executive Order 13764 that President Barack Obama signed on January 17, 2017. None of the subsequent amendments or policy modifications have impacted the core principles of due process that were created in Executive Order 12968.

26. The protocols established by Executive Order 12968 are aimed at ensuring that the protection of the nation's classified information is consistent with "providing fair and equitable treatment to those Americans upon whom we rely to guard our national security." 60 Fed. Reg. at 40245. A hallmark of the process, therefore, is that it is an *individualized* one. The touchstone of that individualized review is whether clearance is consistent with the "national security interest" of the United States. "National security," meanwhile, is defined both in the United States Code and in Executive Order 13526, *Classified National Security Information* (Dec. 29, 2009), as "the national defense and foreign relations of the United States." 10 U.S.C. §801(16); 75 Fed. Reg. 707, 729 (Jan. 5, 2010) (identical definition in Executive Order 13526, except using the disjunctive "or").[1]

27. Pursuant to Executive Order 12968, an individual may not access classified information unless (1) that individual has been "determined to be eligible" for access, (2) that individual has signed a nondisclosure agreement, and (3) that individual has a "demonstrated need-

[1] Mark Zaid's due process rights are derived from Executive Order 12968. There are other executive orders and subordinate directives and regulations that touch upon personnel vetting that are not discussed here. While some of these may reference "national interest" instead of "national security interest," the governing executive order (12968) and the national adjudicative guidelines for security clearances, which are discussed in more detail below, explicitly rely upon the term "national security interests."

to-know" for the information at issue. 60 Fed. Reg. at 40246. Access to classified information is generally granted (with limited and defined exceptions) only to individuals "who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." *Id.* at 40250. The determination of eligibility for access to such information is to be "based on judgments by appropriately trained adjudicative personnel." *Id.*

28. The security clearance process is a critical tool in keeping our nation and its citizens safe. For it to be effective, it is to be implemented in a "fair and equitable" manner and through a "uniform … program." *Id.* at 40245.

29. To ensure that this national security tool (i.e., the individualized security clearance process) is implemented in a fair and equitable manner and through a uniform program, the Director of National Intelligence ("DNI"), under the authority of Executive Order 13467 referenced above and in furtherance of Executive Order 12968, issued DNI Security Executive Agent Directive 4 ("SEAD-4"), *National Security Adjudicative Guidelines*, on June 8, 2017, during the prior Administration of President Donald Trump. This Directive establishes the criteria to be used by all Federal government agencies authorized to render a determination for initial or continued eligibility of an individual to access classified information. Off. of the Dir. of Nat'l Intel., *Security Executive Agent Directive 4: National Security Adjudicative Guidelines* (2017), https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-4-Adjudicative-Guidelines-U.pdf.

30. Pursuant to SEAD-4, an individual's eligibility for a security clearance turns on whether that individual's access to classified information is "clearly consistent with the national security interests" of the United States. *Id.* at 5. The adjudicative process is intended to be an examination of the "whole person," meaning an examination of "a sufficient period and careful weighing of a number of variables of an individual's life," in order to make an affirmative determination that the individual is an acceptable security risk. *Id.* at 6 ("the whole-person concept"). The adjudicative policy states unambiguously that for every individual seeking a security clearance, each such individual "case must be judged on its own merits." *Id.* To perform that adjudication, an individual's personal conduct in the following thirteen areas are taken into account: allegiance to the United States (Guideline A), foreign influence (Guideline B), foreign preference (Guideline C), sexual behavior (Guideline D), personal conduct (Guideline E), financial considerations (Guideline F), alcohol consumption (Guideline G), drug involvement and substance misuse (Guideline H), psychological conditions (Guideline I), criminal conduct (Guideline J), handling protected information (Guideline K), outside activities (Guideline L), and use of information technology (Guideline M). *Id.* The guidelines also state that in evaluating the relevance of an individual's conduct with respect to any of the above guidelines, the recency of that conduct is a key element to be taken into account. *Id.*

31. In light of the above, the granting, suspending, and revoking of security clearances is a highly individualized process that involves a close and detailed factual analysis of the individual in question and provides any individual subject to this analysis with significant due process protections. Before any security clearance is granted, denied, or revoked, the appropriate investigative agency must conduct an investigation of the individual to the required scope. This

investigation addresses the factors outlined in the above adjudicative guidelines outlined in Directive 4, pursuant to Executive Order 12968.

32. Following the appropriate investigation, should an applicant be denied a clearance or should a cleared individual's clearance be revoked, that individual is entitled to the due process considerations set forth in Executive Order 12968. The standard due process provisions that are followed within the Executive Branch whenever an individual's security clearance is denied or revoked include the following: (1) a comprehensive and detailed written explanation for the denial or revocation; (2) appropriate access to documents, records, and reports upon which the denial or revocation is based; (3) the right to be represented by counsel; (4) the opportunity to respond in writing; (5) a written notice of and the reasons for the results of the review, the identity of the deciding authority, and written notice of the appeal; and (5) the opportunity to appeal in writing and in some instances in person to a higher level of review. *See* 60 Fed. Reg. at 40252-53 (Part 5—Review of Access Determinations).

B. Relevant History Regarding The Security Clearance Review Process.

33. The above-described security-clearance processes set out by Executive Order 12968 and expanded through SEAD-4, and the due process protections afforded individuals as part of the same, are an outgrowth of an earlier period of our nation's history when such rights were not present and the security clearance process was abused. As illustrated by the well-known case of Robert Oppenheimer, it was not unusual in the immediate aftermath of World War II for groups of persons to have their security clearances denied, revoked or suspended solely based upon their membership in disfavored organizations or upon their association with other known members of such organizations.

34. In 1947, then-Attorney General Tom Clark released the "Attorney General's List of Subversive Organizations." As its name implies, this list was intended to compile organizations

deemed to be subversive by the U.S. government. The list included 50 organizations ranging from Communist Party USA and the Ku Klux Klan to organizations such as the National Negro Congress and the Washington Book Shop Association. Many Americans had signed petitions or become members of such groups, often not understanding their true nature or the consequences of affiliation. The Attorney General's List was eventually incorporated by then-President Harry Truman into Executive Order 9835, which established the first federal employee loyalty program. *See* 12 Fed. Reg. 1935 (Mar. 25, 1947). Executive Order 9835 was in turn superseded by President Dwight Eisenhower's Executive Order 10450 in 1953, which updated the Attorney General's List and expanded the criteria for determining trustworthiness and reliability for purposes of a security clearance. Security Requirements for Government Employment, 18 Fed. Reg. 2489 (Apr. 27, 1953). In 1959, the Supreme Court decided the landmark case *Greene v. McElroy*, holding in relevant part that the revocation of the plaintiff's security clearance as a defense contractor on the grounds of alleged Communist associations and sympathies was unlawful in that the plaintiff "was not afforded the safeguards of confrontation and cross-examination." 360 U.S. 474, 508 (1959).[2]

35. It was the Supreme Court's decision in *Greene* that led to the establishment of due process provisions for the individualized granting, denial, or revocation of security clearances for contractors, which due process provisions continue to this day. Due process provisions were first adopted for defense contractors through President Eisenhower's Executive Order 10865 in 1960, and similar due process provisions were codified in 1995 by President Clinton in Executive Order 12968 ("Access to Classified Information") to cover civil servants and military personnel. These

[2] *Greene* stands for the proposition that due process applies to security clearances. 360 U.S. 474. There, neither Congress nor the President authorized the constitutionally deficient procedures. *Id.* at 508. The Court declined to opine on the constitutionality of those procedures had they been set out in legislation or an executive order. *Id.*

protections have remained unchanged through five successive administrations, including President Trump's prior Administration between 2017 and 2021. Executive Orders 10865 and 12968 as well as SEAD-4 remain the current governing policy for granting, denying, and revoking personnel security clearances.[3] There is no language within the Clearance Recission Memorandum that indicates it is superseding, revoking or modifying the protections set forth in any of the prior Executive Orders or governing due process requirements.

C. The Process For Revoking A Security Clearance

36. Importantly, whenever it is proposed that an individual's security clearance be revoked, the government entity that granted the clearance is obligated to notify the individual in writing and to provide that individual with a statement of reasons as to why access to classified information will be revoked. The proposed revocation is then to be followed by the established processes and due process protections outlined above.

V. OPINIONS

A. Opinion 1: The Blanket Approach Of The Clearance Recission Memorandum Is Inconsistent With Governing Policy Requiring Individualized Assessments.

37. As described above in Section IV, in order to ensure that clearance procedures "provid[e] fair and equitable treatment to those Americans upon whom we rely to guard our national security," 60 Fed. Reg. at 40245, the process is always based upon the personal conduct

[3] Executive Order 12968 allows for narrow instances when due process may be limited because the required procedure cannot occur "without damaging the national security interests of the United States by revealing classified information." 60 Fed. Reg. at 40252. This provision might be invoked, for example, when a government employee or contractor is charged with espionage for a foreign power. But this limited due process section is inapplicable here, including because the required certification has not been made and because there has been no determination that full due process would itself compromise national security by revealing classified information.

of the relevant individual. That is one of the fundamental hallmarks of the security-clearance review process.

38. The Clearance Recission Memorandum violates these bedrock principles of the security-clearance review process because it provides no individualized assessment of personal conduct in the revocation of clearances. The memorandum contains no mention of, let alone any individualized assessment of the named personnel who currently hold security clearances. And while the Clearance Recission Memorandum does technically list names, it culminates with a vague, blanket reference to "any other member of Joseph R. Biden Jr.'s family" and lacks any individualized assessment. Indeed, it is just as "blanket" of a revocation as is Executive Order 14230, which would have the exact same effect if it had listed the approximately 1,200 employees of the subject law firm.

39. Simply put, a blanket revocation of security clearances of a diverse and unrelated group of individuals was—prior to March 2025—unprecedented in its scope and fundamentally inconsistent with existing authority addressing the processing, granting, and revocation of security clearances. The *ad hoc* directive in this case harkens back to the repudiated and discredited programs that existed before *Greene v. McElroy*, including during the Red Scare. The arbitrary and ad hoc directive of immediate revocation of security clearances not for any personal conduct by any clearance holder is no different analytically than if a directive were issued to immediately suspend the security clearances of all Jews or Muslims, all members of the LGBTQ+ community, all women, or all registered Democrats or Republicans.

40. These types of non-individualized, mass revocations of security clearances targeted at groups of individuals threaten to harm our national security efforts. Should individuals who otherwise meet the standards be summarily denied or stripped of their security clearance through

these types of sweeping, blanket decrees, the resulting uncertainty that would spread throughout the system may severely impact the effectiveness of our military, intelligence and diplomatic capabilities to deter or otherwise respond to our nation's adversaries.

B. Opinion 2: The Clearance Recission Memorandum Is Unprecedented In Its Invocation of Conduct Unrelated To National Security.

41. The Clearance Recission Memorandum is also contrary to the foundational principles surrounding the granting, suspension, denial, or revocation of security clearances, as set forth in existing and operative policy documentation that have existed for decades, in that it devoid of a statement of reasons with a nexus to national security concerns. As I explained in Section IV, the touchstone of the individualized security-clearance review is whether clearance is consistent with the "national security interest" of the United States, which is defined as "the national defense and foreign relations of the United States."

42. Here, however, the Clearance Recission Memorandum makes clear it has nothing to do with national security but rather makes an undefined reference to the "national interest." I understand that Mark Zaid represented a client in a whistleblower case involving President Trump during his first administration. In my more than three decades of service culminating as the most senior public servant focused professionally on the protection of United States classified information, I have never seen any security clearance determination that was based on the fact that an attorney represented client in a whistleblower case and I can see no reasonable construction of such activity as being a matter of "national security" as that term is defined and understood.

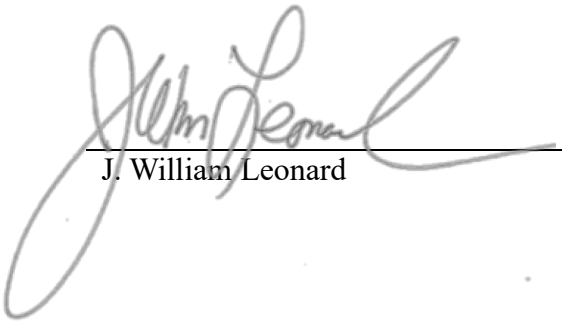
C. Opinion 3: The Clearance Recission Memorandum's Directive Amounts To A Revocation Of Security Clearances Without Due Process.

43. The Clearance Recission Memorandum functionally plays the role of judge, jury, and executioner. Even if the subjects of the Memorandum had been provided with the requisite due process (they were not), for the revocation to be reversed it requires a professional adjudicator

to make findings expressly contradictory to the President's determination. Further, I believe that Mr. Zaid would have to disclose this revocation—senseless as it is—on any future security clearance application, making the harm he will experience from the lack of due process effectively irreparable. The approach of the Clearance Recission Memorandum, especially as it pertains to Mark Zaid, is unprecedented and inconsistent with governing guidance and policy documentation.

I declare under penalty of perjury that the foregoing is true and correct.

Date: May 20, 2025



J. William Leonard

EXHIBIT 1

Authored Publications in Past Ten Years

J. William Leonard, *Congress Must Stop the Weaponization of Personnel Security Clearances*, Just Sec. (Mar. 11, 2025), https://www.justsecurity.org/108657/congress-stop-weaponization- security-clearances/.

J. William Leonard, *Vice Presidents and Rules Governing Classified National Security Information*, Just Sec. (Jan. 17, 2023), https://www.justsecurity.org/84774/vice-presidents-and- rules-governing-classified-national-security-information/.

J. William Leonard, *Myths and Misunderstandings Relating to Mar-a-Lago Documents Investigation*, Just Sec. (Mar. 16, 2022), https://www.justsecurity.org/82706/myths-misunderstandings-relating-to-mar-a-lago-documents-investigation/.

J. William Leonard, *Why Joe Biden Should Pardon Reality Winner*, Wash. Post (Dec. 20, 2019), https://www.washingtonpost.com/opinions/why-joe-biden-should-pardon-reality-winner/2020/12/21/9e6f4094-4162-11eb-8db8-395dedaaa036_story.html.

J. William Leonard, *Barr's Personal Ad Hoc Declassification Authority and the Role of Congress*, Just Sec. (Dec. 9, 2019), https://www.justsecurity.org/67663/barrs-personal-ad-hoc- declassification-authority-and-the-role-of-congress/.

J. William Leonard, *Trump Repudiates a Century of U.S. Policy*, Just Sec. (Nov. 15, 2019), https://www.justsecurity.org/67255/trump-repudiates-a-century-of-u-s-policy/.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK S. ZAID, ESQ. Plaintiff, v. EXECUTIVE OFFICE OF THE PRESIDENT, *et al*. Defendants.	Civil Action No.: 1:25-cv-1365-AHA

[PROPOSED] ORDER

Upon consideration of Plaintiff Mark S. Zaid's Motion for Preliminary Injunction, and the entire record herein, it is this _____ day of _____ 2025, hereby,

ORDERED that the Motion is **GRANTED**; it is further

ORDERED that the Executive Office of the President, Department of Defense, Defense Counterintelligence and Security Agency, Central Intelligence Agency, Officer of the Director of National Intelligence, and the United States of America (collectively, the "Defendants"), and their officers, agents, employees, and attorneys, are **ENJOINED** from revoking Mr. Zaid's security clearance and his access to classified information pursuant to the March 22, 2025 Presidential Memorandum entitled, "Rescinding Security Clearances and Access to Classified Information from Specified Individuals."

ORDERED that Defendants immediately and fully restore Mr. Zaid's security clearance and his access to classified information.

ORDERED that Defendants are **ENJOINED** from taking any additional action pursuant to the March 22, 2025 Presidential Memorandum which would infringe on Mr. Zaid's

Constitutional rights or those of his clients, as the Court determines.

SO ORDERED.

Dated:

Hon. Amir H. Ali
United States District Judge