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

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<b>CARL E. PERSON,</b>	:	<b>Civil Action No.</b>
	:	
<b>Plaintiff,</b>	:	<b>19 Civ. 154 (LGS)(SDA)</b>
	:	
<b>-against-</b>	:	
	:	
<b>UNITED STATES OF AMERICA (Executive</b>	:	<b>AMENDED</b>
<b>Branch, Article II of U.S. Constitution),</b>	:	<b>COMPLAINT</b>
<b>STEVEN MNUCHIN, Secretary of the</b>	:	
<b>Department of the Treasury, in His Official Capacity,</b>	:	<b>[Mandamus/Injunction Action</b>
<b>KIRSTJEN NIELSEN, Secretary of</b>	:	<b>to End Government Shutdown]</b>
<b>Homeland Security, in Her Official Capacity,</b>	:	
<b>ANDREW WHEELER, Acting Administrator of</b>	:	
<b>Environmental Protection Agency, in His Official</b>	:	
<b>Capacity,</b>	:	
<b>THE BOARD OF GOVERNORS OF THE FEDERAL</b>	:	
<b>RESERVE SYSTEM a/k/a the Federal Reserve, and</b>	:	
<b>JEROME POWELL, Chairman, The Board</b>	:	
<b>of Governors of the Federal Reserve System,</b>	:	
<b>a/k/a the Federal Reserve, in His Official Capacity,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
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Plaintiff, acting *pro se*, for his amended complaint (the “**Amended Complaint**”) against the Defendants, alleges as follows:

**INTRODUCTION**

1. This action is brought as a direct Constitutional action and as a mandamus action for a preliminary and permanent injunction to require each of the Defendants to maintain by payment (or facilitation of payment) all of the government pre-shutdown services (the “**Pre-Shutdown Services**”) unless and until any statute is enacted which ends or reduces the Pre-Shutdown Services. Any non-judicial resumption of the Pre-Shutdown Services does not moot

this action. Plaintiff is entitled to the mandamus and injunctive relief to prevent any further shutdowns and prevent shutdown extortion as a frequently used political tool.

### **JURISDICTION**

2. Federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

3. Federal subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331 because the Plaintiff's action arises under the Constitution and laws of the United States.

### **VENUE**

4. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(b)(2), 1391(b)(3) and 1391(e)(1)(B).

### **PARTIES**

5. Plaintiff, **Carl E. Person** (“**Plaintiff**” or “**Person**”), citizen of the United States and a resident of New York, NY, is an 82-year old attorney, and federal practitioner, and licensed to practice law in New York since 1962 and in the SDNY since November, 1970. As an attorney, he and some of his clients in federal court actions are not being provided with the Court services that have been curtailed or eliminated by reason of the partial shutdown of governmental services (“**Governmental Shutdown**”), described further at ¶¶ 17-18 and 20 below, causing various types of actual and threatened injury described elsewhere in this Amended Complaint.

6. Defendant, **United States of America (Executive Branch, Article II of the U.S. Constitution)**, as of December 22, 2018 has shut down part of the governmental services deemed by it to be non-essential, such as National Parks, various State Department and Treasury Department services, museums, the IRS (delay in refunds), and environmental and food inspections, and parts of the Department of Homeland Security (some of which services have subsequently been determined to be essential), and this shutdown has expanded by this date to the federal Courts, including the SDNY (see ¶¶ 19 and 21 below). Some of the shutdown services reclassified as essential were subsequently restored, apparently without any statutory enactment.

7. The extent of the shutdown involving 800,000 federal employees can be seen by reference to the 2013 shutdown.<sup>1</sup>

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1. In October, 2013, a 16-day shutdown of government services affected all or parts of the services of the following federal agencies or activities: American Battle Monuments Commission; Congress; Consumer Product Safety Commission; Department of Agriculture; Department of Commerce; Department of Defense; Military Academies; Department of Education; Department of Energy; Department of Health and Human Services; Centers for Disease Control and Prevention; Food and Drug Administration; National Institutes of Health; Department of Homeland Security; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; Department of the Treasury; Internal Revenue Service; Department of Veterans Affairs; Environmental Protection Agency; Federal Communications Commission; Federally funded research and development centers; General Services Administration; Intelligence agencies; Library of Congress; National Aeronautics and Space Administration; National Archives; National Labor Relations Board; National Science Foundation; National Transportation Safety Board; Nuclear Regulatory Commission; Office of Special Counsel; Small Business Administration; Smithsonian Institution; Social Security Administration; and The White House.

**Source:**

[https://en.wikipedia.org/wiki/List\\_of\\_agencies\\_affected\\_by\\_the\\_United\\_States\\_federal\\_government\\_shutdown\\_of\\_2013](https://en.wikipedia.org/wiki/List_of_agencies_affected_by_the_United_States_federal_government_shutdown_of_2013)

8. Defendant, **Steven Mnuchin** (“**Secretary Mnuchin**”), in his official capacity as Secretary of the Department of the Treasury, has his offices at 1500 Pennsylvania Ave., NW, Washington, DC 20220. Secretary Mnuchin has participated in the shutdown by terminating some of the governmental services that the Department of the Treasury was providing prior to the shutdown, and has the authority and duty not to shut down any such services. Secretary Mnuchin has the duty and authority to pay or require payment for and continuation of the Pre-Shutdown Services being provided by his agency, and has failed to perform his duty.

9. Defendant, **Kirstjen Nielsen** (“**Secretary Nielsen**”), in her official capacity as Secretary of Homeland Security, has her offices at 300 7th Street SW, Washington, DC 20024. Secretary Nielsen has participated in the shutdown by terminating some of the governmental services that the Department of Homeland Security was providing prior to the shutdown, and has the authority and duty not to shut down any such services. Secretary Nielsen has the duty and authority to pay or require payment for and continuation of the pre-shutdown services being provided by her agency, and has failed to perform her duty. :

10. Defendant, **Andrew Wheeler** (“**Acting Administrator Wheeler**”), in his official capacity as Acting Administrator of the Environmental Protection Agency, has his offices at 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Acting Administrator Wheeler has participated in the shutdown by terminating some of the governmental services that the Environmental Protection Agency was providing prior to the shutdown, and has the authority and duty not to shut down any such services. Acting Administrator Wheeler has the duty and authority to pay or require payment for and continuation of the Pre-Shutdown Services being provided by his agency, and has failed to perform his duty.

11. Defendant, **The Board of Governors of the Federal Reserve System a/k/a the Federal Reserve** (the “**Federal Reserve**”), a privately-owned entity, with offices at Constitution Avenue NW & 20th Street NW, Washington, DC 20551. The Federal Reserve has participated in the shutdown by not permitting creation of the money needed to make payment for the governmental services that have been shut down by the governmental Defendants, and has the authority and duty to make the money available for payment for such services. The Federal Reserve has the duty and authority to make money or credits available to each of the governmental agencies that is participating in the shutdown of governmental services, and has failed to perform this duty.

12. Defendant, **Jerome Powell** (“**Chairman Powell**”), in his official capacity as Chairman of The Board of Governors of the Federal Reserve System a/k/a the Federal Reserve, with offices at Constitution Avenue NW & 20th Street NW, Washington, DC 20551. Chairman Powell has participated in the shutdown by not permitting creation of the money needed to make payment for the governmental services that have been shut down by the other Defendants, and has the authority and duty to make the money available for payment for such services. Chairman Powell has the duty and authority to make money or credits available to each of the governmental agencies that is participating in the shutdown of so-called “non-essential services” (including some essential services), and has failed to perform his duty.

## **THE FACTS**

13. *The New York Times* reported on January 2, 2019 that

Nine departments, including those of Homeland Security, Justice, State and Treasury, are affected. So are several federal agencies, including the Environmental Protection Agency and NASA.

In all, about 800,000 government employees are feeling the effects, with just under half sent home on unpaid leave and just over half working without pay. Those who are working can expect compensation when the government reopens, but those who have been furloughed have no such guarantee.

14. The effect of the shutdown is to create a partial shutdown of (a) the nation's federal court system, which has already adversely affected this lawsuit and which threatens to create irreparable injury to Plaintiff's law practice; and (b) the nation's economy, which reduces the ability of most persons in the United States to pay for goods and services, and therefore adversely affects and threatens the economic and business interests of the Plaintiff as well as most other professional organizations and businesses in the United States.

15. Non-Payment begins for the bi-weekly pay period ending Wednesday, January 9, 2019, with payment to be received Wednesday, Thursday or Friday, the 9<sup>th</sup>, 10<sup>th</sup> or 11<sup>th</sup> of January, 2019, depending on the employee, and the method of payment, but because of the government's inability to determine what services are essential or not, some services have been resumed and some services are being provided by unpaid employees who at this time are increasingly failing to show up to perform work without pay. Thus, an injunction ordering Defendants to continue payments would be in part as to governmental services that have not yet been shut down.

### **Standing of the Plaintiff**

16. The Plaintiff has standing to commence this action by

(a) having been deprived of his right as a federal-court litigant to have this case handled in the way that cases are ordinarily handled in absence of adequate funding caused by the Governmental Shutdown, as to which the Court should take judicial notice (see ¶ 18 below, incorporated by reference hereby);

(b) the reduction in federal court services is adversely affecting and threatening Plaintiff's law practice in which he is admitted to practice in the SDNY, EDNY, NDNY, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup> and Federal Courts of Appeals, and the United States Supreme Court;

(c) the threatened destruction of the economy over time is a threat to the existence of Plaintiff's law practice which requires clients to pay money for his services and because of the Governmental Shutdown unless ended will necessarily wind up with a loss of Plaintiff's law practice because of insufficient income;

(d) the Court should take judicial notice that if the Governmental Shutdown is not ended the U.S. economy will collapse, the United States will be in a depression requiring years to overcome; millions of citizens and other residents will become unemployed; terrorism will substantially increase; chaos will result; shortages of water, food, housing, transportation, education, sanitary facilities will become routine; the United States could be taken over by another country or be a battleground by other countries for taking over the United States;

(e) the threatened collapse of the economy which would cause Plaintiff's law practice built over 50+ years (starting in 1968) to go out of business, and Plaintiff is at an age (82) where he probably would not be able to have the time, money, physical endurance or inclination to attempt to build another law practice;

(f) the loss of other governmental services that support Plaintiff's law practice such as availability of governmental officials to be reached by telephone, delays in responding to emails, inability to handle matters as required by the court rules, resulting in short cuts which deprived and continue to deprive Plaintiff and his federal-court clients of due process;

(g) nobody else has filed an action requesting injunctive relief to end the Governmental Shutdown so that there is no threatened duplication of action, which enhances the threatened injury to the Plaintiff;

(h) nobody else has filed an action requesting injunctive relief to end the Governmental Shutdown based on his/her activities as a federal court practitioner, which enhances the threatened injury to the Plaintiff;

(i) the reduction in safety by non-payment of, and resulting decrease in the number of, air controllers reporting for duty, as to air travel Plaintiff needs to have on behalf of his clients (the most recent being on January 7, 2019 from LaGuardia to Rochester, NY and on January 8, 2019 from Rochester, NY to LaGuardia;

(j) the reduction in safety by non-payment of, and resulting decrease in the number of Transportation Security Administration security officers, inspectors, air marshals and managers who protect the nation's transportation systems by screening for explosives at airport checkpoints;

(k) the reduction in safety by non-payment of, and resulting decrease in the number of other law enforcement officials, such as personnel of the Federal Bureau of Investigation (including paid informants) and Central Intelligence Agency who also protect the nation (and from Plaintiff's standpoint, especially New York, NY) from actual and threatened terrorist attacks;

(l) the increase in time (which as an attorney Plaintiff is trying to sell but winds up losing) required for flights he has to make for clients, including a wait of 3 hours at Rochester International Airport on Wednesday, January 8, 2019, as to his reservation on Delta Flight 3342 scheduled to depart at 2:36 p.m., but which departed instead at about 5:30 p.m.

(m) the threatened collapse of the economy which would end most of the governmental services, including arresting, trying and incarcerating criminals, and result in total chaos unable to be regulated by the three branches of government under the U.S. Constitution;

(n) the Governmental Shutdown is longer than the United States has ever experienced and unless the Courts grant a preliminary and permanent injunction the possibility exists that the shutdown will continue with ever-increasing, irreparable injury to the Plaintiff or, if ended by non-judicial means would be used again by the President and/or Congress to achieve some other political objective, with additional threatened irreparable injury to the Plaintiff.

**Shutdown Caused  
Plaintiff and This Action  
To Be Denied Due Process**

17. In this action, the Plaintiff and this lawsuit, by reason of the failure to fully fund the SDNY's and local DOJ's operations, have not received the full benefits of the adversarial system reflected in the Federal Rules of Civil Procedure. The following activities occurred which had the effect of denying the Plaintiff due process in the consideration of his action prior to this amendment:

A. Plaintiff filed his motion (by proposed order to show cause for a TRO and preliminary injunction) in the Pro Se Office, Room 104, 40 Center Street, on January 11, 2019 and was told by the attending Pro Se Clerk that the Court would efile the moving papers, and after that occurred the Judge would contact the Plaintiff about his motion. This prevented the Plaintiff from giving notice to opposing counsel about the date and time for any appearance before the Court as to the proposed Order to Show Cause (seeking a temporary restraining order).

B. In spite of this known obstacle, the Plaintiff (before filing the proposed Order to Show Cause on Friday morning, January 11, 2019) looked up and called various telephone numbers for each of the individual defendants, the Federal Reserve Board, and the Washington, D.C. and SDNY Department of Justice to try to advise them that Plaintiff was going to file a proposed Order to Show Cause at the Pro Se Office in the SDNY, with the following results:

1. Plaintiff left a message with the Department of Justice in the SDNY (Civil Division, 212-637-2800) and was told that somebody would contact him by the end of the day;

2. Plaintiff gave the same information to a telephone receptionist in Office of the General Counsel for the Federal Reserve and Jerome Powell (202-452-3000, Office of Mark Van Der Weide);

3. Plaintiff was unable to reach anyone at the 3 agencies (Treasury, 202-622-2000 – “too busy, call back later”; Homeland Security – 202-282-8000; 202-443-4389 x 30098 “please wait” but nobody answered; and EPA -- 202-564-8040 – “no one available to take call”).

C. Thereafter, Assistant United States Attorney Peter Max Aronoff, who is not getting paid (“current lapse in Department of Justice appropriations”, according to footnote 2 in his letter to the Court dated January 17, 2019, Doc. No. 17), efiled a Notice of Appearance on behalf of all Defendants on January 14, 2019.

D. The Plaintiff and Peter Aronoff reached an agreement pursuant to Rule III-B-4 Rules and Procedures for Civil Cases, dated November 9, 2018 (at page 9) and, by the consent letter dated January 17, 2019 (Doc. No. 17) efiled by Peter Aronoff, proposed a conference for the following week (any of the 4 days after the Martin Luther King, Jr. holiday on Monday) for the purpose of setting up a Scheduling Order and briefing schedule for the action.

E. Meanwhile, instead of allowing the parties to present their arguments, including a reply memorandum by the Plaintiff, the Court *sua sponte* efiled its Memorandum and Order dated January 18, 2019 (Doc. No. 18), precluding the parties from their intended activities as to the motion.

18. Plaintiff alleges that the foregoing treatment of this civil case was a denial of due process and was caused by the Shutdown, as to the persons Plaintiff could not reach by telephone, as to the DOJ's 2-page opposition to Plaintiff's motion (Doc. No. 11); as to the Court's decision not to have a requested conference to set up a briefing schedule; as to the denial of the Plaintiff's right to respond to the DOJ's 2-page letter dated January 11, 2019 (Doc. No. 11); as to the denial Plaintiff's right to prepare and file reply papers to the non-existing papers by the DOJ in opposition to the Plaintiff's motion; and finally for the DOJ's representation of two non-governmental defendants (the Federal Reserve Board and Chairman Jerome Powell) with the result that a decision was made before all defendants had appeared properly; the rendering of the decision when there may have been no valid Notice of Appearance for the 2 Federal Reserve Defendants; and the failure to dismiss the action for lack of standing thereby preventing an immediate appeal.

**Effect of Shutdown  
On the SDNY – Judicial  
Notice Should Be Taken**

19. The Southern District of New York is aware that it is running out of money and should take judicial notice of the events described in the WYNC article by Beth Fertig published on January 21, 2019 at <https://www.wnyc.org/story/federal-courts-brace-full-force-shutdown/> which states:

If the shutdown drags on after Friday, the nation's federal courts will run out of money. But they must stay open. So the U.S. District Court in Manhattan is dusting off an emergency plan it prepared in the event of a pandemic.

Edward Friedland, district executive for the U.S. District Court of the Southern District, said hundreds of judiciary branch employees would get their last paycheck on Feb. 8. These include law clerks, probation officers, IT staffers and even the AV staff who make courtroom presentations. "Everybody," he said.

There's one exception: judges. The Constitution requires them to be paid.

Friedland predicts some court employees will stay home if they can't pay for childcare or need to find other work. U.S. Attorneys and staffers from the U.S. Marshals and Bureau of Prisons who also work in the courts have been going without pay since December if they're considered essential. The same is true for the other U.S. court in Brooklyn, the Eastern District.

The partial shutdown has already resulted in a slowdown in the courts, said Friedland. Most civil cases that require U.S. government attorneys (such as someone suing for their Social Security payments) don't have to proceed as scheduled, in order to conserve resources. And because of limited staffing, first court appearances for a defendant in custody have been stopping at 2:45 p.m. and are not held on Saturdays and Sundays. There have also been complaints that staffing shortages exacerbated by the shutdown have made it more difficult for attorneys to visit their clients.

Government workers can expect to get the money they're owed whenever the shutdown is over. But there's another category of court workers: contractors. Friedland said these include court interpreters, building engineers, maintenance workers and security guards. "There will be an understanding that they will be paid eventually," he said. But not until there's a new appropriation, making that the equivalent of an IOU.

Friedland expects the budget for contractors to run out by March. And that's a huge problem. "We can't occupy a building without fire safety directors and building engineers," he said, referring to the contractors who might not feel an obligation to work.

In that worst case scenario, he said, the courts can keep running even if the Southern District's buildings at Foley Square and the one in White Plains are all closed.

"We have an old plan that we'll dust off that was put in place many years ago with the bird flu," he said. That pandemic, thankfully, never happened. But if the courts can't open, they can still conduct important business as they would in a pandemic.

"Judges would stay home, court staff would stay home, attorneys would stay home," Friedland said. "But when somebody's arrested they need to be seen for a bail hearing in a certain amount of time."

The backup plan: hearings by video. Friedland said this system is tested annually, but will get a thorough workout this week. Prosecutors and marshals accompanying defendants to hearings would all participate with a camera link, as well as the judges, lawyers and prosecutors.

If the buildings do remain open, there might also be an impact on jurors, because they'll have to wait for payment until after an appropriation is passed. Friedland said this could deter some people from wanting to serve if they need the cash immediately after a trial. Jurors make \$50 a day, or \$65 a day if they're serving on a grand jury that lasts more than 45 days.

The district executive for the Eastern District, in Brooklyn, would not comment on security plans.

Public defenders aren't exactly government workers but they depend on the Judiciary for their funding. That would stop after Jan. 25, though David Patton, Executive Director of Federal Defenders of New York, said some grants may last a bit longer.

"We're only surviving by stretching every penny," he said, adding that payments to outside vendors and case experts have been delayed.

Private attorneys who represent indigent clients have already gone without pay since December, because they're funded through the Criminal Justice Act. Likewise, Patton said the investigators and experts they hire have also taken a hit.

And any impact on the defense bar could have repercussions.

"Any motion or application that comes before a judge that they're not able to provide an adequate defense is something a judge would have to consider," said Friedland.

20. The Court should take judicial notice that civil cases (the type of cases handled by the Plaintiff) are given less attention by the federal Court than criminal cases, and that the problems for civil litigation in the federal courts is more severe than for criminal cases.

21. A *New York Times* article entitled “Federal Courts, Running Out of Money, Brace for Shutdown’s Pain” by Thomas Kaplan published January 18, 2019 stated:

The federal courts are running out of money as the partial government shutdown continues with no end in sight, raising concerns that the legal system will be significantly hobbled if the standoff is not resolved soon.

Judges and court officials around the country are bracing for the likelihood that the federal judiciary will be unable to maintain its current operations within the next two weeks, once it exhausts the money it has been relying on since the shutdown began last month.

Already, courts have been cutting down on expenses like travel and new hiring. Court-appointed private lawyers who represent indigent defendants have been working without pay since late December, according to the Administrative Office of the United States Courts, which provides support for the court system.

There have been other disruptions. The Justice Department is among the executive branch agencies whose funding has lapsed, and at the department’s request, some federal courts have issued orders postponing civil cases in which the Justice Department is a party while the shutdown continues, according to the administrative office.

If the judiciary runs out of money, courts around the country will pare down their work to “mission critical” operations, officials said. Thousands of court employees will stop receiving paychecks, some workers are expected to be furloughed and more civil cases could grind to a halt. Jurors may have to wait to be paid until the shutdown is over.

\* \* \*

But the courts present an area in which the damage from the shutdown is expected to worsen considerably. A crippled judiciary, with all the consequences that would entail for businesses and citizens alike who come before its courts, would only add to the pressure on President Trump and lawmakers to find a way to reopen the government.

\* \* \*

.... The courts are now expected to be able to continue funded operations through at least Jan. 25, and possibly until Feb. 1, the administrative office said.

When the courts run out of money, they will essentially have to react much the way that executive branch agencies did in December, limiting work to certain essential activities.

\* \* \*

..... Court employees, like executive branch employees affected by the shutdown, would work without pay or be furloughed.

\* \* \*

Court officials are grappling with all sorts of complications that could arise, including the possible effects on court reporters and court interpreters, as well as on jurors who are supposed to be paid for their service and reimbursed for transportation expenses.

\* \* \*

Then there is the issue of keeping the courthouse doors open.

Mr. Friedland said it was unclear if contracted building workers who handle areas like fire safety as well as heating, ventilation and air conditioning would be paid beyond February, raising the possibility that the Southern District's courthouses might not be able to stay open.

That uncertainty has prompted the court to turn to its pandemic plan — which was prepared for a situation in which judges and other court personnel would not be able to leave their homes because of a disease outbreak, but essential work like determining bail for defendants still needed to take place.

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In Chicago, Judge Castillo worried that there would be longer-term ramifications, such as veteran employees deciding to call it quits, and young people being turned off from pursuing federal jobs.

\* \* \*

Given that his court is already understaffed, he said he was not planning furloughs. But he said that civil trials would be “shut down,” \* \* \*

\* \* \*

“The dilemma that creates is then you have jurors who are making big decisions and may be unhappy about the circumstances of their jury service,” Judge Castillo said. “I was a defense attorney. I would not want to proceed to trial under those circumstances because those circumstances can lead to rushed judgments on the part of jurors that just want to get this done and over with. That’s not fair.”

Source: <https://www.nytimes.com/2019/01/18/us/politics/courts-money-government-shutdown.html>

22. The Pre-Shutdown Services have been duly authorized by statutes, rules and regulations; the Defendants have the authority to print or otherwise create the money or credits needed for payment; payment for the shutdown services (the “**Shutdown Services**”) is impliedly included in any existing debt ceiling announced by Congress and/or the President; and there is no limitation on the amount of money that can be created by the Defendants because the Defendants are no longer prohibited from their Constitutional duty and right as a nation to create money by any gold or silver standard.<sup>2</sup>

23. The federal court system under Article III of the U.S. Constitution has the power as a co-equal branch of government to preserve itself by a *sue sponte* mandamus order compelling the Defendants to provide the money and/or credits needed to maintain the federal court system (and, arguably, any Pre-Shutdown Services that have meanwhile become essential). This is an important part of this action because this action could not be decided if the federal courts closed their doors for lack of funding (or essential services of government were not provided). A Bloomberg online article by Erik Larsen published January 4, 2019 entitled “Courts Run Out of Cash Next Friday. Here’s What Happens Then”, stated:

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2. A 62-page article entitled “*An Essay on the History of Banking*” enables readers to acquire substantial historical information about the creation of money, fractional reserve system, gold and silver standards, statute requiring sale of all privately-owned gold to the Federal Reserve, location and/or disappearance of gold holdings, the Federal Reserve System in the United States, fractional banking, the right of a nation to issue its own money without interest, the English banking system, the Rothschilds, and other information which can help lead to the conclusion that no Act of Congress is required to further authorize payment of the lawful, shutdown operations of the United State government.

Source: <https://criminalbankingmonopoly.wordpress.com/banking-essay/>

The system has enough money left over from fees and other sources to run through Jan. 11, according to the Administrative Office of the U.S. Courts, which supports the judiciary. After that, nonessential workers at the 94 federal district courts, and at higher courts across the country, may have to stay home even as skeleton crews show up -- without pay -- to handle matters deemed essential under U.S. law, including many criminal cases.

Individual courts and judges will then decide how to fulfill those critical functions, said David Sellers, a spokesman for U.S. Courts. He pointed to earlier shutdowns, the longest of which was the 21-day furlough that started in December 1995 and ended in January 1996. A shutdown beyond Jan. 11 would break that record.

23. “Non-essential services” does not apply to all that has been shut down. The governmental agencies including the Courts appear to be including essential services within “non-essential services” to appear as if there is no reduction in essential services.<sup>3</sup>

24. For example, by not paying jurors, jurors are more apt to want to reach a quick decision, which probably is a denial of due process to one or more of the parties and a partial destruction of the law practice of one or more of the attorneys involved.

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3. The Trump administration has expanded the definition of “essential” to include some governmental services that would cause the public great discomfort (and therefore affect President Trump’s poll numbers)—like tax refunds or air passenger transport. Exceptions are also made, it appears, when the administration’s favorite industries face hardship as a result of the shutdown. For example, federal employees who work to support the onshore and offshore oil and gas drilling industry, forest management (timber sales) and the mortgage industry have also been deemed “essential” after their lobbyists complained about how the shutdown was harming their business.

25. A substantial amount of the Shutdown Services has or will become essential, with the consequence that the shutdown (the “**Shutdown**”) whether intentional or not necessarily includes essential governmental services, which is another reason that a partial shutdown of governmental services is unconstitutional and must be ended by the Courts.<sup>4</sup>

26. A *Washington Post* online article by Damian Paletta and Erica Werner published on January 4, 2019 states:

Food stamps for 38 million low-income Americans would face severe reductions ....

The Trump administration, which had not anticipated a long-term shutdown, recognized only this week the breadth of the potential impact, several senior administration officials said. The officials said they were focused now on understanding the scope of the consequences and determining whether there is anything they can do to intervene.

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4. Historically, failure to fund governmental services did not cause a termination of services, but because of two Justice Department memoranda in 1980-1981, the government adopted the legal position that Congressional funding was required. This is explained in a Vox online article dated January 19, 2018, as follows:

The government has officially shut down 18 times since the modern process that Congress uses to pass budget and spending bills took effect in 1976. The first six of those didn't actually affect the functioning of government at all. It wasn't until a set of opinions issued by Attorney General Benjamin Civiletti in 1980 and '81 that the government started to treat "spending gaps" — periods when Congress has failed to allocate funds for the ongoing functions of government — as necessitating the full or partial shutdown of government agencies.

But from the Reagan years onward, any period in which Congress failed to pass funding measures has meant that major chunks of the government stop operating. Which parts differ from shutdown to shutdown, but it generally excludes essential services without which the economy would grind to a halt and people would die.

Source: <https://www.vox.com/2018/1/19/16910986/government-shutdown-what-shuts-down-exempt-essential-nonessential>

Thousands of federal programs are affected by the shutdown, but few intersect with the public as much as ... the Department of Agriculture's Supplemental Nutrition Assistance Program, the current version of food stamps.

The partial shutdown has cut off new funding to ... the USDA, leaving them largely unstaffed and crippling both departments' ability to fulfill core functions.

The potential cuts to food stamps ... illustrate the compounding consequences of leaving large parts of the federal government unfunded indefinitely — a -scenario that became more likely Friday when President Trump said he would leave the government shut down for months or even years ... .

The SNAP program is rare among federal initiatives because it requires annual funding from Congress, even though its existence is automatically renewed.

27. At the filing of the Complaint and this Amended Complaint there was no way to restore the Shutdown Services other than by Court order, and this action is the only action seeking such relief.

28. The U.S. economy necessarily will get worse as the length of the shutdown increases, and the economic devastation to about 99% of the individuals in the United States will necessarily take place, unless the shutdown is ended, and the length of time it will take to restore the economy, if it capable of being restored, will be many times longer than the length of the shutdown. The Court needs to take judicial notice of this.

### **Background**

29. Congress and the President of the United States were unable to enact a law or resolution providing for funding of various so-called “non-essential” services of various agencies of the Defendant by Friday, December 21, 2018 (the “Failure to Finance”).

30. By reason of the Failure to Finance, the Defendant shut down part of then existing governmental operations of non-essential (as well as some essential) services starting December 22, 2018 (the “Shutdown”).

31. The non-essential (and other) services that were shut down had been, prior to the Shutdown, duly authorized services of the Defendant and/or its agencies.

32. On August 15, 1971, President Richard M. Nixon eliminated the last restriction on issuance of money when he signed a bill which no longer required United States money to have any backing such as gold or silver. At the time, foreign governments flush with money were demanding payment in gold, which was draining the already diminished supply of gold held by the U.S. government.

33. During the period from 1879 to 1971, any money issued by the United States could only be issued if there was the required amount of gold. As a practical matter, the U.S. went off the gold standard in 1933, and President Nixon ended what little remained in 1971.<sup>5</sup>

34. As a result, starting on August 15, 1971, money could be printed by the Defendant or its agents without regard to any gold, silver or other backing, and was limited only by lawful acts of Congress and the President, through statutory enactments.

35. The non-essential activities were lawfully created by the Defendant and the Defendant is not required to have any further authorization to pay for what already has been authorized, because issuance of money by the Defendant or its agent no longer requires any gold, silver or other backing.

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5. The Founding Fathers wrote a bi-metallic gold-silver standard into the United States Constitution. For the first 40 years of its existence, the U.S. operated on a bi-metallic system of gold and silver. The U.S. stopped using silver as a standard in 1968 (or by the Nixon order in 1971).

36. Whatever authorization was given by Congress and/or the President for the non-essential operations prior to the shutdown is the only authorization needed to make payment for such operations.

37. The Defendant, through enactment of a statute, is always able to eliminate or modify some or all of the non-essential services, but until this is accomplished, the Defendant has a Constitutional duty to continue with its government operations. Any shutdown of government services requires approval of Congress and/or the President.

38. The Defendants' duty to the Plaintiff and other citizens of the United States to continue these governmental services is a justiciable matter for which the Court may grant a writ of mandamus, pursuant to the Mandamus Act, 28 U.S.C. § 1361, to require the Defendants to continue and pay for (or participate in payment for) the non-essential (and other) governmental services unless and until these services have been eliminated or modified by duly enacted statute.

39. Plaintiff together with the other citizens and residents of the United States are irreparably injured by the Shutdown and are entitled to a preliminary injunction ordering the Defendants not to stop paying the U.S. government employees who are being threatened with non-payment of their salaries and other compensation starting on January 9-11, 2019.

**AS AND FOR A FIRST CLAIM  
(Mandamus pursuant to the Mandamus Act, 28 U.S.C. § 1361)**

40. Plaintiff alleges and realleges each of the preceding paragraphs as if they were fully set forth herein.

41. The Mandamus Act, 28 U.S.C. § 1361, entitled “Action to compel an officer of the United States to perform his duty”, provides:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

42. Defendants have a duty to Plaintiff to provide the governmental services authorized by law. The Constitution does not permit the government to be shut down in whole or in part, other than by procedures set forth in the Constitution. As to already authorized government functions, no “Continuing Resolution” or “CR” is needed for funding because the Congress and/or President through statute, rule or regulation has already authorized the governmental services, and instead of requiring an agreement to fund (through a CR) approval of a statute, rule or regulation is required to terminate a government service that has been approved. This is the obvious way to eliminate unconstitutional governmental shutdowns.

43. Defendants Federal Reserve and Chairman Powell are for this purpose an agency and employee of the United States which the Court may make subject to the Court’s mandamus.

44. Plaintiff has no way to enforce this duty other than by obtaining a writ of mandamus compelling the Defendants to pay (or participate in payment) for the non-essential services that have been shut down, so that the services may resume.

45. Plaintiff is being irreparably harmed by the Shutdown, through a partial destruction of the economy in the United States, which is a macro-economic injury incapable of being proven with certainty as to 99% of the citizens and residents of the United States (and micro-economic injury to 800,000 government employees and others no longer receiving their

salaries), so that monetary relief is not possible and under law would not be available in any event, and inevitably is suffered by citizens and others (including the Plaintiff) without recourse.

46. Plaintiff is entitled to a writ of mandamus compelling each of the Defendants to perform his/her duty in the making of payments (or participate in the making of payments) to enable the Shutdown Services to be resumed, unless and until any such services have been terminated or modified by duly enacted statute or duly promulgated rule or regulation.

47. Defendants have found a variety of ways to make payment for some of the shutdown services so that it is not clear what services at any one time have been shut down, and whether such services are “essential” or “non-essential” or either depending upon who is making the assessment.

48. Plaintiff is entitled to a preliminary injunction ordering the Defendants not to stop paying the U.S. government employees who are not being paid (or are being threatened with non-payment of) their salaries and other compensation starting on January 9-11, 2019 or at the present.

**AS AND FOR A SECOND CLAIM  
(Mandamus or Mandatory Injunction under the U.S. Constitution)**

49. Plaintiff alleges and realleges each of the preceding paragraphs as if they were fully set forth herein.

50. The Defendants have a duty under Article II of the U.S. Constitution of maintaining the Executive Branch of the U.S. Government. The Constitution does not permit the government to be shut down in whole or in part, other than by procedures set forth in the Constitution. As to already authorized government functions, no “Continuing Resolution” or

“CR” is needed for funding because the Congress and/or President through statute, rule or regulation has already authorized the governmental services, and instead of requiring an agreement to fund (through a CR) approval of a statute, rule or regulation is required to terminate a government operation that has been approved. This is the obvious way to eliminate unconstitutional governmental shutdowns.

51. Defendants have not followed the Constitutional procedures for reducing governmental services, and as a result continue to have a duty to provide the governmental services being provided without any shutdown of services, non-essential or otherwise.

52. Defendants have a duty to Plaintiff to provide the governmental services authorized by law that were being provided prior to the Shutdown.

53. Plaintiff has no way to enforce this duty other than by obtaining a writ of mandamus or mandatory injunction compelling the Defendants to pay (or facilitate payment) for the non-essential (and other) services that have been shut down, so that the services may resume.

54. Plaintiff is being irreparably harmed by the Shutdown, through a partial destruction of the economy in the United States, which is an injury incapable of being proven with certainty, so that monetary relief is not possible and under law would not be available in any event, and inevitably is suffered by citizens and others (including the Plaintiff) without recourse.

55. Plaintiff is entitled to a writ of mandamus or mandatory injunction compelling each of the Defendants to perform his/her duty in the making of payments to enable (or facilitate the making of payment) the Shutdown Services to be resumed, unless and until any such services have been terminated or modified by duly enacted statute or duly promulgated rule.

56. Plaintiff is entitled to a preliminary injunction ordering the Defendants not to stop paying the U.S. government employees who are being threatened with non-payment of their salaries and other compensation starting on January 9-11, 2019.

**WHEREFORE**, Plaintiff respectfully requests:

1. A writ of mandamus and/or mandatory injunction be granted against each of the Defendants requiring them to make payment and/or issue the money or credits needed to end the Shutdown of government services, unless and until any lawful statute or regulation or order terminates any unnecessary services, at which time the mandamus or mandatory injunction shall cease as to such lawfully terminated unnecessary governmental services, and that such injunction apply to any subsequent shutdowns.

2. A preliminary injunction be granted ordering the Defendants not to stop paying the U.S. government employees who are being threatened with non-payment of their salaries and other compensation starting on January 9-11, 2019.

3. An award of Plaintiff's costs and disbursements; and

4. Such other and further relief which this Court deems just and equitable.

**Dated: New York, New York  
January 23, 2019**



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