



ORDERED, that the above named defendants show cause before a motion term of this Court, at Room 1106 , United States Courthouse, 40 Centre Street, in the City, County and State of New York, on \_\_\_\_\_ , 2019, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendants during the pendency of this action from withholding payment of salaries, expense reimbursements and other compensation to individuals who were federal governmental employees on or after December 18, 2018; and it is further

ORDERED that, sufficient reason having been shown therefor, pending the hearing of plaintiff's application for a preliminary injunction, pursuant to Rule 65, Fed. R. Civ. P., the defendant is temporarily restrained and enjoined from withholding payment of salaries, expense reimbursements and other compensation to individuals who were federal governmental employees on or after December 18, 2018; and it is further

ORDERED that security in the amount of \$ \_\_\_\_\_ be posted by the plaintiff prior to \_\_\_\_\_ , 2019, at o'clock in the \_\_\_\_\_ noon of that day; and it is further

ORDERED that personal service of a copy of this order and annexed affidavit upon the defendants or their respective counsel on or before \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, \_\_\_\_\_ , 2019, shall be deemed good and sufficient service thereof.

DATED: New York, New York

ISSUED: \_\_\_\_\_M

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United States District Judge

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

-----X		
<b>CARL E. PERSON,</b>	:	<b>Civil Action No.</b>
	:	
<b>Plaintiff,</b>	:	
	:	<b>19 Civ. 00154 (LGS)(SDA)</b>
<b>-against-</b>	:	
	:	
<b>UNITED STATES OF AMERICA (Executive</b>	:	<b>SUPPORTING AFFIDAVIT</b>
<b>Branch, Article II of U.S. Constitution),</b>	:	<b>OF CARL E. PERSON</b>
<b>STEVEN MNUCHIN, Secretary of the</b>	:	
<b>Department of the Treasury,</b>	:	
<b>KIRSTJEN NIELSEN, Secretary of</b>	:	
<b>Homeland Security,</b>	:	
<b>ANDREW WHEELER, Acting Administrator</b>	:	
<b>of Environmental Protection Agency,</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,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
-----X		

STATE OF NEW YORK    )  
                                  : ss.:  
COUNTY OF NEW YORK)

**Carl E. Person**, being duly sworn, deposes and says:

1....I am the Plaintiff in the above-captioned action, am fully familiar with the facts stated herein, and make this affidavit in support of my motion, by order to show cause, for the following relief:

order ... pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendants during the pendency of this

action from withholding payment of salaries, expense reimbursements and other compensation to individuals who were federal governmental employees on or after December 18, 2018; and ...

pending the hearing of plaintiff's application for a preliminary injunction, pursuant to Rule 65, Fed. R. Civ. P., temporarily restraining and enjoining the Defendants from withholding payment of salaries, expense reimbursements and other compensation to individuals who were federal governmental employees on or after December 18, 2018....

2. A copy of my complaint is annexed hereto as **Exhibit A**.
3. I graduated from Harvard Law School and was admitted to the Bar of the State of New York in 1962, and have practiced law continuously since my admission in 1962 to the present.
4. I have had my own practice of law since 1968, and I represent individuals and small businesses in what is known as commercial litigation (including foreclosure defense).
5. Many of my clients are unable to pay all of the fees and out-of-pocket expenses incurred in my representation of them, which has resulted in unpaid invoices amounting to about \$1,000,000, a portion of which (I estimate under 30%) has expired by reason of the statute of limitations or by bankruptcy filings.
6. By reason of the partial shutdown of governmental services and threatened non-payment of salaries, expenses and other compensation to 800,000 federal employees, the nation's economy is being threatened with deterioration, with the consequence for me of obtaining fewer clients (because of their inability to pay), reduced payment from those who do hire my law firm, and lower collection on my outstanding receivables.

7. I am not alone. The rest of the country is facing similar economic adversity, particularly professions and businesses, which generally are not able to reduce many of their overhead expenses (such as rent or mortgage) merely because of economic adversity; also, individuals with jobs are being threatened with job loss or lower salaries, causing them their own economic hardship by being unable to pay the rent or mortgage payments, daycare costs, medical expenses or insurance payments, transportation costs, and family food expenses.

8. The Legislative Branch and Executive Branch have authorized and implemented the governmental activities in existence on and after December 18, 2018.

9. Because no statute was enacted to authorize payment for these existing governmental activities (on December 17, 2018), 800,000 federal governmental employees are not receiving on Friday, January 12, 2019 their promised salaries, expense reimbursements and other compensation and most of such individual have been furloughed until payment can be made to them which has resulted in a shutdown of the services for which governmental employees are no longer performing.

10. The United States Government is free to issue any amount of money it requires to make the payments because there is no backing of the U.S. dollar with any gold or silver and there is no treaty limiting the United States of America in issuing money.

11. The Federal Reserve System can facilitate the payment by creating the monetary credits needed to make payment of the salaries, expense reimbursement and other compensation of the furloughed and other non-paid federal government employees (numbering about 800,000).

12. Defendants Mnuchin, Nielsen and Wheeler have a ministerial duty to order payment.

13. I, as an active attorney with my own law practice in the Southern District of New York, have standing to commence this action as someone being threatened with irreparable harm with the closing down or partial closing down of the federal Judiciary, which according to CBS and other new reports is going to run out of funds on January 11, 2019 or January 18, 2019, at which time the Judiciary will have to make cutbacks in their judicial services.

14. The Judiciary relies upon the other two Branches to provide funding to the Judiciary through “discretionary” appropriations, and the failure to finance the Judiciary threatens the checks and balances of the 3-Branch Constitutional system:

The Judicial Conference is grateful for the support that Congress has shown the Judiciary by providing favorable funding levels since sequestration. The Conference is hopeful that Congress will continue to provide sufficient resources in fiscal years 2018 and 2019. Our constitutional system of government, with separation of powers and checks and balances, cannot function as intended if the judicial branch is insufficiently resourced. We ask that Congress take into account the nature and importance of the work of the federal courts and continue to make the Judiciary a funding priority.

[https://www.uscourts.gov/sites/default/files/fy\\_2019\\_congressional\\_budget\\_summary\\_final\\_0.pdf](https://www.uscourts.gov/sites/default/files/fy_2019_congressional_budget_summary_final_0.pdf)

15. It has been reported in numerous publications that the federal judiciary is going to run out of money to fund its current level of operations on January 11, 2019 or perhaps on January 18, 2019, as reported:

**Jan. 11 also was the day the federal judiciary estimated courts would run out of operating funds, but officials revised that estimate this week and pushed the deadline to Jan. 18. Each court, on that date, would make its own determinations on “the staff necessary to support its mission-critical work.” That is set to include resolution of cases, but Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, still expressed concern.**

<https://www.govexec.com/pay-benefits/2019/01/jan-11-pay-deadline-looms-gop-senators-express-increased-urgency-ending-shutdown/154022/>

**Federal courts are still open and operating through January 11, by relying on court fee balances and funds that do not depend on a congressional appropriation. Should the shutdown extend beyond that date, the courts would continue to operate under the Anti-Deficiency Act, in support of Article III powers. However, staffing could be reduced.**

<https://www.cbsnews.com/news/government-shutdown-what-closed-open-affected-explained-post-office-irs-national-parks-2019-01-05/>

16. Defendant United States of America is not necessary as a defendant because Defendants Steven Mnuchin, Kirstjen Nielsen and Andrew Wheeler have no sovereign-immunity claim and have the authority to perform the ministerial act and duty of paying the 800,000 federal employees who are supposed to be paid on January 11, 2019 and thereby ending the shutdown.

17. For reasons set forth in the accompanying Memorandum of Law, there is no technical barrier to creating the money to make the payment because (i) the nation is no longer on any gold or silver standard (as of 1971, ending the convertibility of dollars into gold; and (ii) there are no treaties limiting the nation's ability to create money.

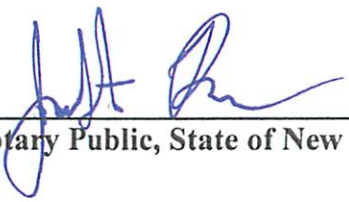
18. Defendant Federal Reserve and its Chairperson, Defendant Jerome Powell, under the Federal Reserve Act of 1913, have the power to increase the nation's money supply to make

whatever payment is needed to continue government operations until the Congress and President are able to reach an agreement.



\_\_\_\_\_  
Carl E. Person

Subscribed and sworn to before me this 11<sup>th</sup> day of January, 2019.



\_\_\_\_\_  
Notary Public, State of New York

JUSTIN G BROWN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01BR6359103  
Qualified In Kings County  
My Commission Expires 05-21-2021



**Exhibit A**

**Exhibit A**

JUDGE SCHOFIELD

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

19 CV 00154

CARL E. PERSON,

Civil Action No.

Plaintiff,

COMPLAINT

-against-

[Mandamus Action to  
End Government Shutdown]

UNITED STATES OF AMERICA (Executive  
Branch, Article II of U.S. Constitution),  
STEVEN MNUCHIN, Secretary of the  
Department of the Treasury,  
KIRSTJEN NIELSEN, Secretary of  
Homeland Security,  
ANDREW WHEELER, Acting Administrator  
of Environmental Protection Agency,  
THE BOARD OF GOVERNORS OF THE FEDERAL  
RESERVE SYSTEM a/k/a the Federal Reserve, and  
JEROME POWELL, Chairman, The Board  
of Governors of the Federal Reserve System  
a/k/a the Federal Reserve,

Defendants.

FILED  
U.S. DISTRICT COURT  
2019 JAN -7 PM 3:17  
S.D. OF N.Y.

Plaintiff, acting *pro se*, for his complaint against the Defendants, alleges as follows:

INTRODUCTION

1. This action is brought as a “Bivens”<sup>1</sup> direct Constitutional action to require by mandamus each of the above-captioned Defendants to maintain by payment (or facilitation of payment) of 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.

1. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

2. 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>

3. 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.

4. “Non-essential services” does not apply to all that has been shut down. 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>3</sup>

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3. 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>

5. 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.

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.

## PARTIES

6. Plaintiff, **Carl E. Person**, citizen of the United States and a resident of New York, NY, is an attorney, taxpayer and consumer of some of the services which have been shut down by Defendant. Plaintiff ran (unsuccessfully) for New York State Attorney General as a Libertarian in 2010 and 2014.

7. 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 government 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.

8. The extent of the shutdown involving 800,000 federal employees can be seen by reference to the 2013 shutdown.<sup>4</sup>

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4. 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)

9. Defendant, **Steven Mnuchin** (“**Secretary Mnuchin**”), 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.

10. Defendant, **Kirstjen Nielsen** (“**Secretary Nielsen**”), 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. :

11. Defendant, **Andrew Wheeler** (“**Acting Administrator Wheeler**”), 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.

12. 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 non-essential government 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 government agencies that is participating in the shutdown of non-essential services, and has failed to perform this duty.

13. Defendant, **Jerome Powell** (“**Chairman Powell**”), 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 [in his capacity as Chairman] has participated in the shutdown by not permitting creation of the money needed to make payment for the non-essential 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 government agencies that is participating in the shutdown of so-called “non-essential services” (including some essential services), and has failed to perform his duty.

14. *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.

15. The effect of the shutdown is to create a partial shutdown of 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.

16. 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. Thus, an injunction ordering Defendants to continue payments, if issued right away, would not be resurrecting payments that already have been stopped.

#### **JURISDICTION**

17. 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.

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**

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

## FACTUAL BACKGROUND

19. 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”).

20. 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”).

21. 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.

22. 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.

23. 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>

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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).

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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)**

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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

**AS AND FOR A SECOND CLAIM  
(Mandamus or Mandatory Injunction under a Bivens Federal Civil Rights Action)**

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

39. 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.

40. 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.

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

42. 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.

43. 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.

44. 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.

45. 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 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.

2. 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.

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 7, 2019**



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**Carl E. Person, pro se**  
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Cell: 917-453-9376  
Email: carlpers2@gmail.com





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

-----X		:
<b>CARL E. PERSON,</b>		:
		:
	<b>Plaintiff,</b>	:
		:
<b>-against-</b>		:
		:
<b>UNITED STATES OF AMERICA (Executive Branch, Article II of U.S. Constitution), STEVEN MNUCHIN, Secretary of the Department of the Treasury, KIRSTJEN NIELSEN, Secretary of Homeland Security, ANDREW WHEELER, Acting Administrator of Environmental Protection Agency, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM a/k/a the Federal Reserve, and JEROME POWELL, Chairman, The Board of Governors of the Federal Reserve System a/k/a the Federal Reserve,</b>		:
		:
	<b>Defendants.</b>	:
		:
-----X		:

**Civil Action No.  
  
19 Civ. 00154 (LGS)(SDA)**

**MEMORANDUM OF LAW IN SUPPORT OF ORDER  
TO SHOW CAUSE FOR A PRELIMINARY  
INJUNCTION AND TEMPORARY RESTRAINING ORDER**

**PRELIMINARY STATEMENT**

This is an action to end the governmental shutdown, which at this time is taking place by a Legislative Branch practice of authorizing government activities, hiring governmental employees, and paying them through legislation which authorizes payment, until the authorized money runs out and further authorization is needed.

This method of paying for government is not required by the Constitution, and authorization of payment at the time that governmental activities are enacted into law is consistent with the U.S. Constitution, and would enable a partial cessation of governmental activities by vote and statute instead of by a shutdown caused by failure to agree.

The Plaintiff, a citizen and resident of New York, and a SDNY attorney (since 1970), has commenced this action to end the shutdown and now seeks a preliminary injunction and temporary restraining order for reasons set forth below in this Memorandum of Law in Support of Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order.

## **STATEMENT OF FACTS**

The elements of the United States government are set forth in Articles I-III of the U.S. Constitution, which creates 3 co-equal branches of the government, the Legislative, the Executive and the Judiciary.

The U.S. Constitution does not permit any or all of the 3 branches to be put out of business, even for as little as one day.

The U.S. Constitution does not permit a partial shutdown of governmental operations other than by statute duly enacted, or by rules and regulations pursuant to duly enacted statutes.

Failure by the Legislative Branch to provide funding for existing governmental operations is not the proper way under the U.S. Constitution to reduce governmental operations. A duly enacted statute is required instead.

The Legislative Branch and Executive Branch have authorized and implemented the governmental activities in existence on and after December 18, 2018 and these activities cannot be ended without duly enacted statute ending such activities.

Because no statute was enacted to authorize payment for these existing governmental activities (on December 17, 2018), 800,000 federal governmental employees are not receiving their promised salaries, expense reimbursements and other compensation and most of such individual have been furloughed until payment can be made to them.

The United States Government under the Constitution requires payment to keep the existing governmental services in operation.

Congress and the President have already authorized and implemented these services.

The United States Government is free to issue any amount of money it requires to make the payments because there is no backing of the U.S. dollar with any gold or silver and there is no treaty limiting the United States of America in issuing money.

Congress and the President have already authorized these shutdown services.

The Federal Reserve System can facilitate the payment by creating the monetary credits needed to make payment of the salaries, expense reimbursement and other compensation of the furloughed and other non-paid federal government employees (numbering about 800,000).

Defendants Mnuchin, Nielsen and Wheeler have a ministerial duty to order payment.

The U.S. Constitution provides whatever authority is needed to prevent destruction or partial destruction on any of the 3 co-equal branches of the U.S. government, other than by duly enacted Constitutional Amendment.

Laws and practices that are incompatible with the Constitutional requirement of maintenance of the 3 co-equal Branches of government are invalid.

No Branch or Branches has or have a Constitutional right to shut down the remaining Branch(es) of government.

No Branch or Branches has or have a Constitutional right to partially shut down the remaining Branch(es), other than by duly enacted law.

Plaintiff, Carl E. Person, an active attorney in the Southern District of New York, has standing to commence this action as someone being threatened with irreparable harm with the closing down or partial closing down of the federal Judiciary.

Plaintiff, Carl E. Person, as a citizen and resident, and with standing as set forth in the preceding paragraph has standing to commence this action as to all aspects of the shutdown.

The Judiciary relies upon the other two Branches to provide funding to the Judiciary through “discretionary” appropriations, and the failure to finance the Judiciary threatens the checks and balances of the 3-Branch Constitutional system:

The Judicial Conference is grateful for the support that Congress has shown the Judiciary by providing favorable funding levels since sequestration. The Conference is hopeful that Congress will continue to provide sufficient resources in fiscal years 2018 and 2019. Our constitutional system of government, with separation of powers and checks and balances, cannot function as intended if the judicial branch is insufficiently resourced. We ask that Congress take into account the nature and importance of the work of the federal courts and continue to make the Judiciary a funding priority.

[https://www.uscourts.gov/sites/default/files/fy\\_2019\\_congressional\\_budget\\_summary\\_final\\_0.pdf](https://www.uscourts.gov/sites/default/files/fy_2019_congressional_budget_summary_final_0.pdf)

## **ARGUMENT**

### **I.**

#### **PLAINTIFF MEETS THE STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF**

##### **Legal Standard**

To obtain a preliminary injunction, a moving party must show: (1) “a likelihood of success on the merits or . . . sufficiently serious questions going to the merits to make them a fair



ground for litigation and a balance of hardships tipping decidedly in the plaintiff’s favor”; (2) a likelihood of “irreparable injury in the absence of an injunction”; (3) that “the balance of hardships tips in the plaintiff’s favor”; and (4) that the “public interest would not be disserved.” See Benihana, Inc. v. Benihana of Tokyo, LLC, 784 F.3d 887, 894-95 (2d Cir. 2015) (internal citations omitted). The temporary restraining order standard is the same. See, e.g., Echo Design Grp. v. Zino Davidoff S.A., 283 F. Supp. 2d 963, 966 (S.D.N.Y. 2003).

**Plaintiff Satisfies the Requirements  
for a Temporary Restraining Order  
and for a Preliminary Injunction**

**A. Plaintiff Will Succeed on the Merits.**

To establish a likelihood of success on the merits, a plaintiff “need not show that success is certain, only that the probability of prevailing is ‘better than fifty percent’”. BigStar Entm’t, Inc. v. Next Big Star, Inc., 105 F. Supp. 2d 185, 191 (S.D.N.Y. 2000) (quoting Abdul Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir. 1985)). While Plaintiff surpasses this standard, he can certainly satisfy the alternative test of “sufficiently serious questions going to the merits to make them a fair ground for litigation” given that the balance of hardships stemming from any limited and temporary relief tips decidedly in Plaintiff’s favor. See Benihana, 784 F.3d at 894-95 (internal citations omitted); see also § C below.

**B. Plaintiff Will Suffer Irreparable  
Harm Absent Injunctive Relief**

To demonstrate irreparable harm, a plaintiff must show an injury that is “actual and imminent” and “cannot be remedied by an award of monetary damages.” Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 332 (2d Cir. 1995) (citation and internal quotation marks omitted).

**C. The Balance Of Hardships Tilts Decidedly Toward Plaintiff**

The balance of the harms decidedly supports injunctive relief. There is no harm to the Defendants if the injunctive relief is granted. The government is losing tax revenues through a declining economy caused by the shutdown, and payment of any salaries, expenses or other compensation that otherwise would not have been paid is offset by the loss of the governmental services represented by such saved amounts. Grant of the preliminary injunction would be beneficial to the Defendants.

The harm to the Plaintiff continues and increases as the economy deteriorates by reason of the shutdown, and because virtually everyone is adversely, financially affected by the shutdown, the Defendants are not able to compensate everyone for their injuries because the injuries are macro-economic (not directly traceable) for the most party, and even if calculable and paid to every citizen and resident would result in a proportionate decline in value if the paid amount through inflation.

Everyone in the United States is suffering macro (non-calculable) injuries by the shutdown, from losses resulting from delays, higher food prices, lost business or income opportunities, thousands of different ways that everyone is affected by a partial shutdown of government, which harm is not calculable, and therefore irreparable, and requiring an injunction to stop.

**D. The Public Interest Favors Granting Injunctive Relief**

The public interest also favors granting the preliminary injunction. Eight hundred thousand government employees are threatened with eviction, foreclosure, loss of private schooling, loss of necessary food stamps, loss of money needed to pay for baby sitting or other

services, or for required transportation. The remaining citizens and residents, numbering more than 3 billion are suffering their own respective macro-economic injuries and have no way to obtain any redress for their existing and future injuries.

The public interest strongly favors granting the injunctive relief.

Plaintiff's requested relief also serves the public interest in judicial economy. Grant of the preliminary injunction would reduce the number of lawsuits to be expected from an extended shutdown.

## **II.**

### **THE PLAINTIFF HAS STANDING TO OBTAIN THE RELIEF SOUGHT IN THE COMPLAINT**

Plaintiff is an attorney in New York practicing law since the date of his admission, in 1962, was admitted to practice in the Southern District of New York in 1970, and remains an attorney admitted to practice in the SDNY.

Plaintiff has had his own law practice since 1968.

The partial shutdown of government services is already causing injury to the economy in the United States, which causes injury to most citizens and residents, including the Plaintiff.

Also, because Plaintiff is an attorney, he is being threatened with a loss of business and income from a threatened total or partial shutdown of the federal courts, through the failure of court financing caused by the Legislative and Executive branches of the United States government.

Plaintiff has standing as an attorney to challenge the practice of the Legislative and Executive Branches to partially (or wholly) shutdown government services of one or more of the

3 Branches to coerce legislators and/or the President into enacting statutes they are unwilling to enact otherwise.

If this practice is permitted to continue, power of the United States government could wind up in the hands of the President, with voters having a diminished say through their election of federal Legislators. Thus, the shutdown is an unconstitutional way of reducing the effect of voting.

The shutdown is an unconstitutional threat to voters and an unconstitutional reduction of the impact of their votes.

It has been reported in numerous publications that the federal judiciary is going to run out of money to fund its current level of operations on January 11, 2019 or perhaps on January 18, 2019, as reported:

Jan. 11 also was the day the federal judiciary estimated courts would run out of operating funds, but officials revised that estimate this week and pushed the deadline to Jan. 18. Each court, on that date, would make its own determinations on “the staff necessary to support its mission-critical work.” That is set to include resolution of cases, but Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, still expressed concern.

<https://www.govexec.com/pay-benefits/2019/01/jan-11-pay-deadline-looms-gop-senators-express-increased-urgency-ending-shutdown/154022/>

Federal courts are still open and operating through January 11, by relying on court fee balances and funds that do not depend on a congressional appropriation. Should the shutdown extend beyond that date, the courts would continue to operate under the Anti-Deficiency Act, in support of Article III powers. However, staffing could be reduced.

<https://www.cbsnews.com/news/government-shutdown-what-closed-open-affected-explained-post-office-irs-national-parks-2019-01-05/>

The failure of anyone else to commence this lawsuit is a factor that should be taken into account on the issue of standing. If the Plaintiff does not have standing, who does?

Is there any person with standing to enforce the Constitutional requirement of 3 operating or functioning Branches of the United States government? Or does any citizen or resident have the right to enforce that Constitutional requirement when it is being threatened?

In summary, the Plaintiff has standing as a practicing attorney to raise the issues herein, and has further standing as a citizen and resident of the United States to raise the issues.

### **III.**

#### **PLAINTIFF MEETS THE STANDARD FOR MANDAMUS RELIEF**

##### **A. Mandamus Requirements**

The district courts have no jurisdiction of a suit seeking mandamus against the United States. United States v. Jones, 131 U.S. 1 (1889); Minnesota v. United States, 305 U.S. 382 (1939); McCune v. United States, 374 F. Supp. 946 (S.D.N.Y. 1974). But 28 U.S.C. § 1361 does give the United States district court jurisdiction of "an 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...."

Courts have no authority to grant relief in the nature of mandamus if the plaintiff has an adequate legal remedy aside from mandamus, such as a suit for monetary judgment or the opportunity to raise the legal issues involved in a suit brought by the government. United States ex rel. Girard Trust Co. v. Helvering, 301 U.S. 540, 544 (1937); Spielman Motor Co. v. Dodge,

295 U.S. 89 (1935); Lovallo v. Froehlke, 468 F.2d 340 (2d Cir. 1972), cert. denied, 411 U.S. 918 (1973).

Mandamus is not available, if a statutory method of review is authorized. Wellens v. Dillon, 302 F.2d 442 (9th Cir.), app. dismiss., 371 U.S. 90 (1962).

Mandamus does not supersede other remedies; it only comes into play when there is a want of such remedies. See Carter v. Seamans, 411 F.2d 767 (5th Cir. 1969), cert. denied, 397 U.S. 941 (1970).

The power of a district court to compel official action by mandatory order is limited to the enforcement of nondiscretionary, plainly defined, and purely ministerial duties. See Work v. Rives, 267 U.S. 175, 177 (1925); Wilbur v. United States, 281 U.S. 206, 218 (1930).

An official action is not ministerial unless "the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command." Wilbur v. United States, *supra*; See United States ex rel. McLennan v. Wilbur, 283 U.S. 414, 420 (1931); ICC v. New York, N.H. & H.R. Co., 287 U.S. 178, 204 (1932); United States ex rel. Girard Trust Co. v. Helvering, *supra*; Will v. United States, 389 U.S. 90 (1967); Donnelly v. Parker, 486 F.2d 402 (D.C. Cir. 1973). "But where there is discretion . . . even though its conclusion be disputable, it is impregnable to mandamus." United States ex rel. Alaska Smokeless Coal Co. v. Lane, 250 U.S. 549, 555 (1919).

## **B. Mandamus Requirements Have Been Met**

The motion for mandamus is made only as to agencies and employees of the United States government (i.e., Steven Mnuchin – Secretary of the Treasury; Kirstjen Nielsen, Secretary of Homeland Security; and Andrew Wheeler, Acting Administrator of Environmental Protection

Agency), to compel them to make payment to the 800,000 government employees that are no longer being paid because of the shutdown.

The action is to compel them to do their duty and make the payment.

This is a duty owed to the Plaintiff who is entitled not to have a partial shutdown of the government.

The Plaintiff has no adequate legal remedy other than mandamus. Plaintiff has and will continue to have macro-economic injuries which cannot be proven with certainty, and therefore are irreparable. Also, these macro-economic damages are being suffered by most individuals and businesses in the country and result in a deterioration of the economy, which is not compensable. Payment to all would through inflation eliminate the payment.

The Plaintiff has no opportunity to raise the issues in any lawsuit brought by the government.

There is no statutory method of review available.

In short, there is a lack of any remedies other than mandamus.

The mandatory order would be limited to the enforcement of non-discretionary duties of the Defendants, to make payment.

The duty is free from doubt and equivalent to a positive command because there is no right under the U.S. Constitution for one or two Branches to stop the lawful operations of another Third Branch.

#### **IV.**

### **THE DOCTRINE OF SOVEREIGN IMMUNITY DOES NOT PROHIBIT THIS ACTION**

The doctrine of sovereign immunity is not referred to in the U.S. Constitution. (Neither the word “sovereign” nor the word “immunity” is contained in the Constitution). “Immunities” is mentioned two times, relating to immunities of citizens.

Sovereign immunity protected the King from lawsuits because “The King could do no wrong.”

The 1946 federal Tort Claims Act, 28 U.S.C. § 1346, waives the sovereign immunity doctrine as to some lawsuits involving torts, but Plaintiff’s claim is not one in tort, so that the federal Tort Claims Act does not waive sovereign immunity as to Plaintiff’s claims.

If the government was not shut down in part, there would be no need of any lawsuit or waiver of sovereign immunity.

If the Constitutional requirement of 3 operating branches of government were met, there would be no need of any lawsuit or waiver of sovereign immunity.

The Sovereign Immunity doctrine does not apply when the Constitutional requirements of 3 operating Branches of the government do not exist. The right of the Plaintiff and the other citizens and residents of the United States to the Constitutional government of 3 co-equal Branches enables this action to be brought against the Defendant United States of America without regard to the doctrine of Sovereign Immunity.



**V.**

**THIS LAWSUIT RAISES JUSTICIABLE  
ISSUES, AND NOT POLITICAL ISSUES**

The Courts are not permitted to decide political issues, and the partial shutdown of government services is clearly political.

The legal issues for this Court to decide also exist, and the Plaintiff has not sought more relief than is warranted by the legal issues involved.

Plaintiff argues that it is a legal issue when one or two of the three Branches of government partially shut down the operations of the Third Branch of government without doing this by duly enacted statute (or rule or regulation thereunder).

There is no right to hold any of the Branches hostage by withholding payment to employees of existing government operations (in any or all of the three Branches) unless Congress gives the President what he wants.

This practice if permitted would make the President a King and reduce the power of Congress, the Judiciary and the Voters accordingly.

**VI.**

**FUNDS ARE AVAILABLE TO MAKE THE PAYMENT**

Defendant United States of America is not necessary as a defendant to order payment because Defendants Steven Mnuchin, Kirstjen Nielsen and Andrew Wheeler have no sovereign-immunity claim and have the authority to perform the ministerial act and duty of paying the 800,000 federal employees who are supposed to be paid on January 11, 2019 and thereby end the shutdown.

There is no technical barrier to creating the money to make the payment because (i) the nation is no longer on any gold or silver standard (as of 1971, ending the convertibility of dollars into gold [source: [https://www.federalreservehistory.org/essays/gold\\_convertibility\\_ends](https://www.federalreservehistory.org/essays/gold_convertibility_ends)]; and (ii) there are no treaties limiting the nation's ability to create money.

Defendant Federal Reserve and its Chairperson, Defendant Jerome Powell, under the Federal Reserve Act of 1913, 12 U.S.C. § 226, have the power to increase the nation's money supply to make whatever payment is needed to continue government operations until the Congress and President are able to reach an agreement.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests his motion by order to show cause for the entry of (1) a temporary restraining order pending the resolution of the motion for a preliminary injunction, and (2) a preliminary injunction pending the resolution on the merits of the present action be granted.

**Dated; New York, New York  
January 11, 2019**



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