UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL E. PERSON,	:	**Civil Action No.**
Plaintiff,	:	**19 Civ. 00154 (LGS)(SDA)**
-against-	:	
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.	:	

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

Dated: New York, New York
January 26, 2019

Carl E. Person, *pro se*
225 E. 36th Street – 3A
New York NY 10016-3664
Tel: 212-307-4444
Cell: 917-453-9376
Email: carlpers2@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont'd)

TABLE OF CONTENTS (Cont'd)

TABLE OF CASES AND AUTHORITIES

Page(s)

CASES:

TABLE OF CASES AND AUTHORITIES (Cont'd)

Page(s)

CASES: (Cont'd)

TABLE OF CASES AND AUTHORITIES (Cont'd)

Page(s)

U.S. CONSTITUTION:

STATUTES AND RULES:

OTHER AUTHORITIES:

USGS_Memo of Law2 supp Prelim Inj Mot Dr01_012519 .doc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL E. PERSON,	:	**Civil Action No.**
Plaintiff,	:	**19 Civ. 00154 (LGS)(SDA)**
-against-	:	
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.	:	

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

PRELIMINARY STATEMENT

This is an action to end the governmental shutdown, which at the time of filing of the Complaint and Amended Complaint was 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, at which time the Antideficiency Act (the "ADA") requires a shutdown.

Under the ADA and agency plans thereunder, services deemed "essential" continue to be performed by selected employees, but are not to receive any paychecks during the shutdown. The remaining furloughed, "non-essential" employees do not perform any services and do not receive any paychecks during the shutdown. During the shutdown, the non-essential employees are aware that they may or may not be paid for the time they have not worked.

The method of Congressional funding through appropriation process and the ADA are inconsistent with the U.S. Constitution if the Constitution prohibits a shutdown of any or all three co-equal branches of government.

On January 25, 2019, President Trump announced an agreement to end this shutdown for a period of 3 weeks, but threatened to resume the shutdown of February 15th if certain conditions were not met during that 3-week period (see ¶ 11(o) at p. 6 of the Plaintiff's moving declaration).

For this reason, the shutdown today is still in effect, with a possibility of a 3-week hiatus, and a threat of resumption on or after February 15, 2019, and there remains the additional issue that, if shutdowns of this type are not enjoined by the federal Judiciary, President Trump and his successor from either or any party would employ additional shutdowns to require Congress, for example, to end Social Security or to enact a single-payer healthcare system, or to terminate any such legislation, leaving the United States in a state of chaos not envisioned or desired by the framers of the Constitution.

The Plaintiff, a citizen and resident of New York, and a SDNY attorney (since 1970), has commenced this action to end the shutdown. Plaintiff's initial motion (by order to show cause) for injunctive relief (including a temporary restraining order) was denied for lack of standing. Plaintiff then amended his complaint and now seeks a preliminary injunction for

reasons set forth below in this Memorandum of Law in Support Motion for a Preliminary Injunction.

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 (through a "shutdown"), 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 the "non-essential" employees have been furloughed until payment to them is authorized. The "essential" employees are required to work without receiving their paychecks, and essentially promised to be paid for such shutdown services if or when the government shutdown is ended.

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.

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 any of the Branches of government partially or otherwise.

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 (see ¶¶ 11-14 of the moving declaration).

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

ARGUMENT

I.

ARTICLE III JUDGES HAVE A CONSTITUTIONAL RIGHT TO BE PAID EVEN IF THERE IS NO LEGISLATIVE APPROPRIATION

It is commonly believed that Article III judges have a right to be paid, even during a partial shutdown, by reason of USCS Const. Art. III, § 1 which provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Because the Services of Article III Judges require a courtroom, Westlaw, electricity, telephones, toilet facilities, security and other support personnel, computers and other

expenditures, these other expenses to support the Article III Judges are equally protected by § 1, otherwise the Article III Judges would not "hold their Offices" during a shutdown (in which only Article III Judges were paid, but nothing else.

The Constitution intended to protect the federal judiciary from being shut down by legislative enactment which decreased the compensation of Article III Judges, and this protection is required for other judiciary expenses to enable the Article III Judges to hold their Offices.

In other words, the partial shutdown as to the Judicial Branch is unconstitutional.

II.

THE ANTIDEFICIENCY ACT SHOULD NOT BE CONSTRUED TO SHUTDOWN ANY OPERATIONS OF THE JUDICIARY BECAUSE OF ITS CONSTITUTIONAL PROTECTION

Federal governmental shutdowns started in 1976 when the current process of appropriations began. See the Wikipedia history of federal shutdowns at https://en.wikipedia.org/wiki/Government_shutdowns_in_the_United_States .

The Antideficiency Act, 31 U.S. Code § 1341 (the "ADA"), established a shutdown procedure. See the Wikipedia article on the ADA at https://en.wikipedia.org/wiki/Antideficiency_Act .

The federal judiciary should be construed as fully funded under the ADA (as Constitutionally protected), so that none of its operations are subject to shutdown.

III.

THE ANTIDEFICIENCY ACT SHOULD NOT BE CONSTRUED TO SHUT DOWN ANY OPERATIONS OF THE EXECUTIVE BRANCH WHICH THE U.S. CONSTITUTION REQUIRES TO EXIST AND REMAIN IN OPERATION

Article III, § 1 of the U.S. Constitution requires the co-equal Judicial Branch to continue its operations without shutdown by reason of funding failure. The current method of appropriations and the ADA need to be construed in this light, and the co-equal Executive Branch under Article II of the U.S. Constitution is also unable to be shut down, as to operations in existence prior to a shutdown under the ADA.

IV.

PURPOSE OF THE STANDING REQUIREMENT

Standing is used to prevent the Judiciary from deciding political issues, as explained by the Supreme Court in Hollingsworth v. Perry, 570 U.S. 693, 704-705 (2013), as follows:

> The doctrine of standing, [****16] we recently explained, "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U. S. 398, 408, 133 S. Ct. 1138, 1146, 185 L. Ed. 2d 264, 275 (2013). In light of this "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of [*705] [an] important dispute and to 'settle' it for the sake of convenience and efficiency." *Raines* v. *Byrd*, 521 U. S. 811, 820, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997) (footnote omitted).

If injury is widespread, the amount of injury required for standing is reduced. See Massachusetts v. EPA, 549 U.S. 497, 525 (2007), in which the Supreme Court stated:

> See also *Mountain States Legal Foundation* v. *Glickman*, 320 U.S. App. D.C. 87, 92 F.3d 1228, 1234 (CADC 1996) (***HN10*** "The

> more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing"); *Village of Elk Grove Village* v. *Evans*, 997 F.2d 328, 329 (CA7 1993) ("[E]ven a small probability of injury is sufficient to create a case or controversy--to take a suit out of the category of the hypothetical--provided of course that the relief sought would, if granted, reduce the probability").

V.

REQUIREMENTS FOR STANDING

To have standing, the Plaintiff is must demonstrate three requirements, as set forth in Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-60, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)), as follows:

> To establish standing, a plaintiff must demonstrate three minimal constitutional requirements:
>
> (1) an "injury in fact" that is both (a) concrete and particularized, and (b) actual or imminent, rather than conjectural or hypothetical;
>
> (2) a causal connection between the alleged injury and the defendant's conduct; that is, that the injury is "fairly traceable" to the challenged action; and
>
> (3) that it is likely that a favorable decision will redress the injury.

VI.

THE PLAINTIFF HAS STANDING TO OBTAIN THE RELIEF SOUGHT IN THE AMENDED COMPLAINT

Injury in Fact that is both Concrete and Particularized, and Actual or Imminent

Plaintiff has set forth in ¶¶ 11(a)-11(o) of his declaration 15 facts that support his standing.

Also, Plaintiff has set forth in ¶¶ 12-A through 12-D and 13 specific facts showing how the Plaintiff in this action has been denied due process by reason of the shutdown's effect on the federal Judiciary.

Also, Plaintiff has set forth in ¶¶ 14-16 supporting facts as to which Plaintiff wants the Court to recognize through judicial notice.

The foregoing facts (in ¶¶ 11-16) show that the Plaintiff has concrete and particularized injury, both actual and imminent (i.e., threatened).

The Plaintiff's injuries are in many ways far more extensive than the shutdown injuries suffered by most individuals and entities (collectively referred to as "persons") in this country.

The Plaintiff is in business (with his law practice) and most persons are not; the Plaintiff is 82 years old and still engaged in business and would be far less able to re-create a law practice if his current law practice were destroyed by the shutdown. The Plaintiff is an active member of the federal courts and an active civil-litigation practitioner in the federal courts, whereas most attorneys are not litigators, and for those that are litigators most are not licensed to practice in and actually litigating in the federal Article III courts, and therefore the Plaintiff is far more affected by the shutdown as affecting the federal courts than most attorneys.

The Plaintiff has also been injured through a 3-hour delay in his air travel on January 8-9, 2019, from Rochester, New York to LaGuardia airport in Queens, New York resulting from the shutdown which caused Plaintiff a loss of gross income of about $450 per hour (his billing rate) before discounting for average non-collectability and average non-billable overhead.

Also, the Plaintiff pro se has been injured in this specific case by reason of the decrease in judicial services made available to Plaintiff in this specific action, as described in ¶¶ 12-13 of Plaintiff's moving declaration.

This is only a partial description of the greater injury being suffered by or threatened to the Plaintiff by reason of the shutdown and threat of resumption of any actual temporary (3-week) termination of the shutdown.

Plaintiff's Injury is Causally Connected or Fairly Traceable to the Shutdown

The Plaintiff's injury would not have occurred in absence of the shutdown. The injury occurred subsequent to and by reason of the shutdown, and is causally connected and obviously traceable to the shutdown.

It is Likely that a Favorable Decision Will Redress Plaintiff's Injury

The Plaintiff's injury, actual and threatened, is caused by the shutdown, and a mandamus order and/or injunction terminating the shutdown now and subsequently will redress Plaintiff's Injury. The threat of being put out of business (i.e., termination of Plaintiff's law practice) and the loss of clients, and the denial of due process by reason of the reduced judicial services resulting from the shutdown would be ended if the relief is granted, so that there is a redress of Plaintiff's injury. If Plaintiff already had lost his practice (which is not the case), there would be an argument that a favorable decision would not redress Plaintiff's injury.

The fact that some of Plaintiff's injuries are widely shared does not minimize Plaintiff's interest in the outcome of this litigation. Massachusetts v. EPA, 549 U.S. 497, 522 (2007), and see Federal Election Comm'n v. Atkins, 524 U.S. 11, 24, 118 S. Ct. 1777, 141 L. Ed. 2d 10 (1998) which stated "[W]here a harm is concrete, though widely shared, the Court has found 'injury in fact".

Standing of Others

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?

The Executive Branch, represented by the President, has refused opportunities to end the shutdown and therefore has no standing. The 3-week suspension enacted on January 25, 2019 was accompanied by a threat of the President to renew the shutdown on February 15, 2019 if certain objectives of the President were not met.

The Legislative Branch as a group has not enacted any legislation or resolution permitting it (or either branch) to commence a lawsuit to end the shutdown, and the Supreme Court has held that individual members of Congress have no standing. Raines v. Byrd, 521 U.S. 811, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997) (lack of personal stake in the alleged suit).

The Judicial Branch has not initiated any proceeding to end the shutdown.

No other attorney (pro se or on behalf of a client) has commenced any mandamus or injunction action to end the shutdown as far as Plaintiff can tell.

No other person has commenced any mandamus or injunction action to end the shutdown as far as Plaintiff can tell.

For the foregoing reasons, the Court should not deny Plaintiff's asserted standing and permit a full record to be developed for review by higher Article III courts.

Summary

In summary, the Plaintiff has standing to raise the issues herein, both as to the current shutdown and as to any threatened or future shutdowns.

VII.

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). Plaintiff has demonstrated that his injuries are irreparable (including but not limited to threatened loss of 82-year old Plaintiff's law practice; denial of due process in this particular action caused by shutdown-reduction of judicial services; and the monetary losses the Plaintiff has suffered already and are increasing, augumented by any additional monetary losses from threatened future shutdowns, are not capable of being calculated because of the macro-economic effect of the shutdown upon Plaintiff, making the losses irreparable; with the further irreparability that almost every person in the United States is suffering from irreparable damages for which there is no adequate remedy other than ending the shutdowns forever.

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 lf the paid amount through inflation.

Almost 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. As the shutdown continues (for longer than any prior shutdown) it is becoming clear that essential employees working without paycheck cannot and will not continue to do so. As the shutdown continues, more of the essential employees do not report to work (causing flights at LaGuardia and other airports to be cancelled for lack of controllers; causing increased delays at TSA airport checkpoints; causing a loss of trained employees who increasingly are forced into seeking alternative employment; causing fatigue for essential employees who are forced into taking additional jobs to earn the money they need to feed their families and pay for housing and medicine; causing additional expenses for training of new employees and for paying furloughed non-essential employees who performed no services at all, just to describe some of the costs associated with an ever-increasing shutdown.

Also, the 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.

VIII.

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. dism., 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.

IX.

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.

X.

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. If shutdowns are not declared unconstitutional, President Trump and his successors from either or any party can be expected to use shutdowns to coerce Congress into consenting to legislation and expenditures they would otherwise not approve. Loss of co-equal status for Congress is the obvious result, with one President using shutdown to terminate or reduce Social Security and another President using shutdown to coerce enactment of a single-payer healthcare system, and the successors of each undoing these coerced statutes by additional shutdowns, resulting in a spiraling downward movement of the nation's economy.

XI.

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 were supposed to be paid on January 11, 2019 and January 25, 2019 and thereby end the shutdown. Note: apparently payment is going to be approved for the

past unpaid amounts, and payments due for the 3-week period starting on January 25, 2019, but the threat of a further shutdown was made by President Trump today if he decides to do so.

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]; 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. The ADA, enacted to ensure Congressional control over spending, should be construed to apply only to governmental operations activated by the Executive Branch but not authorized by Congress. Governmental activities authorized by Congress should be construed to have their own funding unless unauthorized by act of Congress.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion for a preliminary injunction ending the shutdown and enjoining any further shutdowns pending the resolution on the merits of the present action.

Dated: New York, New York
January 26, 2019

Carl E. Person, *pro se*
225 E. 36th Street – 3A
New York NY 10016-3664
Tel: 212-307-4444; Cell: 917-453-9376
Email: carlpers2@gmail.com